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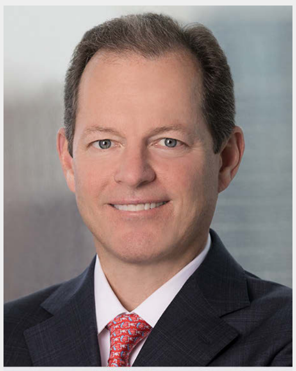

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In this article, the authors examine the considerations that should be taken into account in evaluating potential changes to related-party arrangements under the OECD transfer pricing guidelines and Treasury regulations.

The global COVID-19 pandemic has brought significant tax-related challenges, not least in the area of transfer pricing. Many companies now face disruptions that impede compliance with entrenched pricing policies, particularly in relation to limited-risk structures.

As a result, a significant issue being addressed by multinational enterprises is whether to terminate or modify related-party transfer pricing arrangements, taking into account the severe economic effects of the coronavirus. This article examines the considerations that should be taken into account in evaluating potential changes to related-party arrangements under the OECD transfer pricing guidelines (the guidelines) and Treasury regulations (the regulations).

We also address the common law doctrines of rescission, which may allow a party to unwind a contract, and *force majeure*, which may excuse performance under a contract. Finally, we address the taxpayer-initiated adjustment rules of reg. section 1.482-1(a)(3), which provide taxpayers latitude to report transfer prices other than those actually charged, and thus may allow taxpayers to arrive at arm's-length results without modifying contracts.

I. Modification and Termination

A. Start With the Contract

While both the guidelines and the regulations note that not all contractual arrangements will be respected by tax authorities, including arrangements that lack economic substance or do not align with the actual conduct of the parties, the guidelines and regulations prioritize evaluating the contractual arrangements between related parties, as well as respecting those arrangements if they are consistent with arm's-length behavior.[1] Thus, not surprisingly, the guidelines and regulations start the analysis of the consequences of a modification or termination of a contract by examining the pertinent agreement to gain insight into the rights and obligations of the parties.[2] Similarly, taxpayers considering whether to modify their intercompany arrangements should begin by reviewing their contracts.

The contractual arrangements between related parties play an important role under U.S. transfer pricing law, as the contractual allocation of risk set forth in such an agreement will generally be respected.[3] Moreover, the regulations note that when risk allocations between the parties are modified, a critical element in determining whether those changes will be respected is whether the contractual arrangements between the parties were modified to reflect the modified risk allocations.[4] Thus, any contract modification should be memorialized by an actual amendment to the agreement.

In evaluating the contractual arrangements between the parties, the following terms of the contract should be considered:

1. functional responsibilities of the parties;
2. sales or purchase volume;
3. consideration;
4. payment terms;
5. warranties;
6. term;
7. modifications;
8. *force majeure*; and
9. terminations.[5]

These terms will play a central role in evaluating whether any termination or substantial modification of a contract will be respected.

B. Evaluate in Light of Coronavirus

The regulations also recognize the importance of economic conditions in evaluating any related-party arrangement, including the "economic condition of the particular industry [and] . . . whether the market is in contraction or expansion."[6] These rules also stress the importance of considering the "alternatives realistically available to the buyer and seller."[7] Thus, these rules suggest that contemporaneous substantiation of the economic environment and an analysis of the effect of that environment on the related-party transaction at issue will be important.

Unfortunately, publicly available agreements addressing terminations or modifications in light of the coronavirus may be challenging to find, particularly in the short term, as it will take time for those documents to become publicly available. Taxpayers may have internal comparable uncontrolled agreements that have been modified or terminated and could be used as related-party comparables, but many taxpayers will not have those internal agreements. Thus, in the absence of external or internal comparables that can be used without material adjustments, taxpayers should be able to rely on other agreements between unrelated parties, as modified to improve comparability and taking into account the risks, functions, and assets of the parties as well as the current economic conditions.[8]

If related-party agreements are ultimately modified or terminated, the taxpayer should carefully document the rationale for those changes. For example, if a taxpayer decides to eliminate a marketing intangible royalty due from a distributor, the agreement between the parties should reflect the revised arrangement, and contemporaneous documentation addressing the arm's-length nature of such a change should be prepared, including the revised risk profile of the

[1] OECD, "Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations," at para. 9.82 (July 10, 2017); reg. section 1.482-1(d)(3)(ii)(A), (B)(1), and (B)(2); and reg. section 1.482-1(d)(3)(iii). Under the guidelines, the "termination or substantial renegotiation of existing [related-party] arrangements" constitutes a business restructuring. OECD guidelines, at para. 9.1.

