U.S. Transfer Pricing Overview

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and

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Poll: 1. True or false: Section 482 itself requires use of a microeconomic approach to determine whether reported controlled transaction results “clearly reflect income?”
Outline

• What is Transfer Pricing/Why is it Important?
• Relation to Other Cross-border Tax Considerations
• Concepts and Framework of §482
• Step-by-Step Transfer Pricing Analysis
• Transfer Pricing Methods - Tangibles
• Special Considerations- Intangibles, Services
• Penalties/Documentation/Controversy
What is Transfer Pricing?

• Pricing of transactions between related parties for:
  – tangible property
  – services
  – intangible property
  – rents
  – loans
What is Transfer Pricing?

• Governmental interest
  – Related party aspect of transactions suspends normal laws of supply and demand
  
  – Without IRC § 482 and similar statues in other countries, related parties could artificially shift income among each other to achieve tax benefits
## TP—The Planning Opportunity

<table>
<thead>
<tr>
<th></th>
<th>Parent (Country A)</th>
<th>Sub (Country B)</th>
<th>Consolidated</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total profit reported on tax return</td>
<td>700</td>
<td>300</td>
<td>1,000</td>
</tr>
<tr>
<td>Tax rate</td>
<td>30%</td>
<td>10%</td>
<td></td>
</tr>
<tr>
<td>Tax liability before change to transfer price</td>
<td>210</td>
<td>30</td>
<td>240</td>
</tr>
<tr>
<td>Global Effective Tax Rate (&quot;ETR&quot;)</td>
<td></td>
<td></td>
<td>24%</td>
</tr>
</tbody>
</table>

### Effect of Transfer Pricing Change on ETR

<table>
<thead>
<tr>
<th></th>
<th>Parent (Country A)</th>
<th>Sub (Country B)</th>
<th>Consolidated</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total profit after using transfer pricing to shift 400 of income</td>
<td>300</td>
<td>700</td>
<td>1,000</td>
</tr>
<tr>
<td>Tax rate</td>
<td>30%</td>
<td>10%</td>
<td></td>
</tr>
<tr>
<td>Tax liability after change to transfer price</td>
<td>90</td>
<td>70</td>
<td>160</td>
</tr>
<tr>
<td>Global ETR</td>
<td></td>
<td></td>
<td>16%</td>
</tr>
</tbody>
</table>
## TP– The Exposure

### Exposure to Double Taxation

<table>
<thead>
<tr>
<th></th>
<th>Parent (Country A)</th>
<th>Sub (Country B)</th>
<th>Consolidated</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total profit reported on tax return</td>
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<td>1,000</td>
</tr>
<tr>
<td>Tax rate</td>
<td>30%</td>
<td>10%</td>
<td></td>
</tr>
<tr>
<td>Tax liability before Country B transfer pricing adjustment</td>
<td>90</td>
<td>70</td>
<td>160</td>
</tr>
<tr>
<td>Global Effective Tax Rate (“ETR”)</td>
<td></td>
<td></td>
<td>16%</td>
</tr>
</tbody>
</table>

### Double taxation effect on ETR

<table>
<thead>
<tr>
<th></th>
<th>Parent (Country A)</th>
<th>Sub (Country B)</th>
<th>Consolidated</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total profit after adjustment (increase in profits) by Country A of 400 (assumes no correlative relief in B)</td>
<td>700</td>
<td>700</td>
<td>1,400</td>
</tr>
<tr>
<td>Tax rate</td>
<td>30%</td>
<td>10%</td>
<td></td>
</tr>
<tr>
<td>Tax liability after Country A transfer pricing adjustment (penalties and interest not included)</td>
<td>210</td>
<td>70</td>
<td>280</td>
</tr>
<tr>
<td>Global ETR</td>
<td></td>
<td></td>
<td>28%</td>
</tr>
</tbody>
</table>
## TP - The Accounting Perspective

