New Cost-Sharing Regulations & Implications for Pharma, Life Sciences & Medical Device Companies

April 7, 2009

PRICEWATERHOUSECOOPERS

Administrative issues

- For a better viewing experience, close all other applications.
- For better sound quality, use headphones.
- To print this entire PowerPoint presentation, click on the “Download Slides” button at the bottom of your screen
- If you have any questions throughout the live program, type them in the “Ask A Question” area on the left side of your screen, then click on ‘Submit Question’

Administrative issues – CPE credit

In order to receive CPE credit for this program, you must:

- Stay on for the entire program and respond to all questions asked during the program (you will be prompted to do so); and
- Complete the course evaluation at the end of the program.

As stated in the invitation to this program, CPE cannot be awarded for participants not logged on to this webcast as themselves, phone-only participants, or participants who listen to the on-demand version. No exceptions.

With you today

Name / Title		
Michael F. Swanick Partner, Global Tax Pharma & Life Sciences Leader PricewaterhouseCoopers, US	Phone:	+1 267 330 6060
	Email:	michael.f.swanick@us.pwc.com
Richard F. Barrett Principal, Transfer Pricing PricewaterhouseCoopers, US	Phone:	+1 202 414 1480
	Email:	richard.f.barrett@us.pwc.com
Horacio Peña Principal, Transfer Pricing, Pharma & Life Sciences Leader PricewaterhouseCoopers, US	Phone:	+1 646 471 1957
	Email:	horacio.pena@us.pwc.com

Agenda

Introduction and Objectives
Basic Requirements for Cost Sharing Arrangements
• Administrative and substantive requirements
• Change in requirements on division of rights; territorial or other non-overlapping exclusive rights
• Effect of meeting or not meeting CSA requirements; treatment of non-CSAs
• RAB, cost inclusion in the pool, and transfers of interests
Platform Contributions (PCTs)
• What is a Platform Contribution?
• How to value a PCT? Five new specified methods
• CUT Method; Income Method; Market Cap / Acquisition Price Methods; Residual Profit Split Method
• Discount Rates; Post tax vs pre-tax cash flows and discount rates
• Form of payment, realistic alternatives
• Financial projections (ex ante/ex post)

Agenda

Application of periodic trigger adjustment to the PCT
• How is it calculated?
- Exceptions for some events
- Exceptions for grandfathered PCTs
• Role of APA
• Like CIP, limits Payor to routine return
• Punitive in application, especially for this industry
• Suggests putting CWI in all APAs
Transition Rules
Q&A

Introduction and objectives

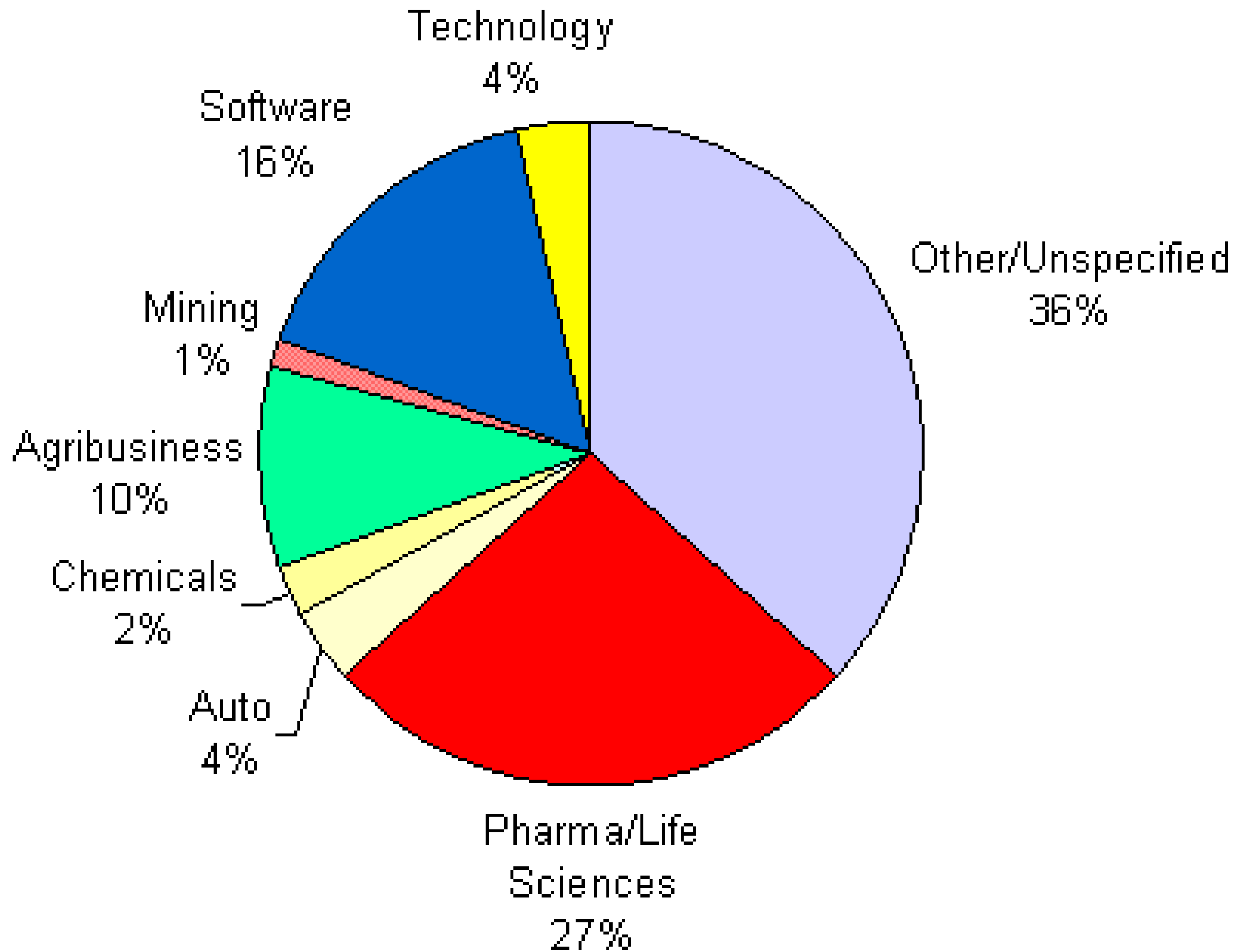
Introduction and Objectives

- Long-anticipated cost sharing regulations are issued on December 31, 2008 in temporary and proposed form

- Temporary and proposed regulations (“Temporary Regulations”) will have significant impact on the intra-group sharing of costs and risks, as well as profits, associated with the intangible development activities of multinationals

