Internal Revenue Service
DEPARTMENT OF THE TREASURY

LB&I International Practice Service Transaction Unit

IPS Level	Number	Title	UIL Code	Number
Shelf	N/A	Business Outbound	–	–
Volume	1	Outbound Income Shifting	**Level 1 UIL**	9411
Part	1.2	Intangible Property Transfers w/o Cost Sharing	**Level 2 UIL**	9411.02
Chapter	1.2.2	Transfer to Which 367 (d) Applies	**Level 3 UIL**	9411.02-02
Sub-Chapter	1.2.2.1	Deemed Annual Royalty Inclusion	–	–

Unit Name	Deemed Annual Royalty Income Under IRC 367(d)

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Issue and Transaction Overview

Deemed Annual Royalty Income Inclusion Under IRC 367(d)

Strategic global deployment of high value intangibles has become a frequently employed form of global tax management. Such transfers are typically made to a related party located in a jurisdiction that imposes little, if any, tax burden on the income from the transferred intangibles. Some U.S. taxpayers that own significant intangible assets may transfer them offshore as part of a strategy to reduce their effective tax rate for financial statement purposes. One method of accomplishing this is through an IRC 351 or IRC 361 intangible transfer, which can trigger a taxable transaction under IRC 367(d).

This practice unit examines how taxpayers may try to reduce or eliminate the federal tax consequences under IRC 367(d) (often referred to as a “toll charge”) when transferring the intangibles offshore and also details audit techniques that examiners can employ when auditing the issues presented by this transaction.

The general rule is that when a U.S. person transfers intangible property (“IP”) to a foreign corporation pursuant to IRC 351 or IRC 361, IRC 367(d) requires that the U.S. transferor recognize a deemed sale of the IP in exchange for a continuing deemed annual royalty. The deemed royalty is characterized as ordinary income over the useful life of the property, not to exceed 20 years. If within the intangible’s useful life, the foreign corporation subsequently disposes of the property to an unrelated party then the U.S. transferor shall recognize gain equal to the difference between the FMV of the property and its adjusted basis.

The appropriate charge for the deemed royalty must be determined in accordance with the provisions of IRC 482 of the Code and regulations, including both the arm’s length and commensurate with income standards. IRC 367(d) does not apply to the transfer of foreign goodwill or going concern value (FGWGC). To the extent any portion of the IP transferred is properly classified as FGWGC then there is no tax imposed on the transfer of those intangibles to a Foreign Corporation (FC) in an IRC 351 or IRC 361 transfer under Treas. Reg. 1.367(d)-1T(b).

Issue and Transaction Overview (cont'd)

Deemed Annual Royalty Income Inclusion Under IRC 367(d)

Treas. Reg. 1.367(d)-1(T)(d)(5)(iii) provides foreign goodwill is the residual value of a foreign business operation conducted outside the United States after all other tangible and intangible assets have been identified. The identification of transferred tangible and intangible assets is a critical step in the analysis of IP transfers. When a substantial portion of the total transfer value is FGWGC the transaction should be evaluated and may require use of an economist or other specialized resources.

CONSULTATION: Local counsel and the Transfer Pricing Practice (TPP) should be consulted in the factual issue development, if necessary.

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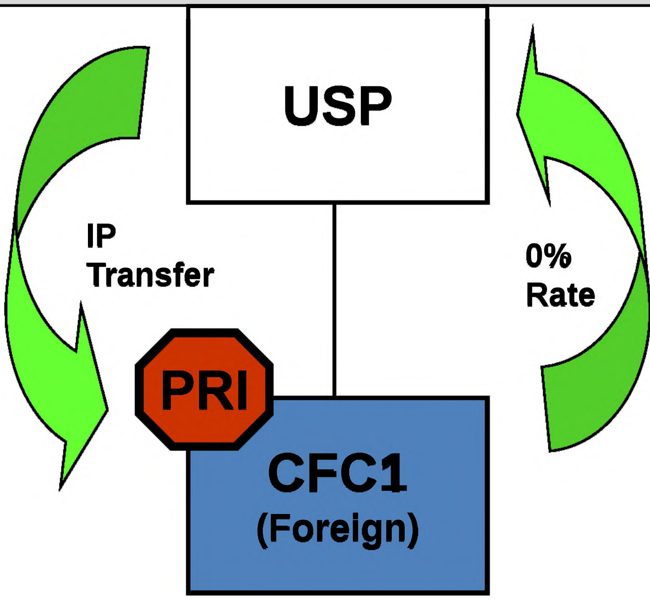
Transaction and Fact Pattern

