



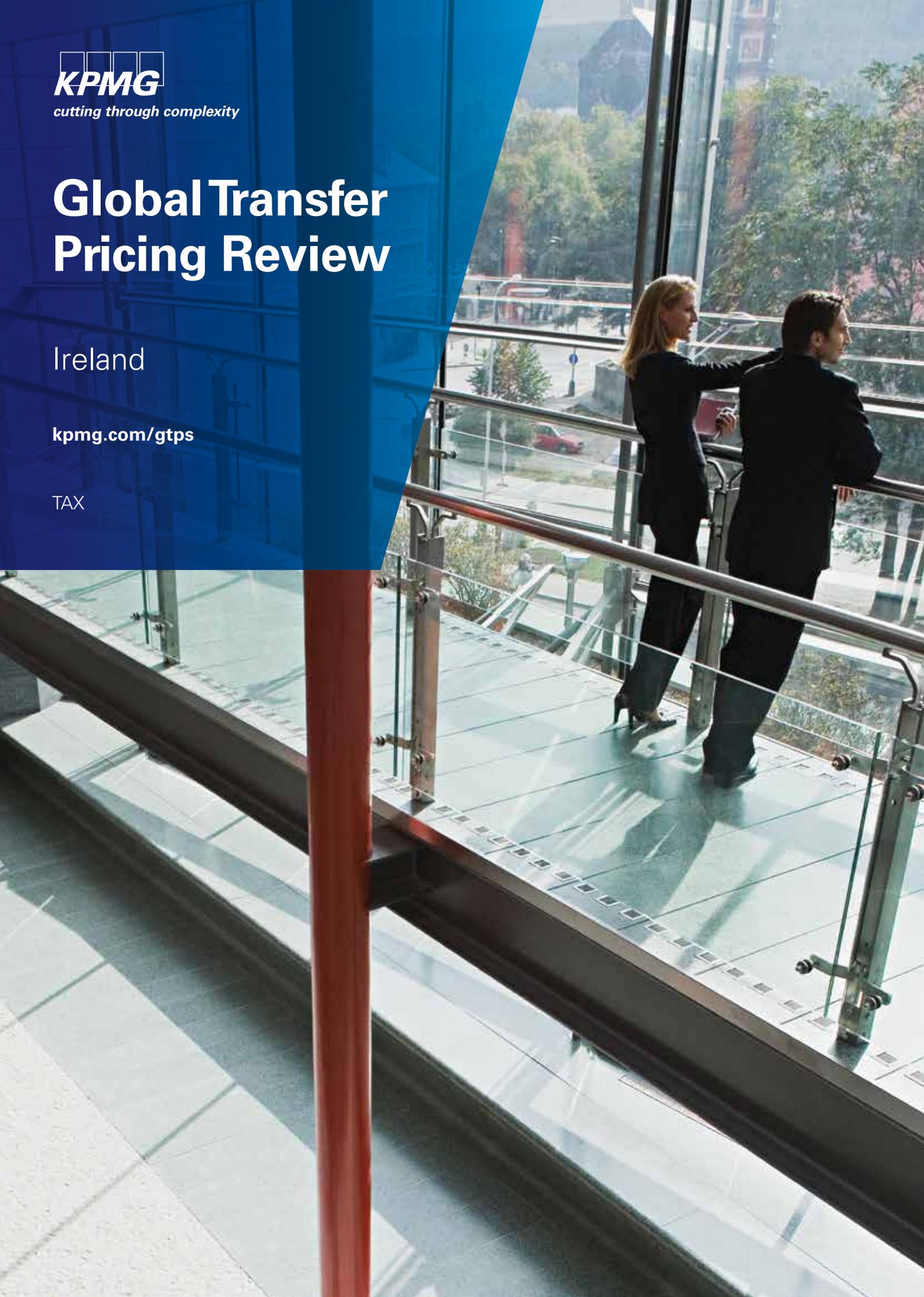
cutting through complexity

Global Transfer Pricing Review

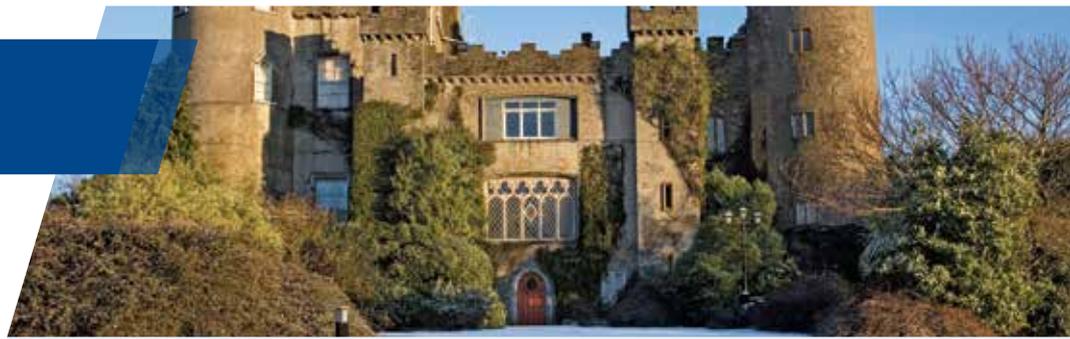
Ireland

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TAX



Ireland



KPMG observation

Transfer pricing legislation was introduced as part of the 2010 Finance Act, effective for accounting periods on or after 1 January 2011 and applicable to trading transactions (not to non-trading activities taxed at a 25% rate). Transactions entered into prior to 1 July 2010 are grandfathered, unless the terms and conditions under which they are conducted do change.

The Irish transfer pricing rules generally follow the OECD Guidelines. The Irish transfer pricing regime applies to both cross-border and domestic transactions.

In November 2012, the Irish Revenue announced Transfer Pricing Compliance Reviews (TPCRs) as the primary process to monitor compliance with the transfer pricing regime. Transfer pricing audits may be conducted if a TPCR is not conducted in a satisfactory manner.

Some of the structures established by multinational companies with residency in Ireland may be regarded as primary targets of the OECD's Base Erosion and Profit Shifting (BEPS) initiative. The Irish government has repeatedly declared that it perceives the transfer pricing regulations in Ireland as fully compliant with the OECD Guidelines and that they will remain so.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Not applicable
Legal requirements	●	
Protection from penalties		●
Reduce risk of adjustment	●	
Shifts burden of proof	●	

Basic information

Tax authority name

Office of the Revenue Commissioners.

Citation for transfer pricing rules

Part 35A, Section 835, Taxes Consolidation Act 1997.

Effective date of transfer pricing rules

1 January 2011.

What is the relationship threshold for transfer pricing rules to apply between parties?

The transfer pricing rules will apply if (1) one of the parties participates in the management, control, or capital of the other party, or (2) if both parties fall under the management, control or capital of another party.

