



Peters Advisors
TRANSFER PRICING • TAX VALUATION

Peters Advisors LLC

Presentation to the Multistate Tax Commission

Arm's Length Adjustment Project

October 6, 2014

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Peters Advisors LLC

- Peters Advisors LLC (“Peters Advisors”) is an independent provider of transfer pricing and valuation services.
 - Founded by Dan Peters, formerly the Global Transfer Pricing and Valuation Services leader at a Big 4 Firm.
 - Both Dan Peters and Sean Faulkner both named “Leading Transfer Pricing Advisor” in client surveys by the Legal Media Group.
 - Peters Advisors received numerous awards in recent years from multiple publications in recognition of our outstanding work product and client service.
- Peters Advisors has extensive experience in defending taxpayers and preparing economic analyses in state and national (in the U.S. and other jurisdictions) audit cases.
- We have also conducted many transfer pricing risk reviews for tax, financial statement, and due diligence purposes and have developed processes for reviews that are consistent with how they are performed at the national tax authority level.

Our Experience in State Transfer Pricing Matters

Through our experience in assisting clients in a number of state transfer pricing matters, we have the following observations:

- The great majority of taxpayers are generally not actively manipulating income through transfer pricing.
- Certain state transfer pricing audit approaches have broadly misapplied transfer pricing principles at the highest level with little basis in the underlying economics; which have occasionally resulted in inappropriate and unsustainable adjustments.
- Leveraging the experiences and approaches of IRS and other national revenue agencies would lead to better case development and more successful cases.
- Contingent fee arrangements between the states and their “experts” are problematic in auditing transfer pricing.

