Internal Revenue Service
DEPARTMENT OF THE TREASURY

LB&I International Practice Service Transaction Unit

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Volume	1	Outbound Income Shifting	**Level 1 UIL**	9411
Part	1.1	Intangible Property Transfers w/ Cost Sharing	**Level 2 UIL**	9411.01
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Sub-Chapter	N/A	N/A	–	–

Unit Name	Pricing of Platform Contribution Transaction (PCT) in Cost Sharing Arrangements (CSA) Acquisition of Subsequent IP

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Issue and Transaction Overview

Pricing of PCT in CSA – Acquisition of Subsequent IP

Often, subsequent to entering into a cost sharing arrangement (“CSA”) pursuant to Treas. Reg. 1.482-7, a party to the CSA acquires a target corporation (“Target”) for its resources, capabilities, and rights, including valuable intellectual property (“IP”), intangibles, and other benefits anticipated to contribute to intangible development within the CSA. These “platform contributions” need to be compensated for in a platform contribution transaction (“PCT”) or more specifically a “subsequent acquisition PCT” as used herein based on these facts.

In this unit we assume the US parent (“USP”) acquires Target and makes some of Target’s resources, capabilities, or rights available to the CSA. Accordingly, a subsequent acquisition PCT payment is required to be paid at arm’s length from the controlled foreign corporation (“CFC”) to USP. Sometimes these subsequent acquisition PCT payments are not in accordance with the arm’s length standard under IRC 482 and accordingly are inadequate. The result is that income generated from these acquired platform contributions is shifted offshore to a low or no tax jurisdiction for inadequate compensation and an adjustment may be required under IRC 482 to clearly reflect the income of the controlled parties.

Significant sub-issues relating to subsequent acquisition PCTs include carve-outs by the taxpayer of various types of intangibles the taxpayer contends are not compensable such as goodwill and workforce in place. It is important to understand the purpose for the acquisition of Target and whether any of the acquired resources, capabilities, and rights, including intangible property, are reasonably anticipated to contribute to intangible development within the CSA. If so, there is a subsequent PCT that must be compensated at arm’s length. Determining the amount of the arm’s length PCT payment requires application of a reliable reasonably anticipated benefits (“RAB”) share. If the subsequent PCT benefits one controlled participant more than another controlled participant disproportionately to the controlled participants’ RAB shares before the subsequent PCT, the RAB shares may change as a result of the subsequent PCT.

It is recommended that the Practice Unit, “Pricing of Platform Contribution Transaction (PCT) in Cost Sharing Arrangements (CSA) – Initial Transaction”, DCN: ISO/9411.01_01 (2013) be reviewed before continuing with the Unit.

Issue and Transaction Overview (cont'd)

Pricing of PCT in CSA – Acquisition of Subsequent IP

Many taxpayers select the method that will result in the lowest PCT, but Exam needs to determine the best method that yields the most reliable result under the facts and circumstances. It is important to remember that all acquired resources, capabilities, or rights reasonably anticipated to contribute to CSA activity must be compensated. This is not limited to acquired IP. Accordingly, Exam needs to determine the best method that provides the most reliable result for valuing the subsequent acquisition PCT under the facts and circumstances to achieve an arm's length result. In the case of an acquisition where Target is acquired primarily for its intangible (versus tangible) assets along with other resources, capabilities, or rights and such are reasonably anticipated to contribute to development within the CSA, aggregating the group of PCTs acquired with Target is generally most reliable.

Taxpayers may assert that the opinion in *VERITAS Software Corp. v. Commissioner* -133 T.C. No. 14 (2009) ("VERITAS"), a case that the IRS lost, is controlling, however, it is not. The Service believes that the Court's factual findings and legal assertions in VERITAS are erroneous and does not agree with the result or reasoning of the decision. Further, VERITAS was decided under the 1995 cost sharing regulations relating to "buy-in payments" and not the regulations governing PCT transactions. Counsel can assist where VERITAS is raised by taxpayers.

This Cost Sharing – Subsequent Acquisition PCT unit is subject to detailed cost sharing regulations. Treas. Reg. 1.482-7T is effective as of January 5, 2009. Treas. Reg. 1.482-7 is effective as of December 16, 2011. The Supreme Court in *Mayo Foundation for Medical Education & Research v. United States* - 131 S. Ct. 704 (2011) recognized that Treasury has to make interpretive choices in regulations implementing the Internal Revenue Code and held that Treasury Regulations are entitled to deference as long as they are a reasonable interpretation of the underlying statute at issue. Id. at 713.