Deemed Annual Royalty Income Inclusion Under IRC 367(d)

Diagram of Transaction	Facts
	▪ United States Person (USP) is a multinational technology company. ▪ USP incorporates CFC1 in a low tax foreign country. ▪ USP transfers valuable IP to CFC1 in exchange for stock in an IRC 351 transaction. ▪ Included in the IRC 351 asset contribution are assets to operate the business. ▪ CFC 1 was previously a foreign branch of USP that operated with minimal profits in the prior two years. ▪ USP also transferred a significant number of interrelated license agreements to CFC1 with an average term of 12 years. USP valued each license agreement separately (not in the aggregate) in its study. ▪ USP reported on its tax return a large percentage of the transferred IP consisted of FGWGC. ▪ USP is not receiving a royalty from CFC1.

Transaction and Fact Pattern (cont'd)

Deemed Annual Royalty Income Inclusion Under IRC 367(d)
Facts
▪ USP reported this as an IRC 367(d) transaction. ▪ USP incorporated its foreign branch and contributed all of the branch assets, and additional IP, to CFC1 in exchange for stock (IRC 351). ▪ Former USP engineers became employees of CFC1. These engineers brought significant technical knowhow and reference materials including manuals and software that were developed by them while being employed by USP. ▪ The study provided by USP identifies that a large percentage of the transferred IP consisted of FGWGC and separately valued the license agreements. ▪ In the study USP stated that the useful life of the licenses and knowhow is 5 years. ▪ The contracts and other interrelated licenses that USP transferred to CFC1 have significant synergistic value.

Effective Tax Rate Overview

Deemed Annual Royalty Income Inclusion Under IRC 367(d)
ETR of Company
When a U.S. taxpayer successfully transfers significant income producing intangibles outside of the U.S. to a FC in a low tax jurisdiction for little or no compensation, the taxpayer's worldwide effective tax rate may decrease substantially. This occurs when the income from these intangibles is deemed to be permanently reinvested offshore for U.S. GAAP financial statement purposes. If repatriated as a dividend the accumulated offshore earnings would be subject to U.S. taxation.
ETR Impact of Adjustment
An adjustment pursuant to IRC 367(d) involves the identification and valuation of transferred intangibles. An annual royalty payment over the life of the intangible not to exceed 20 years will increase taxable income and ETR annually.

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Summary of Potential Issues

Deemed Annual Royalty Income Inclusion Under IRC 367(d)	
Issue 1	Whether all IRC 936(h)(3)(B) intangible assets transferred from USP to CFC1 pursuant to IRC 351 have been properly identified for purposes of applying IRC 367(d).
Issue 2	Did USP properly value foreign goodwill or going concern pursuant to Treas. Reg. 1.367(d)-1T(b)?
Issue 3	Whether USP properly valued the IRC 936(h)(3)(B) intangible assets for purposes of computing the IRC 367(d) deemed royalty.

All Issues, Step 1: Initial Factual Development

Deemed Annual Royalty Income Inclusion Under IRC 367(d)
Whether all IRC 936(h)(3)(B) intangible assets transferred from USP to CFC1 pursuant to IRC 351 have been properly identified for purposes of applying IRC 367(d).

Fact Element	Resources	6103 Protected Resources
▪ Confirm USP transferred IP to CFC1 in exchange for stock (IRC 351). ▪ Confirm USP reported this as an IRC 367(d) transaction. ▪ Confirm USP incorporated its foreign branch and contributed all of the branch assets, and additional IP, to CFC 1 in exchange for stock (IRC 351). ▪ Determine if this is an IRC 367(d) transaction. ▪ Verify if former USP engineers became employees of CFC.	▪ Form 926, Part III, Intangible ▪ Form 926, Part IV, line 17a ▪ Form 5471, Schedule O, Section E ▪ Form 1120, Disclosures pursuant to IRC 6038B	

All Issues, Step 1: Initial Factual Development (cont'd)

Deemed Annual Royalty Income Inclusion Under IRC 367(d)
Whether all IRC 936(h)(3)(B) intangible assets transferred from USP to CFC1 pursuant to IRC 351 have been properly identified for purposes of applying IRC 367(d).

