

# Transfer Pricing

*Contributing editor*  
**Jason M Osborn**



**2018**

GETTING THE  
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# Transfer Pricing 2018

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# Ireland

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## Overview

### 1 Identify the principal transfer pricing legislation.

The primary Irish transfer pricing legislation is contained in Part 35A of the Taxes Consolidation Act 1997 (TCA), which applies to accounting periods commencing on or after 1 January 2011 for transactions the terms of which were agreed on or after 1 July 2010.

### 2 Which central government agency has primary responsibility for enforcing the transfer pricing rules?

The Revenue Commissioners deal with transfer pricing and all other tax matters. The Irish competent authority team within the Revenue Commissioners is responsible for tax matters under Ireland's treaties. There are transfer pricing specialists and economists within the Revenue Commissioners dealing with transfer pricing matters.

### 3 What is the role of the OECD Transfer Pricing Guidelines?

The OECD Transfer Pricing Guidelines are tantamount to being Irish law by virtue of Irish tax legislation which states that the transfer pricing rules are to be construed in such a way as to ensure, as far as practicable, consistency with the OECD Transfer Pricing Guidelines. Consequently, Irish law does not go into any detail about how to apply the arm's-length principle. New and revised versions of the OECD Transfer Pricing Guidelines are incorporated into domestic Irish law by legislative amendment. The 2017 edition of the OECD Transfer Pricing Guidelines have not been incorporated into Irish domestic law to date.

### 4 To what types of transactions do the transfer pricing rules apply?

The transfer pricing rules apply, in a domestic and cross-border context:

- to arrangements involving the supply and acquisition of goods, services, money or intangibles;
- where at the time of the supply and acquisition the supplier and acquirer are associated; and
- to the profits or gains or losses arising from the relevant activities are in respect of trading activities.

Where an arrangement between associated entities is made otherwise than at arm's length, an adjustment may be made where the Irish entity has understated income or overstated expenses.

An arrangement is defined very broadly and includes any agreement or arrangement of any kind (whether or not it is, or is intended to be, legally enforceable). Two persons may be associated directly or indirectly by virtue of participation in the management, control or capital of the other. A trading activity typically involves significant activities conducted regularly by persons or employees in Ireland and will typically qualify for the 12.5 per cent corporation tax rate.

The transfer pricing rules do not apply to small or medium-sized enterprises (SMEs) – broadly, enterprises with less than 250 employees and either a turnover of less than €50 million or assets of less than €43 million on a group basis.

Arrangements that were agreed before 1 July 2010 and remain unchanged are not subject to the transfer pricing rules.

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### 5 Do the relevant transfer pricing authorities adhere to the arm's-length principle?

Yes.

### 6 How has the OECD's project on base erosion and profit shifting (BEPS) affected the applicable transfer pricing rules?

Ireland participated fully in the OECD's BEPS project and has implemented several best practice recommendations to date. As noted above, new and revised versions of the OECD Transfer Pricing Guidelines are incorporated into Irish law by legislative amendment. The BEPS Actions 8 to 10 recommendations will not be applied to non-double tax agreement situations under domestic transfer pricing rules until they become legally effective. However, the updated OECD Transfer Pricing Guidelines will be applied with effect from October 2015 to disputes in relation to profit allocation under double taxation agreements (DTAs). It is anticipated that Ireland will seek to incorporate the 2017 edition of the OECD Transfer Pricing Guidelines into domestic law in the near future.

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## Pricing methods

### 7 What transfer pricing methods are acceptable?

The transfer pricing rules do not specify acceptable or preferred transfer pricing methods. However the legislation requires the transfer pricing rules to be construed in such a way so as to ensure, as far as practicable, consistency with the OECD Transfer Pricing Guidelines.

Therefore any transfer pricing method that is selected and applied in accordance with the OECD Transfer Pricing Guidelines should be acceptable from an Irish transfer pricing perspective. In accordance with the OECD Transfer Pricing Guidelines, the taxpayer should select the methodology that is most appropriate for the particular transaction.

