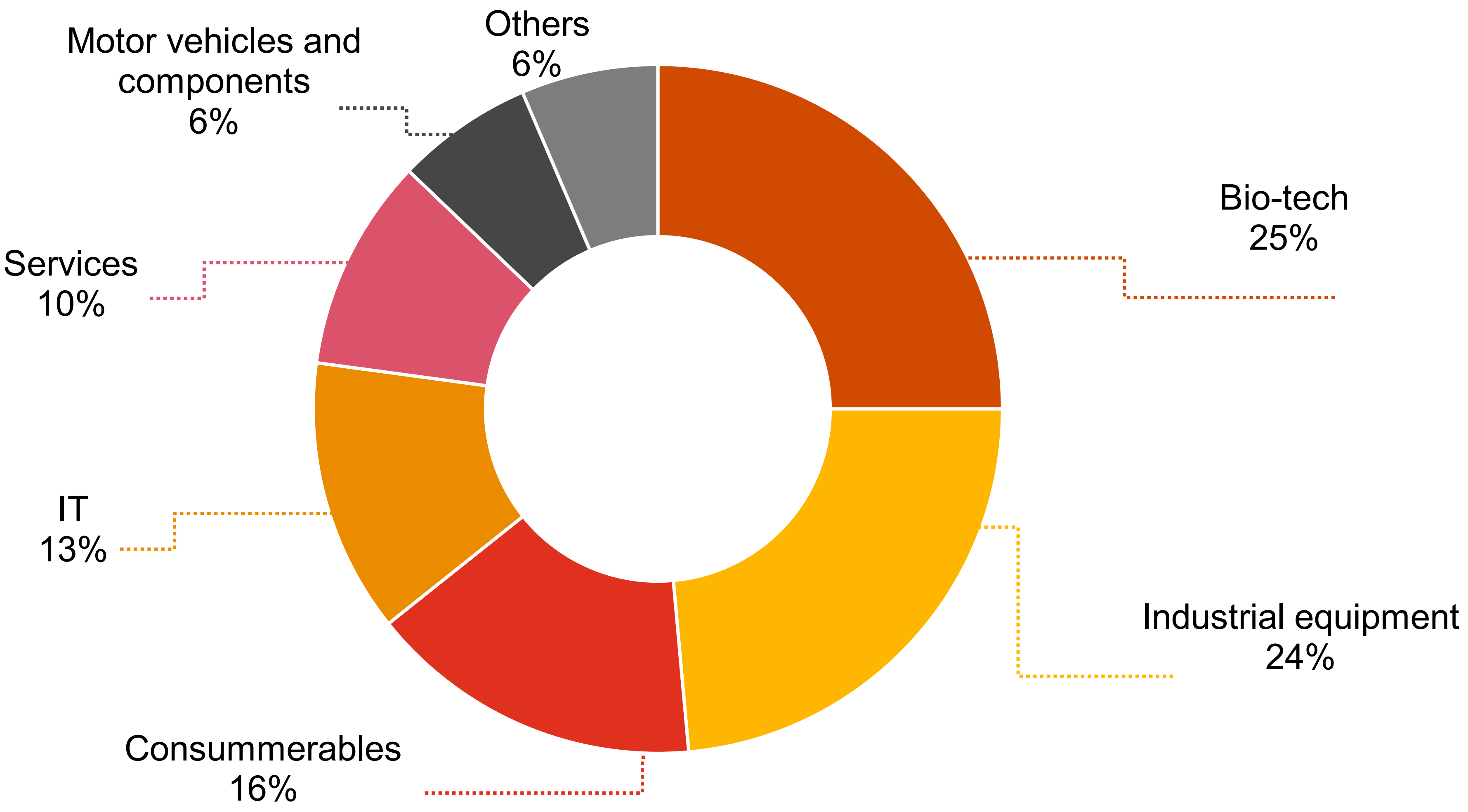
Tax and Transfer Pricing in the United States

January 2024
PwC Center, Shanghai, China

Agenda

1. Opening
2. U.S. Tax
3. US Transfer Pricing
4. Tea Break
5. Panel Discussion

Audience – Industries



United States and China

	China	United States
Area Note1	9,596,961 km^2 (3rd)	9,525,067 km^2 (4th)
Population 2022 Note2 ❖ **Total** ❖ **Growth Rate**	1,411 million (1st) 0.06%	338 million (3rd) 0.38%
GDP 2022 Note3 ❖ **Total** ❖ **Per Capita** ❖ **Real Growth Rate**	$17,963,171 million (2nd) $12,720 3.0%	$25,439,700 million (1st) $76,330 1.9%
Capital market Performance in 2023 Note4	• Shanghai Composite Index -3.70% • Shenzhen Component Index -13.54% • Hang Seng Index -13.82%	• NASDAQ Index +43.42% • S&P 500 Index +24.23%

Source of information

Note 1: https://simple.wikipedia.org/wiki/List_of_countries_by_area
Note 2: https://www.worldometers.info/world-population/population-by-country/, https://www.stats.gov.cn/sj/ndsj/2023/indexch.htm
Note 3: World Bank
Note 4: Wind

U.S. Tax

Speakers

Kevin Zhang
Partner

Kevin Zhang is a partner of the US Tax Consulting Group in PwC China. He has over 12 years of experience in providing US corporate and partnership tax services to clients in the Financial Services (including private equity funds, banks, and insurance companies), manufacturing, real estate, e-commerce, and online gaming industries.

Kevin's recent experience also includes: assisting US investors with fund compliance, including CFC analysis and PFIC testing; assisting PRC investors in setting up tax-efficient structure for their investments in the US; performing US due diligence on US targets; US tax planning, including setting up offshore financing structures for US investments; assisting PRC based e-commerce businesses on their U.S. federal and state income tax issues and state sales and use tax issues, and assisting PRC and HK game developers on US withholding tax refund opportunities.

Kevin earned his Bachelor of Science in Finance, Bachelor of Science in Accountancy, as well as Masters of Accounting Science from University of Illinois Urbana-Champaign in the US. He is a US Certified Public Accountant licensed with the State of Illinois.

Kevin Zhang
Partner
US Tax Consulting
Shanghai, PRC

T: 135 8596 3440
kevin.f.zhang@cn.pwc.com

1. Doing business in the U.S.

Considerations for doing business in the U.S.

Conduct U.S. business activities from China/HK

- How does the U.S. tax laws apply to non-U.S. persons?
- What are my U.S. tax exposures?
- Am I eligible for treaty benefits?
- What are my U.S. tax filing obligations?

Incorporate U.S. entity or acquire U.S. business

- What is my choice of entity?
- What state should I register in?
- What is the role/function of the U.S. entity in my group?
- How do I finance my U.S. business?
- What is the U.S. tax impact on earnings repatriation?
- What are my U.S. tax filing obligations?

U.S. tax – general principles for inbound

In general, the U.S. taxes two major types of income of non-U.S. persons:

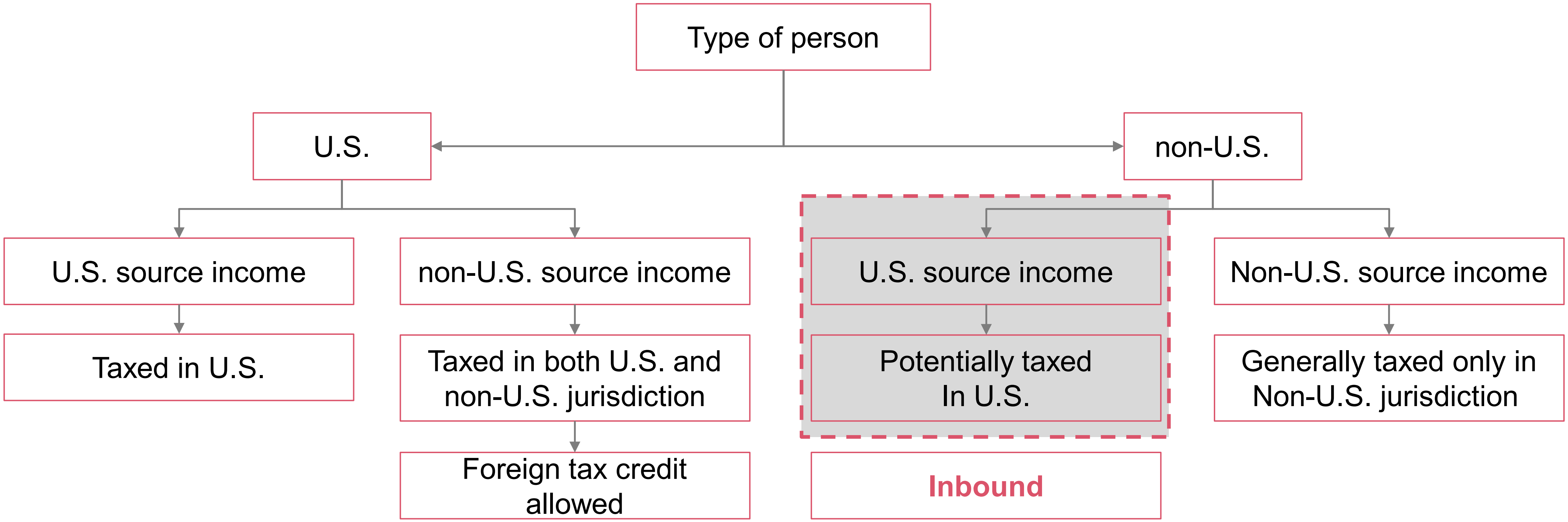
U.S. source trade or business income

- Deductions are permitted
- Taxed at normal tax rates applicable to individuals and corporations
- Potential branch level taxes
- Filing requirements include Form 1120-F

U.S. source non-business income

- Taxed on gross income with no deductions permitted
- Taxed at a 30% rate via withholding unless reduced by a tax treaty
- This type of income is often referred to as fixed, determinable, annual, periodical (“**FDAP**”) income
- Includes dividends, interest, rents, and royalties
- Filing requirements include Form 1042 and 1042-S

U.S. tax – international aspect



U.S. tax – U.S. trade or business

- A non-U.S. person that is engaged in a trade or business in the United States (“**USTB**”) and earns income from that business generally is taxed on its income that is considered effectively connected with that business. This is often referred to as effectively connected income (“**ECI**”)
  - U.S. tax reaties may bring some relief, mainly to limit the amount of income that can attract U.S. tax and to provide a slightly higher threshold.
  - U.S. tax treaties generally provide that the USTB must instead be a permanent establishment (“**PE**”) and only business profits attributable to the PE may be taxed
  - Income that is effectively connected with the non-U.S. person’s USTB is taxed on a net basis (provided it files a Form 1120-F)

What constitutes a USTB?