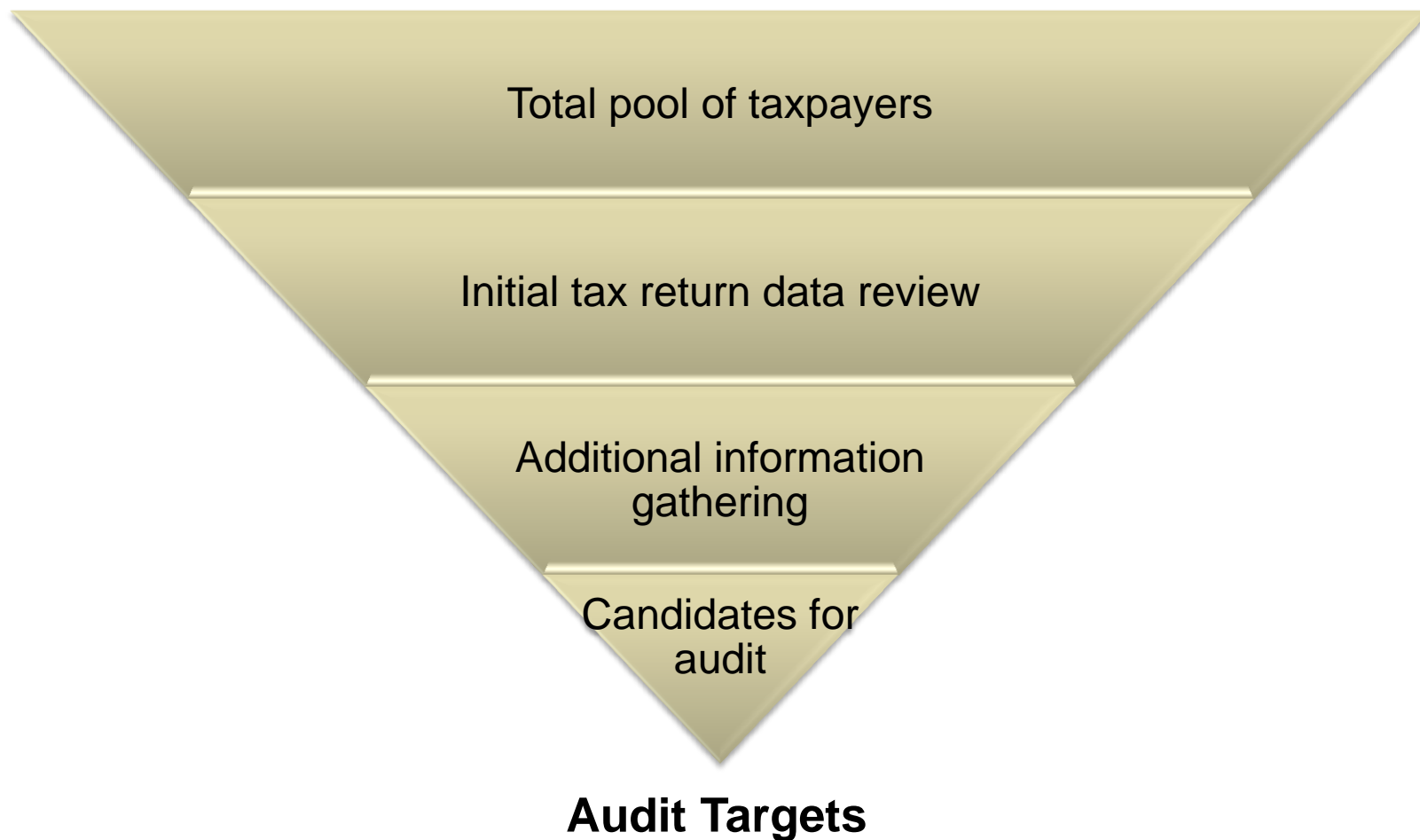
Transfer Pricing Challenges

What are the greatest challenges that states might face in improving tax compliance related to intercompany transactions that distort the reporting of income to their states?

- Historically, taxpayers' experience has been that certain states take unfair positions based on lack of information and misapplication of transfer pricing principles
- Lack of information hampers both the state and the taxpayer:
 - Cannot easily identify good candidates for audit.
 - Intercompany transaction data not readily available from state tax returns.
 - Many taxpayers do not effectively track state-to-state transactions.
 - Taxpayers are not required to prepare documentation.

How States Meet Challenges

States can apply effective processes to identify audit targets



How States Meet Challenges

What are some of the best ways for states to meet those challenges?

- Create a **transfer pricing pricing risk review** process to increase efficiency.
 - Standardize a process to gather information from tax returns and publicly available information.
 - Develop a set of questions and information requests to provide to taxpayers.
 - Based on information gathered, identify taxpayers with highest risk.
 - Adopt sound transfer pricing principles in reviewing companies.
 - Appropriately identify the intercompany transactions.
 - Follow the guidance provided in the Section 482 transfer pricing regulations and other publicly available IRS guidance for evaluating the arm's-length nature of intercompany transactions.
- Select cases for audit that will be important from a broader compliance perspective.
- Provide transparency to the taxpayer through all stages of the review.

Peters Advisors Service Offerings

What type of services is your firm prepared to provide states to assist with transfer pricing tax compliance and in what manner might those services be provided?

- Peters Advisors has worked with taxpayers through all phases of their transfer pricing, including setting of intercompany prices, ensuring compliance and managing disputes with tax authorities.
- Utilizing our experience with taxpayers, we can assist the states with transfer pricing compliance in a number of ways, including:
 - Creating a standardized process for identifying the best potential taxpayers for review.
 - Work with the states to train staff to perform second level reviews to further narrow the pool of potential taxpayers.
 - Develop standardized questionnaires and information requests to gather information from taxpayers.
 - Perform the necessary economic analysis to determine where taxpayers are operating in a manner inconsistent with arm's-length transfer pricing.
 - Support our analysis at every level of controversy (audit, negotiation, litigation).

Integration of Economics, Tax & Legal

Given the fact-intensive nature of transfer pricing work, how might states best integrate expertise in economics and statistical analysis with their audit and legal staffs in the tax administrative process?

