

Company Background

SAS is a \$1.5 billion multinational software company with subsidiaries in over 40 countries. SAS' most significant transfer pricing issue relates to the royalties SAS subsidiaries pay to the U.S. parent for the right to license SAS software in their respective territories (countries). For many years SAS has relied on the CUT (comparable uncontrolled transaction) method as the basis for setting its royalty rate. SAS charges its related subsidiaries the same royalty rate as its unrelated distributors.

Commenter Background

My name is Trent Green and I am SAS' international tax manager and I report to our VP of Tax. I have been at SAS for over 7 years. Among other things I am responsible for SAS' transfer pricing planning and documentation as well as for coordinating the company's transfer pricing defense upon audit.

Comments on Issue 1 – Status of transactional profit methods as last resort methods

We believe that it serves everyone's interest (governments, businesses, practitioners, etc.) for transfer pricing rules and policies to be as practical, transparent and intuitive as possible. We also believe a key element in that approach is to maintain a hierarchy of transfer pricing methods where the traditional transaction methods are regarded as preferable to other methods.

The traditional transaction methods embody the bedrock principle of transfer pricing: if a price can be independently established through transactions with unrelated parties then that should also be the transfer price among related parties as well. In our view, to allow consideration of other transfer pricing methods when a traditional transactional method applies would invite abuse on the part of both taxpayers (trying to reduce taxes) and governments (trying to raise revenue).

Following this point, even if a traditional transaction method doesn't apply to many business models, it is still useful to have it at the top of the transfer pricing method hierarchy. It serves an important purpose in preventing a taxpayer or tax authority from engaging in a more complex, time-consuming, subjective and costly transfer pricing analysis unless it can be shown that a simpler, more transparent and more intuitive traditional transactional method doesn't apply.

Finally, it is uncommon to find a business model where a traditional transaction model will apply perfectly due to a lack of comparable data. However, we also believe that because of the superiority of traditional transaction methods over profit-based methods, reasonable allowances should be made to enable the use of the traditional methods. In summary, we believe that it is easier to extrapolate a reasonable transfer price based on a traditional transactional method, even in cases where there isn't a great deal of data, than it is by using a more subjective and complex transactional profit method.

Comment on Issue 2 – Use of a transactional profit method either in conjunction with a traditional transaction method or as a sanity check to test the plausibility of the outcome of a traditional transaction method.

We think it is reasonable to allow the use of one transactional profit method to test the plausibility of another transactional profit method because those methods are more subjective and can yield a wider range of possible transfer prices. However, the range of acceptable transfer prices using a traditional transactional method (where it can apply) is already sufficiently narrow. As a result, we believe that rules enabling taxpayers or governments to introduce profit-based transfer pricing methods to influence transfer pricing would result in greater complexity and increased administrative and compliance costs for all parties involved.

Other Comments

We also believe that, to the extent possible, sufficient flexibility should be granted for taxpayers to use the cost-plus method for service transactions. This method is one of the most straightforward and transparent available because costs are generally easy to calculate and verify, and determining a reasonable profit method for most services is also a relatively straightforward process. In summary, while the use of other methods may be superior from an academic/economic perspective, the intuitive and common-sense nature of the cost-plus method provides both taxpayers and governments with a straightforward, reliable and verifiable basis for determining reasonable transfer prices.