- The term "trade or business within the United States" is defined mainly by U.S. courts and the IRS
  - It depends on facts and circumstances and is based on the nature and extent of the taxpayer’s economic activities in the United States, either directly or through its agents
  - In order to be a trade or business, the activity must have a profit motive
  - The IRS generally does not issue rulings with respect to what constitutes a USTB
- Activities generally must be "considerable, continuous, and regular"
- Ministerial, clerical, or collection-related activities generally are not sufficiently profit-oriented to constitute a USTB
- Isolated activities generally do not rise to the level of a trade or business
- An agent’s activities in the United States may result in a USTB

U.S. tax – PE

- When income tax treaties exist, the generic “trade or business” concept is replaced with the more formal definition of a “permanent establishment”

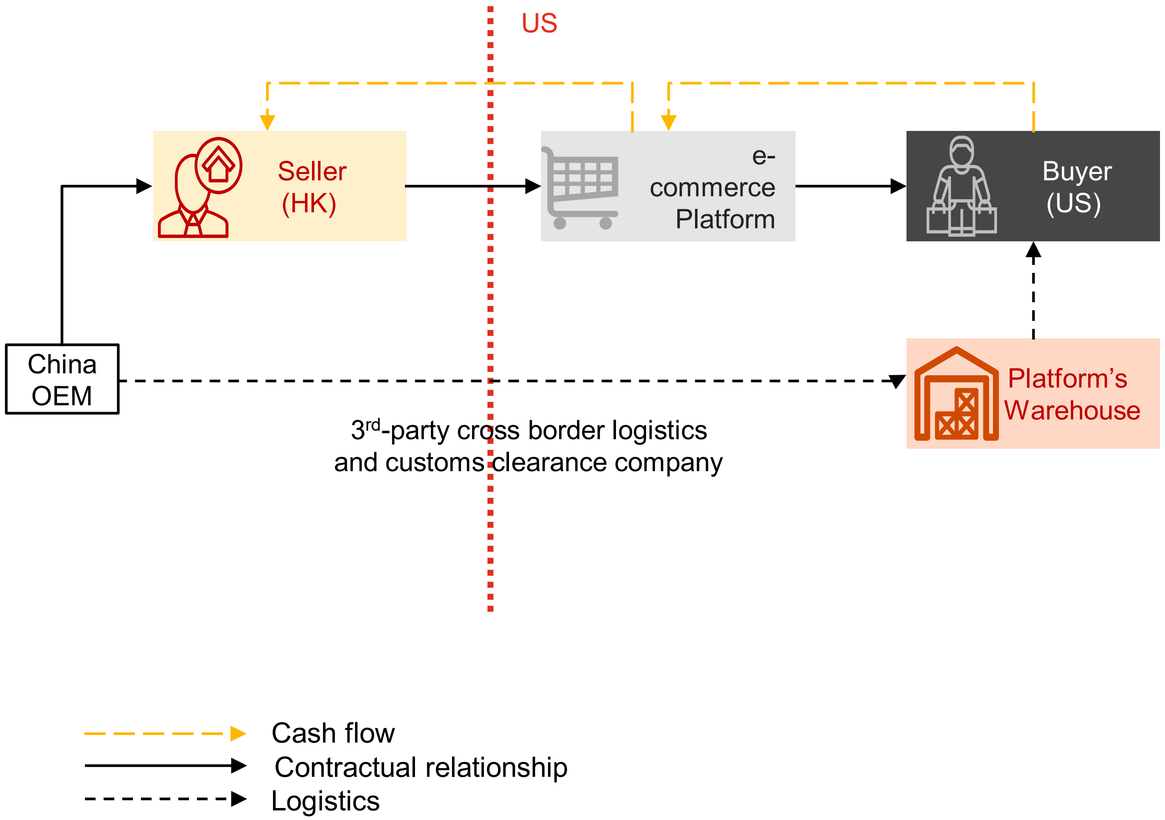
- The PE tax treaty concept is similar to “trade or business” but allows more activities without giving rise to an income tax exposure in the jurisdiction

- A PE generally is created by a fixed place of business which includes:
  - place of management
  - branch
  - office
  - factory
  - workshop

- PE could also be created by:
  - Dependent agent (such as an employee)
  - Independent agent
  - ‘Accidental PE’

- Permanent establishment typically excludes preparatory or auxiliary activities such as:
  - Research on the U.S. market potential of non-U.S. companies' products
  - Establish a warehouse for goods only to store, display or deliver goods
  - Store a shipment of goods to be processed by a third party
  - Subsidiary of parent unless parent carries on business itself

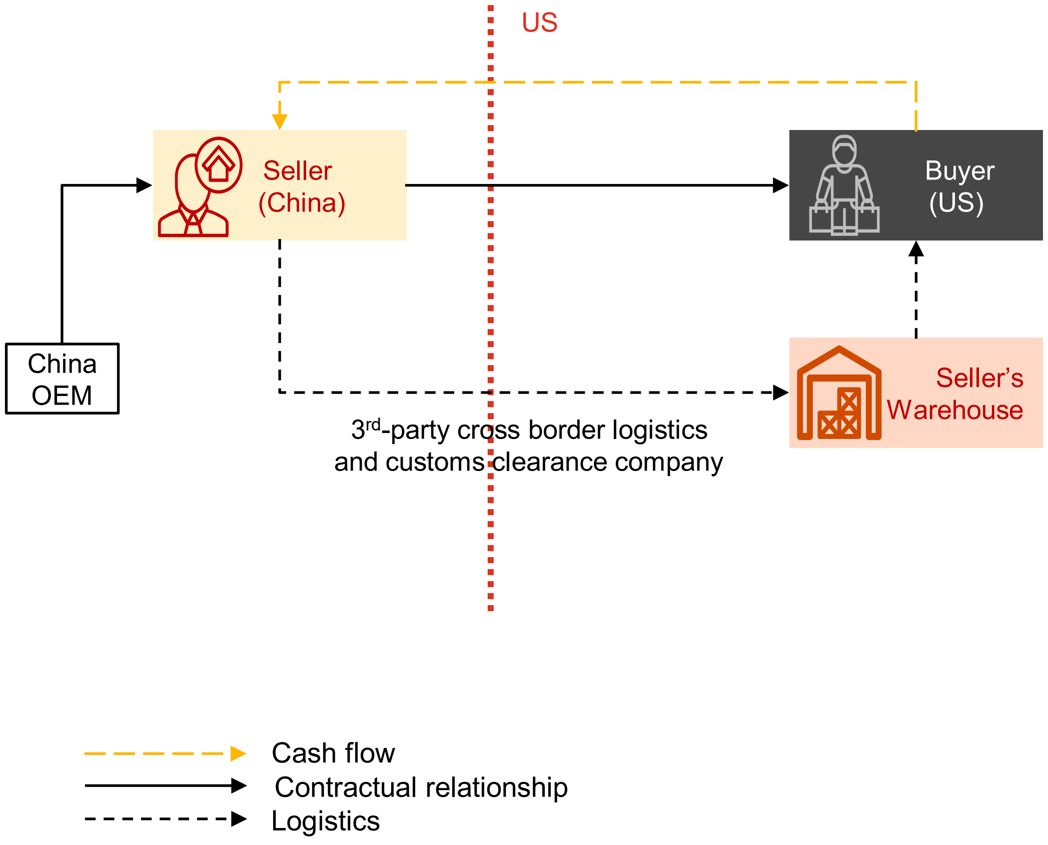
U.S. tax – U.S. trade or business example



Facts:

- HK seller sells goods to U.S. buyers via third-party e-commerce platform
- HK seller ships and stores its inventory at the warehouses of the e-commerce platform
- HK seller operates the U.S. business remotely and does not send employees to the U.S.

U.S. tax – PE example



Facts:

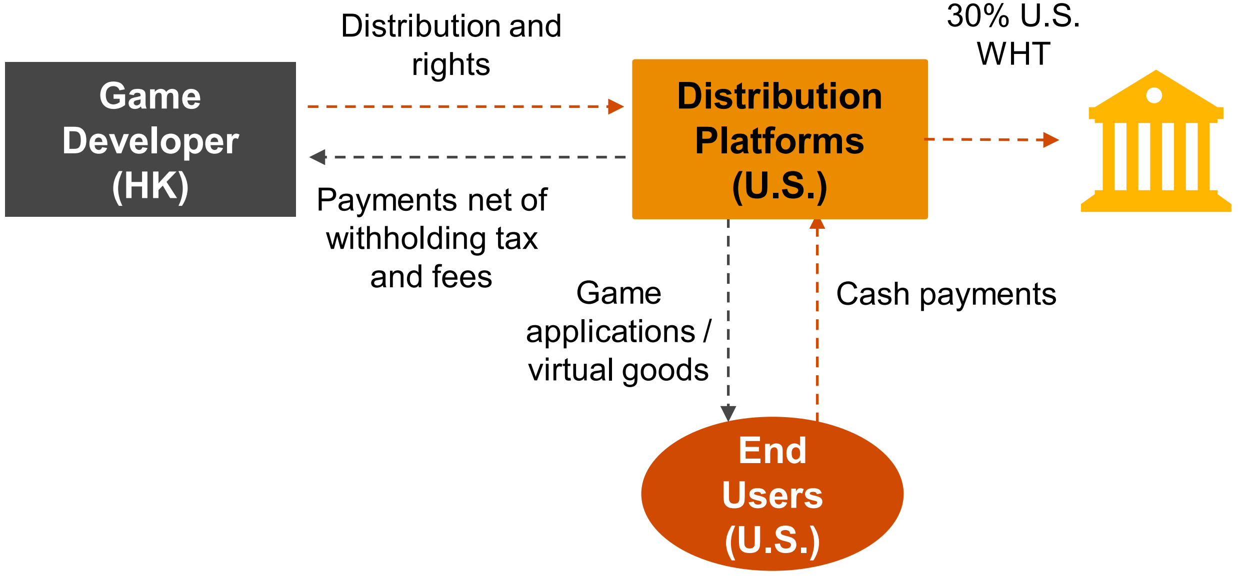
- China seller operates the U.S. business remotely and concludes contracts with U.S. buyers in China
- China seller maintains a warehouse in the U.S. to store inventory for sale to U.S. buyers
- Employees occasionally travel to the U.S. to perform market research or attend trade conferences

