I. OVERVIEW

This L.L.M. course provides a practical, historical, and theoretical understanding of international transfer pricing, with exposure to related areas of taxation.

Reading assignments: (i) Levey and Wrappe, Transfer Pricing: Rules, Compliance and Controversy (4th Ed. 2012), (ii) Internal Revenue Code and relevant Treasury Regulations, IRS Revenue Procedures, IRS Actions on Decisions, and other written guidance, (iii) case law, (iv) materials available from www.oecd.org, and (v) other materials to be identified in class. To the extent possible, we will use electronic citations to materials available from public sources.

New developments arise frequently in international transfer pricing. It is highly likely that we will supplement the reading assignments during our term.

II. CLASS SCHEDULE

Class 1: Introduction to Transfer Pricing
Friday, January 9, 2015

Welcome - Overview, Introductions, and Class Logistics

Lesson Plan/Learning Objectives:

- Transfer Pricing Overview
  - Introduction
  - Example(s)
  - Key Concepts
  - The Statute (short) and Regulations (long)
- Control
The Arm’s Length Principle
Introduction to the U.S. Regulations
  • Introduction
  • Structure ("Transactions and Methods")
  • Nature and Authority

Reading Assignment:

Levey & Wrappe Chapters 1 and 2
Treas. Reg. §§ 1.482-1, -3
B. Forman Co., Inc. v. Commissioner, 453 F.2d 1144 (2nd Cir. 1972), rev’g in part 54
T.C. 912, cert. denied, 407 U.S. 934 (1972)
Read the following, which you can obtain by Google search:
Read: IRS Chief Counsel Memorandum 200408030
Skim: IRS Field Service Advice 200134002 and IRS Chief Counsel Notice CC-2003-010

Class 2: The U.S. Transfer Pricing Regulations
Friday, January 23, 2015

Lesson Plan/Learning Objectives:

  • Understanding the "Methods for Determining Taxable Income" Approach
  • Controlled Transactions involving Tangible Goods
  • CSTs ( Controlled Services Transactions) 
  • The CPM (Comparable Profits Method)

Reading Assignment:

Levey & Wrappe Chapters 3 and 5
Treas. Regs. §§ 1.482-3, -5, -9;
IRC section 367(d) and its Treasury Regulations (skim the regulations)
IRC section 936(h)(3)(B)

Class 3: The U.S. Transfer Pricing Regulations, Continued
Friday, February 6, 2015

Lesson Plan/Learning Objectives:

  • Intangible Property Transfers
  • CSTs (Cost Sharing Transactions) and CSAs (Cost Sharing Arrangements)
  • Recent Important Case Developments

Reading Assignment:
Levey & Wrappe Ch. 4
Treas. Regs. §§ 1.482-4, -7T

Veritas v. Commissioner, Tax Court Opinion and AOD:
133 T.C. No. 14 (2009); AOD 2010-05 (Dec. 6, 2010)

Xilinx v. Commissioner, Tax Court and 9th Circuit Opinions, AOD:
598 F.3d 1191 (9th Cir. 2010, aff’g 125 T.C. 37 (2005)
567 F.3d 482 (9th Cir. 2009), withdrawn Jan. 13, 2010
AOD 2010-03 (July 16, 2010)

OECD Intangibles BEPS Deliverable – New Chapter VI (library/on line)

Class 4: The U.S. Transfer Pricing Regulations, Continued
Friday, February 20, 2015

Lesson Plan/Learning Objectives:

➢ Cost Sharing – General Rules, Xilinx & Veritas aftermath, and related topics
  • Arm’s Length Standard (“Rise and Fall” debates, etc.)
  • Role of Experts (Economic, Business, other)
  • Litigation vs. ADR
➢ The Profit Split Method – Treas. Reg. § 1.482-6
➢ Other Provisions (Loans and Leasing, Global Dealing, “Other”)
➢ Relevant Code Sections – IRC §§ 367(d), 936(h)(3)(B), 1059A
➢ CWI – Commensurate With Income Standard
  • Overview – derivation and necessity (TRA 1986, etc.)
  • Historical Perspective/Review
  • IRS Chief Counsel viewpoint

Reading Assignment:

Skim – Bausch & Lomb, Inc. v. Commissioner, 92 T.C. 523 (1989), aff’d 933 F.2d 1084 (2nd Cir. 1991)
Read – Compare Treas. Reg. § 1.482-4(f)(2) with Treas. Reg. § 1.482-4
Skim – Treas. Reg. §§ 1.482-2 (loans, leasing), -8T (examples)
Skim – Prop. Treas. Reg. § 1.482-8 (Global Dealing)
Look over – Treas. Reg. §§ 1.482-0
IRS Chief Counsel Memorandum AM-2007-007 (3/23/07) (available by Google search)

Skim quickly – House report to TRA 86 (H. Rep. 99-841) –
Can you find the intangibles discussion?
Class 5: Transfer Pricing – Transfer Pricing Disputes and their Resolution
Friday, March 13, 2015

Lesson Plan/Learning Objectives:

➤ Compliance & Controversy
➤ “Self Help”
➤ The ACU (arbitrary, capricious and unreasonable) legal standard
➤ Penalties and Documentation
➤ Administrative Process
➤ Economic Double Taxation
➤ APA and Competent Authority
➤ Customs

Reading Assignment:

IRC § 6662(e)
Treas. Reg. §§1.6662-6, 1.6664-4T
Treas. Reg. § 1.482-1(g)(3)
Treas. Reg. § 1.482-1(a)(3)
IRC § 1059A
Rev. Proc. 2006-9, 2006-54
IRS Notices 2013-78,

Optional (or please, at least skim): Levey & Wrappe Chapters 11 through and 13

Legal Research:
What is “MAP,” where is it found, and why is it important?
Can you find the APA Annual Report? What is it?
What can you find out (if anything) about GlaxoSmithKline?
What is the difference between Yamaha v. Commissioner, and Yamaha v. U.S.?

Class 6: Transfer Pricing – International Aspects (OECD and UN)
Friday, March 20, 2015

Lesson Plan/Learning Objectives:

➤ The OECD and UN Approaches to Transfer Pricing
➤ Selected Country Considerations
➤ The “Comprehensive Resolution” Concept
➤ Tax Planning
Relevant non-tax concepts (comity, practice considerations)
What is BEPS?
What are the BEPS Deliverables?

Reading Assignment:

Levey & Wrappe Chapter 14
OECD selected readings (citations provided during Class 5)
Anticipated BEPS readings: Action Item 13 and others (to be updated)

Class 7: The OECD
Friday, April 3, 2015

Lesson Plan/Learning Objectives:

➢ OECD - Tangibles
➢ OECD - Intangibles
➢ Business Restructurings
➢ Cost Contribution Arrangements
➢ Documentation
➢ UN Approach
➢ Current hot topics

Reading Assignment:

Selected OECD readings (BEPS citations to be supplied by Professor)

Legal Research:
None

Class 8: Putting it All Together
Friday, April 17, 2015

Lesson Plan/Learning Objectives:

➢ Exam Review – what you need to know and what you need to study
➢ Practical Considerations
➢ U.S. and Foreign Government Perspectives
➢ Permanent Establishments
➢ Designing a comprehensive system for effective tax administration
➢ Current transfer-pricing trends and hot topics
➢ Wrap-up
Reading Assignment:
Selected OECD readings (to be supplied)

Legal Research:
Can you find a "PE" article?
What is a PE, where is it found, and why is the concept important?
What can you find out about Morgan Stanley, relative to PEs?

WRITTEN FINAL EXAM
(Check Exam Schedule for Time – Tentatively May 7th)