Transfer Pricing

Part 35A-01-01

This document should be read in conjunction with Part 35A of the Taxes Consolidation Act 1997

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Introduction

Section 27 of Finance Act 2019 substantially expanded and updated transfer pricing legislation by substituting a new Part 35A of the Taxes Consolidation Act 1997. Part 35A, as substituted by Finance Act 2019, applies for chargeable periods commencing on or after 1 January 2020 and, in relation to the computation of certain capital allowances where the related capital expenditure is incurred on or after 1 January 2020. In relation to the computation of balancing allowances and balancing charges, Part 35A applies where the event giving rise to the balancing allowance or balancing charge occurs on or after 1 January 2020 irrespective of when the related capital expenditure was incurred.

Section 15 of Finance Act 2020 provided for certain amendments to Part 35A; namely, an amendment to the definition of 'relevant person' in section 835A and for the substitution of a revised section 835E. Of note, section 15 of Finance Act 2020 is the subject of a Ministerial commencement order and has not yet come into effect. On this basis, while the amendments provided for in section 15 of Finance Act 2020 are noted in this manual, specific guidance on the provisions is not included.

This manual provides an overview of, and guidance in relation to, the transfer pricing legislation. The legislative provisions referred to in this manual are contained in the Taxes Consolidation Act 1997 ("TCA 1997"), unless otherwise stated.

1 Overview

Transfer pricing legislation concerns transactions between associated persons and ensures that taxable profits or gains cannot be understated, or allowable losses overstated, because the prices charged in or the conditions of such transactions are not at arm's length.

Transfer pricing legislation was first introduced by section 42 of Finance Act 2010 and applies the arm's length principle in connection with transactions between associated persons. The arm's length principle is an internationally agreed standard which requires that related party transactions are priced as if they were carried out by unrelated parties dealing at arm's length. The principle is set out in Article 9 of the OECD Model Tax Convention[1] and is reflected in Ireland's double taxation treaties. Guidance on the application of this principle is contained in the 2017 OECD Transfer Pricing Guidelines (see section 5)[2].

[1] Model Tax Convention on Income and on Capital (November 2017)

[2] OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (July 2017)

When introduced in 2010, transfer pricing legislation—

- applied in connection with the computation of profits or gains or losses relating to trading transactions only;
- was to be construed in accordance with the 2010 version of the OECD Transfer Pricing Guidelines (**"2010 OECD Guidelines"**)[3];
- did not apply in respect of transactions the terms of which were agreed before 1 July 2010 (referred to as **"grandfathered arrangements"**); and
- excluded small and medium enterprises (**"SMEs"**) from the scope of transfer pricing rules.

Part 35A, as substituted by section 27 of Finance Act 2019, expanded the scope and application of transfer pricing rules to a wider range of transactions and also updates the rules in a number of respects.

(a) Part 35A is to be construed, as far as practicable, in accordance with the 2017 OECD Transfer Pricing Guidelines (**"2017 OECD Guidelines"**) and certain other supplementary OECD guidance. The 2017 OECD Guidelines reflect the outcome of OECD work on transfer pricing as part of the Base Erosion and Profit Shifting (**"BEPS"**) project;

(b) The arm's length principle applies, subject to certain exceptions, to the computation of trading income, non-trading income, capital allowances and chargeable gains relating to transactions between associated persons. There is an exclusion from the application of transfer pricing rules to the computation of non-trading income in certain circumstances. In relation to the computation of capital allowances and chargeable gains or losses, the transfer pricing rules apply in respect of transactions relating to assets that have a market value of over €25 million or where the capital expenditure incurred on an asset is over €25 million;

(c) Transfer pricing documentation requirements are enhanced. Larger companies are obliged to prepare, and have available upon written request by a Revenue officer, a master file and local file in line with Annex I and II of Chapter V of the 2017 OECD Guidelines;

(d) A higher rate of penalty applies for larger taxpayers who fail to comply with a request to provide transfer pricing documentation to Revenue;

(e) Protection from tax-geared penalties, in the careless behaviour category, applies where a taxpayer prepares transfer pricing documentation on time and provides it on a timely basis to Revenue when requested by a Revenue officer and the documentation demonstrates reasonable efforts to comply with Part 35A;

(f) The rules apply to previously grandfathered arrangements in respect of chargeable periods commencing on or after 1 January 2020.

[3] OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (2010)

SMEs are currently excluded from the scope of transfer pricing rules. Provision was made in Finance Act 2019 to bring SMEs within the scope of transfer pricing rules. Depending on their size SMEs will either be fully exempt from or have significantly reduced transfer pricing documentation requirements. SMEs will come within the scope of transfer pricing rules in the future on the making of a commencement order by the Minister for Finance.

2 Key definitions

Section 835A deals with the interpretation of the various terms used throughout Part 35A. Some key definitions are set out below.

2.1 "Arrangement"

Transfer pricing rules apply to certain arrangements between persons who are "associated" (see section 3 below on the meaning of "associated" and section 4.2 for details of arrangements between "associated" persons which are within the scope of transfer pricing rules).

An "arrangement" is defined broadly to include any transaction, action, course of action, course of conduct, scheme or plan, agreement, arrangement of any kind, understanding, promise or undertaking, whether express or implied and whether or not it is, or is intended to be, legally enforceable. An arrangement also includes any series of, or combination of, the foregoing.

Example 2.1

Example 2.1- Arrangement involving a series of transactions

Group Captive Company provides captive insurance to several associated operating companies in an MNE group including Operating Company.

As part of the arrangement, Operating Company first enters into an insurance transaction with a third-party, Fronting Company, for regulatory reasons. As part of a back-to-back arrangement, Fronting Company then enters into an insurance arrangement with Group Captive Company.

The broad definition of "arrangement" in section 835A means that the two transactions form part of a single arrangement whereby Group Captive Company is regarded as the supplier and Operating Company is the acquirer.

2.2 "Chargeable asset"

Finance Act 2019 extended the application of transfer pricing rules to the computation of chargeable gains and allowable losses relating to certain acquisitions and disposals of chargeable assets between associated persons (see section 11). "Chargeable asset" is defined as an asset which, if it were disposed of, the gain accruing to the person disposing of it would be a chargeable gain.

For transfer pricing rules to apply, there must be a disposal **and** an acquisition of a chargeable asset as part of an arrangement between associated persons at least one of whom is within the charge to Irish tax. Transfer pricing rules do not apply in computing chargeable gains and allowable losses relating to deemed disposals of chargeable assets (see section 11.2.3.1) or to acquisitions of chargeable assets where there is no corresponding disposal (see section 11.1).

2.3 "Chargeable period"

"Chargeable period" has the same meaning as in section 321(2) (i.e. means an accounting period of a company or a year of assessment). Part 35A, as substituted by section 27 of Finance Act 2019, applies for chargeable periods commencing on or after 1 January 2020. Part 35A, as introduced in Finance Act 2010, applied for chargeable periods commencing on or after 1 January 2011 and before 1 January 2020 in relation to any arrangement (see section 2.1) other than grandfathered arrangements.

2.4 "Relevant Activities"

In order for an arrangement between persons who are associated to come within the scope of transfer pricing rules, one of the requirements is that the profits or gains or losses arising from 'the relevant activities' of either the supplier or the acquirer, or both of them, are within the charge to tax in Ireland[4] (see section 4.2). Tax for these purposes is income tax, corporation tax or capital gains tax.

"Relevant activities" are defined, in relation to a person who is a supplier or an acquirer in relation to an arrangement, as that person's activities which comprise the activities in the course of which, or with respect to which, that arrangement is made. Relevant activities include, where applicable, activities involving the disposal and acquisition of an asset or assets. Accordingly, the definition is wide enough to cover any circumstance, activity or activities in the course of which, or with respect to which, an arrangement is made by a supplier or an acquirer with a person who is associated.

[4] Section 835C(1)(c)

2.5 "Relevant Person"

"Relevant person" is defined as having a meaning only "in relation to an arrangement" and is a person who is "within the charge to tax in respect of profits or gains or losses, the computation of which takes account of the results of the arrangement".

Section 15 of Finance Act 2020 provided for an amendment to the definition of "relevant person". However, the amended definition will only come into effect in the future on the making of a commencement order by the Minister for Finance.

Of note, a relevant person could include an individual who, in relation to an arrangement entered into by that individual and a company with whom the individual is associated (see section 3 below), is within the charge to income tax or capital gains tax in respect of profits, gains or losses, the computation of which takes account of the results of the arrangement.

3 Meaning of "associated"

Transfer pricing rules apply only in relation to arrangements between persons who are associated. For the purposes of Part 35A, two persons are associated if one person participates in the management, control or capital of another person or the same person is participating in the management, control or capital of both persons. The controlled person in each case must be a company. Associated persons are mainly companies but, for example, individuals, including members of a partnership who are individuals and are controlling shareholders of a company could be associated persons of that company.

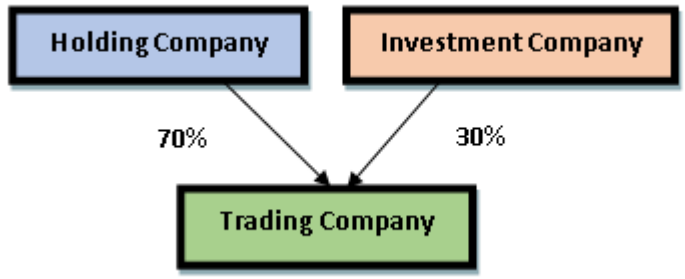
A company will be treated as controlled by an individual if it is controlled by the individual and persons connected with the individual. A person is connected with an individual if that person is a "relative" of that individual within the meaning of section 433(3)(a) (i.e. husband, wife, civil partner, ancestor, lineal descendant, brother or sister).

In the case of a partnership, it will be necessary to 'look through' to the rights of the individual partners in the partnership and seek to test for control of companies held through a partnership by reference to the entitlement of the partners to the assets and income of the partnership.

Example 3.1

Trading Company is an Irish resident company that carries on trading activities taxed under Schedule D, Case I. The issued share capital in Trading Company is held as follows:

Holding Company	70%
Investment Company	30%



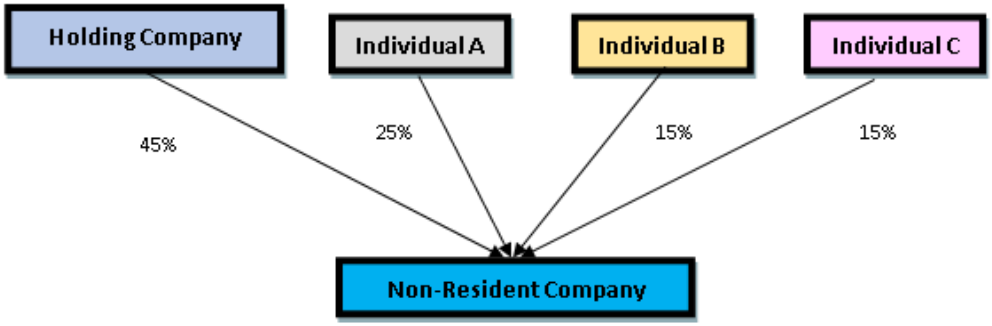
Example 3.1- Meaning of Associated Persons

Trading Company is controlled by Holding Company which holds a 70% shareholding in Trading Company. On this basis, Trading Company and Holding Company are associated within the meaning of section 835B.

Example 3.2

Non-Resident Company is a French resident company. The issued share capital in Non-Resident Company is held as follows:

Holding Company	45%
Individual A (Irish resident)	25%
Individual B (Parent of A and Irish resident)	15%
Individual C (Sibling of A and Irish resident)	15%



Example 3.2- Meaning of Associated Persons

Non-Resident Company is controlled by Individual A and their relatives who hold a total 55% shareholding in Non-Resident Company. On this basis, Non-Resident Company and Individual A are associated within the meaning of section 835B.

4 Basic rules on transfer pricing

4.1 Overview

Section 835C sets out the basic rules on transfer pricing and the arrangements to which the rules apply. Section 27 of Finance Act 2019 applies transfer pricing rules to a wider range of arrangements, including arrangements relating to non-trading transactions and capital transactions. The section sets out the approach to be taken in determining the arm's length amount of consideration for a supply and acquisition under an arrangement and reflects the principles set out in Chapter I, D.2 of the 2017 OECD Guidelines in relation to the circumstances in which an arrangement may be disregarded for transfer pricing purposes. Provision is also made for the interaction of transfer pricing rules with other TCA 1997 provisions that treat certain amounts as distributions.

4.2 Arrangements to which transfer pricing rules apply

Transfer pricing rules apply to any arrangement—

a) involving the supply and acquisition of goods, services, money, assets (including intangible assets) or anything else of commercial value,

b) where at the time of the supply and acquisition, the person making the supply (the supplier) and the person making the acquisition (the acquirer) are associated (see section 3), and

c) the profit or gains or losses arising from the relevant activities are within the charge to tax in respect of either or both the supplier and the acquirer.

As outlined above, transfer pricing rules apply to an arrangement where there is a supply and acquisition and consequently there must be a supplier and an acquirer in relation to the arrangement. Of note, the reference to a supply and acquisition of an asset also includes the disposal and acquisition of a chargeable asset and references to the disposal of a chargeable asset in section 835HB are, for the purposes of Part 35A, construed as being a supply of that asset.