[2] OECD guidelines, at paras. 9.79 and 9.81; reg. section 1.482-1(d)(3)(ii)(A).

[3] Reg. section 1.482-1(d)(3)(iii)(B).

[4] Reg. section 1.482-1(d)(3)(iv)(B)(1).

[5] *See* reg. section 1.482-1(d)(3)(ii)(A); and OECD guidelines, at paras. 9.85, 9.87, and 9.89.

[6] Reg. section 1.482-1(d)(3)(iv)(G).

[7] Reg. section 1.482-1(d)(3)(iv)(H).

[8] The "market share strategy" rules set forth in the regulations could be read to require strict use of comparables. *See* reg. section 1.482-1(d)(4)(i). However, those rules are focused on strategies to enter a new market or increase market share, which are distinguishable from strategies to reduce losses or protect the viability of a business. Thus, those rules should not be applicable to modifications or terminations of related-party agreements in light of the COVID-19 pandemic.

distributor and potential increased future upside for the licensor.

In the context of terminating or modifying a contract, the guidelines note that the compensation arrangements for the underlying transaction are an important consideration in evaluating whether any indemnification terms are arm's length.[9] Obviously, a party that anticipated modest profits arising from the arrangement would not take on risks that it could not afford to bear. The guidelines also note that investments that could only be recovered over an extended period should be considered when terminating a contract.[10] For example, if a manufacturer purchases equipment to perform its obligations under a contract, it would evaluate the contract in light of that investment, taking into account its need to cover its investment and other costs and make a profit. That determination will depend greatly on the term of the agreement. Thus, in those cases, the parties may very well negotiate a clause in the contract that provides for penalties in the event of an early termination.[11] In such a case, the manufacturer would want to have sufficient funds to pay off the equipment, taking into account the scrap or other value of that equipment.

Another factor that should be considered in evaluating the terms of a termination or modification of a related-party agreement is the parties' rights under commercial law, including any legal claims that could be asserted at arm's length.[12] If an unrelated party in similar circumstances would have the right to damages in light of a contract modification or termination, those damages should be taken into account in determining the consequences of the related-party contract modification or termination.

Ultimately, under both the guidelines and the regulations,[13] if the terms of the modification or termination of a contract are consistent with third-party terms, the agreement should be respected as arm's length.[14] If there are no such comparables, the determination of whether the consideration (if any) paid as a result of a termination or modification of a contract is arm's length should take into account the rights and other assets of the parties when entering into the arrangement and of its termination or renegotiation.[15] In that regard, the guidelines are clear that "it may be the case that, in comparable circumstances, an independent party would not have had any option realistically available that would be clearly more attractive to it than to accept the conditions of the termination or substantial renegotiation of the contract."[16]

Similarly, the guidelines note that "an entity may agree to a restructuring as a better option than going out of business altogether."[17] Thus, the guidelines are clear that there is "no presumption that all contract terminations or substantial renegotiations should give a right to indemnification at arm's length, as this will depend on the facts and circumstances of each case," including the "options realistically available to the parties."[18]

Any modification or termination of a related-party arrangement must be girded by an evaluation of the related-party contractual terms and the specific facts and circumstances of the parties involved. If a modification or termination of the arrangement is consummated, the related-party agreement should be amended to memorialize the revised agreement, and the taxpayer should document the decision to make such a change and gather economic support substantiating that the change is consistent with arm's-length behavior.

[9] OECD guidelines, at para. 9.85.

[10] *Id.* at para. 9.87.

[11] *See id.* at para. 9.89.

[12] *Id.* at paras. 9.79 and 9.80.

[13] *Id.* at para. 9.83.

[14] An interesting aspect of the guidelines is that the party obligated to make an indemnification payment may not be a party to the agreement that is modified or terminated. That party may be the party that terminated the contract, or it could be a related party that was assigned the opportunity. OECD guidelines, at para. 9.94. This could also create a constructive payment scenario. OECD guidelines, at para. 9.96. In contrast, U.S. law would not treat the assignment of such a business opportunity as the transfer of an intangible. *See Hospital Corp. of America v. Commissioner*, 81 T.C. 520 (1983), *nonacq*, 1987-2 C.B. 1; and *Merck & Co. v. United States*, 24 Cl. Ct. 73 (1991).

[15] OECD guidelines at para. 9.84.

[16] *Id.*

[17] *Id.* at para. 9.71.

