

Transfer Pricing for Worldwide Income: New Rules and Enforcement

Transfer Pricing New Rules and Enforcement

TUESDAY, APRIL 10, 2012

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Today's faculty features:

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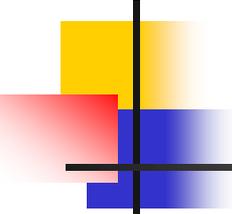
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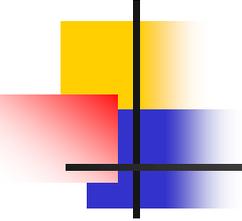
Section I: Transfer Pricing Practice



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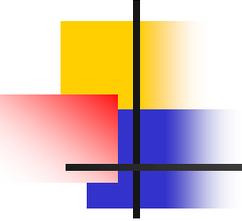
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Outline

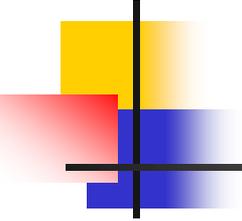
- Transfer Pricing Overview
 - Considerations
 - Methodologies
 - Major Players
- IRS Audit Process
 - Audit
 - Appeals
 - Litigation



Pricing Intercompany Transfers

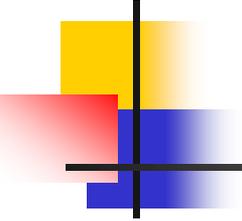
- Economic Considerations
 - Arm's Length Expectations
 - Independence

- Legal Considerations
 - Arm's Length Expectations
 - Section 482 of the IRC
 - OECD Regulations
 - IRS CIPs
 - Other IRS Announcements
 - Legal Precedents
 - Specified Methods
 - Best Interests of the Client
 - Attorney Client Privilege
 - Draft Reports/Communication



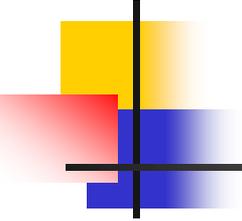
Contexts for Transfer Pricing Analysis

- Prospective
 - Documentation Studies / Penalty Relief
 - Tax Planning
 - Advance Pricing Agreements
- Controversy
 - Audit
 - Appeals
 - Competent Authority
 - Litigation



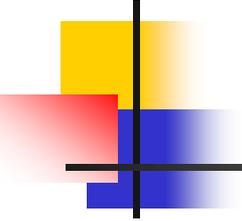
Pricing Methodologies

- Legal Guidance
 - Regulations
 - Specified vs. Unspecified Methods
 - CIPs, etc.
 - Judicial Decisions
- Economic Logic of Benchmark Data Comparisons
 - Transactional Price-to-Price (CUP, CUT)
 - Transactional Gross Margins (Resale Price, Cost Plus)
 - Overall Profitability (CPM/TNMM, Profit Split)
 - Risk/Return Tradeoff



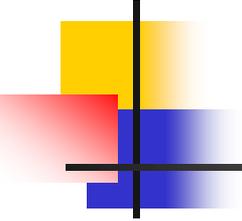
Professionals in the Field

- Taxpayers
 - Law Firm Attorneys and Economists
 - Economic Firm Economists
 - Accounting Firm Attorneys, Accountants, and Economists
- Government
 - Internal Attorneys
 - Internal Economists
 - Internal Accountants
 - Internal Engineers
 - External Attorneys/Barristers (Some Countries)
 - External Economists (Some Countries)



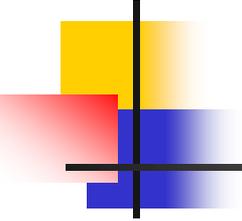
Who Performs Transfer Pricing?

- ❑ Contemporaneous Documentation/APAs
 - ❑ Some Work by Law Firms
 - ❑ Some Work by Economics Firms
 - ❑ Dominated by Big 4
 - ❑ More Work Moving In-House
- ❑ Audits
 - ❑ More Work by Law Firms, Economics Firms
 - ❑ Less Work by Big 4
- ❑ Litigation
 - ❑ All Work by Law Firms, Economics Firms
 - ❑ No Big 4
- ❑ Landscape Slowly Changing



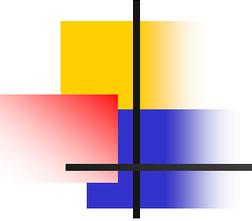
Problems/Controversy Arising

- ❑ Natural Advocacy Issues
- ❑ Accounting Firms
 - ❑ No Practicing Attorneys
 - ❑ No Independent Economists
- ❑ Lawyers Being Economists
 - ❑ Law Firms having In-House Economists on Staff
 - ❑ Lawyers Writing Economic Reports
- ❑ Economists Being Lawyers
 - ❑ Economists Using Legal Rationale for Opinions
 - ❑ Treating Report as Advocacy vs. Independent Analysis



