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Economic Analysis of the Guarantees Made by General Electric Capital Corporation to General Electric Capital Canada, Inc.: 1996 –2000

by

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April 14, 2009

Prepared for

The Department of Justice Canada

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I. Executive Summary

1. The Department of Justice has asked me to opine on the following question: How is the arm's length principle applied in evaluating guarantee fee transactions between multinational affiliates?

2. At *arm's length*, guarantee fee transactions could not be made between companies within the *same* multinational group, by definition. All other relevant characteristics of the guarantee fee transactions *could* be replicated at arm's length (*e.g.* size of transaction, description/form of transaction, etc.). This would potentially cover all of the characteristics of the guarantor and debtor companies, including size, financial structure, and original place within a multinational. That is, the goal of transfer pricing is to most closely define/match the characteristics of the actual transaction in the analysis. To the degree an economist distorts the picture—by, for example, reclassifying subsidiaries of multinationals as independent companies—the resulting analysis becomes less reliable, accurate and precise.

3. Transfer pricing analyses can be divided into two steps. First, it is necessary to define the terms/characteristics of the transaction under examination by creating a hypothetical (arm's length) transaction. This hypothetical serves as a proxy for the intercompany transaction *under arm's length circumstances*.

4. The hypothetical guarantee fee transactions at issue would be structured with (guarantor and debtor) parties that: (a) are unrelated; and (b) have characteristics that are otherwise equivalent to those of the two related parties under consideration. In particular, in this hypothetical transaction, both the guarantor and the debtor would be subsidiaries of multinational corporations.

5. Regardless of whether the characteristic has an obvious or subtle impact on arm's length pricing, the *goal* for this step in the valuation analysis is to match as many of the characteristics as possible in the hypothetical construct. In a more general sense, there is no economic logic in *knowingly departing* from one or more of the characteristics of the transaction at issue in creating a hypothetical transaction to quantify its price. That is, given a choice between a perfect twin and a hypothetical that has a clear difference from the actual transaction, the analysis would be no less reliable (and potentially more reliable) using a perfect twin.

6. The hypothetical transaction's value (*e.g.* price, fee, etc.) is obtained in the second step of the transfer pricing analysis. Using similar logic to the first step, the economist would consider various financial data impacted by market forces (*e.g.* guarantee fees, financial ratings, interest rates, etc.) as potential benchmarks/comparables to estimate the fee that would be expected for the hypothetical arm's length transaction.

II. Overview

A. Assignment and Overview

7. The Canada Revenue Agency has disputed the quantum of the guarantee fees proposed between two subsidiaries of General Electric Company (“GE COMPANY”): General Electric Capital Canada, Inc. (“GE CANADA”) as the debtor and General Electric Capital Corporation (“GE CAPITAL”) as the guarantor. The Canada Revenue Agency has assessed GE CANADA, the taxpayer, based on the proposed guarantee fees being above those that would be expected between parties dealing at arm’s length.¹

8. The Department of Justice has hired Precision Economics, LLC to economically analyze the guarantee transactions at issue. More specifically, the Department of Justice has requested that Precision Economics perform two assignments in this Transfer Pricing report. First, the Department of Justice has requested a general background on the significance of market forces, application of the arm’s length standard, and valuation considerations generally.

9. Second, the Department of Justice has requested a description of the process of applying the arm’s length standard to the guarantee fees in this case, with a particular focus on organizational structure. Since the related party transaction at issue is not naturally impacted by market forces, the Department of Justice has requested a description of the hypothetical transaction—targeted for valuation—that would incorporate such market forces. I have been asked to describe how the characteristics of the parties in this hypothetical transaction would differ from, if at all, the characteristics of GE CANADA, its guarantor, GE CAPITAL, and the terms of the related party transaction, as summarized in **Table 5**.

10. The present assignment does not fully extend into the valuation of the hypothetical transaction. Rather, in this report, I provide broad guidance on the approaches, data (benchmarks/comparables), and consideration that would be applied to value such a guarantee fee.