<table>
<thead>
<tr>
<th></th>
<th>Manufacturer</th>
<th>Distributor</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Sales</strong></td>
<td><strong>Transfer Price</strong></td>
<td>15,000</td>
<td>15,000</td>
</tr>
<tr>
<td><strong>COGS</strong></td>
<td>&lt; 10,000 &gt;</td>
<td>&lt; Transfer Price &gt;</td>
<td>&lt; 10,000 &gt;</td>
</tr>
<tr>
<td><strong>Gross Profit</strong></td>
<td>(___%) _________</td>
<td>(___%) _________</td>
<td>5,000</td>
</tr>
<tr>
<td><strong>S, G &amp; A</strong></td>
<td>&lt; 1,750 &gt;</td>
<td>&lt; 1,250 &gt;</td>
<td>&lt; 3,000 &gt;</td>
</tr>
<tr>
<td><strong>Net Operating Income</strong></td>
<td>(___%) _________</td>
<td>(___%) _________</td>
<td>2,000</td>
</tr>
</tbody>
</table>
TP in the news

• Glaxo, Coca-Cola, Facebook, Altera, Apple, Medtronic, Amazon, 3M, etc.
• FIN 48/Form UTP implications
• Base Erosion and Profit Shifting (BEPS) Project
• Digital Economies: Pillars 1 and 2
Global Introduction of Transfer Pricing Rules
Why is Transfer Pricing Important/ Different?

– Applies to nearly 50% if all U.S. imports/exports
– Large adjustments and lower-fault penalties
– Double tax exposure
– Difficult and expensive dispute resolution
– Largest tax and non-tax exposure
– Application of microeconomic principles to individualized facts - arguably subjective application
– Differences in affected tax jurisdictions’ approaches
Relationship of Transfer Pricing to Other Cross-Border Tax Considerations

Transfer Pricing informs and is informed by cross-border business and tax goals:

• Cross-border tax planning seeks to minimize world-wide tax on anticipated cash flows consistent with business model.

• Defensible transfer pricing requires income flows consistent with arm’s length returns on the parties’ bona fide division of functions, assets (including intangible property) and risks.
Ancillary Impact of §482 Allocations

Allocation can cause foreign corporation to have U.S. source ECI (21% tax) or FDAP (30% tax)
  • Withholding tax implications
  • Tax return filing obligation; no-deduction rule of Reg. §1.882-4

Allocation between brother-sister entities can generate dividend to common owner if tax avoidance or intent to benefit common owner found
  • Withholding tax implications if foreign owner

Foreign income taxes on income reallocated to U.S. related party may not be creditable unless taxpayer exhausts all “effective and practical” foreign tax refund remedies.
  • Does this rule apply to foreign income taxes on income reallocated from one CFC to another?
§482 and CFC Rules

§482 “common control” is heavily facts-and-circumstances based; “controlled foreign corporation” status is largely objectively determined based on aggregate U.S. ownership of foreign corporation

- Majority owner might not satisfy §482 “control” subsidiary if substantial minority owner has adverse economic interest;
- Diffuse U.S. ownership of >50% of foreign corporation’s stock creates CFC status although CFC might not be “controlled” by any U.S. owner.

CFC-to-CFC §482 adjustments have potential significance

- Can convert §951A(c)(2) tested income to subpart F income (or vice-versa);
- Can shift gross tested income between CFCs, potentially creating tested loss that negates DTIR and potential §960(d) foreign tax credits.
§482 and BEAT Regime

Arm’s length deductible payments to foreign related parties (including those under §482 common control) count toward §59A(e)(4) 3% (or 2%) base erosion percentage threshold that triggers 10% BEAT minimum tax.

Reg. §1.59A-3(c)(6) permits election to forego – for all tax purposes – deductions for some/all deductible payments to foreign related parties to keep base erosion percentage below threshold.
§482 and Other Anti-abuse Doctrines

Other anti-abuse doctrines generally change overall treatment of transaction (existence/nature/taxpayer/timing); §482 adjusts taxable consideration taken into account.

