

Tax alert

Ireland

COVID-19 Business Disruptions and Transfer Pricing Considerations

Contacts

If you require further information, please call your regular contact in EY or contact any of the following:

Dan McSwiney (*Partner*)
P: +353 1 2212 094
E: dan.mcswiney@ie.ey.com

Aoife Murray (*Director*)
P: +353 1 4792 186
E: aoife.murray1@ie.ey.com

Sam Stiles (*Director*)
P: +353 1 221 2667
E: sam.stiles@ie.ey.com

Rory O'Connor (*Senior Manager*)
P: +353 1 479 2117
E: rory.oconnor@ie.ey.com

Introduction

As the global economy comes to grips with the far-reaching impacts of Coronavirus (COVID-19), those managing the tax affairs of a company need to support their management in dealing with the consequences. EY have outlined here some of the immediate and pertinent transfer pricing impacts for companies. The key short-term recommendations are to: -

- Assess how COVID-19 could impact the transfer pricing policies of group entities in both the near and longer-term
- Participate in internal decision-making processes to assist evaluate and advise other stakeholders on the tax impacts of business decisions

EY teams can help you identify and evaluate the transfer pricing and related tax issues, as well as support you to collaborate and advise other stakeholders within your company at this time.

Some of the key areas to assess are as follows:

Travel restrictions and the interplay with significant decisions

- Businesses should review their operating procedures and look to internal policies and procedures for scenarios where directors cannot attend meetings in person
- Meetings should proceed, with consideration given to the appointment of local expert representatives (where relevant), or virtual attendance
- Consider the need to review existing transfer pricing policies in respect of the allocation of profits within the organization to appropriately reflect value creation
- With specific reference to Ireland, guidance published by Irish Revenue on 23 March 2020 outlines the following with regard to presence in or outside of the State as a result of COVID-related travel restrictions:
 - Where an individual (who is an employee, director, service provider or agent of a company) is present in the State, and that presence is demonstrably the result of COVID-related travel restrictions, Revenue are prepared to disregard such presence in the State for corporation tax purposes of the company
 - Where an individual (who is an employee, director, service provider or agent of a company) is not present in the State, and would be present in the State but for COVID-related travel restrictions, Revenue are prepared to disregard such presence outside of the State for corporation tax purposes of the company
 - The individual and company should maintain such records as required to demonstrate the bona fide facts and circumstances relevant to the presence in or outside of the State, such records should be made available to Revenue upon request

Risk assumption and control

- Critically assess the existing transfer pricing policies insofar as they relate to the assumption of risk and actual control of risks within the business considering COVID-19 and consider refinements or amendments where necessary

Intercompany agreements and low risk models

- Consider the impact of declining global demand on low risk models, review of intercompany agreements and possible amendment where necessary. Consideration should be given to the possibility that target margins for routine entities should be trending downwards in line with the wider economy in times of systemic disruption, such approaches should be carefully documented.
- Transfer pricing payments should be monitored closely and reviewed regularly to make sure decisions around whether certain payments should be suspended or postponed where actual results are significantly below expectations.
- Review and assess if it is possible for low risk margins to be amended given the wide-reaching impact of COVID-19

Supply chain changes both in the immediate and long term

- Due to the immediate disruption discussions are likely happening in-house already, tax teams should engage proactively in these discussions and keep transfer pricing in mind for any suggested changes in supply chains
- Remain aware of any business restructuring analysis that may need to be carried out if changes to the supply chain impact related party elements, or result in substantial alteration or renegotiation of existing intercompany arrangements
- Longer term alterations in supply chains may necessitate a redesign of existing transfer pricing policies

Intercompany financing

- Financial markets are in a state of flux, with interest rates impacted globally
- Benchmarking analysis undertaken now will reflect the impact of COVID-19 on the interest rate markets, consideration should be given to what actions a potential borrower may take in an uncontrolled scenario given the current level of uncertainty in the market. Businesses should consider carefully the flexibility and readiness of the business to react to further changes in the market

Cashflow and liquidity

- Consider the ability of transfer pricing to assist in group cashflow through advance charging for services or other mechanisms, businesses should examine the options available to them and appropriately document the same from a transfer pricing perspective

Transfer pricing documentation

- Ensure appropriate efforts are made to document any refinements, alternations, or changes to the businesses transfer pricing policies
- Special attention should be paid to the potential need for a business restructuring analysis if any decisions result in changes, renegotiation or termination of existing transfer pricing arrangements
- Any extra-ordinary decisions should be documented robustly to prepare the business for any potential challenge in the future as a result

Staying connected

Due to the immediate disruption discussions are likely happening in-house already, now more than ever it is key for tax teams to be connected with the business and proactively engage in these discussions and keep transfer pricing issues in mind for any suggested changes in business operations.

EY teams can help you identify and evaluate the key transfer pricing issues, as well as support you to collaborate and advise other stakeholders within your company at this time.

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Ernst & Young, Harcourt Centre, Harcourt Street, Dublin 2, Ireland.

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