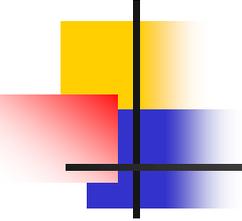
Recent Cases

- Glaxo (U.S., 2006)
 - Marketing vs. Development Intangibles
 - \$3.5 Billion Settlement—Public Information is Limited
- Veritas/Symantec (U.S., 2008)
 - Cost Sharing Buy-In Victory for Taxpayers
 - Sealed Records—Public Information is Limited
- Roche (Australia, 2008)
 - Returns to Distribution
 - Use of CUP Prices and Margins
 - Decision Includes Some Detail on the Hearings/Expert Reports



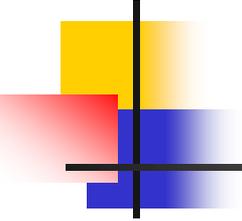
Recent Cases

- General Electric (Canada, 2009)
 - Guarantee Fee Victory for Taxpayer
 - Arm's Length Standard as Part of Multinational
 - Decision Includes Expert Reports
- SNF (Australia, 2009)
 - Return to Distribution Victory for Taxpayers
 - When to Use a CUP?
 - Decision in 2010
 - All Court Documents—and Expert Reports—Available
 - Decision Led to Rewrite of Law



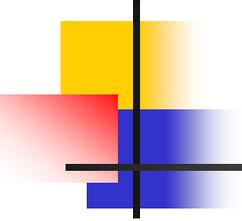
Recent Cases

- Alberta Printed Circuits (Canada, 2011)
 - Service Fees (Set-Up and Square-Inch Fees)
 - Court Upholds Taxpayer's CUP
- McKesson (Canada, 2012)
 - Sale of Receivables ("Factoring")
 - Discount for Purchaser
 - Trial Concluded Early 2012
 - Decision Pending



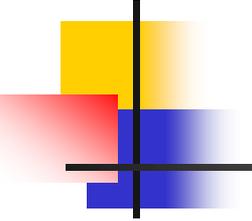
Recent Cases

- ❑ GlaxoSmithKline (Canada, 2012)
 - ❑ Supreme Court Hearing Appeal
 - ❑ Initial Win by Government Overturned in Appeals
 - ❑ Pricing Active Ingredient
- ❑ Potential Cases in 2012-2014
 - ❑ United States, Canada, Australia, India
 - ❑ Pharmaceuticals, Medical Devices, Financial Products



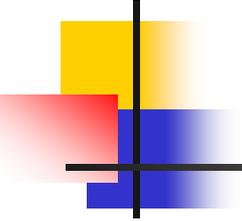
IRS Process: focus on Negotiations

- ❑ Negotiate in APA
- ❑ Negotiate in Audit
- ❑ Negotiate in Appeals
- ❑ Negotiate During Litigation



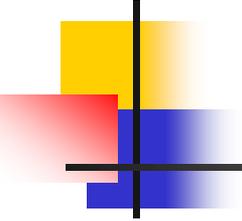
IRS in Appeals

- ❑ Hard to Compare Process with Other Countries
- ❑ Often, only 5-10 Percent of Adjustment is Sustained (Cost-Sharing)
- ❑ IRS Audit Cannot Attend Taxpayer Presentation (Some Exceptions)
- ❑ Some Taxpayers have Written New Reports *After* Audit, for Appeals (Developing...)



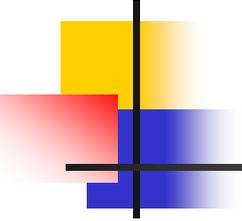
IRS in Litigation

- ❑ 10 Times Size of Canada or Australia, but Similar Number of Transfer Pricing Cases in U.S. Tax Court
- ❑ Mixed Results
 - ❑ Veritas: Complete Win for Taxpayer
 - ❑ Glaxo: (No Trial) Both Sides Claimed Victory
 - ❑ Limited Number of Cases Proceed to Litigation Phase at All



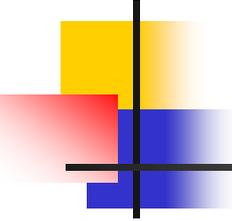
IRS Litigation Process

- Trial Attorneys
 - IRS Employees (or DOJ)
 - Similar in Canada
 - Independent Barristers in Australia (“AGs”)
- Economists
 - Independent Economists
 - Can Hire Same Economist from Audit
 - Can Hire New Economist (Veritas)
 - Can Do Both



Broad IRS Observations

- ❑ Independence/Lack of Bias in Taxpayer Reports is Very Important
- ❑ Impact of Audit Varies on IRS Personnel
 - ❑ Counsel
 - ❑ Economist
 - ❑ International Expertise
 - ❑ Workload
- ❑ The Audit Teams have Much Autonomy in Most Cases
- ❑ Audit Teams Vary Significantly Across and Within Regions



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Brian C. Becker is the President of Precision Economics, LLC (precisionecon.com), a Washington D.C.-headquartered economics firm. Dr. Becker's work is focused in the transfer pricing/valuation field, including expert testimony at the U.S. Tax Court, The Federal Court of Australia, and The Tax Court of Canada. Dr. Becker earned M.A. and Ph.D. degrees in Applied Economics from the Wharton School of the University of Pennsylvania and a B.A. in Applied Mathematics and Economics from the Johns Hopkins University.

