
INTERNATIONAL TAX PLANNING

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TRANSFER PRICING: A CRITIQUE OF THE CCRA'S POSITION ON RANGE ISSUES

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Transfer pricing is not an exact science; when a taxpayer uses a transfer-pricing methodology that involves assessment of comparable transactions, application of the arm's-length principle will often produce a range of results. At the Canadian Tax Foundation's 2002 annual conference, the CCRA presented its views on the use of ranges in testing transfer prices. The authors believe that although the CCRA's guidance in this area is somewhat helpful, it is also ambiguous and open to misinterpretation and in some respects may contradict the arm's-length principle.

In any transfer-pricing analysis, the comparability of results in a range requires a subjective and judgmental examination of the particular facts and circumstances. The authors fear that CCRA's international auditors will attempt to use the CCRA's general guidelines on this issue to challenge legitimate transfer-pricing policies, leading to prolonged disputes at the audit level. With examples, the authors challenge the ambiguities inherent in the CCRA's broad conclusions. The authors also question the method by which the CCRA is communicating its guidance on transfer-pricing issues, and argue for a more consultative approach among the CCRA, taxpayers, and professional advisers.

KEYWORDS: TRANSFER PRICING ■ ARM'S LENGTH

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