Fact Element	Resources	6103 Protected Resources
Request/Consider: ▪ Transfer Pricing Documentation and Background Documents ▪ Pre and Post transfer Organizational Charts ▪ Contracts containing critical facts of IP transfer and reorganization. ▪ IP Valuation ▪ Analyze disclosures on tax return. (IRC 351, IRC 367(d) and Form 926). ▪ Identify interrelated intangibles from the taxpayer's valuation and transfer pricing studies. ▪ Request the transaction steps. ▪ Verify intangibles transferred from legal documents including contracts ▪ Economist referral/engineer referral		

Issue 1, Step 2: Review Potential Issues

Deemed Annual Royalty Income Inclusion Under IRC 367(d)
Issue 1
Whether all IRC 936(h)(3)(B) intangible assets transferred from USP to CFC1 pursuant to IRC 351 have been properly identified for purposes of applying IRC 367(d).

Explanation of Issue	Resources
Taxpayers may transfer more intangibles than what the return or valuation study claims. **It is very important to identify all of the significant intangibles.** A thorough functional analysis, review of contracts and IP valuation will assist in the identification of transferred intangibles for purposes of IRC 367(d). IRC 936(h)(3)(B) defines intangible property to include any: patent, invention, formula, process, design, pattern, knowhow, trademark, trade name, brand name, franchise, license, contract, method, system or any similar item, which has substantial value independent of services of any individual. Taxpayers may exclude intangibles for both legal and/or economic reasons. Intangibles that meet the definition of IRC 936(h)(3)(B) are compensable even though the IRS and some taxpayers may disagree as to whether a particular intangible asset meets this definition. Often the intangible at issue is not specifically named on the list of IRC 936(h)(3)(B), but the intangible should be included within this definition if it is considered a “similar item” to the items specifically listed.	▪ IRC 936(h)(3)(B) ▪ Industry Overview − Pharmaceutical − High tech − Oil and Gas − Other Industries ▪ IRM Exhibit 4.61.3-4 – Transfer Pricing Functional Analysis Questionnaire

Issue 1, Step 3: Additional Factual Development

Deemed Annual Royalty Income Inclusion Under IRC 367(d)
Issue 1
Whether all IRC 936(h)(3)(B) intangible assets transferred from USP to CFC1 pursuant to IRC 351 have been properly identified for purposes of applying IRC 367(d).

Fact Element	Resources	6103 Protected Resources
▪ Confirm if USP incorporated its foreign branch and contributed all of the branch assets, and additional IP, to CFC1 in exchange for stock (IRC 351). ▪ Confirm if former USP engineers that became employees of CFC1 brought knowhow. ▪ Verify if USP transferred a significant number of interrelated license agreements to CFC1. ▪ Conduct functional analysis of branch and compare functions, assets, risks to those of CFC1. ▪ Request taxpayer presentation and consider employee interviews. ▪ Request branch and CFC1 financial statements to verify the length of time of branch operations. ▪ Request organizational charts and verify that they reflect steps of the transaction. ▪ Request contracts for all licenses.	▪ Functional analysis ▪ Taxpayer presentation and consider employee interviews. ▪ Financial statements branch and CFC1 ▪ Organizational charts. ▪ Contracts for all licenses. ▪ Document and identify the IP that the engineers use in CFC1 (e.g. technical manuals, processes, and software). ▪ Transfer Pricing Roadmap	

Issue 1, Step 4: Develop Arguments

Deemed Annual Royalty Income Inclusion Under IRC 367(d)
Issue 1
Whether all IRC 936(h)(3)(B) intangible assets transferred from USP to CFC1 pursuant to IRC 351 have been properly identified for purposes of applying IRC 367(d).