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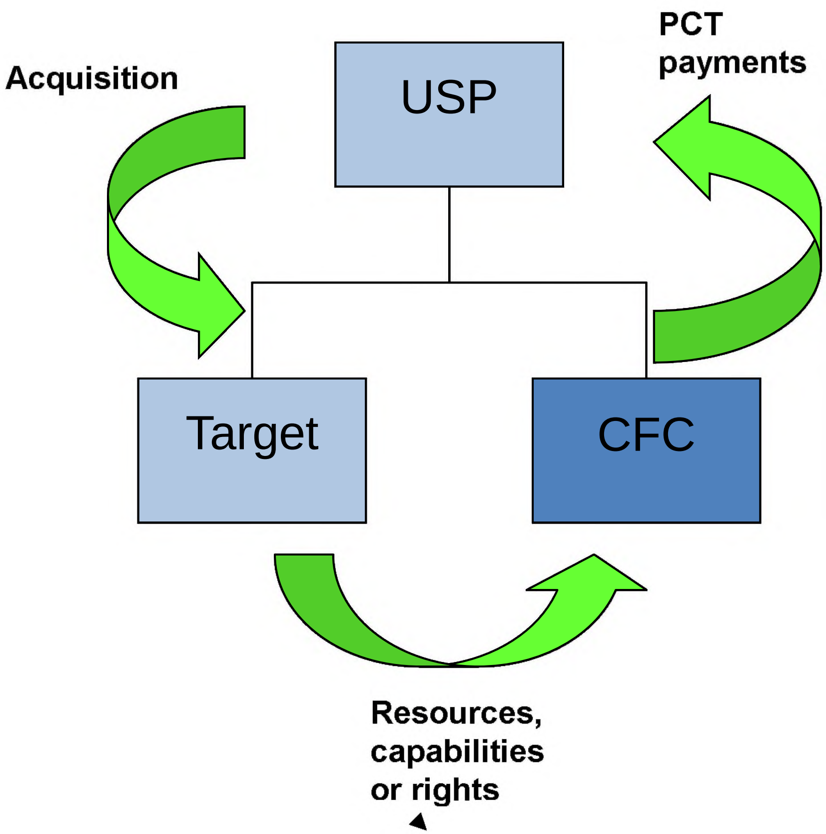
Transaction and Fact Pattern

Pricing of PCT in CSA – Acquisition of Subsequent IP

Diagram of Transaction



Facts

- USP is a multi-national high tech company that has successfully developed resources, rights, and capabilities, including valuable technology IP.
- USP has a March 1, 2012 CSA with CFC (located in a low or no tax jurisdiction) sharing development costs 40 – 60 based on reasonably anticipated benefits ("RAB") in the parties' respective territories. USP's territory is the US and CFC's territory is the rest of the world ("ROW").
- On January 1, 2013, USP acquires the outstanding stock of Target, a U.S. corporation for $270 million cash plus assumed liabilities. Target had international operations as well. The acquired platform contributions are anticipated to assist in development of cost shared intangibles.
- On April 1, 2013, Target's research departments are merged with USPs and a PCT payment was made from CFC to USP.
- USP's valuation of Target's net assets for GAAP purposes is as follows:

▪ Tangible Assets	$ 8,000,000
▪ IP	12,000,000
▪ Liabilities	10,000,000
▪ Goodwill	260,000,000

Transaction and Fact Pattern (cont'd)

Pricing of PCT in CSA – Acquisition of Subsequent IP
Facts
▪ Target's workforce remained after the acquisition and included 50 specialized technology engineers that have been employed by Target for many years. ▪ USP's valuation study and transfer pricing documentation concluded that the PCT should be $12,000,000, the value of the IP. ▪ Target's technology complements USP's existing products and technology enabling it to become an expected market leader in its industry. ▪ Target had a significant amount of valuable self-developed technology in the form of know-how, trade secrets, and in-process research and development ("R&D") that was not separately valued in the purchase price allocation. This means that whatever value this IP has is lumped into the $250 million of goodwill. ▪ The amount paid for Target's stock exceeded its trading price by $5 per share after news of the acquisition became public due to the expected synergy of USP and Target's respective technologies.

Effective Tax Rate Overview

Pricing of PCT in CSA – Acquisition of Subsequent IP

ETR of Company

- When a U.S. taxpayer successfully shifts a significant amount of its income producing intangibles outside of the U.S. into a low tax jurisdiction (including contributing valuable rights, resources, and capabilities to the CSA), for inadequate consideration, then the taxpayer's worldwide effective tax rate ("ETR") may decrease substantially. This occurs because the income streams from these intangibles remain offshore where they may indefinitely escape U.S. taxation.

ETR Impact of Adjustment

- An adjustment to increase the PCT payments pursuant to IRC 482 will increase taxable income for the U.S. taxpayer and will therefore increase the ETR. The ETR impact may affect one or more taxable years depending in part on how the PCT payment was structured by the taxpayer (e.g. lump sum, installment, or contingent royalty).

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Summary of Potential Issues

Pricing of PCT in CSA – Acquisition of Subsequent IP	
Issue 1	What is the best method for determining the arm's length price of the Acquisition PCT payments with respect to the resources, capabilities, or rights of Target that USP reasonably anticipates will assist in further development in the CSA?
Issue 2	Is it more reliable to aggregate USP's platform contributions acquired from Target together as a group for determining the arm's length price?
Issue 3	Is the taxpayer's "goodwill" as identified for accounting purposes or otherwise by the taxpayer actually resources, capabilities, or rights of Target that USP reasonably anticipates will assist in further development in the CSA?

Pricing of PCT in CSA – Acquisition of Subsequent IP

All controlled participants must commit to, and in fact engage in PCTs to the extent that there are platform contributions. In a PCT, each other controlled participant (PCT Payor) is obligated to, and in fact, must make arm's length payments (PCT payments) to each controlled participant (PCT Payee) that provides a platform contribution. A subsequent PCT payment must be made when there are platform contributions by a party during the cost sharing arrangement such as the acquisition by USP of a Target company where it is reasonably anticipated that the platform contributions will assist in development within the CSA.

Fact Element	Resources	6103 Protected Resources
▪ Did a controlled party in a CSA purchase Target and the acquisition of Target is reasonably anticipated to benefit the CSA?	▪ Treas. Reg. 1.482-7(a)(2),(b)(1)(ii), (c), and (j)(3)(ii) – Requirements for PCTs ▪ Cost sharing audit checklist. ▪ Transaction documents and all facts relating to the Target Acquisition including but not limited to purchase price allocation, due diligence studies, 10Qs and 10Ks, board minutes and presentations to the Board relating to the acquisition of Target.	

