Transfer Pricing: Theory and Practice
Proposed Course Description and Outline
University of Houston

Professor Clifford A. Mangano, Ph. D.

Description: - Transfer Pricing: Theory and Practice introduces the student to the taxation of related party transactions and how it impacts multinational companies. Known as Transfer Pricing (“TP”), related party taxation is defined by governments and their tax authorities as the pricing of transactions between legal entities affiliated or owned by the same company. Transfer pricing impacts virtually all related party transactions where value is exchanged. Tax authorities have developed specified transfer pricing methods to determine if a company is pricing a transaction consistent with the tax laws of the country (considered an arm’s length price). This includes transactions involving the exchange of tangible or intangible goods, services, leased goods, loans, or any other exchange between related legal entities in different tax jurisdictions. The course will apply transfer pricing principles and the specified methods to the O&G industry (E&P, oilfield services, marketing and retail, etc.) and, where practical and assuming time allows, common international tax planning structures.

Working primarily within the framework of the oil and gas (O&G) industry, the course introduces the student to TP principles, laws, and regulations as they are applied to related party (intercompany) transactions under the United States (“U.S.”) Internal Revenue Code section 482 (“IRC 482”) and the Treasury Regulations (“Regulations”) promulgated thereunder; the arm’s length standard and its role in determining the price companies transfer goods and services among controlled entities.

For Spring 2016, Transfer Pricing: Theory and Practice will also focus on how the Organisation for Economic Cooperation and Develop (“OECD”) recent Base Erosion and Profit Shifting (“BEPS”) action plan deliverables may impact how companies approach multinational business opportunities. While the course focuses on the U.S. IRC 482 and the Regulations, the BEPS project is changing how tax authorities approach TP, increasing a multinational company’s audit risks and cost of doing business.

The topics covered will allow the student to analyze transactions; examine how businesses and a TP practitioner can apply the TP laws that govern transfer pricing to real world problems; and present some challenges that multinational enterprises confront when analyzing the varied and complex transfer pricing laws in various tax jurisdictions.

Class Objective: For the student, upon successfully completing this course, to:

- Know the core principles of transfer pricing as contained in the U.S. IRC Section 482 and the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.
- Understand why and how tax authorities apply transfer pricing laws to businesses.
- Be able to explain the arm’s length standard and how the standard is met.
- Explain the specified transfer pricing methods as they relate to tangible and intangible goods, services, rentals and loans, as well as the economic rationale behind each method.
- Understand the concept of the selection of a best method and how it is applied.
- Understand landmark transfer pricing court cases and their implications.
- Discuss how and why multinational businesses undertake transfer pricing.
- Apply their knowledge to a basic real world situation.

Reading assignments will be taken from: (i) Class book; (ii) OECD BEPS Action Plan deliverables (publically available documents); (iii) duplicated materials to be handed out in Class; (iv) the Internal Revenue Code and Regulations thereunder (which students can download form the IRS website) and (v) other selected readings. Because new developments related to transfer pricing arise frequently, it is possible that the reading list may be augmented or otherwise revised during the term.
Reading Material:


Section 482 of the Internal Revenue Code and related Regulations, (available online at IRS.Gov)

OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations ("OECD Guidelines")

OECD Base Erosion and Profit Shifting Action Plan documentation, ("BEPS Action Plan") Selected

Bloomberg BNA Transfer Pricing Report, Selected readings

Course Outline and Schedule:

The current class outline and schedule, which is presented below, is designed to cover the course objectives while providing flexibility for in-depth analysis and guest speakers that may be able to provide a broader perspective. (Guest speakers will be scheduled based on their availability and the professor's discretion.) Please use the schedule as a guideline that is subject to change.

Jan 25  Class 1

1.a  Class Overview and Logistics
   • Class logistics
   • Course expectations
   • Some useful background
     ▪ Oil and Gas (O&G) Industry
     ▪ Tax nomenclature and abbreviations

1.b  Transfer Pricing - Fundamental Concepts
   • Transfer Pricing defined
   • Governing bodies addressing transfer pricing
   • Background and evolution of IRC Section 482 and the Regulations thereunder
   • Overview of related party transactions

Reading Assignment:

IRC Section 482

Chapter 1 of "Transfer Pricing: Rules, Compliance and Controversy," Marc Levey and Steven Wrappe (4th edition) ("Levey and Wrappe")

Optional: Chapters 2 and 11 of Notice 88-123, 1988-2 C.B. 458 (the 482 "White Paper")

Feb 1  Class 2

2.a  Transfer Pricing - Fundamental Concepts (Cont’d)
   • Transfer Pricing Laws, Rules and Regulations – Revisited
   • The Arm's Length Standard
   • The Best Method Rule
   • Comparability (Functions, Risks, Contractual Terms)
2.b Transfer Pricing Specified Methods - Tangible Property Transfers

