

Contents

	Page
Preface	v
About the Publisher	vii
About the Author	viii
Glossary	xvii
1 Introduction	1
¶101 What are the risks?	1
¶102 The hidden benefits of planning	1
¶103 Keeping a policy up to date	1
¶104 Theory and practice	2
¶105 Other matters	2
¶106 The future	2
2 Categories of Intercompany Transfer	4
¶201 Introduction	4
¶202 The arm's length principle	4
¶203 Sales of tangible property – definition	5
¶204 Sales of machinery and equipment	5
¶205 Sales of inventory	5
¶206 Transfers of intangible property – definition	6
¶207 Types of intangibles	7
¶208 Modes of transfer of intangibles	7
¶209 Manufacturing intangibles	8
¶210 Marketing intangibles	9
¶211 Hybrid intangibles	10
¶212 The provision of services – definition	11
¶213 Examples of types of service	11
¶214 The problem of 'stewardship' services	12
¶215 Financing transactions	14
¶216 Financing short-term capital needs	15
¶217 Market penetration payments	18
¶218 Cost sharing	19

	Page
¶219 Financing long-term capital needs	19
¶220 Mortgages	19
¶221 Lease financing	20
¶222 Capital stock	20
¶223 Long-term intercompany loans	20
¶224 Other financing techniques	20
¶225 Flexibility in managing capital needs	21
3 Establishing a Transfer Pricing Policy – Technical Considerations	22
¶301 Introduction	22
¶302 The arm's length principle	24
¶303 Acceptable pricing methods	24
¶304 Comparable uncontrolled price method	25
¶305 Resale price method	26
¶306 Cost plus method	27
¶307 Cost plus method – capacity adjustments	28
¶308 'Fourth' methods	29
¶309 Rate of return method	30
¶310 Profit split method	31
¶311 BALRM – the basic arm's length return method	33
¶312 Berry ratio	33
4 Establishing a Transfer Pricing Policy – Practical Considerations	35
¶401 Arm's length pricing: market prices	35
¶402 Functional analysis	36
¶403 Interviews	36
¶404 Other information or documents required	37
¶405 Functions	38
¶406 Risks	39
¶407 Intangibles	42
¶408 Characterisation of businesses	43
¶409 Contract manufacturers and fully-fledged manufacturers	43
¶410 Characterisation of distributors/selling companies	45
¶411 Goals of the multinational	46
¶412 Manufacturing opportunities	47
¶413 Centralised support activities	48
¶414 Selling companies	48
¶415 Contract service providers	49
¶416 Contract research and development	49

	Page
¶417 Other reasons for establishing contract research and development	50
¶418 Contract maintenance	50
¶419 Contract marketing	51
¶420 The evaluation of pricing options	51
¶421 The search for comparables	52
¶422 Identifying appropriate comparables	53
¶423 Internal comparables	54
¶424 External comparables	54
¶425 Functional analysis and comparable information – an overview	55
¶426 Documentation	56
¶427 How to document a policy	57
¶428 Financial analyses	57
¶429 Evaluation of financial analyses	58
¶430 Transfer pricing policy	60
¶431 Transfer pricing guidelines	60
¶432 Intercompany agreements	60
¶433 Documentation of the functional analysis	60
¶434 Documenting the comparables	61
¶435 Income statements	61
¶436 Industry evidence	61
¶437 Implementing a transfer pricing policy	61
¶438 Monitoring the application of the policy	61
¶439 Compensation of management	62
5 Specific Issues in Transfer Pricing	63
MANAGEMENT SERVICES	63
¶501 Management fees – introduction	63
¶502 The importance of management fees	63
¶503 The tax treatment of management fees – an overview	64
¶504 Management fees in the developed world	64
¶505 Dealing with stewardship costs	65
¶506 Analysing the services	65
¶507 The cost base for service charges	67
¶508 The cost accounting method	67
¶509 The computation on a full cost basis	67
¶510 When should a profit margin be added to cost?	68
¶511 Management fees in the US	69
¶512 Management fees in Germany	69
¶513 Management fees in Italy	70

International Transfer Pricing

	Page
¶514 The determination of an arm's length service charge	70
¶515 Documentation	71
TRANSFER OF INTANGIBLE PROPERTY	72
¶516 Transfer of intangibles – introduction	72
¶517 Sale for consideration	72
¶518 Licence	72
¶519 Determination of arm's length royalty rates	73
¶520 Determining an arm's length royalty rate in the absence of perfect comparables	74
¶521 Super-intangibles	75
¶522 Valuation of royalty rates for super-intangibles	75
COST SHARING	77
¶523 Cost sharing – introduction	77
¶524 Advantages of cost sharing	77
¶525 Cost sharing arrangements	78
¶526 Cost sharing agreements	78
¶527 Allocation of costs among participants	78
¶528 Deductibility of cost sharing payments	79
¶529 Cost sharing and risk	81
¶530 The participants	82
¶531 Establishing cost sharing arrangements in mid-stream	82
¶532 Buy-in arrangements	82
¶533 Ownership of intangibles	83
¶534 Other types of cost sharing agreements	85
FOREIGN EXCHANGE AND FINANCE	85
¶535 Foreign exchange risk – introduction	85
¶536 The arm's length standard	85
¶537 Types of exchange rate exposure	86
¶538 Translation exposure	86
¶539 Transaction exposure	86
¶540 Economic exposure	86
¶541 Planning opportunities	87
¶542 Loans and advances	89
¶543 Characterisation of loans	89
¶544 Interest on loans	89
¶545 Loan guarantees	90
¶546 Bona fide leases	90

