
INTERNATIONAL TAX **TP GUIDES**

UNITED STATES OF AMERICA

MARCH 2025

ACADEMY OF TAX LAW

PUBLISHING SERVICES

This Publication is copyrighted under the Berne Convention.

No reproduction or use of this material is allowed without prior permission

Copyright©, 2025 - Academy of Tax Law (Division of International Institute for Tax And Finance)

First Edition Published on 18 March 2025

Published by Academy Of Tax Law

CONTACT US

www.academyoftaxlaw.com | info@academyoftaxlaw.com

HEAD OF ACADEMICS



Welcome to the Academy of Tax Law's annual International Tax and Transfer Pricing Guides. These guides have been meticulously developed to provide critical insights and updates essential for tax professionals, multinational enterprises, students, and researchers navigating the intricate field of international taxation and transfer pricing.

At the Academy, we recognize that international tax law and transfer pricing are continuously evolving disciplines influenced by regulatory shifts, economic trends, and landmark judicial decisions. Our annual guides capture these changes, offering comprehensive analyses, current compliance strategies, and practical guidance to ensure you remain well-equipped to manage cross-border tax complexities effectively.

Each guide is structured to deliver not only clarity on current rules and regulations but also a deeper understanding of their implications for multinational businesses, tax authorities, and legal practitioners. Whether your focus is strategic tax planning, effective risk management, or resolving complex tax disputes, these guides serve as authoritative resources designed to support informed, strategic decision-making in a global context.

At the Academy of Tax Law, we firmly believe in the power of informed practice. With these guides, our aim is to empower you with actionable knowledge, helping you to proactively address challenges and harness opportunities in the dynamic landscape of international tax and transfer pricing.

Thank you for entrusting the Academy of Tax Law as your dedicated partner in continuous professional development.

Sincerely,
Dr. Daniel N Erasmus

PART 1

OVERVIEW

GENERAL SUMMARY

- Introduction
- General Overview of Transfer Pricing in the US
- Dispute Resolution and TP Controversies in the US
- Notable Transfer Pricing Case
- Other Important Transfer Pricing Cases in the US
- Latest TP Developments in the US
- Arms Length Principle
- Transfer Pricing Methods
- Compliance
- Comparability Analysis
- Intangibles
- Permanent Establishments
- TP Policy Development
- Why should you engage with Prof Dr Daniel N Erasmus and his team?
- Engagement with the Academy of Tax Law

[CLICK TO VIEW ONLINE](#)

INTRODUCTION

Transfer Pricing (TP) continues to be a pivotal aspect of U.S. tax law, adapting to both global and domestic economic dynamics. The 2025 USA Transfer Pricing Guide delves into the intricate facets of transfer pricing in the United States, providing insights into the legal framework, dispute resolution mechanisms, landmark cases, and recent developments. This guide aims to furnish a comprehensive understanding of TP principles, methodologies, compliance imperatives, and the influence of Base Erosion and Profit Shifting (BEPS) on U.S. policies. Additionally, it emphasizes the significance of education and training in TP, highlighting resources available through the I/I/T/F Academy of Tax Law.

KEY POINTS

GENERAL OVERVIEW

The U.S. TP regime is renowned for its comprehensiveness and rigor. It is primarily governed by Section 482 of the Internal Revenue Code, complemented by an extensive array of implementing regulations. While the Organisation for Economic Co-operation and Development (OECD) TP guidelines are not directly incorporated into U.S. regulations, the Internal Revenue Service (IRS) maintains that U.S. TP regulations align with the OECD guidelines.

DISPUTE RESOLUTION & CONTROVERSIES

The IRS has adopted a more assertive stance in TP controversies, particularly concerning the application of the Economic Substance Doctrine. An IRS official recently confirmed that the IRS can apply this doctrine to transfer pricing cases, potentially leading to penalties under IRC Section 6662(b)(6) or a 40% penalty under Section 6662(i) if a transaction lacks economic substance. The Advance Pricing and Mutual Agreement program (APMA) within the IRS continues to play a crucial role in preemptively resolving potential disputes.

NOTABLE CASES

RECENT CASE/S

United States v. Eaton Corp. (2024)

In this case, the IRS sought performance evaluations of certain employees of Eaton's Irish affiliate during an audit of Eaton's transfer pricing related to a royalty arrangement. Eaton declined to provide the evaluations, citing EU privacy laws. A federal district court ruled that the IRS's summons power overrides EU privacy laws, reinforcing the IRS's broad investigative authority in transfer pricing audits.