A party will have control over another party if it is able to control the affairs of the other party in such a way that they are conducted in accordance with the wishes of the controlling party by virtue of shareholding, voting power or articles of association.

There is no fixed participation quota or shareholding stated in the regulations.

What is the statute of limitations on assessment of transfer pricing adjustments?

There are no specific limitations for transfer pricing, but the general rule is four years from the year-end, in which tax return is filed.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be submitted to the revenue authority on an annual basis (e.g. with the tax return)?

No.

What types of transfer pricing information must be disclosed?

Not applicable.

What are the consequences of failure to submit disclosures?

Not applicable.

Transfer pricing study overview

Can documentation be filed in a language other than the local language? If yes, which ones?

Yes, English, Irish.

When a transfer pricing study is prepared, should its content follow Chapter V of the Organisation for Economic Co-operation and Development (OECD) Guidelines?

Yes. While there are no specific requirements set down in the legislation, the OECD Guidelines should be followed when preparing a transfer pricing study. The Irish tax authorities have stated that the form and manner that the documentation takes will be dictated by the facts and circumstances of the transactions and that the costs involved in preparing the documentation should be commensurate with the risk involved. Additionally, if documentation exists in another territory which supports the Irish arrangement, this will also be sufficient from an Irish transfer pricing perspective as long as the documentation is in English.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

Transfer pricing methods

Does your country follow the transfer pricing methods outlined in Chapter II of the OECD Guidelines? If exceptions apply, please describe.

