

TRANSFER PRICING METHODOLOGIES

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TRANSFER PRICING METHODOLOGIES

- **An Intellectual Journey in Four Steps, With Extensive Articulation of Concepts: the U.S. Way**
 - ➤ **Situational Subtleties (*Ex Ante, Ex Post*)**
 - ➤ **Focus on the Price Reported, Not the Price Paid**
 - ➤ **A Common Thread — the Search for Objective Assistance**
 - ➤ **But a Particularized Inquiry**

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Step One: From the Statute to Implementation

- ➤ “Clear Reflection” Means “Arm’s Length”
- ➤ Alternatives and Ambiguities
- ➤ One-Sided or Two?
- ➤ Transactions as They Are, or as They Might Have Been?
- ➤ A “Pure Tax” Inquiry, or a Reflection of the Ability To Shift Income?

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Step Two: Categorization of the Transaction

- ➤ (Inevitable) Blurring of Lines
- ➤ Underlying Commonality of the Search
- ➤ Borrowing of Methods Among Categories
- ➤ Potential Safe Harbors

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Step Three: Ranges And Approximations

- ➤ Over Time
- ➤ Over Place
- ➤ Over Industries
- ➤ From the Facts to the Rules (Not the Opposite)
- ➤ Using Comparables: Direct Evidence, Indirect Suggestions, Hints, Statistics

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Step Four: An Array of Choices

- ➤ Comparable Uncontrolled Price (Transaction)
- ➤ Resale Price (Gross Margin), Cost Plus (Gross Mark-up)
- ➤ Comparable Profits (With Various Profit Level Indicators)
- ➤ Profit Splits (The Real World — But Requiring a Leap of Faith)
- ➤ Trolling for the “Best Method” — Situational Subtleties (Again)

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Alternative Strategies

- ➤ **Cost Sharing**
- ➤ **Advance Pricing Agreements**

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THANK YOU