### 8 Are cost-sharing arrangements permitted? Describe the acceptable cost-sharing pricing methods.

Cost-sharing arrangements are permitted. Intragroup cost-sharing arrangements should be implemented in a manner consistent with the OECD Transfer Pricing Guidelines. Therefore the conditions applying to the cost-sharing arrangement should be consistent with the arm's-length principle and should be adequately documented.

### 9 What are the rules for selecting a transfer pricing method?

Transfer pricing methods should be selected in accordance with the OECD Transfer Pricing Guidelines. There are no preferred methods prescribed by the transfer pricing rules. Therefore traditional transaction methods and transactional profit methods may be used but the selection of a transfer pricing method should always aim at finding the most appropriate method given the particular factual circumstances.

### 10 Can a taxpayer make transfer pricing adjustments?

Where the transfer pricing adjustment arises in respect of an obligation to make a payment to a connected person outside Ireland, as a result of an adjustment to the profits of that connected person and where relief is available under the terms of a DTA, then an adjustment may only be taken in Ireland by way of a correlative relief application to the Irish competent authority.

Transfer pricing adjustments made in other situations (eg, as a year-end true-up) are generally acceptable as long as they comply with the arm's-length standard.

**11 Are special 'safe harbour' methods available for certain types of related-party transactions? What are these methods and what types of transactions do they apply to?**

There are no safe harbour methods. However, the transfer pricing rules do not apply to SMEs.

**Disclosures and documentation**

**12 Does the tax authority require taxpayers to submit transfer pricing documentation? What are the consequences for failing to submit documentation?**

A taxpayer is not obliged to submit transfer pricing documentation unless requested by the Revenue Commissioners. However the taxpayer is obliged to retain and have available for inspection sufficient documentation and records to demonstrate the taxpayer's compliance with the transfer pricing rules. The records must be prepared in a timely manner and must demonstrate that the taxpayer's relevant income has been computed in accordance with the transfer pricing rules. The records must be prepared in English or Irish in written form or by means of any electronic, photographic or other process permitted for accounting records. The records must be retained for a period of at least six years after the completion of the relevant transaction to which they relate.

A taxpayer who fails to submit documentation when requested by the Revenue Commissioners may be liable to a penalty. The Revenue Commissioners can apply to the High Court of Ireland for a court order to compel a taxpayer to submit records or documentation.

**13 Other than complying with mandatory documentation requirements, describe any additional benefits of preparing transfer pricing documentation.**

Taxpayers are obliged to retain such records and documentation that enable true returns to be made under the self-assessment system of corporation tax compliance. A failure to do so may result in the taxpayer incurring penalties. In addition, a comprehensive and robust system of document and record retention will strengthen a taxpayer's position in any engagements with the Revenue Commissioners. For example, a record of the transfer pricing analysis that was carried out should be sufficient to show that reasonable care has been taken and should therefore mitigate tax-gear penalties in the event of underpayment.

**14 When must a taxpayer prepare and submit transfer pricing documentation to comply with mandatory documentation requirements or obtain additional benefits?**

Records and documentation must be maintained in a timely manner on a continuous and consistent basis. Best practice dictates that all documentation should be prepared contemporaneously.

Taxpayers are not obliged to submit transfer pricing documentation until they are requested to do so by the Revenue Commissioners. The Revenue Commissioners are obliged to give taxpayers a reasonable opportunity to submit the relevant documentation. If a taxpayer fails to comply with a request for documents, the Revenue Commissioners may serve a demand on the taxpayer seeking the relevant documents within a period not less than 21 days. A taxpayer who fails to submit the relevant documentation within the time period prescribed in the notice may be liable to a penalty.