11. This report represents my opinions as of the date on the cover page based upon my access to publicly available information and the taxpayer-specific information provided by the Department of Justice.² The first chapter serves as an executive summary. In the second chapter, I provide an overview of my assignment and qualifications. The third chapter provides a factual statement of the GE parties and the transactions at issue. In Chapter IV, the arm’s

¹ See, for example, *General Electric Capital Canada Inc. v. Her Majesty the Queen*. (31 August 2006). “Reply.” Tax Court of Canada. Case No. 2006-1385(IT)G, p. 2.

² Appendix B contains a complete listing of the documents I have reviewed in these analyses.

length standard and transfer pricing analyses in general are summarized. My analyses of the guarantee fees at issue are contained in Chapter V.

B. Qualifications

12. My name is Brian C. Becker. I am the founder and President of Precision Economics. A copy of my current curriculum vitae, which includes a complete listing of my publications, teaching experience, and expert testimony, is attached to this report as Appendix A.

13. I have been employed as a consulting economist for approximately 17 years. Prior to founding Precision Economics in 2001, I gained experience with several consulting firms. My primary areas of focus in these positions were in transfer pricing, business valuation, international trade, intellectual property, and financial damages.

14. In the transfer pricing/valuation area, I have qualified to testify (and testified) as an expert witness, published more than a dozen articles, and spoken to a number of industry/government groups. In total, this experience includes more than 250 transfer pricing reports. Among the work that is a matter of public record, I served as a lead transfer pricing economic expert for the U.S. Internal Revenue Service in its 2006 dispute with GlaxoSmithKline. In 2008, I served as a lead transfer pricing economic expert for the Australian Government Solicitor and the Australian Taxation Office in Australia's first major transfer pricing trial. I have also prepared reports and presented my findings on behalf of taxpayers in audits, APAs, and litigation. These taxpayers span many industries, including pharmaceuticals, software, medical devices and automobiles, and include General Motors and 3M Company.

15. I have provided expert deposition and trial testimony in matters before The Administrative Appeals Tribunal (Australia), the Canadian International Trade Tribunal, U.S. Tax Court, U.S. District Court, various Superior Courts, U.S. Bankruptcy Court, Delaware Chancery Court, and the U.S. International Trade Commission.

