

## Requests for Transfer Pricing Documentation

### Part 35A-01-05

This document should be read in conjunction with section 835G of the Taxes Consolidation Act 1997.

This document should also be read in conjunction with the following Tax and Duty Manual (TDM):

[Tax and Duty Manual Part 35A-01-01](#) - Monitoring Compliance with Transfer Pricing Rules contained in Part 35A TCA 1997.

This document applies to chargeable periods commencing on or after 1 January 2020. For chargeable periods commencing before 1 January 2020, please refer to [Tax and Duty Manual Part 35A-01-02](#) - Transfer Pricing Documentation Obligations.

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## 1 Introduction

The purpose of this manual is to document the operational policy of the Transfer Pricing (“**TP**”) Audit Branches in Large Corporates Division (“**TP Audit Branches**”) for requesting transfer pricing documentation (“**TP documentation**”) from taxpayers as part of the risk assessment / appraisal process, so that a consistent approach is applied to all such requests. The use of TP documentation at the appraisal stage is intended to ensure that appraisals are more effective in instances where functional and transaction level information is not available in sufficient detail from other sources.

This manual also seeks to ensure that such TP documentation requests appropriately fit within the Compliance Intervention Framework, as set out in the Code of Practice for Revenue Compliance Interventions (“**Code of Practice**”).

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

[...]

## 2 Section 835G TCA 1997: TP documentation requirements

Finance Act 2019 substantially expanded and updated TP legislation by substituting a new Part 35A of the Taxes Consolidation Act 1997 (“**TCA 1997**”). Part 35A, as substituted by Finance Act 2019, applies for chargeable periods commencing on or after 1 January 2020.

Section 835G(2) TCA 1997 details Irish TP documentation requirements and requires taxpayers to have available such records as may reasonably be required to demonstrate compliance with TP legislation. It **also** requires 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 Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (“**2017 OECD TPG**”)¹. The master file and local file requirements are subject to de minimis group consolidated turnover thresholds of €250 million and €50 million respectively. Appendix II and Appendix III of this manual lists the information which must be included in the master file and local file respectively.

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<sup>1</sup> Finance Act 2022 updated the definition of ‘transfer pricing guidelines’ for chargeable periods commencing on or after 1 January 2023 to refer to the updated OECD Transfer Pricing Guidelines published on 20 January 2022.

While other information may be retained as part of a taxpayer's TP documentation, **the scope of this manual is limited to the operational policy for requesting copies of the local file and master file** as part of the risk assessment / appraisal process. It is important to note that taxpayers are required to have prepared their TP documentation no later than the date on which the tax return for the chargeable period is due to be filed [section 835G(5)(a) TCA 1997]. On this basis, the master file and local file should already be prepared and, therefore, be readily available upon request.

## 2.1 Fixed penalties

Taxpayers are required to provide their TP documentation to Revenue within **30 days of a written request** made by a Revenue officer, in accordance with section 835G(5)(b) TCA 1997.

Taxpayers are subject to a **fixed penalty of €25,000 for non-compliance with such requests, plus €100 for each day on which the failure continues.**

Taxpayers that are below the master file and local file thresholds are subject to a lower €4,000 fine.

## 2.2 Tax-geared penalties

Section 835G(7) TCA 1997 provides that a taxpayer will be exempted or protected from a tax-geared penalty in certain circumstances.

Where a transfer pricing adjustment results in additional tax due, a taxpayer will be protected from a tax-geared penalty that may otherwise apply under section 1077E(5) or 1077F(2)(d), as appropriate, TCA 1997, which relates to careless but not deliberate behaviour, where the taxpayer:

- has fulfilled the requirements of the section to prepare, and provide upon request, TP documentation within the specified timeframe (i.e. 30 days from a request in writing); and
- the records provided are accurate and demonstrate that, notwithstanding the transfer pricing adjustment, the taxpayer has made reasonable efforts to comply with the requirements of Part 35A TCA 1997 in setting the actual consideration payable or receivable under an arrangement between associated entities.

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 the deliberate behaviour category of default, the relevant tax-geared penalty will apply even where the TP documentation is provided within 30 days of a written request from a Revenue officer.