- The key objective of this webcast is to clarify the key components of the Temporary Regulations, including
  - The investor model ‘principle’ and the new specified methods for the calculations of inter-company buy-in payments,
  - The allocation of costs and benefits among cost sharing participants, and
  - Grandfathering rules for existing cost sharing arrangements (CSA)

The Pharma/Life Sciences sector is the most frequently referenced industry in the CSA Regulations:



Important dates

- Temporary and proposed regulations, issued: December 31, 2008
- Temporary regulations expire on or before December 30, 2011
- Applies to cost sharing arrangements (CSAs) entered into on or after January 5, 2009
- Grandfather and transition rules apply to CSAs in existence on January 5, 2009
- Hearing on cost sharing regulations, April 21, 2009
- Written comments and outlines of topic to be discussed at hearing, were due April 6, 2009
- PwC has submitted comments to address our concerns regarding the period trigger, material change, and treatment of a research team as a PCT

CPE Question 1

1. Which elements of the temporary and final cost sharing regulations are you most interested in?
   - Cost sharing buy-ins
   - Allocation of cost pool among cost sharing participants
   - Transition and grandfathering rules

Basic requirements for cost-sharing arrangements

Requirements of a CSA

- All participants commit to and engage in cost sharing transactions (CSTs)
  - Obligated to share intangible development costs (IDCs) in proportion to reasonably anticipated benefits (RABs)
- All participants engage in platform contribution transactions (PCTs) for any platform contributions
  - Obligated to make arm's length payments to each participant that provides a platform contribution
- Each participant must receive a non-overlapping interest in the cost shared intangibles

Requirements of a CSA (continued)

- Each participant must be entitled to the perpetual and exclusive right to profits attributable to that participant's interest in the cost shared intangibles
  - Geographical divisional interest
  - Field of use divisional interest
  - Other – must be verifiable, non-overlapping, exclusive, and perpetual
- The CSA and each participant must satisfy contractual, documentation and other administrative requirements (including filing CSA statements with each tax return)

Effect of CSA requirements

- Commissioner must apply §1.482-7T to an arrangement if:
  - Administrative requirements are met
  - Taxpayers reasonably concluded that substantive requirements regarding CSTs, PCTs, and divisional interests were met
- Example
  - P and S enter into an agreement to share intangible development costs
  - Method used to value P's platform contribution is so unreliable that P and S could not reasonably conclude that they had contracted to make arm's length PCT payments
  - The Commissioner is not required to accept this as a cost sharing arrangement

Effect of CSA requirements (continued)

- Development arrangements not meeting CSA substantive requirements
  - Commissioner may still apply §1.482-7T if administrative requirements are met and -7T determined to be most reliable
  - General rules for intangible and services transactions in §§ 1.482-4 and -9T apply to intangible development arrangements other than CSAs
  - Methods in §1.482-7T may be applied as an unspecified method under §1.482-4
  - This means the new arsenal of cost sharing methods and procedures could conceivably be used to non-cost sharing transactions such as licensing of IP

Intangible Development Costs (IDCs) and Reasonably Anticipated Benefit (RAB) Shares

- IDCs
  - All costs in cash or in kind (including stock-based compensation) that are directly indentified with, or reasonably allocable to, the IDA (intangible development activity)
  - Cost for land or depreciable property = arm's length rental charge
  - IDA means the activity under the CSA of developing or attempting to develop reasonably anticipated cost shared intangibles
  - Stock-based compensation rules unchanged from current regulations
- RAB Share
  - A controlled participant's share of reasonably anticipated benefits is equal to its reasonably anticipated benefits divided by the sum of the reasonably anticipated benefits of all the controlled participants
  - RAB must be estimated over the "entire" period (past and future) of exploitation of the cost shared intangibles

CPE Question 2

2. Does your company (or related affiliates) currently participate in cost-sharing, and if so, in which segment of the health and life sciences industry?
    - No
    - Yes, biotechnology
    - Yes, pharmaceuticals
    - Yes, medical devices
    - Yes, other health technologies
    - Yes, other non-life science industry

Methods for determining payments for platform contribution transactions

Platform contributions

- "A platform contribution is any resource, capability, or right that a controlled participant has developed, maintained, or acquired externally to the intangible development activity (whether prior to or during the course of the CSA) that is reasonably anticipated to **contribute to developing** cost shared intangibles." Temp. Treas. Reg. §1.482-7T (c)
  - Platform Contribution Transaction ("PCT") are only to further development rights, as such PCT payments are over and above payments for make-sell rights.
- "The Platform Contribution Transaction obligation…does not terminate merely because it may later be determined that [the] resource or capability or right has not contributed, and no longer is reasonably anticipated to contribute, to developing cost shared intangibles." Temp. Treas. Reg. §1.482-7T (c)
  - Platform contributions must be determined on an ex-ante basis and PCT obligations must be made in full, even if during the research process, it is determined that the platform contribution no longer will be used in the development process.

Examples of Platform Contributions

	Intellectual Property/Rights:	Resource:	Capability:
Mentioned in the Cost Sharing Regulations	• Patent rights • Software source code • Trade secrets • Rights to technology under development • Technology intangibles	• Software • Assembled research teams and labs • Current products • Products under development	
Other possible Platform Contributions?	• Auxiliary or complimentary patents • Proprietary software • Trademarks, copyrights, trade names, or brand names • Inventions • Formulas • Franchises, licenses or contracts • Designs	• Proprietary methods • Programs • Systems • Procedures • Designs, patterns • Campaigns, surveys, studies • Forecasts, estimates • Customer lists • Technical/patient data • Access to JV/University research • Formulas • Research Tools	• Manufacturing know-how • Troubleshooting/QC systems or processes • Research methods

Evaluation of a PCT – Overview

- The Temporary Regulations introduce five new specified methods for valuing PCT (in addition to an unspecified method) and a best method rule to guide the selection of a best method

CUT method	Income method
Acquisition price method	Market capitalization method
Residual profit split method.	

- The Best method selection is governed by the “investor model principle” which requires consistency with realistic alternatives available to parties.
- Realistic alternatives are considerations over a potentially indefinite period of time with potentially different allocations of risks among the parties. In translating the alternatives into NPVs taxpayers need to discount the potential benefits, hence the Temporary Regulations introduce the discussion of discount rates.