4.3 Main transfer pricing rules

There are two main transfer pricing rules—

a) If the amount of **consideration payable** under an arrangement involving persons who are associated is above the arm's length amount, the profits or gains or losses of the acquirer that are chargeable to tax are computed as if the arm's length amount of consideration were payable.

b) If the amount of **consideration receivable** under an arrangement involving persons who are associated is less than the arm's length amount, the profits or gains or losses of the supplier that are chargeable to tax are computed as if the arm's length amount were receivable. Of note, if no actual consideration is receivable, then the profits or gains or losses that are chargeable to tax are computed as if arm's length amount were receivable.

The rules apply in computing the amount of profits or gains or losses arising from relevant activities that are chargeable to tax. If a person's profits or gains or losses are not chargeable to tax then transfer pricing rules do not apply to that person.

4.4 Determining the arm's length amount of consideration

The 'arm's length amount' of consideration for a supply or acquisition refers to the amount that would have been agreed between independent parties dealing at arm's length. This is determined by—

(a) identifying the actual commercial or financial relations between the supplier and acquirer and the conditions and economically relevant circumstances attaching to those relations (the 'identified arrangement'), and

(b) applying the most appropriate transfer pricing method set out in the 2017 OECD Guidelines (see section 5).

Guidance on identifying the commercial or financial relations is set out in Chapter I D.1 of the 2017 OECD Guidelines. The first step is to identify the commercial or financial relations between the associated enterprises and the conditions and economically relevant circumstances attaching to those relations in order to accurately delineate the controlled transaction[5].

The economically relevant circumstances can be broadly categorised as follows:

- the contractual terms of the transaction;
- the functions performed by each of the parties to the transaction, taking into account assets used and risks assumed, including how those functions relate to the wider generation of value by the MNE group to which the parties belong, the circumstances surrounding the transaction, and industry practices;
- the characteristics of property transferred or services provided;
- the economic circumstances of the parties and of the market in which the parties operate; and
- the business strategies pursued by the parties.

The second step is that, once the identified arrangement has been accurately delineated, the conditions and the economically relevant circumstances of the identified arrangement as accurately delineated are compared with the conditions and the economically relevant circumstances of comparable transactions between independent parties. This comparison is performed in applying the most appropriate transfer pricing method (see Chapters II and III of the 2017 OECD Guidelines for further guidance).

Where the economically relevant circumstances of an identified arrangement are inconsistent with the written form of the arrangement, the arrangement will be delineated in accordance with the economically relevant circumstances reflected in the conduct of the parties.

Of particular significance in the accurate delineation of an identified arrangement is the concept of risk and, in particular, the control of risk and the financial capacity to assume risk. Extensive guidance on this area, including a six-step framework for analysing risk, is contained in Chapter I, D.1 of the 2017 OECD Guidelines.

4.4.1 Disregarding or substituting the 'identified arrangement'

As outlined in Chapter I, D.2 of the 2017 OECD Guidelines, every effort should be made to determine the actual nature of the transaction and apply arm's length pricing to the accurately delineated transaction. However, where the circumstances described in paragraphs 1.122 – 1.125 apply, a transaction may be disregarded for transfer pricing purposes and if appropriate, replaced by an alternative transaction.

[5] Paragraph 1.33 of the 2017 OECD Guidelines

4.4.2 Accurate delineation of financial transactions

The revised Part 35A applies to all financing arrangements in place in chargeable periods commencing on or after 1 January 2020. This includes loan arrangements that were agreed in chargeable periods commencing prior to 1 January 2020. An examination of the quantum of debt forms part of the accurate delineation of the transaction under Chapter I of the 2017 OECD Guidelines. Therefore, it will be necessary for companies to examine the quantum of debt in addition to other factors including the interest rate and terms and conditions of the loan. The guidance set out in D.1 and D.2 of Chapter I of the 2017 OECD Guidelines is relevant for all financial transactions, including loan transactions, and for determining whether the quantum of debt is consistent with the arm's length principle.

Additionally, it should be noted, that the OECD published guidance[6] in February 2020 for determining whether the conditions for certain financial transactions between associated enterprises are consistent with the arm's length principle. In particular, Section B of this guidance provides direction on how to apply the approach set out in Chapter I, D.1 of the 2017 OECD Guidelines to financial transactions. Section B.1 of the guidance elaborates on how the accurate delineation analysis under Chapter I of the 2017 OECD Guidelines applies to the capital structure of an entity within an MNE group. It also provides guidance on determining whether a purported loan should be regarded as a loan. While this guidance has not yet been implemented into Irish law and is subject to a future Ministerial Order, it will be considered as best practice by Revenue when analysing transfer pricing issues associated with financial transactions.

The quantum of debt is also a relevant consideration for Mutual Agreement Procedures ("MAPs") and Advance Pricing Agreement ("APAs") cases conducted under Ireland's double tax treaties.[7]

[6] Transfer Pricing Guidance on Financial Transactions (Inclusive Framework on BEPS: Actions 4, 8-10) on 11 February 2020

[7] When considering whether the terms and conditions of a loan arrangement are consistent with the arm's length principle, Article 9 of the OECD Model Tax Convention, as contained in the applicable double tax treaty, is relevant. Paragraph 3(b) of the Commentary on Article 9 provides that the Article is relevant in determining whether a *prima facie* loan can be regarded as a loan or should be regarded as some other kind of payment, in particular a contribution to equity capital.

Application of transfer pricing rules

Notwithstanding that there may be limited availability of historic information in relation to some loan arrangements that were entered into in chargeable periods commencing before 1 January 2020, companies must ensure that all available and relevant data is relied upon in establishing compliance with the revised Part 35A. The debt capacity of a borrower in relation to a related party loan arrangement should be considered at the time the arrangement was entered into. Where no debt capacity analysis was performed at the time the arrangement was entered into, companies may use other available information to assist in considering debt capacity at the time of the arrangement, including for example, the results of the entity before the transaction, budget or cashflow forecasts prepared for other purposes, knowledge of the transfer pricing or remuneration model of the entity at the time, financial covenants in comparable loans at that time, etc.

In addition, companies could potentially benchmark the before and after debt to equity ratio against comparable independent companies using those commercial databases typically used for Transactional Net Margin Method (**"TNMM"**) analyses.

4.4.3 Charges on income

There may be circumstances where a company claiming interest as a charge on income (to which section 247 applies and which is not a relevant trading charge on income) has accrued interest for chargeable periods commencing prior to 1 January 2020 but which is paid in a chargeable period commencing on or after 1 January 2020.

Transfer pricing rules will not apply for the purposes of determining the amount of such interest that qualifies as a charge on income when paid in a chargeable period commencing on or after 1 January 2020. Transfer pricing rules will apply for the purposes of determining the amount of interest that qualifies as a charge on income under section 247 in circumstances where the interest relates to, and is paid in, a chargeable period commencing on or after 1 January 2020.

4.5 Supply and acquisition

The reference to a supply and acquisition of an asset (as referred to in section 4.2) includes the disposal and acquisition of a chargeable asset and references to the disposal of a chargeable asset in section 835HB (see section 11) are to be construed as being a supply of that asset.

4.6 Interaction with provisions treating certain amounts as a distribution

Where the actual amount of consideration payable under an arrangement exceeds the arm's length amount and any part of that excess is treated as a distribution under any other provision of the TCA 1997 then, in applying transfer pricing rules to profits or gains or losses chargeable to tax under Schedule D, the actual amount of consideration payable will be taken as that amount net of the amount treated as a distribution. Any amount of an expense that is treated as a distribution will already not be deductible in computing taxable profits. The operation of section 835C(7) and its interaction with section 835C(2)(a) is best illustrated through the following examples:

Example 4.6.1

Actual consideration payable (**ACP**)	€2,500
Amount treated as a distribution under Schedule D (e.g. section 130(2)(d)(iii)(II)) (**D**)	€625
Arm's length consideration	€2,000

In the circumstances above, there will be no transfer pricing adjustment under section 835C(2)(a) because the actual consideration payable (€2,500) less the amount treated as a distribution (€625) amounting to €1,875 does not exceed the arm's length amount of €2,000. Section 835C(2)(a) operates to compute the profits or gains or losses of the acquirer that are chargeable to tax as if the arm's length amount of consideration were payable (see section 4.3) where the actual consideration payable (or where section 835C(7) applies ACP - D) exceeds the arm's length amount.

Example 4.6.2

Actual consideration payable (**ACP**)	€2,500
Amount treated as a distribution under Schedule D (e.g. section 130(2)(d)(iii)(II)) (**D**)	€500
Arm's length consideration	€1,875

In the circumstances above, there will be a transfer pricing adjustment of €125 as a consequence of the application of section 835C(2)(a) because the actual consideration payable (€2,500) less the amount treated as a distribution (€500) (€2,000) exceeds the arm's length amount of €1,875.

The supplier, if within the charge to tax under Schedule D in respect of the profits or gains or losses arising from the relevant activities, may claim a corresponding adjustment to their profits or gains or losses under the provisions of section 835H (see section 9.2). Of note, the supplier may only claim a corresponding adjustment in relation to the amount of the transfer pricing adjustment (€125) and not the amount of the consideration that is treated as a distribution (€500).

Of note, where the actual consideration payable under an arrangement exceeds the arm's length amount and the profits or gains or losses of a person that are chargeable to tax under Schedule D are, by virtue of section 835C(2)(a), computed as if, instead of the actual consideration payable under the terms of the arrangement, the arm's length amount in relation to that arrangement were payable, the excess amount will not be treated as a distribution for the purposes of the Tax Acts by virtue of the operation of section 835C(2)(a).

4.7 Exclusions from transfer pricing rules

Certain persons/entities are not chargeable to tax on profits or gains or losses arising from their activities and are therefore not within the scope of transfer pricing rules (see section 4.2). These include—

a) A fund, including an Irish Real Estate Fund (**"IREF"**), and
b) A Real Estate Investment Trust (**"REIT"**).

The profits or gains or losses of a fund, including an IREF and a REIT, are chargeable to tax when they are distributed to their shareholders.

In addition, a company that is not resident in Ireland and does not have a taxable presence here is not within the charge to Irish tax and as a consequence not within the scope of Irish transfer pricing rules.

5 Principles for construing rules in accordance with OECD Guidelines

The updated section 835D incorporates the 2017 OECD Guidelines and certain other OECD guidance published since 2017 into Irish legislation. The section effectively ensures that the most up to date OECD guidance is applied in Irish law in so far as it is consistent with Irish legislation and applies to all arrangements, including arrangements the terms of which were agreed before 1 January 2020. Of note, the 2017 OECD Guidelines already have effect in relation to Ireland's double taxation treaties and, therefore, already apply in connection with MAPs and APAs.

The transfer pricing rules contained in section 835C are to be construed in such a way as to ensure, as far as possible, consistency with the 2017 OECD Guidelines and the following additional guidance published by the OECD after the date of publication (10 July 2017) of the 2017 OECD Guidelines —

- Guidance for Tax Administrations on the Application of the Approach to Hard-to-Value Intangibles[8]
- Revised Guidance on the Application of the Transactional Profit Split Method[9] and

[8] Guidance for Tax Administrations on the Application of the Approach to Hard-to-Value Intangibles (June 2018)

[9] Revised Guidance on the Application of the Transactional Profit Split Method (June 2018)

- any additional guidance published by the OECD on or after the date of the passing of the Finance Act 2019 (i.e. 22 December 2019) as the Minister for Finance may designate by order.

As referred to at section 4.4.2, the OECD published Transfer Pricing Guidance on Financial Transactions in February 2020 as part of the inclusive framework on BEPS Action 4 and Actions 8 - 10. This guidance will only be implemented into Irish law upon the making of an order by the Minister for Finance. Until such time, companies should consider the framework set out in this guidance to be reflective of best practice when considering transfer pricing issues associated with financial transactions.

6 Modification of basic rules on transfer pricing for arrangements between qualifying relevant persons

6.1 Overview

Section 15 of Finance Act 2020 provided for the substitution of a revised section 835E. However, these amendments will come into effect in the future on the making of a commencement order by the Minister for Finance. On the basis that these amendments are not yet in effect, they are not reflected in the guidance included in section 6 of this manual.

While transfer pricing rules generally apply to the computation of profits or gains or losses chargeable to tax under Schedule D, regardless of whether they arise from trading or non-trading transactions between associated persons, under section 835E as inserted by section 27 of Finance Act 2019, there is an exclusion from the application of transfer pricing rules to the computation of certain non-trading profits or gains or losses of a supplier or an acquirer in certain circumstances. For the exclusion to apply to a particular arrangement, the requirements set out in section 6.2 must be met.

Where the exclusion in section 835E applies to an arrangement, the transfer pricing documentation requirements in section 835G (see section 8) will not apply to the supplier or acquirer in respect of that arrangement. However, the supplier or acquirer is required to maintain such records as may reasonably be required for the purposes of determining whether the requirements for the application of the exclusion are met (see section 6.7).