Where the conditions set out in section 835G(7) TCA 1997 are not satisfied, tax-geared penalties provided for in section 1077E or 1077F, as appropriate, TCA 1997 will apply in the normal manner.

### 3 Policy for requesting TP documentation

#### 3.1 Reasons for requesting TP documentation

There are multiple other sources of information available, and utilised, by the TP Audit Branches when completing TP risk assessments / appraisals. Appendix IV lists the information sources that are routinely used in transfer pricing appraisals. However, these sources of information, where available, typically provide only limited information on the taxpayer's functions or its transactions with associated entities. For example, many Irish companies avail of FRS exemptions from disclosing related party transactions with other group undertakings in their financial statements. Therefore, it is not always possible, based on the information otherwise available, to conclude on whether there is sufficient TP risk to justify escalation to a TP audit or other risk review.

Access to the master file and local files would provide the following information to the TP Audit Branches, which are critical to evaluating TP risk:

- The type of controlled transactions;
- The pricing of those transactions;
- The TP methodology applied to price the taxpayer's intercompany transactions;
- The quantum of each intragroup transaction (which assists with understanding materiality and tax at risk);
- Details of the associated entities that the taxpayer transacts with (which assists with jurisdictional risk if the counterparty is in a low/no tax jurisdiction or if any transactions are intra-Ireland); and
- The taxpayer's functional analysis and functional characterisation of the transacting entities for TP purposes.

Therefore, reviewing a taxpayer's TP documentation during the appraisal process would enable the TP Audit Branches to better identify TP risks and make more informed decisions about whether there is sufficient risk to proceed to audit or risk review. This would also facilitate more targeted risk-based TP interventions to be opened.

#### 3.2 Requests for TP documentation: Compliance Intervention Framework

Where a taxpayer's TP documentation is requested as part of the risk appraisal process, an appropriate forum must be identified for requesting such documentation under the Compliance Intervention Framework. The policy of the TP Audit Branches is that TP documentation requested during an appraisal is recorded as a **Level 1 compliance intervention**.

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This operational policy of requesting TP documentation by way of a Level 1 compliance intervention is consistent with the Compliance Intervention Framework and the Code of Practice for the following reasons:

- Taxpayers are obliged to prepare TP documentation by the date on which the tax return for the chargeable period is due to be filed, and therefore requesting TP documentation by way of Level 1 intervention imposes the least cost on taxpayers, in accordance with section 1.1 of the Code of Practice;
- Requesting TP documentation can help avoid the time and resources for both taxpayer and Revenue of audits being opened where TP risk has been incorrectly identified due to information limitations;
- Taxpayers can still address any compliance matters through self-correction or by making an unprompted qualifying disclosure, as appropriate, in accordance with section 1.2 of the Code of Practice;
- It supports taxpayers by reminding them of their TP documentation obligations and provides them with the opportunity to correct errors without the expense and stress of an audit or other Level 2 enquiry, in accordance with section 1.2.1 of the Code of Practice; and
- It is taking place at a time where Revenue has not already engaged in any detailed examination or review of the matters under consideration.

It should be noted that a taxpayer's master file and local file is always requested when a Level 2 TP intervention (i.e. a risk review or audit) is initiated by the TP Audit Branches.

#### 4 Approach for requesting TP documentation by TP Audit Branches

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#### 5 Interaction with Co-Operative Compliance Framework ("CCF")

The TP Audit Branches reserve the right to select transactions for a TP audit from the entire LCD case base and the Medium Enterprises Division ("MED") case base for

taxpayers within scope of Part 35A TCA 1997. This includes both taxpayers within the Co-Operative Compliance Framework (“CCF”) and non-CCF taxpayers<sup>2</sup>.

Compliance with TP provisions in Part 35A TCA 1997 may form part of the CCF annual risk review meeting. Where this is the case, some Sectoral Branches may request a taxpayer’s TP documentation as part of the CCF annual risk review meeting.

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[...]

## 6 Interaction with Transfer Pricing Compliance Reviews (“TPCRs”)

The operational policy included in this manual relates to requesting TP documentation from taxpayers as part of the TP Audit Branches’ risk appraisal process and is separate to TP documentation requests from taxpayers as part of a Transfer Pricing Compliance Review (“TPCR”).