- §482 generally comes into play after application of other anti-abuse doctrines
- **Sham transaction doctrine** negates tax effect of transaction; §482 modifies taxable consideration from recognized transactions.
- **Economic substance doctrine** recasts transaction per its overall legal/economic substance; §482 applies economic substance principles to determine taxable consideration attributable to parties’ functional, asset and risk contributions.
- **Assignment of income doctrine** taxes all income from transaction to person that controls but redirects such income to another; actual recipient also taxed; §482 applies only to related party dealings and only to modify amount of taxable income from those.
- **Constructive receipt doctrine** taxes income when taxpayer has unconditional right to it; §482 generally does not affect timing of income.
Concepts and Framework of §482
Section 482

“In any case of two or more organizations, trades or businesses (whether or not incorporated, whether or not organized in the United States, and whether or not affiliated) owned or controlled directly or indirectly by the same interests, the Secretary may distribute, apportion or allocate gross income, deductions, credits, or allowances between or among such organizations, trades or businesses, if he determines that such distribution, apportionment or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any of such organizations, trades or businesses.

“In the case of any transfer (or license) of intangible property (within the meaning of Code Sec. 367(d)(4), the income with respect to such transfer or license shall be commensurate with the income attributable to the intangible.

“For purposes of this section, the Secretary shall require the valuation of transfers of intangible property (including intangible property transferred with other property or services) on an aggregate basis or the valuation of such a transfer on the basis of the realistic alternatives to such a transfer, if the Secretary determines that such basis is the most reliable means of valuation of such transfers.”
Conceptual framework

• Purpose
• Control
• Arm’s length standard
• Best method rule/ Comparability
• Transfer pricing methods
• Arm’s length range
Purpose

Section 482-- ... (IRS)... “may distribute, apportion or allocate gross income, deductions, credits, or allowances between or among such organizations, trades or businesses, if he determines that such distribution, apportionment or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any of such organizations, trades or businesses.
Control

“Controlled”- Reg. §1.482-1(i)(4) – includes any kind of control, direct or indirect, whether legally enforceable or not, and however exercisable or exercised, including control resulting from the actions of two or more taxpayers acting in concert or with a common goal or purpose. It is the reality of control that is decisive, not its form or the mode of its exercise. A presumption of control arises if income or deductions have been arbitrarily shifted.
Arm’s-Length Standard

– An intercompany transaction is arm’s length if results are same as results realized by uncontrolled taxpayers engaged in same transaction under same circumstances

– Identical uncontrolled transactions generally not available; appropriate to consider comparable uncontrolled transactions

– Analysis of independent, uncontrolled comparable transactions is at center of all transfer pricing analysis

– Arm’s-length standard is fundamental basis of worldwide transfer pricing rules
Best Method Rule

– No hierarchy of approaches ("methods") specified
– Best method is the one that provides most reliable measure of arm’s-length result – based on (i) available comparable uncontrolled data (ii) as applied to the facts

– Application
  • Degree of comparability between controlled and uncontrolled transactions
  • Completeness and accuracy of available comparable uncontrolled data
Comparability

• Purpose- uncontrolled transactions must be sufficiently similar to controlled transactions to provide a reliable measure of the arm’s-length result (i.e., allow taxpayer to characterize tested party in order to find comparables)

• Five Factors:
  – Functions performed
  – Contractual terms
  – Risks assumed
  – Economic and financial conditions
  – Nature of property or services transferred and/or used

• Each transfer pricing method places different priority on the factors
Arm’s Length Range

– Seldom possible to identify a single price that would occur between unrelated parties
– Arm’s-length range is constructed of results from uncontrolled transactions of similar reliability and comparability
– No adjustment if controlled results are in arm’s length range
  • “Full range” if material differences identified and adjusted
  • If adjustments cannot be made, use interquartile range - middle 50% of observations- to improve reliability
“Mechanics” of Transfer Pricing Analysis