Explanation of Adjustment	Resources	6103 Protected Resources
▪ IP transfers typically list a few IRC 936(h)(3)(B) intangibles and a substantial residual value amount that is classified as foreign goodwill or going concern. ▪ A functional analysis of the transferred IP will assist in the identification of the intangibles. All intangibles must be identified and valued. ▪ The facts are critical and can make all the difference in developing a successful and well documented case.	▪ TAM 200907024 ▪ IRC 367(d) ▪ IRC 936(h)(3)(B) ▪ Treas. Reg. 1.367(a)-1T(d)(5)(iii) ▪ *Hospital Corp. of America v. Commissioner*, 81 T.C. 520 (1983) ▪ *International Multifoods v. Commissioner*, 108 T.C. 25 (1997)	

Issue 1, Step 4: Develop Arguments (cont'd)

Deemed Annual Royalty Income Inclusion Under IRC 367(d)
Issue 1
Whether all IRC 936(h)(3)(B) intangible assets transferred from USP to CFC1 pursuant to IRC 351 have been properly identified for purposes of applying IRC 367(d).

Explanation of Adjustment	Resources	6103 Protected Resources
Preliminary questions for the exam team to consider are: ▪ Does the valuation date match the transfer date? ▪ How was the IP valued? ▪ Does the taxpayer's return position include little or no value for IP transferred relative to the business enterprise? ▪ Did the taxpayer identify the transfer as a non-taxable outbound transfer of foreign goodwill and going concern? ▪ Was the IP, in fact, transferred via a IRC 351 or 361?		

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Issue 2, Step 2: Review Potential Issues

Deemed Annual Royalty Income Inclusion Under IRC 367(d)
Issue 2
Did USP properly value foreign goodwill or going concern pursuant to Treas. Reg. 1.367(d)-1T(b)?

Explanation of Issue	Resources
Some taxpayers categorize their transferred intangibles as FGWGC so that there is no tax imposed on the transfer of it under IRC 367(d). While Congress intended that there should be an exception to compensability for amounts properly categorized as foreign goodwill or going concern, the issue often becomes whether foreign goodwill or going concern even exists, and if so, the proper value of it. Some taxpayers additionally assert that the transfer of assets includes FGWGC, but in many cases, there may be domestic goodwill and no foreign goodwill. Thus, a related issue is not the amount of goodwill, but rather whether it is “foreign” or “domestic”. In other cases, the taxpayer and IRS may agree that the goodwill is foreign but disagree as to the actual value of it.	▪ Treas. Reg. 1.367(d)-1T(b) ▪ TAM 200907024 ▪ IRC 367(d)(2)(A) ▪ IRC 936(h)(3)(B) ▪ HR Rep. No. 98-432 (1984) – Committee Reports on Tax Reform Act of 1984 ▪ S. Rep. No. 98-169 (1984) Committee Reports on Tax Reform Act of 1984 ▪ P.L. No. 99-514, Sec.1231(e) - 1986 Modification to IRC 936 ▪ IRC 367(d)(2)(A)

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Issue 2, Step 2: Review Potential Issues (cont'd)

Deemed Annual Royalty Income Inclusion Under IRC 367(d)
Issue 2
Did USP properly value foreign goodwill or going concern pursuant to Treas. Reg. 1.367(d)-1T(b)?

Explanation of Issue	Resources
When a taxpayer transfers its intangibles offshore through IRC 351 and IRC 361 and categorizes substantially all of it as FGWGC, it: ▪ Minimizes the value of compensable intangibles under IRC 367(d) so that the federal tax impact from the transfer is reduced (also referred to as "toll charge"); ▪ Maximizes the value of foreign goodwill and going concern value because foreign goodwill and going concern value is not compensable (a "carve out") under IRC 367(d) and is not subject to U.S. taxation. Treas. Reg. 1.367(d)-1T(d)(5)(iii) provides foreign goodwill is the residual value of a foreign business operation conducted outside the United States after all other tangible and intangible assets have been identified. Often the identification of only some of the transferred assets will result in a large residual value. You must determine whether this residual value is in fact foreign goodwill or going concern.	▪ TAM 200907024 ▪ Treas. Reg. 1.367(d)-1T(d)(5)(iii) ▪ IRC 936(h)(3)(B) ▪ Treas. Reg. 1.367(a)-1T(d)(5)(iii) ▪ IRM Exhibit 4.61.3-4 – Transfer Pricing Functional Analysis Questionnaire

Issue 2, Step 2: Review Potential Issues (cont'd)

Deemed Annual Royalty Income Inclusion Under IRC 367(d)
Issue 2
Did USP properly value foreign goodwill or going concern pursuant to Treas. Reg. 1.367(d)-1T(b)?