[18] *Id.* at para. 9.78.

II. Rescission

A. Background

Rescission is a contract law doctrine under which the parties to a contract may agree to — or in appropriate circumstances one party may unilaterally require — the unwinding of the contract. In the tax context, the doctrine of rescission has been enshrined by Rev. Rul. 80-58, 1980-1 C.B. 181, which provides that a rescission will be given effect for U.S. federal income tax purposes, with the result that both the original transaction and the rescission transaction will be treated as never having occurred, if specific requirements are satisfied.

Rev. Rul. 80-58 follows *Penn*,[19] the classic case in this area. The taxpayer in *Penn* was an executive and director of the American Tobacco Company, which in 1929 enacted a plan to sell its stock to some employees at discounted prices. In exchange for the stock he received, the taxpayer executed a note to the company on the understanding that the dividends paid for the stock would be credited to the note. Dividends were indeed paid in 1930 and 1931 and were credited to the note.

The arrangement unraveled in 1931, when a shareholder sued, asserting that the company had failed to obtain shareholder approval for the discounted stock sales, and the company resolved that the plan be rescinded for all participants who would agree thereto. The taxpayer being lately deceased, his estate gave its consent, relinquished the stock, and forwent the dividends.

The IRS included the dividends paid on the stock in the taxpayer's income for 1930 and 1931, which is not a surprising position. Although the failure to obtain shareholder consent rendered the transfer of stock to the taxpayer (and consequently also the payment of dividends on that stock) void, the dividends had been received by the taxpayer without knowledge of that fact, and had inured to his benefit. Under the claim of right doctrine, when funds are received by a taxpayer who is apparently entitled to them, they are includible in his income even if he does not have any valid right to those funds, and even if he is ultimately compelled to return them.[20]

Accordingly, the Fourth Circuit held in *Penn* that the dividends received in 1930 were income to the taxpayer for that year, stressing the importance of the annual accounting concept to the federal income tax system. For 1931, on the other hand, the court took the view that the rescission during the year "extinguished what otherwise would have been taxable income to Penn for that year." In doing so, it drew a limited exception to the claim of right doctrine.

Like *Penn*, Rev. Rul. 80-58 addressed the effect of a rescission on transactions taking place both in the same year as the rescission and in an earlier year. The ruling considered two situations: In both, the taxpayer sold land under a contract that gave the buyer a right to force reconveyance if rezoning could not be obtained. In the first situation, that right was exercised in the same year as the sale; in the second, it was exercised the year after. In both cases, the purchase price was duly refunded to the buyer, and the property returned to the taxpayer. The IRS ruled that in the first situation, no gain would be recognized on the sale, which was disregarded because of the successful rescission. In the second situation, the rescission was not respected, resulting in recognition of gain in the first year and the acquisition of a new cost basis in the reconveyed property in the second.

Rev. Rul. 80-58 establishes three requirements for a successful rescission. When these requirements are satisfied, Rev. Rul. 80-58 indicates that both the original transaction and any transaction undertaken to affect the rescission, such as the reconveyance in Rev. Rul. 80-58, are disregarded for U.S. federal income tax purposes.

First, and most evidently, there must be a rescission. While Rev. Rul. 80-58 postulated a situation in which one party could enforce rescission of the transaction, it expressly indicates that the doctrine of rescission applies more broadly. The ruling defines rescission expansively, noting that a "rescission may be effected by mutual agreement of the parties, by one of the parties declaring a rescission of the contract

[19] *Penn v. Robertson*, 115 F.2d 167 (4th Cir. 1940).

[20] *North American Oil Consolidated v. Burnet*, 286 U.S. 417 (1932).

without the consent of the other if sufficient grounds exist, or by applying to the court for a decree of rescission," and cases and IRS private letter rulings have given their imprimatur to rescissions based on mutual agreement.[21]

Second, the transaction that is rescinded and the rescission must occur in the same tax year. In some cases, taxpayers may be able to change their tax years to cause the original transaction and the rescission to fall within the same year. However, doing so has important collateral consequences that must be considered.