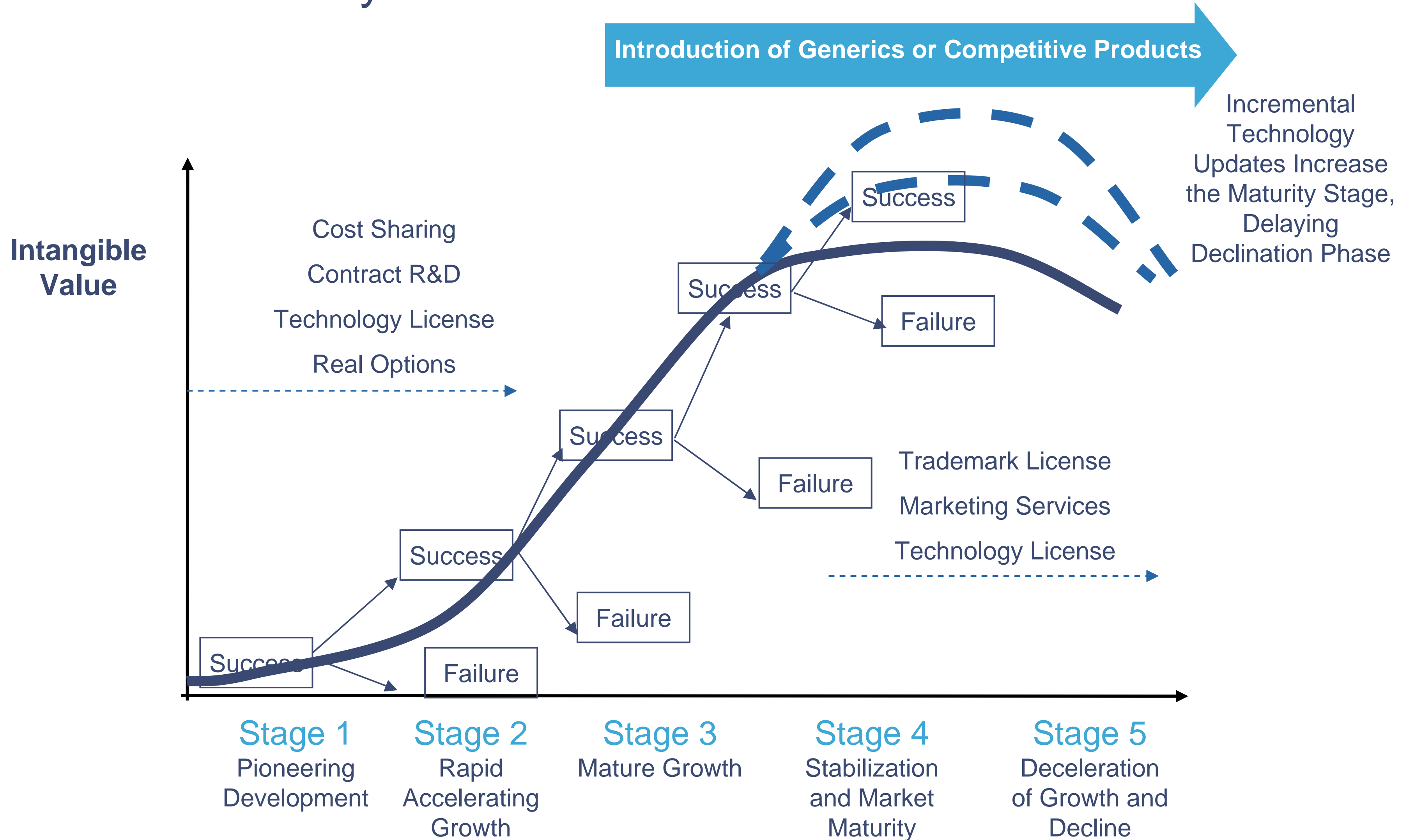
Evaluation of a PCT – Overview (continued)

- Unlike in the CIP, the Temporary Regulations recognize that discount rates can vary between transactions and forms of payment.
- Discount rates may vary between forms of payment, for example fixed payments are more certain and thus require lower discount rates than contingent payments.
- The Temporary Regulations recommend applying post-tax discount rate to pre-tax income multiplied by (1-tax rate). In the application of the income method as described in the Temporary Regulations multiplying income by (1-tax rate) may not be required as it will cancel between the licensing and the cost sharing alternatives.
- Guidance in the Temporary Regulations on the specific applications of the methods is based on income, rather than cash flow measures, even though market-based discount rates are used to discount cash flows, rather than items entering into income.
- The Temporary Regulations recognize that an arm's length range of PCT payments can be used given the variations in the input parameters. The arm's length range apply the interquartile statistical measure.