• Analysis of controlled transaction
  – Delineation of functions performed, assets (including intangibles) used and risks borne by each controlled party
  – Focus on profit drivers

• Selection of comparable uncontrolled data
  – Identification of (i) comparable uncontrolled produce/service or (based on similarity of functions/assets/risks in similar markets) comparable uncontrolled parties (ii) the most accurate and complete income-related data on which are available

• Adjust results from comparables to reflect differences between comparable uncontrolled price/parties and tested price/party

• Take interquartile range of adjusted results of comparable uncontrolled data and apply to tested party data to determine arm’s length range
Transfer Pricing Methods
## Transfer Pricing Methods (TPMs)

<table>
<thead>
<tr>
<th>Tangible property</th>
<th>Intangible property</th>
<th>Services</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>CUP</strong></td>
<td><strong>CUT</strong></td>
<td><strong>CUSP</strong></td>
</tr>
<tr>
<td>(Comparable Uncontrolled Price Method)</td>
<td>(Comparable Uncontrolled Transaction Method)</td>
<td>(Comparable Uncontrolled Services Price Method)</td>
</tr>
<tr>
<td><strong>RPM</strong></td>
<td></td>
<td><strong>GSM</strong></td>
</tr>
<tr>
<td>(Resale Price Method)</td>
<td></td>
<td>(Gross Services Margin Method)</td>
</tr>
<tr>
<td><strong>Cost Plus</strong></td>
<td></td>
<td><strong>CSPM</strong></td>
</tr>
<tr>
<td>(Cost Plus Method)</td>
<td></td>
<td>(Cost of Services Plus Method)</td>
</tr>
<tr>
<td><strong>CPM</strong></td>
<td></td>
<td><strong>CPM</strong></td>
</tr>
<tr>
<td>(Comparable Profits Method)</td>
<td></td>
<td>(Commensurate with income rules)</td>
</tr>
<tr>
<td>(cf. to TNMM in OECD Guidelines)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Transactional Net Margin Method)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>PSM</strong></td>
<td></td>
<td><strong>PSM</strong></td>
</tr>
<tr>
<td>(Profit Split Method)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>CPS</strong></td>
<td><strong>RPS</strong></td>
<td><strong>CPS</strong></td>
</tr>
<tr>
<td>(Comparable Profit Split Method)</td>
<td>(Residual Profit Split Method)</td>
<td></td>
</tr>
<tr>
<td><strong>PSM</strong></td>
<td></td>
<td><strong>RPS</strong></td>
</tr>
<tr>
<td></td>
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</tr>
<tr>
<td><strong>Unspecified Methods</strong></td>
<td><strong>Unspecified Methods</strong></td>
<td></td>
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<tr>
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<td></td>
</tr>
</tbody>
</table>
## Output From Various TPMs

<table>
<thead>
<tr>
<th></th>
<th>Manufacturer</th>
<th>Distributor</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Sales</strong></td>
<td><strong>Transfer Price CUP</strong></td>
<td>15,000</td>
<td>15,000</td>
</tr>
<tr>
<td><strong>COGS</strong></td>
<td>10,000</td>
<td><strong>Transfer Price CUP</strong></td>
<td>10,000</td>
</tr>
<tr>
<td><strong>Gross Profit</strong></td>
<td>(_% _% Cost+_% RPM)</td>
<td>5,000</td>
<td></td>
</tr>
<tr>
<td><strong>S, G &amp; A</strong></td>
<td>1,750</td>
<td>1,250</td>
<td>3,000</td>
</tr>
<tr>
<td><strong>Net Operating Income</strong></td>
<td>(_% _% CPM ROCE_% CPM OM)</td>
<td>2,000</td>
<td></td>
</tr>
</tbody>
</table>
Transfer Pricing Methods – Comparable Uncontrolled Price (CUP)