U.S. tax – FDAP

A non-U.S. person who does not conduct a U.S. trade or business is taxed only on U.S.-source FDAP income

- FDAP = fixed or determinable, annual or periodical income
- Includes dividends, interest, rents, and royalties
  - Certain exceptions apply
- Sections 871(a) and 881(a) impose a 30% tax on FDAP income of nonresident individuals and corporations, respectively
  - Taxed at a rate of 30% on a gross basis, with potential reduction or elimination under a U.S. income tax treaty
- FDAP income does not include gains from the sale of property
- Withholding on FDAP income is required at the source of the payment (Sections 1441 and 1442)
- The withholding regime is generally designed to place the burden of collecting this U.S. tax on the person from whom the IRS can most readily collect such tax
- U.S. tax persons generally furnish Form 1042/1042-s to substantiate withholding amount
- Non-U.S. person subject to withholding generally furnish Form W-8 to substantiate non-U.S. status and treaty position, if applicable

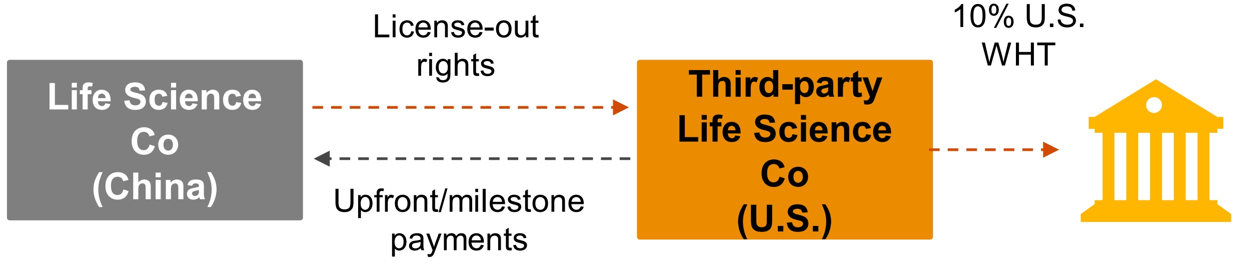
U.S. tax – FDAP withholding example



Facts:

- HK game developer licences its mobile app games to third-party distribution platform under the platform's general distribution agreement. The games are free with in-app purchases.
- The third-party distribution platform collects the payments from end users based in the U.S. and remits the payments to the game developer net of U.S. withholding tax of 30% and platform fees.

U.S. tax – FDAP withholding example



Facts:

- China life science company enters into exclusive license agreement with a third-party U.S. life science company to develop and commercialize drugs in the U.S. market.
- U.S. life science company pays an upfront payment and subsequent milestone payments under the terms of the agreement.
- U.S. life science company treats the payments as royalty and withholds 10% tax on payments to the China life science company pursuant to the U.S.-China income tax treaty.

U.S. tax – Sourcing rules

Since the U.S. taxes U.S. source income, it is important to determine whether an item of income is U.S. or non-U.S. source

What is the process for sourcing income?

- There are two main steps for determining the source of income:
  1. Determine the category of gross income to which the income belongs
  2. Apply the source rule for that particular category
- The source rules are generally found in Sections 861-863 and 865. Items not specifically addressed by these sections are usually sourced by analogy

U.S. tax – Sourcing rules

Step 1: Determine category	Step 2: Apply the general sourcing rule to the identified category (exceptions may apply in certain cases)
Interest	residence of the payor
Dividends	residence of the payor
Personal services	where the services are performed
Rental income	where the property is located or used
Royalty income	where the intangible property is used
Purchased inventory sales	place of title passage
Manufactured inventory sales	place of production (in part in certain circumstances)
Personal property sales (other than inventory)	residence of the seller
Real property sales	location of the property
Guarantee fees	residence of the payor of the fee

2. Holding structure considerations

Holding Structure Considerations

C Corporation

- Separate taxable entity
- Incorporated under the Companies Registration Act of the States (common states of incorporation include Delaware and Nevada)
- Disadvantage: 1. Double taxation 2. Corporate level losses cannot be transferred to shareholders
- Advantage: Tax deferral to a certain extent as shareholders generally taxed at the time corporation makes distributions out of earnings and profits.

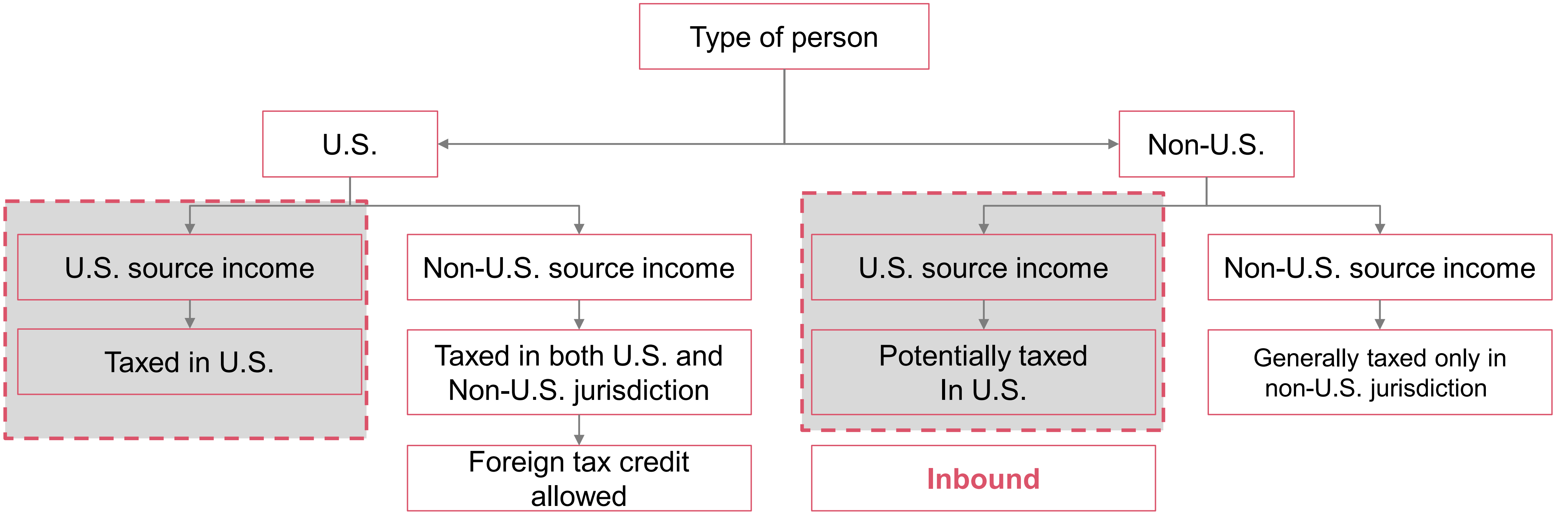
Partnership

- All profit or loss and credits at the corporate level are distributed to the partners in the current year, and their original nature is maintained
- Disadvantage: Tax cannot be deferred, and US partners (and in some cases even non-US partners) still need to include fund-level earnings in current income even if no actual earnings are distributed
- Advantage: no double taxation, flexible allocation mechanism, loss at the partnership level can be transferred to partners (or be able to offset other gains at the partnership level) for the current period

Limited liability company (LLC)

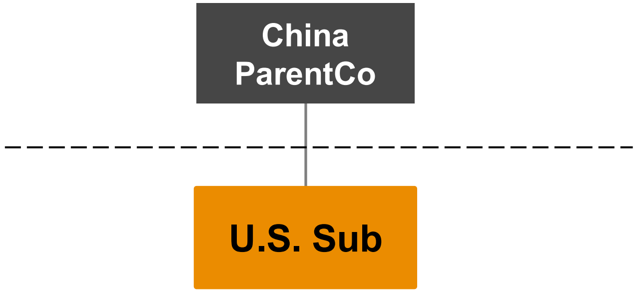
- Default tax treatment is a flow-thru entity and can be elected to be treated as a corporation for U.S. income tax purposes
- Flexibility: From the legal perspective combines corporate and partnership characteristics of tax.

U.S. tax – international aspect



Holding Structure Considerations

1. Incorporation of U.S. C-Corporation

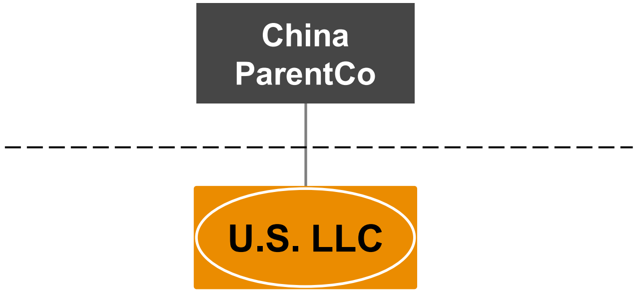


U.S. corporation

- Independent legal and tax entity separate from its parent company
- Subject to federal (and state) annual filing of its corporate income tax return Form 1120.
- Subject to annual income tax payments on its profits at 21% and making payments via quarterly estimated tax payments
- Any return of profits via distributions out of its earnings and profits are generally subject to U.S. withholding tax of 30%, may be reduced by applicable treaty. Illustrated here, if the U.S.-China income tax treaty applies, dividend distributions are subject to 10% withholding tax. China ParentCo to provide Form W-8 to substantiate non-U.S. status and treaty eligibility.

