

San Jose State University Business School
Transfer Pricing Theory and Practice
Business 297D
Professors Marios Karayannis and Kevin McCracken
Summer 2010

The course is designed to introduce students to the fundamental principles of intercompany pricing, applications of transfer pricing methods to related party transactions under U.S. transfer pricing regulations and OECD Guidelines, and present the foundations of economic analysis to real world intercompany transactions of multinational corporations.

Reading assignments will be taken from: (i) duplicated materials to be handed out in class; (ii) material available on the course website; and (iii) the Code and Regulations (which students will be expected to own). 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.

For your convenience, we have included a bibliography of recommended readings and a list of court cases which are accessible on the course website.

Grading will be based 20% on in-class assignments and 80% on final take home exam.

Class meets at 6 pm on Mondays and 9 am on Saturdays. The current class schedule is as follows:

Class 1: Introduction; Transfer Pricing Regulations - Fundamental Concepts
(Monday, June 21, 2010)

- Class logistics
- Introduction to the course
- Background and evolution of Section 482
- The Arm's Length Standard
- Transfer Pricing in practice

Reading Assignment:

Internal Revenue Code Section 482

Treas. Reg. § 1.482-1(a), (b) and (i); Temp. Treas. Reg. § 1.482-1T(b)

Chapter 1 ¶ 160 of *“Transfer Pricing: Rules, Compliance and Controversy,”* Marc Levey and Steven Wrappe (2nd edition) (“Levey and Wrappe”)

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

Class 2: Transfer Pricing Regulations - Fundamental Concepts (Cont'd)

(Saturday, June 26, 2010)

- The Best Method Rule
- Comparability (Functions, Risks, Contractual Terms)
- Arm's Length Range
- Multiple Year Analysis
- Adjustments

Reading Assignment:

Treas. Reg. § 1.482-1(c), (d), (e), and (f);

Corporate Business Taxation Monthly, "*Transfer Pricing Comparability: Concepts, Methods and Applications*," Vol. 5 Number 3 (December 2003)

Class 3: Transfer Pricing Methods For Tangible Property Transfers

(Monday, June 28, 2010)

- Methods for Tangible Property Transactions
- Comparable Uncontrolled Price Method
- Resale Price Method
- Cost Plus Method

Reading Assignment:

Treas. Reg. § 1.482-3;

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

Optional: BNA Transfer Pricing Report, "*Economic Issues in Intercompany Transfer Pricing*," by Clark Chandler, Economic Consulting Services Inc., Washington, D.C. and Irving Plotkin, Arthur D. Little, Inc., Boston, October 20, 1993.

No Class: July 4th Holiday

(Monday, July 5, 2010)

Class 4: Transfer Pricing Tangible and Intangible Property Transfers

(Monday, July 12, 2010)

- Methods for Tangible Property Transactions (cont'd)
- Comparable Profit Method
- Intangible Property Transfers
- Definition of Intangibles
- Ownership of Intangibles
- The Commensurate-with-Income Standard
- Stock Compensation

Reading assignment

Treas. Reg. §§1.482-4(a) and (b) and 1.482-5

Chapters 6 and 8 of Notice 88-123, 88-2 C.B. 458

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

Optional: Ossi, "The Significance of Intangible Property Rights in Transfer Pricing," 19 Tax Notes International 993 (Sept 13, 1999).

Class 5: Transfer Pricing Methods For Intangible Property Transfers (Cont'd)

(Monday, July 19, 2010)

- Comparable Uncontrolled Transaction Method
- Comparable Profit Method
- Profit Split Method

Reading Assignment:

Treas. Reg. §§1.482-4(c),(d),(e) and (f) and 1.482-6

Bausch & Lomb v. Commissioner, 92 T.C. 525 (1989)

DHL Corp v. Commissioner, T.C. Memo. 1998-461, 76 TCM 1122 (1998)

Class 6: Special Topics

(Monday, July 26, 2010)

- Limited Risk Distributor Model
- Toll Manufacturing Arrangements
- Foreign Principal Structures

Reading Assignment:

Treas. Regs. §§1.482-3, 1.482-4, 1.482-5 (review);

(optional) OECD Guidelines: "*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>

Class 7: Cost Sharing Arrangements ("CSAs")

(Monday, August 2, 2010)

- Introduction to CSAs
- The controversy about CSAs
- CSA Requirements
- Platform Contribution Transactions
- Intangible Development Costs
- Reasonably Anticipated Benefits
- Changes in Participation
- Grandfather rules

Reading Assignment:

Treas. Regs. §1.482-7T

Xilinx, Inc. v. Commissioner, 125 T.C. 37 (2005), rev'd, 567 F.3d 482 (9th Cir. 2009)

Thomas Horst, "Employee Stock Options and the Xilinx Case," Tax Notes International, Sept. 7, 2009.

Class 8: Cost Sharing Arrangements (Cont'd)

(Saturday, August 7, 2010)

- Methods Applicable to PCTs
- Form of PCT Payment

Reading assignment:

Treas. Regs. §1.482-7T

Veritas, Inc. v. Commissioner, 133 TC No. 14

Class 9: Intercompany Services Transactions

(Monday, August 9, 2010)

- Intercompany services in general
- Benefit test
- Shareholder activities
- Transfer Pricing methods

Reading Assignment:

Treas. Reg. § 1.482-9T

DHL Corp v. Commissioner, 285 F3d 1210 Court of Appeals, 9th Circuit, 2002

Class 10: Transfer Pricing Documentation, Controversy, and Penalties

(Monday, August 16, 2010)

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

Reading Assignment:

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);