Explanation of Issue	Resources
Even if there is no foreign goodwill present in a particular fact pattern, it is possible that there could still be foreign going concern. Therefore, it is important to consider whether the facts demonstrate that foreign going concern may exist. Case law suggests that going concern value is the additional element of value which attaches to property by reason of its existence as an integral part of a going concern. Thus, the theory is that even in the absence of goodwill, excess earning capacity, and the ability of a business to continue to function and generate income without interruption as a consequence of the change in ownership, is a vital part of the value of a going concern.	▪ *Conestoga Transportation Co. v. Commissioner*, 17 T.C. 506, 514 (1951) ▪ *United States v. Cornish*, 348 F.2d 175 (9th Cir. 1965) ▪ *Winn-Dixie Montgomery, Inc. v. United States*, 444 F.2d 677, 685 (5th Cir. 1971) ▪ *Computing & Software, Inc. v. Commissioner*, 64 T.C. 223, 235 (1975) ▪ *VGS v. Commissioner*, 68 T.C. 563 (1977)

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Issue 2, Step 3: Additional Factual Development

Deemed Annual Royalty Income Inclusion Under IRC 367(d)
Issue 2
Did USP properly value foreign goodwill or going concern pursuant to Treas. Reg. 1.367(d)-1T(b)?

Fact Element	Resources	6103 Protected Resources
▪ Confirm the study provided by USP identifies that a large percentage of the transferred IP consisted of FGWGC. **CONSULTATION:** Consult with Economist or Engineer on the determination of transferred intangibles and value, if necessary.	▪ USP IP Transfer Study ▪ Critique of USP IP Transfer Study ▪ Organizational structure before and after the transfer ▪ Valuation method – Transferred IP – Intangibles – What intangibles were not included in valuation. ▪ TAM 200907024 ▪ Economist/Engineer Transactions Analysis – Functional analysis – Identification of intangibles – Identification of synergist value – Review of branch operations – CFC financial statements	

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Issue 2, Step 4: Develop Arguments

Deemed Annual Royalty Income Inclusion Under IRC 367(d)
Issue 2
Did USP properly value foreign goodwill or going concern pursuant to Treas. Reg. 1.367(d)-1T(b)?

Explanation of Adjustment	Resources	6103 Protected Resources
In this scenario, USP attempted to reduce the IRC 367(d) deemed royalty by asserting that a high percentage of the intangible value is attributable to foreign goodwill or going concern value since it is not compensable under IRC 367(d).	▪ IRC 367(d) ▪ IRC 936(h)(3)(B) ▪ Treas. Reg. 1.367(d)-1T(b) ▪ Treas. Reg. 1.367(d)-1T(c)(3) ▪ Treas. Reg. 1.367(d)-1T(d)(5)(iii) ▪ Notice 2012-39 ▪ TAM 200907024 ▪ *Hospital Corp. of America v. Commissioner*, *81 T.C. 520 (1983)* ▪ *International Multifoods v. Commissioner, 108 T.C. 25 (1997)*	

Issue 2, Step 4: Develop Arguments (cont'd)

Deemed Annual Royalty Income Inclusion Under IRC 367(d)
Issue 2
Did USP properly value foreign goodwill or going concern pursuant to Treas. Reg. 1.367(d)-1T(b)?

Explanation of Adjustment	Resources	6103 Protected Resources
CONSULTATION: To address these valuation arguments, the appropriate expertise must be utilized to develop the facts, when necessary. Intangible assets that the taxpayer categorize as foreign goodwill or going concern must be carefully examined. Besides an economist, an engineer or outside expert can be very helpful in determining the value of FGWGC. Counsel involvement is critical for legal issues, since taxpayers often argue that intangibles that are not specifically listed under IRC 936(h)(3)(B) are part of foreign goodwill or otherwise are not compensable under IRC 367(d)		

Issue 2, Step 4: Develop Arguments (cont'd)

Deemed Annual Royalty Income Inclusion Under IRC 367(d)
Issue 2
Did USP properly value foreign goodwill or going concern pursuant to Treas. Reg. 1.367(d)-1T(b)?