All Issues, Step 1: Initial Factual Development (cont'd)

Pricing of PCT in CSA – Acquisition of Subsequent IP

All controlled participants must commit to, and in fact engage in PCTs to the extent that there are platform contributions. In a PCT, each other controlled participant (PCT Payor) is obligated to, and in fact, must make arm's length payments (PCT payments) to each controlled participant (PCT Payee) that provides a platform contribution. A subsequent PCT payment must be made when there are platform contributions by a party during the cost sharing arrangement such as the acquisition by USP of a Target company where it is reasonably anticipated that the platform contributions will assist in development within the CSA.

Fact Element	Resources	6103 Protected Resources
▪ Verify if the taxpayer did not rebut the presumption that the platform contributions are exclusive to the CSA or carve out US operational intangibles or other items that benefit solely the USP.	▪ Treas. Reg. 1.482-7(c)(2) – Rebuttable presumption ▪ Transaction documents and all facts relating to the Target Acquisition including but not limited to purchase price allocation, due diligence studies, 10Qs and 10Ks, board minutes and presentations to the Board relating to the acquisition of Target	

Issue 1, Step 2: Review Potential Issues

Pricing of PCT in CSA – Acquisition of Subsequent IP
Issue 1
What is the best method for determining the arm's length price of the Acquisition PCT payments with respect to the resources, capabilities, or rights of Target that USP reasonably anticipates will assist in further development in the CSA?

Explanation of Issue	Resources	6103 Protected Resources
Subsequent PCTs are generally subject to the same methods and provisions as initial PCTs, but with some additional guidance specific to subsequent PCTs. Treas. Reg. 1.482-7(g)(2) broadly provides guidance on selecting the best method for purposes of evaluating a PCT, including guidance on valuation of subsequent PCTs. A determination must be made if the subsequent PCT is most reliably analyzed on its own or in relation to other PCTs (*e.g.*, a group of PCTs).	▪ Treas. Reg. 1.482-1(c) – *Best method rule* ▪ Treas. Reg. 1.482-7(g)(1) – Methods applicable to PCTs ▪ Treas. Reg. 1.482-7(g)(2) – Best method analysis applicable for evaluation of a PCT ▪ Treas. Reg. 1.482-7(g)(2)(viii) – *Valuation of Subsequent PCTs*	

Issue 1, Step 2: Review Potential Issues (cont'd)

Pricing of PCT in CSA – Acquisition of Subsequent IP
Issue 1
What is the best method for determining the arm's length price of the Acquisition PCT payments with respect to the resources, capabilities, or rights of Target that USP reasonably anticipates will assist in further development in the CSA?

Explanation of Issue	Resources	6103 Protected Resources
The acquisition price method ("APM") is one method available that can value on its own a subsequent PCT that occurred within the context of an acquisition. The APM will generally be used when substantially all of the acquired company's resources, capabilities, and rights are made available to the CSA shortly after the acquisition. However, the reliability of using the APM will be diminished to the extent that a substantial portion of the resources, capabilities, and rights of the acquired company are not contributed to the CSA or if the acquisition and the subsequent PCT are not close in time.	▪ Treas. Reg. 1.482-7(g)(2)(viii) – *Valuation of Subsequent PCTs* ▪ Treas. Reg. 1.482-7(g)(5) – *Acquisition Price Method*	

Issue 1, Step 2: Review Potential Issues (cont'd)

Pricing of PCT in CSA – Acquisition of Subsequent IP
Issue 1
What is the best method for determining the arm's length price of the Acquisition PCT payments with respect to the resources, capabilities, or rights of Target that USP reasonably anticipates will assist in further development in the CSA?

Explanation of Issue	Resources	6103 Protected Resources
Some taxpayers may chose the method that provides the lowest PCT value, rather than the method that provides the most reliable measure of an arm's length result. Thus, it is extremely important to complete a detailed functional analysis to develop the relevant facts for purposes of determining the best method for a subsequent PCT transaction and why other non-chosen methods are less reliable.	▪ Treas. Reg. 1.482-1(c) – *Best method rule* ▪ Treas. Reg. 1.482-7(g)(2) – Best method analysis applicable for evaluation of a PCT	

Issue 1, Step 2: Review Potential Issues (cont'd)

Pricing of PCT in CSA – Acquisition of Subsequent IP
Issue 1
What is the best method for determining the arm's length price of the Acquisition PCT payments with respect to the resources, capabilities, or rights of Target that USP reasonably anticipates will assist in further development in the CSA?

Explanation of Issue	Resources	6103 Protected Resources
Here, USP relied on its General Accepted Accounting Principles ("GAAP") purchase price accounting ("PPA") valuation for determining the arm's length price of the subsequent PCT payment from CFC. Taxpayers sometimes claim that by relying on a PPA valuation they are using the APM, but in fact PPA valuation studies rely on other methods to value certain types of intangibles. Generally, the PPA valuation will not specifically value each of the resources, capabilities, and rights acquired. Rather, within the PPA, intangibles not specifically identified are lumped together in "goodwill".	▪ Treas. Reg. 1.482-1(c) – *Best method rule* ▪ Treas. Reg. 1.482-7(g)(2) – Best method analysis applicable for evaluation of a PCT	

Pricing of PCT in CSA – Acquisition of Subsequent IP
Issue 1
What is the best method for determining the arm's length price of the Acquisition PCT payments with respect to the resources, capabilities, or rights of Target that USP reasonably anticipates will assist in further development in the CSA?