• Based on **direct observation of market price**
• **Internal comparables** most commonly used
• CUP is usually “best method” *if* truly comparable transactions are available
• Concerns:
  – Degree of comparability
  – Limited info re “comparables’” intermediate products
  – Differences in design, intangibles, volumes, timing, terms, functions, and geographic markets affect price
  – Reliability and completeness of comparable uncontrolled data
Transfer Pricing Methods – CUP

• **Internal CUPs**
  – Related party buys from or sells to 3rd party
  – Generally good comparability and data

• **External CUPs**
  – 3rd party-to-3rd party transactions
  – Generally found in publicly available data
  – Comparability and data concerns
  – Seldom used due to lack of needed uncontrolled data
Transfer Pricing Methods – Resale Price

• General Observations
  – Typically used to evaluate **returns to distributors** from resales of related party purchases
  – Applies data from functionally comparable resellers with similar risks and routine intangibles

• Application of Resale Price Method (RPM)
  – Gross profit margin (“GPM”) derived from uncontrolled transaction as a percentage of sales
  – Subtract appropriate GPM from end user resale price to arrive at transfer price (sales price to 3rd party less profit to distributor equals the transfer price)
Transfer Pricing Methods – Cost Plus

- General Observations
  - Used to determine arm’s length returns on *routine manufacturing* and *service* operations
  - Generally not used for distributors

  - Prices based on gross profit markup % (GPM) earned by functionally comparable manufacturers/service providers, over fully absorbed costs

  - Comparable uncontrolled taxpayers must have similar:
    - Functions, risks & routine intangibles
    - Production process
    - Cost structure
  - Accounting consistency essential

  - Gross profit data difficult to obtain for non-U.S. based companies
  - Steady return to manufacturer; shifts general risk to distributor
Transfer Pricing Methods – CPM

- Uses a profit level indicator (PLI) to compare
- **Operating margin is the most often used PLI**
- Typically tests routine distribution or manufacturing functions
- Relies on functional comparability; *product comparability is less important*
- Commonly used when:
  - Product comparables are not found, accounting comparability is not assured
  - One affiliate performs only routine functions
  - Comparable parties with general similarity of products and functions are identified

**Profit Level Indicators**

- Operating margin = operating profit / sales
- Return on assets = operating profit / assets actively employed in business (usually tangible assets)
- Berry ratio = gross profit / operating expenses
Transfer Pricing Methods – Profit Split

• Two types of Profit Split Methods:
  – Residual profit split method (RPSM)
  – Comparable profit split method

• General Conditions for Use
  – Each party must have valuable, non-routine intangibles
  – Intangibles must contribute significantly to profits
  – Significant transactions to establish comparability
  – Administrative requirements
Unspecified methods

• Potentially available for tangible property, intangible property or service transactions

• Must take into account – i.e., arm’s length returns are limited by results from - **alternate transactions reasonably available to taxpayer**

• Method chosen must provide most reliable measure of arm’s length results under best method rule
Intangibles and Services
Intangibles – definition

• **Traditional definition**: asset with substantial value independent of services of any individual; derives its value not from its physical attributes but from intellectual content or other intangible properties.

• **Common examples**:
  – Patents, inventions, formulae, process, designs, patterns, or know-how
  – Copyrights and literary, musical, or artistic compositions
  – Trademarks, trade names, or band names
  – Franchises, licenses, or contracts
  – Methods, programs, systems, procedures, campaigns, studies, forecasts, estimates, customer lists, or technical data
  – Other similar items

Since 2017, also includes goodwill, going concern value, workforce-in-place and “any other item” that is neither service of individuals nor tangible property

- Business opportunities?  - Group efficiencies?
Intangibles – ownership/consequences

• Ownership is important because owner is entitled to compensation for transfer or license of intangible
• Legally protected intangible: legal owner or holder of rights treated as owner
• Not legally protected intangible: controlled taxpayer who has control of intangible treated as owner
• Multiple ownership of intangible property: no longer subdivided
• Controlled taxpayers who assist owner in development or enhancement of intangible are entitled to arm’s length compensation
Intangibles – methodologies