- Defining Transactions
- What are Tangible Property Transactions
- Specified Methods for Tangible Property transfers
  - Comparable Uncontrolled Price Method
  - Resale Price Method
  - Cost Plus Method
  - Comparable Profit Method

Reading Assignment:

Chapters 2 and 3 of Levey and Wrappe

Treas. Reg. § 1.482-1; Treas. Reg. § 1.482-3;
Treas. Reg. § 1.482-5; Treas. Reg. § 1.482-6;


Feb 8 Class 3

3.a Transfer Pricing Specified Methods - Intangible Property Transfers

- Definition and Ownership of Intangibles
- Intangible Property Transfers
- The Commensurate-with-Income Standard
- Stock Compensation
- Specified Methods
  - Comparable Uncontrolled Transaction Method
  - Comparable Profit Method
  - Profit Split Method
- Special Topics Overview (Cost-sharing, Business restructuring)

3.b Transfer Pricing Specified Methods (Cont'd) - Intercompany Services

- Intercompany services defined
- Benefit test
- Shareholder activities
- Transfer Pricing methods

Reading Assignment:

Chapters 4 and 5 of Levey and Wrappe

Treas. Reg. §§1.482-4(c),(d),(e) and (f); Treas. Reg. § 1.482-9;

Feb 15  Class 4

Writing Assignment - Preliminary Topic Discussion (submitted a written topic)

4.a  Guest Lecturer

“Transfer Pricing Methods and the IRS”
John Hatch, Transfer Pricing Associates

4.b  Cost Sharing Arrangements ("CSAs")

- Introduction to CSAs
- The controversy about CSAs
- CSA Requirements
- Reasonably Anticipated Benefits

Chapters 4 and 13 and Practice Tools 20,140 of Levey and Wrappe;
Treas. Reg. §§1.482-7;

Skim: Xilinx, Inc. v. Commissioner, 125 T.C. 37 (2005), rev’d, 567 F.3d 482 (9th Cir. 2009)
Veritas, Inc. v. Commissioner, 133 TC No. 14

Feb 22  Class 5

5.a  Advanced Pricing Agreement (“APA”)

- What is an APA
- Benefits for entering into an APA
- The APA Process

5.b  Transfer Pricing Documentation, Controversy, and Penalties

- Transfer Pricing Documentation requirements in the US and abroad
- Transfer Pricing Penalties
- IRS audits
- The MAP process

Reading Assignment:

Chapters 10, 11 and 13 of Levey and Wrappe

Code §6662;
Treas. Regs. §1.6662-6, 1.6664-4T;
Rev. Proc. 2006-09 (skim);
Rev. Proc. 2006-54 (skim);
Rev. Proc. 99-32 (skim);

OECD *Base Erosion and Profit Shifting*, June 2013

**Feb 29 Class 6**

*Writing Assignment – Draft Topic Choice:* Submit written topic and brief description

- Meeting with Professor by end of Class on Feb 20

**6.a Non IRC Section 482 Transfer Pricing Standards**
- OECD Guidelines
- UN Draft Manual
- Formulary Approaches

**6.b OECD Guidelines to Intercompany Transactions**
- The Arm’s Standard
- Transfer Pricing of Tangible and Intangible Transfers
- Transfer Pricing of Services and Cost Sharing
- Business Restructuring

*Reading Assignment:*

Chapters 14 of Levey and Wrappe


UN Draft Transfer Pricing Manual (can be found on the United Nations website);

**Mar 7 Class 7**

*Writing Assignment - Final Topic Choice:* Submit written statement & bibliography; minimum of 5 sources expected

**7.a Mid-Term Exam**

**7.b Important Related Topics –**
- Base Erosion and Profits Shifting (BEPS)
- Permanent Establishments (*Attribution of Profits to Permanent Establishments*)
- What is Business Substance

*Reading Assignment:*

Chapters 14 of Levey and Wrappe

Mar 14  No Class (Spring Break)

Mar 21  Class 8

8.a  Implementing Transfer Pricing in a Firm
- Developing a Transfer Pricing policy
- Implementing the Transfer Pricing policy
- Departmental Roles
- Taking Ownership

8.b  Hot Topics - Business Planning and Transfer Pricing
- Introduction to Business Planning
- Limited Risk Distributor Model
- Toll Manufacturing Arrangements
- Foreign Principal Structures

Mar 28  Class 9

9.a  Hot Topics Transfer Pricing Around the World

Apr 4  Class 10

Writing Assignment – All papers are due

10.a  Hot Topics Transfer Pricing Around the World

10.b  Hot Topics

Guest Speaker - IRS Transfer Pricing Auditor (Depending on IRS budget limitations)

Apr 11  Class 11

11.a  Role of the Tax Professional in Transfer Pricing

Apr 18  Class 12  Papers

Apr 25  Class 13  Papers

Mar 2  Class 14  Papers

Exam Week  Final Exam