**15 What content must be included in the transfer pricing documentation? Are a separate 'master file' and 'local file' required? What are the acceptable languages for the transfer pricing documentation?**

Taxpayers must have available records as may reasonably be required for the purposes of determining whether the trading income has been computed on an arm's-length basis. Irish tax legislation is not prescriptive as to the form of that documentation. The Revenue Commissioners have published guidance on documentation requirements. The key points noted in the Revenue Commissioners' guidance are as follows:

- There is no standard or required form of transfer pricing documentation. However, the EU Council Code of Conduct, EU Transfer

Pricing Documentation, and Chapter V of the OECD Transfer Pricing Guidelines are considered good practice.

- Documentation should be available at the time the relevant tax return is made although it is best practice that the documentation is prepared at the time of the transaction in question.
- Suitable documentation may already be held by another group company.
- The extent of documentation depends on the facts. The cost and administrative burden of preparing documentation should be commensurate with the risk involved. For example, it would be expected that complex and high-value transactions would generally require more detailed analysis and related documentation than simple, easily understood and comparable, high-volume transactions.
- The quality of the documentation will be a key factor in determining whether an adjustment on audit should be regarded as correcting an innocent error or as being a technical adjustment. The quality of the documentation will depend on its suitability for purpose. Again, for complex high-value transactions the benchmark for what represents quality documentation will be higher.

Although a separate master file and a local file is not technically required, the information required to be kept on a master file and a local file should be treated as being reasonably required for the purposes of determining whether the trading income has been computed on an arm's-length basis. Therefore, taxpayers should comply with the BEPS Action 13 documentation requirements in order to satisfy Irish domestic obligations. Taxpayers are not obliged to file this information with the Revenue Commissioners.

**16 Has the tax authority proposed or adopted country-by-country reporting? What, if any, are the differences between the local rules adopting country-by-country reporting and the consensus framework of BEPS Action 13?**

Country-by-country (CbC) reporting applies to fiscal years beginning on or after 1 January 2016. The Irish legislative framework largely follows the OECD BEPS Action 13 proposal. However, the Irish approach departs from the OECD proposal with respect to secondary reporting obligations. In Ireland, a constituent entity that is neither an ultimate parent entity nor a surrogate parent entity is obliged to request information from its ultimate parent entity to complete a full CbC report. If the ultimate parent entity refuses or fails to provide sufficient information to enable the constituent entity to file a full CbC report, the constituent entity is obliged to notify the Revenue Commissioners of that refusal and file an 'equivalent country-by-country report'. The 'equivalent country-by-country report' contains details of the filing constituent entity and its subsidiaries only. Failure by the constituent entity to request the information from the ultimate parent entity will result in penalties for the constituent entity. There are no penalties if the constituent entity requests the information and that request is refused.

**Adjustments and settlement**

**17 How long does the tax authority have to review an income tax return?**

Where a taxpayer has delivered a return containing a full and true disclosure of all material information, the Revenue Commissioners may not make an assessment or an amendment to an assessment after the end of four years commencing at the end of the tax year in which the return is filed. Unless and until a full and true return has been filed, the four-year time limit does not begin to run. The Revenue Commissioners may raise an assessment at any time where they have reasonable grounds for suspecting fraud or neglect.

**18 If the tax authority asserts a final transfer pricing adjustment, what options does the taxpayer have to dispute the adjustment?**

A taxpayer can appeal a transfer pricing assessment to the Tax Appeals Commission at first instance. The decision of an Appeal Commissioner may be appealed on a point of law to the High Court and the Supreme Court.

Procedural defects in the Revenue Commissioners' conduct may be challenged by way of judicial review.

Where the transfer pricing adjustment results in double taxation, the taxpayer may present the case to the Irish competent authority for

relief pursuant to the mutual agreement procedure (MAP) article of the relevant DTA.

### Relief from double taxation

#### 19 Does the country have a comprehensive income tax treaty network? Do these treaties have effective mutual agreement procedures?

Ireland currently has an extensive network of 72 effective DTAs including most major trading nations. The DTAs generally contain an article providing for a MAP.

