



BDO IRELAND

CHANGES TO IRELAND'S TRANSFER PRICING REGIME

Finance Bill 2019

Roinn an Taoiseach
Department of the Taoiseach

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NEW TRANSFER PRICING STANDARDS AND MORE

Ireland's transfer pricing and international tax regime will dramatically change from **1 January 2020**. The Department of Finance published *Finance Bill 2019* on **17 October**, containing legislation that adopts latest international standards for corporate taxation in Ireland.

The new Irish tax legislation covers eight general areas. This paper outlines the key transfer pricing elements of Finance Bill 2019 and their impact on Irish business and investment.

1. 2017 OECD Transfer Pricing Guidelines
2. Documentation using Master and Local Files
3. Re-characterize arrangements lacking substance
4. Excessive payments deemed a distribution
5. Remove exemption for medium-sized companies
6. Remove grandfathering exemption
7. Apply transfer pricing to specified non-trading transactions
8. Extend rules to capital transactions

OVERVIEW

Finance Bill 2019 is the conclusion to consultations and legislative consideration by the Department of Finance. Most of the legislation takes effect from 1 January 2020, although the expansion of scope to include small and medium-sized enterprises (SMEs) is deferred to a later date.

Amendments will be made to Finance Bill 2019 during review stages, before becoming law as a Finance Act. None of these core principles and rules are expected to change.

Ireland's Revenue Commissioners (Revenue) has, since 2015, conducted audits to enforce transfer pricing legislation in force since 2011. The breadth of tax law updates introduced by Finance Bill 2019 will influence how Revenue seeks to enforce transfer pricing legislation going forward and what documented evidence Irish business is meant to have ready on demand for Revenue inspections.

2017 OECD GUIDELINES AND UPDATED PRINCIPLES

Ireland's transfer pricing regime will reflect the [2017 OECD Guidelines](#) and other OECD guidance as basis for determining the arm's length price for intra-group transactions. Finance Bill 2019 adopts accepted practice into Irish domestic tax law, which has to date referenced a 2010 version of the OECD Guidelines. This should be welcome news for businesses that wish to comply with consistent rules across their international operations.

NEW DOCUMENTATION OBLIGATIONS

Larger businesses operating in Ireland must prepare OECD-standard Master and Local Files to evidence compliance with transfer pricing rules (see *Chapter V* of the *2017 OECD Guidelines*).

An Irish business of any size will have an annual obligation to prepare a Local File if it is a member of a global group that has turnover greater than €50 million. An Irish business will have a further Master File obligation if it is a member of a global group that has turnover greater than €250 million.

The **Master File** is group-wide document that introduces a tax authority to the business, its transfer pricing policies and capital structure.

The **Local File** is a detailed document seeking to prove that all material intra-group transactions were executed using arm's lengths pricing.

Businesses have **30 days** to submit documentation to Revenue upon request, whereas 3 months was afforded previously. Failure to prepare and submit the required documentation will attract penalties of €25,000 or greater for larger businesses; or €4,000 for those companies under the €50 million threshold.

Businesses in scope for documentation requirements should bridge gaps with existing documentation to align with latest OECD standards. A critical new item in the Local File is to reconcile transfer pricing policies to statutory accounts of the Irish entity.

RE-CHARACTERISATION OF AN ARRANGEMENT

Finance Bill 2019 contains additional provisions aimed at curtailing tax benefits of artificial arrangements.

A provision allows Revenue to re-characterise an intragroup arrangement if it is demonstrated that the arrangement: (i) lacks the required substance (e.g. relevant people functions), and (ii) conflicts with commercial arrangements of independent parties.

DEEMED DISTRIBUTIONS AND WITHHOLDING TAXES

If an Irish business pays an amount in excess of the arm's length amount in connection with an intragroup transaction, then legislation deems the excess payment as a distribution subject to potential withholding taxes unless an exemption is available.

SMALL AND MEDIUM-SIZED ENTERPRISES

Medium-Sized businesses employ between 50 and 250 people, and have either: (i) turnover between €10 and €50 million, or (ii) balance sheet values between €10 and €43 million. The legislation proposes to remove the current exemption for these businesses.

Medium companies need only apply transfer pricing rules for cross-border arrangements above €1 million. Documentation obligations are also substantially reduced relative to the Master and Local File framework mentioned earlier.

Finance traditionally sets tax policies to reduce the compliance burden for smaller companies relative to larger ones. Accordingly, Finance indicated these proposed rules may not take effect next year.

REMOVED GRANDFATHERING EXEMPTION

Arrangements entered into prior to 1 July 2010 are no longer exempt from transfer pricing rules in Ireland. The original purpose of the exemption was to ease the transition burden of transfer pricing compliance.

It is not expected that many ongoing transactions in Ireland continue to claim this exemption, and hence few businesses, if any, will be affected by this change.

EXTENSION TO NON-TRADING TRANSACTIONS

Transfer pricing rules in Ireland only apply to income earned or expenses incurred related to a trade, i.e. in general terms, profits subject to the 12.5% tax rate. Transfer pricing rules will apply to Irish entities that are subject to tax, with a few exemptions.

There has been pressure to discourage a form of nontrading transaction, referred to as Interest-Free Loans, granted by Irish companies to non-Irish affiliates. These arrangements can yield tax savings outside Ireland.

Certain businesses now have until 31 December 2019 to identify and to execute their preferred alternative arrangement to the interest-free, intra-group lending that was the target of this legislation.

Finance Bill 2019 exempts non-trading transactions involving two parties both subject to Irish taxation, i.e. wholly-domestic transactions, provided the arrangement has no tax avoidance motive or benefit.

EXTENSION TO CAPITAL TRANSACTIONS

Intra-group sales and purchases of assets will be subject to Ireland's transfer pricing rules if the market value of the assets is greater than €25 million. If valuations of those assets do not satisfy the OECD arm's length standards, then Irish businesses can be exposed to further capital gains tax on sales or reduced capital allowance relief (i.e., tax depreciation) on acquisitions.

While Ireland's tax regime contains pre-existing provisions with regard to capital transactions, the extension of transfer pricing rules adds prescribed documentation obligations and compliance requirements for asset transfer transactions.

In certain conditions, other provisions in tax legislation supersedes transfer pricing rules, thereby, removing the arm's length value requirement for pricing the relevant assets.

► IS YOUR BUSINESS PREPARED?

Given the fundamental reforms witnessed across many international tax issues this year, many businesses operating in Ireland continue to evaluate the impact to their commercial, finance and tax structures and obligations.

The introduction of material transfer pricing penalties to encourage compliance is now cause to consider how best to manage this new compliance requirement.

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