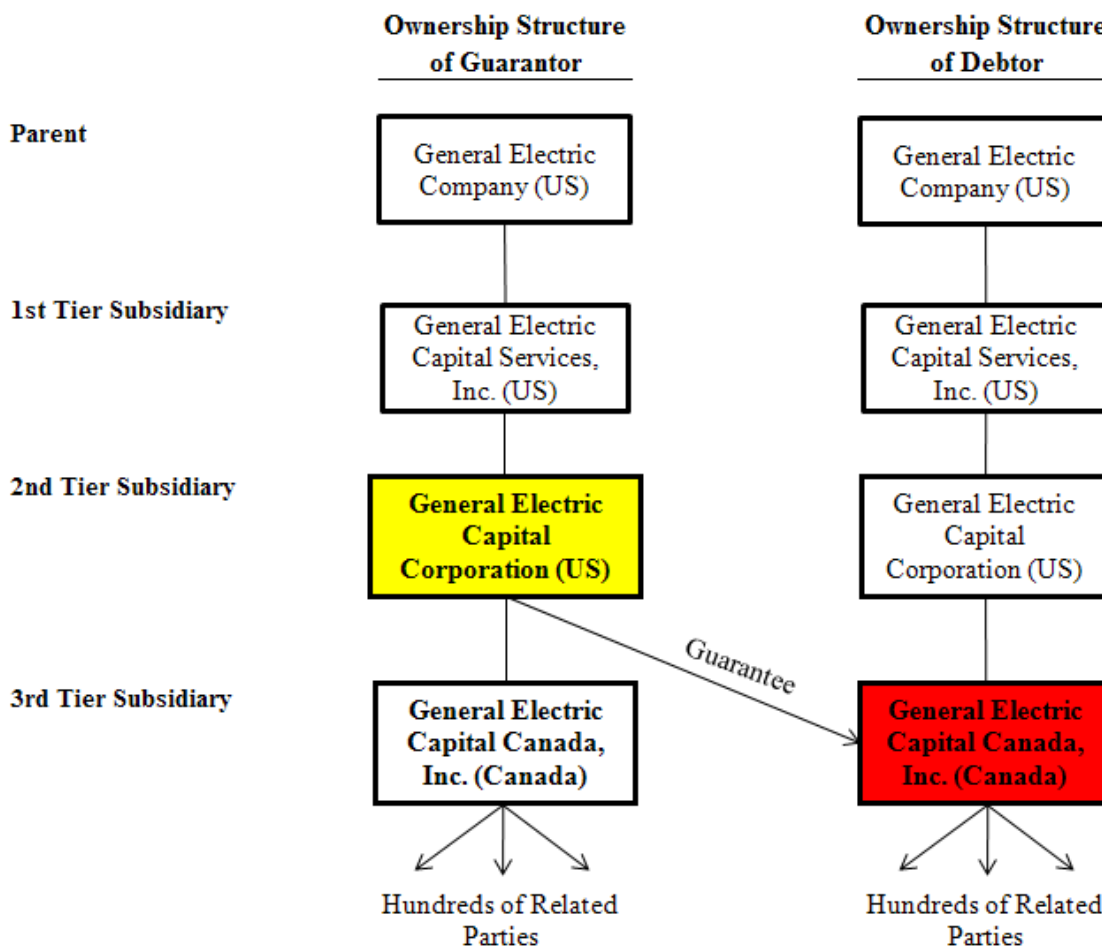
16. My academic background includes teaching positions at four universities and a variety of published research. Most recently, at Johns Hopkins University, I taught Corporate Finance and Derivative Securities to MBA students. I have published more than two dozen articles and book chapters, including in the *Tax Management Transfer Pricing Report*, *Corporate Business Taxation Monthly*, *Business Valuation Review*, and *Business Valuation Digest*.

17. I received my B.A. in Applied Mathematics and Economics from the Johns Hopkins University. I received my M.A. and Ph.D. in Applied Economics from the Wharton School of the University of Pennsylvania.

III. Factual Statement

18. This assignment considers intercompany transactions between two subsidiaries within the GE COMPANY: GE CAPITAL and GE CANADA. While both of these subsidiary companies operated under the “GE” or “General Electric” names, neither subsidiary at issue was directly owned by GE COMPANY.³ Displaying their respective places in the GE corporate structure, the guarantees provided by GE CAPITAL to GE CANADA are summarized in **Table 1** below.

Table 1: Ownership Structure of GE CAPITAL (Guarantor) and GE CANADA (Debtor)



³ GE CAPITAL was owned by a GE subsidiary, which in turn was owned by GE COMPANY. GE CANADA was owned by GE CAPITAL. I have simplified the organizational chart of GE for this report—providing only the “links” directly from GE COMPANY to the guarantor and debtor subsidiaries at issue. See **Table 1**. In point of fact, GE’s organizational structure is quite complex. General Electric Company. (1 January 2000). “Copy of Chart Prepared by General Electric Company, Re: Corporate Structure.”

19. GE CANADA provided a range of financial and other services. To fund its financing operations, GE CANADA borrowed money from the public markets by issuing commercial paper and medium term notes/debenture bonds. Between 1996 and 2000, GE CANADA's debt issuances were guaranteed by GE CAPITAL.⁴ In particular, GE CAPITAL guaranteed GE CANADA's commercial paper and medium term notes/debenture bonds.

