

LB&I International Practice Service Process Unit – Overview

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Shelf	N/A	Business Outbound	-	-
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Unit Name	Review of Transfer Pricing Documentation by Outbound Taxpayers
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Table of Contents

(View this PowerPoint in "Presentation View" to click on the links below)

[Introduction](#)

[Process Overview](#)

[Detailed Explanation of the Process](#)

[Process Applicability](#)

[Summary of Process Steps](#)

- [Step 1 - Overview of USP's Business](#)
- [Step 2 - Organizational Structure](#)
- [Step 3 - Documentation Required by the Regulations](#)
- [Step 4 - Method Selected](#)
- [Step 5 - Alternative Methods](#)

Table of Contents (cont'd)

(View this PowerPoint in "Presentation View" to click on the links below)

- [Step 6 - Controlled Transactions](#)
- [Step 7 - Comparables](#)
- [Step 8 - Economic Analysis](#)
- [Step 9 - Summary of Data after Year End](#)
- [Step 10 - Background Documents](#)
- [Step 11 - General Index](#)

[Definitions](#)

[Training and Additional Resources](#)

[Glossary of Terms and Acronyms](#)

[Index of Related Issues](#)

Introduction

Review of Transfer Pricing Documentation by Outbound Taxpayers

Taxpayers may enter into a wide variety of transactions involving tangibles, intangibles and/or services with controlled parties. To show that the transactions are priced at arm's length, taxpayers may provide contemporaneous documentation. The contemporaneous documentation must be in existence at the time taxpayer filed its tax return and also be provided to the IRS within 30 days of being requested if taxpayer is seeking to avoid the IRC 6662(e) and (h) penalties.

The purpose of this Process Overview Unit is to serve as an introduction to the review of a taxpayer's transfer pricing documentation ("TPD"). Review of the TPD serves a couple of important purposes. First, the Transfer Pricing Audit Roadmap uses the TPD in the Planning Phase (Pre-Examination Analysis) to note areas that require further development, confirmation or inquiry. The review of the TPD is then used in the initial TP risk analysis and development of a preliminary working hypothesis. Second, the review of the TPD is essential to determine if it meets the requirements of IRC 6662(e) penalty avoidance.

If, as the statute permits, the taxpayer has not prepared IRC 6662(e) documentation, exam would issue a written information document request at the beginning of the audit for relevant information regarding the taxpayer's transfer pricing practices. Such non-contemporaneous TP documentation may establish that the taxpayer's controlled party transactions meet the arm's length standard but it cannot prevent imposition of the TP penalties if the IRS determines that the transactions are not at arm's length prices.

If a taxpayer does not have contemporaneous documentation (also known as 6662(e) documentation or transfer pricing documentation) or the TPD is deemed deficient and the Service concludes that a transfer pricing adjustment is appropriate, the taxpayer may be subject to transactional or net adjustment penalties under IRC 6662(e) and (h). These regulations contain reasonable cause and good faith requirements in order for taxpayers not be subjected to such penalty provisions. To meet the reasonable cause and good-faith requirements (if taxpayer is subject to the transactional penalty) or to have amounts excluded from the calculation of the net section 482 adjustment (if taxpayer is subject to the net adjustment penalty), the taxpayer must maintain and provide the IRS with documentation sufficient to establish that the taxpayer reasonably concluded that the chosen pricing method was the best method and its application provided the most reliable measure of an arm's-length result, given the available data. Additionally, if the taxpayer chose an unspecified method but a specified method was potentially applicable, the taxpayer must establish that none of the specified methods was likely to be the best method and provide a more reliable measure of an arm's length result.

Introduction (cont'd)

Review of Transfer Pricing Documentation by Outbound Taxpayers

The following documentation should be provided to the IRS via the mandatory transfer pricing information document request (IDR):

- Overview of business;
- Organizational structure;
- Documentation specifically required by IRC 482 and the regulations thereunder;
- Description of method chosen;
- Explanation of methods not chosen;
- Description of controlled transactions;
- Description of the comparables;
- Explanation of economic analysis;
- Relevant year-end data, and
- Index.

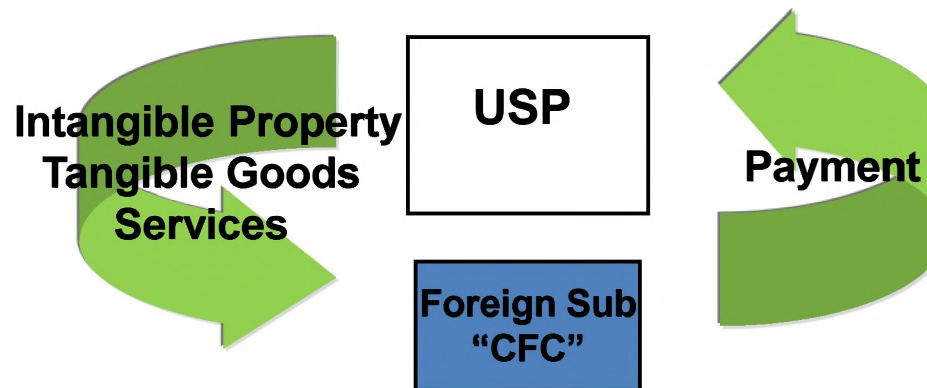


CAUTION: Background documents are not specifically required under the mandatory IDR. However, background documents should be requested as needed.

Process Overview

Review of Transfer Pricing Documentation by Outbound Taxpayers

This Process Unit focuses on the documentation provided when there is an outbound transaction of tangible goods, intangibles, and services. However, similar documentation is also required for inbound transactions. During the Planning Phase of the examination (Outlined in the Transfer Pricing Roadmap), as part of the exam teams overall Pre Examination Analysis, the IE in consultation with an economist (also TPP) will request (via Mandatory Transfer Pricing IDR), review and analyze the taxpayers IRC 6662(e) transfer pricing documentation in order to gain a better understanding of the taxpayers transfer pricing transactions and note areas that require further development, confirmation or inquiry. This analysis of the TPD is critical in the overall assessment and hypothesis developed by the IE and Economist (also TPP) when formulating the audit plan. The analysis may be accomplished in a series of steps as further defined in this Practice Unit,. These steps are focused around the 10 principal documentation requirements contained in Treas. Reg. 1.6662-6(d)(2)(iii)(B). The exam team needs to consider whether the documentation meets the requirements under the regulations or is deficient and thus potentially subjecting the taxpayer to penalties under IRC 6662(e) and (h). It is important to remember that the overall objective of IRC 6662(e) is to improve compliance with IRC 482 by encouraging taxpayers to document their transfer pricing transactions and to provide that documentation to the IRS in a timely manner. Here is a depiction of the transaction.



- US Parent (USP) owns 100% of Foreign Sub (CFC).
- USP sells tangible goods to CFC. Additionally, USP licenses intangible property and provides services to CFC.
- USP has TPD prepared by an outside consultant.


Detailed Explanation of the Process


Review of Transfer Pricing Documentation by Outbound Taxpayers

Analysis

The purpose of a taxpayer's TPD is to show that its transactions with related parties are priced consistently with the arm's length standard. To do this it must select and apply the "best method" as described in the 482 regulations. To be the best method, the method selected must not only produce the most reliable measure of an arm's length result, but also be the most reliable application of the method. In other words, you could have two or more applications of the same method but one such application is more accurate in terms of certain key factors (comparability, data and assumptions etc.), resulting in a better (more reliable) application of the method and, thus, making that application the "best method."

The purpose of this Unit is to serve as an introduction to the review of a taxpayer's TPD. The documentation should show that the taxpayer reasonably concluded that the transfer pricing methodology chosen and applied met the best method rule (i.e., it provides the most reliable measure of an arm's length result). In addition, taxpayers should document how they selected their method, why it's the best method, and the reasons they rejected other possible methods (specified and unspecified).

 **CAUTION:** Although Treas. Reg. 1.6662-6(d)(2)(iii)(B) specifies ten principal documents, a taxpayer supplying all principal documents does not preclude the Service from applying the transactional or net adjustment penalty provisions where the taxpayer's TPD is deficient or where the requirements under the reasonable cause and good faith exception for the transactional penalty or the requirements to exclude amounts from net section 482 adjustments have not been met. Alternatively, complete documentation may not require all principal documentation to be provided. You need to analyze whether the documents provided give you a complete understanding of taxpayer's controlled transactions.