6.2 Requirements for the application of the exclusion

For the exclusion to apply to a particular arrangement, all of the following requirements must be met in relation to that arrangement—

(a) It must involve a supplier and an acquirer who are both '**qualifying relevant persons**' (see section 6.3 below);

(b) The profits or gains or losses of the supplier or acquirer arising from the relevant activities must be chargeable to tax under Case III, IV or V of Schedule D (i.e. under Schedule D but other than Case I or II) (see section 6.4 below); and

(c) The anti-avoidance provision in subsection (4) of section 835E must not apply (see section 6.5 below).

6.3 Arrangements between qualifying relevant persons

Section 835E, which provides for the exclusion from the application of transfer pricing rules, shall apply to an arrangement involving a supplier and an acquirer who are 'qualifying relevant persons'[10].

6.3.1 Who is a qualifying relevant person?

The term 'qualifying relevant person' is defined in section 835E(1). A qualifying relevant person means a relevant person who —

(a) is chargeable to income tax or corporation tax under Schedule D in respect of the profits or gains or losses arising from the relevant activities or who would be chargeable to corporation tax in respect of the profits or gains or losses arising from the relevant activities but for section 129,

(b) where that person is chargeable to income tax in respect of the profits or gains or losses arising from the relevant activities, is resident in the State for the purposes of tax for the chargeable period or periods in which the charge arises, and

(c) is not a qualifying company under section 110.

6.3.2 Who is not a qualifying relevant person?

Certain persons who are a supplier or an acquirer in relation to an arrangement cannot be regarded as a qualifying relevant person. These include:

'Section 110 company'

A qualifying company within the meaning of section 110 is specifically precluded from being a qualifying relevant person.

Certain non-residents

The definition of qualifying relevant person requires that, where a person is chargeable to income tax in respect of profits or gains or losses arising from relevant activities, that person must be resident in the State. This means that a non-resident individual cannot be regarded as a qualifying relevant person. A non-resident individual who has an Irish source of income, e.g. rental income, could be within the scope of transfer pricing rules in relation to the computation of profits or gains or losses arising from relevant activities where they relate to an arrangement with a company that is controlled by the non-resident individual.

A company that is not resident for tax purposes in the State, and which is within the charge to income tax in respect of Irish source profits or gains or losses arising from relevant activities, also cannot be regarded as a qualifying relevant person. Where,

[10] Section 835E(2)

however, a non-resident company is within the charge to corporation tax because it carries on a trade in the State through a branch or agency, the non-resident company may be regarded as a qualifying relevant person in relation to an arrangement that relates to that Irish branch or agency.

Persons/entities who are not within the scope of transfer pricing rules

As outlined in section 4.7, persons/entities who are not within the scope of transfer pricing rules because they are not chargeable to tax on profits or gains or losses arising from relevant activities but rather the profits of such persons/entities are taxed when distributed, cannot be regarded as qualifying relevant persons. These include:

(a) A fund, including an IREF, and

(b) A REIT.

A supplier or acquirer who is a qualifying relevant person and who enters into an arrangement with any person who is not a qualifying relevant person cannot avail of the exclusion from the application of transfer pricing rules in computing the amount of the qualifying relevant person's profits or gains or losses chargeable to tax under Case III, IV or V of Schedule D.

6.4 Profits or gains or losses to which the exclusion may apply

The exclusion only applies to profits or gains or losses of a supplier or an acquirer that are chargeable to tax under Case III, IV or V of Schedule D where they relate to an arrangement involving qualifying relevant persons.

The exclusion provides that, in relation to an arrangement involving qualifying relevant persons, the main transfer pricing rules in section 835C will not apply in computing the amount of profits or gains or losses arising from **the relevant activities** of a supplier or an acquirer who is chargeable to tax under Schedule D (other than Case I or II) in respect of those profits or gains or losses.

Where the supplier or an acquirer in relation to an arrangement is a qualifying relevant person but is chargeable to tax under Case I or II of Schedule D in respect of the profits or gains or losses arising from the relevant activities, the exclusion cannot apply to that particular supplier or acquirer. However, the counterparty to the arrangement, if chargeable to tax under Case III, IV or V of Schedule D, may still be eligible for the exclusion.

6.5 Anti-avoidance provision

An anti-avoidance provision denies the availability of the exclusion in section 835E in respect of certain arrangements between qualifying relevant persons. The exclusion does not apply in the case of an arrangement between qualifying relevant persons (**"arrangement 1"**):

(a) which is made as part of, or in connection with any scheme involving the acquirer in relation to arrangement 1, or a person associated with the acquirer, entering into a back-to-back arrangement with a person who is not a qualifying relevant person (**"arrangement 2"**); and

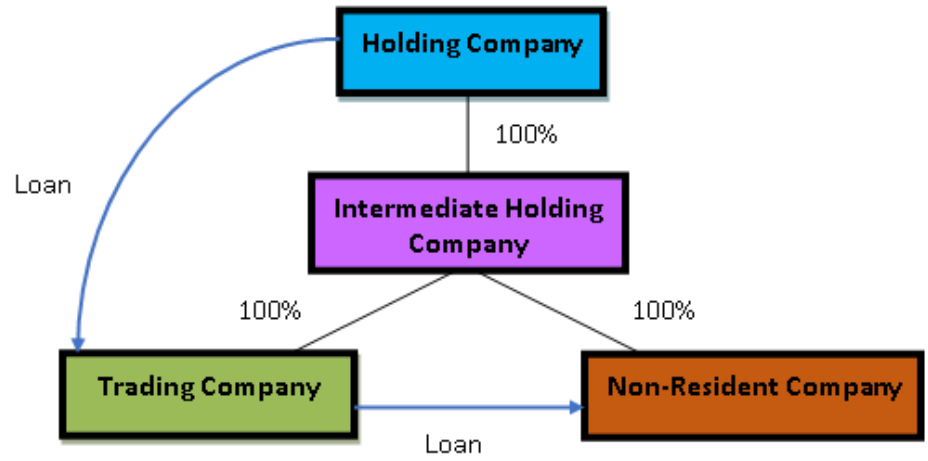
(b) the sole or main purpose of arrangement 1 is to directly or indirectly obtain a tax advantage in connection with arrangement 2.

For the purposes of the anti-avoidance provision, "tax advantage" has the same meaning as in section 811C and is therefore broad in scope. The anti-avoidance provision is designed to prevent the use of the exclusion in the case of an arrangement between qualifying relevant persons (arrangement 1) where, as part of a scheme, arrangement 1 merely facilitates the obtaining of a tax advantage in connection with the entering into an arrangement with a non-qualifying relevant person (arrangement 2).

Example 6.5.1 - Arrangement undertaken as part of a scheme to obtain a tax advantage in connection with another arrangement

In this example, Holding Company acquired 100% of Intermediate Holding Company on 1 June 2020. Intermediate Holding Company owns 100% of the shares of Trading Company and Non-Resident Company. Holding Company wishes to make a loan of €30m to Non-Resident Company on 1 July 2020. Trading Company and Holding Company both have financial year ends of 31 December 2020. Trading Company carries on a retail trade and it is apparent at 1 July that Trading Company will incur trading losses in the region of €2.4m in the year ended 31 December 2020.

On 1 July 2020, Holding Company and Trading Company enter into back-to-back arrangements to make a loan of €30m to Non-Resident Company. Holding Company lends €30m for nominal interest to Trading Company (arrangement 1) and, in turn, Trading Company on-lends €30m to Non-Resident Company (arrangement 2) at an arm's length interest rate of 10% per annum (€3m per annum or €1.5m for the accounting period ended 31 December 2020). Tax payable on the amount of interest receivable by Trading Company for its accounting period ended 31 December 2020 is €375K (€1.5m @ 25%). Trading Company uses trading losses of €2.4m for the accounting period ended 31 December 2020 on a value basis to offset part (€300K) of the €375K of tax payable on interest receivable from Non-Resident Company.

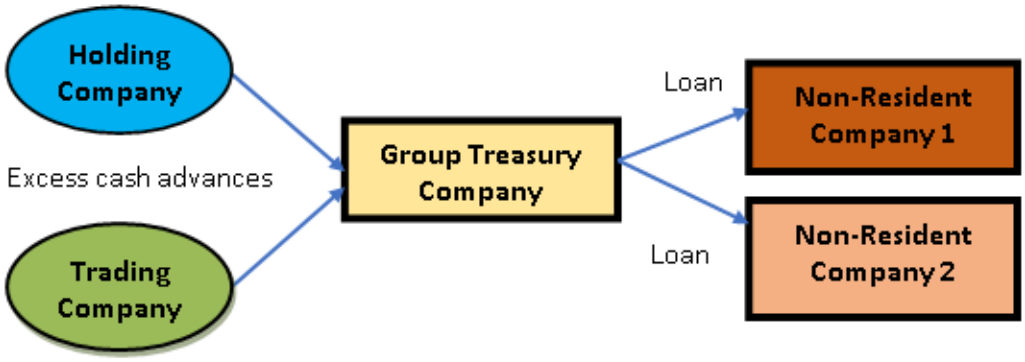


Example 6.5.1- Anti- avoidance provision

Arrangement 1 has been entered into as part of a scheme the sole or main purpose of which is to obtain a tax advantage in connection with arrangement 2, being the offset of trading losses of Trading Company on a value basis against interest receivable from Non-Resident Company for the accounting period ended 31 December 2020. If Holding Company loaned the €30m directly to Non-Resident Company at an arm's length interest rate of 10% per annum, Holding Company would have interest receivable of €1.5m for the accounting period ended 31 December 2020. Of note, only 7/12ths (€1.4m) of Trading Company's trading losses for the accounting period ended 31 December 2020 could have been claimed by Holding Company by way of group relief on a value basis (with a value of €175K) because Holding Company and Trading Company are in the same group for only 7 months of the 12-month accounting period. In this example, the anti-avoidance provision applies, and Holding Company cannot benefit from the exclusion from transfer pricing rules in relation to arrangement 1.

Example 6.5.2 – Bona fide group treasury activity

In this example, Holding Company, Trading Company and Group Treasury Company are all members of Computer Software Group and all are Irish tax resident. Group Treasury Company is a trading company which acts as Computer Software Group's lending and financing company. Members of Computer Software Group that have excess cash balances advance the cash surpluses to Group Treasury Company at nominal interest. Group Treasury Company uses the amounts advanced to make loans to other Computer Software Group companies to finance their operations and charges an arm's length amount of interest on those loans. Holding Company and Trading Company have both advanced excess cash balances to Group Treasury Company and Group Treasury Company has used these monies to finance the operations of other group companies, including Non-Resident Company 1 and Non-Resident Company 2.



Example 6.5.2- Bona fide activity

Had Holding Company and Trading Company advanced their excess cash balances by way of loans directly to Non-Resident Company 1 and Non-Resident Company 2, their profits or gains or losses chargeable to tax under Case III of Schedule D would be computed as if arm's length interest were receivable and amounts would be chargeable to tax at the higher corporation tax rate of 25%. By contrast, Trading Company is chargeable to tax at the rate of 12.5% on the profits or gains or losses arising from its lending and financing activity. While there may prima facie be a tax advantage (being the taxation of profits or gains at a lower tax rate) arising as a consequence of these arrangements, the anti-avoidance provision may be regarded as not applying where—

(a) Group Treasury Company is carrying on a bona fide group treasury trade,

(b) the arrangements between Holding Company and Trading Company and Group Treasury Company have been entered into for bona fide commercial reasons and not as part of a scheme the sole or main purpose of which is to obtain a tax advantage in connection with Group Treasury Company entering into arrangements with non-qualifying relevant persons (Non-Resident Company 1 and Non-Resident Company 2 in this example), and

(c) all of the other requirements for the application of the exclusion are met.

Where these requirements are met, the exclusion from transfer pricing rules will apply to Holding Company and Trading Company in connection with their arrangements with Group Treasury Company. Transfer pricing rules will apply in connection with the arrangements between Group Treasury Company and Non-Resident Company 1 and Non-Resident Company 2.

6.6 Interaction between section 835E and capital allowances provisions

Subject to a number of exclusions contained in section 835HA, transfer pricing rules contained in section 835C apply for the purposes of computing the amount of—

- any capital allowances to be made to an acquirer in respect of capital expenditure incurred on an asset, or
- any balancing allowance or charge to be made to a supplier.

Section 835HA provides for a number of circumstances in which transfer pricing rules do not apply for the purposes of computing capital allowances and balancing allowances or charges, including where the allowances/charges relate to an asset with a market value that does not exceed €25 million. Given this materiality threshold, and the various other exclusions contained in section 835HA, in most cases it will be unnecessary to consider whether the exclusion in section 835E applies in connection with the computation of capital allowances and balancing allowances or charges. However, this part considers the possible application of the exclusion in section 835E to the computation of capital allowances and balancing allowances or charges.

Where an acquirer who is a qualifying relevant person incurs capital expenditure on the acquisition of an asset from an associated person who is also a qualifying relevant person, and the capital allowances are deductions in computing the amount of profits or gains or losses of an acquirer that are chargeable to tax under Schedule D (other than under Case I or II of Schedule D), the exclusion from the application of transfer pricing rules may apply. Similarly, the exclusion may also apply in computing the amount of any deductions or additions to be made in computing the amount of profits or gains or losses of a supplier which is chargeable to tax under Schedule D (other than Case I or II) in respect of the supply of an asset where both the supplier and the acquirer are qualifying relevant persons.