20. As payment for these explicit intercompany guarantees, GE CANADA has paid GE CAPITAL a fee for explicit guaranteed securities. Whether that proposed fee is consistent with the fee that would result in a similar situation subject to market forces is, of course, the subject of this dispute.⁵

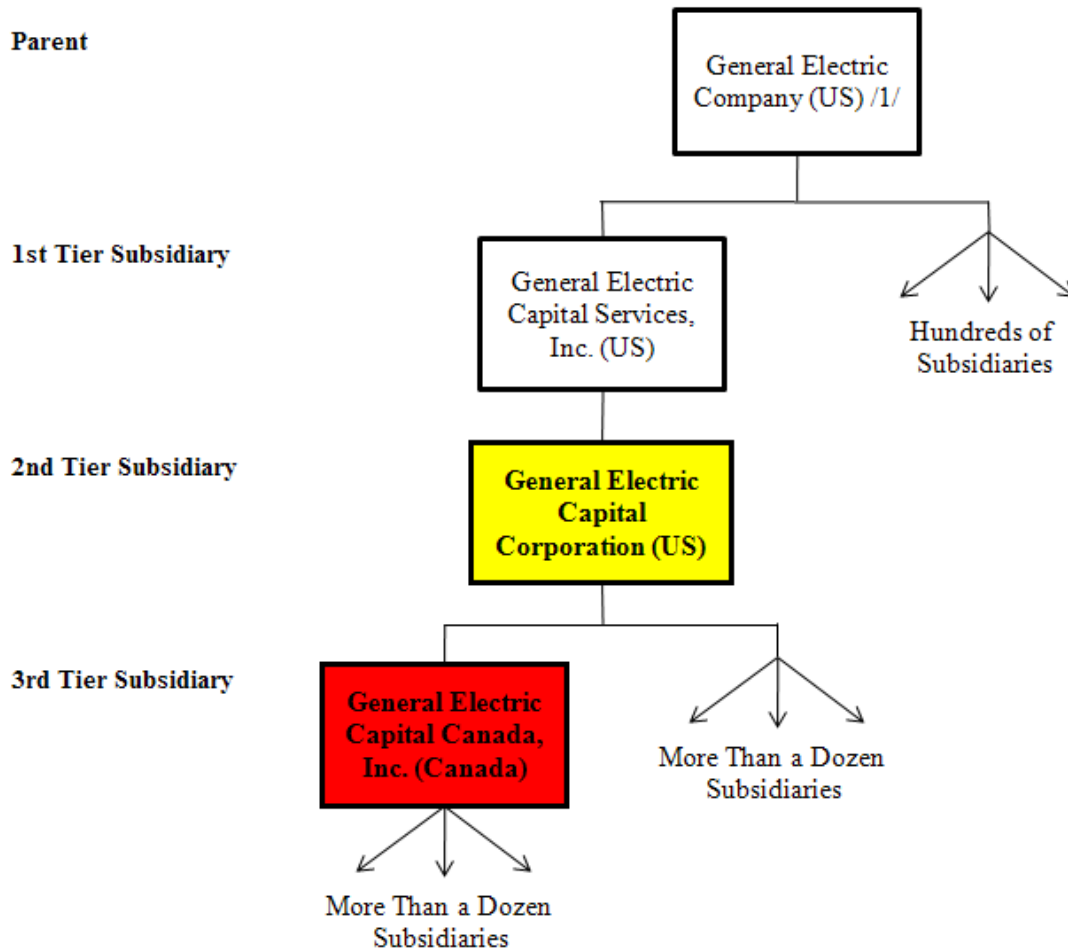
A. General Electric Family of Companies

21. During the tax years in question, GE COMPANY was one of the largest multinational corporations in the world, as detailed in the following pages. In addition to its above mentioned subsidiaries, it owned hundreds of operating, financing, and other subsidiaries throughout the world. While the GE family's full organizational structure is difficult to capture on a single sheet of paper, **Table 2** summarizes this structure as it relates to the entities at issue in this case.

⁴ GE CANADA obtained similar guarantees before 1996, but only this five year period is at issue in this report. *General Electric Capital Canada Inc. v. Her Majesty the Queen*. (20 April 2006). "Notice of Appeal (Part XIII Assessments)." Tax Court of Canada. Case No. 2006-1386(IT)G, pp. 1 & 9.