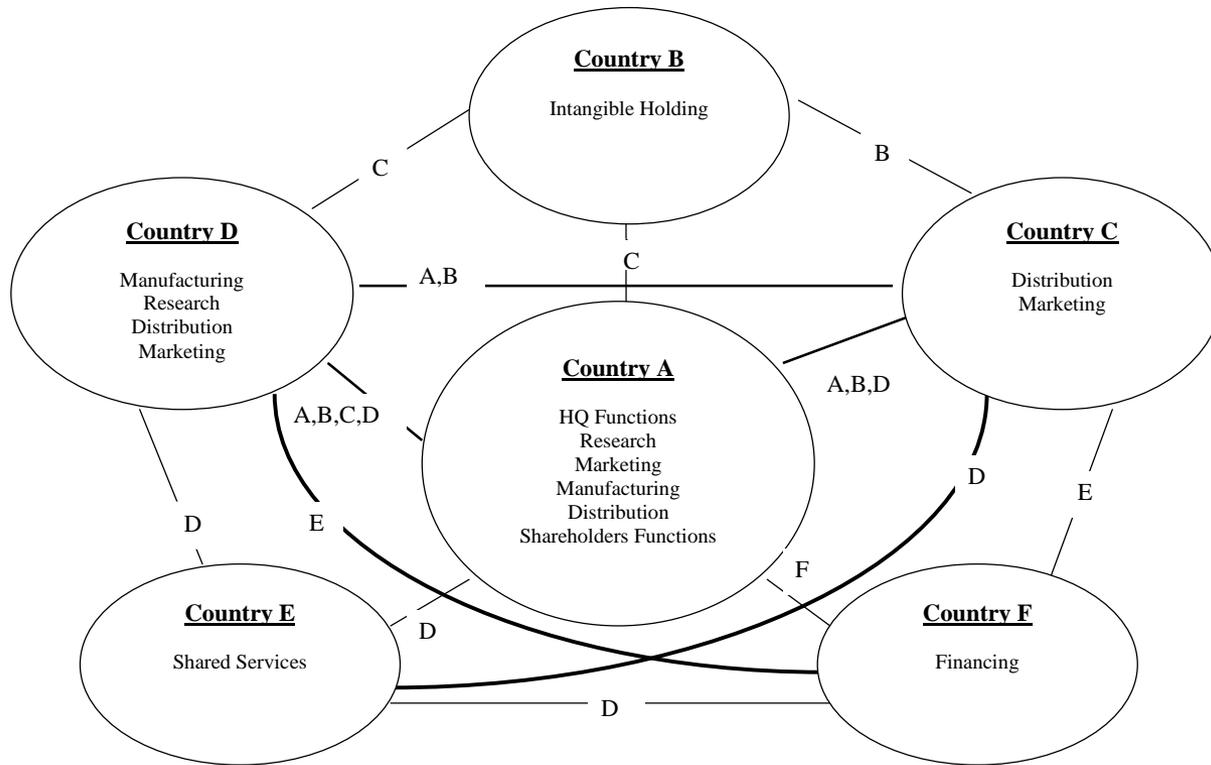
Transfer Pricing for Worldwide Income: New Rules and Enforcement

U.S. Rules in General and New Cost Sharing Rules

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U.S. Transfer Pricing Rules

MNE Example



- A. Sale of Tangible Property
- B. Use of Intangibles
- C. Cost Sharing

- D. Services
- E. Loans
- F. Guarantees

Section 482 – Allocations of Income and Deductions Among Taxpayers

In any case of two or more organizations, trades, or businesses ... 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 such organizations, trades, or businesses. In the case of any transfer (or license) of intangible property ... the income with respect to such transfer or license shall be commensurate with the income attributable to the intangible.

Arm's Length Standard

- Controlled taxpayers required to report “true taxable income”
- In determining true taxable income, taxpayers must apply arm's length standard (ALS).
- ALS is satisfied if controlled results are “consistent” with results of similar uncontrolled transactions
- 482 regulations provide variety of methods for determining taxable income from specific controlled transactions
 - Loans and Advances - 1.482-2(a)
 - Use of Tangible Property – 1.482-2(c)
 - Transfers of Tangible Property – 1.482-3, -5, -6
 - Transfer of Intangible Property – 1.482-4
 - Services – 1.482-9
 - Cost Sharing – 1.482-7