Comparable Uncontrolled Transaction (CUT): generally most direct and reliable measure of arm’s length result if same intangible is transferred in controlled and uncontrolled transaction

– CUT method may also provide most reliable measure of arm’s length result in situations with an “inexact CUT”

CPM: evaluates whether amount charged in a controlled transaction is arm’s length based on objective measures of user’s/licensee’s profitability

PSM: compares allocation of combined operating profit or loss attributable to controlled transactions to relative value of each controlled taxpayer’s contribution

• Comparable Profit Split Method
• Residual Profit Split Method (RPSM)
Intangibles – commensurate with income

- §482 amended in 1986 to require related party payments re: intangibles to be “commensurate with income” (“c-w-i”)
  - Generally, annual payments over the useful life of the intangible
- Rationale: information asymmetry
  - Taxpayers know much more than IRS about potential value of intangibles
- Periodic adjustments: consideration charged is subject to an annual adjustment
  - Exceptions if cumulative profits fall within 80%-125% of projected profits
Intangibles – cost sharing alternative

• Primary tax benefit of cost sharing is that each participant is considered to own an interest in the developed intangibles, precluding the need for c-w-i consideration for such participants’ use
• Cost sharing is a practical alternative to cross-border licensing
• Cost sharing regulations significantly regulate the use of cost sharing
  – Critical point: valuing “platform contribution transactions”: pre-existing resources, rights and capabilities contributed to development process
Services – definition

► Any activity by one member of group of controlled taxpayers that results in a benefit to one or more other members of controlled group

► “Activity” is defined broadly to include:
  ► Performance of functions
  ► Assumption of risks
  ► Use by a renderer of tangible or intangible property or other resources, capabilities, or knowledge
  ► Making available any property or other resources of the renderer
Services: specified methods

• Services cost method (SCM)—cost-only (no profit or markup) transfer price
  – Elective; special requirements for use
• Comparable uncontrolled services price
• Gross services margin – similar to Resale Price Method
• Cost of services plus – similar to Cost Plus Method
• Comparable profits method
• Profit split method
Penalties, Documentation, Controversy
# Section 6662 penalty

<table>
<thead>
<tr>
<th></th>
<th>Transactional</th>
<th>Net Adjustment</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Substantial Valuation</strong></td>
<td>Price or value is 200% or more (50% or less) than the correct amount</td>
<td>Net adjustment exceeds the lesser of $5 million or 10% of gross receipts</td>
</tr>
<tr>
<td><em>(20% penalty)</em></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Gross Valuation</strong></td>
<td>Price or value is 400% or more (25% or less) than the correct amount</td>
<td>Net adjustment exceeds the lesser of $20 million or 20% of gross receipts</td>
</tr>
<tr>
<td><em>(40% penalty)</em></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Section 6662 penalty

• **Good Faith + Reasonable Basis Exclusion**
  – Valuation penalties may be waived if taxpayer can show good reason to believe it was following arm’s-length standard in application of transfer prices
  – Net adjustment penalty- may be satisfied only if reasonable contemporaneous documentation
  – Two elements are required for the “Good Faith + Reasonable Basis Exclusion”:
    • Reasonable effort (to establish the arm’s-length nature of prices)
    • Reasonable belief (that methodology produced arm’s-length result)
  – Taxpayer may gain reasonable belief through reliance on professional tax advisor provided with all relevant facts.
Transfer Pricing Documentation

– Factual analysis
  • Taxpayer’s Group
  • Industry/sector in which transactions occur
  • Nature of transactions
  • Functions performed by each party
  • Risks assumed by each party
  • Intangibles involved

– Economic analysis
  Transfer Pricing Methodology
  Comparable Search
  Adjustments to comparables for material differences
Section 6662 penalty - exclusion