⁵ This guarantee fee only covered debt securities offered from 1995 onward. See *General Electric Capital Canada Inc.* (20 April 2006). "Notice of Appeal (Part 1 Reassessments)." Tax Court of Canada. Case No. 2006-1385(IT)G", p. 9; and *General Electric Capital Canada Inc. v. Her Majesty the Queen*. (20 April 2006). "Notice of Appeal (Part XIII Assessments)." Tax Court of Canada. Case No. 2006-1386(IT)G, Attached Table.

Table 2: Organizational Chart of GE COMPANY Entities as of January 1, 2000



Note:

/1/: The organizational structure is more complicated than shown. For example, GE CANADA is partially owned by GE CAPITAL (33 percent) and by GE Capital Auto Financial Services, Inc. (67 percent), which is also partially owned by GE CAPITAL (66 percent).

Source:

(1) General Electric Company. (1 January 2000). "Copy of Chart Prepared by General Electric Company, Re: Corporate Structure."

22. GE COMPANY operated a number of business lines that generated significant revenue and profit. It had operated for more than 100 years, and its reputation was well-established. Among the objective measures/rankings testifying to its size and reputation were:

- GE COMPANY's market value of over \$400 billion (U.S. dollars) as of December 31, 2000 placed it third among U.S. companies in rankings performed by Forbes. In that same ranking system, GE COMPANY's sales placed it fifth.⁶
- GE COMPANY remained one of the 30 companies in the Dow Jones Industrial Average ("DJIA") throughout the time period at issue. In fact, GE COMPANY has continuously been part of the DJIA for more than 100 years—the longest tenure of any company.⁷
- The GE brand name—with an estimated worth of more than \$38 billion (U.S. dollars)—ranked as the world's sixth most valuable in 2000.⁸
- GE COMPANY had the highest available debt rating from Standard & Poor's (AAA) during the 1996-2000 time period.⁹

B. GE CAPITAL

23. GE CAPITAL was incorporated in New York in 1943. It initially financed the manufacturing and distribution activities of GE COMPANY, but during the time period at issue, GE CAPITAL's financing mostly focused on non-GE products.¹⁰

24. GE CAPITAL, although wholly (indirectly) owned by GE COMPANY, reported its own financial statements from which its stock was traded. Its financial statements reflect its consolidated results that include its subsidiaries like GE CANADA and similar companies around the world.¹¹

⁶ Retrieved August 11, 2008 from: <http://www.forbes.com/lists/home.jhtml?passListId=38&passYear=2000&passListType=Company>.

⁷ "Dow Jones Industrial History." Retrieved August 11, 2008 from: http://www.djindexes.com/mdsidx/downloads/DJIA_Hist_Comp.pdf.

⁸ "The Best Global Brands." (6 August 2001). BusinessWeek, pp. 50-64.

⁹ In fact, GE is the only company that has kept its AAA rating since 1960. Retrieved February 17, 2009 from <http://www.usatoday.com/money/general/2002/05/30/triplea-rating.htm>.

¹⁰ General Electric Capital Corporation. (23 March 2001). Form 10-K for fiscal year ended December 31, 2000, p. 1.

¹¹ GE CAPITAL owned more than a dozen subsidiaries throughout the world. General Electric Capital Corporation. (23 March 2001). Form 10-K for fiscal year ended December 31, 2000, pp. 1-18.

25. GE CAPITAL enjoyed certain rights from being part of the General Electric family. For example, it had the right to use the “GE” and General Electric names.¹² However, GE CAPITAL received no explicit guarantees¹³ from GE COMPANY for specific debt or funding if it were to face financial distress.¹⁴

26. While smaller than GE COMPANY, GE CAPITAL was a large company, reporting average annual revenues of approximately \$40 billion over this time period. With (book) assets of between \$200 billion and \$330 billion, GE CAPITAL reported equity of approximately \$16 billion to \$27 billion during this period. See **Table 3**. GE CAPITAL typically received the highest debt ratings from Moody’s and Standard & Poor’s during the period at issue.¹⁵

¹² That is, GE CAPITAL enjoys the “shared name” GE. Fax transmission from Osler, Hoskin & Harcourt LLP. (9 February 2009). “Response to Question 1318.”