 **CONSULTATION:** Recommended that you consult with the Info Gathering IPN if you are applying penalties.

This Process Unit Overview does not cover how to select the "best method." For selecting the best method see the Practice Unit entitled "Overview of IRC 482," DCN: ISO/9411.07_01 (2013). Additionally, this process unit does not cover "comparability." For information on how to do a comparability analysis (including functional analysis) see Practice Unit entitled "Comparability Analysis for Tangible Goods Transactions-Outbound," DCN: ISO/PUO/V_1_01(2014).

Process Applicability

Review of Transfer Pricing Documentation by Outbound Taxpayers

Review taxpayer's documents and public information to determine if there are significant controlled transactions.

Criteria	Resources	6103 Protected Resources
<p>Request taxpayers TPD by issuance of the IRC 6662(e) Mandatory Transfer Pricing IDR with the initial examination contact letter. The required 30 day taxpayer response time starts with the issuance of the letter.</p> <p>Identify significant controlled transactions from review of the taxpayer's TPD. This review is part of the Planning Phase outlined in the Transfer Pricing Roadmap under Pre Examination analysis. The roadmap is a comprehensive toolkit outlining the audit steps all examiners should use during the Planning, Execution and Resolution phases of their examination. The roadmap is not intended as a template, every transfer pricing case is unique, the exam team needs to exercise its judgment about how to best utilize these guidelines.</p> <p>Prior to receipt of the TPD, use the 30 day period to perform company background, overview analysis and tax return review.</p>	<ul style="list-style-type: none"> ▪ Transfer Pricing Roadmap. ▪ Form 5471- Schedules C, F and M. ▪ Form 8858- Schedules C and F ▪ Form 8865- Schedules B, L and N ▪ Form 1120 - Schedule M-3, and Uncertain Tax Positions (UTP) Disclosures. Tie the financials to the tax return and note any differences. ▪ International Information Returns (IIR) system. ▪ Prior exam cycle files. ▪ Organizational Charts ▪ Transfer Pricing Roadmap. ▪ TPD obtained from the Transfer Pricing IDR enables an understanding of the Multi-National Enterprise (MNE) structure, the activities performed, transaction materiality, and general risks of the transaction. 	

Process Applicability (cont'd)

Review of Transfer Pricing Documentation by Outbound Taxpayers

Review taxpayer's documents and public information to determine if there are significant controlled transactions.

Criteria	Resources	6103 Protected Resources
<p>At receipt of the TPD, map Forms 5471, 8858 and 8865 to the TPD. Are there transactions missing from the TPD? Are there "exceptional profits" offshore in the foreign affiliates potentially indicating a U.S. shifting of income in non-arm's length transactions with such foreign affiliates?</p> <p>Review the general ledger and financial statements for expenses relating to the production of goods, such as manufacturing costs, depreciation of plants, R&D expense, warranty expenses etc.</p> <p>Perform ratio analysis based on the financial information.</p>	<ul style="list-style-type: none"> ▪ Taxpayer websites for additional discussions about the taxpayer's activities. ▪ Annual Reports/Financial Statements for confirmation that the information matches the TPD. ▪ Income statement and balance sheet for expenses. 	

Summary of Process Steps

Review of Transfer Pricing Documentation by Outbound Taxpayers

Process Steps

The Treasury Regulations provide a list of principal and background documents that need to accurately and completely describe the basic transfer pricing analysis conducted by USP.

Step 1	Review Overview of USP's Business.
Step 2	Review USP's Organizational Structure.
Step 3	Review any documentation explicitly required by the regulations under IRC 482.
Step 4	Review the description of the method selected and explanation of why that method was selected.

Summary of Process Steps (cont'd)

Review of Transfer Pricing Documentation by Outbound Taxpayers

Process Steps

The Treasury Regulations provide a list of principal and background documents that need to accurately and completely describe the basic transfer pricing analysis conducted by USP.

Step 5	Review the description of the alternative methods and explanation of why they were not chosen.
Step 6	Review the description of the controlled transactions and any internal data used to analyze the transactions.
Step 7	Review the description of the comparables that were used, how comparability was evaluated, and what (if any) adjustments were made.
Step 8	Review the explanation of the economic analysis and projections used for developing the method.

Summary of Process Steps (cont'd)

Review of Transfer Pricing Documentation by Outbound Taxpayers

Process Steps

The Treasury Regulations provide a list of principal and background documents that need to accurately and completely describe the basic transfer pricing analysis conducted by USP.

Step 9	Review the description or summary of any relevant data that USP obtains after the end of the tax year and before the filing of its tax return.
Step 10	Review background documents.
Step 11	Review the general index of the principal and background documents.

Step 1: Overview of USP's Business

Review of Transfer Pricing Documentation by Outbound Taxpayers

Step 1

An overview of USP's business is the first principal document. The overview should include an analysis of the economic and legal factors that affect the pricing of its property or services.

Considerations	Resources	6103 Protected Resources
<p>You may obtain the following documents to get an overview of USP's business:</p> <ul style="list-style-type: none"> ▪ Description of principal business segments, product lines, geographic markets, vendors, customers, and contractors ▪ Functional analysis identifying economically significant activities undertaken or to be undertaken by the taxpayer, such as: <ul style="list-style-type: none"> – Conceptualization – Research and development – Product design and engineering – Manufacturing, production and process engineering – Product fabrication and extraction – Product assembly, packaging and labeling – Purchasing and materials management – Marketing, advertising and distribution functions 	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.6662-6(d)(2)(iii)(B)(1) – documentation requirement ▪ Treas. Reg. 1.482-1(d)(3)(i) – functional analysis ▪ Transfer Pricing IDR ▪ Functional Analysis Questionnaire ▪ Transfer Pricing Roadmap ▪ IRM Exhibit 4.61.3-4 – Transfer Pricing Functional Analysis Questionnaire ▪ Practice Unit, “Comparability Analysis for Tangible Goods Transactions – Outbound,” DCN: ISO/PUO/V_1_01 (2014) ▪ Taxpayer Presentation ▪ Interview Notes 	

Step 1: Overview of USP's Business (cont'd)

Review of Transfer Pricing Documentation by Outbound Taxpayers

Step 1

An overview of USP's business is the first principal document. The overview should include an analysis of the economic and legal factors that affect the pricing of its property or services.

Considerations	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ Functional analysis identifying economically significant activities undertaken or to be undertaken by the taxpayer, such as (cont'd): <ul style="list-style-type: none"> – Inventory management – Warranty administration – Transportation and warehousing – Managerial, legal, accounting and finance, credit and collection, training, and personnel management services – Various stage of production – Various state of financing the production and inventory – Testing and quality control – Sales or internal use – Patent or other intangible development – Accounts receivable – Capital investment 	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.6662-6(d)(2)(iii)(B)(1) – documentation requirement ▪ Treas. Reg. 1.482-1(d)(3)(i) – functional analysis ▪ Transfer Pricing Roadmap ▪ Practice Unit, “Comparability Analysis for Tangible Goods Transactions – Outbound,” DCN: ISO/PUO/V_1_01 (2014) ▪ Functional Analysis Questionnaire ▪ IRM Exhibit 4.61.3-4 – Transfer Pricing Functional Analysis Questionnaire 	

Step 1: Overview of USP's Business (cont'd)

Review of Transfer Pricing Documentation by Outbound Taxpayers

Step 1

An overview of USP's business is the first principal document. The overview should include an analysis of the economic and legal factors that affect the pricing of its property or services.

Considerations	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ Description of contractual terms: <ul style="list-style-type: none"> – Form of consideration charged or paid – Sales or purchase volume – Scope and terms of warranties provided – Rights to updates, revisions or modifications – Duration of relevant licenses, contracts or other agreements, and termination or renegotiation rights – Collateral transactions or ongoing business relationships between parties including ancillary or subsidiary services – Extension of credit and payment terms 	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.6662-6(d)(2)(iii)(B)(1) – documentation requirement ▪ Treas. Reg. 1.482-1(d)(3)(ii) – contractual terms ▪ Transfer Pricing Roadmap ▪ Practice Unit, “Comparability Analysis for Tangible Goods Transactions – Outbound,” DCN: ISO/PUO/V_1_01 (2014) ▪ Intercompany and Third Party Agreements 	

Step 1: Overview of USP's Business (cont'd)

Review of Transfer Pricing Documentation by Outbound Taxpayers

Step 1

An overview of USP's business is the first principal document. The overview should include an analysis of the economic and legal factors that affect the pricing of its property or services.