Where the exclusion applies in computing the amount of any capital allowances (including balancing allowances) to be made to an acquirer or a supplier or the amount of any balancing charge to be made to a supplier, in respect of capital expenditure incurred on an asset, the market value/open market price rules (or equivalent) contained in provisions dealing with capital allowances will continue to apply instead of transfer pricing rules.

6.7 Records required to demonstrate the exclusion applies

A relevant person is obliged to keep such records as may reasonably be required for the purposes of determining whether the requirements of the section are met. The records that may be required for these purposes will depend on the particular facts and circumstances and should include an analysis of whether profits or gains or losses are chargeable to tax under Case III, IV or V of Schedule D as opposed to Case I or Case II (where applicable) and the basis on which it is considered that the arrangement involves a supplier and an acquirer who are both qualifying relevant persons. As outlined in section 6.1 above, where a company concludes that the exclusion applies, they should state that they are relying on same in their transfer pricing documentation or local file and explain how they have made this conclusion based on the provisions of the legislation and the circumstances of the case.

7 Small or medium-sized enterprise

7.1 Overview

SMEs are currently excluded from the scope of transfer pricing rules. Section 835F, as inserted by Finance Act 2019, makes provision to bring SMEs within the scope of transfer pricing rules but, depending on their size, SMEs will either be fully exempt from transfer pricing documentation requirements or will have significantly reduced transfer pricing documentation requirements. This section is subject to a commencement order by the Minister for Finance. Until such time as the commencement order is made, the existing provision that excludes all SMEs from the scope of transfer pricing rules continues to apply in the now renumbered section 835EA.

7.2 Definition of an SME

The definition of an SME is based on the Annex to the EU Commission Recommendation 2003/361/EC[11] (**'the Annex'**) and includes an enterprise that falls within the category of micro, small or medium-sized enterprise as defined in the Annex. However, as set out in section 7.3 below, some modifications to the approach in the Annex apply in an Irish context.

An enterprise may be regarded as an SME if the enterprise, or where the enterprise is a member of a group, the global consolidated group of which it forms part, has—

- a total staff headcount, and
- an annual turnover, **and/or**
- an annual balance sheet total

that do not exceed specified thresholds. These are:

Company category	Staff headcount	Turnover	Balance Sheet total
Medium-sized	< 250	≤ €50 million	≤ €43 million
Small	< 50	≤ €10 million	≤ €10 million
Micro	< 10	≤ €2 million	≤ €2 million

7.3 Modification to the meaning of SME in an Irish context

Certain modifications to the definition of an SME, contained in the Annex apply for the purposes of defining an SME in an Irish context. These modifications to the definition of an SME in the Annex, include—

- Disapplying the rights of a liquidator or examiner in determining whether, in accordance with Article 3(3)(b) of the Annex, a company is an SME;

[11] Annex to the EU Commission Recommendation 2003/361/EC

- Omitting the option, in paragraph 5 of Article 3 of the Annex, for the SME to make a declaration as an autonomous enterprise, partner enterprise or linked enterprise;
- Applying a simplified version of Article 4 of the Annex to the identification of the chargeable period for which the data relating to the headcount of staff, and financial amounts are to be assessed.

7.4 Transfer pricing documentation requirements

Currently, transfer pricing rules and transfer pricing documentation requirements **do not apply** to SMEs and therefore nor do the transfer pricing documentation requirements in section 835G. Section 835F makes provision for the application of transfer pricing rules and relaxed transfer pricing documentation requirements for SMEs. That section will come into operation on the making of a commencement order by the Minister for Finance.

Under section 835F—

- The transfer pricing documentation requirements in section 835G (see section 8) will not apply to a relevant person who is a small (or micro) enterprise (see section 7.2);
- A relevant person who is a medium sized enterprise (see section 7.2) will be required to provide transfer pricing documentation only in relation to a 'relevant arrangement'. The documentation required in respect of a relevant arrangement is reduced and simplified as compared to the transfer pricing documentation required to be provided by larger enterprises.

Simplified transfer pricing documentation

Provision is made in section 835F for a relevant person who is a medium enterprise to have certain documentation available. **This will only apply when a Ministerial Order is made to commence section 835F**. A relevant person who is a medium enterprise will be required to have the following transfer pricing documentation available:

- a description of the business of the medium enterprise, including its organisational structure, business strategy and key competitors, and;

in relation to each relevant arrangement—

- a copy of all relevant agreements;
- a description of the transfer pricing method used and the reasons the method was selected, along with evidence to support the price selected as being the arm's length amount;
- the amount of consideration payable or receivable under the arrangement, and;
- a description of the functions performed, risk assumed and assets employed.

For these purposes, a 'relevant arrangement' is:

1. An arrangement between a medium enterprise and an associated person who is not a qualifying relevant person (see section 6) and the aggregate of consideration under this arrangement arising in the chargeable period exceeds €1 million, or
2. An arrangement between a medium enterprise and an associated person who is not tax resident in the State where:
    - that arrangement involves the disposal or acquisition of a chargeable asset for the purposes of chargeable gains;
    - the asset has a market value exceeding €25 million; and
    - the asset ceases to be a chargeable asset (in the case of a disposal) or was not a chargeable asset before its acquisition (in the case of an acquisition).

8 Transfer pricing documentation requirements

8.1 Overview

Transfer pricing documentation is fundamental to validating and explaining the pricing of intra-group transactions. Prior to Finance Act 2019, Part 35A required a relevant person to have available such records as may reasonably be required for the purposes of determining whether the trading income of the company was computed in accordance with transfer pricing legislation.

Part 35A, as substituted by Finance Act 2019, has enhanced transfer pricing documentation requirements. In addition to requiring a taxpayer to have available such records as may reasonably be required to demonstrate compliance with transfer pricing legislation, reflecting the best practice recommendation in BEPS Action 13[12], it requires larger taxpayers to prepare a master file and/or a local file in accordance with Annex I and Annex II to Chapter V of the 2017 OECD Guidelines. Taxpayers are required to have transfer pricing documentation in place no later than the date on which a return for the chargeable period is due to be filed and also to provide the transfer pricing documentation to Revenue within 30 days of a written request made by a Revenue officer.

[12] BEPS Action 13

While transfer pricing documentation requirements generally apply in respect of arrangements within the scope of transfer pricing rules, there are some exclusions. Certain arrangements the terms of which were agreed prior to 1 July 2010 (see section 8.12.1) are excluded from transfer pricing documentation requirements. Also, when SMEs are brought within the scope of transfer pricing rules in the future by Ministerial Order, a small enterprise will not be required to provide transfer pricing documentation and medium enterprises will only be required to have available simplified transfer pricing documentation in respect of relevant arrangements (see section 7.4).

The enhanced transfer pricing documentation requirements apply for chargeable periods commencing on or after 1 January 2020.

8.2 Thresholds for transfer pricing documentation requirements

Part 35A sets specific de minimis thresholds to ensure that the transfer pricing rules apply in respect of transactions at or above certain thresholds. To ensure that transfer pricing documentation requirements are proportionate, the master file and local file obligations apply only where turnover exceeds €250 million per annum in the case of the master file and €50 million in the case of the local file with each test applying on a global consolidated group basis. In addition, and as outlined at section 10.2 and section 11.2 below, transfer pricing rules apply to capital transactions subject to a threshold of €25 million.

Provision has been made in section 835F to bring SMEs within the scope of transfer pricing rules (but only on the making of a Ministerial Order which has not yet been made). When SMEs are brought within scope of transfer pricing rules, they will either have no or reduced and simplified transfer pricing documentation requirements as compared to larger enterprises. As outlined at section 7.4 transfer pricing documentation requirements will apply to certain arrangements involving a medium enterprise that exceeds a revenue threshold of €1 million for a chargeable period and to certain chargeable gains where they exceed a €25 million threshold. A relevant person who is a medium enterprise will be required to provide specified information in satisfaction of that person's obligation to provide transfer pricing documentation under section 835G. A relevant person who is a small enterprise will not be required to prepare transfer pricing documentation.

The updated Part 35A also provides for a number of exclusions from transfer pricing documentation requirements for previously grandfathered arrangements between qualifying relevant persons (see section 8.12.1 below).

8.3 Transfer pricing documentation

A relevant person is obliged to have available such records as may reasonably be required for the purposes of determining whether the profits or gains or losses of the relevant person have been computed in accordance with Part 35A. The documentation must be sufficiently robust and detailed for the purpose of demonstrating compliance with transfer pricing rules and the level of detail required will depend on the facts and circumstances of the arrangement.

A relevant person must have transfer pricing documentation available that provides all information relevant to the facts and circumstances of the arrangement, including but not limited to the following:

- The associated persons between whom the arrangement is made;
- Details of the nature of the arrangement within the scope of Part 35A including the terms and conditions of the arrangement. Transactions forming part of a series of transactions (e.g. regular purchases made by a distributor throughout a period of the same or similar products for resale) may be aggregated provided any material changes to the nature or terms of the arrangement are recorded;
- Full details of the transfer pricing methodology employed, including any study of comparables and any functional analysis undertaken;
- Details of how the relevant person determined the arm's length price based on the methodology, studies etc. used and details of any adjustments required. This will usually include an analysis of market data or other information on third party comparables;
- Any budgets, forecasts or other documentation containing information relied upon in determining arm's length terms or in calculating any necessary adjustment; and
- The terms of relevant transactions with both third parties and associated persons.

The above-mentioned information is not an exhaustive list and a relevant person who is required to provide a master file (see section 8.5 below) and/ or a local file (see section 8.6 below) will also need to consider those requirements.

8.4 Frequency of review of transfer pricing documentation

The transfer pricing documentation must be up to date and contemporaneous and must be reviewed regularly to determine whether the pricing remains arm's length and that the transfer pricing documentation adequately demonstrates this. Information showing how the transfer pricing policy was actually applied in each period should be updated annually. This information should include a reconciliation with the financial results recorded on the income statement of the company (and/or the tested party) and should also explain how the company is satisfied that the consideration payable or receivable in each arrangement satisfies the arm's length requirement under section 835C(2). How financial data used in applying transfer pricing methods ties to financial statements and the level of detail required may well depend on the individual facts and circumstances of the case. Of note, this includes the financial results of a single material transaction which must similarly be evaluated on an annual basis. To the extent that other facts and circumstances are materially unchanged, the content of transfer pricing documentation may be carried forward from one year to the next and updated at less regular intervals.

Transfer pricing documentation should be prepared no later than the filing date for the return for the chargeable period and must be made available within 30 days of a written request from a Revenue officer.

8.5 Master File requirement

Where a relevant person forms part of a multinational group of enterprises (**'MNE group'**) and the total consolidated global revenue of the MNE group is or is likely to be at, or above, €250 million (**'master file revenue threshold'**) in the chargeable period, the relevant person is required to prepare and have available a report containing the information specified in Annex I to Chapter V of the 2017 OECD Guidelines. The master file should be prepared no later than the date on which a return for the chargeable period is due to be filed.

Of note, the meaning of 'MNE group' is based on the definition outlined in Article 1 of the OECD Model Legislation Related to Country-by-Country Reporting ('**Model Legislation'**)[13] and for Irish transfer pricing purposes, the consolidated global revenue of the MNE group is adjusted to €250 million.

The master file provides a high-level outline of the business operations and policies at MNE group level. The information specified in Annex I to Chapter V of the 2017 OECD Guidelines and which must be included in the master file includes information relating to the nature of the MNE group's global operations, including its allocation of income and economic activities and the MNE group's overall transfer pricing policies and practices.

The following categories of relevant information should be contained in the master file:

1. the MNE group's organisational structure;
2. a description of the MNE's business;
3. the MNE's intangibles;
4. the MNE's intercompany financial activities; and
5. the MNE's financial and tax positions.

[13] Model Legislation Related to Country-by-Country Reporting - Article 1 - Definitions

The term **"MNE Group"** means any Group that (i) includes two or more enterprises the tax residence for which is in different jurisdictions, or includes an enterprise that is resident for tax purposes in one jurisdiction and is subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction, and (ii) is not an Excluded MNE Group.

8.6 Local File requirement

Where a relevant person forms part of an MNE group and the total consolidated global revenue of the MNE group is or is likely to be at, or above, €50 million (**"local file revenue threshold"**) in the chargeable period, the relevant person is required to prepare and have available a report containing the information specified in Annex II to Chapter V of the 2017 OECD Guidelines (**"local file"**).

In contrast to the master file, the local file provides detailed entity-level information. This file is specific to the Irish operations, identifying related party transactions with associated persons in different countries, the amounts involved in those transactions, and the company's analysis of the transfer pricing determinations they have made with regard to those transactions.

8.6.1 Local File content

The OECD standard local file, on which Irish transfer pricing local file requirements are based, has detailed content requirements in relation to the description of intra-group transactions relevant to the local entity, details of controlled transactions, transfer pricing methodologies and financial data used for each category of transaction, comparability and functional analyses, etc. A relevant person must provide the standard local file content in relation to a wide variety of transactions, including transactions that are trading, non-trading and capital in nature, where applicable. Where certain aspects of the prescribed local file template do not apply to a particular arrangement, this will need to be stated in the local file. This may be particularly relevant in documenting non-trading and/or capital arrangements where parts of the local file template may not be fully applicable. It is, however, necessary to provide all relevant information in relation to the arrangement.