#### 20 How can a taxpayer request relief from double taxation under the mutual agreement procedure of a tax treaty? Are there published procedures?

The procedure for making a MAP request is relatively informal. To activate the MAP, a taxpayer must apply to the Revenue Commissioners in writing setting out the details of its case. The MAP request must:

- be in writing;
- quote the legal basis for the MAP (ie, the relevant article in Ireland's double taxation treaties and agreements or EU Arbitration Convention);
- explain why a MAP is considered necessary;
- explain the issues involved (attaching relevant background documentation); and
- set out what the requester considers to be the correct outcome (attaching any documents, case law, etc, backing up the requester's view).

If the MAP request (or requests) is being made to more than one competent authority, the Irish competent authority should receive the same information as the other competent authority or authorities.

#### 21 When may a taxpayer request assistance from the competent authority?

A taxpayer should request assistance from the Irish competent authority as early as possible and in advance of the applicable time limitation.

The time limit laid down by the OECD Model Convention for presenting a MAP request is three years from the first notification of the action resulting in potential double taxation. In practice, the majority of Ireland's DTAs include this three-year time limit, though some DTAs provide for a two-year limit or no time limit.

In the absence of a specified time limit, the domestic legislation stipulating the time limit for claiming a repayment of tax may apply giving a period of four years from the end of the relevant accounting period to apply for a MAP request. However, certain of Ireland's DTAs, such as the US-Ireland DTA, provide that the MAP shall be available notwithstanding domestic time limits.

The MAP is generally available irrespective of any domestic remedies available and it may be initiated before, during or after litigation, but if initiated while such litigation is ongoing the litigation would generally be suspended.

#### 22 Are there limitations on the type of relief that the competent authority will seek, both generally and in specific cases?

There are generally no limitations on the type of relief the Revenue Commissioners may seek.

#### 23 How effective is the competent authority in obtaining relief from double taxation?

The Irish competent authority is generally effective in ensuring a taxpayer obtains relief from double taxation. Typically the Irish competent authority is asked to engage in a MAP or the Revenue Commissioners are asked to give correlative relief, for a transfer pricing adjustment raised in another jurisdiction. The Irish competent authority and the Revenue Commissioners will endeavour to ensure that the taxpayer has sought to vigorously defend its position and that ultimately any settlement represents a robust and fair application of the OECD Transfer Pricing Guidelines.

In 2016, the Revenue Commissioners completed negotiations to eliminate double taxation through MAPs in more than 15 per cent of its open case inventory.

### Advance pricing agreements

#### 24 Does the country have an advance pricing agreement (APA) programme? Are unilateral, bilateral and multilateral APAs available?

Ireland introduced a formal bilateral APA programme that became effective on 1 July 2016. The APA programme replaces the Revenue Commissioners' ad hoc approach to agreeing APAs and provides for the initiation by taxpayers of APAs in Ireland.

Ireland actively participates in bilateral APAs but will not generally conclude unilateral APAs. Where the relevant issues involve more than two tax jurisdictions, the Revenue Commissioners will consider entering into a series of bilateral APAs to deal with multilateral situations.

#### 25 Describe the process for obtaining an APA, including a brief description of the submission requirements and any applicable user fees.

A company's access to the APA programme is subject to the terms of the MAP article of the relevant DTA. An application for an APA may be made by a company that is tax resident in Ireland, or by a permanent establishment of a non-resident company.

The Revenue Commissioners adhere to the detailed guidelines for concluding APAs that are contained in Annex to Chapter IV: Advance Pricing Arrangements of the OECD Transfer Pricing Guidelines. All bilateral APAs are negotiated on the basis of identifying an arm's-length remuneration for the transactions covered by the APA, and in each case the transfer pricing method applied will be in accordance with one of the methodologies contained in Chapter II of the OECD Transfer Pricing Guidelines.

In addition, when negotiating a bilateral APA with an EU member state, the Revenue Commissioners will adhere to the best practices for the conduct of APA procedures which are set out in the Guidelines for Advance Pricing Agreements within the EU which have been published by the EU Joint Transfer Pricing Forum.

