



US TRANSFER PRICING

IRS notice provides simplified, streamlined approach to pricing certain qualified intercompany transactions; OECD Amount B guidance released

Tax Alert

Overview

On December 18, 2024, Treasury and the IRS issued Notice 2025-04 announcing their intent to issue proposed regulations that, for purposes of applying section 482, provide a **new method for pricing certain controlled transactions** involving baseline marketing and distribution activities of goods.

This method, referred to as **the Simplified and Streamlined Approach (SSA)**, is **similar to the comparable profits method** under US transfer pricing regulations and the OECD Transfer Pricing Guidelines.

The Notice **allows taxpayers to elect to apply the SSA annually for taxable years beginning on or after January 1, 2025**, in advance of the Treasury Department and the IRS issuing the proposed regulations.

Additionally, on December 19, 2024, the **OECD released fact sheets and a pricing tool to facilitate the understanding and operation of the SSA** for transfer pricing.

Notice 2025-04

On December 18, 2024, the Internal Revenue Service (IRS) issued [Notice 2025-04](#) (the “Notice”) announcing the intent of the Department of Treasury (“Treasury Department”) and the IRS to issue proposed regulations that, for purposes of applying section 482, provide a new method for pricing certain controlled transactions involving baseline marketing and distribution activities of goods.

This method is referred to as the Simplified and Streamlined Approach (SSA), as described in a February 19, 2024 [report](#) of the Organization for Economic Cooperation and Development (OECD) titled “Pillar One – Amount B: Inclusive Framework on BEPS” (the “Report”). According to the Notice, the SSA is similar

to the comparable profits method under Treas. Reg. §§ 1.482-3(a)(4), 1.482-5, and 1.482-9(a)(5) and (f) (referred to in the Report as the transactional net margin method as that method is known in the OECD Transfer Pricing Guidelines).

The Notice allows taxpayers to elect to apply the SSA for taxable years beginning on or after January 1, 2025, in advance of the Treasury Department and the IRS issuing the proposed regulations. Although not currently envisioned to be included, the Treasury Department and the IRS are considering whether the proposed regulations should also permit the IRS to apply the SSA.

To file an election, taxpayers must elect to apply the SSA by filing a statement with their original return for the taxable year. The statement must include: 1) a description of each transaction; 2) identification of the entities participating in each transaction; and 3) specification of the entities' respective places of incorporation or tax residence. Transactions may be grouped on the basis of products, product lines, or similar groupings to avoid listing each individual transaction. The election must be made annually; taxpayers who elect the SSA for one year are not bound to it in other years.

To apply the SSA, the controlled transaction must fit within a category of qualifying transactions and be an in-scope transaction under section 482. For purposes of determining whether a qualifying transaction is also an in-scope transaction under section 482, the upper bound of the operating expenses-to-revenues scoping criterion in paragraph 13.b. of the Report is 30% if the Distributor is a US Distributor or the Distributor Country has not adopted the SSA. If the Distributor is a non-US Distributor, and the Distributor Country has adopted the SSA, then the upper bound is the upper bound specified by the law of the Distributor Country but shall be no lower than 20% and no higher than 30%.

If a valid election to apply the SSA is made, the SSA will be considered the best method under the best method rule in Treas. Reg. § 1.482-1(c). The appropriate return to the tested party is determined under the SSA by applying the guidance in section 5 of the Report, with certain clarifications provided by the Notice on applying that guidance for US tax purposes. However, the SSA will not be treated as the best method if any relevant party (that is, the Distributor, the Related Supplier, or either tax administration) demonstrates that the comparable uncontrolled price method described in Treas. Reg. § 1.482-3(b) using one or more internal comparables can be applied more reliably than the SSA and chooses to apply such method instead of the SSA.

If the SSA is applied, the taxpayer must maintain permanent books of account and records that are adequate to permit verification by the Commissioner that the controlled transactions with respect to which the election is made are in-scope transactions and must maintain sufficient documentation to allow verification that the taxpayer properly determined its income under the SSA.

The Commissioner may challenge whether a controlled transaction is in scope, whether an election to apply the SSA has been made, and whether the income allocation is properly calculated under the SSA. Adjustments will be determined under the best method analysis if the SSA is not validly elected or applied. The Notice further notes that there may be inconsistencies between jurisdictions' policies with respect to the SSA. The IRS recommends taxpayers to carefully assess whether to rely on US law or foreign law, whether to otherwise rely on the SSA, and the extent and nature of documentation to create and maintain.

Taxpayers are encouraged to submit comments on the Notice, particularly on the application and election process of the SSA. Comments should be submitted by March 7, 2025.

Practical considerations for taxpayers

1. Evaluate transactions: Analyze whether your controlled transactions qualify for the SSA and meet the in-scope criteria.
2. Assess impact: Calculate potential impact on your transfer pricing policies, price setting, and compliance strategy if the SSA is applied.
3. If SSA is elected
 - Prepare documentation: Maintain detailed documentation to support the application of the SSA, including financial information and intercompany agreements.
 - File election statements: Be mindful to file election statements with the original return for the taxable year, including all required details.
4. Stay informed: Taxpayers are encouraged to keep abreast of updates and revisions to the SSA guidance and regulations.

Pillar One Amount B guidance

Additionally, on December 19, 2024 the OECD [released](#) fact sheets and a pricing tool to facilitate the understanding and operation of the simplified and streamlined approach to transfer pricing.

- The [fact sheets](#) provide a high-level overview of the mechanics of Amount B, including the steps taxpayers and tax administrations should take to apply Amount B.
- The [Pricing Automation Tool](#) automatically computes the Amount B return for an in-scope tested party.

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