Explanation of Adjustment	Resources	6103 Protected Resources
The question is whether intangible value categorized as FGWGC by the taxpayer is really another type of IRC 936(h)(3)(B) intangible. Also, it is important to: ▪ Consider if all tangible and intangible assets have been identified ▪ Consider whether the assets are from a foreign business operation conducted outside the United States that may give rise to FGWGC. In this fact pattern, USP's branch was operating with minimal profit for two years before incorporating, so it is unlikely that the branch would have developed significant FGWGC value during that time period. Further, to the extent that specific IRC 936(h)(3)(B) intangibles can be identified that comprise this FGWGC, then try to identify and quantify those assets, if possible.	▪ IRC 367(d) ▪ Treas. Reg. 1.367(d)-1T(c)(3) ▪ TAM 200907024	

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Issue 3, Step 2: Review Potential Issues

Deemed Annual Royalty Income Inclusion Under IRC 367(d)
Issue 3
Whether USP properly valued the IRC 936(h)(3)(B) intangible assets for purposes of computing the IRC 367(d) deemed royalty.

Explanation of Issue	Resources
Synergy value between intangibles is often not identified. Case law supports that it is appropriate to value interrelated assets in the aggregate and that the synergistic value of a collection of assets is attributable to those assets rather than a conceptually distinguishable FGWGC value element. As a matter of economic reality and fundamental valuation principles, USP transferring intangibles at arm's length would conclude that the assets should be valued in the aggregate in a manner that properly reflects any synergistic relationships. In a scenario where numerous assets are used as a single integrated asset, it would be inappropriate to value the assets on a separate, stand-alone basis when they have functioned in the past, and will function in the future, as a single asset. Treas. Reg. 1.482-1(f)(2)(i) recognizes such economic realities by providing that multiple transactions should be valued in the aggregate if such transactions, taken as a whole, are so interrelated that an aggregated valuation is the most reliable means of determining the arm's length consideration for the transactions.	▪ TAM 200907024 ▪ *Computing and Software, Inc. v. Comm'r*, *64 T.C. 223, (1975)* ▪ *International Multifoods v. Commissioner*, *108 T.C. 25 (1997)* ▪ Treas. Reg. 1.482-1(f)(2)(i)

Issue 3, Step 2: Review Potential Issues (cont'd)

Deemed Annual Royalty Income Inclusion Under IRC 367(d)
Issue 3
Whether USP properly valued the IRC 936(h)(3)(B) intangible assets for purposes of computing the IRC 367(d) deemed royalty.

Explanation of Issue	Resources
▪ USP may have undervalued IRC 936(h)(3)(B) intangibles by disregarding synergies between separate intangibles that increase their aggregate value. Because FGWGC is a residual, undervaluing IRC 936(h)(3)(B) intangibles overvalues FGWGC. ▪ Synergies between separate IRC 936(h)(3)(B) intangibles should be considered when valuing those intangibles. Often, valuing IRC 936(h)(3)(B) intangibles in the aggregate, taking synergies into account, will be the most reliable means to value them. ▪ USP did not identify knowhow that was transferred. The technical manuals, processes, transferred to CFC1 likely constitute valuable intangibles and CFC1 should compensate USP at an arm's length rate. ▪ USP may contend that the useful life of an intangible is short, and therefore, the present value period for computing the royalties is also short. **CONSULTATION**: In such instance, the team needs to rely heavily on the economist, engineer and/or outside expert to determine the proper useful life, when necessary.	▪ TAM 200907024 ▪ International Multifoods v. Commissioner*, 108 T.C. 25 (1997)*

Issue 3, Step 3: Additional Factual Development

Deemed Annual Royalty Income Inclusion Under IRC 367(d)
Issue 3
Whether USP properly valued the IRC 936(h)(3)(B) intangible assets for purposes of computing the IRC 367(d) deemed royalty.

