Syllabus

Grading Policy

Students’ grades will be based on a combination of

(a) class participation (20%)

(b) class presentation (40)%

(c) final examination (40%).
Weekly Class Topics

Week 1: Introduction to Class (9/9)

A. Administrative details
B. Putting Transfer Pricing in Context
C. Overview of Transactions and Specified Methods
   A. Control
   B. Tax Evasion
   C. Clear Reflection of Income
   D. The Arm’s Length Standard Today
   E. Burden of Proof

Week 2: (9/16)

A. Best Method Rule
B. Comparables
C. Tangible Property Methods
D. Intangibles

Week 3: (9/23)

A. Cost sharing
B. Services
C. Loans
D. Lease
   A. Leases

Week 5: (9/30)

A. Collateral Adjustments
B. Setoffs

C. The Foreign Tax Credit

D. Penalties

E. Penalties

F. Tax Treaties

G. APAs

Week 6: BEPS (10/7)

Week 7: OECD Topic 1 (10/14)

Week 8: OECD Topic 2 (10/21)

Week 9: OECD Topic 3 (10/28)

Week 10: Comprehensive Review (11/11):

Week 11: FINAL EXAM (11/18):

I. OVERALL FRAMEWORK

Code Sections 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 such organizations, trades, or businesses. In the case of any transfer (or license) of intangible property (within the meaning of section 936(h)(3)(B)), the income with respect to such transfer or license shall be commensurate with the income attributable to the intangible.
A. Transfer Pricing in Context


Ernst & Young Survey Finds Transfer Pricing Still a Key Tax Issue, 2011 TNT 12-30 (January 19, 2011)


B. Historical Background

Asiatic Petroleum Co. v. Commissioner, 79 F.2d 234 (2d Cir. 1935)

C. Control

B. Forman Company v. Commissioner, 453 F.2d 1144 (2nd Cir. 1972)

Robert M. Brittingham v. Commissioner, 66 T.C. 373 (1976)

D. Evasion of Taxes

Asiatic Petroleum Co. v. Commissioner, surpra

E. Or Clearly to Reflect Income

National Securities Corp. v. Commissioner, 137 F. 2d 600 (3rd Cir. 1942)

Central Cuba Sugar Co. v. Commissioner, 198 F.2d 214 (2d Cir. 1952)

Ruddick Corp. v. United States, 643 F.2d 747 (Ct. Cl. 1981)

F. Development of the Law: Steps Along the Way

R.T. French Co. v. Commissioner, 60 T.C. 836 (1973)

Ross Glove Co. v. Commissioner, 60 T.C. 569 (1973)

Latham Park Manor v. Commissioner, 69 T.C. 199 (1977)

E.I. DuPont de Nemours & Co. v. United States, 608 F.2d 445 (Ct. Cl. 1979)
G. The Arm’s-length Standard Today

1. Definition
   Treas. Reg. § 1.482-1(b)(1), -1(e)

2. The Formulary Alternative

3. Overview of Methods
   Treas. Reg. § 1.482-1(b)(2), -1(c)

4. Scope of Review
   Treas. Reg. § 1.482-1(f)

5. Relevance of Customs Valuation
   Field Service Advice 200036015
   I.R.C. § 1059A
   Brittingham v. Commissioner, supra
   Ross Glove Co. v. Commissioner, supra

6. Relevance of Nonrecognition Transactions
   Treas. Reg. § 1.482-1(f)(1(iii)
   Ruddick Corp. v. United States, supra
   Eli Lilly & Co. v. Commissioner, 856 F.2d 855 (7th Cir. 1988)

7. Relevance of Foreign Legal Restrictions
   Treas. Reg. § 1.482-1(h)(2)
   Procter & Gamble Co. v. Commissioner, 95 T.C. 323 (1990)
H. **Burden of Proof**


I. **Taxpayer Invocation of Section 482**

Treas. Reg. § 1.482-1(a)(3)

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**II. TRANSFER PRICING METHODS**

A. **Best Method Rule**

Treas. Reg. § 1.482-1(c), -8

B. **Comparables**

Treas. Reg. § 1.482-1(d)

*Hospital Corp. of America v. Commissioner*, 81 T.C. 520 (1983)

*Eli Lilly & Co. v. Commissioner*, *supra*

C. **Transfers of Tangible Property**

Treas. Reg. § 1.482-3(a)

*Compaq Computer Corp. v. Commissioner*, *supra*

*U.S. Steel Corp. v. Commissioner*, 617 F.2d 942 (2nd Cir. 1980)

1. **Methods**

   Treas. Reg. § 1.482-3, -5, -6

2. **Manufacturing contracts**


   *Sundstrand Corp. v. Commissioner*, 96 T.C. 226 (1991)
D. Other Types of Transfers

1. Intangibles
   
   Treas. Reg. § 1.482-4
   
   
   Bausch & Lomb v. Commissioner, supra
   
   Ciba-Geigy Corp. v. Commissioner, supra
   
   DHL Corp. v. Commissioner, 285 F.3d 1210 (9th Cir. 2002)
   
   IRS Chief Counsel Attorney Memorandum 2007-007 (March 23, 2007)
   
