



# Ireland introduces transfer pricing provisions

## Background

Finance Bill 2010 introduced new transfer pricing provisions to be applied to trading transactions between associated persons. These provisions are intended to consolidate and expand on existing legislation in the Irish tax code and align Ireland with international standards by adopting the OECD arms length principles.

Transfer pricing is a process whereby related parties set prices for transactions between each other. Supporting documentation that summarises this process is prepared and this is used to defend the agreed pricing structure should any tax authority wish to challenge it in due course.

The three aspects of the business that are considered in determining the transfer price between connected parties are as follows:

- Functions performed
- Assets utilised and
- Risks borne

Once the split of the above are known, transactions entered into by independent parties that have a similar profile to the client can be identified and financial data that is publicly available can be used to provide a basis for the inter-company transfer price.

There are a number of methods which may be used to set an appropriate transfer price. All of these methods seek to replicate the conditions of an independent transaction.

Many companies affected by the Irish transfer pricing legislation are members of large international groups that trade internationally and are already subject to international transfer pricing requirements. For such companies, the concepts of international transfer pricing rules are well understood and all they will have to do is introduce such principles into their Irish operations.

The introduction of transfer pricing in Ireland will provide greater scope for Irish companies to challenge transfer pricing adjustments from other territories. Ireland is now a low tax onshore location with transfer pricing legislation.

The Irish transfer pricing provisions will apply to large businesses only - small and medium size enterprises are excluded. Entities subject to the transfer pricing rules must maintain sufficient documentation to show compliance and must ensure that this documentation is available on request.

## New Provisions

### *Exclusion for small medium sized enterprises*

The transfer pricing provisions do not apply to small and medium sized enterprises (“SMEs”). The definition of an SME is based on the definition of medium-sized enterprises in EU Commission Recommendation of 6 May 2003 and, broadly, includes groups of companies where the group employs less than 250 employees and either has a turnover of less than €50m or assets of less than €43m. These figures apply to the worldwide group and are reviewed annually.

### **Transfer pricing charging provisions**

If a group fails the SME test, the transfer pricing provisions will apply to any arrangements involving:

- (a) the supply and acquisition of goods, services, money or intangible assets,
- (b) where, at the time of the supply and acquisition, the person making the supply and the person making the acquisition are associated, and
- (c) the profits or gains or losses arising from the relevant activities qualify as trading operations and are subject to the 12.5% rate of corporation tax in the case of either or both of them.

There are therefore three key concepts that drive the application of the transfer pricing provisions.

If the actual consideration **payable** under any arrangement **exceeds** the arm’s length amount, then the profits or gains or losses that are chargeable to tax at 12.5% shall be computed as if the arm’s length amount were payable instead of the actual consideration payable.

If the actual consideration **receivable** under any arrangement is **less** than the arm’s length amount, then the profits or gains or losses that are chargeable to tax at 12.5% shall be computed as if the arm’s length amount were receivable instead of the actual consideration receivable.

The ‘arm’s length amount’ in relation to an arrangement is the amount of the consideration that independent

parties would have agreed in relation to the arrangement had those independent parties entered into that arrangement. This is in accordance with the OECD Guidelines on Transfer pricing.

**In summary, the transfer pricing adjustments can only facilitate an upwards adjustment to taxable trading profits i.e. receivables must be adjusted upwards and expenses must be adjusted downwards.**

### *Meaning of Associated*

Only transactions between associated persons are subject to the transfer pricing provisions. The term associated is widely defined and separate groups of companies operating independently that are under common ownership may be regarded as associated.

### *Grandfathering provisions*

The transfer pricing provisions applies to periods beginning on or after 1 January 2011 and do not apply to arrangements agreed before 1 July 2010. Therefore, arrangements agreed on or before 30 June 2010 will fall outside the scope of the regime so immediate steps should be taken to ensure intergroup transactions associated with the supply and acquisition of goods, services, money or intangible assets are adequately documented.

### *Requirement to maintain records*

There is a requirement to have available such records as may reasonably be required for the purposes of determining whether, in relation to the arrangement, the income of the person carrying on a trade is chargeable to tax has been computed in accordance with arms length principles. The records must be prepared on a timely basis and made available to an authorised officer of the Irish tax authorities on request.