Holding Structure Considerations

1. Incorporation of U.S. LLC



U.S. limited liability company

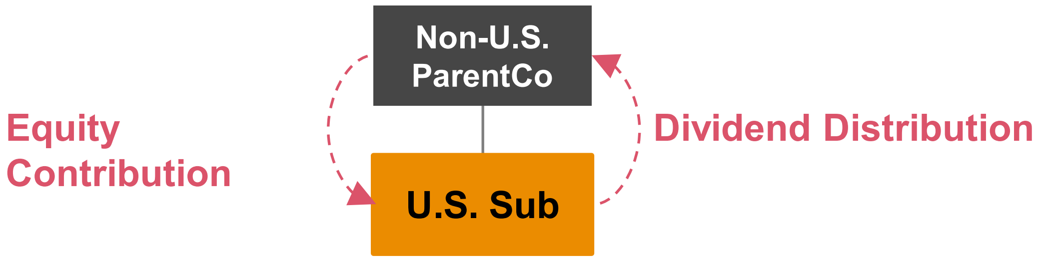
- Flow-thru entity by default, not separate from its parent company
- May consider check-the-box via Form 8832 to change entity classification (if so, previous c-corp implications apply)
- China ParentCo subject to federal (and state) annual filing of its corporate income tax return Form 1120-F
- U.S. ECI of China ParentCo is subject to U.S. corporate tax of 21% on a net basis and making payments via quarterly estimated tax payments
- Branch profits tax also applicable unless reduced by an applicable treaty which should be the case here. Therefore, no further U.S. withholding tax on distribution of after tax profits from U.S. LLC to China ParentCo.

3. Financing structure considerations

Financing Structure Considerations

Common capital structure - equity

1. Equity contribution

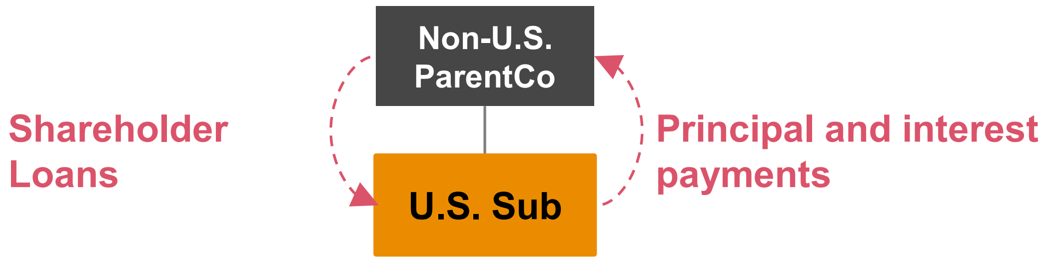


Dividends distributions are subject to U.S. federal withholding tax of 30% and generally not deductible for tax purposes at the U.S. corporate level.

Financing Structure Considerations

Common capital structure - debt

2. Debt financing via Shareholder Loans

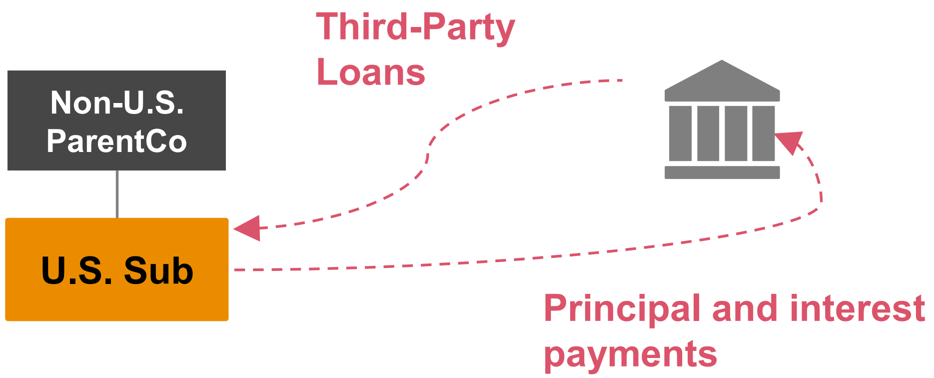


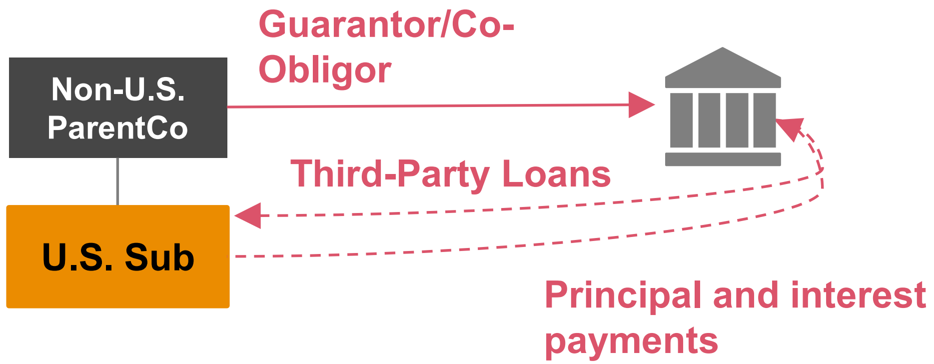
Need to consider bona fide debt treatment for U.S. federal income tax purposes and U.S. federal withholding tax of 30% on interest payments. At U.S. Sub level, need to consider interest deductibility (e.g. Section 163(j)).

Financing Structure Considerations

Common capital structure - debt

3. Debt financing via Third-Party Loans



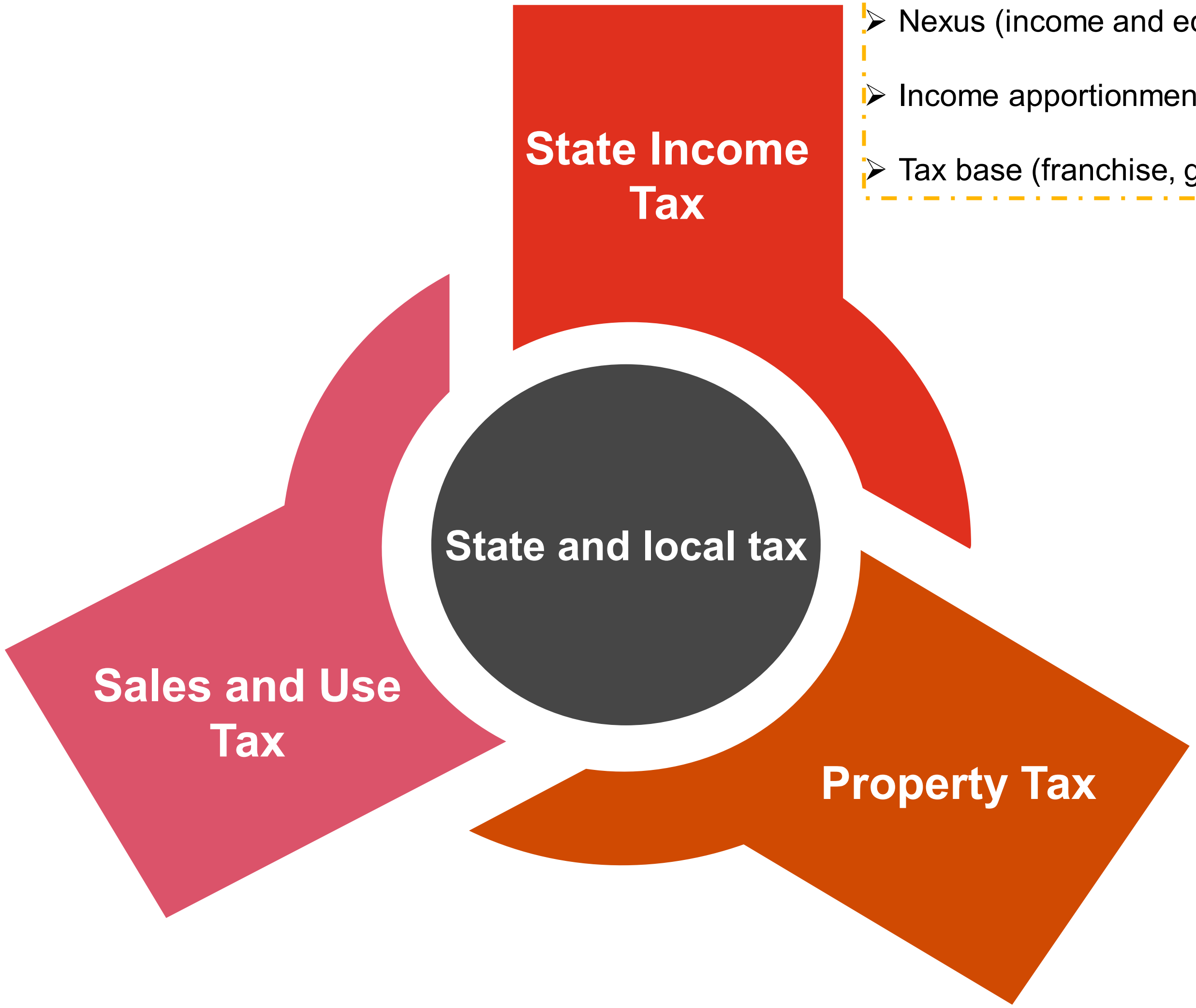


Need to consider bona fide debt treatment for U.S. federal income tax purposes and U.S. federal withholding tax of 30% on interest payments.

Here the non-U.S. ParentCo may be treated as borrower followed by equity contribution into the U.S. sub for U.S. federal income tax. In such cases, the repayment of principal and interest by the U.S. Sub would be deemed to be a distribution to the non-U.S. ParentCo followed by repayment from non-U.S. ParentCo to third-party lender.

