Irish transfer pricing update

Impact of Finance Act 2019

Irish transfer pricing

Important update – significant changes to Irish transfer pricing regime, including from 1 January 2020, alignment of Irish transfer pricing legislation with OECD 2017 Transfer Pricing Guidelines.

We have summarised below the key changes and what businesses need to do to remain compliant within the new legislative framework.

Recap:
Who does transfer pricing apply to?
Very broadly, the Irish transfer pricing rules apply to arrangements entered into between associated persons (companies) on or after 1 July 2010, involving the supply or acquisition of goods, services, money or intangible assets

While SMEs are currently outside the scope of Irish transfer pricing, Finance Act 2019 provides for the extension of transfer pricing to SMEs, but subject to a Ministerial Order (not yet in place).

Key changes in Finance Act 2019
Irish transfer pricing regime is being brought in line with 2017 OECD Guidelines. Broadly, this means that OECD concepts such as DEMPE (Development, Enhancement, Maintenance, Protection and Exploitation of intangibles) are now on a legislative footing in Ireland, with a focus on value creation as a driver of profit allocation, not simply contractual entitlements. This focus on substance will require a review of existing arrangements.

Activities that are deemed to be non-trading or 'passive' in nature and which are taxable at the higher rate of 25% are now within the scope of the transfer pricing regime. This means that intra group financing arrangements that were previously outside the scope of Irish transfer pricing will now need to be reviewed. Non trading transactions between Irish companies will generally be outside the scope of Irish transfer pricing, but the position needs to be reviewed on a case by case basis.

Other changes include:
- the extension of transfer pricing to capital transactions with a market value of over €25 million (although market value will often regardless apply under existing CGT rules);
- the removal of grandfathering exemption for arrangements in place at 1 July 2010 (not expected to have adverse implications for the vast majority of companies);
- future extension of transfer pricing to SMEs, subject to Ministerial Order; and
- more onerous documentation requirements.

Documentation

Depending on group size, either a master file or local file will need to be in place from 1 January 2020.

From 1 January 2020 there is a requirement to have a master and local file under Irish transfer pricing regulations. The OECD's 2017 guidelines require the maintenance of both a master file and a local file.

Larger companies will be required to hold a master file where group turnover exceeds €250m.

>€250m

>€50m

A local file must be in place where group turnover exceeds €50m.

Transfer pricing documentation should be in place prior to the entity submitting its corporation tax return - non-compliance can result in penalties of up to €25k, plus €100 daily penalties (for larger groups).

The master file provides on overall summary of how the group is structured and the key value drivers in the business, with an overview of the group's transfer pricing policies.

The master file outlines the key operations and intercompany transactions between the global entities within the group.

The local file contains information on the local entity and support for the specific related party transactions undertaken by the operation in Ireland.

Groups should review their existing transfer pricing documentation and ensure that any gaps between current documentation and the new requirements are addressed prior to the corporation tax filing deadline.

How we can help

Our experts can ensure you are compliant with transfer pricing legislation. We collaborate with our Grant Thornton International Transfer Pricing network in putting together a robust transfer pricing policy across all jurisdictions.

Functional analysis review

Typically, our work involves a functional analysis review of your business to understand how the business operates and its key value drivers.

Design & implementation

Following our functional analysis review, we help to design and implement appropriate transfer policies, while cognisant of commercial sensitivities.

Sensible advice

We provide sensible advice on key issues, such as the pricing of intellectual property and the allocation of profits/losses within a group. We also advise on ongoing transfer pricing developments, including work at OECD level on the role of the consumer and marketing intangibles in the appropriate allocation of profit between jurisdictions.

Documentation

Transfer pricing policies and procedures are put together in tandem with the preparation of appropriate documentation. Having the right documentation in place, in a timely manner, is critical in the event of a Revenue challenge.

Dispute resolution

We assist within the dispute resolutiom phase that takes place when Revenue authorities challenge transfer pricing policies. This can be on a unitlateral basis or in collaboration with our global transfer pricing teams, depending on the nature of the challenge.

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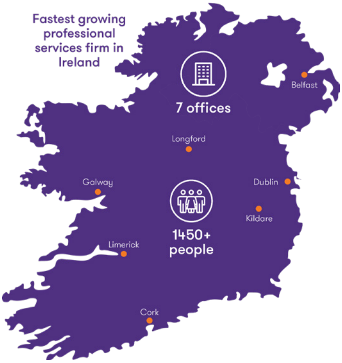
€149m
turnover in 2018

54
Partners in Ireland



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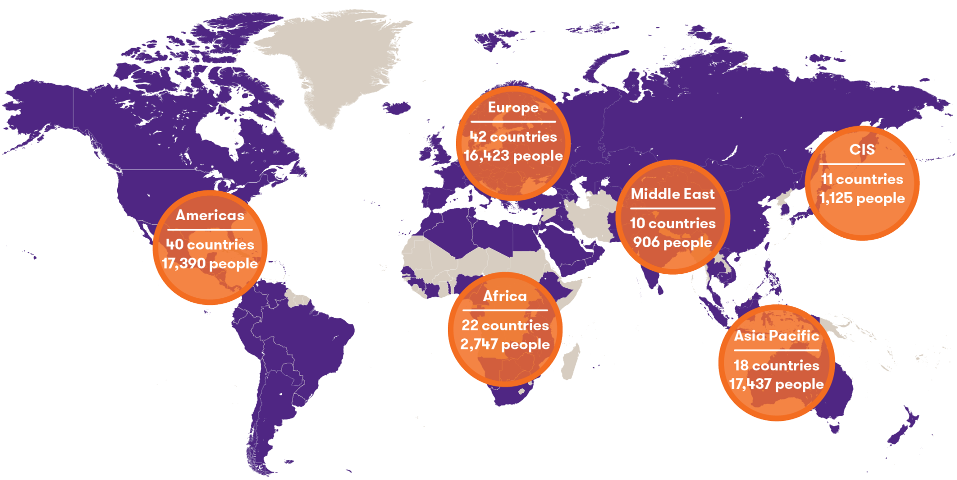

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