Yes.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer's transfer pricing documentation, are there timing requirements for a taxpayer to submit its documentation? And if so, how many days?

Yes, 28 days.

When the tax authority requests a taxpayer's transfer pricing documentation, are there timing requirements for a taxpayer to submit its documentation? Please explain.

Documentation should be prepared on a timely basis, but no specific time deadline is outlined. Normal practice in a tax audit is to expect documentation within 28 days of request. If a company is selected for a TPCR, the timeline for submission is three months.

If an adjustment is proposed by the tax authority, what dispute resolution options are available?

Yes. The standard tax appeal procedures are available.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Yes. No specific transfer pricing penalties are included within the legislation, so the standard interest and general tax penalty provisions will apply. Under general tax penalties provision, interest arises on underpaid tax at a daily rate of 0.0219 percent (equivalent to 7.99 percent per annum). The Irish tax authorities

charge penalties for three categories of negligence on the part of the taxpayer. The categories are insufficient care (20 percent of tax underpaid), careless behavior (40 percent) and deliberate behavior (100 percent). These standard penalties can be reduced by co-operation and by disclosure of the taxpayer.

To what extent are transfer pricing penalties enforced?

It remains to be seen how the Irish tax authorities will enforce penalties to transfer pricing transactions. It is expected that penalties will be levied in the same manner as general tax penalties.

What defenses are available with respect to penalties?

Sufficient transfer pricing documentation.

What trends are being observed currently?

TPCR have started during 2013. Irish Revenue is in the process of increasing its resources both in terms of staffing transfer pricing experts and utilizing transfer pricing specific databases.

Special considerations

Are secret comparables used by tax authorities?

No.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

No.

Do tax authorities have requirements or preferences regarding databases for comparables?

No.

Does the tax authority generally focus on the interquartile range in a TNMM analysis?

No.

Does the tax authority have other preferences in benchmarking? If so, please describe.

None.

What level of interaction do tax authorities have with customs authorities?

Low.

Are there limitations on deductibility of management fees beyond the arm's length principle?

Yes. The general deductibility rules for costs and expenses applies to all expenses to ensure they were incurred "wholly and exclusively" for the purpose of the Irish trading activity.

Are management fees subject to withholding?

No.

Are there limitations on the deductibility of royalties beyond the arm's length principle?

No.

Are royalties subject to withholding?

No.

Are taxpayers allowed to file tax return numbers that differ from book numbers?

Yes. The arm's length standard of any adjustments should be explained in the transfer pricing documentation prepared.

Other unique attributes?

None.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

The Irish double tax treaty network is extensive.

If extensive, is the competent authority effective in obtaining double tax relief?

Almost always.

When may a taxpayer submit an adjustment to competent authority?

There is no specific timing or form for making a Competent Authority request. The tax treaty between Ireland and the counterparty jurisdiction may require a claim for double tax resolution to be made within a specified time period.

There is no specific document requirement either.

May a taxpayer go to competent authority before paying tax?

No.

Advance pricing agreements

What APA options are available, if any?

Unilateral, bilateral.

Is there a filing fee for APAs?

No.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?

No.

Are there any difficulties or limitations on the availability or effectiveness of APAs?

Yes. The Irish tax authorities have been willing to enter into bilateral APA negotiations once a case has been successfully accepted into the APA program of the other jurisdiction. It remains to be seen whether Ireland will formalize its APA procedures.

KPMG in Ireland

Eoghan Quigley

Tel: + 353 1 410 2327

Email: eoghan.quigley@kpmg.ie

Warren Novis

Tel: + 353 1 700 4154

Email: warren.novis@kpmg.ie

As email addresses and phone numbers change frequently, please email us at transferpricing@kpmg.com if you are unable to contact us via the information noted above.

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