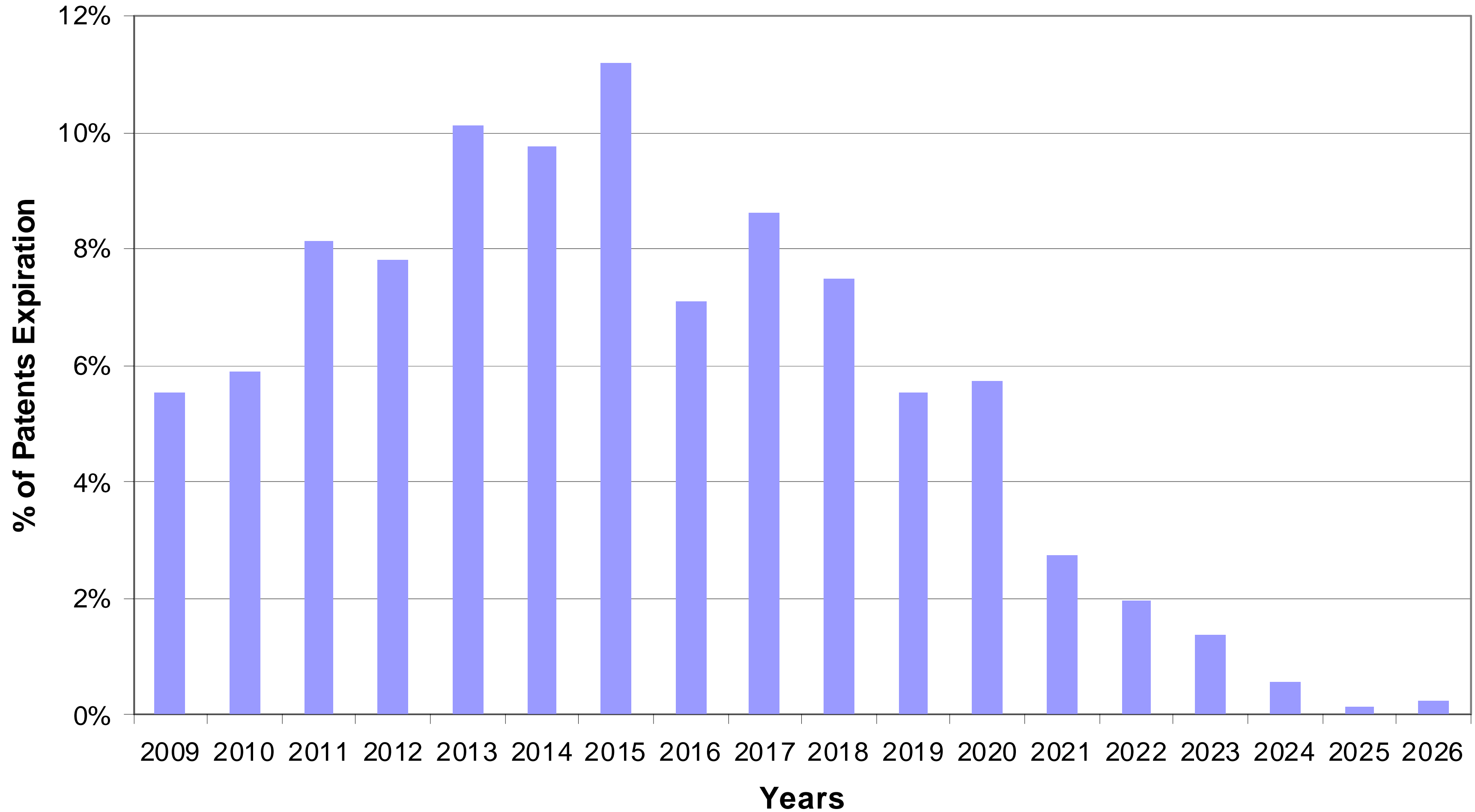
PCT – Observations

- PCTs are defined as payments for rights to develop future intangibles, but most examples aggregate them with payments for make-sell rights.
- The term "Platform" can be commonly understood to imply intangibles or technologies that are fundamental in nature, but the IRS definition captures all knowledge in existence at the time of the CSA.
  The Preamble (but not the Temporary Regulations) indicates circumstances where a platform intangible may have a finite life.
- Investor model is the guiding principle but the Temporary Regulations consider only one of several realistic alternatives.
- Use of different discount rates and arm's length range provide more realism and flexibility relative to CIP.

I. Products Lifecycle



I. Products Lifecycle – Expiration Rate of Pharmaceutical Patents



Source: FDA Orange Book and PwC Proprietary Research.

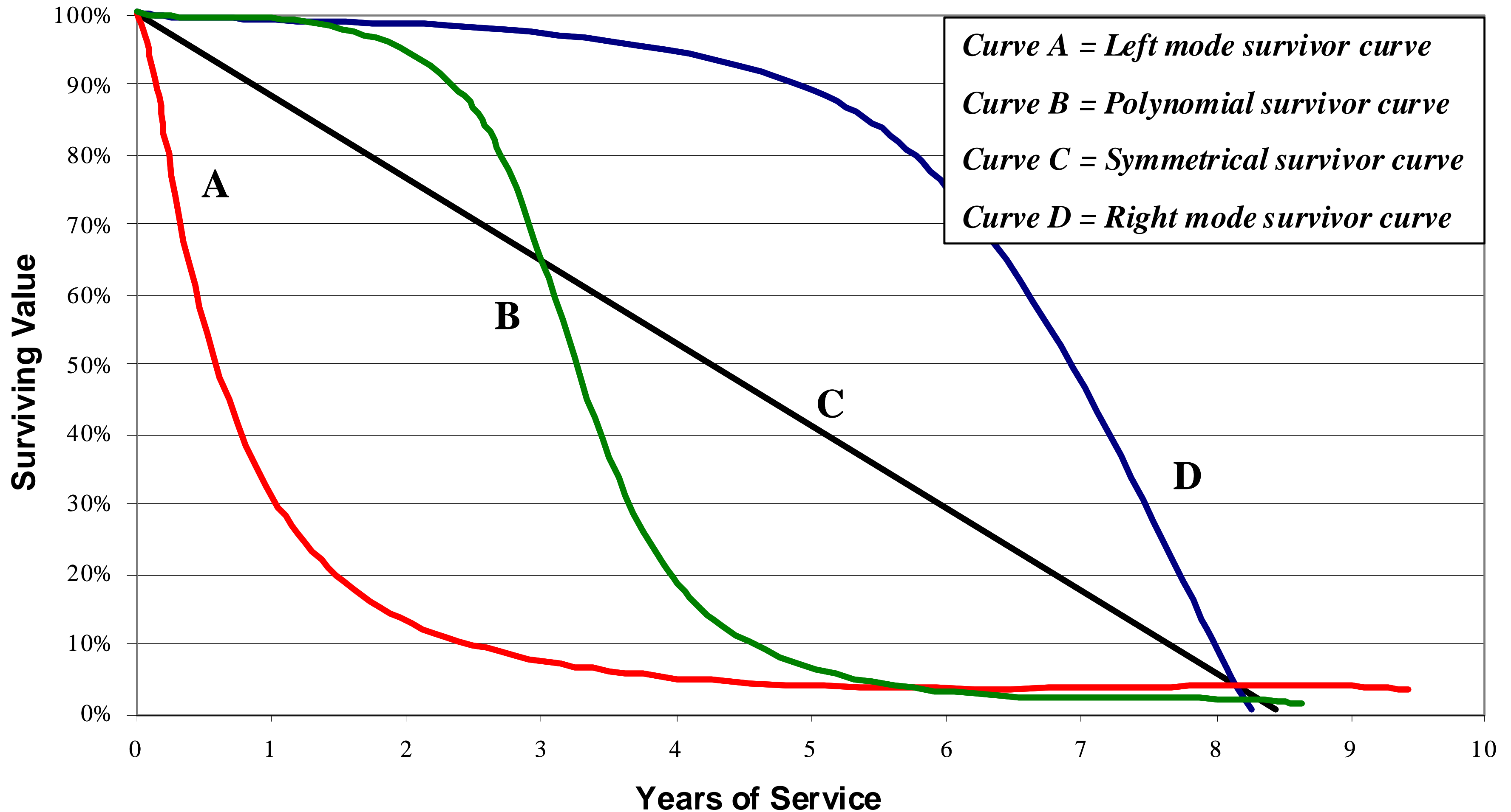
II. Useful Lives and Survivor Curves

- An integral component in the valuation analysis of intangible assets is an estimation of their useful lives.
- There are eight determinants of the useful life of an intangible asset:

