



United States Council for International Business

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International Chamber of Commerce (ICC)
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October 6, 2006

SUBJECT: Code § 482 Services Regulations

Mr. Eric Solomon
Department of Treasury
Assistant Secretary Tax Policy (Designate)
1500 Pennsylvania Ave., NW
3116 MT
Washington, DC 20220

Mr. Donald L. Korb
Internal Revenue Service
Chief Counsel
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Washington, DC 20224

Dear Messrs. Solomon and Korb:

On August 1, 2006, the Department of Treasury and the IRS issued regulations in temporary and proposed form regarding the treatment of controlled services transactions under Code § 482. These regulations update ones in existence since 1968, and address changes in the way business is currently being conducted by multinational enterprises. An earlier set of proposed regulations was issued in 2003, generating a number of taxpayer comments requesting the government to reconsider some of the proposed guidance.

The USCIB advances the global interests of US business, both here and abroad, including, in many instances, the US operations of non-US enterprises. It is the US affiliate of the International Chamber of Commerce (ICC), the Business and Industry Committee to the OECD (BIAC), and the International Organization of Employers (IOE). It represents US business in the preeminent intergovernmental bodies, where the many and complex issues that face the international business community are addressed, with the primary objective being to search for possible resolutions to these issues. The bottom line in all of this is to ensure the existence of an open and equitable system of world trade, finance and investment. Therefore, these regulations, which outline significant changes to the historical cost safe harbor under Treas. Reg. § 1.482-2, are of great interest to our member companies.

The USCIB must first extend our appreciation for the effort undertaken by the government to develop this new set of rules, as we are encouraged by some of the changes that have been made from the earlier proposed regulations. Our members are still reviewing the provisions and we may provide more detailed technical comments over the coming months. However, we are submitting this initial letter to register our immediate concern on the effective date of these temporary and proposed regulations.

Under Treas. Reg. § 1.482-9T(n), these regulations are issued with a delayed effective date for taxable years beginning after December 31, 2006. Accordingly, calendar year taxpayers will need to apply these rules to their 2007 tax year. This is a problematic and very unrealistic schedule. For all practical

purposes, companies must be able to implement and charge out services under these new regulations by January 2007. The effective date, therefore, has actually left taxpayers with as little as four months to understand and apply the regulations before the first service charges are issued to their affiliates. **We strongly urge that the effective date for these regulations instead be postponed until January 1, 2008.**

Although there may be an impression that taxpayers have over a year to work with these new regulations before 2007 tax returns are filed, there are significant legal and practical reasons why the effective date will force companies to try and implement something much sooner. First, a failure to adequately implement these new rules could require companies to make multiple accounting corrections in subsequent periods. The current securities rules require publicly traded companies to apply the accounting rules under Financial Accounting Standard ("FAS") 109 to clearly account for their tax expense in financial statements. Since intercompany arrangements may encompass large sums of money, new transfer pricing rules can directly impact a company's tax exposure in different jurisdictions. This impact must be reflected by a company when it calculates its effective tax rate under FAS 109. Fully applying these new regulations after companies have already begun disclosing financial information for 2007 could, therefore, lead to significant mid-year accounting corrections and additional administrative effort. This action would obviously have very significant impacts.

Moreover, due to the need to properly reflect a company's tax exposure on their public financial reports, the Sarbanes-Oxley Act requires companies to establish internal controls over the tax calculation process. Accordingly, external accountants, and perhaps regulators, will press companies to have adequate U.S. transfer pricing processes in place for services so that large accounting adjustments would not be required. The failure to adequately meet these requirements could lead to deficiencies in the internal control over financial reporting which could create regulatory issues for companies.

Companies must also address the financial reporting impact of whether the charges will be deductible in the foreign jurisdictions. This is dependent upon a number of factors and the rules are not very clear in many countries. Due to this uncertainty, the tax provision for financial accounting purposes might be adjusted further as new accounting rules interpreting FAS 109 now require companies to properly record a liability for the impact of tax positions that do not meet the level of "more likely than not" of being sustained. Obviously failure to properly reflect the uncertain acceptance in foreign jurisdictions of new transfer pricing charges could also lead to multiple accounting corrections and additional administrative effort.

As stated above, beyond the substantial financial accounting problems, **our companies are concerned that a failure to fully implement the new regulations by early 2007 could give rise to practical double taxation problems.** In the past, it has often been difficult enough for our companies to obtain a deduction for the basic cost of intercompany services in some countries. The USCIB members are deeply concerned that charging any type of retroactive mark-up coming from a delayed transfer pricing study could easily be seen as something other than a reimbursement for service costs and be disallowed by the foreign country.

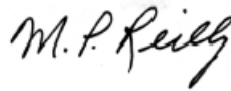
Without a softening of the current effective date, companies will have to understand and apply new and, to some extent, unfinished rules within a very short time frame. According to the new set of regulations, taxpayers must review all of their service arrangements to determine the proper service charges under the methods laid out. Given the breadth of operations of some of our members, this list would be a significant enough undertaking to get finished by the end of 2007, let alone over the next few months.

Finally, as companies attempt to obtain studies and implement transfer pricing changes, significant constraints will occur on the resources available to complete these tasks. Certainly, internal resources will now have to be shifted and budgets altered to review existing service charges, the allocation formulas and the supporting documentation to allow foreign deductibility. Internal systems will also likely need to be altered during year-end, a period in which accounting systems are usually not open to change. Finally, the tightened deadline and potential impact from new charges for services without a supporting pricing study will generate a significant competition for external consulting resources. Most taxpayers that

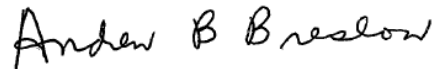
have relied upon the existing transfer pricing rules will have to undergo a completely new type of transfer pricing process and will look to outside accounting firms and economists for help. However, like the taxpayers, those consultants will be working with these rules for the first time and the steep learning curve and expected conservatism will naturally lead to more delays for these studies.

A more reasonable delay in the effective date to January 1, 2008 would certainly help to alleviate these issues. It would give taxpayers a realistic time frame in which to conduct and implement the needed studies, address many of the financial reporting issues, eliminate some of the looming resource constraints and reduce consulting costs that need to be spent to comply with these regulations. The USCIB welcomes a quick decision to be made on this request, in order to allow taxpayers a more realistic time frame to implement these temporary and proposed regulations.

Sincerely,



Michael Reilly
Chair, Taxation Committee



Andrew B. Breslow
Chair, Tax Legislative & Administrative Developments
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