4. Other U.S. tax considerations

U.S. state and local tax considerations

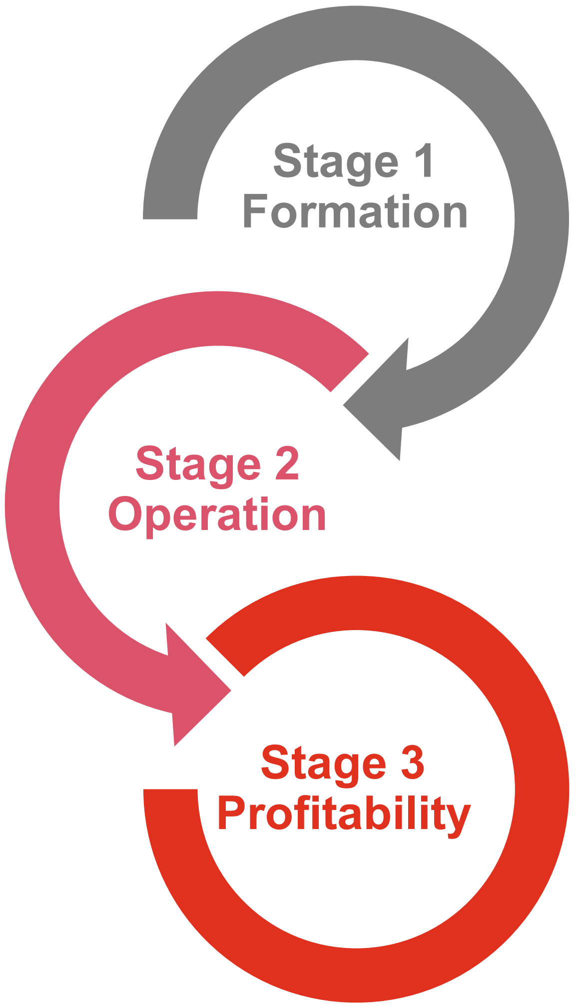


- Nexus (income and economic)
- Income apportionment/allocation
- Tax base (franchise, gross receipts, net worth)

- Usually levied by the county and/or locality
- Levied on movable and immovable property located within the district on a specific date
- Informs the Department of Revenue of the market value of its property, or the Department may determine the market value
- When calculating property taxes, the relevant depreciation rate and tax rate for taxable property varies depending on the jurisdiction and type of property
- Typical rates range from 0.5% to 2.5%.

- Usually levied by the state and/or county and locality where the business is engaged in sales activities
- State (including county) sales or use tax rates range from 0% to about 15%, with an average rate of 5.67%
- Economic nexus
- Marketplace facilitator rule

Recap: overview of U.S. tax considerations related to U.S. company formation and operations



- Choice of company entity (including but not limited to C-corporation and LLC)
- State for company registration
- Investment structure and holding paths (considering the tax compliance burden, tax costs, U.S. withholding tax implications, including tax treaty applicability, and tax impact on investment exit)
- Financing structure (equity/debt) related impacts, including the impact of U.S. withholding tax on interest payments, restrictions on the deduction of interest expenses by U.S. companies, etc.

- Tax compliance such as federal income tax, state income tax, sales and use tax, payroll tax, property tax, etc.
- Transfer pricing analysis (selection of personnel, assets, etc. allocation of the company based on the functions set up in the U.S., and pricing considerations for related parties)
- R&D expense tax credit analysis
- IP attribution analysis
- Tax restructuring

- Reinvestment in the U.S. or repatriation of cash
- Withholding tax consideration

U.S. Transfer Pricing

Speakers

Ye "Xavier"Xu
Senior Manager

Xavier Xu is a Senior Manager in the global TP practice of PwC New York, with more than 12 years of experience assisting clients with a variety of TP engagements, including TP documentation/planning/provision, value chain transformation, cost sharing arrangement related planning and compliance, IP valuation, economic research and expert testimony, strategic risk assessments and BEPS related TP compliance.

- Xavier has served clients in the consumer products, education, energy, entertainment, financial services, industrial products, insurance, medical, pharmaceutical, professional services, retail, technology and transportation industries.
- With his bilingual skills, Xavier has also provided tailored TP services related to cross border issues, tax strategies and value chain transformation for Chinese clients in the US.
- Xavier holds a bachelor degree in Business Administration from Shanghai University in China and an MBA from University of the Pacific's Eberhardt School of Business.

Ye "Xavier" Xu
Senior Manager
Tax-Transfer Pricing
New York, NY

T: +1 (209) 244-4653
ye.xu@pwc.com

1. US Transfer Pricing Compliance Overview

US transfer pricing documentation requirements

The Internal Revenue Service (“IRS”) requires that the taxpayer maintains contemporaneous Transfer Pricing (“TP”) documentation to show adherence and compliance with the arm’s length standard, and in order to provide penalty protection in case of an underpayment of tax attributable to a valuation misstatement.

To provide penalty protection, the taxpayer **must show** that the following were substantially complete contemporaneously with the filing of the US federal tax return for the taxable year in question:*

- An overview of the taxpayer’s business, including an analysis of economic and legal factors that affect transfer pricing.
- A description of the taxpayer’s organizational structure, including an organizational chart, covering all related parties engaged in potentially relevant transactions.
- Any documentation specifically required by the transfer pricing regulations.
- A description of the selected pricing method and an explanation of why that method was selected.
- A description of alternative methods that were considered and an explanation of why they were not selected.
- A description of the controlled transactions, including the terms of sale, and any internal data used to analyze those transactions.
- A description of the comparable uncontrolled transactions or parties that were used with the transfer pricing method, how comparability was evaluated, and what comparability adjustments were made, if any.
- An explanation of the economic analysis and projections relied upon in applying the selected transfer pricing method.
- A description of any relevant data that the taxpayer obtains after the end of the tax year and before filing a tax return that would be useful in determining whether the taxpayer’s selection and application of its transfer pricing method was reasonable.
- A general index of the principal and background documents related to its transfer pricing analysis and a description of the record keeping system used for cataloguing and accessing these documents.

*PwC’s Transfer Pricing documentation would typically contain the first eight bullet points mentioned above.

US transfer pricing audit and penalties

Statute of Limitation

- The statute of limitation is **three years** from the filing of the return.
- In the case of substantial omissions of income, the statute is **six years**.
- In the case of fraud or failure to file a return, the statute is **unlimited**. (I.R.C. § 6501A).

Penalty

- A **20%** net adjustment penalty is imposed on a tax underpayment attributable to a net increase in taxable income caused by a net transfer pricing adjustment.
- The penalty is increased to **40%** if the net transfer pricing adjustment exceeds the lesser of $5 million or 10% of taxpayer gross receipts for the taxable year.

Penalty Protection

- Under the U.S. Regulations regarding transfer pricing related penalties, such penalties can be waived where documentation has been prepared contemporaneously with the corporate federal tax return and be presented to the Internal Revenue Service within 30 days of request.
- The U.S. federal tax return is due four month after fiscal year end. However, a six-month extension is allowed from that date. For calendar year end taxpayer, the due date is April 15 of the following year, while the extended due date is **October 15** of the following year.

IRS announcement on high-quality transfer pricing documentation

IRS issued informal guidance, in the form of frequently asked questions (“FAQs”), advising taxpayers that high-quality, comprehensive TP documentation can reduce the chance that the IRS will audit a TP issue or can improve the speed of audit resolution by demonstrating a low level of compliance risk.

IRS FAQs best practices for TP documentation

1. **Use of self-assessment** - Taxpayers are advised to step into the shoes of the IRS, in effect auditing themselves, to proactively address areas of potential non-compliance and include that analysis in the documentation.
2. **Industry analysis** - Focused and relevant industry analysis.
3. Functional analysis - Preparation of a functional analysis over a functional checklist and ensure that documentation reflects the current allocation of risk within the group.
4. **Best method and profit level indicator (PLI) selection** - documentation should thoroughly explain why a method was chosen and why other methods were not chosen.
5. **Comparability criteria** - Thorough analysis of comparability criteria, selection and adjustments for comparable company data
6. **Contemporaneously available information**
7. **Tested party data** - Clear explanation of tested party data (e.g., segmentation approach).
8. **Profit allocation sanity check** - For example, confirming LRDs end up with lower returns that the group's entrepreneur.
9. **User friendly** - Preparation of a user friendly report with a summary introduction

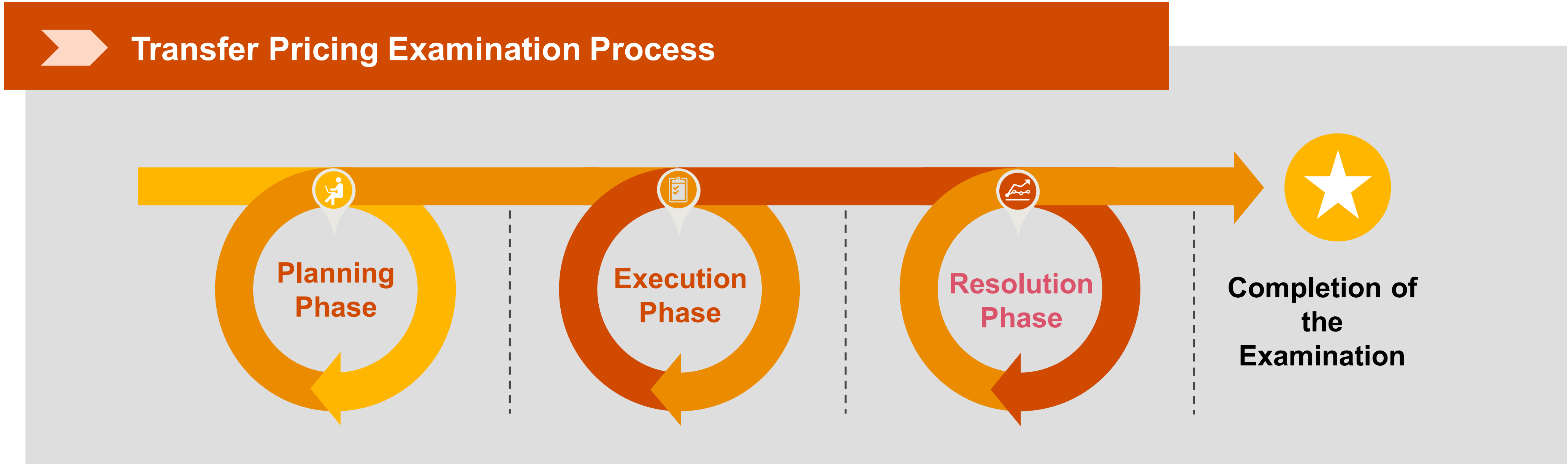
*Source: IRS, Transfer Pricing Documentation Best Practices Frequently Asked Questions (FAQs).