Third, the rescission must restore the parties to the same position they occupied before the rescinded transaction — their *status quo ante*. In *Blanco*,[22] the taxpayer received a distribution from a controlled corporation, realized that this resulted in undesirable tax consequences, and sought to recharacterize the dividend as an amount received in consideration for a note issued to the corporation. The court held that the substitution of the note for the distribution caused the parties to occupy a new status, rather than their *status quo ante*. Notwithstanding this requirement, in some circumstances IRS private letter rulings have allowed taxpayers to unwind only a portion of the original transaction.[23] However, the IRS will no longer grant private letter rulings on rescission issues, making it difficult to obtain certainty on this point.[24]

B. Applying Rescission Doctrine

The IRS has sanctioned the application of the rescission doctrine in related-party contexts.[25] When a rescission between related parties primarily benefits one party, it is possible that the IRS could argue that, under the principles of section 482, arm's-length consideration must be paid to the other party for agreeing to forgo what it was entitled to under the rescinded contract. However, IRS rulings have not required that consideration in related-party cases, and have even included representations that no consideration would be charged.[26] Presumably, the reason for this is the *status quo ante* requirement: If consideration exchanges hands as a result of the rescission, the parties will not truly have been restored to the status they occupied before the rescinded transaction, thus imperiling the treatment of the rescission under Rev. Rul. 80-58. However, as described more fully earlier, taxpayers should evaluate all the facts and circumstances, including their contractual arrangement, and determine whether consideration would be required in this context, and they should contemporaneously document that analysis.

The *status quo ante* requirement is also likely to affect when rescission is a feasible option for addressing related-party arrangements. While there is no formal restriction on the types of transactions to which rescission may be applied, as a practical matter it may be difficult or burdensome to rescind transactions such as inventory sales and related-party services. For sales of inventory, restoration to the *status quo ante* would presumably require reconveyance of goods to the seller, which raises customs issues, although it may be possible to recoup duties paid on the importation of goods into the United States if they are later exported because of a rescission. The feasibility of rescinding an intercompany service transaction depends in large part on the nature of the services involved and the stage of contract performance. When a provider of research and development services has already shared the results of its research with the principal, for instance, there may not be any way to undo that transfer of knowledge and return to the *status quo ante*.

By contrast, rescission is well suited to larger, ad hoc transfers that do not recur on an ongoing basis. In particular, rescission may be an important tool for addressing intangible property transfers, including platform contribution transactions in connection with cost sharing arrangements. The sudden and severe disruptions occasioned by the coronavirus may render the valuations employed for intangible property transfers in early 2020 untenable in light of a business's prospects for the foreseeable

[21] *E.g.*, LTR 200908016. *Penn* was one such case.

[22] *Blanco v. United States*, 602 F.2d 324 (Ct. Cl. 1979).

[23] *See* LTR 200915031; LTR 200908016.

[24] Rev. Proc. 2020-3, 2020-1 IRB 131, section 3.02(8).

[25] *See* LTR 201016048; LTR 201008033; LTR 200915031; and LTR 200908016.

[26] LTR 200915031.

future. Companies may find that transferring intangible property no longer makes sense in a world in which markets for its products have all but evaporated, and those facing limited liquidity in an intangible property transferee's jurisdiction may desire to unwind a hefty intangible property transfer cost to use funds for other purposes.

Lastly, taxpayers should exercise caution when considering rescinding a transaction and then entering into a new transaction that is substantively similar to, or meant as a substitute for, the first transaction. As noted earlier, *Blanco* and Rev. Rul. 80-58 require that the transaction be rescinded, rather than simply modified. When the transaction is rescinded and then followed by a second transaction, it is possible that the step transaction doctrine might be applied to collapse the rescission transaction and the new transaction, with the result that the original transaction would be followed by a substitute transaction rather than a rescission, the *status quo ante* requirement would not be fulfilled, and the rescission would not be respected. However, the IRS has given effect to rescissions followed by substitute transactions in some instances.[27] Ultimately, whether a rescission of a transaction will be respected when there is a subsequent substitute transaction will depend on the facts and circumstances of the case.

III. *Force Majeure*

Another common law doctrine that may be implicated by the COVID-19 pandemic is the doctrine of *force majeure*. To assert *force majeure*, it is important to note that the agreement must include a *force majeure* clause, as such a provision will not be imputed into a contract in the United States.[28] If it does, then whether it is enforceable depends on the specific language of the *force majeure* clause and state law. If the clause is drafted to include an epidemic, pandemic, or declared national emergency, then it may be enforceable in light of the coronavirus. Some *force majeure* clauses are drafted broadly and would likely include a pandemic, depending on the specific facts. Regardless, as a general rule, *force majeure* provisions typically become applicable when performance becomes impossible, and not when it is simply burdensome.