Considerations	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ Description of risks assumed which could affect the prices that would be charged or paid, or the profit that would be earned, such as: <ul style="list-style-type: none"> – Market risks, including fluctuations in cost, demand, pricing, and inventory level – Risks associated with research and development activities – Financial risks, including changes in currency rates and interest rates – Credit and collection risks – Product liability risks – Warranty risks – General business risks relating to the ownership of property, plant, and equipment – Advertising and marketing risks – Intangible risks 	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.6662-6(d)(2)(iii)(B)(1) – documentation requirement ▪ Treas. Reg. 1.482-1(d)(3)(iii) – <i>Risk</i> ▪ Transfer Pricing Roadmap ▪ Practice Unit, “Comparability Analysis for Tangible Goods Transactions – Outbound,” DCN: ISO/PUO/V_1_01 (2014) ▪ RM 4.61.3.5.3 – Risk Analysis ▪ Intercompany and Third Party Agreements 	

Step 1: Overview of USP's Business (cont'd)

Review of Transfer Pricing Documentation by Outbound Taxpayers

Step 1

An overview of USP's business is the first principal document. The overview should include an analysis of the economic and legal factors that affect the pricing of its property or services.

Considerations	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ Description of economic conditions that could affect prices or profits, such as: <ul style="list-style-type: none"> – Similarity of geographic markets – Relative size of each market and the extent of the overall economic development in each market – Level of market (e.g. wholesale, retail, manufacture, etc.) – Relevant market shares for the products, properties, or services transferred or provided – Location-specific costs of the factors of production and distribution – Extent of competition in each market for the relevant properties or services – Economic condition of the particular industry, including whether the market is in contraction or expansion 	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.6662-6(d)(2)(iii)(B)(1) – documentation requirement ▪ Treas. Reg. 1.482-1(d)(3)(iv) – economic conditions ▪ Transfer Pricing Roadmap ▪ Practice Unit, “Comparability Analysis for Tangible Goods Transactions – Outbound,” DCN: ISO/PUO/V_1_01 (2014) 	

Step 1: Overview of USP's Business (cont'd)

Review of Transfer Pricing Documentation by Outbound Taxpayers

Step 1

An overview of USP's business is the first principal document. The overview should include an analysis of the economic and legal factors that affect the pricing of its property or services.

Considerations	Resources	6103 Protected Resources
<p>Description of economic conditions that could affect prices or profits,-cont'd.</p> <ul style="list-style-type: none"> - Alternatives realistically available to the buyer and seller - Discounts and rebates <ul style="list-style-type: none"> ▪ Identification of, development of, use of, and ownership of relevant intangible property (e.g., patents, trademarks, customers lists, trade secrets, copyrights, etc.) ▪ Description of the relevant history of the taxpayer's (tested party's) operations including the business strategy employed by the taxpayer (tested party) throughout such history ▪ Description of any federal, state or foreign laws that restrict payment of arm's length consideration in an intercompany transaction 	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.6662-6(d)(2)(iii)(B)(1) – documentation requirement ▪ Transfer Pricing Roadmap ▪ Annual report ▪ Interview Notes ▪ Forms 10-K and 6K ▪ Audited financial statements ▪ Product line profit and loss statements 	

Step 1: Overview of USP's Business (cont'd)

Review of Transfer Pricing Documentation by Outbound Taxpayers

Step 1

An overview of USP's business is the first principal document. The overview should include an analysis of the economic and legal factors that affect the pricing of its property or services.


Considerations	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ Pre-existing economic analyses of the taxpayer's (tested party's) industry (either prepared internally or by industry associations, government agencies or securities analysts, etc.) ▪ Description of how government involvement and the regulatory environment affect the taxpayer's (tested party's) business ▪ Description of all financial summary reports used in budgeting and financial planning. 	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.6662-6(d)(2)(iii)(B)(1) – documentation requirement ▪ Product line balance sheets ▪ Domestic, export and foreign country price lists ▪ Price lists for both items purchased and items sold ▪ Product catalogues, brochures, pamphlets, billboards, etc. ▪ Board of Directors' minutes and handouts ▪ Hart-Scott Rodino Forms filed with US Securities and Exchange Commission, if merger and acquisition for publicly held company involved ▪ Reports filed with any foreign securities regulatory agency 	

Step 1: Overview of USP's Business (cont'd)

Review of Transfer Pricing Documentation by Outbound Taxpayers

Step 1

An overview of USP's business is the first principal document. The overview should include an analysis of the economic and legal factors that affect the pricing of its property or services.

Considerations	Resources	6103 Protected Resources
 DECISION POINT: Do you have a good understanding of USP's business? Are the documents contained in the TPD reasonable and reliable? Remember you may not need all considerations/documents listed to have a good overview of USP's business.		

Step 2: Organizational Structure

Review of Transfer Pricing Documentation by Outbound Taxpayers

Step 2

The second required document is a description of taxpayer's organizational structure which covers all related entities (domestic and foreign) engaged in transactions that are relevant (directly or indirectly) to the transfer pricing issues.


Considerations	Resources	6103 Protected Resources
<p>It is important to understand where USP and the foreign affiliates fit into the organizational structure. The following information should be included within the TPD:</p> <ul style="list-style-type: none"> ▪ Complete legal entity organizational chart including ownership percentage and resident countries ; ▪ Complete tax entity organizational chart showing whether the entities are corporations, partnerships, disregarded entities, etc., and ▪ Departmental organizational chart with names and positions. <ul style="list-style-type: none"> – It is also a good idea to get position descriptions to help aide in determining what employees you may need to interview. 	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.6662-6(d)(2)(iii)(B)(2) – documentation requirement ▪ 2014 (IBC) CPE CENTRA Global Tax Organization Chart Analysis Part III ▪ 2014 (IBC) CPE CENTRA Global Tax Organization Chart Analysis Part IV ▪ 2014 (IBC) CPE CENTRA Global Tax Organization Chart Analysis Part V 	

Step 2: Organizational Structure (cont'd)

Review of Transfer Pricing Documentation by Outbound Taxpayers

Step 2

The second required document is a description of taxpayer's organizational structure which covers all related entities (domestic and foreign) engaged in transactions that are relevant (directly or indirectly) to the transfer pricing issues.

Considerations	Resources	6103 Protected Resources
 CAUTION: Map the tax return to the organizational chart. Do you have Forms>Returns for all the entities listed? Are there Forms>Returns missing or are there entities missing on the organizational chart?	<ul style="list-style-type: none">▪ Forms 5471, 8858, 8865▪ IIR system	

Step 3: Documentation Required by Regulations

Review of Transfer Pricing Documentation by Outbound Taxpayers

Step 3

In some circumstances, the Regulations under IRC 482 will explicitly require certain documentation. When documentation is required by the Regulations, it should be included in the transfer pricing documentation.

Considerations	Resources	6103 Protected Resources
<p>Areas/examples where documentation is specifically required by the regulations include when a market share strategy is used, when a taxpayer claims an exception to the Service’s authority to make a commensurate-with-income (CWI) adjustment, and when a taxpayer utilizes a cost sharing arrangement (CSA).</p> <p><u>Market Share Strategy</u></p> <p>If USP adopts strategies to enter new markets or to increase a product’s share in the existing market, it must provide documentation. The documentation must show that an uncontrolled taxpayer engaged in a comparable strategy under comparable circumstances for a comparable period of time and include substantiation of the following:</p>	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.6662-6(d)(2)(iii)(B)(3) – documentation requirement ▪ Treas. Reg. 1.482-1(d)(4)(i) – market share strategy ▪ Treas. Reg. 1.482-4(f)(2)(ii) – CWI Exceptions ▪ Treas. Reg. 1.482-7(b)(2) – cost sharing ▪ Treas. Reg. 1.482-7(k) – cost sharing ▪ Treas. Reg. 1.482-1(d)(4)(i)(A), (B) and (C) – market share strategy 	

Step 3: Documentation Required by Regulations (cont'd)

Review of Transfer Pricing Documentation by Outbound Taxpayers

Step 3

In some circumstances, the Regulations under IRC 482 will explicitly require certain documentation. When documentation is required by the Regulations, it should be included in the transfer pricing documentation.

