

Transfer Pricing Documentation



The Dublin based treasury services company



Transfer Pricing is now a key area of focus for many tax authorities. To avoid unnecessary penalties, companies are obliged to prepare and maintain appropriate documentation. In this article, Marie Clarke, Head of Finance and Corporate Services at FTI Treasury, provides some guidance on what is required to remain compliant.

What is the background?

The Finance Act 2019 introduced changes to Irish transfer pricing rules, updating those originally enacted to Irish law in the Finance Act 2010.

These changes apply BEPS Action 13 which provides guidance for tax administrations in developing rules around documentation to be prepared by tax-payers to demonstrate that relevant transactions satisfy the arms-length principle. Action 13 was incorporated into the 2017 OECD Transfer Pricing guidelines.

Previous legislation offered flexibility in terms of the form of the documentation. However, this set of rules is more prescriptive in the content of transfer pricing documentation; the main aim being to set common standards for clarity and transparency purposes.

What transactions are in scope?

These rules apply to transactions between related parties, such transactions must be priced as if they were carried out between unrelated parties dealing at arm's length.

The documentation requirement applies to all relevant transactions entered into from accounting periods commencing 1 January 2011.

Ask yourself -

Would independent parties have entered into the particular transactions in the first instance?

How can we remain compliant with the rules?

The legislation obliges companies to describe clearly the nature of related party transactions falling within the legislation. It is important to consider and document the assessment of each transaction, in essence asking the question, would independent parties have entered into the particular transactions in the first instance? If requested by Revenue a company must be able to easily demonstrate that the arm's length requirements have been complied with.

The policy sets out a three-tiered harmonised approach to documentation and reporting of the arms-length principle as follows:

Local File

This is compulsory for groups with global revenues >€50M. The purpose of the local file is to provide an overview of the activities of the company and to analyse and document the arm's length nature of the related party transactions carried out.

The following are the detailed topics covered and included within the local file:

1. Information on the local entity
 - Description of business
 - A copy of the Annual Financial Statements
2. Details of the related parties and a group structure showing where each company lies in relation to the other parties
3. Industry analysis

4. Nature and terms of the transactions
 - Type of transaction
 - Value of transaction
 - Copy of legal agreements including any tax rulings related to the transaction
 - Any changes from prior year
 - Schedule to show how each financial transaction can be tied out to the Financial Statements
5. Detail on how the pricing strategy was arrived at
 - Research and analysis carried out
 - a. Functional analysis (risk profile analysis of the company) and
 - b. Economic analysis (look at the industry the company operates in, competition, structure and market trends)
 - Budgets/forecasts
 - Comparatives, including relevant third party/internal associate pricing, any assumptions made (and the availability of this independent data)

In performing the above, it is necessary to assess the functions performed in the transaction, the assets used and the risks assumed by each party to the transaction.

6. Conclusion

Explain the basis for concluding that the above method has resulted in arm's length.

It is worth noting that the documentation does not have to be prepared by the Irish entity or maintained by the Irish entity but it must be readily available to the Revenue if required. If the local file is prepared at group level the Irish company should obtain a copy on a regular basis and review for completeness and accuracy of reporting.

Master File

This file is compulsory for groups with global revenues >€250m. It is maintained at group level and contains information on the group as a whole. The master file must be readily available to all entities within the group for review, the Irish entity should satisfy itself regularly that it continues to be correctly reflected within the document and in the organisation structure.

The following items are covered in the master file:

1. Organisation structure, including geographical location of each entity
2. Description of the Group's business, strategy, supply chain, important service arrangements and main geographic markets
3. Description of the Group's intangibles, agreements and related transfer pricing policies
4. Group's financial activities including detail of how the group is financed, overall transfer pricing policy for intragroup financing arrangements, details of member companies who are key to the financing function
5. Detail the Group's financial and tax position, include
 - a copy of the Group's Consolidated Financial Statements
 - any relevant tax rulings

Review and report annually -

1. Local File
2. Master File
3. Country by Country Reporting

Country by Country (CbC) Reporting

The ultimate parent or other nominated entity files an annual report with the relevant tax authorities on behalf of group entities. This report is filed within 12 months of the end of a chargeable period.

The CbC report contains the following:

- Revenues (Unrelated Party/Related Party/Total)
- Profit(loss) before tax
- Capital
- Accumulated Earnings
- Tax paid and accrued
- Certain indicators of economic activity among the countries in which it operates
- Number of employees
- Tangible assets other than cash and cash equivalents

Where an Irish entity is not the reporting entity there is an annual requirement to notify the Irish revenue of who the reporting entity is. This filing is done by the end of the financial year to which the report relates and is called CBC notification.

There is no standard form that the documentation is required to be maintained in, it should be in a form that suits each company/group, the detail/complexity of which will be determined by the types of transactions that are being assessed.

What do we need to do on an ongoing basis?

Documentation should be prepared/updated at the time the terms of a transaction are agreed. Best practice would recommend a regular review of the transfer pricing documentation to ensure that the policies applied continue to remain relevant, appropriate and arm's length. If documentation is prepared locally it is advisable to compare with group and the master file on a routine basis to ensure consistent application of rules and content.

What happens on non-compliance?

Penalties will apply to companies unable to provide such documentation to the revenue within 30 days of a request.

What are the relevant compliance deadlines?

Documentation is required to be ready by, latest, the time the relevant tax return falls due. So for a company with a fiscal year end 31 December 2021 it is expected that up to date transfer pricing documentation would be available by 23 September 2022.

Contact:

W: www.ftitresury.com

E: info@ftitresury.com

T: +353 1 636 0000