Best Method Rule

- Arm's length result must be determined under the method that provides the most reliable measure of an arm's length result given the facts and circumstances (1.482-1(c))
- Primary factors:
 - Degree of comparability between the controlled transaction/taxpayer and any uncontrolled comparable transactions
 - Quality of data and the assumptions used in the analysis
- No hierarchies among methods under U.S. rules
- Confirmation of results by another method are encouraged
- Some countries do have a hierarchy of methods

Transfers of Tangible Property – Specified Methods

- Comparable Uncontrolled Price Method (CUP) (1.482-3(b))
- Resale Price Method (1.482-3(c))
- Cost Plus Method (1.482-3(d))
- Comparable Profits Method (CPM) (1.483-5)
- Profit Split Method (1.482-6)
- Unspecified Methods (1.482-3(e))

Transfers of Tangible Property

- Best Method Considerations

- No rigid hierarchy since '94 regulations, but “traditional transactional methods” still generally considered the best methods (see Reg. 1.482-8 examples and OECD Guidelines)
- Taxpayers must evaluate strengths and weaknesses of specified methods based on facts and circumstances
- In reality, CPM and other profit-based methods are most frequently used because of lack of uncontrolled transactions and/or sufficient data, while can almost always find comparable companies, performing similar functions in aggregate or by segment
- CPM most common method used

Intangible Property

- Patents, inventions, formulae, processes, designs, patterns, or know-how;
- Copyrights and literary, musical, or artistic compositions;
- Trademarks, trade names, or brand names;
- Franchises, licenses, or contracts;
- Methods, programs, systems, procedures, campaigns, surveys, studies, forecasts, estimates, customer lists or other technical data;
- Human capital
- Other similar property, i.e., property that derives its value not from its physical attributes but from its intellectual content or other intangible properties

Intangible Property Methods

- Comparable Uncontrolled Transaction (“CUT”) (1.482-4(c))
- Comparable Profits Method (“CPM”) (1.482-5)
- Profit Split Method (1.482-6)
- Unspecified Methods (1.482-4(d))

Services

- Services Cost Method (1.482-9(b))
- Comparable Uncontrolled Services Price Method (1.482-9(c))
- Gross services Margin Method (1.482-9(d))
- Cost of services Plus Method (1.482-9(e))
- CPM (1.482-9(f) and 1.482-5)
- Profit Split (1.482-6 and 1.482-9(g))
- Unspecified Methods (1.482-9(h))

TRANSFER PRICING FOR WORLDWIDE INCOME: NEW RULES AND ENFORCEMENT

Section II

- (a) IRS Advance Pricing Agreement Program
- (b) IRS Transfer Pricing Reorganization
- (c) Transfer Pricing Issues from Business Restructuring

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Advance Pricing Agreements (APAs)

According to the IRS:

“The APA program is designed to resolve actual or potential transfer pricing disputes in a principled, cooperative manner, as an alternative to the traditional examination process.”

- Cumulative total APA applications from 1991 beginning through 2010 = 1,523
- Cumulative total APAs executed through 2010 = 973, including 293 renewals
- APAs executed during 2008 through 2010 = 200, including 84 renewals
 - Average time to complete = 39.1 months for new APAs, 33.1 months for renewals
 - Location of parent = at least 141 foreign, ≤ 53 in US, some partnerships & others
 - APA covering sale of tangible property into US = 113, from US = 25
 - APA covering services by US entity = 65, by non-US entity = 47
 - APA covering use of intangible property by US entity = 39, by non-US entity = 37
 - APA covering R&D cost-sharing with US parent ≤ 3 each year, with non-US parent ≤ 3 in 2008

Note: Some APAs cover multiple transactions

- Small business APAs = 27, including 7 renewals
- Average months to complete Small Business APAs= 32.0 for new APAs, 22.8 for renewals

Advance Pricing Agreements (APAs)

Transfer Pricing Methods (TPMs) used in APAs executed 2008 through 2010

- TPM for transfers of tangible & intangible property
 - Comparable Profits Method (CPM)
 - Operating margin as the Profit Level Indicator (PLI) = 123 (62% of total APAs)
 - Berry Ratio (gross profit/operating expense) as PLI = 28 (16%)
 - Other PLI = between 29 and 37 (15% to 19%)
 - Comparable Uncontrolled Transaction (CUT, for intangibles only) = 19 (10%)
 - Profit Split Method (mostly Residual) = between 18 and 26 (9% to 13%)
 - Unspecified Method = 38 (19%)
- TPM for services
 - CPM using operating profit-to-total services cost ratio as PLI = 65 (33% of total APAs)
 - CPM using other PLI = between 16 and 28 (8% to 14%)
 - Comparable Uncontrolled Services Price = at least 17 (9%)
 - Method justifying cost with no markup = between 14 and 20 (7% to 10%)
 - Other Specified Method = at least 24 (12%)

Note: Multiple transactions may be covered & multiple methods used in a single APA

Advance Pricing Agreements (APAs)