Explanation of Issue	Resources	6103 Protected Resources
Moreover, accounting standards provide the following accounting definition of an acquired intangible asset (other than goodwill): An intangible asset shall be recognized as an asset apart from goodwill if it arises from contractual or other legal rights and obligations. If an intangible asset does not arise from contractual or other legal rights, it shall be recognized as an asset apart from goodwill only if it is separable, that is, capable of being separated or divided from the acquired entity and sold, transferred, licensed, rented, or exchanged (regardless of whether there is an intent to do so).	▪ FAS 141, paragraph 39	

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Issue 1, Step 2: Review Potential Issues (cont'd)

Pricing of PCT in CSA – Acquisition of Subsequent IP
Issue 1
What is the best method for determining the arm's length price of the Acquisition PCT payments with respect to the resources, capabilities, or rights of Target that USP reasonably anticipates will assist in further development in the CSA?

Explanation of Issue	Resources	6103 Protected Resources
Accounting standards provide the following accounting definition of an acquired intangible asset (other than goodwill) (cont'd): For purposes of this Statement, however, an intangible asset that cannot be sold, transferred, licensed, rented, or exchanged individually is considered separable if it can be sold, transferred, licensed, rented, or exchanged in combination with a related contract, asset, or liability. For purposes of this Statement, an assembled workforce shall not be recognized as an intangible asset apart from goodwill.	▪ FAS 141, paragraph 39	

Issue 1, Step 3: Additional Factual Development

Pricing of PCT in CSA – Acquisition of Subsequent IP
Issue 1
What is the best method for determining the arm's length price of the Acquisition PCT payments with respect to the resources, capabilities, or rights of Target that USP reasonably anticipates will assist in further development in the CSA?

Fact Element	Resources	6103 Protected Resources
▪ What are the functions performed, risks assumed, and assets employed the acquired company and how will that be incorporated into the taxpayer's business?	▪ Transfer pricing study ▪ Annual Reports, references & SEC filings ▪ Interview key employees ▪ PPA and due diligence studies ▪ Press Releases – Joint Efforts w/FP ▪ Capital IQ – Research Market Studies as well as competitors ▪ Internet Searches on taxpayer and industry ▪ Hart Scott Rodino Filings	
▪ What significant nonroutine contributions are the controlled participants providing to the CSA?	▪ Transfer pricing study ▪ Technology License Agreement ▪ Cost Sharing Agreement ▪ Economist/Engineer/Outside Expert ▪ Valuation study ▪ Annual Reports / SEC filings.	

Issue 1, Step 3: Additional Factual Development (cont'd)

Pricing of PCT in CSA – Acquisition of Subsequent IP
Issue 1
What is the best method for determining the arm's length price of the Acquisition PCT payments with respect to the resources, capabilities, or rights of Target that USP reasonably anticipates will assist in further development in the CSA?

Fact Element	Resources	6103 Protected Resources
▪ Is the taxpayer's method the most reliable method to determine the arm's length price of the PCT payments paid from CFC to USP? – comparability – quality of data – reliability of assumptions (tax rates, discount rates, projections, etc.) – sensitivity of results to possible deficiencies – consistency with upfront contractual terms and risk allocation--the investor model – consistency of evaluation with realistic alternatives	▪ Transfer Pricing Study ▪ Taxpayer Economist Report ▪ Valuation Study ▪ Technology License Agreement (if any) ▪ Cost Sharing Agreement ▪ Financial statements and disclosures for all controlled participants ▪ PPA and related acquisition documents	

Issue 1, Step 4: Develop Arguments

Pricing of PCT in CSA – Acquisition of Subsequent IP
Issue 1
What is the best method for determining the arm's length price of the Acquisition PCT payments with respect to the resources, capabilities, or rights of Target that USP reasonably anticipates will assist in further development in the CSA?

Explanation of Adjustment	Resources	6103 Protected Resources
Develop the unique facts of the subsequent PCT transaction through a functional analysis and adopt the transfer pricing method that provides the most reliable measure of an arm's length result under those facts. Apply the factors in best method rule under Treas. Reg. 1.482-1(c) and Treas. Reg. 1.482-7(g)(2) to determine if the acquisition price method is the most reliable method in this case. Also, consider the additional best method considerations specific to subsequent PCTs. Exam should critique all methods not selected to show why they are less reliable than the best method established by Exam.	▪ Treas. Reg. 1.482-1(c) – *Best method rule* ▪ Treas. Reg. 1.482-7(g)(1) – Methods applicable to PCTs ▪ Treas. Reg. 1.482-7(g)(2) – Best method analysis applicable for evaluation of a PCT ▪ Treas. Reg. 1.482-7(g)(2)(viii) – *Valuation of Subsequent PCTs*	

Issue 1, Step 4: Develop Arguments (cont'd)

Pricing of PCT in CSA – Acquisition of Subsequent IP
Issue 1
What is the best method for determining the arm's length price of the Acquisition PCT payments with respect to the resources, capabilities, or rights of Target that USP reasonably anticipates will assist in further development in the CSA?

Explanation of Adjustment	Resources	6103 Protected Resources
CONSULTATION: Determining the best method requires collaboration between the IE, economist, and counsel as all skill sets are complementary for developing complex PCT issues		

Issue 2, Step 2: Review Potential Issues

Pricing of PCT in CSA – Acquisition of Subsequent IP
Issue 2
Is it more reliable to aggregate USP's platform contributions acquired from Target together as a group for determining the arm's length price?