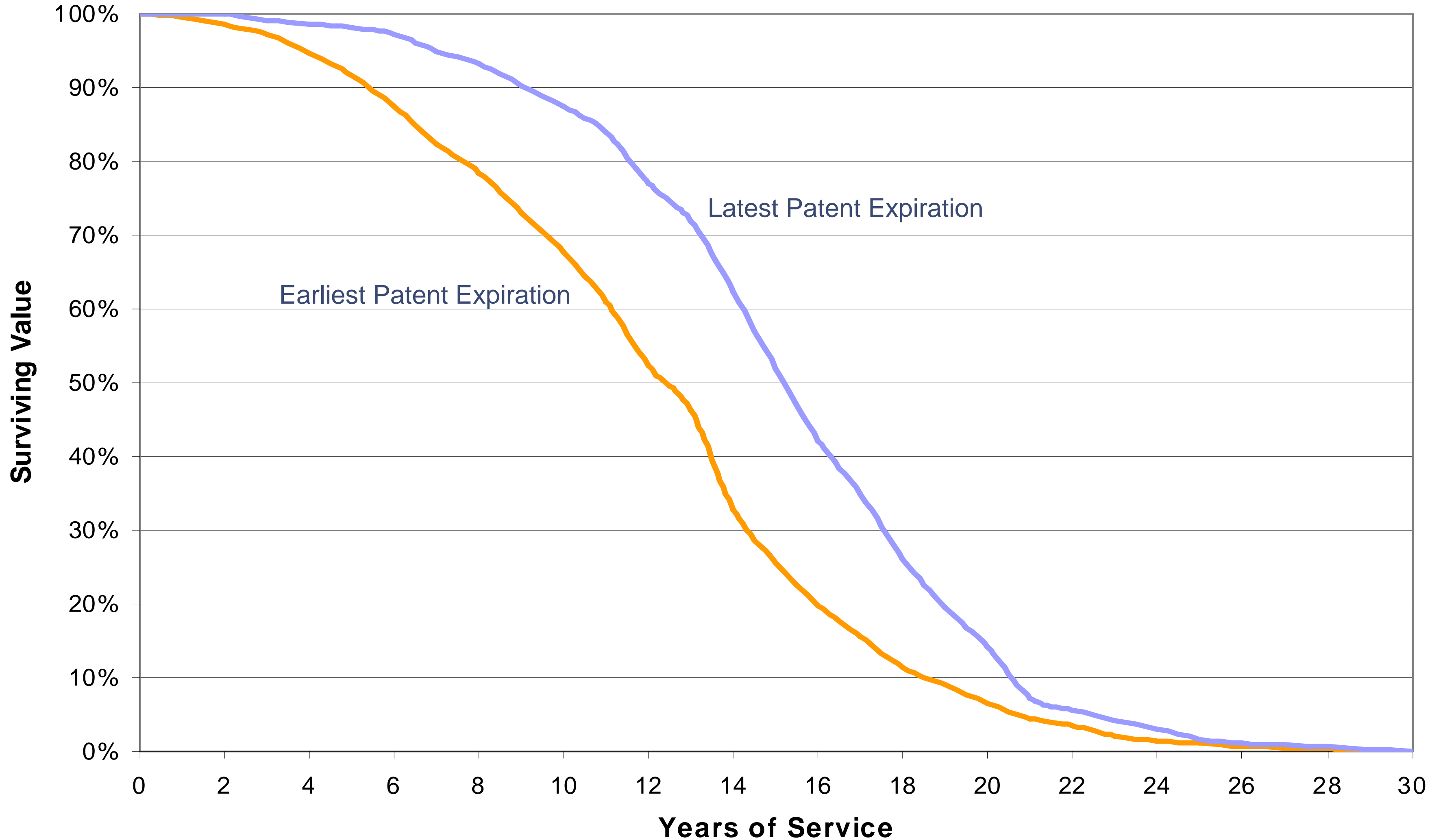
1. Legal Life
2. Contractual Life
3. Judicial Life
4. Physical Life
5. Technological Life
6. Functional Life
7. Economic Life
8. Analytical Life

- The cost sharing regulations do not address these factors
- However, the rate at which the value of platform contributions or intangible assets decay over time is intertwined and can be estimated through survivor curves.