	Page
¶547 Establishing an arm's length rental rate	91
6 Managing Changes to a Transfer Pricing Policy	92
¶601 Introduction	92
¶602 Transfer pricing committee	92
¶603 Accounting systems	93
¶604 The audit trail	94
¶605 The group's first pricing policy	94
¶606 Changes in law	95
¶607 Problems with current policy	97
¶608 Making corrections through fine-tuning	97
¶609 Dealing with major changes	98
¶610 Change in the operating structure of the company	99
¶611 Massive change: alteration to business reality	99
¶612 Change in tax rates: affirmative planning	100
¶613 Parent company pressure: crisis management	100
¶614 Tax audit settlements	101
¶615 Year end adjustment	101
¶616 Retroactive price changes	102
¶617 Defensible late adjustments	103
¶618 Big bang or softly softly	104
¶619 Communicating the changes to the tax authorities	104
¶620 Communicating the changes to employees	105
¶621 Documenting the changes	105
¶622 Effect on tax audits of prior years	106
¶623 Impact on management/employee bonus schemes	106
¶624 Accounting disclosure	106
¶625 Tax return disclosure	107
¶626 Indirect taxes	107
¶627 Impact on banks and other users of the financial statements	107
7 Dealing with an Audit of Transfer Pricing by a Tax Authority	109
A GENERAL APPROACH TO TAX AUTHORITY INVESTIGATIONS	109
¶701 Introduction	109
¶702 Establishing control of the audit process	110
¶703 Minimising the exposure	111
¶704 Settling the matter – negotiation, litigation and arbitration	112
¶705 Preparation	113
¶706 Dealing with adjustments to existing pricing policies	114
¶707 Advance rulings	114
¶708 Competent authority	116

International Transfer Pricing

	Page
THE US APPROACH	117
¶709 A transfer pricing audit in the US	117
¶710 The commencement of the US audit	117
¶711 The audit process	118
¶712 Appeals	121
¶713 Statutory rights of the Internal Revenue Service	122
THE UK APPROACH	122
¶714 A transfer pricing audit in the UK	122
¶715 The audit process	122
¶716 The Appeal Commissioners	123
¶717 Litigation	124
¶718 The assessment procedure	124
THE GERMAN APPROACH	124
¶719 A transfer pricing audit in Germany	124
¶720 The audit process	124
¶721 Adjustments to transfer prices	125
THE AUSTRALIAN APPROACH	125
¶722 A transfer pricing audit in Australia	125
¶723 The audit process	126
THE CANADIAN APPROACH	127
¶724 A transfer pricing audit in Canada	127
¶725 The audit process	128
¶726 Adjustments	128
THE JAPANESE APPROACH	128
¶727 A transfer pricing audit in Japan	128
¶728 The audit process	129
¶729 The provision of information	130
¶730 Negotiation	130
¶731 Appeals	130
8 US Transfer Pricing Rules	132
¶801 The importance of the US rules on transfer pricing	132
¶802 The current US position	132
¶803 The 1993 temporary transfer pricing regulations	133
¶804 The best method rule	133
¶805 Intangible property	133
¶806 Comparable uncontrolled transaction method (CUTM)	134

	Page
¶807 Comparable profit method (CPM)	134
¶808 Tangible property	135
¶809 Periodic adjustment of royalty rates	135
¶810 Proposed profit split method	136
¶811 Loss leader strategies	136
¶812 Safe harbour	136
¶813 Penalties and documentation	136
¶814 Looking to the future	137
9 Importance of Indirect Taxes	138
¶901 Customs duty implications	138
¶902 General Agreement on Tariffs and Trade (GATT) customs valuation code	138
¶903 Relationship between customs and tax rules	139
¶904 Intangibles	139
¶905 The Brussels definition of value	139
¶906 Specific duties and fixed values	140
¶907 Sales taxes, value added taxes and excise duties	140
¶908 Anti-dumping duties	140
¶909 Establishing a transfer pricing policy – technical considerations	140
¶910 Adjustments	141
¶911 Validation of the transfer price for customs purposes	142
¶912 Transfer prices below the acceptable customs value	143
¶913 Transfer price exceeds minimum acceptable customs value	144
¶914 Alternative methods of valuation	145
¶915 Implementation of the customs pricing policy	146
¶916 Transfers of intangibles	146
¶917 Royalties and licence fees	147
¶918 Intangible assists	149
¶919 Interest	149
¶920 Computer software	150
¶921 Design, development, engineering and similar charges	150
¶922 The impact of pricing policy changes	150
¶923 Dealing with an audit of transfer pricing by an indirect tax authority	151
10 European Community Multilateral Transfer Pricing Convention	153
¶1001 Background	153
¶1002 The scope of the convention	153
¶1003 The required level of control	154
¶1004 Adjustments to profits	154

International Transfer Pricing

	Page
¶1005 Mutual agreement and arbitration procedures	155
¶1006 Serious penalty proceedings	155
¶1007 The advisory commission	156
¶1008 Resolution of the problem	156
¶1009 Entry into force of the convention	156
¶1010 Interaction with non-member states	157
¶1011 Implications of the European Community convention	157
Appendix 1: Functional Analysis Questions	159
Appendix 2: Examples of Databases for use in Identifying Comparative Information	167
Index	169