

Tax Briefing No. 7 of 2010

Transfer Pricing Documentation Obligations

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Guidance Note Issued by the Revenue Commissioners - Part 35A Taxes Consolidation Act 1997

1. Section 835C

Section 835C sets out the main transfer pricing rules. Recomputation of profits or losses is required in the following circumstances:

- a transaction takes place between two associated persons,
- one or both of the persons is within the charge to tax under Case I or II of Schedule D in respect of the profits or gains or losses relating to the transaction,
- the actual pricing of the transaction differs from the pricing that would have been agreed at arm's length, and
- the actual pricing results in the taxable trading income of one of the persons being less (or the allowable trading loss being greater) than it would have been had arm's length pricing been used.

In these circumstances the trading income is increased (or the trading loss reduced) to reflect adjustment to arm's length pricing.

2. Section 835F

Section 835F imposes an obligation on companies [\[1\]](#), to whom the section applies to have available such records as may reasonably be required for the purposes of determining whether the trading income of the company has been computed in accordance with the requirements of section 835C. Transfer pricing documentation is fundamental to validating and explaining the pricing of intra-group transactions. It should be borne in mind that the main purpose in having transfer pricing documentation available is to enable a company, if requested, to readily establish to Revenue's satisfaction that its transfer prices are consistent with the arm's length requirements of section 835C.

3. Legislative requirement

The legislative requirement is that a company have transfer pricing documentation available. There is no requirement for documentation to be kept in a standard form. The company may have the required documentation kept in the form of its own choosing. The legislation does not require that the company itself must prepare the documentation or that the documentation must be in the State. If appropriate documentation is available, for

example where it has been prepared by an associated company for tax purposes in another jurisdiction, it will be sufficient that that documentation can be made available to Revenue.

4. EU Council

The EU Council has adopted a code of conduct under the title "["EU Transfer Pricing Documentation"](#) ("EU TPD"[\[2\]](#)). Although not binding, this sets out good documentation practice. Chapter V of the OECD Transfer Pricing Guidelines also contains guidance on documentation. Revenue's application of the new rules will accept both EU TPD and OECD Transfer Pricing Guidelines as representing good practice.

5. Transfer pricing documentation

Transfer pricing documentation must be sufficient to demonstrate a company's compliance with the transfer pricing rules. The actual documentation required will be dictated by the facts and circumstances of the transactions. Revenue accepts that the manner of meeting the requirement for documentation may take account of the cost and administrative burden involved. The cost should be commensurate with the risk involved. It would be expected that complex and high value transactions would generally require more detailed documentation than simple high volume transactions.

6. Relevant documentation

While it is not intended to provide a prescriptive list of documentation that should be kept for transfer pricing purposes, the relevant documentation must clearly identify –

- associated persons for the purposes of the legislation;
- the nature and terms of transactions within the scope of the legislation. Transactions which are clearly in one family (e.g. regular purchases made by a distributor throughout a period of the same or similar products for resale) may be aggregated, provided any significant changes during the period in the nature or terms of the transactions are recorded;
- the method or methods by which the pricing of transactions were arrived at, including any study of comparables and any functional analysis undertaken;
- how that method has resulted in arm's length pricing etc. or, where it has not, what computational adjustment was required and how this has been calculated. This will usually include an analysis of market data or other information on third party comparables;
- any budgets, forecasts or other papers containing information relied on in arriving at arm's length terms etc. or in calculating any adjustment made in order to satisfy the requirements of the new transfer pricing legislation;
- the terms of relevant transactions with both third parties and associates.

7. Transfer prices and related documentation

Transfer prices and related documentation should be reviewed at regular intervals to determine whether the pricing remains arm's length.

8. Transfer pricing adjustment

If a transfer pricing adjustment is made during the course of a Revenue audit, the quality of supporting documentation will be a key factor in determining whether the adjustment should be regarded as correcting an innocent error or as being a technical adjustment.

9. Best practice

It is best practice that the documentation is prepared at the time the terms of the transaction are agreed. For a company to be in a position to make a correct and complete Tax Return for an accounting period in which there were trading transactions with associates, the documentation should exist by the time the Tax Return falls to be made.

10. Documentation for transactions

Subject to paragraph 11 below, documentation must be available for transactions that take place in accounting periods beginning on or after 1 January 2011.

11. Documentation requirements not applicable

The documentation requirements do not apply to a transaction the terms of which were agreed before 1 July 2010. A transaction will be treated as qualifying for this transitional treatment if –

- the terms of the pre 1 July 2010 agreement clearly envisage the transaction, and
- application of these terms delivers the price of the transaction.

An agreement to enter into a further agreement would not meet these conditions.

12. Trade transferred

Where a trade is transferred from one company to another in the course of a scheme of reconstruction or amalgamation, Revenue will treat an agreement entered into by the transferring company, and transferred as part of the transfer of the trade, as having been entered into by the acquiring company at the time the agreement was entered into by the transferring company.

Footnotes

[1]The term "company" is used throughout the document. In practice, it is mainly companies that are impacted by transfer pricing legislation. However this guidance note applies equally to unincorporated trades that come within the scope of the legislation.

[2]OJ No. C176, 28.07.2006, p.1