- Using economic and statistical analysis will help the audit and legal staffs to correctly identify taxpayers for further review.
- Economics expertise will also provide audit and legal staffs with the necessary tools to gather relevant information from taxpayers in order to better assess the arm's-length nature of the intercompany transactions.
- From our experience, tax authorities can either perform reviews in-house or outsource to consulting firms.
 - A combination of in-house personnel and outsourced expertise may produce the most effective and cost-efficient review process.

Objections from Taxpayers

What objections will states face from taxpayers as they increase their compliance work? Which of those objections is a legitimate concern? How can states best respond to those criticisms?

- For many multi-national companies (MNC's), intercompany transactions among state entities are primarily a matter of compliance.
 - Very limited transfer pricing planning done today regarding intra-state transfer pricing.
- An increased focus on transfer pricing compliance places an increased burden on the taxpayer's resources.
- Certain states may continue (or expand) with an unfair transfer pricing audit system that doesn't have a basis in Section 482 regulations or OECD Guidelines.
- Contingent fee arrangements do not fit with the inherently subjective nature of transfer pricing analysis.
- States are using transfer pricing as a tool to increase revenue.

Lessons Learned from Tax Authorities

What lessons can the project states learn from other taxing authorities with regard to transfer pricing enforcement?

- Following a risk review model, similar to that adopted by the Australian Taxation Office, will increase the efficiency of monitoring transfer pricing compliance and selecting companies for audit.
- Economic analysis performed by the states needs to be applied in a manner that is consistent with basic transfer pricing principles.
- Selecting cases for enforcement and litigation that are meaningful from a broader compliance and collection perspective will improve overall compliance.
- Taxpayers want certainty and offering advance pricing structures (or even informal audit “closing agreements”) would be useful.

How to Correct Income Manipulation

What remedies are most effective in correcting income manipulation associated with intercompany transactions?

- In our experience, most taxpayers are not artificially manipulating their income through transfer pricing at the state level.
 - Identify those that are doing so, and pursue vigorously (and publicly).
- Create stronger transfer pricing reporting requirements in conjunction with state income tax returns.
 - Consider requiring some form of attestation that transfer pricing is consistent with the arm's length standard.
 - Consider requiring access to country-by-country reporting information that is now being recommended by the OECD.
 - Consider creation of state-by-state reporting requirements.

Sunlight is the best disinfectant

What other issues are important for states to consider in designing the project MTC Arm's-Length Adjustment Service?

- Do taxpayers already have international transfer pricing documentation or Advance Pricing Agreements in place for the entities in the state jurisdiction?
- Consider the counterparties to the intercompany transactions.
 - Making an income adjustment in one state requires a corresponding income adjustment in another state.

Conclusions

Taxpayers have a strong view that certain state tax authorities are conducting transfer pricing audits in a manner that is inconsistent with accepted transfer pricing principles.

- In addition, contingent fee arrangements with external consulting firms create the perception that tax authorities are seeking to maximize adjustments.

Learning from national tax authorities, such as the IRS and ATO, state tax offices can create processes that increase the efficiency of transfer pricing reviews.

Selecting key cases for audit can be important in creating a broader atmosphere of compliance.

Our Services

Peters Advisors specializes in managing all stages of the transfer pricing life cycle

● Planning

Intangible Property

ETR management via cost-sharing, licensing agreements, sales and transfers of all types of intangibles

Tangible Property

Price goods along the supply chain to optimize income tax, customs, operational performance

Services

Structure management services arrangements to enhance cash flow, credit and ETR management

Financing

Price simple loans, hybrid financial instruments, guarantees, factoring and insurance products

● Implementation

Design & Development

Design intercompany pricing to integrate seamlessly with the client's commercial & operational objectives

Policies & Procedures

Develop customized transfer pricing manuals and assist clients with the implementation of best practices