An APA may be unilateral, bilateral, or multilateral

- A unilateral APA is a binding contract between the taxpayer & the IRS
 - Specifies covered transactions, covered years, & transfer pricing method (TPM) used to test the covered transactions during the covered years
 - The IRS will not seek a transfer pricing adjustment to the covered transactions during the covered years as long as the tax returns are consistent with the APA
- A bilateral or multilateral APA includes an agreement between the U.S. & one or more foreign tax authorities under an income tax treaty, as well as separate contracts between the taxpayer & each government
 - No transfer pricing adjustments to the covered transactions from any of the participating governments during the covered years
 - The APA Program prefers bilateral or multilateral APAs
- The APA process is voluntary and taxpayer initiated
 - The taxpayer may withdraw at any stage
 - The IRS may not use non-factual materials from an application against the taxpayer, unless such information is otherwise discoverable

Advance Pricing Agreements (APAs)

Advantages Sought

APA negotiations may help to overcome unreasonable approaches taken by field personnel

Settling transfer pricing issues in advance could reduce risk and improve business planning

When facts & circumstances are complicated and/or unusual both sides could benefit from the opportunity to work cooperatively

A successful U.S. APA could strengthen the taxpayer's position in negotiations with other governments

Potential Disadvantages

As APA directors changed, the balance between APA & field staff has fluctuated, sometimes wildly

It has not been unusual for APA negotiations to continue throughout most of the covered period, and renewals often have involved different APA teams & equally extended negotiations

Both APA & field personnel have been known to treat an APA negotiation as an opportunity for in depth exploration of multiple alternative methods at taxpayer expense

An arbitrary position taken by the US APA team may encourage the other government to dig in its heels

Advance Pricing Agreements (APAs) & Customs

Entering into an APA may help to achieve certainty on the valuation of goods imported from a related party for U.S. Customs and Border Protection (“Customs”) purposes.

- In some cases, the existence of an APA has been an important factor in Customs’ decision. Some examples where transaction value was accepted and a bilateral APA was in place:
 - Ruling #HQ 546979 (August 2000)
 - Ruling #HQ 548233 (November 2003)
 - Ruling #HQ H029658 (December 2009)
- Matching of products covered by the APA vs. products imported is important (e.g., APA may only cover a subset of the imported products).
- Customs is considering changing its treatment of post-importation adjustments; change would allow downward adjustments. An APA is among the items that can constitute a transfer pricing “policy” or “formula,” which if followed can help to substantiate related party pricing.

Advance Pricing Agreements (APAs) Procedures Through 2011

1. Pre-file conference to discuss issues, preliminary views, & expectations
2. Taxpayer application with user fee (or user fee followed by application)
3. IRS APA team analyzes application and submits questions
4. Taxpayer responds, & negotiations continue with meetings & further exchanges
5. For a unilateral APA
 - Field personnel are solicited for concurrence with the negotiated terms, & any disagreement is noted as the APA is submitted for review & execution.
 - The completed APA is reviewed by the APA Branch Chief & APA Director, & a summary memo is approved by the Associate Chief Counsel (International)
6. For a bilateral APA (prior to the reorganization described on the following slides)
 - The APA team included a representative of the Mutual Agreement Program (MAP), but often only that one person was willing to consider the anticipated views of the other government
 - Through 2011 the IRS APA team completed a Recommended Negotiating Position (RNP)
 - The RNP was reviewed by the taxpayer, the APA Branch Chief, & the APA Director, & a summary memo was approved by the Associate Chief Counsel (International)
 - The RNP and any comments or objections from the taxpayer were submitted to MAP
 - MAP developed its negotiating position based on the RNP modified by MAP's experience with and understanding of the other government's views
 - Competent authority negotiations generally resulted in an agreement between the governments which then was formalized in APAs between the taxpayer & each government

IRS Transfer Pricing Reorganization

- Moved APA Program from the Office of IRS Chief Counsel to an office under the Director, Transfer Pricing Operations (a new position) in the Large Business & International (LB&I) division's international operation.
- Moved the Mutual Agreement Program (MAP), which deals with the bilateral resolution of tax (including transfer pricing) disputes with treaty partners, to the same office.
- Result = Advance Pricing and Mutual Agreement (APMA) Program
- Per the IRS: “The combined office will allow the IRS to reduce the time needed to complete advance pricing agreements and to resolve transfer pricing disputes with its treaty partners.”
- The Office of IRS Chief Counsel will continue involvement in analysis and resolution of legal issues.