The local file must contain information showing how the transfer pricing policy was actually applied in each period including a reconciliation with the financial results recorded on the income statement of the company (and/or tested party) and explaining how the actual consideration payable or receivable on each arrangement complies with the arm's length requirement under section 835C(2) . The level of detail required on an annual basis to demonstrate compliance with transfer pricing documentation obligations will depend on the facts and circumstances of the arrangement.

For example, if based on the facts and circumstances the most appropriate transfer pricing method with respect to the arrangement is the TNMM and a foreign associated company is the appropriate tested party then it will be necessary to show how the actual arrangement resulted in the foreign associated company earning an appropriate arm's length return under the TNMM. If the foreign associated company has a number of transactions with different associated affiliates (in addition to the Irish entity) which are aggregated then it may be necessary to show the segregated financial results of the foreign associated affiliate to demonstrate that the consideration payable/receivable with respect to the arrangement with the Irish affiliate complies with the arm's length requirement under section 835C(2).

In certain circumstances where a category of transactions comprises numerous smaller transactions, it may be appropriate to aggregate these smaller transactions. However, the appropriateness of aggregation or other approaches will depend on the particular facts and circumstances of the arrangement.

8.7 Guidelines on low value intra-group services

Revenue has previously published guidelines in relation to its simplified approach to low value intra-group services[14]. For accounting periods commencing on or after 1 January 2020, these guidelines will be replaced by Chapter VII, D, D.1 – D.4 of the 2017 OECD Guidelines. Of note, a taxpayer may apply the simplified approach for low value-adding intra-group services outlined in section D of Chapter VII without making an election to do so. Where a taxpayer applies the simplified approach in accordance with Chapter VII of the 2017 OECD Guidelines, a mark-up of 5% can be applied to the relevant costs (as determined in accordance with Chapter VII, D.2.2) without the need for the mark-up to be justified by a benchmarking study. Taxpayers who apply the simplified approach must comply with the documentation and reporting requirements set out in Chapter VII, D.3 of the 2017 OECD Guidelines.

8.8 Simplification measures

8.8.1 Country File

As an alternative to preparing an individual local file for each Irish group company, companies may choose to prepare a consolidated 'Country File' for all Irish entities of an MNE group containing the same content required by the OECD standard in a single country file. Entity level qualitative and financial information must be readily accessible within the country file. Where financial information is consolidated in the country file, companies will not be treated as complying with transfer pricing documentation requirements.

8.8.2 Counter-party transfer pricing documentation

There may be circumstances where Revenue will accept counter-party documentation to evidence transfer pricing for certain aspects of arrangements to limit duplication and to minimise the cost of compliance with transfer pricing documentation requirements.

Counter-party documentation may be acceptable for certain arrangements where—

a) the transfer pricing documentation is complete and provides all information required for the local file from the perspective of the Irish entity within scope of Part 35A,

b) the quantitative and qualitative information on the Irish entity is detailed and readily accessible.

[14] Revenue eBrief No. 37/18

In this regard, it may be necessary to incorporate or reference portions of an overseas report into the local file and therefore reduce the compliance burden. However, it is unlikely that counterparty documentation will include all relevant information from an Irish perspective. It may contain significant details on certain transactions within scope. Where details are missing from an Irish perspective the company should prepare a local document with the missing information and referencing the relevant sections of the counterparty documentation which contains the other relevant details needed for the local file. It should be borne in mind that transfer pricing documentation must be consistent with and comply with the OECD standard content.

8.8.3 Transfer pricing documentation held outside the State

Revenue will continue to accept transfer pricing documentation prepared and stored outside Ireland where it has been prepared no later than the due date for the filing of the return for the chargeable period and it is provided to Revenue within 30 days of a written request from a Revenue officer. Where appropriate transfer pricing documentation is prepared by an associated company for tax purposes in another jurisdiction and it fully complies with section 835G, it will be sufficient that that documentation can be made available to Revenue within the required timeframe. In addition, as in the case of the country file and counter-party documentation, it is necessary that transfer pricing documentation prepared and stored outside Ireland must provide all information as required to comply with transfer pricing documentation requirements.

8.9 Requirements to be met by benchmarking analyses

The actual application of the transfer pricing policy or method selected in each period and its reconciliation to the company's and/or the tested party's financial results should be updated annually. To the extent that the other facts and circumstances are materially unchanged, Revenue do not consider that it is necessary to revise the narrative in the transfer pricing documentation which should be updated as required. Similarly, if a benchmarking analysis is—

a) reasonably contemporaneous;

b) there are no economic circumstances that are materially different; and

c) it continues to be relevant to the particular facts and circumstances of the arrangement,

then it may be relied upon for multiple periods.

For a **TNMM benchmarking**, in general, Revenue will expect a full benchmarking study every 3 years and for the financials of the accepted comparables to be updated or refreshed on an annual basis. Pan-european comparables may be acceptable depending on the facts and circumstances. However, if there are local factors that clearly differentiate the tested party's geographic market they should be factored into the benchmarking, where possible.

8.10 Historic intercompany debt balances

Part 35A, as substituted by the Finance Act 2019, applies the updated transfer pricing rules to the computation of non-trading income arising from intercompany debt balances between associated persons who are not qualifying relevant persons (see section 6). Where such balances have arisen over a number of years, there may be some practical difficulties in tracing the inception of such intercompany balances. However, as outlined at section 4.4.2, companies must ensure that all available and relevant data is relied upon to demonstrate compliance with the requirements of Part 35A.

For example, while certain databases may not have a full record of historic transactions, there should be other sources and loan tools available to benchmark historic loans. In addition, credit rating agencies provide earlier versions of their models to assist in performing a historic standalone credit rating analysis.

Where, despite all reasonable efforts, it is not possible to trace the origin of each movement of the intercompany balance, the balance should be treated as arising from the earliest date for which reliable information is available. The relevant person should establish or "benchmark" the arm's length interest rate as if the arrangement was effective from that date and prepare transfer pricing documentation on this basis. Of note, the latter approach should only be taken where all efforts to trace exact origin of the intercompany balance have been exhausted. All movements in intercompany balances from 1 January 2020 (or the first day of the chargeable period commencing on or after 1 January 2020) must be tracked and transfer pricing rules applied to the computation of any non-trading income arising on this basis.

8.11 Arrangements between qualifying relevant persons

As outlined in section 6.1 where the exclusion from transfer pricing rules applies in relation to an arrangement between qualifying relevant persons (see section 6), the relevant person is not required to prepare transfer pricing documentation in respect of that particular arrangement. Of note, the relevant person is required to keep and have available such records as may reasonably be required for the purposes of determining whether the requirements for the exclusion to apply have been satisfied (see section 6.2).

In order for the exclusion to apply, the arrangement must be between a supplier and an acquirer who are both qualifying relevant persons. Of note, a person who, in relation to an arrangement, is chargeable to tax under Case I or II of Schedule D in respect of profits or gains or losses arising from the relevant activities, may be a qualifying relevant person in relation to that arrangement but will not entitled to the exclusion in section 835E(3). However, where the arrangement was agreed before 1 July 2010 and the terms of the arrangement have not changed on or after that date, the person may seek to rely on the transfer pricing documentation exclusion. Where the exclusion does not apply, the relevant person is required to prepare transfer pricing documentation in respect of that arrangement. The level of documentation required depends on the size of the MNE group that the relevant person belongs to (see section 8.5 and section 8.6 above). Where the relevant person is not required

to prepare a local file or a master file, the transfer pricing documentation requirements set out in section 8.3 apply.

8.12 Documentation requirements for pre-1 July 2010 arrangements

Arrangements, the terms of which were agreed before 1 July 2010 ("**pre-1 July 2010 arrangements**"), were excluded from transfer pricing rules for chargeable periods prior to 1 January 2020. This exclusion was deleted by section 27(5)(a) Finance Act 2019 and these previously "grandfathered" arrangements are now within the scope of transfer pricing rules for chargeable periods commencing on or after 1 January 2020. In general, these arrangements are subject to the same transfer pricing documentation requirements as apply to other arrangements within the scope of transfer pricing rules. However, some exclusions are set out in section 8.12.1 below.

8.12.1 Exclusions for pre-1 July 2010 arrangements between qualifying relevant persons

As noted at section 8.11 above, transfer pricing documentation requirements do not apply to certain pre-1 July 2010 arrangements. The exclusion applies where the supplier and the acquirer in relation to the arrangement are qualifying relevant persons and the terms and conditions of the arrangement have not changed on or after 1 July 2010. Companies relying on this exclusion must be able to demonstrate that all the terms and conditions of the arrangement were agreed before 1 July 2010, that these same terms and conditions were in fact applied from 1 July 2010 and that none of the terms and conditions of the arrangement changed from 1 July 2010.

Where the terms and conditions of such a pre-1 July 2010 arrangement have been amended post 1 July 2010, a relevant person must be able to demonstrate the arm's length pricing of the arrangement by preparing transfer pricing documentation.

8.12.2 Documentation pre-1 July 2010 arrangements

Transfer pricing rules apply in computing the amount of profits or gains or losses that are chargeable to tax in respect of arrangements for chargeable periods commencing on or after 1 January 2020. The rules apply to all arrangements between associated persons irrespective of when they were entered into. Arrangements should be priced to reflect the arm's length terms and pricing from the date that the arrangement was entered into and continuously throughout the period of the arrangement. The rules apply to all arrangements between associated persons irrespective of when they were entered into and arrangements should be priced to reflect the arm's length consideration payable or receivable. This will require relevant persons to fully review the arrangement under the 2017 OECD Guidelines and certain other supplementary OECD guidance (see section 5) to ensure that the arrangement is priced in a manner consistent with them.

In certain circumstances, depending on the arrangement, it may be necessary to consider the arm's length terms and pricing on an *ex ante* basis from the point in time that the arrangement was entered into as outlined in Example 8.12.2 below.

Example 8.12.2 – Previously Grandfathered Loan Arrangement

Irish Company borrowed €100 million from Non-resident Company on 1 June 2010 and the loan had a stated maturity of 12 years. Irish Company and Non-resident company are associated persons. The terms of the arrangement have not been amended since 1 June 2010 and the loan will not be fully repaid until 31 May 2022.

For chargeable periods commencing on or after 1 January 2020, Irish Company will be required to ascertain the arm's length consideration payable on the loan advanced by Non-resident Company based on the guidance provided in the 2017 OECD Guidelines. In this regard, it will be necessary to consider the arm's length quantum of debt based on the accurately delineated loan transaction as at 1 June 2010. If an analysis has not previously been performed to consider the arm's length quantum of debt on the basis that the transaction was previously grandfathered, it will be necessary to consider all available information in order to perform an assessment of debt capacity at the time the transaction was entered into (e.g. financial results of company before 1 June 2010, budget/cashflow forecasts prepared for other purposes, knowledge of the transfer pricing/remuneration model at the time of the arrangement, financial covenants in comparable loans, etc).

Similarly, depending on the facts and circumstances, it may be necessary to consider historic comparable loan/bond data to determine the arm's length interest rate on the accurately delineated loan in order to comply with Part 35A in respect of chargeable periods commencing on or after 1 January 2020.

8.13 Compliance requirements

A relevant person is required to prepare transfer pricing documentation at the time of filing of the return for the relevant chargeable period and provide such documentation, upon written request from a Revenue officer, within 30 days. The documentation must demonstrate that the relevant person's profits or gains or losses have been computed in accordance with transfer pricing rules. Transfer pricing documentation must be in written form and stored by means of electronic, photographic or other processes permitted.

8.14 Penalties

8.14.1 Fixed penalties

As outlined in section 8.13, transfer pricing documentation should be prepared no later than the date on which a return for the chargeable period is due to be filed and must be made available to Revenue within 30 days of a written request from a Revenue officer. Where a relevant person fails to comply with the requirement to provide transfer pricing documentation within 30 days of such a written request, a fixed penalty of €4,000 will apply.

Where the relevant person is of such a size that the relevant person is required to prepare a local file for the chargeable period (see section 8.6), the fixed penalty is increased from €4,000 to €25,000 plus €100 for each day on which the failure continues. Of note, the increased fixed penalty applies where that relevant person has failed to provide any required transfer pricing documentation, it is not limited to

a failure to provide the local file. This increased penalty applies to a relevant person being a company that is a member of an MNE group with an annual global consolidated turnover of €50 million or more in the relevant chargeable period (See section 8.6).

8.14.2 Penalty protection

Chapter V, D.7 of the 2017 OECD Guidelines recommends that where transfer pricing documentation requirements are satisfied and submitted on time, the relevant person may be exempt from penalties or subject to a lower penalty where a transfer pricing adjustment is made. In line with this approach, section 835G(7) provides that a relevant person will be exempted or protected from a tax-geared penalty in certain circumstances.