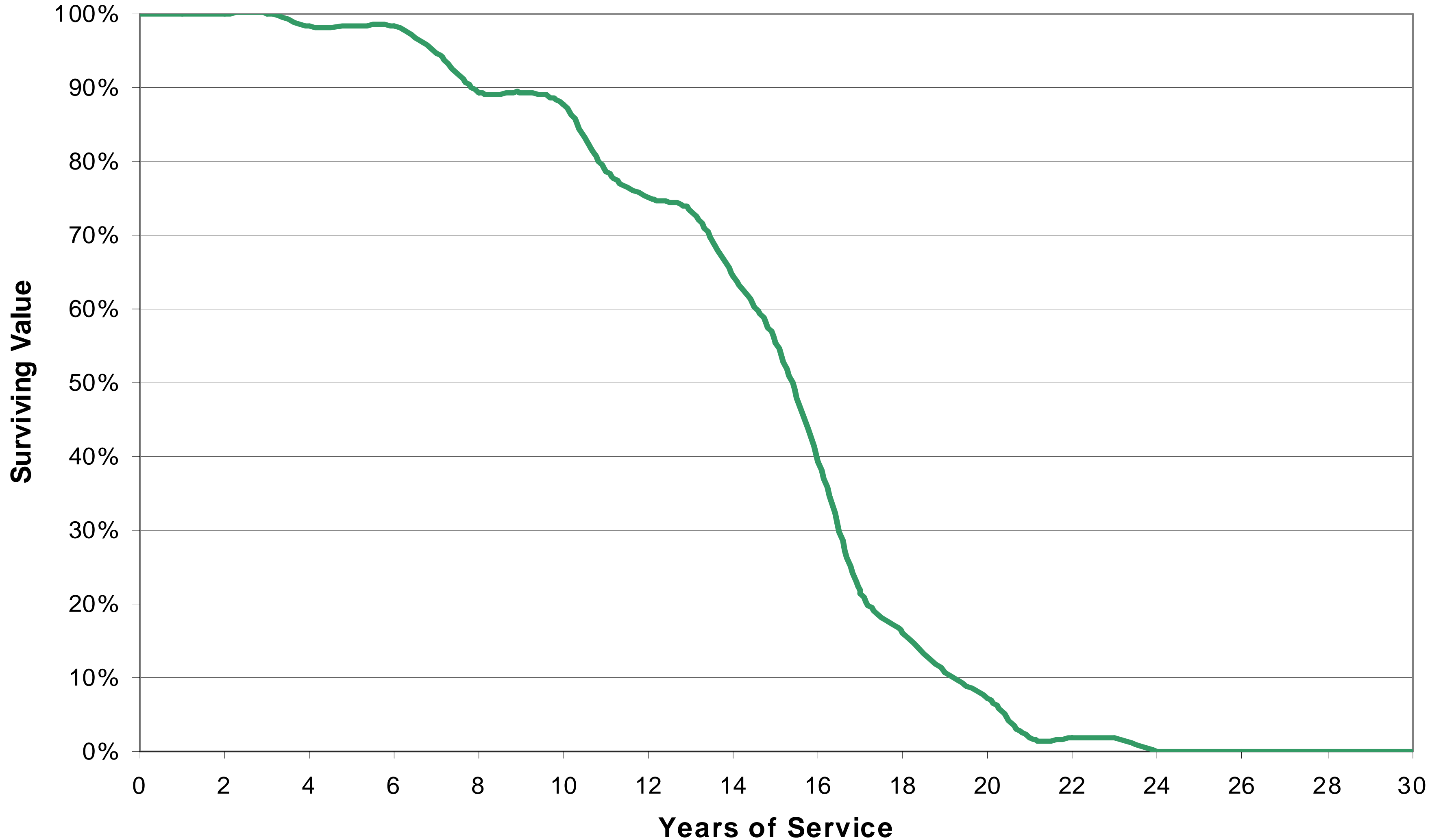
III. Survivor Curves – Potential Shapes



III. Survivor Curves – Proxies for Pharmaceutical Products



III. Survivor Curves – Patents Approach for OTC Products



V. PCTs and Survivor Curves

PCTs on Temp. Treas. Regs.	PwC Observations
• A PCT is any resource, capability, or right that a controlled participant has developed, maintained, or acquired externally to the intangible development activity that is reasonably anticipated to contribute to developing cost shared intangibles. *Temp. Treas. Reg. §1.482-7T(c)*	• At arm's length PCTs may achieve no or only a small incremental improvement in results for only a finite period. • Survivor curves may be used as a basis to estimate the PCTs remaining life and future depreciation patterns, a key input in valuation models.
• Best method is governed by the "investor model principle" which requires consistency with realistic alternatives available to parties.	• In translating the alternatives into NPVs taxpayers need to estimate the contribution of PCTs over time as well as the appropriate discount rates at arm's length.
• "The PCT obligation … does not terminate merely because it may later be determined that [the] resource or capability or right has not contributed, and no longer is reasonably anticipated to contribute, to developing cost shared intangibles." *Temp. Treas. Reg. §1.482-7T(c)*	• PCTs must be determined on an ex-ante basis, so consistent with industry practices, options based valuation models may be used to reflect future uncertainties and decision points.
• The IRS may make adjustments to taxpayer's PCTs valuation estimates based on "Periodic Triggers".	• This further emphasizes the need to properly estimate future cash flows or provide high level of comfort with APAs.

CUT method

- A CUT or CUSP in the context of valuing a PCT would imply licensing of rights to further developments only. However, as applied in practice, transactions will be evaluated in aggregate for both further developments rights and make-sell right.
- The Temporary Regulations set strict comparability requirements, key among them:
  - Contractual terms,
  - Allocation of risks and of reasonably anticipated benefits, and
  - Profit potential of intangible development.
- In addition, a reliable CUT application is required to yield consistency with the perception of the total worldwide value of the platform contribution.

Income method – Overview

- "Under (the income) method, the arm's length charge for a PCT Payment will be an amount such that a controlled participant's present value, as of the date of the PCT, of its cost sharing alternative of entering into a CSA equals the present value of its best realistic alternative." Temp. Treas. Reg. §1.482-7T (g)(4)
- Best realistic alternative for cost sharing participants is assumed to be a licensing arrangement
  - For the parent, to license intangible it develops and owns, and
  - For the sub, to license intangibles from an unrelated party.
- Application of investor model principle implies that the NPV of the licensee's returns under the two alternatives are of equal value.
- The Temporary Regulations recognize that the two alternatives may have different allocation of risks and thus may require the use of different discount rates.

Income method example – Data

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8
Revenue (a)	-	-	200	400	600	650	700	750
Operating cost (b)	-	-	120	240	360	390	420	450
Operating Profit (c) = (a)–(b)	-	-	80	160	240	260	280	300
Cost contribution (CS payments) (d)	50	50	50	50	60	65	70	75

Data based on Example 1 Temp. Treas. Reg. §1.482-7T (g)(4)(vii)

CUT-based income method example

Licensing Alternative Royalty rate = 35% of revenues		
NPV of pre-license payment operating profit (discounted at 13%)	$ 1,592	(A) =NPV [(a) - (b)]
NPV of license payments (discounted at 13%)	$ 1,393	(B) = NPV [35% x (a)]
NPV of total profit of licensee	$ 199	(C) = (A) – (B)
Cost Sharing Alternative		
Cost sharing participant's NPV of total profit after CST payment (discounted at 15%)	$ 867	(D) = NPV [(a) – (b) – (d)]
Arm's length lump sum PCT payment	$ 668	(E) = (D) – (A)

Using data on slide 25

CPM-based income method example

Licensing Alternative Licensee's routine return = 5% of revenues		
NPV of total profit of licensee (discounted at 13%)	$ 199	(A) = NPV [5% x (a)]
Cost Sharing Alternative		
Cost sharing participant's NPV of total profit after CST payment (discounted at 15%)	$ 867	(B) = NPV [(a) – (b) – (d)]
Arm's length lump sum PCT payment (leaving PCT Payor with NPV of routine returns)	$ 668	(C) = (B) – (A)

CPM-imputed license royalty = Pre-royalty operating income – CPM licensee's routine return (5%)

Using data on slide 25

Calculation of an interquartile range of PCT payment

Observations within interquartile range	Comparable uncontrolled discount rate
1	11%
2	12%
3(median)	13%
4	14%
5	15%

Observations within interquartile range	Comparable uncontrolled licensing rate
1	30%
2	32%
3(median)	35%
4	37%
5	40%

Income method application number	Comparable uncontrolled Licensing discount rate	Comparable uncontrolled CSA discount rate	Comparable uncontrolled licensing rate	Calculated lump sum PCT payment	Interquartile range of PCT Payment
1	17%	19.6%	30%	291	
2	17%	19.6%	32%	347	
3	15%	17.3%	30%	367	
4	17%	19.6%	35%	431	
5	15%	17.3%	32%	433	
6	13%	15.0%	30%	469	
7	17%	19.6%	37%	487	LQ = 487
8	15%	17.3%	35%	532	
9	12%	13.8%	30%	535	
10	13%	15.0%	32%	549	
11	17%	19.6%	40%	571	
12	15%	17.3%	37%	598	
13	11%	12.7%	30%	614	Median = 614
14	12%	13.8%	32%	623	
15	13%	15.0%	35%	668	
16	15%	17.3%	40%	697	
17	11%	12.7%	32%	712	
18	13%	15.0%	37%	748	
19	12%	13.8%	35%	755	UQ = 755
20	12%	13.8%	37%	844	
21	11%	12.7%	35%	860	
22	13%	15.0%	40%	867	
23	11%	12.7%	37%	959	
24	12%	13.8%	40%	976	
25	11%	12.7%	40%	1107	