Explanation of Issue	Resources	6103 Protected Resources
Many taxpayers compute the subsequent acquisition PCT payment focusing solely on limited IP for example per the purchase price allocation ("PPA") and sometimes through a separate technology license agreement ("TLA") for the acquired Target IP in either case ignoring other platform contributions--resources, capabilities and rights acquired from Target that require compensation. Often, the primary purpose for acquiring Target is to obtain its intangible (versus tangible) assets and these intangibles and other resources, capabilities, and rights are reasonably anticipated to benefit the CSA. The entire purchase price must be examined in the aggregate in this case. Further, there may be interrelated intangibles within the Target with resulting synergies such that valuing the intangibles together is necessary and it would be inappropriate to separately value the specific separate intangible assets.	▪ Treas. Reg. 1.482-7(a)(2), (b)(1)(ii), (c), and see (j)(3)(ii) -- Requirements for PCTs ▪ Treas. Reg. 1.482-7(g)(2)(iv) and 1.482-1(f)(2)(i) – *Aggregation of Transactions* ▪ Treas. Reg. 1.482-1(f)(2)(i) – Aggregation, generally, including transactions not in cost sharing ▪ Treas. Reg. 1.482-7(g)(5) – *Acquisition Price Method* ▪ Treas. Reg. 1.482-7(g)(6) – *Market-capitalization Method* ▪ Treas. Reg. 1.482-7(g)(8)— *Unspecified Methods* ▪ TAM 200907024	

Issue 2, Step 2: Review Potential Issues (cont'd)

Pricing of PCT in CSA – Acquisition of Subsequent IP
Issue 2
Is it more reliable to aggregate USP's platform contributions acquired from Target together as a group for determining the arm's length price?

Explanation of Issue	Resources	6103 Protected Resources
As such, it may be more reliable to aggregate platform contributions (the group of PCTs) acquired from Target and the entire purchase price of Target must be necessarily considered (paid for the group of PCTs) and aggregate valuation may be required for best method analysis as the acquired Target assets are so interrelated.	▪ TAM 200907024	

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Issue 2, Step 3: Additional Factual Development

Pricing of PCT in CSA – Acquisition of Subsequent IP
Issue 2
Is it more reliable to aggregate USP’s platform contributions acquired from Target together as a group for determining the arm’s length price?

Fact Element	Resources	6103 Protected Resources
▪ Review PPA and other documents taxpayer relies upon to support its return position that the PCT is priced at arm's length.	▪ PPA	
▪ Confirm all relevant facts relating to the Target Acquisition. ▪ Verify the taxpayer’s primary purpose for acquiring Target – obtain its intangible assets so the acquisition of Target is reasonably anticipated to benefit the CSA?	▪ Board Minutes relating to approval of acquisition and presentation to the Board for approval. ▪ SEC filings including Forms 10Q and Form 10K. ▪ USP Transfer Pricing Study relating to the acquisition of Target (if any) ▪ Hart Scott Rodino Filings	

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Issue 2, Step 3: Additional Factual Development (cont'd)

Pricing of PCT in CSA – Acquisition of Subsequent IP
Issue 2
Is it more reliable to aggregate USP's platform contributions acquired from Target together as a group for determining the arm's length price?

Fact Element	Resources	6103 Protected Resources
▪ Verify if Taxpayer has rebutted the presumption under Reg. 1.482-7(c)(2) that the Target's group of platform contributions are exclusive to the CSA.	▪ USP Transfer Pricing Study relating to the acquisition of Target (if any)	
▪ Document the taxpayer's complete explanation of its rebuttal and any explanation that the subsequent PCT results in changing the RAB shares of the controlled participants.	▪ USP Transfer Pricing Study relating to the acquisition of Target (if any) ▪ PPA ▪ Due diligence studies ▪ Board minutes ▪ SEC filings (Forms 10Q and Form 10K)	

Issue 2, Step 4: Develop Arguments

Pricing of PCT in CSA – Acquisition of Subsequent IP
Issue 2
Is it more reliable to aggregate USP's platform contributions acquired from Target together as a group for determining the arm's length price?

Explanation of Adjustment	Resources	6103 Protected Resources
Based upon the facts, USP attempted to minimize its PCT focusing on the limited IP per the PPA and / or with a TLA. (USP did not make a PCT payment for the group of all resources, capabilities, and rights of Target.) Consider focusing on all the facts and circumstances of the transaction in the aggregate. In many cases intangibles are so interrelated that the method that provides the most reliable measure of an arm's length charge is a method applied on an aggregate basis. In this case, the acquisition of Target involves multiple interrelated intangibles, so it will likely be more reliable to value them together as a group.	▪ Treas. Reg. 1.482-7(a)(2), (b)(1)(ii), (c), and see (j)(3)(ii) -- Requirements for PCTs ▪ Treas. Reg. 1.482-7(g)(2)(iv) and Treas. Reg. 1.482-1(f)(2)(i) – Aggregation of Transactions ▪ Treas. Reg. 1.482-7(g)(5) – Acquisition Price Method ▪ Treas. Reg. 1.482-7(g)(6) – Market-capitalization Method ▪ Treas. Reg. 1.482-7(g)(8)— Unspecified Methods ▪ TAM 200907024	

Issue 2, Step 4: Develop Arguments (cont'd)

Pricing of PCT in CSA – Acquisition of Subsequent IP
Issue 2
Is it more reliable to aggregate USP's platform contributions acquired from Target together as a group for determining the arm's length price?

