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Talent in Demand as Transfer Pricing Disputes Gain Attention

Transfer pricing - complex arrangements companies use to allocate costs and revenue between operations in different tax jurisdictions - has steadily become one of the top concerns of the IRS. The agency was recently handed a victory in a dispute with Xilinx that could have far reaching implications for other multinational companies that use transfer pricing.

In the decision, the U.S. Court of Appeals for the Ninth Circuit reversed an August 2005 ruling by the U.S. Tax Court concerning Xilinx's cost-sharing agreement with its Irish subsidiary, Xilinx Ireland, according to the [WSJ](#). The report states the dispute concerned a transfer-pricing arrangement that Xilinx had set up in which it allocated part of its R&D costs to the Irish subsidiary, but kept the entire value of its stock option deductions for its R&D employees in the U.S. None of the deductions were allocated to the subsidiary in Ireland, where corporate income-tax rates are significantly lower than in the U.S., thus lowering Xilinx's global tax burden.

Transfer pricing is the pricing of goods and services, including raw materials, products, and payments such as management fees and intellectual property royalties, within a multi-divisional corporation. Essentially, when one subsidiary sells goods or services to another subsidiary in a different country, the price charged for these goods or services is called the transfer price.

Since tax rates vary between countries, multinational corporations can increase their profits with the help of transfer pricing. By lowering prices in countries where tax rates are high and raising them in countries with a lower tax rate, corporations can reduce their overall tax burden and boost profits.

U.S. Treasury Department regulations, however, dictate that multinational corporations conduct business between their subsidiaries at "arm's length." That means all transactions between the subsidiaries should be priced as if the transaction was conducted between two unconnected parties.

Xilinx argued that unrelated companies wouldn't have shared the costs of the stock options. By a vote of 2-1, however, the appellate court ruled that the costs related to the options had to be shared, increasing Xilinx's taxable income in the U.S., notes the [WSJ](#).

The report adds the panel also held that a regulation limiting the IRS to the arm's length standard is in "irreconcilable" conflict with another regulation that gives the IRS authority to decide how R&D-type expenses should be allocated between corporate subsidiaries. The WSJ concludes this could hand the IRS broad new powers to adjust corporate tax returns.

The WSJ quotes H. David Rosenbloom, an international tax attorney at Caplin & Drysdale, as saying, "It's the most important transfer-pricing decision in this country in 20 years. It goes to the question of how broad the IRS's power is."

The Xilinx decision comes as the Obama administration is proposing a tough new enforcement campaign directed at taxes owed both domestically and abroad, according to tax-news.com. Moreover, in his recent Fiscal Responsibility Summit, Obama discussed the possibility of lowering the statutory corporate tax rate while also closing tax loopholes that allow companies to reduce taxes, according to WebCPA.

Congressional scrutiny of transfer pricing schemes has also ramped up in recent years. And IRS Commissioner, Doug Shulman, has repeatedly warned that the agency is ramping up efforts to police the U.S. international tax system.

In a recent speech before the Organization for Economic Cooperation and Development, Shulman noted that the stepped-up enforcement efforts had led to a victory in last week's Appeals Court ruling against chip maker Xilinx, according to WebCPA. The report states that Shulman plans to require more enforcement of information-reporting requirements to catch tax evaders.

"While we won't always agree about what the law is, or how it applies in particular cases, we recognize that many businesses are trying to get it right. However, we also know that some businesses use the complexity of the Tax Code and the international capital markets to push the envelope too far. That is where we have issues, and where we will continue to focus," Web CPA quotes Shulman as saying. The report adds that particular areas of concern include financial instruments, hybrid structures, withholding taxes and transfer pricing.

Today, transfer-pricing disputes between multinational companies and the IRS are drawing increased attention as companies do more business overseas and develop more sophisticated methods for cutting their taxes, particularly in the technology and pharmaceutical industries, notes the WSJ. As a result, multinational organizations are facing increasing demands from different jurisdictions as authorities attempt to collect taxes on cross-border activities. These corporations need to have very clear transfer pricing guidelines in place ahead of any potential IRS audits.

Now, from supply chain restructuring, to transfer pricing planning and compliance with documentation requirements, executive search firm, A.E. Feldman says that international tax jobs are opening up. A.E. Feldman President, Mitch Feldman, also notes that talent with expertise in complex transfer pricing matters, particularly international transfer pricing controversy and advanced pricing agreements among the most sought after candidates.

Are you an accountant or transfer pricing specialist? If you want to grow your career or discuss your company's talent needs, contact A.E. Feldman's President, Mitch Feldman today.



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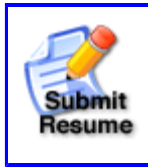
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