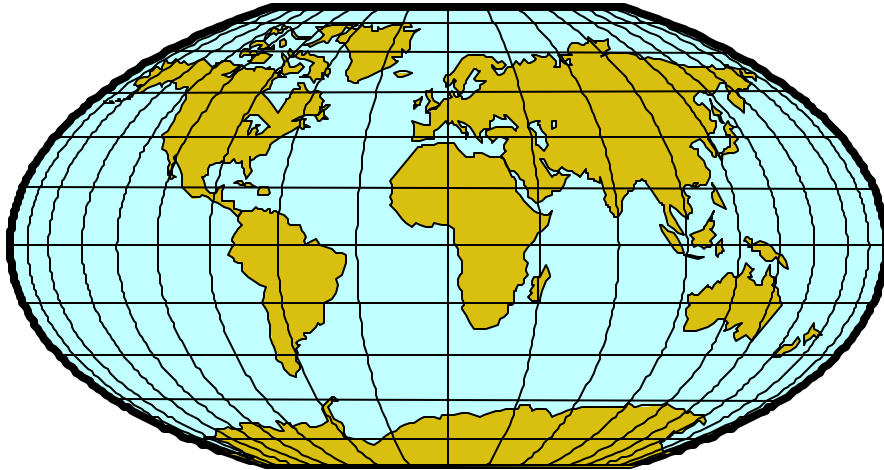


# Global Dealing Regulations



## **Financial Services Industry - Lines of Business**

- Foreign Exchange Contracts
- Notional Principal Contracts for Customers
- Other Derivative Contracts (Forwards, Futures, Options)
- Physical Securities (Stocks, Bonds, Other Debt Instruments)
- Certain Commodities (Foreign Currency, Metals, etc.)

## **Global Dealing Corporate Structures**

- Foreign Corporation - U.S. Branch
- U.S. Corporation - Foreign Branch
- Separate Corporations (U.S. or Foreign Controlled)
- Combination Separate Corporation/Branch Structures

## **Global Dealing Models**

- Separate Enterprise (FX Spot/Forward, Some NPC Trading)
- Centralized Product Management (Natural Home) (Specific Products: e.g. Treasuries, U.K. Gilts, etc.)
- Integrated Trading (Trading Authority Passes in One Entity's Name)

## **Double Taxation Potential - Current Law**

- Source (All or Nothing Approach)
- Character (e.g. Gains, Services, Interest; Affects Source)
- Timing (e.g. Accounting Method Differences)
- U.S. Trade or Business - No Rule Policy

## **Current Law Issues**

- Section 482 - No Specific Financial Services Guidance
- Section 863 - No Split Sourcing Rule (All or Nothing)
- Section 864 - No Interbranch Recognition (All or Nothing)
- Section 988 - No Split Sourcing on FX (All or Nothing)
- Section 475 - Timing Mismatches on Risk Management Transfers (No Interbranch/Interdesk Recognition)

## **Current Law Solutions**

- Advanced Pricing Agreement (APA) Program
- Notice 94-40
- Treaty Based Return Positions (Article 7)
- Lack of Guidance - Widespread Industry Practice

## **Technical Changes to Existing Regulations**

- Proposed ' 1.482-8 Allocation Rules
  - New Specified Methods
  - Best Method Rule continues to apply
  - Modified Arms Length Range Rule
  - Modified Comparability Factors
- Proposed ' 1.863-3(h) Split-Sourcing Rules apply ' 1.482-8 Principles
- Coordination with NPC & Foreign Currency Sourcing Rules
- Proposed ' 1.475(g)-2: Cross-Border Mark-to-Market Rules
- Proposed ' 1.864 Amendments
- Proposed ' 1.894(d) Treaty Rule for ECI

## **Scope of New ' 1.482-8**

- Two or More Controlled Taxpayers
- Controlled Taxpayers are “Participants”
- “Global Dealing Operation” must Exist

## **Global Dealing Operation: Basic Requirements**

- Conduct of Specific Functions is Required
  - Execution of Customer Transactions
  - Marketing
  - Sales
  - Pricing
  - Risk Management
- Specific Alternative Operating Structures
  - Multiple Participants in One Jurisdiction
  - Multiple Participants: Two or More Jurisdictions
  - Single Participant: Two or More Jurisdictions
  - At Least One Participant is a Regular Dealer in Securities@

- Dealing in Financial Product or Products

### **Global Dealing Operation: Other Considerations**

- Financial Products are in Securities as Defined
- Each Financial Product is Entered onto Books and Records
- Each Business Activity is Evaluated Separately
- Lending and Investment Activities are Excluded
- Section 475 Identification not relevant to Investment Status

### **Types of Participants**

- Separate Controlled Taxpayers: ' 1.482-8 (a)(2)(ii)
- Multiple Jurisdictions of Single Taxpayer: ' 1.863-3(h)(3)
- Combination of Both Operating Structures

### **Section 1.482-8 Participant**

- Controlled Taxpayer which is a Regular Dealer in Securities; or
- Member of Controlled Group of Taxpayers which has:
  - Regular Dealer in Securities; and
  - Conducts an Activity Related to Regular Dealer

### **Section 1.482-8 Participant: Related Activities**

- Marketing
- Sales
- Pricing
- Risk Management

- Brokering

### **Section 1.482-8 Participant: Excluded Activities**

- Credit Analysis
- Accounting Services
- Back Office
- General Supervision and Control over Taxpayer's Policies
- Guarantee of Participant Transaction

### **Section 1.863-3(h)(3) Participant**

- QBU under ' 1.989(a)-1(b)
- QBU acts as Regular Dealer in Securities or Related Activity
- Deemed QBU Rule
- QBU treated as Separate Controlled Entity to Source Income

### **' 1.482-8 New Specified Methods**

- Comparable Uncontrolled Financial Transaction Method
- Gross Margin Method
- Gross Markup Method
- 2 Profit Split Methods
- Unspecified Methods
- ' 1.482-5 Comparable Profits Method is Excluded