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International Chamber of Commerce (ICC)
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Mr. Steven Musher
Associate Chief Counsel (International) CC:INTL:FO
Internal Revenue Service
1111 Constitution Avenue, NW
Room 4554
Washington, DC 20224

Reference: Control Number NOT-127827-06
Comments on Proposed Rev. Proc., "specified covered services" under
Section 1.482-9T(b)(4)(i)

Dear Mr. Musher:

We are pleased to submit the comments contained herein of the United States Council for International Business (USCIB) on the proposed revenue procedure list of "specified covered services", eligible to be charged at cost under Section 1.482-9T(b)(4)(i) provided other standards (concerning relationship of the services to business risks, adequate recordkeeping, etc.) are met.

Our further comments on the regulations, including to urge a delay in the effective date to years beginning January 1, 2008 or after, will be provided under separate cover.

Representing over 300 U.S.-based multinational companies, professional firms, and business associations, USCIB seeks to advance the global interests of U.S. business at home and abroad. It promotes an open system of global commerce in which business can flourish and contribute to economic growth, human welfare and protection of the environment. USCIB is the U.S. affiliate of the International Chamber of Commerce (ICC), the Business and Industry Advisory Committee to the OECD (BIAC) and the International Organization of Employers (IOE).

Discussion

We appreciate the opportunity to comment and would like to acknowledge the constructive changes reflected in the recently issued regulations governing transfer pricing of services.

We believe the "services cost method", including the concept of specified covered services, represents a substantial improvement over the "simplified cost based method" from the previously proposed regulations.

We continue, however, to have significant reservations which, fundamentally, lead to our concern that the taxpayer resources needed to comply with the regulations, and the associated potential for controversy, are out of proportion to what is at stake in this area.

In the proposed list of specified covered services, a high degree of specificity is very evident. It is clear that (what we consider to be an excess of) care has been taken to excise specific *activities* which might be perceived to be of a more value-added nature, or are potentially reliant on intangible assets, even if the functional area in question is supportive, not commercial.

To take a few illustrations:

General Administrative, item 11. Here, an eligible service includes the act of:

"Using a word processor/computer or typewriter to generate (*without substantial modification*) letters, reports, forms, or other material from *another person's* rough draft, corrected copy, or voice recording."

The *italics* are added for emphasis. The description is exceedingly specific and limited to actions which are devoid of any originality. We do not see how taxpayers can practically delineate such narrowly circumscribed activities.

Tax, items 18 and 19. Here, only "processing payments" or "gathering and including that information" in returns are covered. Any element of planning or audit defense assistance is conspicuously absent.

Accounting and Auditing, items 16 and 17. Here, the scope is limited to:

"...gathering and reviewing information in accounting records..."

"...computing, classifying and recording numerical data to maintain accurate and complete financial records..."

"...performing any combination of calculating, posting, and verifying duties to obtain primary financial data for use in maintaining accounting records, checking the accuracy of figures, calculations, and postings pertaining to business transactions recorded by other workers."

Not only are the descriptions highly task oriented, they are limited to certain *purposes*. Should a taxpayer be expected to examine whether an accounting staff is verifying *primary*, as opposed to other, data? Should the taxpayer be concerned with determining whether there is another possible purpose to computing, classifying and recording data *other* than to maintain accurate and complete records?

The task orientation is so narrow that we are uncertain if even the basic process of consolidating data is covered. Likewise, other areas of accounting and controls

are left out, including, for example, design, testing and documentation of internal controls.

Again, we understand the sensitivities reflected in the way the list is drafted: that the intent of Treasury seems to be, within selected functional areas, to set forth in a very specific way tasks that are so routine in nature as to be virtually certain to represent a "low margin" service if rendered commercially.