   
   Veritas, supra
   
   Xilinx v. Commissioner, 598 F.3d 1191 (2010)

2. Services
   
   Treas. Reg. § 1.482-2(b)
   
   Temp. Treas. Reg. § 1.482-9T
   
   U.S. Steel Corp. v. Commissioner, supra
   
   Field Service Advice 200230001

3. Loans
   
   Treas. Reg. § 1.482-2(a)
   
   B. Forman Company v. Commissioner, supra
   
   Latham Park Manor v. Commissioner, supra

4. Leases
   
   Treas. Reg. § 1.482-2(c)
III. COLLATERAL ADJUSTMENTS

Treas. Reg. § 1.482-1(g)(1)

A. Correlative Adjustments

Treas. Reg. § 1.482-1(g)(2)

B. Conforming Adjustments

Treas. Reg. § 1.482-1(g)(3)

1. Parent-subsidiary

   Schering Corp. v. Commissioner, 69 T.C. 579 (1978)


2. Brother-sister

   Central de Gas de Chihuahua v. Commissioner, 102 T.C. 515 (1994)

   Rev. Rul. 78-83, 1978-1 C.B. 79

   White Tool & Machine Co. vs. Commissioner, T.C. Memo 1980-443, aff’d 677 F. 2d 528 (6th Cir. 1982).

C. Setoffs

Treas. Reg. §§ 1.482-1(g)(4), -1T(g)(4)

Chief Counsel Advisory 200729034 (July 20, 2007)

D. Foreign Tax Credit Implications

Treas. Reg. § 1.901-2(e)(5)


IV. SPECIAL PROCEDURES AND THE PENALTY REGIME

Code Sections 6038A, 6662, 6664

A. Special Procedures

I.R.C. § 6038A

B. Penalties

1. The transactional penalty
   Treas. Reg. § 1.6662-6(b)
   Treas. Reg. § 1.6664-4(a), (b), (c), -4T

2. Net section 482 adjustment
   Treas. Reg. § 1.6662-6(c), (d)

3. Coordination of penalties
   Treas. Reg. § 1.6662-6(f)
   DHL Corp. v. Commissioner, supra

C. Application of Treaties

U.S. Model Income Tax Convention
   Article 9 (Associated Enterprises)
   Article 25 (Mutual Agreements)

D. Advance Pricing Agreements

OECD Reading List

Module 1 (305 Pages)

1. OECD Final Report on Transfer Pricing Documentation and CbC Reporting (September 2014) (48 Pages)
3. OECD Discussion Draft on Revision to Transfer Pricing Guidelines (Including Risk, Recharacterization and Special Measures) (December 2014) (46 Pages)
4. KPMG Comments on OECD Discussion Draft on Revisions to Transfer Pricing Guidelines (Including Risk, Recharacterization and Special Measures) (February 2015) (21 Pages)
5. OECD Guidance on Transfer Pricing Aspects of Intangibles (September 2014) (134 Pages)
6. OECD Discussion Draft on Use of Profit Splits in Global Value Chains (December 2014) (34 Pages)
7. KPMG Comments on OECD Discussion Draft on Use of Profit Splits in Global Value Chains (February 2015) (12 Pages)

Module 2 (98 Pages)

8. OECD Discussion Draft on Low Value-Adding Intra-Group Services (November 2014) (20 Pages)
9. KPMG Comments on OECD Discussion Draft on Low Value-Adding Intra-Group Services (January 2015) (3 Pages)
10. KPMG Comments on OECD Discussion Draft on Transfer Pricing Aspects of Cross-Border Commodity Transactions (February 2015) (6 Pages)
11. OECD Discussion Draft on the Transfer Pricing Aspects of Cross-Border Commodity Transactions (December 2014) (8 Pages)
12. OECD Discussion Draft on Avoidance of PE Status (October 2014) (26 Pages)
13. KPMG Comments on OECD Discussion Draft on Avoidance of PE Status (January 2015) (27 Pages)

Module 3 (678 Pages)

15. OECD Discussion Draft on Make Dispute Resolution Mechanisms More Effective (December 2014) (30 Pages)
16. KPMG Comments on Discussion Draft on Make Dispute Resolution Mechanisms More Effective (January 2015) (26 Pages)
17. OECD Discussion Draft on Interest Deductibility (December 2014) (93 Pages)
18. OECD Agreement on Modified Nexus Approach for IP Regimes (February 2015) (8 Pages)
19. KPMG Comments on OECD Discussion Draft on Interest Deductibility (February 2015) (9 Pages)
20. OECD Final Recommendations on Treaty Abuse (September 2014) (112 Pages)
21. OECD Report on Adoption of a Multilateral Instrument (September 2014) (67 Pages)
22. OECD Discussion Draft on Follow-Up Work on Treaty Abuse (November 2014) (15 Pages)
23. KPMG US Comments on OECD Discussion Draft on Follow-Up Work on Treaty Abuse (January 2015) (11 Pages)
24. OECD Mandate for the Development of a Multilateral Instrument (February 2015) (12 Pages)
25. OECD Report on Harmful Tax Practices (September 2014) (70 Pages)
27. OECD Discussion Draft on International VAT/GST Guidelines (December 2014) (23 Pages)