IRS Transfer Pricing Reorganization

Director, Transfer Pricing Operations

- New position and organization under the director to focus increased expertise on transfer pricing at all levels of IRS
 - Sam Maruca, the first director, is a very experienced international tax lawyer
 - Increased networking and coordination among transfer pricing experts throughout IRS
- Emphasis on very early and accurate identification of taxpayers whose transfer pricing “deserves” intense scrutiny

Consolidation of APA & MAP as APMA & Relocation in LB&I

- Advance Pricing and Mutual Agreement (APMA) Program will develop the negotiating position and carry out the negotiations
 - Increased involvement of competent authority personnel from the beginning should result in more practical negotiating positions
 - Avoiding the “handoff” will increase efficiency & save time
 - Increased personnel numbers (from merger & new hiring) will increase productivity
- APMA Director will report to Director, Transfer Pricing Operations
 - End of separate “silos” should reduce friction between field & APA teams

IRS Transfer Pricing Reorganization

Summary of IRS Structure under Director, Transfer Pricing Operations

1. APMA

- Advance Pricing Agreements
- Mutual Agreement Program

2. Transfer Pricing Practice (field)

- 3 territory managers (East, Central, West)
- Frontline managers
- Senior Economists & Transfer Pricing specialists
- Will work with exam teams to:
 - Identify appropriate transfer pricing issues
 - Help develop facts, analyze transactions, and determine best transfer pricing method
 - May sometimes perform an advisory role only
 - Collaborate with APMA, International Business Compliance (IBC, which houses International Examiners and field economists), and other IRS business units

IRS Administration of Transfer Pricing Regulations

Before Reorganization

All International Examiners were required to look for intercompany transactions, request transfer pricing documentation, recognize any issues, & request resources to investigate

Examination teams with insufficient transfer pricing expertise could miss signs of aggressive transfer pricing, or waste time and effort searching for a “smoking gun” when a taxpayer had reasonable transfer prices

After Reorganization

Transfer pricing specialists will seek to identify and focus attention on taxpayers that deserve scrutiny, and ensure appropriate resources are made available from the beginning

Application of expertise to identify cases deserving attention as early as possible should increase examination efficiency, improve the development of appropriate cases, & spare compliant taxpayers from excessive hassle

Business Restructuring & Transfer Pricing

Business reasons for restructuring as a response to globalization:

Efficiency

- Cost savings from centralized procurement
- Cost savings from contract or toll manufacturing near markets

Worldwide customer relations

- Centralized pricing & credit approval protects against customer arbitrage
- Centralized inventory management improves response times

Tax benefits

- Concentrating risk minimizes trapped losses
- Concentrating functions & risk may allow concentration of income in tax favorable jurisdictions

Business Restructuring & Transfer Pricing

Simple Supply Chain Restructuring Example:

Original Entities:

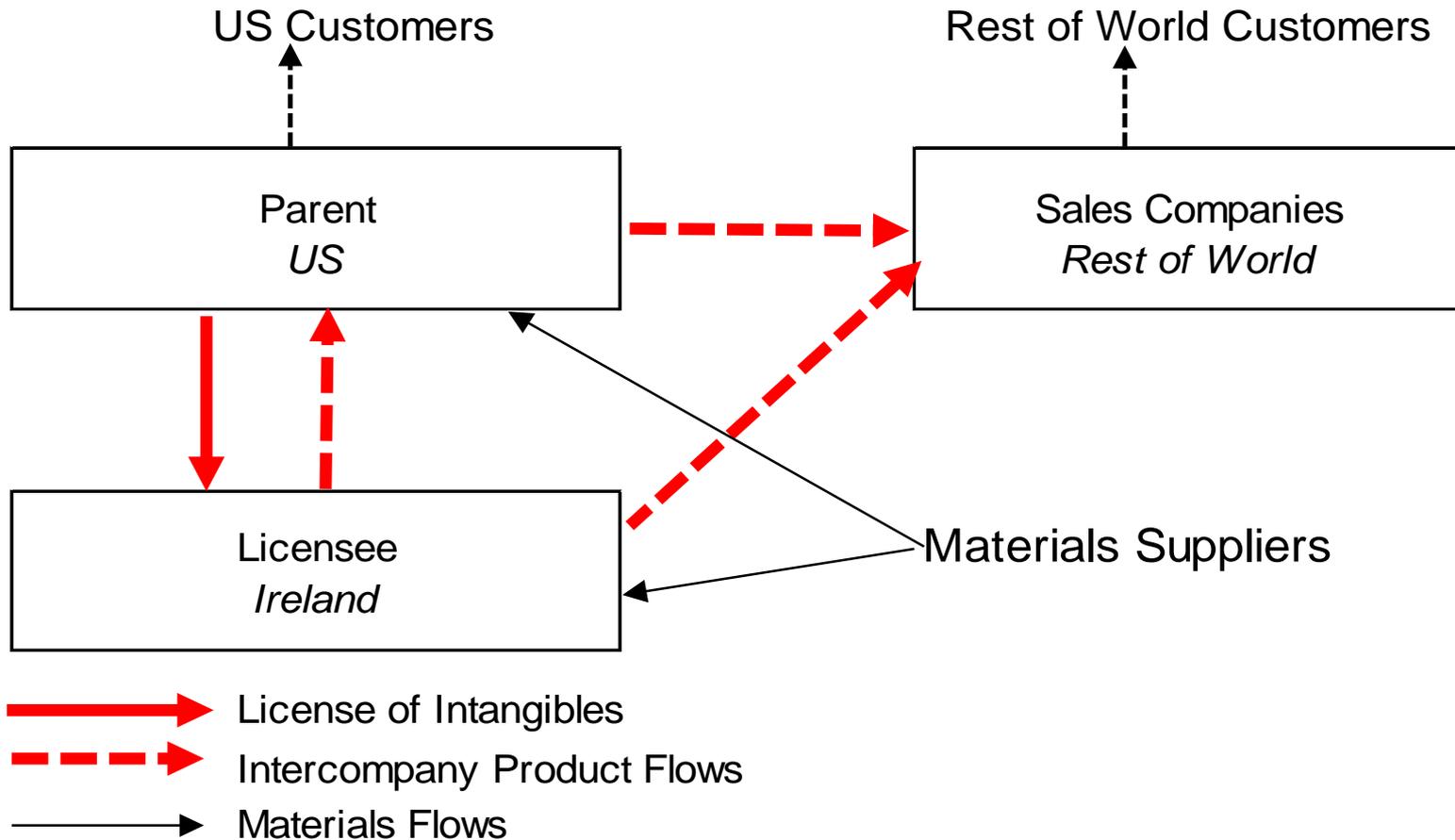
- U.S. Parent—original manufacturer, developed products, trademarks & other intangibles
- Irish Licensee—manufacturing subsidiary
- Non-U.S. Distributors—Local market distributors