2. IRS – Transfer Pricing Examination Process

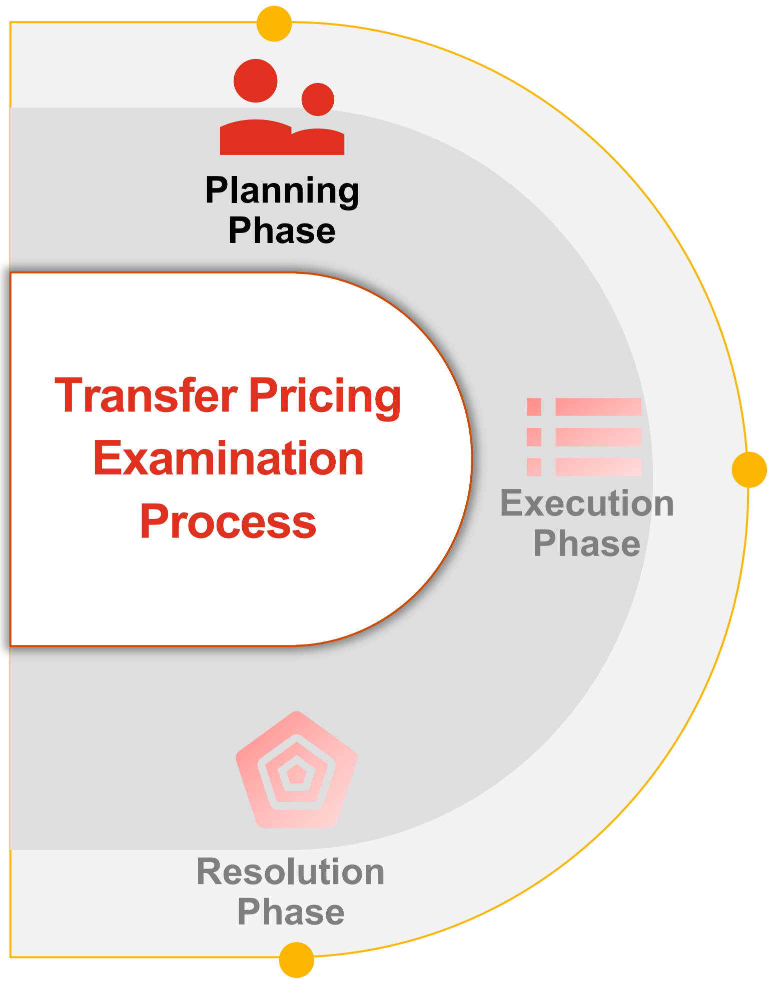
IRS – Transfer Pricing Examination Process

Transfer pricing examinations are **factually intensive** and require a **thorough analysis of functions performed, assets employed, and risks assumed along with an accurate understanding of relevant financial information**. They are resource intensive for both the Internal Revenue Service ("IRS") and taxpayers.

To ensure resources are applied effectively, Large Business & International ("LB&I") is using **data analytics to identify issues for examination that have the most significant risk for non-compliance**. If the facts of the case show that the taxpayer's results fall within an appropriate arm's length range, then the IRS resources are instructed to be applied elsewhere.



IRS – Transfer Pricing Examination Process – Planning Phase



I. Planning Phase

This phase of the examination process determines the scope of the audit. Issues selected for transfer pricing examinations should have the broadest impact on achieving compliance **regardless of the size or type of entity**.

A. Issue Team Member Collaboration and Coordination

B. Practice Units

C. Initial Transfer Pricing Risk Assessment

1. Review Prior Year Workpapers
2. Collaborating with Advance Pricing Mutual Agreement Program
3. Analyze the Income Tax Return
4. Analyze the Country-by-Country Report
5. Prepare Ratio Analysis
6. Research Taxpayer's Background and Operations
7. Develop a Preliminary Working Hypothesis
8. Complete Risk Analysis

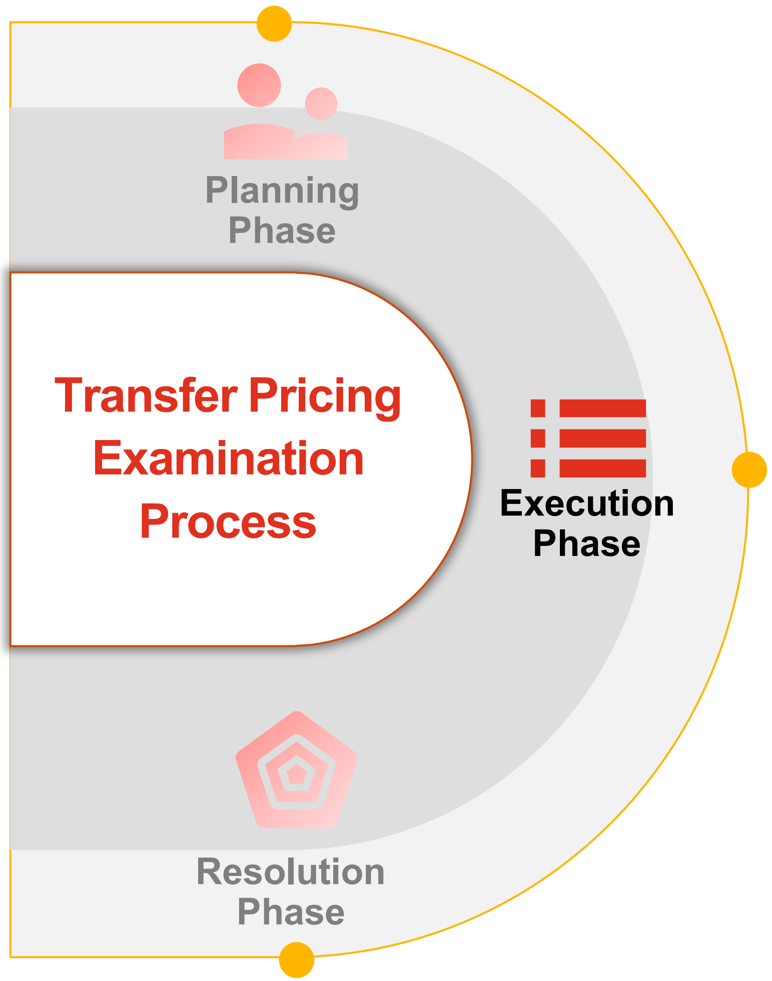
D. IRC Section 6662(e) Documentation Request

E. Internal Planning Meeting(s)

F. Issue Team Examination Plan, Timelines, and Key Milestones

G. Opening Conference

IRS – Transfer Pricing Examination Process – Execution Phase



II. Execution Phase

Stages of issue development include determining the facts, applying the law to those facts, and understanding the various tax implications of the issue. The issue team should conduct interactive discussions, including using the IDR process to develop the facts. Every effort should be made to resolve any factual differences. Open communication and continuous reassessment should continue throughout the Execution Phase.

A. Risk Assessment
  1. Review IRC Section 6662(e) Response
  2. Request Financial Statement Orientation
  3. Request Transfer Pricing/Supply Chain Orientation
  4. Update Risk Assessment

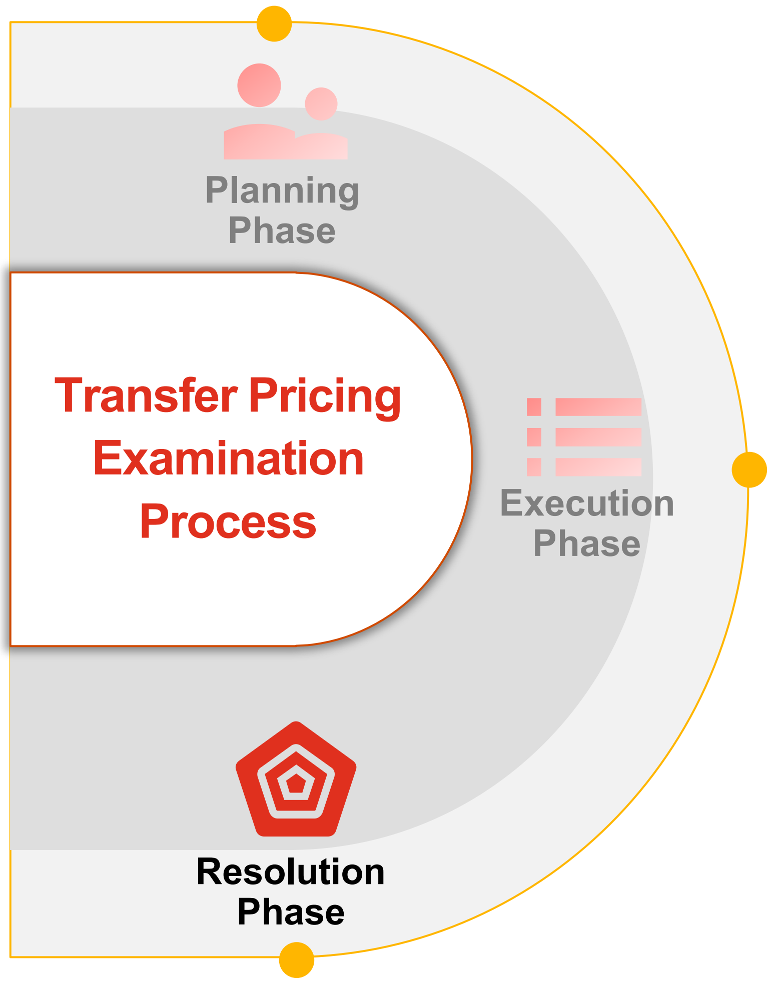
B. Fact Finding and Information Gathering
  1. Issue IDRs and/or Summonses
  2. Review Intercompany Agreements
  3. Conduct Functional Analysis

C. Taxpayer Meetings

D. Mid-Cycle Risk Assessment

E. Issue Development
  1. Economic Analysis
  2. Penalties
  3. Drafting Reports
  4. Acknowledgements of Facts IDR

IRS – Transfer Pricing Examination Process – Resolution Phase



III. Resolution Phase

The goal of the resolution phase is to reach agreement, if possible, on the tax treatment of each issue examined and, if necessary, issue a Revenue Agent Report ("RAR") to the taxpayer.