Considerations	Resources	6103 Protected Resources
<ul style="list-style-type: none">▪ The costs incurred to implement the market share strategy are borne by the controlled taxpayer that would obtain the future profits that result from the strategy, and there is reasonable likelihood that the strategy will result in future profits that reflect an appropriate return in relation to the costs incurred to implement it;▪ Period of time is reasonable taking into account the industry and product in question; and▪ The market share strategy, related costs and expected returns, and any agreement to share costs was established before the strategy was implemented.		

Step 3: Documentation Required by Regulations (cont'd)

Review of Transfer Pricing Documentation by Outbound Taxpayers

Step 3

In some circumstances, the Regulations under IRC 482 will explicitly require certain documentation. When documentation is required by the Regulations, it should be included in the transfer pricing documentation.


Considerations	Resources	6103 Protected Resources
<p><u>USP Claims Exception to Commensurate-with-Income</u></p> <p>If USP claims an exception to the Service’s authority to make a commensurate-with-income adjustment, additional information should be included with the transfer pricing documentation. There are four separate exceptions described in Treas. Reg. 1.482-4(f)(2)(ii) for each of the following types of scenarios: CUT involving the same intangible; CUT involving comparable intangible; methods other than CUT; and extraordinary events.</p> <p>If USP ‘s arm’s length result is derived from the application of the CUT involving a comparable intangible or a method other than CUT, USP must provide the written contract with the defined terms and time period. Additionally, there may be no substantial changes in functions performed, and the actual profits or cost savings should fall within 80% to 120% of forecasts.</p>	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.482-4(f)(2)(ii) – exceptions to periodic adjustments ▪ Treas. Reg. 1.482-4(f)(2)(ii)(A) – CUT-same intangible ▪ Treas. Reg. 1.482-4(f)(2)(ii)(B) – CUT-comparable intangible ▪ Treas. Reg. 1.482-4(f)(2)(ii)(C) – methods other than CUT 	

Step 3: Documentation Required by Regulations (cont'd)

Review of Transfer Pricing Documentation by Outbound Taxpayers

Step 3

In some circumstances, the Regulations under IRC 482 will explicitly require certain documentation. When documentation is required by the Regulations, it should be included in the transfer pricing documentation.

Considerations	Resources	6103 Protected Resources
<p>If USP is claiming an extraordinary event, a description of the circumstances should be provided. Lastly, there will be no CWI adjustments made after 5 years beginning with the first year in which substantial periodic consideration was required to be paid under the license agreement.</p>		
<p> CONSULTATION: Should consult with Counsel and the Income Shifting IPN if you have CWI.</p>		

Step 3: Documentation Required by Regulations (cont'd)

Review of Transfer Pricing Documentation by Outbound Taxpayers

Step 3

In some circumstances, the Regulations under IRC 482 will explicitly require certain documentation. When documentation is required by the Regulations, it should be included in the transfer pricing documentation.

Considerations	Resources	6103 Protected Resources
<p><u>Cost Sharing Arrangement</u></p> <p>If USP is a party to a CSA, additional documentation is required. A controlled participant must substantially comply with certain administrative requirements (contractual, documentation, accounting and reporting) as follows:</p> <p>Contractual Provisions -- The CSA must be recorded in writing in a contract that is contemporaneous with the formation (and any revision) of the CSA and include certain contractual terms and satisfy certain requirements.</p> <p>Maintenance and Updating of Documentation -- The controlled participants must timely update, maintain, and produce certain sufficient documentation to establish that the participants have met the CSA contractual provisions as well as additional CSA documentation requirements.</p>	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.482-7(b)(2) and (k) – cost sharing ▪ Practice Unit, “Cost Sharing Arrangements vs. Licensing Agreements,” DCN: ISO/9411.01_03(2013) ▪ Treas. Reg. 1.482-7(k)(1) – CSA contractual requirements ▪ Treas. Reg. 1.482-7(k)(2) and 1.6662-6(d)(2)(iii)(D) – documentation requirements 	

Step 3: Documentation Required by Regulations (cont'd)

Review of Transfer Pricing Documentation by Outbound Taxpayers

Step 3

In some circumstances, the Regulations under IRC 482 will explicitly require certain documentation. When documentation is required by the Regulations, it should be included in the transfer pricing documentation.



Considerations	Resources	6103 Protected Resources
<p><u>Cost Sharing Arrangement (cont'd)</u></p> <p>CSA Accounting Requirements -- The controlled participants must maintain sufficient accounting books and records (and underlying data and information) to establish, among other things, that a consistent method of accounting to measure costs and benefits was chosen.</p> <p>CSA Reporting Requirements -- Each controlled participant must timely file a "Statement of Controlled Participant to § 1.482-7 Cost Sharing Arrangement" (CSA Statement) which includes certain information as described in the regulations. A special filing rule applies if a controlled participant is not required to file a U.S. tax return.</p>	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.482-7(b)(2) and (k) - cost sharing ▪ Treas. Reg. 1.482-7(k)(3) – CSA accounting requirements ▪ Treas. Reg. 1.482-7(k)(4) – CSA reporting requirements ▪ Practice Unit, "Cost Sharing Arrangements vs. Licensing Agreements," DCN: ISO/9411.01_03(2013) 	

Step 3: Documentation Required by Regulations (cont'd)

Review of Transfer Pricing Documentation by Outbound Taxpayers

Step 3

In some circumstances, the Regulations under IRC 482 will explicitly require certain documentation. When documentation is required by the Regulations, it should be included in the transfer pricing documentation.

Considerations	Resources	6103 Protected Resources
 CONSULTATION: Consult the with an Economist and the Income Shifting IPN if you need assistance with the CSA.		
 DECISION POINT: If specific documents are required, are they included in the TPD? Does the documentation included comply with the applicable law? If no, why not?		

Step 4: Method Selected

Review of Transfer Pricing Documentation by Outbound Taxpayers

Step 4

A description of the method selected should be included in the TPD.

Considerations	Resources	6103 Protected Resources
<p>USP's TPD must contain a description of the method selected and an explanation of why the method was selected. This should include:</p> <ul style="list-style-type: none"> ▪ Review the description of the pricing method selected for each material intercompany transaction. ▪ Identification of the specific Section 482 regulations, if any, governing the method selected. <ul style="list-style-type: none"> – Transfer of Tangible Property – Transfer of Intangible Property – Cost Sharing – Controlled Service Transactions 	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.6662-6(d)(2)(iii)(B)(4) – documentation requirement ▪ Treas. Reg. 1.482-3(a)(1)-(6) – tangible property methods ▪ Treas. Reg. 1.482-4(a)(1)-(4) – intangible property methods ▪ Treas. Reg. 1.482-5 – comparable profits method ▪ Treas. Reg. 1.482-6 – profit split methods ▪ Treas. Reg. 1.482-7(g)(1)(i)-(vi) – CSA methods—supplemental guidance ▪ Treas. Reg. 1.482-9(a)(1)-(7) – controlled services methods 	

Step 4: Method Selected (cont'd)

Review of Transfer Pricing Documentation by Outbound Taxpayers

Step 4

A description of the method selected should be included in the TPD.

Considerations	Resources	6103 Protected Resources
<p>The TPD should include an analysis establishing that the chosen pricing method satisfies the best method rule. In determining which of two or more available methods (or applications of a single method) provides the most reliable measure of an arm's length result, the two primary factors to take into account are the degree of comparability between the controlled transactions (or taxpayer) and any uncontrolled comparables, and the quality of the data and the assumptions used in the analysis.</p> <p>The reliability of a method based on results of transactions between unrelated parties depends on the following:</p>	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.482-1(c) – best method ▪ Treas. Reg. 1.482-1(c)(2)(i) – comparability ▪ Treas. Reg. 1.482-1(d)(2) – standard of comparability ▪ Treas. Reg. Section 1.482-1(d)(3)(i) - (iv) – comparability factors ▪ Treas. Reg. Section 1.482-5(c)(2)(i)-(iii) – CPM comparability ▪ Treas. Reg. Section 1.482-5(c)(2)(iv) – CPM adjustments ▪ Practice Unit, “Comparability Analysis for Tangible Goods Transactions – Outbound,” DCN: ISO/PUO/V_1_01 (2014) 	

Step 4: Method Selected (cont'd)

Review of Transfer Pricing Documentation by Outbound Taxpayers

Step 4

A description of the method selected should be included in the TPD.