The APA programme involves the following five stages:

- Pre-filing: The pre-filing meeting will enable the parties to establish whether an APA is appropriate and will facilitate a discussion of the relevant issues (ie, the transactions involved, proposed TP methodology, etc).
- Formal application: The formal APA application will require submission of information including an executive summary, details on the company background, industry analysis, the covered transactions, functional analysis, economic analysis (covering the proposed methodology, search for comparables and any adjustments), financial information and details of any related audit enquiries.
- Evaluation and negotiation: The Revenue Commissioners will formulate its view based on a detailed evaluation of all information submitted. The Revenue Commissioners will then enter into negotiations with the relevant competent authority to resolve any differences arising, with the objective that one agreed set of terms and conditions can be provided to the taxpayer.
- Agreement: Where an agreement is reached, the Revenue Commissioners will notify the taxpayer in writing of the agreed terms and conditions within 30 days. If the taxpayer accepts the agreed terms, the Revenue Commissioners will liaise with the other competent authority to finalise the APA. If the agreed terms are not accepted, the Revenue Commissioners will consult with the other competent authority regarding modification where possible.
- Annual reporting: The taxpayer will be obliged to file an annual report with the Revenue Commissioners detailing how it has complied with the terms of the APA. The TP issues covered by the APA will not be subject to audit adjustments by the participating tax authorities provided the terms and conditions of the APA are consistently satisfied.

The Irish competent authority should receive the same information as the other competent authority or authorities. There are no user fees payable to the Revenue Commissioners.

#### 26 How long does it typically take to obtain a unilateral and a bilateral APA?

It will typically take 18 to 24 months to conclude a bilateral APA.



## Update and trends

### Corporation Tax Review

In September 2016, Ireland announced that an independent expert would be appointed to review Ireland's corporation tax regime. The following were identified as key aspects of the review:

- tax transparency: Ireland is committed to achieving the highest standards in tax transparency (including exchange of information);
- ensuring that the Irish corporation tax system does not provide preferential treatment to any taxpayer;
- further implementation of Ireland's commitments under BEPS (including the adoption of the 2017 edition of the OECD Transfer Pricing Guidelines); and
- delivering tax certainty for business and maintaining the competitiveness of Ireland's corporation tax offering.

The review is due to be completed during the second quarter of 2017 and recommendations are likely to be included in Finance Act 2017 (which should be enacted by the end of 2017).

### OECD BEPS Implementation

The OECD BEPS final reports continue to have a significant impact on international tax policy in Ireland. Ireland signed the multilateral instrument (MLI) on 7 June 2017. The key updates to Ireland's DTAs effected by the MLI will be the:

- adoption of a principal purpose test;
- adoption of a tie-breaker test based on mutual agreement to determine tax residence for dual resident entities; and

- adoption of a number of measures, including mandatory binding arbitration, to resolve DTA disputes more efficiently.

Interestingly, Ireland will not adopt the changes to the permanent establishment (PE) definition designed to treat commissionaires as PEs. In addition, Ireland will not adopt the narrower specific activities exemption to PE status proposed by the MLI. Ireland will, however, adopt the anti-fragmentation rule in article 13(4) of the MLI and the anti-avoidance rule in article 14 of the MLI designed to prevent contractual arrangements being done in a manner which artificially prevents a long-standing building site from being classified as a PE.

Ireland will adopt the BEPS measures proposed in the Anti-Tax Avoidance Directive (ATAD). The Irish government is expected to consult on the implementation of the ATAD during 2017.

### Dispute Resolution

In line with international trends, tax disputes have become more commonplace in Ireland. The Revenue Commissioners reported a 33 per cent increase in the number of MAPs initiated during 2016. As noted, the Revenue Commissioners concluded negotiations to eliminate double taxation through MAP in more than 15 per cent of its open case inventory. Ireland will be subject to the OECD peer review of its MAP procedures in 2017.