Explanation of Adjustment	Resources	6103 Protected Resources
CONSULTATION: Appropriate expertise must be utilized to develop the facts. Besides an economist, Counsel is necessary to review all documents including legal agreements surrounding the acquisition of Target. Outside the four corners of the taxpayer's written documents, all additional facts including de facto benefits as the result of the acquisition of Target must be considered.	▪ Treas. Reg. 1.482-7(a)(2), (b)(1)(ii), (c), and see (j)(3)(ii) -- Requirements for PCTs ▪ Treas. Reg. 1.482-7(g)(2)(iv) and 1.482-1(f)(2)(i) – Aggregation of Transactions ▪ Treas. Reg. 1.482-7(g)(5) – Acquisition Price Method ▪ Treas. Reg. 1.482-7(g)(6) – Market-capitalization Method ▪ Treas. Reg. 1.482-7(g)(8)— Unspecified Methods ▪ TAM 200907024	

Issue 3, Step 2: Review Potential Issues

Pricing of PCT in CSA – Acquisition of Subsequent IP
Issue 3
Is the taxpayer's "goodwill" as identified for accounting purposes or otherwise by the taxpayer actually resources, capabilities, or rights of Target that USP reasonably anticipates will assist in further development in the CSA?

Explanation of Issue	Resources	6103 Protected Resources
Some taxpayers improperly use valuations prepared under GAAP for their acquisitions to support their transfer pricing position that the acquired goodwill of the target should be carved-out as it is not compensable by the CFC foreign controlled participant when the goodwill is a platform contribution to an existing CSA. In most instances, a GAAP valuation study does not provide necessary information for determining whether goodwill from an acquisition is compensable by the foreign participant in the form of a PCT payment for Section 1.482-7 purposes because often the GAAP goodwill is a significant amount and consists of many resources, capabilities, and rights that benefit the foreign participant economically and are reasonably anticipated to assist in further development of the CSA.	▪ Treas. Reg. 1.482-7(a)(2), (b)(1)(ii), (c) -- Requirements for PCTs ▪ TAM 200907024 ▪ AOD 2010-05, *VERITAS v. Commissioner* ▪ FAS 141 ▪ FAS 141(R) – Allocation of acquisition price in a business combination ▪ FAS 142 – Reporting of goodwill and other intangible assets	

Issue 3, Step 2: Review Potential Issues (cont'd)

Pricing of PCT in CSA – Acquisition of Subsequent IP
Issue 3
Is the taxpayer's "goodwill" as identified for accounting purposes or otherwise by the taxpayer actually resources, capabilities, or rights of Target that USP reasonably anticipates will assist in further development in the CSA?

Explanation of Issue	Resources	6103 Protected Resources
Pursuant to Statement of Financial Accounting Standards ("FAS") No. 141(r) – Allocation of acquisition price in a business combination GAAP, goodwill is calculated as a residual after allocating the purchase price to other "identifiable assets." Under this definition, an intangible asset is an identifiable asset if it either is separable or arises from contractual or legal rights. Therefore, intangibles that meet the above criteria are recognized apart from goodwill for book purposes, and any residual value is allocated to goodwill.	▪ Treas. Reg. 1.482-7(a)(2), (b)(1)(ii), (c) -- Requirements for PCTs ▪ TAM 200907024 ▪ AOD 2010-05, *VERITAS v. Commissioner* ▪ FAS 141 ▪ FAS 141(R) – Allocation of acquisition price in a business combination ▪ FAS 142 – Reporting of goodwill and other intangible assets	

Issue 3, Step 2: Review Potential Issues (cont'd)

Pricing of PCT in CSA – Acquisition of Subsequent IP
Issue 3
Is the taxpayer's "goodwill" as identified for accounting purposes or otherwise by the taxpayer actually resources, capabilities, or rights of Target that USP reasonably anticipates will assist in further development in the CSA?

Explanation of Issue	Resources	6103 Protected Resources
Many resources, capabilities, and rights, however, are not identifiable apart from goodwill under GAAP rules. Some examples may include, but are not limited to: customer service capability, distribution networks, certain marketing intangibles, know-how, processes, technical data, potential contracts being negotiated, assembled workforce ("WFP"), and self-created intangible property. Further, goodwill may reflect the value of synergies between identified intangibles (the greater value associated with the collection of intangibles (e.g. a collection of essential patents)) versus each patent valued in isolation. See TAM 200907024.	▪ Treas. Reg. 1.482-7(a)(2), (b)(1)(ii), (c) -- Requirements for PCTs ▪ FAS 141 ▪ FAS 141(R) – Allocation of acquisition price in a business combination ▪ FAS 142 – Reporting of goodwill and other intangible assets ▪ TAM 200907024 – groups of intangibles, "goodwill," and synergies ▪ *Hospital Corp. of America v. Commissioner, 81 T.C. 520 (1983)* ▪ AOD 2010-05, *VERITAS v. Commissioner*	

Issue 3, Step 2: Review Potential Issues (cont'd)

Pricing of PCT in CSA – Acquisition of Subsequent IP
Issue 3
Is the taxpayer's "goodwill" as identified for accounting purposes or otherwise by the taxpayer actually resources, capabilities, or rights of Target that USP reasonably anticipates will assist in further development in the CSA?