Where a transfer pricing adjustment results in additional tax due, a relevant person will be protected from a tax-geared penalty that may otherwise apply under section 1077E(5), which relates to careless but not deliberate behaviour, where the relevant person—

- has fulfilled the requirements of the section to prepare, and provide upon request, transfer pricing documentation within the specified timeframe; and
- the records provided are accurate and demonstrate that notwithstanding the transfer pricing adjustment, the relevant person has made reasonable efforts to comply with the requirements of Part 35A in setting the actual consideration payable or receivable under an arrangement.

Protection from tax-geared penalties only applies to transfer pricing adjustments that fall within the careless behaviour category of default. Where the additional tax due relates to deliberate behaviour category of default, the relevant tax-geared penalty will apply even where transfer pricing documentation is provided within 30 days of a written request from a Revenue officer.

Where the conditions set out in section 835G(7) are not satisfied, then penalties provided for in section 1077E will apply in the normal manner.

Reasonable efforts to comply with this Part

Section 835G(7)(c)(iii) requires the relevant person to demonstrate "reasonable efforts to comply with this Part" as part of the criteria for penalty protection. Reasonable efforts may be demonstrated by including a description of the work actually undertaken when preparing the transfer pricing documentation. This could include—

1. details of the functional analysis interviews undertaken;
2. the steps taken by the relevant person to ensure factual information remains up to date;
3. the relevant person's policy for periodically benchmarking its arrangements with associates, describing the roles of those involved in preparing the documentation and the extent to which arrangements between the taxpayer and independent enterprises were considered as part of its economic analysis;

4. evidence of the relevant person's controls to managing the implementation of its intragroup pricing will also help demonstrate reasonable efforts.

The following are illustrative examples of where a relevant person **will not** be considered to have made reasonable efforts to comply with the Part:

Example 8.14.2.1 – A relevant person advances an interest-bearing loan to an associated person.

An Irish manufacturing company loans €15 million to an associated company. Both companies are part of an MNE group whose total consolidated group turnover is €70 million. The loan is advanced for a period of 3 years at an annual interest rate of 0.25%. The loan arrangement is fully documented in the local file which is prepared no later than the date on which a return for the chargeable period is due to be filed.

The relevant person concludes in the local file that—

1. the loan is an example of a low value-adding intra-group service and that the interest receivable is supported as arm's length on the basis that it exceeds a cost plus 5% return in respect of activities performed by the taxpayer in advancing the loan, and;
2. a benchmarking study is not required to be performed on the basis that the arrangement is in line with the simplified approach for pricing low value-adding intra-group services described in Chapter VII, D.2 of the 2017 OECD Guidelines.

During an audit intervention, the Revenue officer disagrees with the relevant person's analysis and makes a transfer pricing adjustment based on their analysis of the facts and circumstances concluding that an arm's length interest rate is in fact 2.5%.

As financial transactions are excluded from the scope of the OECD's simplified approach to low value-adding intra-group services as set out in Chapter VII, D.1. of the 2017 OECD Guidelines, the relevant person is not considered to have made reasonable efforts to comply with Part 35A in determining the amount of the actual consideration receivable under the loan arrangement.

On this basis, the relevant person does not meet the criteria for penalty protection under section 835G(7)(b).

Example 8.14.2.2 – A relevant person borrows from an associated person on interest-bearing terms

An Irish distributor company borrows €5 million from an associated company. Both companies are part of an MNE group whose total consolidated group turnover is €50 million. The loan is advanced for 5 years at an annual interest rate of 7.25%. The local file is prepared at the time of filing the return for the chargeable prepared in which the loan arrangement is fully documented.

The relevant person concludes in the local file that the comparable uncontrolled price (**"CUP"**) method is the most appropriate method to test the arm's length nature of the transaction and performs a benchmarking analysis using a subscription database to support the interest rate (an external CUP analysis). The relevant person also has an €8 million loan with a third-party bank in the same year based on comparable terms and conditions to the related party loan with an interest rate of 3% (an internal CUP). This loan was not analysed in the local file.

During an audit intervention, the Revenue officer concludes that the relevant person's loan with the third-party bank provides the best evidence of arm's length pricing and that a transfer adjustment was required. On the basis that the relevant person did not evaluate the applicability of the internal comparable when analysing the arm's length nature of the actual consideration payable, the relevant person will not be considered to have made reasonable efforts to comply with Part 35A in determining the amount of the actual consideration payable under the loan arrangement.

Consequently, the relevant person does not meet the criteria for penalty protection under section 835G(7)(b).

9 Elimination of double counting

9.1 Overview

This section eliminates double counting in the case of domestic transactions. Where both parties to a transaction are resident in the State and a transfer pricing adjustment increases the profits or gains or losses of one party to a transaction then a corresponding downward adjustment is available to the other party.

9.2 Corresponding adjustments

Where the profits or gains or losses of a person that are chargeable to tax under Schedule D are, by virtue of section 835C, computed on an arm's length basis, and the other party to the arrangement (the affected person) is within the charge to tax under Schedule D, in respect of the relevant activities, the affected person may claim a corresponding downward adjustment to their profits or gains or losses. The adjustment allows the affected person to compute their liability to tax on a consistent basis with the counterparty to the arrangement who has had their profits or gains or losses adjusted by virtue of section 835C.

9.3 Trading stock

A downward adjustment made in accordance with this section will not affect the credits brought into account for an accounting period in respect of closing stock. Where relief is being given to the counterparty to a transaction by way of an increase in the cost of purchases, and any of those purchases remain in stock at the end of the accounting period, then the closing stock value of that stock is unaffected by the adjustment. For this purpose, trading stock in relation to a trade has the same meaning as in section 89. This provision ensures that a transfer pricing adjustment will not adversely affect cash flow within a group.

9.4 Relief

Where the profits or gains or losses of a person chargeable to tax are, by virtue of section 835C, computed on an arm's length basis, and the other party to the arrangement (the affected person) is within the charge to tax under Schedule D in respect of the profits or gains or losses arising from the relevant activities, then the affected person may make a claim for a corresponding downward adjustment to their profits or gains or losses arising from the relevant activities, once the tax due and payable for the period in which the adjustment is made by virtue of section 835C, is actually paid.

The affected person's ability to make a claim under this section will not be hindered by virtue only of the fact that there may be no tax due and payable, by the other party to the arrangement, for the period in which the adjustment is made by virtue of section 835C.

Where the profits or gains of an affected person, arising from a foreign branch are adjusted downwards, credit for foreign tax, if any, which may be given under double taxation agreements will be given by reference to the branch profits as so reduced.

The practice that profits on development land acquired by a group as trading stock are taxed when the land is sold outside the group is maintained. Where such land is transferred within a group the companies involved can elect that the existing treatment continues to apply. The election must be made by notice on or before the return filing date for the chargeable period of the company who is the counterparty to the arrangement and the notice must set out the necessary facts and show that the group companies involved in the arrangement are entitled to make the election.

Where a transfer pricing adjustment is made and the affected person has already submitted their CT1 return for the accounting period, the affected person may, subject to the normal time limits for making an amendment to a return, amend the return accordingly.

Any adjustments required to be made by virtue of this section may be made by the making of, or the amendment of, an assessment.

10 Interaction with capital allowances provisions

10.1 Overview

Finance Act 2019 extended the application of transfer pricing rules to the computation of capital allowances and balancing allowances or charges relating to capital expenditure incurred on assets in certain circumstances. Subject to exclusions, the transfer pricing rules contained in section 835C (see section 4) apply in computing the amount of—

- any capital allowances to be made to an acquirer of an asset where the capital expenditure incurred on the asset exceeds €25 million, or
- any balancing allowances or charges to be made to, or on, a supplier of an asset, where the market value of the relevant asset exceeds €25 million.

Transfer pricing rules apply in computing the amount of capital allowances and charges for chargeable periods commencing on or after 1 January 2020. However, the rules do not apply in computing the amount of any available capital allowances (other than balancing allowances) unless the related capital expenditure is incurred on or after 1 January 2020. In relation to the computation of balancing allowances and charges, transfer pricing rules apply where the event giving rise to the balancing allowance or charge occurs on or after 1 January 2020 irrespective of when the related expenditure was incurred.

Whether capital allowances are available in respect of capital expenditure incurred on a particular asset, or whether an event gives rise to a balancing allowance or charge, is determined under capital allowances provisions. Transfer pricing rules, where they apply, supplement capital allowances provisions by ensuring that capital allowances and balancing allowances or charges are computed as if an arm's length amount of consideration were payable or receivable in relation to transactions between associated persons. Where transfer pricing rules apply, they apply instead of the market value/open market price rules contained in capital allowances provisions. Where they do not apply because, for example, the amount of capital expenditure incurred by an acquirer in relation to an asset does not exceed €25 million, market value/open market price substitution rules contained in capital allowances provisions continue to apply where there is a sale of any asset between associated persons.

There are a number of provisions in the TCA 1997 (see section 10.2.2 and section 10.2.3) which, for capital allowances purposes, provide an exception to the requirement to substitute market value/open market value pricing where assets are transferred between associated persons. The extension of transfer pricing rules to the computation of capital allowances does not disturb the availability of these reliefs and this is achieved by provision being made for the non-application of the transfer pricing rules to the computation of capital allowances and balancing allowances or charges in a number of circumstances (see section 10.2).

10.2 Exclusions in applying transfer pricing rules on the acquisition or supply of an asset

Section 835HA sets out a number of exclusions to the general rule that transfer pricing rules apply in computing capital allowances and balancing allowances or charges relating to transactions between associated persons. These include where—

- the capital expenditure incurred on an asset (in the case of the acquisition of an asset by an acquirer) or market value of an asset (in the case of the supply of an asset by the supplier) does not exceed a threshold of €25 million (see section 10.2.1);
- the asset is a specified intangible asset to which section 291A applies and, by virtue of section 288(3C), the amount of the expenditure incurred on the acquisition of the asset is deemed to be an amount equal to the amount still unallowed (see section 10.2.2); or
- under specified reliefs in the TCA 1997, the supply and acquisition of an asset between associated persons is treated as having been supplied and acquired for an amount other than open market value (or equivalent) or the arm's length amount (see section 10.2.3).

10.2.1 €25 million threshold

To ensure that transfer pricing rules, and the related obligation to prepare and have available transfer pricing documentation, only apply in relation to high-value capital transactions, section 835HA provides that transfer pricing will not apply where the capital expenditure incurred on an asset (in computing capital allowances) or market value of an asset (in computing a balancing allowance or charge) does not exceed €25 million. The computation of allowances and charges on the acquisition and disposal of chargeable assets where the capital expenditure incurred on acquisition and market value on disposal does not exceed €25 million are subject to the open market value requirements set out in section 312 where they occur between connected persons (which includes persons who are associated for the purposes of transfer pricing legislation (see section 3 above)).

An anti-avoidance provision applies to guard against the possibility of splitting the asset being acquired or disposed of into more than one asset in order to avoid reaching the €25 million threshold and therefore to avoid the application of transfer pricing rules in computing allowances and charges relating to capital expenditure (in the case of the acquisition of an asset by an acquirer) or market value (in the case of the supply of an asset by the supplier) of assets (see section 10.2.4).

10.2.2 Interaction with certain other areas of TCA 1997

Transfer pricing rules will not apply in circumstances where an asset is a specified intangible asset to which section 291A applies and it is transferred to a connected company (within the meaning of section 10) resulting in capital expenditure being incurred by the connected company which exceeds the tax written down value of the asset at the time of transfer. Section 288(3C) provides that the connected company (acquirer) may claim capital allowances on the tax written down value of the asset at time of transfer, subject to meeting certain criteria.

10.2.3 Application of specified reliefs

Transfer pricing rules will not apply in computing allowances and charges relating to capital expenditure where there is a supply and acquisition of an asset and, in accordance with certain specified provisions of the TCA 1997, the asset is regarded as having been transferred or acquired for an amount other than its open market value (or equivalent) or the arm's length amount. This also may apply where there is an option to elect to transfer the asset at tax written-down value.

These circumstances include—

- Where the acquirer and supplier make a joint election under section 289(6) TCA 1997 or section 312(5)(a) to treat an asset as having transferred at the lower of the amount of expenditure still unallowed and the open market value of the asset,
- Where the supply and acquisition of the asset occurs as part of the transfer of the whole or part of a trade to which section 308A(3), section 310(3), section 400(6), section 631(2) or section 670(12) applies and under the relevant provision a balancing allowance or a balancing charge does not arise for the supplier and/or unallowed allowances may be made to the acquirer,
- Where the supply and acquisition of the asset occurs in the course of a merger to which section 633A applies and a balancing allowance or a balancing charge does not arise for the supplier and any unallowed allowances may be made to the acquirer SE or SCE,
- Where the supply and acquisition is of an interest in farm land to which section 658(9) applies and the acquirer is entitled to claim the remaining allowances following the transfer,
- Where the supply and acquisition of the asset occurs in the course of a conversion of a building society to a company, to which paragraph 1 of Schedule 16 applies and, in accordance with that paragraph, a balancing allowance or a balancing charge does not arise for the building society and any unallowed allowances may be made to the new company, or
- Where the supply and acquisition of the asset occurs in the course of a transfer, to which paragraph 2 of Schedule 17 applies, from a trustee savings bank to a successor company and, in accordance with that paragraph, a balancing allowance or a balancing charge does not arise for the bank and certain unallowed allowances may be made to the successor company.