Assuming that the *force majeure* clause is enforceable, it is important to note that *force majeure* is a contractual defense — it excuses performance under a contract because of a *force majeure* event. For example, if applicable, it would allow a party to suspend or discontinue performance of its contractual obligations under specific circumstances. It may operate to limit a contract party's liability as well. Note, however, that the *force majeure* event must generally affect the ability to perform. While this will certainly be true in many cases during the COVID-19 pandemic, if customer demand is affected but ability to perform is not affected, then this may not qualify for *force majeure*. Again, a factual analysis is necessary in each case.

In many cases, the significant benefit of a *force majeure* event and proper contractual language will be the ability to reopen contractual negotiations, which would allow the parties to reach a revised agreement.

IV. Taxpayer Use of Section 482

A. Background

Under reg. section 1.482-1(a)(3), taxpayers may use timely, original U.S. tax returns to report the results of controlled transactions "based upon prices different from those actually charged," if this is necessary to arrive at an arm's-length result. This provision allows taxpayers to affirmatively invoke section 482 to adjust their transfer pricing to achieve arm's-length results, and is particularly useful in circumstances such as those brought about by the pandemic, when substantial uncertainty and other urgent matters may make initially determining arm's-length prices challenging. Under the regulation, taxpayers can also use amended or untimely returns to adjust their intercompany pricing, but only if this increases U.S. taxable income.[29] By contrast,

[27] *See* LTR 201016048; LTR 201008033.

[28] Although a *force majeure* provision will not be implied in a contract, there is a common law doctrine of "impossibility" that may apply when a contract lacks a *force majeure* provision, though the availability and contours of that defense will vary by state. Of course, it will be important to consider the availability and implications of any such defense in all relevant jurisdictions.

[29] *See* FSA 200031025.

original timely returns may be used to decrease or increase U.S. taxable income.

As a threshold matter, it's important to establish what it means to report prices "different from those actually charged." If read broadly, the regulatory language would encompass a broad swath of business practices that may be employed by related parties as well as by those acting at arm's length. Especially when transactions occur on an ongoing basis, pricing cannot always be definitively determined when the first charges are made, and adjustments may be made over the course of the parties' dealings. Fortunately, the preamble to the regulation clarifies the issue, noting that "the final regulations therefore impose no restrictions on taxpayers' ability to report a result on their original tax return that differs from the result reflected in the taxpayer's books and records."[30] Accordingly, adjustments that are made before the taxpayer's books for the year are closed should not be considered departures from the prices actually charged, but rather as part of the process of initially determining those prices. Only when an adjustment is made after the books are closed should reg. section 1.482-1(a)(3) be implicated. While the closing of the U.S. entity's books is the dispositive event, taxpayers should also consider whether books and records remain open in the counterparty country, as making adjustments after the books are closed abroad may cause complications and potential double taxation.

This distinction is important, because reg. section 1.482-1(a)(3) adjustments entail some significant collateral consequences. Reg. section 1.482-1(a)(3) adjustments, along with adjustments on amended or untimely returns that increase U.S. taxable income, are allocations that trigger the provisions of reg. section 1.482-1(g)(3), which provide that conforming adjustments — also known as secondary adjustments — must be made to conform a taxpayer's accounts to reflect an allocation. By contrast, adjustments made before the books for the year are closed should not rise to the level of allocations that require conforming adjustments.

When a section 482 adjustment is made by the IRS or by the taxpayer under reg. section 1.482-1(a)(3), income is shifted for tax purposes, but the cash remains where it was from the perspective of a taxpayer's accounts. For instance, when a U.S. company pays its Irish subsidiary \$100*x* in cash for widgets and the IRS later adjusts the transfer price to \$75*x*, the Irish subsidiary will retain the full \$100*x* of cash unless a subsequent adjustment is made. Conforming or secondary adjustments aim to address this discrepancy and achieve conformity between the taxpayer's accounts and the tax treatment of transactions.

These adjustments may take two forms. First, deemed transactions may be inferred to bring the tax treatment into line with the taxpayer's accounts. In the example earlier, there would be a deemed capital contribution: The Irish subsidiary would retain the full \$100*x*, but now \$75*x* would reflect the price paid for the widgets, and the remaining \$25*x* would represent a capital contribution from the U.S. parent. Conversely, if the U.S. company were the subsidiary and the Irish affiliate were the parent, the conforming adjustment would take the form of a deemed distribution, which may be characterized as a dividend and be subject to withholding tax (in this case reduced to 5 percent under the U.S.-Ireland treaty). When the relevant entities are sibling corporations beneath a common parent, both a distribution (up to the parent) and a capital contribution may be involved.