Explanation of Issue	Resources	6103 Protected Resources
Therefore, it is important to not simply accept the GAAP valuation study for purposes of determining whether goodwill is compensable. Instead, the primary issue, as in this case, is to determine the resources, capabilities, and rights that are embedded within the goodwill of Target and that are anticipated to contribute to the CSA and which will accordingly benefit the CFC.	▪ Treas. Reg. 1.482-7(a)(2), (b)(1)(ii), (c) -- Requirements for PCTs ▪ FAS 141 ▪ FAS 141(R) – Allocation of acquisition price in a business combination ▪ FAS 142 – Reporting of goodwill and other intangible assets ▪ TAM 200907024 – groups of intangibles, "goodwill," and synergies ▪ *Hospital Corp. of America v. Commissioner, 81 T.C. 520 (1983)* ▪ AOD 2010-05, *VERITAS v. Commissioner*	

Issue 3, Step 2: Review Potential Issues (cont'd)

Pricing of PCT in CSA – Acquisition of Subsequent IP
Issue 3
Is the taxpayer's "goodwill" as identified for accounting purposes or otherwise by the taxpayer actually resources, capabilities, or rights of Target that USP reasonably anticipates will assist in further development in the CSA?

Explanation of Issue	Resources	6103 Protected Resources
The facts indicate that Target has significant self developed intangible assets including knowhow, trade secrets, WFP, and in process R&D that were not listed separately on its financial statements. The value of these resources, capabilities, and rights are embedded in accounting goodwill along with the value of other interrelated intangibles which are not separately or specifically identified.	▪ Treas. Reg. 1.482-7(c)(5) Example 2 ▪ Treas. Reg. 1.482-7(g)(2)(vii)(B) Example 1	

Issue 3, Step 3: Additional Factual Development

Pricing of PCT in CSA – Acquisition of Subsequent IP
Issue 3
Is the taxpayer's "goodwill" as identified for accounting purposes or otherwise by the taxpayer actually resources, capabilities, or rights of Target that USP reasonably anticipates will assist in further development in the CSA?

Fact Element	Resources	6103 Protected Resources
▪ Verify the platform contributions that USP contributed to CFC – Verify if Target's self-developed knowhow, in process R&D, and trade secrets were contributed to the CSA.	▪ Transfer pricing study ▪ TLA and CSA ▪ GAAP valuation study ▪ Hart Scott Rodino Filings ▪ Employee interviews ▪ Economist / Engineer / Outside Expert Referral	
▪ What portion of the goodwill contributed to the CSA by USP from the acquisition of Target consists of resources, capabilities, and rights that benefit CFC?	▪ Transfer pricing study ▪ TLA and CSA ▪ GAAP valuation study ▪ Hart Scott Rodino Filings ▪ Employee interviews	

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Issue 3, Step 3: Additional Factual Development (cont'd)

Pricing of PCT in CSA – Acquisition of Subsequent IP
Issue 3
Is the taxpayer's "goodwill" as identified for accounting purposes or otherwise by the taxpayer actually resources, capabilities, or rights of Target that USP reasonably anticipates will assist in further development in the CSA?

Fact Element	Resources	6103 Protected Resources
▪ Verify if there is synergy between Target's technology and USP's existing technology. – Was the $5 increase in amount paid over share price (control premium/acquisition premium) of Target due to the expected synergy of USP and Target's respective technologies?	▪ Transfer pricing study ▪ TLA and CSA ▪ GAAP valuation study ▪ Hart Scott Rodino Filings ▪ Employee interviews ▪ Analyst Reports ▪ Economist / Engineer / Outside Expert Referral	
▪ Why did USP purchase Target? For its intangibles? – Look at what IP is identified, does anything (resources, capabilities, rights) pop out that is missing?—e.g. WFP, marketing intangibles, brand recognition, monopoly status, synergies?)	▪ IDRs requesting documents and information why USP purchased Target ▪ Board minutes ▪ Employee Interviews ▪ Hart Scott Rodino Filings	

Issue 3, Step 3: Additional Factual Development (cont'd)

Pricing of PCT in CSA – Acquisition of Subsequent IP
Issue 3
Is the taxpayer's "goodwill" as identified for accounting purposes or otherwise by the taxpayer actually resources, capabilities, or rights of Target that USP reasonably anticipates will assist in further development in the CSA?

Fact Element	Resources	6103 Protected Resources
▪ Target's skilled work-force is a resource or capability developing Target intangibles as of the date of the acquisition and such IP being developed is reasonably anticipated to benefit the CSA.	▪ Employee job descriptions and evaluations ▪ Education Level and experience of employees, patents developed, awards, articles in professional journals ▪ Internet Research of employees ▪ Headcount ▪ IDRs ▪ Economist / Engineer / Outside Expert Referral	
▪ What does USP identify as benefiting US only?	▪ IDRs why certain intangibles benefit the US only. ▪ Employee interviews	

Issue 3, Step 4: Develop Arguments

Pricing of PCT in CSA – Acquisition of Subsequent IP
Issue 3
Is the taxpayer's "goodwill" as identified for accounting purposes or otherwise by the taxpayer actually resources, capabilities, or rights of Target that USP reasonably anticipates will assist in further development in the CSA?