The Revenue Commissioners have also enhanced their transfer pricing audit and compliance activities in recent years. The Revenue Commissioners' Transfer Pricing Audit Branch had 12 open transfer pricing audits ongoing at the end of 2016.

## 27 How many years can an APA cover prospectively? Are rollbacks available?

Typically, APAs cover three to five years, but a longer period may be considered depending on the characteristics of the transaction covered by the APA. Rollbacks are available.

## 28 What types of related-party transactions or issues can be covered by APAs?

The APA programme will apply to complex transfer pricing issues only, where the appropriate application of the arm's-length principle is in doubt or there is a significant risk of double taxation. The Revenue Commissioners list a number of factors which indicate the appropriateness of a particular matter for an APA, including:

- significant doubt exists over the appropriate methodology or a bespoke methodology is being applied;
- the application of the methodology is complex or requires complex calculations;
- reliable comparables are not readily available or require significant and complex adjustments or both; and
- the transaction is real (ie, not hypothetical) and is not expected to change throughout the duration of the APA.

## 29 Is the APA programme widely used?

The APA programme is of growing importance in recent years. During 2016, the Revenue Commissioners received one formal APA request and six pre-filing applications for an APA. It is likely that the initiation of APAs in Ireland will continue to increase in popularity under the formal APA programme.

## 30 Is the APA programme independent from the tax authority's examination function? Is it independent from the competent authority staff that handle other double tax cases?

APA negotiations are typically handled by the competent authority team, which handles double tax cases under a DTA. This is a separate team to the Revenue Commissioners' case officer assigned to that taxpayer. The Revenue Commissioners highlighted the importance of establishing an objective and independent competent authority team in its 2015 publication *The Role of the Competent Authority*.

## 31 What are the key advantages and disadvantages to obtaining an APA with the tax authority?

The advantages and disadvantages in Ireland are similar to most countries.

Advantages include:

- certainty and enhanced predictability;
- reduced scrutiny going forward;
- avoiding costly and time-consuming litigation or examinations;
- a better understanding of the business on the part of the Revenue Commissioners; and
- the opportunity to establish or improve a relationship with Revenue in a non-adversarial environment.

Disadvantages include:

- external professional fees;
- close scrutiny of a transaction by the Revenue Commissioners;
- significant time of key executives;
- no guarantee that the tax authorities will agree terms that are acceptable to the taxpayer;
- a large amount of information must be volunteered to the Revenue Commissioners; and
- information submitted may be exchanged with tax authorities outside of the APA procedure.

## Special topics

### 32 Is the tax authority generally required to respect the form of related-party transactions as actually structured? In what circumstances can the tax authority disregard or recharacterise related-party transactions?

The Revenue Commissioners will have due regard to Chapter I of the OECD Transfer Pricing Guidelines concerning when, exceptionally, it may be appropriate to consider disregarding the legal form of a structure:

- the economic substance of a transaction differs to its form, and
- the form and substance differ from those that would have been adopted by independent enterprises behaving in a commercially rational manner and the actual structure practically impedes the Revenue Commissioners from determining the appropriate transfer price.

Under Irish domestic law, the Revenue Commissioners are generally entitled to consider the substance rather than form of a transaction, or may disallow certain specific tax reliefs, where the transaction is not carried out for bona fide commercial reasons or can be considered a tax avoidance transaction within the meaning of the Irish general anti-avoidance legislation.

The Supreme Court decision of *O'Flynn Construction Limited v Revenue Commissioners* [2011] IESC 47 is considered as support for a

substance-over-form doctrine in Irish tax law and reverses the long-standing position of form over substance as enunciated in the UK case of *IRC v Duke of Westminster* 19 TC 490 and endorsed by the Irish courts in *McGrath v McDermott* III ITR 683.