New Entities:

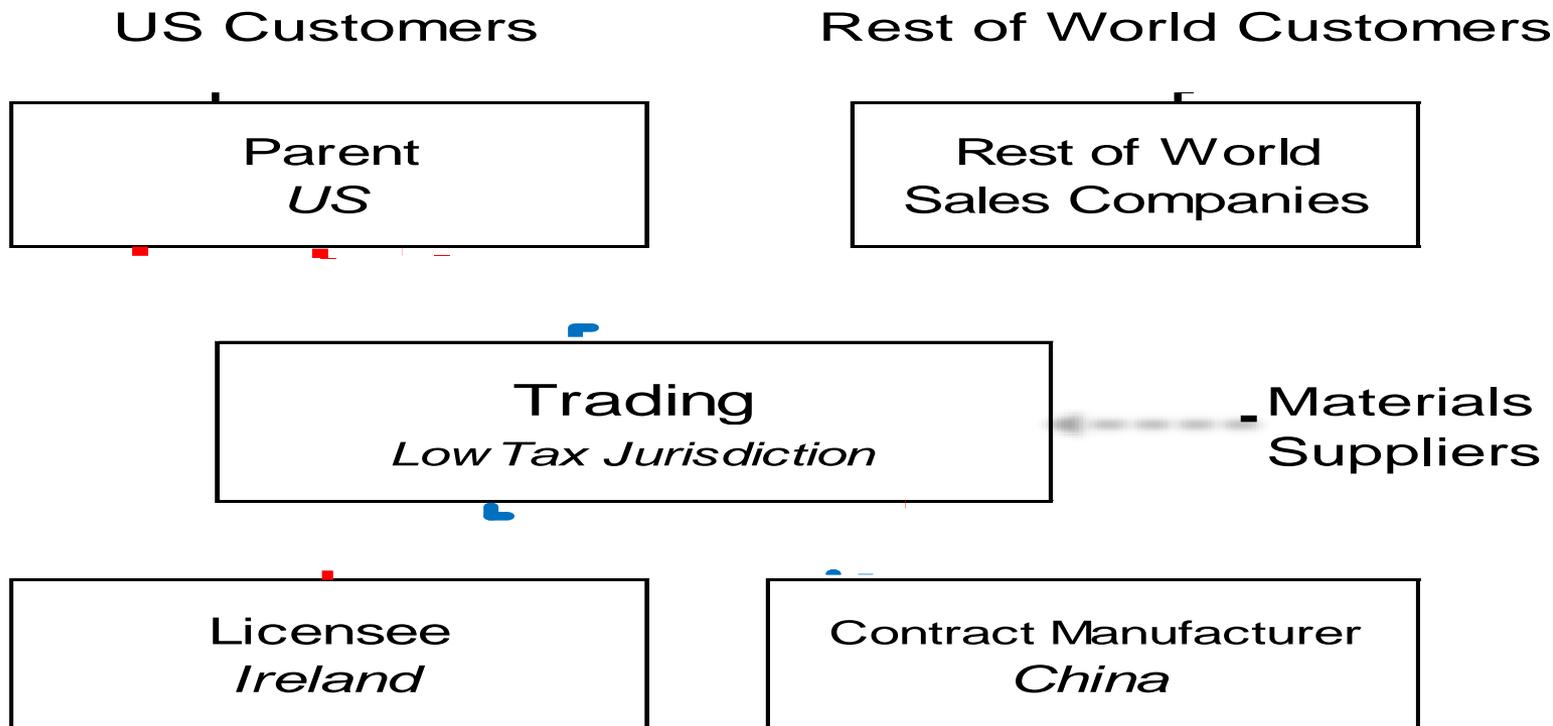
- Trading—newly created entrepreneur in low tax jurisdiction
- China – Contract manufacturer

