

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

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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 Development ("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 from 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:

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

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)

- Arm's Length Range, Multiple Year Analysis, & Adjustments

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;

Charles Berry, "*Berry Ratios: Their Use and Misuse*," Journal of Global Transfer Pricing, 1999.

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;
IRS Rev. Proc. 2007-13, January 16, 2007 which can be found at http://www.irs.gov/irb/2007-03_IRB/ar13.html

IRS Generic Legal Advice Memorandum 2007-007 (IRS AM 2007-007) (March 15, 2007) on Taxpayer Use of Section 482 and the Commensurate With Income Standard; found at <http://www.irs.gov/pub/irs-utl/am2007007.pdf>.

Optional:

Bausch & Lomb v. Commissioner, 92 T.C. 525 (1989)
DHL Corp v. Commissioner, 285 F3d 1210 Court of Appeals, 9th Circuit, 2002
DHL Corp v. Commissioner, T.C. Memo. 1998-461, 76 TCM 1122 (1998)

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);

Department of the Treasury, *Report to the Congress on Earnings Stripping, Transfer Pricing and U.S. Income Tax Treaties*, November 2007, pp. 38-46.

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

OECD Guidelines on Business Restructuring: "*Transfer Pricing Aspects of Business Restructurings: Discussion Draft for Public Comment*" (Sept. 19, 2008), available at: <http://www.oecd.org/dataoecd/59/40/41346644.pdf> (Skim);

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

OECD: 2010 "Report on the Attribution of Profits to Permanent Establishments" (July 22, 2010),
available at: <http://www.oecd.org/ctp/transferpricing/45689524.pdf>

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**