Considerations	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ Degree of comparability between the controlled transaction and any uncontrolled comparables. Consideration should be given to: <ul style="list-style-type: none"> – Factors for determining comparability between transactions or taxpayers (Functions, Risk, Economic Conditions, Property or Services) and – Adjustments for Differences . If there are material differences between the controlled and uncontrolled transactions adjustments must be made if the effect of such differences on prices or profits can be ascertained with sufficient accuracy to improve the reliability of the result under the method applied. 		

Step 4: Method Selected (cont'd)

Review of Transfer Pricing Documentation by Outbound Taxpayers

Step 4

A description of the method selected should be included in the TPD.

Considerations	Resources	6103 Protected Resources
 <p>CAUTION: If adjustments are made to increase the degree of comparability, the number, magnitude, and reliability of those adjustments will affect the reliability of the results of the analysis.</p>	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.482-1(c)(2)(i) – comparability 	
<ul style="list-style-type: none"> ▪ Whether the method selected provides the most reliable measure of an arm's length result depends upon the following: <ul style="list-style-type: none"> – Completeness and accuracy of data; – Reliability of assumptions; and – Sensitivity of results to possible deficiencies in data and assumptions. ▪ Practice Unit, “Comparability Analysis for Tangible Goods Transactions – Outbound,” DCN: ISO/PUO/V_1_01 (2014) 	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.482-1(c)(2)(ii) – data and assumptions ▪ Treas. Reg. 1.482-1(d)(2) – standard of comparability ▪ Treas. Reg. 1.482-1(d)(3)(i)-(v) – comparability factors ▪ Treas. Reg. 1.482-5(c)(2)(i)-(iii) – CPM comparability ▪ Treas. Reg. 1.482-5(c)(2)(iv) – CPM adjustments 	

Step 4: Method Selected (cont'd)

Review of Transfer Pricing Documentation by Outbound Taxpayers

Step 4

A description of the method selected should be included in the TPD.


Considerations	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ Confirmation of results by another method – If two or more methods produce inconsistent results, the best method rule will be applied to select the method that provides the most reliable measure of an arm's length result. ▪ Use of unspecified methods require consideration of realistic alternatives to the transaction. It is assumed that uncontrolled taxpayers dealing at arm's length would have evaluated the terms of the transaction and only entered into such transaction if no alternative is preferable. 	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.482-1(c)(2)(ii) – data and assumptions ▪ Treas. Reg. 1.482-1(c)(2)(ii)(A) – completeness and accuracy of data ▪ Treas. Reg. 1.482-1(c)(2)(ii)(B) – reliability of assumptions ▪ Treas. Reg. 1.482-1(c)(2)(ii)(C) – sensitivity of results ▪ Treas. Reg. 1.482-5(c)(3)(i)-(iii) – CPM ▪ Treas. Reg. 1.482-1(c)(2)(iii) – confirmation 	

Step 4: Method Selected (cont'd)

Review of Transfer Pricing Documentation by Outbound Taxpayers

Step 4

A description of the method selected should be included in the TPD.

Considerations	Resources	6103 Protected Resources
 DECISION POINT: Has the best method been selected? If no, why not?	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.482-3(e) – tangible property ▪ Treas. Reg. 1.482-4(d) – intangible property ▪ Treas. Reg. 1.482-7(g)(8) and 1.482-7(g)(2)(iii) – CSAs ▪ Treas. Reg. 1.482-9(h) – controlled services 	

Step 5: Alternative Methods

Review of Transfer Pricing Documentation by Outbound Taxpayers

Step 5

A description of the method selected should be included in the TPD.

Considerations	Resources	6103 Protected Resources
<p>The TPD must contain a description of the alternative methods that were considered and an explanation of why they were not selected. Methods to consider for the different types of transactions are:</p> <ul style="list-style-type: none"> ▪ Transfer of Tangible Property (CUP, Resale Price, Cost Plus, CPM, Profit Split, Unspecified) ▪ Transfer of Intangible Property (CUT, CPM, Profit Split, Unspecified) ▪ Cost Sharing (CUT, Income Method, Acquisition Price Method, Market Capitalization Method, Residual Profit Split, Unspecified) ▪ Controlled Service Transactions (Services Cost, CUSP, Gross Services Margin, Cost of Services Plus, CPM, Profit Split, Unspecified) 	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.6662-6(d)(2)(iii)(B)(5) – documentation requirement ▪ Treas. Reg. 1.482-3(a)(1)-(6) – tangible property ▪ Treas. Reg. 1.482-4(a)(1)-(4) – intangible property ▪ Treas. Reg. 1.482-5 – CPM ▪ Treas. Reg. 1.482-6 – profit split methods ▪ Treas. Reg. 1.482-7 – CSA ▪ Treas. Reg. 1.482-9(a)(1)-(7) – services 	

Step 5: Alternative Methods (cont'd)

Review of Transfer Pricing Documentation by Outbound Taxpayers

Step 5

A description of the method selected should be included in the TPD.

Considerations	Resources	6103 Protected Resources
<p>Does the TPD analysis establish why the rejected pricing methods do not satisfy the best method rule? The following factors should have been considered as a basis for rejection of a method:</p> <ul style="list-style-type: none"> ▪ Degree of comparability between the controlled transaction and any uncontrolled comparables. Specific consideration given to: <ul style="list-style-type: none"> – Factors for determining comparability and – Adjustments for differences ▪ Quality of the Data and Assumptions: <ul style="list-style-type: none"> – Completeness and accuracy of data; – Reliability of assumptions; and 	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.482-1(c)(2) – best method ▪ Treas. Reg. 1.482-1(c)(2)(i) – comparability ▪ Treas. Reg. 1.482-1(d)(3) – factors for determining comparability ▪ Treas. Reg. 1.482-1(d)(2) – standard of comparability ▪ Practice Unit, “Comparability Analysis for Tangible Goods Transactions- Outbound,” DCN: ISO/PUO/V_1_01 (2014) ▪ Treas. Reg. Section 1.482-1(c)(2)(ii) – data and assumptions ▪ Treas. Reg. Section 1.482-1(c)(2)(ii)(A) – completeness and accuracy of data 	

Step 5: Alternative Methods (cont'd)

Review of Transfer Pricing Documentation by Outbound Taxpayers

Step 5

A description of the method selected should be included in the TPD.

Considerations	Resources	6103 Protected Resources
<ul style="list-style-type: none"> - Sensitivity of results to possible deficiencies in data and assumptions. 	<ul style="list-style-type: none"> ▪ Treas. Reg. Section 1.482-1(c)(2)(ii)(B) – reliability of assumptions ▪ Treas. Reg. Section 1.482-1(c)(2)(ii)(C) – sensitivity of results 	

Step 6: Controlled Transactions

Review of Transfer Pricing Documentation by Outbound Taxpayers

Step 6

A detailed description of each controlled transaction should be in the TPD.


Considerations	Resources	6103 Protected Resources
<p>The TPD should include a detailed description of the controlled transactions (including the terms of sale) and any internal data used to analyze those transactions. TPD may include one study for all USP transactions with all controlled foreign subs, or a separate study for each controlled foreign sub. The TPD should also describe any other related party transactions USP has with related entities other than CFC's, such as, foreign disregarded entities, partnerships etc. For each controlled transaction, the TPD should describe functions performed, resources employed, and risks assumed by each entity in the controlled transaction.</p>	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.6662-6(d)(2)(iii)(B)(6) – documentation requirement ▪ Form 10K, Company website, etc. ▪ Treas. Reg. 1.482-1(f)(2)(i) – aggregation of transactions 	

Step 6: Controlled Transactions (cont'd)

Review of Transfer Pricing Documentation by Outbound Taxpayers

Step 6

A detailed description of each controlled transaction should be in the TPD.

Considerations	Resources	6103 Protected Resources
<p>Items that should be included in TPD are:</p> <ul style="list-style-type: none"> ▪ Sources of information, clearly cited so information can be replicated. ▪ Description of each controlled transaction, including background information on each related party. If there is TPD for each controlled transaction, would aggregation of similar transactions potentially be more reliable? 		
 <p>CONSULTATION: Consult with an economist, counsel, the TPP or the Income Shifting IPN If you have questions regarding aggregation of transactions.</p>		

Step 6: Controlled Transactions (cont'd)

Review of Transfer Pricing Documentation by Outbound Taxpayers

Step 6

A detailed description of each controlled transaction should be in the TPD.