OTHER IMPORTANT CASES

Coca-Cola Co. v. Commissioner (2020)

This landmark case involved a dispute over the allocation of income between Coca-Cola and its foreign subsidiaries. The IRS argued that Coca-Cola's transfer pricing did not comply with the arm's length standard, leading to a significant underreporting of taxable income in the U.S. The Tax Court sided with the IRS, resulting in Coca-Cola owing a substantial amount in back taxes.

Amazon.com Inc. v. Commissioner (2017)

A pivotal case concerning cost-sharing arrangements and the transfer of intangible assets. The IRS challenged Amazon's transfer pricing methodologies related to its European subsidiaries. The Tax Court ruled in favor of Amazon, setting a precedent for how intangible assets are valued in transfer pricing.

Facebook Inc. v. Internal Revenue Service (ongoing):

This ongoing case involves the transfer of intangible assets by Facebook to its Irish subsidiary. The IRS alleges that Facebook undervalued these assets, leading to a significant understatement of taxable income. The outcome of this case is anticipated to have major implications for digital companies and the valuation of intangible assets in transfer pricing.

NOTABLE CASES

OTHER IMPORTANT CASES

Medtronic Inc. v. Commissioner (2018):

This case centered on the royalties paid by a Medtronic subsidiary in Puerto Rico to its U.S. parent for the use of patented technology. The Tax Court initially sided with Medtronic, but the decision was later vacated and remanded by the Appeals Court, emphasizing the importance of comparable uncontrolled transactions in setting transfer prices.

Altera Corporation v. Commissioner (2019):

A significant case involving cost-sharing arrangements and stock-based compensation. The Ninth Circuit Court of Appeals reversed a previous Tax Court decision, upholding a Treasury regulation that requires the inclusion of stock-based compensation in the cost-sharing calculation. This decision has had broad implications for companies with similar arrangements.

These cases highlight the complexity and evolving nature of transfer pricing in the U.S., underscoring the importance for companies to maintain robust compliance practices and documentation.

LATEST TP DEVELOPMENTS

THE SIMPLIFIED AND STREAMLINED APPROACH (SSA)

In December 2024, the IRS released Notice 2025-04, announcing the adoption of a new transfer pricing methodology known as the Simplified and Streamlined Approach (SSA). This approach allows taxpayers to apply the Amount B rules under Pillar One of the

OECD framework, providing a safe harbor application of the arm's length standard for qualifying transactions. The SSA is elective and applies to taxable years beginning on or after January 1, 2025.

CLARIFICATION ON PERIODIC ADJUSTMENT RULES

In January 2025, the IRS issued Advice Memorandum 2025-001, clarifying its stance on the interaction between periodic adjustment rules and general transfer pricing principles. The memorandum emphasizes that taxpayers cannot circumvent periodic

adjustments by invoking general principles such as the arm's length standard or the best method rule. This clarification underscores the IRS's commitment to ensuring that transfer pricing outcomes are commensurate with the income attributable to intangible assets.

TP METHOD HIGHLIGHTED (IF ANY)

The Transactional Net Margin Method (TNMM) was adopted as the most appropriate transfer pricing method by both the Assessee and the Transfer Pricing Officer (TPO) in this case.

Application of TNMM by the Assessee

- AON Consulting (formerly Hewitt Associates India Pvt. Ltd.) applied TNMM to determine the arm's length price (ALP) for its international transactions.
- It selected comparable companies based on specific filters and calculated the Profit Level Indicator (PLI) as Operating Profit to Total Cost (OP/TC).
- The average PLI of comparable companies selected by the Assessee was 13.06%, while its own PLI stood at 15.69%, demonstrating that the transactions were at arm's length.

Rejection of Assessee's Comparability Analysis by the TPO

- The TPO rejected the Assessee's analysis, claiming that the selection of comparable

companies was flawed.

- The TPO applied different comparability filters and removed certain low-margin entities, leading to an inflated PLI benchmark.
- New comparable companies selected by the TPO resulted in a higher mean PLI of 26.2% for software development services and 29.16% for IT-enabled services.
- Consequently, an upward TP adjustment of ₹44,06,38,092 was made, with ₹2,26,48,798 attributed to Non-US Transactions.

High Court's View on the TP Methodology

- The High Court did not dispute the use of TNMM as the most appropriate method but criticised the ITAT for directing the TPO to apply MAP-based adjustments to Non-US Transactions.
- The court emphasized that the TP adjustment for Non-US Transactions must be determined independently under the Income Tax Act, 1961 and OECD guidelines, without reference to the MAP framework agreed for US Transactions.