Under a TPCR, a taxpayer is requested to carry out a self-review of its compliance with Part 35A TCA 1997 and the application of the arm’s length principle in relation to its transactions with associated entities. Section 12.2 of [Tax and Duty Manual Part 35A-01-01](#) - Monitoring Compliance with Transfer Pricing Rules contained in Part 35A TCA 1997 (“TDM Part 35A-01-01”) provides further information on the conduct of TPCRs.

Under a TPCR, the taxpayer is requested to provide Revenue, within a period of **3 months** of the date of issue of the notification letter, a list of information - included in Appendix 1 of TDM Part 35A-01-01 - detailing the outcome of the self-review.

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<sup>2</sup> Section 5.1 of [Revenue’s Tax and Duty Manual “Large Corporates Division: Co-Operative Compliance Framework”](#).

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[...]

As a TPCR may involve further work for taxpayers, compared to only providing a copy of their master file and local file, the requested 3-month period for a TPCR should be considered separately to the 30-day requirement under section 835G(5)(b) TCA 1997.

## 7 Interaction with correlative adjustment claims

The operational policy included in this manual is separate to claims for correlative adjustments received from taxpayers.

The Appendix to [Tax and Duty Manual Part 35-02-09 “Guidelines for Article 9 Correlative Adjustment Claims”](#) contains a list of information and documentation to be provided by taxpayers to enable Revenue to examine the merits of a correlative adjustment claim. This list does not specifically refer to the taxpayer’s master file and local file. However, if during the review of the correlative adjustment claim, the Revenue officer is of the view that the taxpayer’s master file and local file is required to examine the merits of the claim, the Revenue officer may request this in writing.

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[...]

## Appendix I: Template letter for requesting TP documentation

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[...]

## Appendix II: Information to be included in master file

The information listed below should be included in the master file. This list is taken from Annex I to Chapter V of the OECD 2017 TPG.

### **Organisational structure**

- Chart illustrating the MNE's legal and ownership structure and geographical location of operating entities.

### **Description of MNE's business(es)**

- General written description of the MNE's business including:
  - Important drivers of business profit;
  - A description of the supply chain for the group's five largest products and/or service offerings by turnover plus any other products and/or services amounting to more than 5% of group turnover. The required description could take the form of a chart or a diagram;
  - A list and brief description of important service arrangements between members of the MNE group, other than research and development (R&D) services, including a description of the capabilities of the principal locations providing important services and transfer pricing policies for allocating services costs and determining prices to be paid for intra-group services;
  - A description of the main geographic markets for the group's products and services that are referred to in the second bullet point above;
  - A brief written functional analysis describing the principal contributions to value creation by individual entities within the group, i.e. key functions performed, important risks assumed, and important assets used;
  - A description of important business restructuring transactions, acquisitions and divestitures occurring during the fiscal year.

**MNE's intangibles (as defined in Chapter VI of the OECD 2017 TPG)**

- A general description of the MNE's overall strategy for the development, ownership and exploitation of intangibles, including location of principal R&D facilities and location of R&D management.
- A list of intangibles or groups of intangibles of the MNE group that are important for transfer pricing purposes and which entities legally own them.
- A list of important agreements among identified associated enterprises related to intangibles, including cost contribution arrangements, principal research service agreements and licence agreements.
- A general description of the group's transfer pricing policies related to R&D and intangibles.
- A general description of any important transfers of interests in intangibles among associated enterprises during the fiscal year concerned, including the entities, countries, and compensation involved.

**MNE's intercompany financial activities**

- A general description of how the group is financed, including important financing arrangements with unrelated lenders.
- The identification of any members of the MNE group that provide a central financing function for the group, including the country under whose laws the entity is organised and the place of effective management of such entities.
- A general description of the MNE's general transfer pricing policies related to financing arrangements between associated enterprises.

**MNE's financial and tax positions**

- The MNE's annual consolidated financial statement for the fiscal year concerned if otherwise prepared for financial reporting, regulatory, internal management, tax or other purposes.
- A list and brief description of the MNE group's existing unilateral advance pricing agreements (APAs) and other tax rulings relating to the allocation of income among countries.