Example 2 Temp. Treas. Reg. §1.482-7T (g)(4)(vii)

Using data on slide 25

Acquisition price method and market capitalization method

- Both methods are applications of the CUT/CUSP method by reference to the value of an entire organization.
- Both methods are adjusted for liabilities and fixed assets and include the value of goodwill attributable to the foreign business.
- Market cap is calculated as the average of the daily market capitalization of the PCT payee over a period of time beginning 60 days before the date of the PCT and ending on the date of the PCT.
- Comparability consideration for market capitalization:

  "…reliability…normally is reduced if…facts and circumstances demonstrate the likelihood of a material divergence between the average market capitalization of the PCT Payee and the value of its resources, capabilities, and rights for which reliable adjustments cannot be made." Temp. Treas. Reg. §1.482-7T (g)(6)(v)

Residual profit split method

- Method to be used only in cases where both controlled participants make significant nonroutine contribution to the CSA activity.
- This application of the RPSM reflects similar assumptions about the life of the PCTs of each party as the income method.
- Mechanics of RPSM:
  - Step 1: Calculate an NPV of the cost sharing participant's non-routine residual profit, after all development expenses (using appropriate discount rate).
  - Step 2: Calculate the relative value of each controlled participant's contribution (operating and platform contributions) to the business activity (using capitalized development costs or alternatives).
  - Step 3: PCT payment is calculated based on the allocation of the NPV of the non-routine residual profit among the participant's non-routine contributions to the business activity.

Residual profit split method – Example

- Example uses same data as slide 25, but assumes that foreign participant in CSA has developed marketing intangibles in its territory.
- After analysis, it was determined that 60% of the nonroutine residual profit is attributable to technology intangibles and 40% is attributable to marketing intangibles.
- It was also determined that the appropriate discount rate to calculate the NPV of nonroutine residual profit is 15.5%.

NPV of nonroutine residual profit (discounted at 15.5%)	$ 668	(A) = NPV[(a) – (b) – (d) – 5% x (a)]
Relative value of technology intangible	60%	(B)
Arm's length lump sum PCT payment	$ 401	(C) = (A) x (B)

CPE Question 3

3. I am interested in the cost sharing regulations for the following reason:
    - My company is currently participating in a cost sharing arrangement
    - My company is considering intercompany cost sharing
    - Other

Periodic adjustments

Periodic Trigger

Periodic trigger – Adjustments to buy-ins

- The IRS justifies by an asymmetry of information argument its sole right to make adjustments to taxpayer's buy-in royalties (or PCT's); the event giving rise to this adjustment is referred to as the "Periodic Trigger". It is not consistent with observable arm's-length behavior.
- A Periodic Trigger is deemed to occur when the ratio of the present value of the licensee's income to the present value of the licensee's cost sharing and buy-in payments is greater than 1.5 OR less than 0.667 or (1.25 and 0.8 without adequate documentation).
  - Exceptions allow for situations due to extraordinary events beyond the control of the parties
  - Where a CUT analysis is used.
  - The lower bound might be employed only for inbound CSAs.
- The adjustment mechanism will not be applied to grandfathered PCTs made before January 5, 2009.
- The Periodic Trigger is waived if taxpayer agrees to an Advance Pricing Agreement with IRS.

Periodic trigger – Example

a	b	c	d	e	f	g	h
Year	Sales	Non-CC Costs	CCs	PCT Payments	Investment (d+e)	Divisional Profit or Loss (b-c)	AERR (g/f)
1	0	0	15	40	55	0	
2	0	0	17	10	27	0	
3	0	0	18	10	28	0	
4	680	662	20	10	30	18	
5	836	718	22	10	32	118	
6	1,023	680	24	10	34	343	
7	1,079	747	27	10	37	332	
PV through Year 5	925	846	69	69	138	79	.58
PV through Year 6	1434	1,184	81	74	155	250	1.62
PV through Year 7	1900	1,507	93	78	171	393	2.31

- First year in which Periodic Trigger is deemed to occur is Year 6 (AERR > 1.5)

Periodic trigger – Adjustments to buy-ins

- The Periodic Adjustment rule uses the inappropriately named Residual Profit Split Method to arrive at the amount to be adjusted.
- The Example demonstrates that the Periodic Trigger, like the widely criticized example in the CIP, limits the licensee's return to that of a routine service provider (i.e., 10% on costs), reallocating the total Residual Profit to the licensor.
- Given the required narrow scope of a CSA, this could have a devastating impact on pharma and biotech firms using CSAs.
- Underscores the wisdom of providing for CWI adjustments in your CSA, perhaps based on the IRS trigger points.

Periodic trigger – Example

a	b	c	d	e	f	g
Year	Sales	Non-CC Costs	Divisional profits or loss (b-c)	CCs	Routine Return	Residual Profit (d-e-f)
1	0	0	0	15	0	-15
2	0	0	0	17	0	-17
3	0	0	0	18	0	-18
4	680	662	18	20	66	-68
5	836	718	118	22	72	24
6	1,023	680	343	24	68	251
7	1,079	747	332	27	75	230
8	1,138	822	316	29	82	205
9	1,200	894	306	32	89	185
10	1.265	974	291	35	97	159
Cumulative PV	3,080	2,385	695	124	238	332

- Example uses cost plus 10% ($238) as routine return and returns remaining profit ($332) to licensor.