A. Issue Presentation and Resolution

B. Case Closing /RAR

C. Appeals

D. U.S Competent Authority Request

E. Competent Authority Request Concerning U.S.-Initiated Actions

1. Competent Authority Resolution
2. Accelerated Competent Authority Procedure ("ACAP")
3. Simultaneous Appeals Procedures ("SAP")

IRS – Transfer Pricing Examination Process – Example of 36 Month Examination

Example of 36 Month Examination

This sample timeline is only used as an example. Each case has its own unique characteristics. The examination plan's timeline is specific to the facts of each case.

TRANSFER PRICING EXAMINATION PROCESS					
PLANNING					
	EXECUTION				
				RESOLUTION	
Cycle Time in Months					
Prior to Opening Conference	1st to 2nd	3rdto 4th	5th to 30th	30th to 31st	32nd to 36th
Initial Transfer Pricing Risk Assessment					
Issue IDR for IRC Section 6662(e)					
Internal Planning Meeting(s)					
Exam Plan/Time line/Key Milestones					
	Opening Conference				
	Risk Assessment				
		Fact Finding and Information Gathering/Issue Development			
			Mid-Cycle Risk Assessment		
				Issue Presentation and Resolution	
				Case Closing/RAR	
				Appeals	
				U.S. CA Request	
THE TIMELINE SHOULD BE USED ONLY AS A GUIDE AND MUST BE ADAPTED TO EACH CASE					

3. US Advance Pricing Agreement Updates

APA updates – Overview of Key Statistical Data and Benefits

Since 1991, the IRS has concluded more than 3,100 advance pricing agreement applications. Key benefits of applying an APA with the IRS include:

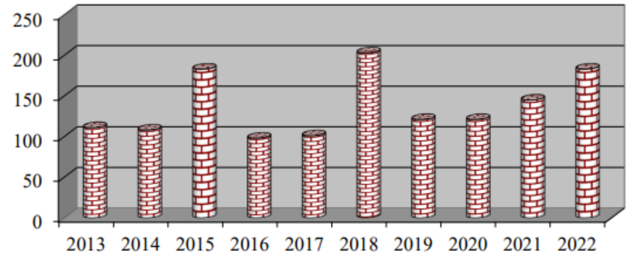
- Achieve tax certainty with significant operations and investments in the US;
- Reduce the burden of the US contemporaneous documentation requirements;
- Prevent costly and complicated transfer pricing audits and avoid potential double taxation for past and future years; and
- Resolve ongoing transfer pricing disputes with the IRS by including historical tax years (subject to limitations).

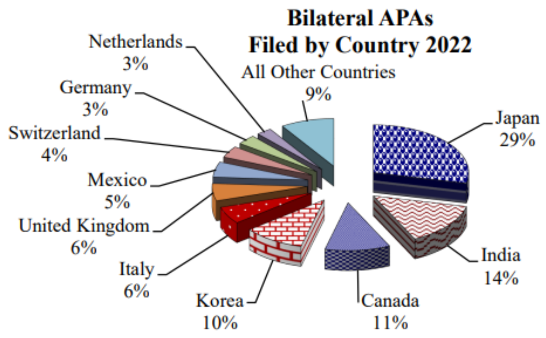
Many Asia based parents (e.g., India, Japan, Korea, Hong Kong, Taiwan, etc.) with US subsidiaries have concluded APAs (unilateral and bilateral) with the IRS for nearly three decades.

APA Applications Filed

	Unilateral	Bilateral	Multilateral	Total
Filed 1991-1999				401
Filed 2000-2021	653	1,845	37	2,535
Filed in 2022	22	154	7	183
Total Filed 1991-2022				**3,119**

2013-2022 APA Applications Filed



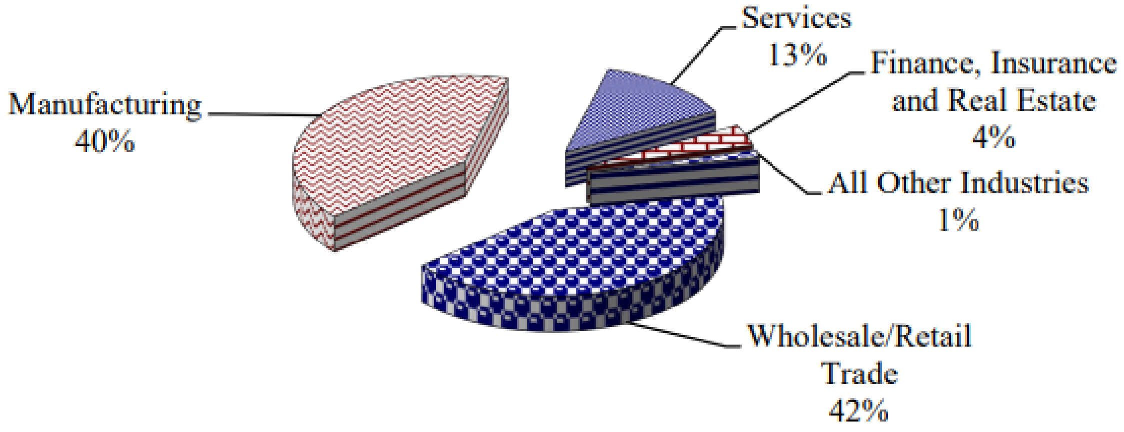


*Source: Announcement and report concerning advance pricing agreements, March 27, 2023, Internal Revenue Service

APA updates – APAs executed by industry

Industry	Number of APAs
Wholesale/Retail Trade	32
Manufacturing	31
Services	10
Finance, Insurance, and Real Estate	3
All Other Industries	1

APAs Executed in 2022 by Industry



*Source: Announcement and report concerning advance pricing agreements, March 27, 2023, Internal Revenue Service

Advance Pricing Agreement process overview

Pre-file initial assessment

- A pre-filing memo gives Advance Pricing and Mutual Agreement Program (“APMA”) a snapshot of the company’s business, proposed covered issues and transfer pricing method. A pre-filing memo accompanies a pre-filing conference.
- Is a pre-filing conference necessary? Is there a difficult audit in either the U.S. or other country? Does the company want to get more comfortable with the Advance Pricing Agreement (“APA”) process? Are there specific questions we want the IRS to answer?
- Pre-filings are mandatory in a small number of cases (e.g., transfer of intangible assets, etc.)

Pre-file meeting

- PwC submits the pre-filing memo with several proposed dates starting a few weeks after the memo is filed.
- The pre-filing meeting can take place in person with the IRS, by video conference or by telephone conference or a combination of all options.

Prepare application

- APA request includes: business overview, proposed covered issue, functional analysis, economic analysis, exhibits, as well as a draft of the APA contract.

Pay user fee

- Company pays the IRS user fee. A complete APA request must follow within 120 days. The user fee and application can also be filed at the same time.

File APA application

- Company submits application.
- Application in the U.S. should be filed within 60 days of a filing in another country.

APA review in each country

- APMA will review the application and request additional information if necessary.
- Other country will also conduct due diligence including site visits and plant tours in some cases.
- APMA and other country may perform its own economic analysis.
- APMA will prepare a position paper with its proposed transfer pricing method.

Negotiation between two tax authorities

- Tax authorities have scheduled meetings throughout the year (the frequency of meetings depends on the country).
- Negotiations may also occur by fax, email, and phone calls between meetings.

APA agreement

- Agreement concluded
- Taxpayer monitors results and prepares APA annual report for years covered by APA

Implementation

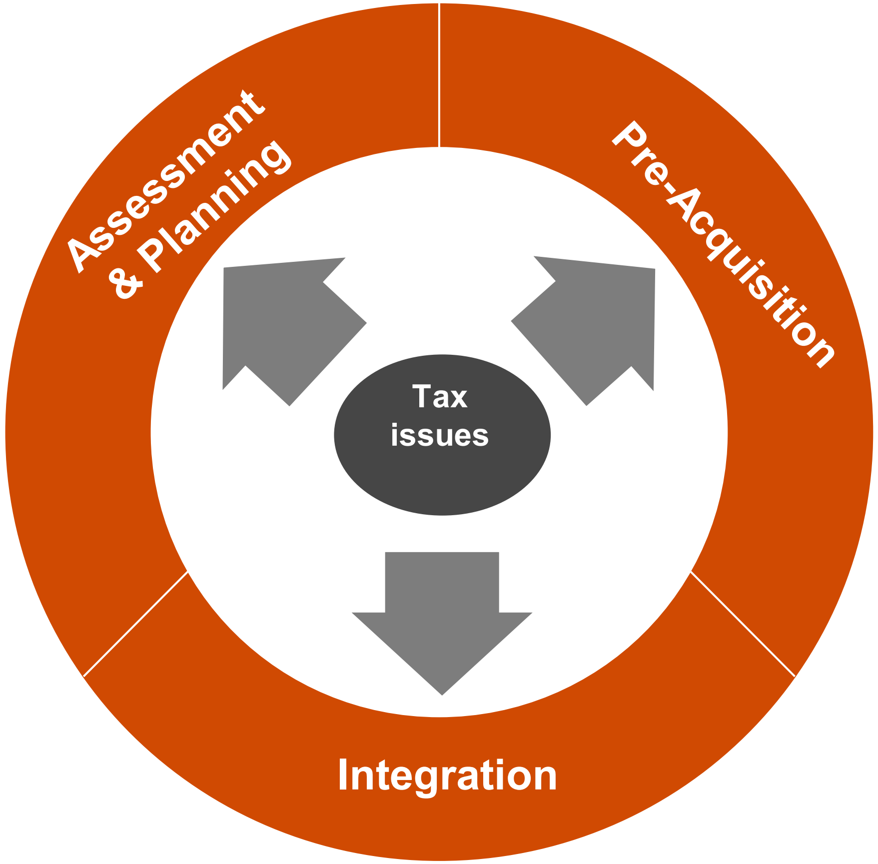
Pre-File | Submission | Negotiations

4. Transfer Pricing Considerations Throughout the M&A Deal

Transfer Pricing considerations throughout the M&A deal

Transfer Pricing considerations

- Check for unrealized tax savings
- Plan long-term TP strategy
- Identify targets that improve tax advantage
- Extract learning experiences
- Prepare team for next M&A