¹³ It was reported after the audit period that GE COMPANY did provide certain explicit support to GE CAPITAL to the extent necessary to ensure the latter’s fixed-charge coverage ratio remains at a level of 1.10 or more. I have not confirmed whether such explicit support existed during the audit period. See, for example, Moody’s Investors Service. (April 2003). “General Electric Capital Corporation,” p. 2.

¹⁴ General Electric Capital Canada Inc. (22 March 1995). “Offering Circular,” p. 11.

¹⁵ A significant factor in GE CAPITAL’s ratings (after the audit period) was the strength it derived from its ownership by GE COMPANY. I have not confirmed that the ratings services made similar analyses/observations during the audit period. See Moody’s Investors Service. (April 2003). “General Electric Capital Corporation,” p. 1; and Standard & Poor’s. (18 April 2002). “General Electric Capital Corp.” p. 5.

Table 3: GE CAPITAL Summary Financial Results: 1996-2000

In Thousands of USD	1996	1997	1998	1999	2000
Income Statement Summary					
Revenues	26,570,000	33,404,000	41,405,000	46,605,000	54,267,000
Interest Expense	7,042,000	7,330,000	8,618,000	8,936,000	10,461,000
Pre-tax Income (including minority interest)	3,804,000	3,726,000	4,559,000	5,761,000	5,844,000
Balance Sheet Summary					
Financing receivables - net	97,287,000	101,133,000	118,098,000	132,023,000	140,500,000
Total assets	200,816,000	228,777,000	269,050,000	307,441,000	332,636,000
Total liabilities	184,611,000	209,544,000	246,844,000	282,928,000	305,219,000
Equity /1/	16,205,000	19,233,000	22,206,000	24,513,000	27,417,000

Note:

/1/: Equity includes minority interest.

Sources:

- (1) General Electric Capital Corporation. (23 March 2001). Form 10-K for fiscal year ended December 31, 2000.
- (2) General Electric Capital Corporation. (29 March 1999). Form 10-K for fiscal year ended December 31, 1998.
- (3) General Electric Capital Corporation. (27 March 1998). Form 10-K for fiscal year ended December 31, 1997.

C. GE CANADA

27. Incorporated in 1963 in Canada, GE CANADA was originally founded to help finance the manufacturing and distribution operations of General Electric Canada, Inc., the Canadian operating entity of GE COMPANY.¹⁶ Ten years after its founding, GE CANADA began to expand its offerings to outside clients. By 1983, GE CANADA had primarily shifted its financing operations away from assisting General Electric Canada, Inc. to working with outside companies in a variety of industries.¹⁷

28. To fund its financing operations, GE CANADA borrowed money from the public markets by issuing commercial paper and medium term notes/debenture bonds. In the years 1996-2000, GE CAPITAL guaranteed these securities, and GE CANADA paid the former a

¹⁶ GE CANADA was originally named Genelco Finance Limited before going through a series of name changes to finally be named General Electric Capital Canada, Inc. in 1988. General Electric Capital Canada Inc. (22 March 1995). "Offering Circular," p. 12.

¹⁷ General Electric Capital Canada Inc. (22 March 1995). "Offering Circular," p. 12.

guarantee fee. The taxpayer paid a total of approximately CAD \$136 million for such fees over this time period.¹⁸

29. GE CANADA had common ownership with hundreds of companies within the General Electric organizational structure, resulting from its ownership by GE CAPITAL, and its ultimate ownership by GE COMPANY.¹⁹ GE CANADA also owned multiple subsidiaries, including General Electric Capital Canada Retailer Financial Services Company (“GE RETAILER”) and General Electric Capital Equipment Finance Inc.²⁰

30. As is often the case with companies being part of larger multinational entities, GE CANADA enjoyed certain rights from being part of the General Electric family. For example, like GE CAPITAL, GE CANADA enjoyed the rights to use the “General Electric” and “GE” names in conducting its business.²¹ However, on the securities it offered, GE CANADA was provided no explicit guarantees by GE COMPANY or any other GE-owned entity *besides* the aforementioned guarantees with GE CAPITAL.²²

31. GE CANADA was smaller than GE CAPITAL, although it still controlled billions of dollars of capital. As seen in **Table 4**, GE CANADA reported consolidated average annual revenues of approximately CAD \$2.1 billion, and owned assets with a (book) value of approximately CAD \$5.6 billion to CAD \$10.9 billion over this time period. After accounting for its liabilities, its book value of equity ranged from approximately CAD \$447 million to CAD \$824 million.