Note: This example ignores various legal issues that tend to make real world restructuring far more complicated

Business Restructuring & Transfer Pricing Before Restructuring



Business Restructuring & Transfer Pricing Example After Restructuring



- License of Intangibles
- Intercompany Product Flows
- Intercompany Materials Flows

Business Restructuring & Transfer Pricing Example

Transfer Prices to Document

Before Restructuring

Parent:

- License to Ireland (tech. & trademarks)
- Sales to Sales companies

Irish licensee:

- Royalty to Parent
- Sales to Sales companies (inc. Parent)

Sales Companies:

- Purchases from Parent & Ireland

Before restructuring, at least 2 separate tests to establish arm's length pricing

After restructuring, at least 5 separate tests to establish arm's length pricing

After Restructuring

Parent:

- License to Ireland (technology)
- License to Trading (tech. & trademarks)
- Purchases from & sales to Trading

Irish licensee:

- Royalty to Parent
- Purchases from & sales to Trading

Sales Companies:

- Purchases from Trading

Trading:

- Royalty to Parent
- Sales to & purchases from Parent & Ireland
- Sales to Sales companies
- Payment to China for manufacturing services

China:

- Revenue for manufacturing services

Cost Sharing

Background

- 1968 Regulations – bona fide cost sharing arrangement as method of acquiring an interest in an intangible
- Tax Reform Act of 1986 – CWI not intended to preclude cost sharing; appropriate return for excess/early investments
- White Paper (Notice 88-123)
- 1996 Regulations – buy-ins for pre-existing intangibles; valuation under -4 rules
- 2003 – Stock Based Compensation
- 2005 Audit Guidelines and Proposed Regulations – investor model, new methods, CWI
- 2007 – Coordinated Issue Paper – income and acquisition methods as best methods under 1996 regulations; 2008 directive
- Temporary Regulations 12/31/08 – effective 1/5/09
- Final Regulations 12/16/11 (plus temporary and proposed regulations)

Cost Sharing Arrangement

- Arrangement by which controlled participants share the costs and risks of developing cost shared intangibles in proportion to their reasonably anticipated benefits (RAB) shares
- To qualify as CSA:
 - All controlled participants must engage in cost sharing transactions (CSTs) and platform contribution transactions (PCTs)
 - Each controlled participant must receive a non-overlapping interest in the cost shared intangibles
 - Administrative requirements must be met

Intangibles Broadly Defined

- Arms length consideration required for any resource, capability, or right made available to intangible development activity under a CSA, regardless of whether intangible property under section 936(h)(3)(C)
- Intangible may be transferred, licensed, or retained
- Reaches research team's experience and expertise; could reach goodwill and going concern

The Problem

- Intercompany transfers of high-value intangibles for low compensation
- CWI addresses in theory, but CSAs viewed as masking value
 - Aggressive valuations based on make or sell rights
 - *Veritas*
- New regulations focus on valuation of PCTs and measuring CWI

CSTs

- Controlled participants share intangible development costs (IDCs) in proportion to their RABs from the IDA
- IDCs include all costs associated with the IDA
- RABs based on available information
 - No retrospective adjustments
 - No true-ups in future years

PCT Valuation – Income Method

- Investor Model - a participant in a CSA expects returns over time consistent with the riskiness of that investment
- Realistic alternative
 - Uncontrolled taxpayer dealing at arm's length would evaluate all terms and enter into a CSA only if no alternative preferable
 - Met if anticipated NPV from CSA no less than anticipated NPV from realistically available alternative
 - For PCT payor, realistic alternative licensing developed intangibles

Income Method

- Financial projections
 - Same projections for CSA and licensing
 - Sole difference due to underlying payment obligations
- Discount rates
 - Rates for two alternatives closely linked
 - Differences due to differing risk profiles
- Arm's length range
- Differential income stream and implied discount rate

Other Valuation Methods

- Comparable Uncontrolled Transaction Method
- Acquisition Price Method
- Market Capitalization Method
- Residual Profit Split Method
- Unspecified Methods

Periodic Adjustments

- One sided; contingent payment terms allowed but not retroactive price adjustments
- Periodic trigger range based on ratio of PV of actual operating profit to PV of total investment – 0.667 – 1.5
- Modified RPSM to determine adjustment if trigger tripped
- Exceptions to adjustment
 - CUT available
 - Results not reasonably anticipated
 - Profits due to routine contributions
 - Within range for 10-year period