
CMS Cameron McKenna's

TRANSFER PRICING BULLETIN

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The grass remains greener in Ireland...

Introduction of transfer pricing regulations in Ireland is unlikely to detract from the country's appeal as a sound economic choice for inward investment, with an excellent opportunity to grandfather existing arrangements before July 2010.

With Ireland's attractive corporate tax rates historically drawing a significant level of inbound investment, global and European authorities have been applying increasing pressure for a formal framework to establish Ireland's principles for pricing of intra-group transactions.

Effective from 1 January 2011, and applying to transactions that take place after 1 July 2010, Ireland's new transfer pricing regulations are dividing opinion, and the rush for grandfathering existing arrangements prior to the July deadline is now on. Any increase in a multinational's compliance burden only adds to tax directors' headaches, but with Irish documentation following OECD guidelines, the extension of existing group transfer pricing policy and paperwork to transactions where an Irish entity is a counterparty may be a relatively routine matter.

The new legislation only applies to trading operations, currently taxable at 12½%, and excludes non-trading operations, such as income from investments, which are subject to the higher corporation tax rate of 25%. In many cases intra-group transactions involving Ireland will have already been the subject of scrutiny by other jurisdictions targeting perceived leakage of local tax revenues, so often we are able to alleviate concern over there being material adjustments to Irish profits from 2011 onwards. Recent cases such as Xilinx serve to demonstrate that multinationals with an Irish presence have been all too conscious of the risk of material adjustments to transfer prices at audit by the US and other tax authorities.

So what benefits can we see from Ireland now toeing the line on global transfer pricing compliance? This is to be welcomed to the degree to which it can underwrite the anticipated tax position on establishing or expanding operations in Ireland. The expectation that in due course advance rulings on pricing and financing will be available on a bi-lateral basis between Ireland and other tax jurisdictions can only enhance this security. The US is a perfect case in point - with increasingly bullish attitudes demonstrated by the Obama administration towards transfer pricing of off-shored intellectual property and service activity in relation to a group's US tax base, the comfort of appropriately benchmarked Irish profits should provide a buffer against the threat of IRS litigation that remains a major concern for most multi-nationals.

The grandfathering provisions are also generous, and offer an opportunity for Irish companies that are able to conclude inter-company arrangements in the window up to 1 July 2010. These arrangements will be specifically excluded from the new regulations, potentially protecting any pricing that may be susceptible to adjustment as not being 'arm's length'. Whilst some significant benefit is to be gained by use of these provisions, care must be exercised to ensure that any subsequent renegotiation or amendment of grandfathered arrangements do not negate the concession, and with a wide definition of what constitutes an 'arrangement', we are working closely with clients to ensure that there is no negative commercial and legal impact of hastily constructed intercompany agreements.

TRANSFER PRICING NEWS SNAPSHOT

- Updated thin capitalisation guidelines released by HMRC in March 2010 throw up no particular surprises, but do offer further insight into the approach of the specialist teams that are now being used to deal with UK transfer pricing audits
- Astra Zeneca's payment of £505m in settlement of UK transfer pricing liabilities for 1996-2010 closes a long period of contention with the UK tax authorities, and serves to highlight the significant sums at risk in attribution of value to intellectual property and other intangibles across multiple jurisdictions.
- Proposed introduction of convoluted Russian transfer pricing regulations in 2011 potentially represents an onerous responsibility for multinationals, with even a low level of cross-border ownership constituting a 'related party' for the purposes of analysing transactions.
- US Court of Appeals backpedals on March 2009 ruling in *Xilinx, Inc v CIR*, ultimately excluding recharges of stock-based compensation under a US/Irish cost-sharing arrangement in a case that questioned the fundamental use of the 'arm's length' standard for inter-company pricing.

CMS has extensive international expertise in advising multinationals on transfer pricing and other integrated services. For further information on these or any other issues please contact:



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