**33 What are some of the important factors that the tax authority takes into account in selecting and evaluating comparables? In particular, does the tax authority require the use of country-specific comparable companies, or are comparables from several jurisdictions acceptable?**

The Revenue Commissioners have not published guidelines on the evaluation of comparables and there is no requirement to limit comparability analysis to Irish or European comparables. However, the principles outlined in Chapters I and III of the OECD Transfer Pricing Guidelines clearly will be relevant. The Revenue Commissioners typically adopt a pragmatic approach in evaluating comparables. In general, Irish tax legislation and the Revenue Commissioners place considerable weight on the commerciality of transactions. Therefore, in determining the appropriateness of the comparables identified, results that do not apparently make commercial sense (eg, when there is a substantial deviation from other results) should be investigated further.

**34 What is the tax authority's position and practice with respect to secret comparables? If secret comparables are ever used, what procedures are in place to allow a taxpayer to defend its own transfer pricing position against the tax authority's position based on secret comparables?**

The Revenue Commissioners do not use secret comparables, but will use the same commercial databases typically used by taxpayers.

**35 Are secondary transfer pricing adjustments required? What form do they take and what are their tax consequences? Are procedures available to obtain relief from the adverse tax consequences of certain secondary adjustments?**

Generally, secondary transfer pricing adjustments are not a feature of the Irish tax landscape.

**36 Are any categories of intercompany payments non-deductible?**

There are no specific categories of intercompany payment that are non-deductible. However, there are limitations on the deductibility of certain interest payments to related parties where the related securities are:

- securities issued otherwise than for new consideration or are convertible directly or indirectly into shares;
- securities where the interest paid is to any extent dependent on the company's results or is at more than a reasonable commercial rate; or
- securities issued by an Irish company and held by a non-resident related company (other than a related company in an EU member state or a DTA partner country, or by certain Irish-resident finance companies and the interest represents a reasonable commercial rate).

Otherwise intercompany payments are subject to the same rules on deductibility as third-party payments. In order for a trading expense to be deductible, it must be incurred wholly and exclusively for the purposes of the trade and must not be capital in nature. It is typically considered by the Revenue Commissioners that an excessive (or non-arm's-length) expense payment is not wholly and exclusively incurred for the purpose of a trade.

**37 How are location savings and other location-specific attributes treated under the applicable transfer pricing rules? How are they treated by the tax authority in practice?**

There are no specific rules on location savings, and typically the Revenue Commissioners will not assert location-specific attributes in applying the transfer pricing rules.

**38 How are profits attributed to a branch or permanent establishment (PE)? Does the tax authority treat the branch or PE as a functionally separate enterprise and apply arm's-length principles? If not, what other approach is applied?**

A non-Irish-resident company that is trading in Ireland through a branch or agency is subject to tax in Ireland on any trading income arising directly or indirectly through or from the branch or agency or any income from property or rights used by, or held by or for the branch or agency.

There is no guidance on how to determine what trading income arises directly or indirectly through a branch or agency. However the Revenue Commissioners will typically accept an allocation determined on a just and reasonable basis that is applied in a consistent manner. In this regard the Revenue Commissioners would typically apply the separate enterprise theory as provided for in most of Ireland's DTA and would seek to apply arm's-length principles.

**39 Are any exit charges imposed on restructurings? How are they determined?**

There are no explicit exit charges imposed on restructurings except where the restructuring involves the actual or deemed disposal of an asset. In such circumstances, market value is imposed on disposals to connected persons.

Irish law imposes an 'exit tax' in certain circumstances where a company with assets ceases to be tax resident in Ireland. In such circumstances, the company is deemed to have disposed of and reacquired all of its assets at market value immediately prior to the change of residence. The deemed disposal and reacquisition can give rise to an Irish capital gains tax liability on any gain arising based on the increase in the value of the assets of the company concerned. There are a number of exceptions to the exit charge where the exiting company is ultimately owned by persons resident in an EU or DTA partner country.

**40 Are temporary special tax exemptions or rate reductions provided through government bodies such as local industrial development boards?**

No.



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