CPE Question 4

4. With the temporary and final cost sharing regulations, are you more or less likely to consider an intercompany cost sharing arrangement for your company?
   - More likely
   - Less likely
   - Not sure - need to learn more

Transition rules

Transition rules

- An agreement already in existence on January 5, 2009, will continue to be treated as a CSA if:
  - It was a Qualified Cost Sharing Arrangement under the old regulations;
  - Taxpayer complies with certain contractual, documentation, accounting and reporting requirements of the Temporary Regulations.
- Existing CSA's do **not** have to comply with the provision requiring a mutually exclusive division of rights, to qualify for this transition rule
- Taxpayers must amend current cost sharing agreements to conform with these requirements (if necessary) by July 6, 2009 and file a CSA Statement with the IRS Ogden campus by September 2, 2009.
- CSTs and PCTs occurring prior to January 5, 2009 are subject to the prior cost sharing regulations
- PCTs occurring either before or **after** January 5, 2009 under a pre-existing Qualified Cost Sharing Arrangement are not subject to the new periodic trigger adjustment rules
  - Exception if there is a material change in scope of the CSA

“Material change” exception

- Exception to grandfather relief from periodic adjustment trigger applies if a PCT occurs **after** there is a material change in the scope of a pre-existing cost sharing arrangement.
  - Regulations specifically reference "an expansion of the activities undertaken beyond the scope of the intangible development area“ as a material change
  - Determination of “material change” is made on a cumulative basis
- The interpretation of this exception is crucial to the “grandfathering” of PCT’s under pre-existing CSA’s on an ongoing basis
- PCTs that occurred under a pre-existing CSA **before** a material change in scope are forever protected from the new periodic trigger adjustment rules, even for years after the material change
- Temporary Regulations have dropped the 50% change in ownership clause from the Proposed Regulations, which would have subjected legacy buy-ins to the new regulations in the case of an ownership change.

Contractual requirements

- The following items must be included in taxpayer's written cost sharing agreement by July 6, 2009:
  1. The controlled participants, including the address of each domestic entity and the country of organization of each foreign entity;
  2. The scope of the intangible development activity to be undertaken and each class of reasonably anticipated cost shared intangibles;
  3. The functions and risks that each controlled participant will undertake;
  4. Provide a method to calculate the controlled participants' RAB shares, and require that such RAB shares must be updated as necessary;
  5. Enumerate all categories of intangible development costs to be shared under the CSA;
  6. Specify that the controlled participant must use a consistent method of accounting to determine intangible development costs and RAB shares;
  7. Specify the form of payment due under each PCT (or group of PCTs) in existence at the formation (and any revision) of the CSA; and
  8. Specify the date on which the CSA is entered into and the duration of the CSA, the conditions under which the CSA may be modified or terminated, and the consequences of a modification or termination.

Documentation requirements

- The controlled participants to a CSA must update and maintain documentation sufficient to:

  1. Describe the scope of the intangible development activity, any changes to the reasonably anticipated cost shared intangibles and establish that each controlled participant reasonably anticipates that it will derive benefits from the cost shared intangibles;
  2. Describe the functions and risks that each controlled participant has undertaken during the term of the CSA;
  3. Provide an overview of each controlled participant's business segments and establish the amount of each controlled participant's IDCs for each taxable year;
  4. Describe the method used to estimate each participant's RAB share, the projections used to estimate benefits, and an explanation of why that method was selected;
  5. Describe all platform contributions, the method used to determine the PCT payment and and the form of payment due;
  6. An explanation of why the method selected constitutes the best method; and
  7. The economic analyses, data, projections, and discount rates relied upon in developing and selecting the best method.

- Taxpayers should ensure these items are either included in their U.S. transfer pricing documentation report or in supporting files.

Reporting requirements

- Each controlled participant must file a CSA Statement with the IRS which:
  - States the participant is a controlled participant in a CSA and provides the taxpayer identification number;
  - Lists the other controlled participants in the CSA, the country of organization of each such participant, and the taxpayer identification number of each such participant;
  - Specifies the earliest date that any IDC occurred; and
  - Indicates the date on which the controlled participants formed (or revised) the CSA and the date on which the controlled participants recorded the CSA (or any revision).
- CSA Statement for revised cost sharing agreement must be filed no later than September 2, 2009.
- CSA Statement must be dated and signed, under penalties of perjury, by an officer of the controlled participant.
- Original CSA Statement must be attached to participant's U.S. income tax return for each taxable year for the duration of the CSA, and in subsequent years a schedule must be attached to record any changes to the CSA Statement.

Accounting requirements

- The controlled participants must maintain books and records sufficient to:
  - Establish that the controlled participants are using a consistent method of accounting to measure costs and benefits;
  - Permit verification that the amount of any contingent PCT Payments due have been (and are being) properly determined;
  - Translate foreign currencies on a consistent basis; and
  - To the extent that the method of accounting used materially differs from U.S. generally accepted accounting principles, explain any such material differences.
- Taxpayers should ensure these items are either included in their U.S. transfer pricing documentation report or in supporting files.

CPE Question 5

5. What is the most convenient way for you to stay abreast of developments in transfer pricing?
   - Webcasts
   - E-mail newsletters
   - Seminars or roundtables
   - Other

CPE Question 6

6. What additional transfer pricing issue are you interested in learning more about?
   - Transfer pricing associated with intercompany transfers of intangible property
   - Transfer pricing landscape outside US (Europe, Asia-Pac, Latin America)
   - Principal structures & economic substance
   - Transfer pricing implications of restructuring & reorganizations
   - APAs & dispute resolution
   - All of the above

Q&A

With you today

Name / Title		
Michael F. Swanick Partner, Global Tax Pharma & Life Sciences Leader PricewaterhouseCoopers, US	Phone: Email:	+1 267 330 6060 michael.f.swanick@us.pwc.com
Richard F. Barrett Principal, Transfer Pricing PricewaterhouseCoopers, US	Phone: Email:	+1 202 414 1480 richard.f.barrett@us.pwc.com
Horacio Peña Principal, Transfer Pricing, Pharma & Life Sciences Leader PricewaterhouseCoopers, US	Phone: Email:	+1 646 471 1957 horacio.pena@us.pwc.com

The materials contained in this presentation were assembled in April 2009 and were based on the law enforceable and information available at that time. The information contained in this presentation is for general guidance on matters of interest only and is not meant to be comprehensive. The application and impact of laws can vary widely based on the specific facts involved.

This document is provided by PricewaterhouseCoopers LLP for general guidance only, and does not constitute the provision of legal advice, accounting services, investment advice, written tax advice under Circular 230 or professional advice of any kind. The information provided herein should not be used as a substitute for consultation with professional tax, accounting, legal or other competent advisers. Before making any decision or taking any action, you should consult with a professional adviser who has been provided with all pertinent facts relevant to your particular situation. The information is provided 'as is' with no assurance or guarantee of completeness, accuracy or timeliness of the information, and without warranty of any kind, express or implied, including but not limited to warranties or performance, merchantability, and fitness for a particular purpose

Thank you

© 2009 PricewaterhouseCoopers LLP. All rights reserved. "PricewaterhouseCoopers" refers to PricewaterhouseCoopers LLP or, as the context requires, the PricewaterhouseCoopers global network or other member firms of the network, each of which is a separate and independent legal entity.

PRICEWATERHOUSECOOPERS