Considerations	Resources	6103 Protected Resources
<p>Items that should be included in TPD are: (cont'd)</p> <ul style="list-style-type: none"> ▪ Description of the products, tangibles, and intangibles in each transaction. ▪ Description of intangibles, and identification of ownership of intangibles. ▪ A functional analysis, and description of how the functional analysis was performed. If interviews were performed, are the interviewees identified? ▪ A comparison of the transfer pricing results with results of application of Best Method. ▪ Relevant financial data for each controlled transaction. <p>The TPD should clearly describe which entity performs each function, and which functions are considered routine or non-routine.</p>	<ul style="list-style-type: none"> ▪ Treas. Reg. Section 1.6662-6(d)(2)(iii)(B)(6) – documentation requirement ▪ Form 10K, Company website, etc. ▪ Functional Analysis Questionnaire 	

Step 6: Controlled Transactions (cont'd)

Review of Transfer Pricing Documentation by Outbound Taxpayers

Step 6

A detailed description of each controlled transaction should be in the TPD.

Considerations	Resources	6103 Protected Resources
 CONSULTATION: Consult with an economist regarding the functional analysis and the best method.		
 DECISION POINT: Did the documentation supplied by USP provide a detailed description of each controlled transaction?		

Step 7: Comparables

Review of Transfer Pricing Documentation by Outbound Taxpayers

Step 7

A description of the comparables should be included in the TPD.



Considerations	Resources	6103 Protected Resources
<p>The TPD should include a description of the comparables that were used, how comparability was evaluated, and what (if any) adjustments were made. Reliability of a method depends on the degree of comparability between controlled and uncontrolled transactions. As an example, if CPM was chosen as the best method, CPM evaluates whether a transaction is arm's length based on profit level indicators (such as Operating Margin) from uncontrolled transactions for companies (comparables) with similar business activities under similar circumstances.</p> <p>From the controlled transaction, a Tested Party is chosen. The Tested Party operates in a similar business under similar circumstances as comparables and in most cases:</p> <ul style="list-style-type: none"> ▪ Is the least complex entity; ▪ Performs fewest functions, and ▪ Does not own intangible property or unique assets. 	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.6662-6(d)(2)(iii)(B)(7) – documentation requirement ▪ Treas. Reg. 1.482-1(c)(2)(i) – comparability ▪ Treas. Reg. 1.482-5(a) – CPM ▪ Treas. Reg. 1.482-5(b)(2)-(4) - tested party, arm's length range and profit level indicators ▪ Treas. Reg. 1.482-5(b)(2)(ii) – adjustments for tested party ▪ Practice Unit, “Comparability Analysis for Tangible Goods Transactions – Outbound,” DCN: ISO/PUO/V_1_01 (2014) 	

Step 7: Comparables (cont'd)

Review of Transfer Pricing Documentation by Outbound Taxpayers

Step 7

A description of the comparables should be included in the TPD.


Considerations	Resources	6103 Protected Resources
<p>Tested party operating profit must be adjusted to reflect all other allocations under IRC 482 to provide most reliable profit level indicator.</p> <p> DECISION POINT: Was the correct Tested Party chosen? If USP is determined to not be the correct tested party, a similar transfer pricing analysis must be undertaken for the correct tested party selected from within the controlled group of entities.</p>	<ul style="list-style-type: none"> Practice Unit, "CPM Simple Distributor Outbound," DCN: ISI/9411.05_02 (2014) 	
<p> CONSULTATION: An economist can help determine the correct Tested Party.</p>		

Step 7: Comparables (cont'd)

Review of Transfer Pricing Documentation by Outbound Taxpayers

Step 7

A description of the comparables should be included in the TPD.


Considerations	Resources	6103 Protected Resources
<p>TPD should then describe the comparables, including:</p> <ul style="list-style-type: none"> ▪ Source data bases used and years searched should be identified; ▪ Industry code(s) (SIC or NAICS) used for search; ▪ Comparables found in the search; ▪ Criteria for selecting or excluding comparables, and ▪ Any adjustments made to comparables. 	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.482-1(d) – comparability ▪ Treas. Reg. 1.482-5(c) – comparability and reliability considerations ▪ Practice Unit, “Comparability Analysis for Tangible Goods Transactions – Outbound,” DCN: ISO/PUO/V_1_01 (2014) ▪ Practice Unit, “CPM Simple Distributor Outbound,” DCN: ISI/9411.05_02 (2014) 	
<p> DECISION POINT: Did USP correctly select the comparables? Do the comparables make sense given your understanding of USP’s business? If there are any adjustments, are they reasonable?</p>		

Step 7: Comparables (cont'd)

Review of Transfer Pricing Documentation by Outbound Taxpayers

Step 7

A description of the comparables should be included in the TPD.

Considerations	Resources	6103 Protected Resources
 CONSULTATION: Consult an economist for assistance regarding the comparables and adjustments to comparables		

Step 8: Economic Analysis

Review of Transfer Pricing Documentation by Outbound Taxpayers

Step 8

An explanation of economic analysis and projections relied upon developing the method should be included in the TPD.


Considerations	Resources	6103 Protected Resources
<p>Description of any economic analyses undertaken to explain the effect, if any, of potential factual differences (e.g., functions, risks, volume, geographic market, level of market, etc.) upon the transfer price:</p> <ul style="list-style-type: none"> ▪ To what extent are differences in price/profit influenced by these factors? <p>Description of any economic analyses undertaken to determine the adjustments required to take into account material differences between the transactions:</p> <ul style="list-style-type: none"> ▪ Terms of Sale and Purchase Adjustments (aka Working Capital and Asset Intensity Adjustments) ▪ To the extent that functional, risk, volume, geographic market or level of market differences exist, how are prices adjusted for these differences? 	<ul style="list-style-type: none"> ▪ Treas. Reg. Section 1.6662-6(d)(2)(iii)(B)(8) – documentation requirement. ▪ Functional Analysis Questionnaire ▪ Intercompany and Third Party Contracts ▪ Practice Unit, “Comparability Analysis for Tangible Goods Transactions – Outbound,” DCN: ISO/PUO/V_1_01 (2014) ▪ Practice Unit, “CPM Simple Distributor Outbound,” DCN: ISI/9411.05_02 (2014) 	

Step 8: Economic Analysis (cont'd)

Review of Transfer Pricing Documentation by Outbound Taxpayers

Step 8

An explanation of economic analysis and projections relied upon developing the method should be included in the TPD.


Considerations	Resources	6103 Protected Resources
 CONSULTATION: Consult with an economist, TPP or Income Shifting IPN if you need assistance.		

Step 8: Economic Analysis (cont'd)

Review of Transfer Pricing Documentation by Outbound Taxpayers

Step 8

An explanation of economic analysis and projections relied upon developing the method should be included in the TPD.

Considerations	Resources	6103 Protected Resources
<p>Description of any economic analyses undertaken to develop internal or comparable financial data:</p> <ul style="list-style-type: none"> ▪ Differences in accounting treatments ▪ Use of product/geographic segment data for internal or external data ▪ If considering product/geographic segment data are the methods for allocating revenues and costs accurate? <ul style="list-style-type: none"> – Does the segment data reconcile to the overall financial data and other segments? – Do the other segments look odd or if you subtract the segments from the overall financials does it result in a residual or an excess? 	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.6662-6(d)(2)(iii)(B)(8) – documentation requirement ▪ Audited Financial Data/Statements ▪ Practice Unit, “CPM Simple Distributor Outbound,” DCN: ISI/9411.05_02 (2014) 	
<p> CAUTION: If segment data is used, make sure the controlled transaction is included in the segmented financials.</p>		

Step 8: Economic Analysis (cont'd)

Review of Transfer Pricing Documentation by Outbound Taxpayers

Step 8

An explanation of economic analysis and projections relied upon developing the method should be included in the TPD.

Considerations	Resources	6103 Protected Resources
<p>Description of any economic analyses undertaken to value intangibles, functions or risks in order to apply a pricing method.</p> <ul style="list-style-type: none"> ▪ Are there functions being performed that are not priced but should be? ▪ Are there services being performed that are not included as part of the covered transactions being evaluated? ▪ Do the assumptions reflect economic reality? 	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.482-4 – intangibles ▪ Treas. Reg. 1.482-1(d) – comparability ▪ Treas. Reg. 1.482-9 – controlled service transactions ▪ Practice Unit, “Comparability Analysis for Tangible Goods Transactions – Outbound,” DCN: ISO/PUO/V_1_01 (2014) 	

Step 8: Economic Analysis (cont'd)

Review of Transfer Pricing Documentation by Outbound Taxpayers

Step 8

An explanation of economic analysis and projections relied upon developing the method should be included in the TPD.