10.2.4 Anti-avoidance

Section 835HA contains an anti-avoidance measure to prevent schemes whereby an asset, valued at over €25 million, could be acquired or disposed of in separate parts to an associated person to avoid exceeding the €25 million threshold amount. The measure is designed to defeat any benefits of such transactions where the purpose is to avoid the application of transfer pricing rules where the total value of the asset exceeds the €25 million threshold amount. Such schemes could, for example, involve circumstances where separate agreements or understandings exist whereby capital expenditure on an asset is parcelled or fragmentated for the purposes of circumventing the €25 million threshold. The anti-avoidance provision does not apply to genuine business transactions entered into for *bona fide* commercial purposes. The provision applies to transactions entered into primarily for the avoidance of the threshold amount.

In the case of a supply of an asset by a supplier, where the asset being supplied had at any time formed part of another asset (the other asset) and that asset and the other asset were disposed of under separate arrangements as part of a scheme to avoid exceeding the €25 million threshold, the expenditure incurred on both assets will be taken into account in determining whether the €25 million threshold is exceeded. A similar provision applies in relation to an acquisition of an asset by an acquirer – where the asset being acquired formed part of another asset and the acquisition is fragmented as part of a scheme to avoid reaching the €25 million threshold.

Example 10.2.4 - Arrangement undertaken as part of a scheme to avoid exceeding the €25 million threshold

Trading Company incurred capital expenditure on the acquisition of an intangible asset on 1 January 2017 and met the conditions for claiming capital allowances under section 291A. As at 1 January 2020, the intangible asset has a market value of €35 million and Trading Company wishes to transfer it to Subsidiary Company, a trading company that is a 100% subsidiary of Trading Company. Of note, the exclusion from transfer pricing under section 835E will not apply to either Trading Company or Subsidiary Company because both companies are chargeable to tax under Case I of Schedule D. As part of a scheme to avoid reaching the €25 million threshold, Trading Company plans to transfer rights relating to the intangible asset to Subsidiary Company in two separate tranches, with the first set of rights transferring to Subsidiary Company for €20 million on 2 January 2020 and a second tranche to be transferred for €15 million on 30 December 2020.

In this example, there is a scheme to avoid reaching the €25 million threshold for applying transfer pricing rules by parcelling assets. For the purposes of determining whether transfer pricing rules apply in connection with the supply and acquisition of the assets, and specifically whether the €25 million threshold is reached, the market value (supplier) or capital expenditure incurred (acquirer) of or on both assets will be taken into account.

10.3 Interaction between transfer pricing rules and capital allowances provisions

10.3.1 Interaction with section 835E

Given that transfer pricing rules will only apply in respect of high-value transactions (above €25 million in terms of expenditure or market value), it will be unnecessary in most cases to consider the application of the exclusion contained in section 835E in relation to a particular arrangement. Where the market value of an asset/capital expenditure incurred on an asset exceeds €25 million, it may be necessary to consider the application of the exclusion contained in section 835E in connection with the computation of capital allowances (including balancing allowance) and balancing charges apply. This can only apply to an arrangement between qualifying relevant persons (see section 6).

10.3.2 Substitution of transfer pricing rules

Transfer pricing rules will apply irrespective of the other provisions of the TCA 1997 that deal with the computation of allowances and charges relating to capital expenditure namely—

- Part 9: Principal provisions relating to relief for capital expenditure;
- Part 10: Income tax and Corporation Tax: Reliefs for renewal and improvement of certain urban areas, certain resort areas and certain islands;
- Part 23: Farming and market gardening;
- Part 24: Taxation of profits of certain mines and petroleum taxation;
- Part 24A: Shipping: Tonnage tax;
- Part 29: Patents, scientific and certain other research, know-how and certain training;
- Part 36: Miscellaneous special provisions; or
- Schedule 18B: Tonnage Tax

This means that capital allowances and balancing allowances or charges must be computed as if an arm's length amount of consideration were payable or receivable in relation to transactions between associated persons rather than by reference to open market value (or equivalent) rules specified in the capital allowance provisions. To assist in pricing capital transactions, Revenue expect the supplier or acquirer to draw on the guidance provided for in the 2017 OECD Guidelines.

10.3.3 Exception to application of transfer pricing rules

If, in a given case, the application of transfer pricing rules would result in a higher allowance (including a balancing allowance) or a reduced balancing charge than would be the case if the open market value (or equivalent) provision had applied, transfer pricing rules will not apply. In these circumstances, the normal open market value (or equivalent) rules in capital allowances provisions will apply. Where transfer pricing rules are disapplied in these circumstances, then transfer pricing documentation requirements will not apply.

10.3.4 Interaction with section 291A (3)

Section 291A(3) provides that the rate of wear and tear allowance to be applied under section 284 TCA is to be determined by applying the formula—

$$\frac{A}{B} \times 100$$

where-

- **A** is the amount, computed in accordance with generally accepted accounting practice, charged to the profit and loss account of the company for the accounting period in respect of the amortisation and any impairment of the specified intangible asset. [Provision is also made for apportionment where the accounting period for tax purposes and the company's period of account are not the same], and
- **B** is the actual cost of the asset or, if greater, the value of the asset on which the amortisation and any impairment is computed.

Where, as a result of the application of transfer pricing rules an adjustment is made to the computation of the amount of capital allowances relating to the acquisition of an asset, the amounts referred to in "A" and "B" of the above-mentioned formula will be adjusted accordingly. This modification applies for each chargeable period in which an allowance is made.

This is best illustrated by way of an example.

Example 10.3.4 - Modification of section 291A(3)

In this example, Trading Company acquired an intangible asset from its non-resident parent company (100% share capital) for €40 million on 1 January 2021 and is brought into the accounts at that value. The intangible asset is a specified intangible asset within the meaning of section 291A. Trading Company has an accounting year end of 31 December 2021 and the arm's length amount of consideration for the intangible asset is €35 million.

Trading Company wishes to claim section 291A capital allowances in line with the accounting treatment as per section 291A(3). Trading Company has a 10-year depreciation policy for intangible assets for accounting purposes.

As the carrying value of the intangible asset in the accounts exceeds the arm's length price, the amount of capital allowances to be made to Trading Company in accordance with section 291A(3) is modified to ensure that the capital allowances are made in respect of the arm's length price.

In applying the formula in section 291A(3) to this example, the arm's length price is used and, in this example, will mean that the "A" in the formula will be €3.5m (€35 million at 10%) and "B" will be €35 million. These modifications ensure that wear and tear allowances are based on the arm's length amount of consideration for the intangible asset.

11 Interaction with provisions dealing with chargeable gains

11.1 Overview

Subject to certain exclusions, Finance Act 2019 extended the application of transfer pricing rules to the computation of chargeable gains and allowable losses relating to the disposal (supply) and acquisition of assets between associated persons. The provisions may apply to an individual who disposes an asset to, or acquires an asset from, a company which that person controls. However, this is subject to exclusions as outlined in section 11.2.

For chargeable periods commencing on or after 1 January 2020, the transfer pricing rules in section 835C apply for the purposes of—

- computing the amount of any chargeable gain or allowable loss arising to a supplier on the disposal of a chargeable asset, and
- determining the amount of consideration for the acquisition of a chargeable asset (base cost) which will be taken into account in computing the amount of any chargeable gain arising on a subsequent disposal of the asset,

in circumstances where an asset is supplied and acquired between associated persons and the market value of the relevant chargeable asset exceeds €25 million. Where the market value of the chargeable asset does not exceed €25 million, transfer pricing rules will not apply, and the market value rules contained in provisions in the TCA 1997 dealing with chargeable gains and allowable losses will continue to apply in respect of disposals and acquisitions of chargeable assets between associated persons.

Whether there is a disposal or an acquisition of a chargeable asset for the purposes of capital gains tax or corporation tax on chargeable gains will be determined under provisions in the TCA 1997 dealing with chargeable gains. Transfer pricing rules, where they apply, supplement these provisions by ensuring that chargeable gains and allowable losses are computed as if an arm's length amount of consideration were payable or receivable in relation to transactions between associated persons. They also ensure that transfer pricing documentation requirements apply (see section 8). For transfer pricing rules to apply (see section 4.2), there must be a supply **and** an acquisition of an asset between associated persons. Therefore, transfer pricing rules do not apply in computing chargeable gains and allowable

losses relating to deemed disposals of chargeable assets (see section 11.2.3.1) or to acquisitions of chargeable assets where there is no corresponding disposal.

There are various reliefs which, for the purposes of capital gains tax or corporation tax on chargeable gains, treat a chargeable asset as having been disposed of and acquired between associated persons for an amount other than market value or the arm's length amount. In extending transfer pricing rules to the computation of chargeable gains, Part 35A, as substituted by Finance Act 2019, has not disturbed the availability of these reliefs and provides that the transfer pricing rules do not apply in computing chargeable gains or allowable losses in a number of circumstances (see section 11.2).

11.2 Exclusions from the application of transfer pricing rules to the computation of chargeable gains and allowable losses

Section 835HB sets out a number of exclusions to the general rule that transfer pricing rules apply in computing the amount of any chargeable gain or allowable loss arising to a supplier on the disposal of a chargeable asset to an associated person or in determining the amount of the acquisition (base) cost of a chargeable asset in circumstances where it is acquired from an associated person. These exclusions are—

- where the market value of the chargeable asset disposed of by a supplier, or acquired by an acquirer, does not exceed €25 million,
- where, under specified reliefs the supply and acquisition of an asset between associated persons is treated as having been supplied for an amount that gives rise to neither a gain nor a loss (see section 11.2.2) or the acquirer is treated as if it has acquired the asset at the same time and the same cost at which it was acquired by the supplier, or
- the asset is disposed of by an individual to a company and, immediately after its acquisition by the company, the asset remains a chargeable asset.

11.2.1 €25 million threshold

To ensure that transfer pricing rules, and the related obligation to prepare and have available transfer pricing documentation, only apply in relation to high-value transactions, section 835HB excludes from the application of transfer pricing rules disposals and acquisitions of chargeable assets between associated persons where the market value of the relevant chargeable asset does not exceed €25 million. Disposals and acquisitions of chargeable assets with a market value of up to €25 million are subject to the market value requirements set out in sections 547 [15] and 549 [16] where they occur between connected persons (which includes persons who are associated for the purposes of transfer pricing legislation (see section 3)).

[15] TDM Part 19-02-06

[16] TDM Part 19-02-09

There is an anti-avoidance provision designed to guard against the possibility of splitting the asset being disposed of, or acquired, into more than one asset in order to avoid reaching the €25 million threshold and therefore to avoid the application of transfer pricing rules (see section 11.2.4).

11.2.2 Application of specified reliefs

Supplier perspective

There are a number of reliefs which, for the purposes of capital gains tax or corporation tax on chargeable gains, treat a supplier as having disposed of an asset for a consideration of such an amount that gives rise to neither a gain nor a loss.

Where these reliefs apply, transfer pricing rules will not apply for the purposes of computing the amount of any chargeable gain or allowable loss arising to the supplier on the disposal of a chargeable asset. The relevant reliefs are—

- Section 606(2) – Disposals of works of art, etc loaned for public display,
- Section 615(2) - transfer of an asset in the course of a company reconstruction or amalgamation,
- Section 617(1) – relief for transfer of an asset, other than trading stock within a group,
- Section 632(1) – transfer of a trading asset by a company to its parent company,
- Section 633 – transfer of development land in connection with a scheme of company reconstruction or amalgamation,
- Section 633A – Transfer of assets on the formation of a SE or SCE by merger,
- Section 702(2) – transfer of an asset between building societies in the course of a union or an amalgamation, and
- Paragraph 5(2) Schedule 17 – transfer of an asset in the course of a reorganisation of a Trustee Savings Bank into a company.

Section 835HB also excludes from the application of transfer pricing rules a disposal of a chargeable asset where the asset is disposed of by an individual to a company and immediately after its acquisition by the company, that asset remains a chargeable asset.

Acquirer perspective

A number of the specified reliefs in the TCA 1997 provide that, for the purposes of capital gains or corporation tax on chargeable gains, the disposal of the asset by the supplier is treated as giving rise to neither a gain or loss and/or the acquirer's acquisition of the asset is treated as if the asset was acquired at the time and the cost at which it was acquired by the supplier under certain specified provisions. This ensures that any chargeable gain is deferred until such time as the asset is disposed of by the acquirer.

The relevant reliefs are—

- Section 615(2) – transfer of an asset in the course of a company reconstruction and amalgamation,
- Section 617(1) – relief for transfer of an asset, other than trading stock within a group,
- Section 631(3) – transfer of assets in accordance with EU Directive 2009/133/EEC,
- Section 632(1) – transfer of a trading asset by a company to its parent company,
- Section 633 – transfer of development land in connection with a scheme of reconstruction or amalgamation,
- Section 633A – Transfer of assets on the formation of a SE or SCE by merger,
- Section 702(2) – transfer of an asset between building societies in the course of an amalgamation, and
- Paragraph 5(3) of Schedule 17 – Reorganisation of Trustee Savings Bank into a company.