## Appendix III: Information to be included in local file

The information listed below should be included in the local file. This list is taken from Annex II to Chapter V of the OECD 2017 TPG.

### Local entity

- A description of the management structure of the local entity, a local organisation chart, and a description of the individuals to whom local management reports and the country(ies) in which such individuals maintain their principal offices.
- A detailed description of the business and business strategy pursued by the local entity including an indication whether the local entity has been involved in or affected by business restructurings or intangibles transfers in the present or immediately past year and an explanation of those aspects of such transactions affecting the local entity.
- Key competitors.

### Controlled transactions<sup>3</sup>

For each material category of controlled transactions in which the entity is involved, provide the following information:

- A description of the material controlled transactions (e.g. procurement of manufacturing services, purchase of goods, provision of services, loans, financial and performance guarantees, licences of intangibles, etc.) and the context in which such transactions take place.
- The amount of intra-group payments and receipts for each category of controlled transactions involving the local entity (i.e. payments and receipts for products, services, royalties, interest, etc.) broken down by tax jurisdiction of the foreign payor or recipient.

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<sup>3</sup> Controlled transactions are transactions between two enterprises that are associated enterprises with respect to each other.

- An identification of associated enterprises involved in each category of controlled transactions, and the relationship amongst them.
- Copies of all material intercompany agreements concluded by the local entity.
- A detailed comparability and functional analysis of the taxpayer and relevant associated enterprises with respect to each documented category of controlled transactions, including any changes compared to prior years.
- An indication of the most appropriate transfer pricing method with regard to the category of transaction and the reasons for selecting that method.
- An indication of which associated enterprise is selected as the tested party, if applicable, and an explanation of the reasons for this selection.
- A summary of the important assumptions made in applying the transfer pricing methodology.
- If relevant, an explanation of the reasons for performing a multi-year analysis.
- A list and description of selected comparable uncontrolled transactions (internal or external), if any, and information on relevant financial indicators for independent enterprises relied on in the transfer pricing analysis, including a description of the comparable search methodology and the source of such information.
- A description of any comparability adjustments performed, and an indication of whether adjustments have been made to the results of the tested party, the comparable uncontrolled transactions, or both.
- A description of the reasons for concluding that relevant transactions were priced on an arm's length basis based on the application of the selected transfer pricing method.
- A summary of financial information used in applying the transfer pricing methodology.
- A copy of existing unilateral and bilateral/multilateral APAs and other tax rulings to which the local tax jurisdiction is not a party and which are related to controlled transactions described above.

**Financial information**

- Annual local entity financial accounts for the fiscal year concerned. If audited statements exist they should be supplied and if not, existing unaudited statements should be supplied.
- Information and allocation schedules showing how the financial data used in applying the transfer pricing method may be tied to the annual financial statements.
- Summary schedules of relevant financial data for comparables used in the analysis and the sources from which that data was obtained.

## Appendix IV: Information reviewed for TP risk appraisals

The TP Audit Branches generally review the following information for TP risk appraisals (this is a non-exhaustive list):

- Financial statements filed with Revenue via iXBRL, or available from other sources such as the CRO and subscription databases;
  - Consolidated financial statements of the group (where accessible);
  - Corporation tax returns (Forms CT1);
  - Corporation tax computations (where available);
  - Payroll information for company employees filed with Revenue;
  - Information on company directors available from the CRO and/or other sources such as the CRO and subscription databases;
  - Country by Country Reports (where available);
  - Information on cross-border transactions submitted as part of the mandatory disclosure regime under fifth amendment to the Directive on Administrative Cooperation 2011/16/EU (“DAC 6”) (where available);
  - Tax rulings received by Revenue under DAC3 or the OECD to identify whether there is any information available on arrangements with associates (where available);
  - Intellectual property registries such as the Intellectual Property Office of Ireland, the European Patent Office or the European Union Intellectual Property Office;
  - Any other information about the taxpayer’s transactions with associated entities, which may be available from previous interventions undertaken by the Revenue;
- and
- Company or Group website(s).