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Ireland: Introduction of Transfer Pricing Regime

Ireland's Finance Bill 2010 was presented today, and includes details of the draft Irish transfer pricing legislation.

Key aspects of the proposed transfer pricing regime include the following measures:

- The legislation will cover domestic or international trading transactions entered into between associated entities.
- The commencement (effective) date is 1 January 2011.
- The transfer pricing regime will not apply to contracts or terms and conditions agreed before 1 July 2010.
- The legislation will require that covered transactions are entered into "at arm's length" and will apply to either overstated expenses or understated trading receipts.
- The principles in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations are to be applied when analysing when a transaction has been entered into "at arm's length".
- The rules will not apply to small or medium sized enterprises. To fall within the rules, the overall enterprise must have more than 250 employees and either turnover of greater than €50 million or assets of greater than €43 million. The size thresholds are to be applied on a global consolidated basis, and the economic interests of controlling individual shareholders must be taken into account in applying the tests.
- The legislation contains provisions to allow an offsetting adjustment to related parties when a transfer pricing adjustment is applied to domestic transactions between associated parties that are both subject to Irish tax.
- No specific transfer pricing penalties are included within the legislation so the standard interest and penalty provisions will apply.

Implications of the Proposed Transfer Pricing Regime

Who does this potentially affect? The proposed transfer pricing regime will affect multinationals operating within Ireland and domestic Irish companies that meet the size requirements.

What inter-company transactions will be affected? The proposed transfer pricing regime will only apply to trading transactions, and will be applicable to overstated expenses or understated receipts.

Irish tax law defines "trade" as including "every trade, manufacture, adventure or concern in the nature of trade." Because this statutory definition of a trade is vague and does not actually define the word "trade," guidance as to what constitutes trading must be drawn from case law and from a set of rules known as the Badges of Trade, which have been approved by the Irish Courts. The typical example of "trading" is the sale of goods and the provision of services, and it encompasses transactions such as the provision of management services, certain intellectual property licensing and treasury operations.

What documentation is required? There are no detailed documentation requirements. The draft

legislation requires supporting documentation for pricing to be prepared on a timely basis.

To the extent that transactions are covered from the other side, e.g., a transaction between a U.S. parent and an Irish subsidiary when U.S. transfer pricing documentation has been prepared, additional Irish specific documentation may not be required. However, some analysis may be required at the time that the transaction is entered into to determine that the transaction is arm's length, as an arm's length result cannot be guaranteed after the event.

How are arm's length prices to be determined? The OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations are to be used to determine the arm's length nature of an intercompany transaction.

What is to be done now? Companies need to consider conducting a diagnostic review of existing covered intercompany transactions and assess when those agreements are up for renewal. They also may need to consider the extent of any planned intercompany transactions and whether they are likely to fall under the scope of the new regime.

For more information, contact a tax professional with KPMG's Global Transfer Pricing Service group in Ireland:

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