

Survival Techniques: Transfer Pricing in a Sick Economy

05.01.2009 | Article

The Tax Executive

This article originally appeared in the May-June 2009 issue of The Tax Executive magazine. Copyright 2009 by the author and Tax Executives Institute, Inc. Reprinted with permission.

Times are tough. But as multinational businesses wrestle with serious economic pressures, transfer pricing remains central to ultimately balancing their global tax burdens and minimizing tax controversies. Transfer pricing strategies developed in a more stable business environment may not yield satisfactory or appropriate results in the face of unusual stress. Working with their operational counterparts, tax directors should monitor and, as necessary, modify the company's transfer pricing situation.

Transfer pricing methodologies (TPMs) applied to cross-border transactions between commonly controlled entities evaluate the parties' relative functions, risks and assets, and then value them using benchmarks based on "comparables." The financial evaluations of the "tested party" and the comparables are typically based on profitability measures. All of these elements may be profoundly affected in a protracted economic downturn.

Evaluating the effect of business volatility on transfer pricing and potential responses involves several levels of analysis.² First, the nature of the problem — if any — must be identified. Then, as a better understanding of the relevant factors and drivers develops, various ameliorative steps can be weighed. Special considerations may apply to taxpayers with advance pricing agreements (APAs) or currently in the APA process. Of particular note, loss situations expose the tension between the usual one-sided methodologies that test the profitability of only one of the related parties — generally requiring some profit — and the fact of overall system losses. More balanced bilateral profit (or loss) sharing methods are available only where all parties have intangibles, and are complex to negotiate and implement. To read more, please click on attached pdf.

Attorneys

Patricia Gimbel Lewis
(202) 862-5017
plewis@capdale.com

Related Practices/Industries

International Tax