Considerations	Resources	6103 Protected Resources
<p>Pro forma profit and loss statements and/or other projections of income prepared by the taxpayer in applying a pricing method:</p> <ul style="list-style-type: none"> ▪ Have the profit and loss statements been compared to the underlying financials for consistency in application and overall accuracy? ▪ Are the statements and projections consistent with what a specific buyer/seller would construct so as to be in accordance with the Arm's Length Standard? <ul style="list-style-type: none"> – Are the assumptions consistent with the principles of IRC 367(d) and IRC 482? 	<ul style="list-style-type: none"> ▪ Audited Financial Data/Statements ▪ Practice Unit, "Arm's Length Standard," DCN: ISI/9422.09_06 (2013) ▪ IRC 482 ▪ IRC 367(d) 	

Step 8: Economic Analysis (cont'd)

Review of Transfer Pricing Documentation by Outbound Taxpayers

Step 8

An explanation of economic analysis and projections relied upon developing the method should be included in the TPD.

Considerations	Resources	6103 Protected Resources
<p>Economic analysis supporting a profit split method, if used:</p> <ul style="list-style-type: none"> ▪ Is the measure of routine profit appropriate? ▪ Is the measure by which non-routine profits are split (i.e., R&D expenses, marketing expenses, etc.) appropriate given the nature of the activities that generate that profit? 	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.482-6 – profit split methods ▪ Treas. Reg. 1.482-5 – CPM 	
<p>Economic analysis supporting multiple year data, if used:</p> <ul style="list-style-type: none"> ▪ Is the use of multiple year data appropriate given the facts and circumstances? ▪ Is the period used appropriate? ▪ Is the period used consistently applied (same period used for both controlled and uncontrolled transactions)? 	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.482-1(f)(2)(iii) – multiple year data 	

Step 8: Economic Analysis (cont'd)

Review of Transfer Pricing Documentation by Outbound Taxpayers

Step 8

An explanation of economic analysis and projections relied upon developing the method should be included in the TPD.

Considerations	Resources	6103 Protected Resources
<p>Is the explanation of the economic analysis and projections relied upon in developing the method substantially complete and accurate?</p> <ul style="list-style-type: none"> ▪ Can the analysis and projections be corroborated? ▪ Have the reasoning and underlying assumptions of the analysis been adequately explained and corroborated? <p>If no, explain the reason.</p>	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.482-1(c)(2)(ii) – data and assumptions ▪ S&P Industry Surveys ▪ Westlaw - Investext (Analysis Reports) ▪ Capital IQ ▪ Industry Associations and Reports 	

Step 9: Summary of Data After Year End

Review of Transfer Pricing Documentation by Outbound Taxpayers

Step 9

Summary of data after year end is the ninth principal document that should be included in the TPD.

Considerations	Resources	6103 Protected Resources
<p>There may be instances where the Taxpayer has data after the year that may support their transfer pricing.</p> <p>A description or summary of any relevant data the Taxpayer receives after the year end that helps determine that the method was applied in a reasonable manner should be included in the TPD.</p>	<ul style="list-style-type: none">▪ Treas. Reg. 1.6662-6(d)(2)(iii)(B)(9) – documentation requirement	

Step 10: Background Documents

Review of Transfer Pricing Documentation by Outbound Taxpayers

Step 10

Although not required as part of the principal documentation, background documents must be maintained to support the assumptions, conclusions and positions contained in the principal documentation.

Considerations	Resources	6103 Protected Resources
<p>The assumptions, conclusions and positions contained in the principal documents ordinarily will be based on, and supported by, additional background documents. Documents that support the principal documentation may include the documents listed in Treas. Reg. 1.6038A-3(c). The following documents must be maintained in order for a taxpayer to satisfy the record maintenance safe harbor under Treas. Reg. 1.6038A-3(c) to the extent such documents may be relevant to determine the correct U.S. tax treatment of transactions between the reporting corporation and any foreign related party:</p>	<ul style="list-style-type: none">▪ Treas. Reg. 1.6662-6(d)(2)(iii)(C) – documentation requirement▪ Treas. Reg. 1.6038A-3(c) – specific records to be maintained for record maintenance safe harbor▪ Information Gathering IPN consult	

Step 10: Background Documents (cont'd)

Review of Transfer Pricing Documentation by Outbound Taxpayers

Step 10

Although not required as part of the principal documentation, background documents must be maintained to support the assumptions, conclusions and positions contained in the principal documentation.

Considerations	Resources	6103 Protected Resources
<ul style="list-style-type: none">▪ Original entry books and transaction records:<ul style="list-style-type: none">– Chart of accounts– General ledgers– Sales journals– Purchase order books– Cash receipt books– Cash disbursement books– Cancelled checks and bank statements– Work papers		

Step 10: Background Documents (cont'd)

Review of Transfer Pricing Documentation by Outbound Taxpayers

Step 10

Although not required as part of the principal documentation, background documents must be maintained to support the assumptions, conclusions and positions contained in the principal documentation.

Considerations	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ Pricing documents: <ul style="list-style-type: none"> – Same or similar products or services entered into by the reporting corporation or a foreign related party with related or unrelated parties – Shipping and export documents – Commission agreements – Production or assembly facilities – Third party purchase invoices – Intercompany purchase invoices – Operating manuals, handbooks, user guides etc. – Particular locations of performance for the functions – Intercompany correspondence discussing any instructions or assistance relating to the performance of the functions provided to the reporting corporation by the related foreign person or vice versa 	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.6662-6(d)(2)(iii)(C) – documentation requirement ▪ Treas. Reg. 1.6038A-3(c) – specific records to be maintained for record maintenance safe harbor 	

Step 10: Background Documents (cont'd)

Review of Transfer Pricing Documentation by Outbound Taxpayers

Step 10

Although not required as part of the principal documentation, background documents must be maintained to support the assumptions, conclusions and positions contained in the principal documentation.

Considerations	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ Pricing documents (cont'd): <ul style="list-style-type: none"> – Intercompany correspondence discussing any instructions or assistance relating to the performance of the functions provided to the reporting corporation by the related foreign person or vice versa – Intercompany and intracompany correspondence concerning the price or the negotiation of the price used in the transactions – Value and ownership of intangibles used or developed by the reporting corporation or foreign related party – Cost of goods sold and other expenses – Direct and indirect selling, and general and administrative expenses (e.g. advertising, sales promotions, or warranties, etc.) – Discounts and rebates schedules and agreements 	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.6662-6(d)(2)(iii)(C) – documentation requirement ▪ Treas. Reg. 1.6038A-3(c) – specific records to be maintained for record maintenance safe harbor 	

Step 10: Background Documents (cont'd)

Review of Transfer Pricing Documentation by Outbound Taxpayers

Step 10

Although not required as part of the principal documentation, background documents must be maintained to support the assumptions, conclusions and positions contained in the principal documentation.

Considerations	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ Foreign country, U.S. and third party filings <ul style="list-style-type: none"> – Foreign and U.S. government agency – Independent commission – Financial Institution ▪ Ownership and capital structure <ul style="list-style-type: none"> – Charts showing the relationship between the reporting corporation and the foreign related party including location, ownership, and status (joint venture, partnership, branch, or division) of all entities and offices directly or indirectly involved in the transactions between the reporting corporation and any foreign related party – Worldwide organization chart 	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.6662-6(d)(2)(iii)(C) – documentation requirement ▪ Treas. Reg. 1.6038A-3(c) – specific records to be maintained for record maintenance safe harbor 	

Step 10: Background Documents (cont'd)

Review of Transfer Pricing Documentation by Outbound Taxpayers

Step 10

Although not required as part of the principal documentation, background documents must be maintained to support the assumptions, conclusions and positions contained in the principal documentation.

Considerations	Resources	6103 Protected Resources
<ul style="list-style-type: none">– Management structure of all foreign affiliates– Loan documents– Agreements and other documents relating to any transfer of the stock of the reporting corporation or an offshore entity that results in the change of the status of a foreign person as a foreign related party		

Step 10: Background Documents (cont'd)

Review of Transfer Pricing Documentation by Outbound Taxpayers

Step 10

Although not required as part of the principal documentation, background documents must be maintained to support the assumptions, conclusions and positions contained in the principal documentation.