The trouble is that this approach severely undermines the utility of the method. It is close to impossible in a large multinational corporate group incurring tens of \$millions, and in some cases, hundreds of \$millions, to delineate activities to such degrees of precision. The practical reality is that cost budgets correspond to broad functional areas -- in essence, departments -- and are then categorized by type (e.g., salary, benefits, etc.), not activity. For large corporations, to attempt to dissect the budgets of the accounting or human resources or other functions to delineate *activities* will, at best, require effort that is inordinately intrusive and, of necessity, highly approximated. The likely result will be to severely limit actual use of the list, with taxpayers instead driven to extensive benchmarking against the 7 percent reference point. We believe this will not be productive and precisely what the simplified cost method ought to minimize.

You may respond that the regulations are intended to be applied reasonably and that, in practice, examiners will respect good faith, diligent efforts. However, to have rules which are difficult both to comply with and to examine is a recipe for *inconsistency* in audit practice and outcomes.

We respectfully submit that a more practical approach for *all* concerned -- government and taxpayers -- would be grounded in ***more generalized descriptions across a broader set of functional areas***: in short, the list should be comprised of approved ***departments***. Examples of service departments present in multinationals are contained in the Services Regulations Coalition submission dated June 2, 2004 (2004 WTD 123-18 (Tax Analysts)), which refers to broad areas such as Human Resources, Accounting and Finance, etc.; please see list in the attached Appendix. If there need (in the revenue procedure) be subsets of types of services within these departments, they should also be broad and comprehensive, *oriented to achieve a common view of the general scope of activity of the department*.

We recognize that, in a generalized framework, it may be more difficult to set limits that prevent every potential instance of a service being charged at cost where third parties might earn beyond a minimal profit. In this respect, however, we note the following:

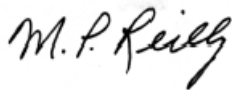
- The regulations *already provide* that services are not eligible to be charged at cost unless the taxpayer reasonably concludes that they "do not contribute significantly to key competitive advantages, core capabilities, or fundamental risks of success or failure ..."
- Certain categories of services (manufacturing, production, extraction, construction, reselling, etc.) are *already explicitly excluded* from eligibility by the regulations.

And, indeed, we note that these exclusions are based on broad categories, not narrowly defined activities.

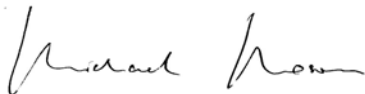
- We expect the support services listed in the Services Regulations Coalition submission to be consistently within the $\leq 7\%$ margin threshold and, providing they do not significantly contribute to core capabilities or are not specifically excluded services, they therefore need never be excluded from treatment as a covered service. If necessary in order to be convinced of the low margin nature of such services, the IRS or Treasury could perform the economic studies necessary to identify and include a more appropriately expansive and complete set of low margin services in the specified list. This would save multinational taxpayers the cost and burden of annually performing transfer price studies for the support service departments common to so many of them.

In closing, please recognize that we acknowledge and commend the effort at Treasury and the IRS which has gone into this project. And we endorse the services cost method and the notion of specified covered services. We fear, however, that the manner in which specified covered services may be defined, at least as suggested so far by the proposed revenue procedure, would severely reduce -- to taxpayers *and* the IRS -- the potential utility of the approach, which we recognize was intended to be of true practical value. We believe a modest relaxation in the way specified covered services are defined -- and in the philosophy in which those definitions are grounded -- would restore much of the potential of this approach without compromising the position of the government or of any group of taxpayers.

Respectfully submitted,



Michael Reilly
Chair, USCIB Taxation Committee



Michael Mason
Chair, USCIB Transfer Pricing Subcommittee



Lynda K. Walker
Vice President and International Tax Counsel

Appendix: Illustrative Support Service Departments

The following support service areas correspond to departments which are common, in some form, to virtually all multinational corporations. Please refer to the Services Regulations Coalition submission for elaboration on the range of activities spanned by the respective departments.

Human Resources

Legal

Accounting and Finance

Information Services

Purchasing

Public Affairs

Health Risk Management / Health & Safety

Security Services