Fact Element	Resources	6103 Protected Resources
▪ Determine if the contracts and other interrelated licenses that USP transferred to CFC1 have significant synergistic value. ▪ Confirm the study separately valued the license agreements. ▪ Confirm whether the technical knowhow and reference materials were in the study including manuals and software that were developed by CFC1 engineers when they were employed by USP. ▪ Determine if the useful life of the technology is estimated to last 12 years (life of the licenses), not 5 years as USP stated in its study. **CONSULTATION:** Consult with Economist/Engineer on Synergistic and other values, if necessary.	▪ Valuation study ▪ IDR responses ▪ License Agreements ▪ Interviews − Engineer Reference Material ▪ TAM 200907024 ▪ Functional analysis questionnaire responses by the taxpayer ▪ Economist Report ▪ Engineer Report ▪ Outside Expert Report	

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Issue 3, Step 4: Develop Arguments

Deemed Annual Royalty Income Inclusion Under IRC 367(d)
Issue 3
Whether USP properly valued the IRC 936(h)(3)(B) intangible assets for purposes of computing the IRC 367(d) deemed royalty.

Explanation of Adjustment	Resources	6103 Protected Resources
The study did not value the synergistic effect of the interrelated technology license agreements. The issue should be coordinated with the economist and engineer to determine the proper value, when necessary. Because these licenses have a 12 year term, the useful life may be 12 years, and not five years as the taxpayer concludes in its study. In addition, USP transferred a significant amount of knowhow when it transferred the group of engineers with their technical manuals and software. These assets were omitted from the study and an economist may be able to determine an arm's length price for these intangibles.	▪ IRC 367(d) ▪ IRC 482 ▪ TAM 200907024	

Issue 3, Step 4: Develop Arguments (cont'd)

Deemed Annual Royalty Income Inclusion Under IRC 367(d)
Issue 3
Whether USP properly valued the IRC 936(h)(3)(B) intangible assets for purposes of computing the IRC 367(d) deemed royalty.

Explanation of Adjustment	Resources	6103 Protected Resources
Now that you properly identified the intangibles, you must compute the IRC 367(d) annual deemed royalty that cannot exceed 20 years. The deemed royalty charge must be determined in accordance with IRC 482 and the regulations thereunder. The commensurate with income standard can potentially apply in a particular tax year.		

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Training and Additional Resources

Chapter 1.2.2 Transfers to Which 367(d) Applies		
Type of Resource	**Description(s) and/or Instructions for Accessing**	**References**
CENTRA sessions	2012 (TPO) CPE CENTRA – IRC 367(d)	IRC 367(d) CENTRA
Issue Toolkits	Audit Tool – Transfer Pricing Audit Roadmap	Transfer Pricing Roadmap
Podcasts / Videos	2011 (TPO) CPE CENTRA – Intangibles Migration	Intangible Migration

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Glossary of Terms and Acronyms

Term/Acronym	Definition
CFC	Controlled Foreign Corporation
ETR	Effective Tax Rate
FGWGC	Foreign Goodwill or Going Concern
GAAP	Generally Accepted Accounting Principles
HR Rep.	House of Representative Committee Report
IRC	Internal Revenue Code
IDR	Information Document Request
IP	Intellectual Property
P.L.	Public Law
PRI	Permanent Reinvestment
S. Rep.	Senate Committee Report
TAM	Technical Advice Memorandum
TPP	Transfer Pricing Practice
USP	United States Person

Index of Related Issues

Issue	Associated UIL(s)	References
IRC 482 Licensing of Intangibles	9411.01 9411.02	Practice Unit, “License of Intangible Property From U.S. Parent to Foreign Subsidiary,” DCN: ISO/9411.02_03(2013)
Foreign Goodwill	9411.02-02	Practice Unit, “Identifying Foreign Goodwill or Going Concern Value,” DCN: ISO/PUO/V_1_02(2014)) in process as of 6/2015
IRC 367(d) vs. Sale or Licensing of Intangibles – Factors to Consider	9411.02-02	Practice Unit, “Distinguishing Between Sale, License and other Transfers of Intangibles to CFCs by U.S. Transferors,” DCN: ISO/9411.02_02(2013)
Risk Shifting or De-Risking Transactions	9411.04	Practice Unit, “Risk Shifting to Controlled Foreign Corporation,” DCN: ISO/9411.04_01(2013)) in process as of 6/2015
Outbound Transfer of Property to Foreign Corporation – IRC 367 Overview	9411.08	Practice Unit, “Outbound Transfer of Property to Foreign Corporation – IRC 367 Overview.” DCN: ISO/9411.08_01(2013)