Considerations	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ Records of loans, services, and other non-sales transactions <ul style="list-style-type: none"> – Loan agreements – Deposits – Guarantees – Hedging arrangements or other risk shifting or currency risk shifting arrangements – Security agreements – Service agreements – Research and development expense allocations – Description of the allocation of charges for services transactions, time or travel records, or allocation studies – Import and export transactions – Registration of patents and copyrights – Valuation Reports 	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.6662-6(d)(2)(iii)(C) – documentation requirement ▪ Treas. Reg. 1.6038A-3(c) – specific records to be maintained for record maintenance safe harbor 	

Step 10: Background Documents (cont'd)

Review of Transfer Pricing Documentation by Outbound Taxpayers

Step 10

Although not required as part of the principal documentation, background documents must be maintained to support the assumptions, conclusions and positions contained in the principal documentation.

Considerations	Resources	6103 Protected Resources
<ul style="list-style-type: none"> Documents regarding lawsuits in the U.S. and foreign countries that relate to the transactions (e.g., product liability suit for U.S. products) 		
 <p>CAUTION: You can ask for the background documents by issuing IDRs. However, make sure you follow the IDR procedures and only request the documents you need and will be able to review.</p>	<ul style="list-style-type: none"> Treas. Reg. 1.6662-6(d)(2)(iii)(C) – documentation requirement Treas. Reg. 1.6038A-3(c) – specific records to be maintained for record maintenance safe harbor 	

Step 11: General Index

Review of Transfer Pricing Documentation by Outbound Taxpayers
Step 11
A general index is also required to be included in USP's TPD.

Considerations	Resources	6103 Protected Resources
<p>A complete and accurate general index of the principal and background documents should be included in USP's TPD. Often a table of contents will satisfy this requirement.</p> <p>Lastly, a description of the record keeping system used for cataloging and accessing those documents should also be included.</p>	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.6662-6(d)(2)(iii)(B)(10) – documentation requirement 	

Definitions

Review of Transfer Pricing Documentation by Outbound Taxpayers

Description

- Arm's Length Standard - A controlled transactions meets the arm's length standard if the results of the transaction are consistent with the results that would have been realized if uncontrolled/unrelated parties had engaged in the same transaction under the same circumstances (arm's length result).
- Controlled Parties - 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. Controlled entities are often referred to as "related" parties.

Training and Additional Resources

Review of Transfer Pricing Documentation by Outbound Taxpayers		
Type of Resource	Description(s) and/or Instructions for Accessing	References
CENTRA sessions	<ul style="list-style-type: none"> ▪ 2012 CENTRA – Performing Functional Analysis ▪ 2012 (TPO) CENTRA – Overview and Introduction to 482 ▪ 2012 (TPO) CPE CENTRA – Comparable Profits Method ▪ 2012 (TPO) CPE CENTRA – High Value Services ▪ 2012 (TPO) CPE CENTRTRTA – PLIs in a CPM World ▪ 2014 (IBC) CPE CENTRA – Global Tax Org Chart Analysis 	
Issue Toolkits	<ul style="list-style-type: none"> ▪ Audit Tool – Transfer Pricing Audit Road Map ▪ IRM Exhibit 4.61.3-4 (Transfer Pricing Functional Analysis Questionnaire) ▪ IRM 4.61.3 – Development of IRC 482 Issues ▪ IRM 4.61.3.5.1 – Functional Analysis 	
Treatises	<ul style="list-style-type: none"> ▪ BNA Tax Management Int'l Portfolio 890-WS1 – Sample Questionnaire for intercompany transactions. 	

Glossary of Terms and Acronyms

Acronym	Definition
CFC	Controlled Foreign Corporation
COGS	Cost of Goods Sold
CPM	Comparable Profits Method
CSA	Cost Sharing Arrangement
CUP	Comparable Uncontrolled Price
CUSP	Comparable Uncontrolled Services Price
CUT	Comparable Uncontrolled Transaction
IDR	Information Document Request
IIR	International Information Returns system
IP	Intangible Property
IPN	International Practice Network
IPS	International Practice Service
IRC	Internal Revenue Code
IRM	Internal Revenue Manual
ISI	Income Shifting Inbound

Glossary of Terms and Acronyms (cont'd)

Acronym	Definition
ISO	Income Shifting Outbound
MNE	Multinational Enterprise
OECD	Organisation for Economic Co-operation and Development
PCT	Platform Contribution Transaction
PUO	Process Unit – Overview
R&D	Research and Development
TP	Transfer Pricing
TPD	Transfer Pricing Documentation
UIL	Uniform Issue List
USP	United States Parent
UTP	Uncertain Tax Position

Index of Related Issues

Issue	Associated UIL(s)	References
Comparability	<ul style="list-style-type: none"> ▪ 9411 	<ul style="list-style-type: none"> ▪ Practice Unit, “Comparability Analysis for Tangible Goods Transactions – Outbound,” DCN: ISO/PUO/V_1_01 (2014)
Provision of High Value Services	<ul style="list-style-type: none"> ▪ 9411.03 ▪ 9422.05 	<ul style="list-style-type: none"> ▪ Practice Unit, “High Value Services: Technical and Marketing Fees,” DCN: ISO/9411.03_01(2014) ▪ Practice Unit, “High Value Services: Technical and Marketing Fees,” DCN: ISI/9422.05_02(2014)
Sale of Tangible Goods	<ul style="list-style-type: none"> ▪ 9411.05 	<ul style="list-style-type: none"> ▪ Practice Unit, “Sale of Tangible Goods from a CFC to a USP - CUP Method,” DCN: ISO/9411.05_01 (2013)
Comparable Profits Method	<ul style="list-style-type: none"> ▪ 9422.05 	<ul style="list-style-type: none"> ▪ Practice Unit, “CPM Simple Distributor Outbound,” DCN: ISI/9411.05_02 (2014)
Overview of IRC Section 482	<ul style="list-style-type: none"> ▪ 9411.07 	<ul style="list-style-type: none"> ▪ Practice Unit, “Overview of IRC Section 482,” DCN: ISO/9411.07_01(2013)
Outbound Services by U.S. Companies to CFC's	<ul style="list-style-type: none"> ▪ 9411.07 	<ul style="list-style-type: none"> ▪ Practice Unit, “Outbound Services by U.S. Companies to CFC's,” DCN: ISO/9411.07_02(2013)
Resale Price Method	<ul style="list-style-type: none"> ▪ 9422.07 	<ul style="list-style-type: none"> ▪ Practice Unit, “Inbound Resale Price Method Routine Distributor,” DCN: ISI/9422.07_08 (2013)

Index of Related Issues (cont'd)

Issue	Associated UIL(s)	References
Best Method	<ul style="list-style-type: none"> ▪ 9422.09 	<ul style="list-style-type: none"> ▪ Practice Unit, “Best Method Determination for an Inbound Distributor,” DCN: ISI/9422.09_04 (2013)
Arm’s Length Standard	<ul style="list-style-type: none"> ▪ 9422.09 	<ul style="list-style-type: none"> ▪ Practice Unit, “Arm’s Length Standard,” DCN: ISI/9422.09_06 (2013)
Outbound Transfers of Property to Foreign Corporation – IRC 367 Overview	<ul style="list-style-type: none"> ▪ 9411.08 	<ul style="list-style-type: none"> ▪ Practice Unit, “Outbound Transfers of Property to Foreign Corporation – IRC 367 Overview,” DCN: ISO/9411.08_01(2013)
Distinguishing between Sale, License and other Transfers of Intangibles to CFC’s by U.S. Transferors	<ul style="list-style-type: none"> ▪ 9411.02 	<ul style="list-style-type: none"> ▪ Practice Unit, “Distinguishing between Sale, License and other Transfers of Intangibles to CFC’s by U.S. Transferors,” DCN: ISO/9411.02_02(2013)
Pricing of Platform Contribution Transaction (PCT) in Cost Sharing Arrangements (CSA)	<ul style="list-style-type: none"> ▪ 9411.01 	<ul style="list-style-type: none"> ▪ Practice Unit, “Pricing of Platform Contribution Transaction (PCT) in Cost Sharing Arrangements (CSA) Initial Transaction,” DCN: ISO/9411.01_01(2013)