Example 11.2.2 - Exclusion from transfer pricing rules (no gain, no loss circumstances)

Trading Company transfers a trading asset to its Irish Subsidiary Company (100% ownership) for its market value of €50 million on 25 June 2020. Trading Company acquired this asset in 2018 for €10 million.

In this example it is assumed that the disposal and subsequent acquisition of the asset qualifies for relief under section 617(1) and therefore transfer pricing rules will not apply.

Section 617(1) treats the disposal of the asset such that:

- Neither a gain nor a loss will accrue to Trading Company on the disposal, and
- Subsidiary Company is deemed to have acquired the asset at the same time and for the same base cost as Trading Company.

As section 617(1) applies in connection with this arrangement, transfer pricing rules do not apply.

11.2.3 Interaction with other areas of TCA

11.2.3.1 Deemed disposal events

'Deemed disposal events' are a feature of the capital gains tax code. These types of events occur where, for example an asset is lost or destroyed or where a company migrates or transfers assets offshore. In these circumstances there is generally a deemed disposal and acquisition by the same person. For transfer pricing rules to apply there must be an actual disposal and acquisition of a chargeable asset as part of an arrangement between associated persons at least one of whom is within the charge to Irish tax. Therefore, 'deemed disposal events' are outside the scope of transfer pricing rules.

11.2.3.2 Acquisition of an asset in circumstances where section 626B applies to the disposal

Where the acquirer of shares, the disposal of which qualified for relief under section 626B [17], is within the charge to Irish tax, Revenue expect the acquirer, in relation to a subsequent disposal of the shares, to be able to demonstrate that the amount of consideration paid for the acquisition of the shares complies with transfer pricing rules. The transfer pricing documentation (see section 8) should be contemporaneous and available in relation to a subsequent disposal[18].

11.2.4 Anti-avoidance

Section 835HB contains an anti-avoidance measure to prevent schemes whereby an asset, valued at over €25 million, could be acquired or disposed of in separate parts to an associated person so as to avoid exceeding the €25 million threshold amount. The measure is designed to defeat any benefits of such transactions where the purpose is to avoid the application of transfer pricing rules where the total value of the asset exceeds the €25 million threshold amount. Such schemes could, for example, involve circumstances where separate agreements or understandings exist so that the capital expenditure on an asset is parcelled or fragmentated for the purposes of circumventing the €25 million threshold. The anti-avoidance provision does not apply to genuine business transactions entered into for genuine commercial purposes, in a commercial manner, and not entered into primarily for the avoidance of the threshold amount.

In the case of a disposal of an asset by a supplier, where the asset being disposed of had at any time formed part of another asset (the other asset) and that asset and the other asset were disposed of under separate arrangements as part of a scheme to avoid exceeding the €25 million threshold, the market value of both assets will be taken into account in determining whether the €25 million threshold is exceeded. A similar provision applies in relation to an acquisition of an asset by an acquirer – where the asset being acquired formed part of another asset and the acquisition is fragmented as part of a scheme to avoid reaching the €25 million threshold.

[17] TDM Part 20-01-14

[18] If section 626B were to apply to an acquirer in connection with any subsequent disposal of the shares then it would not be necessary to demonstrate that the acquisition cost of the shares is arm's length (and to provide transfer pricing documentation) because the gain on disposal would be exempt from capital gains tax. Whether this will be applicable in a given case will depend on the facts and circumstances of the case.

Example 11.2.4 - Arrangement undertaken as part of a scheme to avoid exceeding €25 million threshold

Trading Company owns a specified intangible asset which has a market value of €30 million as at 30 June 2020. Trading Company wishes to transfer this specified intangible asset to its Irish Subsidiary Company (100% ownership). Trading Company and Subsidiary Company make a joint election in order to disapply the provisions of section 617(1) in relation to the transfer because Subsidiary Company intends to claim section 291A capital allowances on this specified intangible asset post-acquisition. As part of a scheme to avoid exceeding the €25 million threshold, Trading Company makes a part disposal of this specified intangible asset for €15 million to its Subsidiary Company on 30 June 2020 and the remaining part of the specified intangible asset is disposed of for €15 million on 1 July 2020.

In this example the disposal and subsequent acquisition of the specified intangible asset is clearly parcelled as part of a scheme to avoid exceeding the €25 million threshold and therefore, the market value of each asset is aggregated for the purpose of determining the €25 million threshold.

11.2.5 Corresponding adjustments

Gain on disposal

Section 835HB(5)(a) provides for an adjustment to the base cost at which an asset is acquired by an acquirer. The adjustment will occur in circumstances where there is a gain on disposal of an asset between associated persons and, in accordance with transfer pricing rules, the arm's length value is substituted for the consideration paid, if any. This applies where the arrangement relates to the disposal and acquisition of a chargeable asset. In such circumstances, the acquirer is deemed to have acquired the chargeable asset at its arm's length price instead of the consideration actually paid, if any.

This measure will not apply unless and until such time as the tax due and payable in accordance with the transfer pricing rules for the chargeable period by the supplier has been paid.

Loss on disposal

Revenue accept that, where following the application of transfer pricing rules, a loss arising on a disposal of a chargeable asset by a supplier is reduced (rather than a gain arising), the acquirer in relation to that arrangement will be able to make a corresponding adjustment to the base cost of the chargeable asset. In such circumstances, the acquirer will be treated as having acquired the chargeable asset for an amount of consideration equal to the arm's length amount rather than the actual consideration payable, if any. This will only apply in connection with an arrangement entered into for *bona fide* commercial purposes.

11.3 Interaction between transfer pricing rules and other provisions of the TCA 1997 that provide for the computation of chargeable gains or allowable losses

11.3.1 Impact of transfer pricing rules on provisions dealing with chargeable gains

Where transfer pricing rules apply to the computation of any chargeable gain or allowable loss arising to a supplier on the disposal of a chargeable asset or to the acquisition cost of an acquirer of an asset, they will apply irrespective of the provisions that otherwise compute such chargeable gains or allowable losses or which determine the base cost of an asset acquired by an acquirer. This ensures that the arm's length principle determined under transfer pricing rules will apply instead of the market value (or equivalent) rules specified in the capital gains tax provisions and therefore, the transfer pricing documentation requirements will also apply (see section 8).

The arm's length principle and transfer pricing rules take precedence over the following provisions in the TCA 1997 that provide for the computation of chargeable gains or allowable losses on the disposal of an asset by a supplier or set the base cost of an asset acquired by an acquirer. The relevant provisions are:

- Part 19: Principal Provisions Relating to Taxation of Chargeable Gains;
- Part 20: Companies' Chargeable Gains;
- Part 22: Provisions Relating to Dealing in or Developing Land and Disposals of Development Land; or
- Schedule 14: Capital Gains Tax: Leases

Where transfer pricing rules apply instead of the market value (or equivalent) rules contained in the above-mentioned provisions, transfer pricing documentation requirements will also apply. To assist in pricing capital assets, Revenue expect the supplier and acquirer to draw on guidance provided for in the 2017 OECD Guidelines.

11.3.2 Exception to the application of transfer pricing rules

An exception to the application of the transfer pricing rules in section 835C is provided for in certain circumstances. Transfer pricing rules will not apply where they would result in (i) a lower chargeable gain or higher allowable loss arising to the supplier on the disposal of a chargeable asset, or (ii) the acquirer of a chargeable asset having a higher acquisition cost than would be the case under certain provisions of the TCA 1997 dealing with the computation of chargeable gains and allowable losses. This ensures that anti-avoidance provisions in the TCA 1997 are not dis-applied where their application would result in a higher tax liability than would be the case if transfer pricing rules were to apply. Where transfer pricing rules are disapplied in these circumstances, then transfer pricing documentation requirements will not apply.

12 Approach to Monitoring Compliance

Revenue's aim is to optimise the use of resources in its transfer pricing compliance intervention programme having regard to the complex and time-consuming nature of transfer pricing audits. Experience domestically and in other jurisdictions would suggest that transfer pricing cases are very fact-and-circumstance-dependent and authorities need to have a good understanding of the specific commercial context of each case. A risk assessment process is also central to the success of any transfer pricing compliance programme.

Therefore, in order to optimise the use of resources, Revenue approaches transfer pricing compliance using a number of compliance focused programmes including:

- a Transfer Pricing Compliance Review programme (see section 12.2 below); and
- a Transfer Pricing audit programme (see section 12.3 below).

12.1 Applicable periods

As outlined at section 2.3, section 27 of Finance Act 2019 substituted Part 35A. The substituted Part 35A applies for chargeable periods commencing on or after 1 January 2020.

Compliance enquiries relating to chargeable periods commencing on or after 1 January 2020 may be initiated and carried out by a Revenue officer. Compliance enquiries relating to chargeable periods commencing before 1 January 2020 may only be initiated by an 'authorised officer', being an officer of the Revenue Commissioners authorised by them in writing for the purposes of Part 35A[19].

12.2 Transfer Pricing Compliance Review (TPCR)

A Transfer Pricing Compliance Review (**"TPCR"**) is a self-review carried out by the company/MNE group of its compliance with Part 35A and the application of arm's length principle in relation to relevant transactions between associated persons.

A TPCR gives the relevant company/MNE group the opportunity to review its transfer pricing compliance and to provide Revenue with an assessment of that compliance. A TPCR also results in Revenue receiving important information, such as facts and data on a particular company/MNE group's business structure, related party transactions and transfer pricing methodologies used, which may assist Revenue with its risk assessment generally and its knowledge and understanding of the practical approaches applied by businesses in relation to transfer pricing.

TPCRs are not Revenue audits – nor are they Revenue investigations – for the purposes of the Code of Practice for Revenue Audit and Other Compliance Interventions[20]. Consequently, the opportunity to make an 'Unprompted Qualifying Disclosure' will still be available to the company/ group.

[19] Section 835A(1)(as enacted by section 42 Finance Act 2010)

[20] Code of Practice for Revenue Audit and other Compliance Interventions (March 2020)

Further details in relation to how a TPCR is conducted and the types of information required are contained at Appendix 1.

12.3 Transfer Pricing Audit

The transfer pricing audit branches in Revenue's Large Corporates Division (**LCD**) have nationwide responsibility for conducting risk-driven transfer pricing audits and other transfer pricing compliance interventions. The transfer pricing audit programme is in addition to the TPCR programme.

Transfer pricing audits are conducted in compliance with the Code of Practice for Revenue Audit and other Compliance Interventions. As outlined at section 12.1, compliance enquiries relating to chargeable periods commencing on or after 1 January 2020 may be initiated and carried out by a Revenue officer. For chargeable periods commencing before 1 January 2020, compliance enquiries may only be initiated by an 'authorised officer' who has been specifically authorised in writing for the purposes of Part 35A of the TCA 1997. Of note, while such compliance enquiries must be initiated by an authorised officer, they may then be undertaken by other Revenue officers.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[…]

Appendix 1: Conduct of a TPCR

Notification Letter

A notification letter will be issued by an authorised officer/Revenue officer to a company/group selected for a TPCR requesting that the company/group undertake a self-review of its relevant related-party transactions and associated transfer pricing for a specified accounting period. A copy of the letter will also be issued to the appropriate tax agent. It is important that the taxpayer should understand that Revenue considers the TPCR to be a substantial compliance check in its own right and not normally a precursor to the conduct of a transfer pricing audit.

The notification letter will generally request the taxpayer to address the following matters during its self-review—

a) a corporate chart for the review period showing the group structure, the shareholdings of each group company and each associated company that the company transacted with during the review period;

b) an organisational chart outlining the different functional areas, employee titles and reporting lines within the company, and also to personnel in other group companies, where applicable;

c) details of each category or type of related party transaction – identifying the material terms and conditions of the transactions, the associated companies involved and the value of income or expenditure from each transaction;

d) a summary of the functions, assets and risks of the relevant parties;

e) the pricing structure and transfer pricing methodology used in relation to each category or type of related party transactions;

f) a summary list of relevant documentation available and reviewed;

g) details of the basis on which it has been established that the arm's length principle is satisfied; and

h) a financial analysis, which demonstrates the application of the transfer pricing policy for each transaction or transaction class during the period under review, including a reconciliation of the application of the transfer pricing policy to the company's financial statements for the period under review.

The company will also be requested to provide Revenue, within a period of 3 months of the date of issue of the notification letter, with a copy of a report that addresses each of the above matters in detailing the outcome of the self-review. In some

cases, a transfer pricing study may already have been prepared for the relevant period and a further self-review may be unnecessary.

To minimise compliance costs for the taxpayer, the letter will make it clear that where, a transfer pricing report or study already exists, that report or study will suffice provided it contains the information listed above.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[…]

Outcomes from a TPCR

A post-review letter will issue from Revenue. This may convey that no further enquiries are necessary in respect of the period concerned or it may indicate issues for further consideration or discussion within the TPCR process.

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[…]

In some instances, other options may be considered, including a transfer pricing audit. A case selected for TPCR may be escalated to an audit, where appropriate, based on an assessment of risk. For example, this might be considered appropriate where the company declines to complete a self-review or where the output from the review and any follow-up queries indicates that the transfer pricing appears not to be in accordance with the arm's length principle and therefore not in compliance with Part 35A.

Where a case escalates from TPCR to a transfer pricing audit, an authorised officer/Revenue officer will issue a Notification of Revenue Audit letter.

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