PART 2

QUICK GUIDES

QUICK GUIDES

Arms Length Principle

The arm's length principle is a cornerstone of TP regulations. It seeks to ensure that related parties agree on a price as if they were unrelated parties dealing at arm's length.

Transfer Pricing Methods

US legislation provides for various TP methods, including Comparable Uncontrolled Price (CUP), Resale Price, Cost Plus, Transactional Net Margin Method (TNMM), and Profit Split[7].

Compliance

Compliance with US TP rules is crucial for multinational enterprises. The IRS provides comprehensive documentation best practices to aid in compliance[4].

Comparability Analysis

Comparability analysis is a key aspect of TP, used to determine arm's length pricing in related-party transactions[11].

Intangibles

Intangibles play a significant role in TP, particularly in the context of multinational corporations. The IRS has comprehensive regulations addressing the treatment of intangibles in TP.

QUICK GUIDES

Permanent Establishments

Permanent establishments can have significant TP implications. The IRS considers cases arising under the permanent establishment articles of US tax treaties.

Compliance and The Importance of Documentation

Comprehensive documentation is crucial for TP compliance. The IRS provides best practices for TP documentation.

Base Erosion and Profit Shifting (BEPS) and the US

BEPS refers to tax planning strategies that exploit gaps and mismatches in tax rules. The US has been actively involved in the OECD's work on BEPS.

TP Policy Development

The US has been at the forefront of TP policy development, with comprehensive regulations and a proactive approach to TP controversies

PART 3

PREVENTION

ENGAGING EXPERTS

The I/I/T/F Academy of Tax Law, led by Dr. Erasmus, plays a significant role in TP education. Its postgraduate programs in TP provide invaluable knowledge and skills, equipping professionals to navigate complex TP landscapes.

The USA Transfer Pricing Guide offers a quick overview of US TP. For further guidance, particularly in TP dispute resolution and effective policy management, Dr. Erasmus

and the TRM team are invaluable resources. Their expertise is further showcased in Dr. Erasmus's book, "Conducting a TP Trial", available at <https://tptrial.iitfconnect.com/>. For expert assistance in managing TP policies and navigating disputes, contact Dr. Erasmus and the TRM team.

For further assistance with TP, don't hesitate to get in touch with Dr Erasmus and the TRM team.

ENGAGEMENT WITH THE ACADEMY OF TAX LAW

The Academy of Tax Law, under the leadership of Prof. Dr. Daniel N. Erasmus, offers postgraduate programs in TP that equip professionals with the knowledge and skills necessary to navigate the complexities of transfer pricing. Dr. Erasmus's expertise is further showcased in his book, "Conducting a TP Trial," available at <https://tptrial.iitfconnect.com/>.

RESOURCES

ORDER BOOK

[CONDUCTING A TP TRIAL by DR DANIEL N ERASMUS](#)

“Conducting a TP Trial” by Dr. Daniel N. Erasmus is an indispensable guide for navigating the complex world of transfer pricing litigation. Drawing from extensive practical experience, Erasmus provides a step-by-step approach to preparing for and effectively managing transfer pricing trials, ensuring multinationals and tax professionals are well-equipped to handle disputes with confidence and clarity.

DOWNLOAD FREE BOOK

[TAX INTELLIGENCE: THE 7 HABITUAL TAX MISTAKES MADE BY COMPANIES](#)

Tax Intelligence: The 7 Habitual Tax Mistakes Made by Companies” by Dr. Daniel N. Erasmus is a must-read for businesses seeking to navigate the intricate world of tax compliance and risk management. By highlighting common pitfalls and offering strategic solutions, Erasmus equips companies with the knowledge to improve their tax practices and secure financial stability.

DOWNLOAD FREE E-BOOK

[DRIVING TAX COMPLIANCE: THE ESSENTIAL ROLE OF THE TAX STEERING COMMITTEE](#)

The eBook “Driving Tax Compliance: The Essential Role of a Tax Steering Committee” by Prof. Dr. Daniel N. Erasmus, Renier van Rensburg, and Gilbert Ferreira, emphasizes the critical importance of establishing a Tax Steering Committee (TSC) within multinational corporations to ensure tax compliance and manage tax-related risks effectively.

INTERNATIONAL TAX **TP GUIDES**

ACADEMY OF TAX LAW

Copyright © 2024/2025

International Institute for Tax and Finance Ltd (I/I/T/F) Academy of Tax Law

This publication was accurate at time of publishing.
It may be necessary for reasons beyond the control of the organisers to alter the content.