Taxpayers that prefer not to be subject to these deemed transactions and the tax consequences that come in their wake may elect a different method of making secondary adjustments. Rev. Proc. 99-32, 1999-2 C.B. 296, allows taxpayers that are subject to IRS adjustment, or that make affirmative section 482 adjustments under reg. section 1.482-1(a)(3), to repatriate funds, thereby conforming their accounts to the adjusted tax treatment and avoiding any of the U.S. federal income tax consequences of the deemed treatment described earlier. In the example above, the Irish entity would repay the excess \$25*x* to its U.S. affiliate, and if this is done within 90 days, there would not be a need for any deemed transactions. Accounts payable and receivable established under Rev. Proc. 99-32 are subject to numerous rules, including the requirement that the account bear interest and the requirement that the taxpayer affirmatively elect treatment under the

[30] T.D. 8552. The 1993 temporary regulations on which the final regulation is based contain similar language. Reg. section 1.482-1T(a)(3).

revenue procedure. For a taxpayer-initiated adjustment, this election is made by filing a statement with the taxpayer's tax return reporting the section 482 adjustment.

B. Considerations

It is generally preferable to adjust pricing and ensure that results are arm's length before the books for the year are closed. However, this is not always possible, and the coronavirus seems poised to create additional challenges. In particular, 2020 financial results for comparable companies will generally not be available until after a taxpayer's books for the calendar year are closed, and it will therefore not always be possible to ensure that arm's-length prices are recorded on the books.

In those cases, reg. section 1.482-1(a)(3) provides an important tool that taxpayers can use to adjust their transfer pricing and avoid the application of section 6662 penalties. However, taxpayer-initiated adjustments require careful consideration. First, taxpayers must take care to determine which type of secondary adjustments they prefer, and take appropriate action to ensure that these adjustments are properly reflected (including, when applicable, filing an election for repatriation treatment under Rev. Proc. 99-32).

Taxpayers also should consider the foreign consequences of adjustments. Although permitted under U.S. law, self-initiated transfer pricing adjustments after the end of a tax year may not be respected for foreign purposes. In our experience, adjustments made before the closing of the books are more likely to be accepted, though due consideration must be given to the circumstances and the countries involved. Taxpayers should also consider the foreign implications of any secondary adjustments, whether they be deemed transactions or repatriation accounts. While some foreign jurisdictions may take no cognizance of these add-on effects, others may take them into account, potentially triggering withholding obligations on deemed dividends or interest payments connected with repatriation.

V. Conclusion

While taxpayers have flexibility to modify or terminate related-party agreements, including potentially applying the common law doctrines of rescission and *force majeure*, careful attention must be paid to the contract between the parties and the facts and circumstances of the case, as well as the review and analysis of unrelated-party behavior in similar circumstances. If changes are made, they should be memorialized in contracts, and the analysis and economic support for those changes should be contemporaneously documented.

Of course, for many taxpayers the situation remains fluid. For some, modifying or terminating contracts during the current year will not be feasible; for others, time may show that initial modifications require refinement. For those taxpayers, rescission and reg. section 1.482-1(a)(3) may be useful. These are, in some respects, cumbersome tools, and they may be traps for the unwary, as rescissions may be associated with substitute transactions that do not achieve the desired effects, and taxpayer-initiated section 482 adjustments may cause issues down the road if the appropriate secondary adjustments are not duly made. Nonetheless, in appropriate cases, they provide important means of addressing disruptions caused by the coronavirus.

This is particularly true in light of their timing. Neither option calls for immediate action. Taxpayers have until the end of their tax year to rescind transactions, and in some cases may be able to change their accounting period to accommodate a rescission made even later. Reg. section 1.482-1(a)(3) is even more generous regarding pricing, allowing taxpayers until the filing of their original timely return to make requisite adjustments. Solutions that can be implemented in the short term offer significant benefits, and may be less burdensome to employ, but taxpayers caught up in a whirlwind of activity in responding to the immediate challenges of the coronavirus may take comfort in knowing that some transfer pricing changes can be made months or even a year from now.[31] ■

[31]The information in this article is not intended to be written advice concerning one or more federal tax matters subject to the requirements of reg. section 10.37(a)(2) of Circular 230 because the content is issued for general informational purposes only. The information in this article is of a general nature and based on authorities that are subject to change. Its applicability to specific situations should be determined through consultation with a tax adviser. This article represents the views of the authors only and does not necessarily represent the views or professional advice of KPMG.