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Preface

The *Transfer Pricing Handbook* provides a comprehensive analysis of the transfer pricing issues that affect taxpayers and tax collectors alike. The *Handbook* has a practical focus, advising taxpayers about transfer pricing techniques and their consequences. This *Handbook* has U.S. perspective, encompassing companies doing business abroad and foreign companies doing business in the United States. It focuses on current taxation under IRC sections 482, 6038A, and 6662 and is buttressed with legislative and regulatory developments during the 1986–2000 period. The *Handbook* addresses OECD and transfer pricing rules in other countries to the extent that these rules are relevant to U.S. taxation.


Transfer pricing, both as development of practical techniques and as an academic discipline continued to grow rapidly as the twentieth century came to a close. This process is mirrored by the publication itself. The *Transfer Pricing Handbook* began just seven years ago with 24 chapters and little more than 600 pages. The Second Edition, published three years ago, had 58 chapters and was more than twice the size of the initial volume. The Third Edition has 89 chapters and is more than three times the size of the initial book necessitating a two-volume treatment. Initial readership of the *Transfer Pricing Handbook* began with a few thousand and continues to grow accordingly.

The *Transfer Pricing Handbook* is divided into 10 parts, each pertaining to a specific facet of transfer pricing. Part One (Chapters 1 through 5) provides the introduction, focusing on practical aspects, legislative history, and policy concerns as well as business issues and operational control.

Part Two (Chapters 6 through 13) addresses the evolving transfer pricing process itself, starting with the general principles and guidelines. Functional analysis, risk, the best method rule, and the arm’s-length range to implement this objective are addressed. In addition, a focus on data analysis is provided.

Part Three (Chapters 14 through 19) assembles the traditional transfer pricing methods, the comparable uncontrolled price method, the resale price
method, and the cost plus method. These topics are addressed both in the aggregate and separately.

Part Four (Chapters 20 through 38) examines the new transfer pricing methodologies. The cost sharing chapter (Chapter 21) focuses on the long-delayed regulations and other chapters focus on the comparable profits method and its OECD analogy and the transactional net margin method. This Part also examines financial transactions and transfer pricing and foreign exchange adjustments under Section 482. It addresses marginal costing and other circumstances in transfer pricing, the OECD guidelines, and maquiladoras.

Part Five (Chapters 39 through 46) addresses intangibles and services in the Section 482 context. We begin with a detailed analysis of the tax regulations of intangible transactions. Then we focus on intangible asset valuation and royalty rates and on the role of rate return in Section 482 analysis. The OECD rules for intangible property and transfer pricing for services are also examined.

Part Six (Chapters 47 through 51) turns its attention to apportionment as an alternative to transfer pricing. To achieve this goal, we address apportionment methodologies, apportionment under the FSC and DISC provisions, and state tax apportionment in the transfer pricing context.

Volume 2 starts with Part Seven (Chapters 52 and 53) and examines the risks and consequences of penalties in the transfer pricing context. We look first at the importance of accuracy in transfer pricing determinations, including the accuracy-related penalty for transfer pricing misstatements. Then we turn our attention to the contemporaneous documentation exclusion for the penalty.

The tax regulations for foreign-owned U.S. corporations are made applicable by the transfer pricing penalty regulations of Treasury Regulation 1.6038A-3(c). These provisions apply whether the corporation is foreign or domestic. Part Eight (Chapters 54 through 66) of the *Transfer Pricing Handbook* addresses these provisions. After a brief overview, we examine the recordkeeping and reporting provisions. The provisions are tiered, requiring more obligations on larger businesses. Accordingly, we look at multiple thresholds. Section 6038A requires reporting and general maintenance of records and both are included in this part. This part also discusses the safe harbor provisions and the mandatory use of “significant industry segments” and high profit carve-outs as part of the provisions for tax reporting for foreign-owned U.S. corporations. Record maintenance agreements can be structured to meet compliance objectives. Failure to comply with the requirements can lead to penalties, which can be in addition to transfer pricing penalties. All are addressed in the *Handbook*, as are limited agency agreements that serve as a discovery technique, the summons procedure, and the formal document procedure for recalcitrant foreign owners.

Part Nine (Chapters 67 through 79) encompasses audits and litigation in the transfer pricing context. We look at transfer pricing examinations and litigation techniques. Litigation of transfer pricing often requires experts, which is addressed. Third-party information can provide valued information to the litigants and is discussed in a separate chapter.
Preface

The litigation process may be timely, costly, and uncertain, but taxpayers and tax collectors alike can avail themselves of other alternatives. This part includes a chapter concerning the competent authority procedure between governments; the alternative dispute resolution procedure is discussed in separate chapters; advance pricing agreements as an alternative to transfer pricing disputes are addressed separately; and transfer pricing objectives should be viewed in a broader context, including foreign tax ramifications, and is addressed in a separate chapter (Chapter 72).

Transfer pricing provides important impacts that extend beyond tax consequences themselves. Part Ten (Chapters 80 through 89) addresses these issues and applies tax and nontax issues in the transfer pricing context. We examine issues affecting imported merchandise, customs-related issues, and customs appraisement. Then we turn our attention to antitrust concerns and dumping. We conclude with valuation issues in transfer pricing and the possibility that tax malpractice may be the ultimate solution to transfer pricing errors.

I am pleased to be selected by John Wiley & Sons to be the editor of this comprehensive book on transfer pricing, whether this selection is based on my practical transfer pricing experience as a practitioner during the past 30 years or otherwise. I am grateful to Sheck Cho at John Wiley & Sons for developing the transfer pricing project, bringing the first edition to fruition, developing the supplements, and encouraging me to develop the second edition, and now the third edition. Further, I am grateful to him for helping me develop the companion volume, *International Transfer Pricing: A Country-by-Country Guide*. In addition, I have a debt of gratitude to Natu Patel, the principal tax official at John Wiley & Sons, for encouraging me to undertake this project.

We will be continuing the supplement process. Readers are welcome to contact me to suggest additional topics or suggestions or to inform me about transfer pricing planning or audit and litigation techniques (Suite 33149, telephone 305-361-5800, fax 305-361-7722, e-mail: multijur@aol.com).

ROBERT FEINSCHREIBER

Miami, Florida
April 2001
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