Irish Revenue release details on monitoring compliance with transfer pricing rules

Global Transfer Pricing Alert 2018-017

The Irish Revenue on 28 May 2018 released a Tax and Duty Manual – "Monitoring Compliance with Transfer Pricing Rules" -- that contains information regarding the tax authorities' approach to monitoring compliance with domestic transfer pricing law in Ireland.

Details

The manual outlines details regarding the two programs used to monitor compliance with Irish domestic transfer pricing law:

- The Transfer Pricing Compliance Review program (TPCR); and
- The transfer pricing audit program.

Main Features of TPCR Program

The Irish Revenue originally introduced the TPCR program in November 2012, in advance of a formal transfer pricing audit program within Irish Revenue.

The TPCR program allows authorized officers from the Irish Revenue to send out notifications to selected taxpayers inviting them to self-review their transfer pricing and report back within three months. The review will be for a specific accounting period.

The report to be provided to the Irish Revenue based on this self-review should address:

- The group structure;
- Details of transactions by type and associated companies involved;
- Pricing and transfer pricing method for each transaction or group of transactions;
- Functions, assets, and risks of the parties involved;
- List of documentation available or reviewed by the taxpayer; and
- The basis for establishing if the arm's length standard has been satisfied.

In most circumstances, an existing transfer pricing study should suffice, as it is likely to include all the relevant points required.

The manual emphasizes that a TPCR is not a transfer pricing audit, and the information collated from the review is used by Irish Revenue in its risk assessment process for taxpayers. In certain circumstances, a case selected for a TPCR may be escalated to a formal audit. The manual cites two examples when this may occur: when the company declines to complete a self-review or when the output from the review and follow-up queries indicates that the arm's length principle is not adhered to.

Because the TPCR process is not a formal tax audit, a company will retain the right to make an unprompted qualifying disclosure under the Code of Practice for Revenue Audit & Other Compliance Interventions at any time throughout or after the review concludes (and up to the point before the Irish Revenue provide notification of a formal audit).

Transfer Pricing Audit Program

A separate transfer pricing audit team was constituted within Irish Revenue in the Large Cases Division (LCD) in 2015. Transfer pricing audits in Ireland are undertaken in compliance with the Code of Practice for Revenue Audit & Other Compliance Interventions. The code provides an opportunity for companies to make unprompted qualifying disclosures before an audit notification letter is issued.

Irish Revenue have a standard schedule of information they normally request on the commencement of a formal transfer pricing audit, including:

- A corporate chart outlining the group structure and shareholdings of each group company;
- An organizational chart outlining the different functional areas, employee titles, and reporting lines;
- Details of relevant related-party transactions, including a brief description of each transaction, together with the name of each counterparty and a summary of the material terms and conditions of each transaction;

- A summary of the functions, assets, and risks of the relevant parties in relation to each related-party transaction or transaction class;
- The pricing structure and transfer pricing methodology used in relation to each related-party transaction or transaction class;
- Details of the basis on which it has been established that the arm's length principle is satisfied for each transaction or transaction class identified; and
- A financial analysis supporting the conclusions reached on the arm's length nature of each transaction or transaction class.

Typically, 30 days' notice is given in the first audit letter to provide the information requested. It is not uncommon for additional letters with further detailed queries to be issued by the auditors after the initial information request outlined above.

Comments

The manual issued by the Irish Revenue provides up-to-date clarifications regarding the compliance programs in operation in Ireland. Interestingly, the document issued may suggest that the Irish Revenue intends for the TPCR program and the transfer pricing audit program to work in tandem. Because the transfer pricing team within Irish Revenue have finite resources to undertake full transfer pricing audits, it may mean that the TPCR process will be used more frequently going forward to risk-assess potential cases for future audits.

In today's environment, tax authorities have more information on a company's operations and global value chain. The first country-by-country (CbC) reports have been filed with Irish Revenue in early 2018, and shortly foreign tax authorities will share CbC reports with Irish Revenue through exchange of information mechanisms. In addition, many groups are now preparing their transfer pricing documentation to align with the master file and local file approach in the 2017 OECD transfer pricing guidelines, and that documentation will contain enhanced information on the entire group. The additional information available to Irish Revenue on companies' operations in Ireland will assist them in assessing companies for further scrutiny in the years ahead.

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Useful links

Resources

- 2016 Global Transfer Pricing Country Guide
- Arm's length standard
- Transfer pricing alerts

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