• Contemporaneous Documentation - must be in place when tax return filed and provided to IRS within 30 days of request

• Ten principal documents required to qualify as contemporaneous documentation:
  1. Overview of taxpayer’s business
  2. Description of organizational structure
  3. Documentation explicitly required under Section 482 (such as license agreements)
  4. Description of method selected and reason for selection
  5. Description of alternative methods not used, and reason for not using them
  6. Description of controlled transactions and internal data
  7. Description of comparables and adjustments (if any)
  8. Explanation of economic analysis and projections used
  9. Description of data obtained after tax year and before filing return
  10. General index of documents
Controversy - Transfer Pricing Differs from Other Tax Issues

- “Rules” = microeconomic principles applied to individualized facts and circumstances
- Differences in governments’ approaches to same cross-border transaction
- Double taxation exposure
- Procedural options
TP Dispute Procedural Flowchart

1. Consider extending Statute of Limitations.
2. T/P considers information to be provided to IRS and IRS tools for obtaining the information.

Pre-opening or Opening conference: Start of Examination

File Return

TP return selected for Examination

IRS issues either initial contact letter or initial telephone contact


1. Consider extending Statute of Limitation;
2. T/P considers information to be provided to IRS and IRS tools for obtaining the information.

IRS starts detailed Transfer Pricing Examination

IRS issues Form 5701 “Notice of Proposed Adjustments.” Does T/P agree?

Yes

- Consider correlative and corresponding adjustments;
- Consider refund request in foreign jurisdiction.

No

IRS and/or T/P should consider if any issue requires Field Service Advice or Technical Advice;
- Consider CA**/SAP***, pursuant to Rev. Proc. 2006-54;
- Consider whether IRS Examination may resolve open issues, pursuant to Del. Ord. 236 (Rev. 3).

IRS issues 30-day letter “Preliminary Notice of Deficiency.” Form 4665, Publication 5, Pub. 586

Sign Form 5701 as agreed and proceed to close Examination.

- Consider correlative and corresponding adjustments;
- Consider refund request in foreign jurisdiction.

T/P accepts; proceed to close case, consider CA**

Proceed with Decision may be appealed via grant of cert. to Supreme Court

T/P files tax deficiency; does T/P agree?

Yes

Go to Appeals for review, consider SAP***

No

T/P files for refund; Refund granted?

Yes

T/P accepts; proceed to close case, consider CA**

No

T/P files with District Court or Federal Claims Court

Proceed to close case, consider CA**

Refund Appeals: Agreement reached?

Yes

Non-Docketed Appeals: (a) file written protest within 30 day period; (b) do not pay tax – consider cash bond; (c) consider SAP***

No

T/P and IRS agree to a resolution in Appeals?

Yes

Proceed to close case, consider CA**

No

May request additional time to file protest in writing – generally IRS will grant an additional 30 days.

Docketed Appeals: May have case reviewed by Appeals Officer

Agreement at Appeals?

Yes

Previous Appeals review?

No

T/P pays tax deficiency; does T/P agree?

Yes

Proceed to close case and consider CA**

No

Proceed to close case, consider CA**

Does T/P require Additional time to prepare and file protest with IRS?

Yes

No

Docketed Tax Court

Docketed Mediation;
- Consider Tax Court Rule 124 (Voluntary Binding Arbitration).

No

Does T/P petition Tax Court?

Yes

Proceed to close case and consider CA**

No

Does T/P want to settle issue in Appeals?

No

Proceed to close case, consider CA**

Yes

Appeals issue 90 day letter; Agreement reached?

Yes

No

Does T/P have a resolution in Appeals?

Yes

No

Previous Appeals review?

IRS issues 90-day letter “Notice of Disallowance” or Statutory Notice

Consider CA**/SAP***, pursuant to Rev. Proc. 2006-54.

After 90 days expire, IRS issues 90 day letter “Notice of Disallowance” or Statutory Notice

Yes

No