Interim Testing

Conduct interim testing on a periodic basis to avoid material year-end transfer pricing adjustments

● Documentation

§6662 U.S. Documentation

Assist clients in analyzing and documenting transfer prices in accordance with U.S. regulations

Global Documentation

Identify high-risk jurisdictions and develop global documentation that satisfies local requirements

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Develop the appropriate framework and analysis to determine and support TP tax reserve positions

● Dispute Resolution

Advance Pricing Agreements

Design pricing models, file APA request, negotiate and agree to terms with U.S. and foreign tax authorities

Audit Defense

Develop TP audit defense strategy, represent taxpayer at tax audit meetings, negotiate resolutions

Competent Authority

In the event of double taxation arising from a tax audit, prepare taxpayer's TP case for CA resolution

Litigation & Appeals

Work with clients and their legal advisors to provide analytical support to achieve acceptable outcomes

Our Principals

Dan Peters

Dan Peters has practiced transfer pricing since 1993. He became partner at KPMG and moved to London in 1999 to lead the European transfer pricing team of that Firm. He returned to the US in 2000 and led KPMG's Transfer Pricing and Valuation practice until leaving the Firm in 2005. In 2004, Dan became Managing Partner of KPMG's Global Transfer Pricing Services practice.

Dan joined Duff & Phelps in 2006 to build a world-class transfer pricing practice, and eventually led that Firm's entire Tax practice as well as its Financial Advisory segment. Dan left Duff & Phelps in 2009 to found Peters Advisors LLC.

Dan has been named as a "Leading Transfer Pricing Advisor" consistently in client surveys by the Legal Media Group in the past decade, and has been referred to in other tax advisor surveys. In 2014, Dan was again named as "Best of the Best" in the U.S. as among the top 30 US Transfer Pricing Advisors.

Dan has led teams that have been awarded numerous accolades in client surveys at KPMG, Duff & Phelps, and Peters Advisors.

He has had the privilege of serving many of the world's leading multinational firms in their transfer pricing and tax valuation matters. Dan has worked in numerous industries, with specific expertise in industrial and high technology manufacturing, life sciences (pharmaceutical and healthcare device), telecommunications, transportation, consumer products (food, beverage, retail), software development and internet based businesses, and all aspects of the financial services industry.

His experience and expertise ranges across the entire range of transfer pricing transactions (intellectual property, tangible goods, services, and financing) and effective global planning, efficient compliance, and managing controversies.

Dan has written and presented extensively regarding transfer pricing and tax valuation matters, and developed and has taught "Valuation Principles in Transfer Pricing" for the ASA's Center for Advanced Valuation Studies.



Our Principals

Sean Faulkner

Sean Faulkner has practiced transfer pricing in the United States, Australia and China since 2000. Sean has worked both in an in-house capacity with a large pharmaceutical firm and as an advisor for KPMG and Duff & Phelps. Sean spent two years in Sydney, Australia and Guangzhou, China and has focused on Asia-Pacific transfer pricing in his career. Sean has developed and led significant transfer pricing and tax valuation engagements.

In these roles, he has developed expertise in all types of intercompany transactions – tangible goods, intangible property, services, financing and guarantees and has helped clients to establish and implement effective transfer pricing strategies and manage global compliance requirements.

In 2013, Sean was named as a “Leading Transfer Pricing Advisor” in client surveys conducted by the Legal Media Group.

Sean has worked on numerous transfer pricing controversies and Advance Pricing Agreements, developing economic analyses and negotiating with tax authorities in the United States, Australia, Japan and the United Kingdom.

Sean has served many large multinational clients across a wide range of industries. Industries where he has a specific expertise on transfer pricing matters include transportation, specialty chemicals, pharmaceutical and medical device, telecommunications and publishing/media.

Sean also helped develop the course material and taught “Valuation Principles in Transfer Pricing” for the ASA’s Center for Advanced Valuation Studies.



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Peters Advisors LLC



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