Explanation of Adjustment	Resources	6103 Protected Resources
Determine the portion of the GAAP goodwill that consists of resources, capabilities, and rights that USP contributed to the CSA as a result of the Target acquisition that benefits CFC economically. As in this case, transfer pricing studies typically list a few intangible assets and a substantial residual value amount that is classified as goodwill. A functional analysis of the contributions by USP with respect to the Target acquisition will assist in the identification of the valuable resources, capabilities and rights.	▪ Treas. Reg. 1.482-7(a) (2), (b)(1)(ii), (c) -- Requirements for PCTs ▪ TAM 200907024 ▪ *Hospital Corp. of America v. Commissioner, 81 T.C. 520 (1983)* ▪ AOD 2010-05, *VERITAS v. Commissioner*	

Issue 3, Step 4: Develop Arguments (cont’d)

Pricing of PCT in CSA – Acquisition of Subsequent IP
Issue 3
Is the taxpayer’s “goodwill” as identified for accounting purposes or otherwise by the taxpayer actually resources, capabilities, or rights of Target that USP reasonably anticipates will assist in further development in the CSA?

Explanation of Adjustment	Resources	6103 Protected Resources
In this fact pattern, USP contributed self developed knowhow, in-process R&D, and trade secrets to the CSA. Also, Target has a skilled workforce that has successfully developed Target IP and is expected to continue doing so in the future in the CSA. In support, after the acquisition, Target’s skilled workforce remained. The expertise and existing integration of the research team , along with other unidentified resources, capabilities, and rights are anticipated to contribute to further development of IP in cost sharing.	▪ Treas. Reg. 1.482-7(a)(2), (b)(1)(ii), (c) -- Requirements for PCTs ▪ TAM 200907024 ▪ Treas. Reg. 1.482-7(c)(5) Example 2 ▪ Treas. Reg. 1.482-7(g)(2)(vii)(B) Example 1	

Issue 3, Step 4: Develop Arguments (cont'd)

Pricing of PCT in CSA – Acquisition of Subsequent IP
Issue 3
Is the taxpayer's "goodwill" as identified for accounting purposes or otherwise by the taxpayer actually resources, capabilities, or rights of Target that USP reasonably anticipates will assist in further development in the CSA?

Explanation of Adjustment	Resources	6103 Protected Resources
In addition, the increase in the amount paid over the stock price may include the value of expected synergies from Target's and USP's respective technologies. Although these amounts are included in goodwill, they are clearly resources, capabilities, and rights that benefit the CFC economically, so they are compensable with a PCT.	▪ *Hospital Corp. of America v. Commissioner, 81 T.C. 520 (1983)* ▪ AOD 2010-05, *VERITAS v. Commissioner*	

Issue 3, Step 4: Develop Arguments (cont'd)

Pricing of PCT in CSA – Acquisition of Subsequent IP
Issue 3
Is the taxpayer's "goodwill" as identified for accounting purposes or otherwise by the taxpayer actually resources, capabilities, or rights of Target that USP reasonably anticipates will assist in further development in the CSA?

Explanation of Adjustment	Resources	6103 Protected Resources
When developing this issue, it is important to bring the required expertise early. Therefore, consult with counsel, economists, engineers, outside experts, and other specialists to determine relevant facts. **CONSULTATION:** In this case, USP's claim that all GAAP goodwill is not compensable is likely invalid because valuable resources, capabilities, and rights within the goodwill that benefit the CFC can be identified. These resources, capabilities, and rights should be compensated with an arm's length PCT.	▪ Treas. Reg. 1.482-7(a)(2), (b)(1)(ii), (c) -- Requirements for PCTs ▪ TAM 200907024 ▪ *Hospital Corp. of America v. Commissioner, 81 T.C. 520 (1983)* ▪ AOD 2010-05, *VERITAS v. Commissioner* ▪ Economist / Engineer / Outside Expert Reports	

Training and Additional Resources

Chapter 1.1.1 Determination of Buy-In/Buy-Out Amounts		
Type of Resource	**Description(s) and/or Instructions for Accessing**	**References**
CENTRA sessions	▪ 2012 CENTRA – Cost Sharing: Advanced Cost Issues and New Developments ▪ 2012 CENTRA – Income Method ▪ 2013 CENTRA - Income Method - Part II –Follow-up	
Issue Toolkits	▪ IRM 4.61.3-4 Functional Analysis Questionnaire ▪ IRM 4.61.3 Development of IRC section 482 Cases	

Glossary of Terms and Acronyms

Term/Acronym	Definition
APM	Acquisition Price Method
CFC	Controlled Foreign Corporation.
CSA	Cost Sharing Arrangement.
FAS	Financial Accounting Standards
GAAP	Generally Accepted Accounting Principles
IP	Intangible Property
PCT	Platform Contribution Transaction.
PPA	Purchase Price Accounting
RAB	Reasonably Anticipated Benefits
TAM	Technical Advice Memorandum
TLA	Technology License Agreement
USP	United States Parent
WFP	Workforce in Place

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Index of Related Issues

Issue	Associated UIL(s)	References
Initial PCT Transaction	9411.01	Practice Unit, "Pricing of Platform Contribution Transaction (PCT) in Cost Sharing Arrangements (CSA) Initial Transaction," DCN: ISO/9411.01_02(2013)
Arm's Length Royalty – 367(d)	9411.02	Practice Unit, "Deemed Annual Royalty Income Section 367(d)," DCN: ISO/9411.02_01(2013)
License of Intangible Property to Foreign Affiliate	9411.02	Practice Unit, "License of Intangible Property from U.S. Parent to a Foreign Subsidiary," DCN: ISO/9411.02_03 (2013)
Arm's Length Standard	9422.09	Practice Unit, "Arm's Length Standard," DCN: ISI/9422.09_06 (2013)

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