Transfer Pricing considerations

- Potential liabilities and exposure
- Structural solution to align IP ownership
- Identify sources of improved group's effective tax rate ("ETR")

Transfer Pricing considerations

Identify time-bombs Implement IP post-integration strategy realize reduction of ETR

Panel Discussion

Panel Discussion

Paul Tang
paul.tang@cn.pwc.com
Transfer Pricing Partner

PwC China

Xavier Xu
ye.xu@pwc.com
Senior Manager Transfer Pricing

PwC US

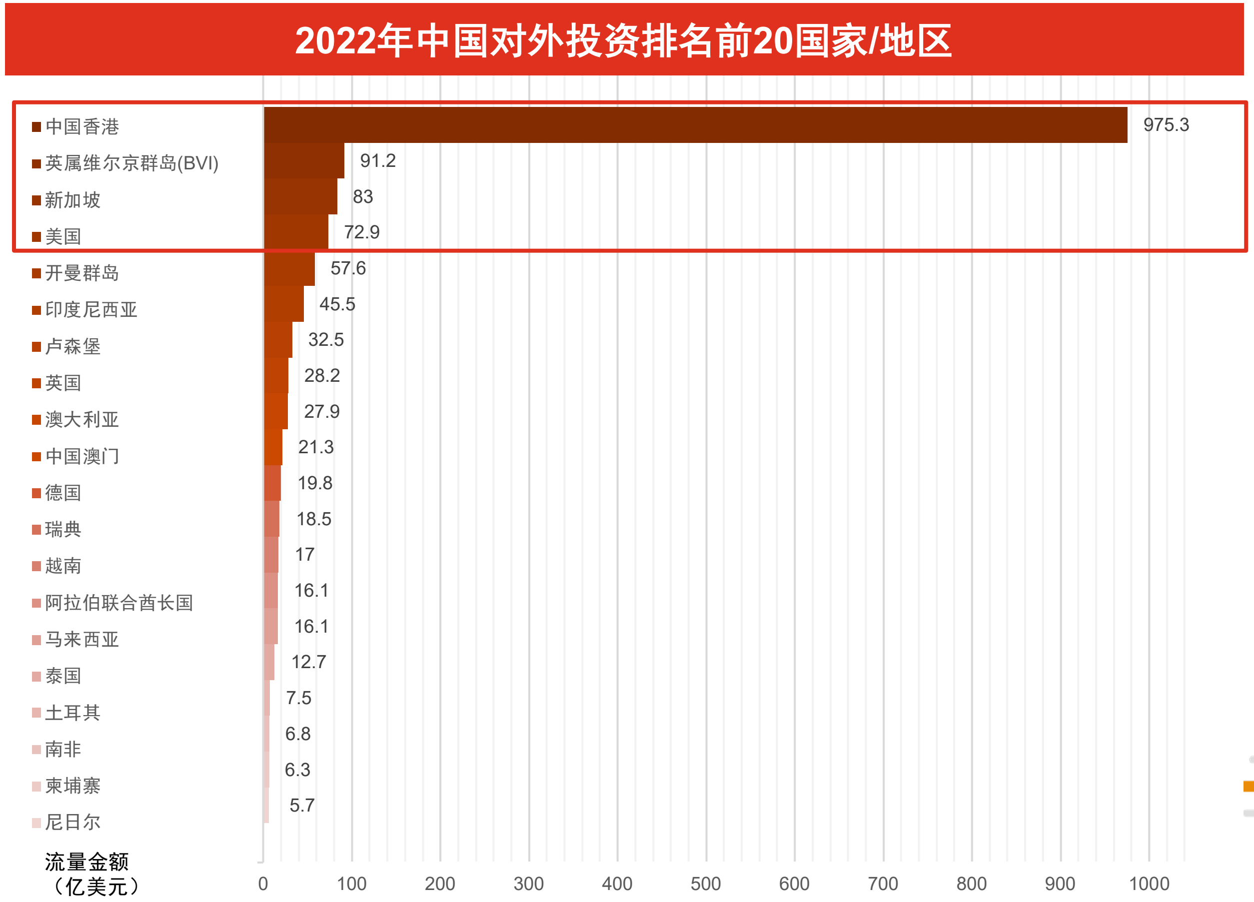
Kevin Zhang
kevin.f.zhang@cn.pwc.com
US Consulting Partner

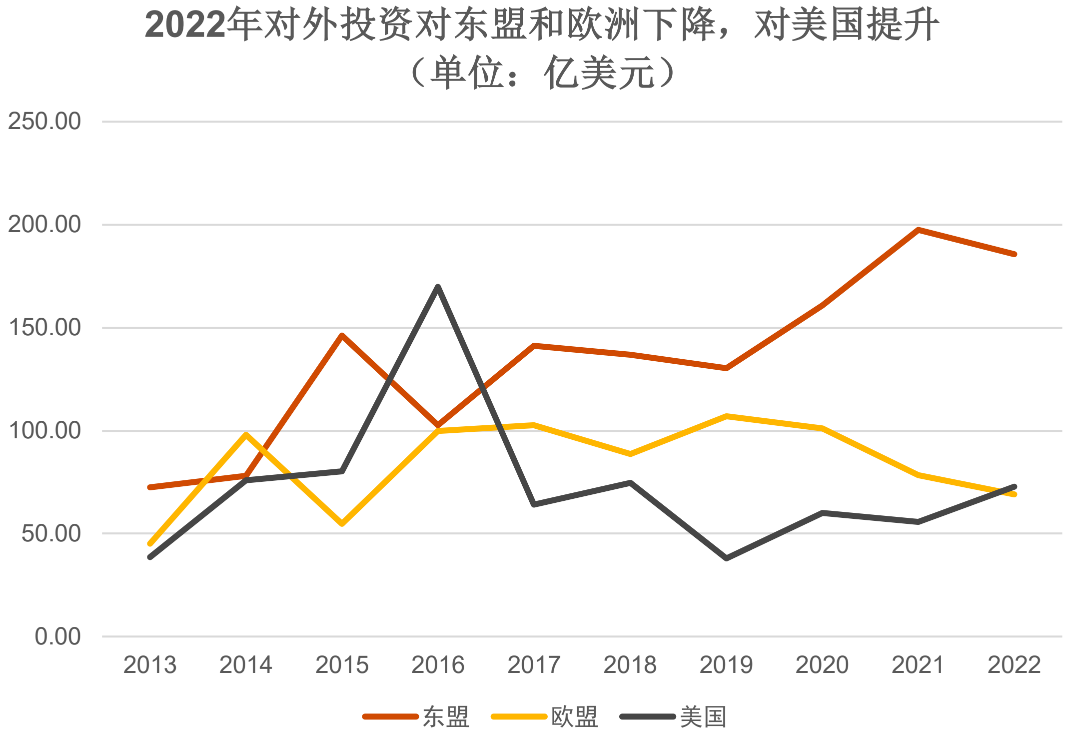
PwC China

Dixon Guo
dixon.guo@cn.pwc.com
Global Structuring Service Partner

PwC China

2022年中国企业海外投资的选择地





数据来源：2022年中国对外直接投资统计公报

中国企业出海——从战略到计划，从计划到执行

【从战略到计划】

ESG与可持续发展价值链战略

- 企业可持续发展战略与目标制定
- 循环经济转型与生态伙伴协同价值创造
- 绿色供应链（绿色供应链战略/转型/数字化）

盈利能力

- 商品与服务组合管理优化（产品与库存）
- 综合成本管理（采购/制造/物流/关务等核心成本节降机会规划与实施）
- 精益价值链管理（财务价值驱动机会梳理）

数字化供应链

- 数字化运营模式（供应链控制塔与业务架构/系统架构规划/系统选型与实施管理）
- 数字化采购（战略采购，供应商管理）
- 数字化物流（仓网与3PL管理，OMS/TMS）

产品开发

- 集成产品开发与产品组合管理（PACE）
- 集成产品开发2.0（敏捷开发）
- 数字化产品开发（数字化创新）

供应链管理

- 企业可持续供应链诊断与对标
- 集成供应链运营模式设计（供应链资产布局，仓储物流网络优化，绿色可持续供应链集成）
- 企业集成业务计划体系与数字化（IBP）

【从计划到执行】

【选址与可研】合适的国家/地区及海外投资可行性/风险

- 成本、适配性以及宏观投资和政策环境
- 基础设施及物流的连通性和效率/土地、劳动力成本
- 识别海外投资项目风险，评估风险等级， 筛选重点关注风险，建议风险应对策略

【架构】搭建税务有效的投融资和运营架构

- 研究双边税收协定以及当地税收法律法规，为外商投资限制提供法律支持
- 设计高税务效益的投资控股架构，评估目标运营模式的税务有效性

【间接税】现金流改善

- 供货安排（时间或地点）的增值税/销售税的建议
- 针对特定国家的增值税/销售税注册和合规报告提供咨询

【优惠】申请东道国投资/税务优惠

- 研究拟投资项目与东道国招商引资鼓励政策的契合度
- 分析不同投资方案下给予的投资/税务优惠政策

【海关】评估海关及贸易管制风险

- 原产及目的国海关事务咨询
- 目的国贸易管制及制裁风险评估

【外汇】对外投资备案(“ODI”)

- 明确境外投资项目的管理与申报要求
- 符合法律监管的投资备案建议

【转让定价】可持续的转让定价框架构建

- 评估供应链转型后对境内实体的影响
- 评估境内各地政府对供应链转型/优化方案的反馈并支持落地

【协调PMO】协调全球专家团队一站式交付

- 结合普华永道广泛的全球专家网络资源，协调东道国商务、税务及法律方面的专家为项目的研判及落地提供一站式服务

IPD：集成产品开发　PLM：产品生命周期管理系统　DevOps：软件敏捷开发　OMS：订单管理系统　TMS：运输管理系统

Thank you

pwc.com