¹⁸ General Electric Capital Canada Inc. v. Her Majesty the Queen. (20 April 2006). “Notice of Appeal (Part XIII Assessments).” Tax Court of Canada. Case No. 2006-1386(IT)G, p. 10.

¹⁹ General Electric Company. (1 January 2000). “Copy of Chart Prepared by General Electric Company, Re: Corporate Structure.”

²⁰ General Electric Company. (1 January 2000). “Copy of Chart Prepared by General Electric Company, Re: Corporate Structure.”

²¹ Fax transmission from Oslar, Hoskin & Harcourt LLP. (9 February 2009). “Response to Question 1318.”

²² General Electric Capital Canada Inc. (22 March 1995). “Offering Circular,” p. 11.

Table 4: GE CANADA Summary Financial Results: 1996-2000

In Thousands of CAD	1996	1997	1998	1999	2000
Income Statement Summary					
Revenues	1,600,868	1,913,000	2,254,000	2,268,000	2,410,000
Interest Expense	239,685	292,000	398,000	472,000	595,000
Pre-tax Income (including minority interest)	129,850	174,000	182,000	157,000	50,000
Balance Sheet Summary					
Financing receivables - net	2,592,463	4,440,000	4,877,000	5,887,000	6,267,000
Total assets	5,565,280	7,329,000	8,902,000	10,097,000	10,883,000
Total liabilities	5,117,884	6,795,000	8,279,000	9,372,000	10,059,000
Equity /1/	447,396	534,000	623,000	725,000	824,000

Note:

/1/: Equity includes minority interest.

Sources:

- (1) General Electric Capital Canada Inc. (2003). Consolidated Financial Statements for fiscal years ended December 31, 2000-2002.
- (2) General Electric Capital Canada Inc. (2000). Consolidated Financial Statements for fiscal years ended December 31, 1997-1999.
- (3) General Electric Capital Canada Inc. (1997). Consolidated Financial Statements for fiscal years ended December 31, 1995-1996.

IV. Transfer Pricing and the Arm's Length Standard

A. Market Transactions and Transfer Pricing

32. Transactions that are typically witnessed in markets around the world involve two parties that are not commonly owned—*i.e.*, they are transacting at “arm’s length”. In most cases, there is relatively little need for governments to regulate the pricing of such transactions, as the prices are naturally impacted by market forces.²³ Put more broadly, the buyer attempts to pay as little as possible and the seller attempts to extract as high a price as possible—with the ultimate price largely determined by the positions/bargaining power of the two parties.

33. While multinational companies have various business reasons to move tangible property, intangible property, and services from one related party to another, these movements do not have the inherent competitive market forces setting their prices. Rather, the multinational company could set the prices at whatever levels it chose but for transfer pricing regulations. In particular, multinational companies have incentive to set their transfer prices in a way that moves corporate profits from high tax to low tax jurisdictions.²⁴

34. Related company (transfer) pricing is not directly governed by market forces, but it is broadly governed by a consistent standard—the arm’s length standard.²⁵ This standard attempts to mimic market forces seen in transactions between unrelated parties. It does so by requiring intercompany transfer prices to be set at the level (in terms of price, fee, rate, etc.) that would have been achieved under similar circumstances, that is, as if the trading parties had not been related to each other.

35. The *concept* of the arm’s length standard is relatively simple, but its *application* is often complicated. Generally, the application is performed in two steps. First, it is necessary to define the terms/characteristics of a transaction by creating a hypothetical (arm’s length) transaction.

²³ Commonly referred to as the “invisible hand” (coined by Adam Smith in 1776), this generally accepted economic principle states that market economies—in which many buyers and sellers of numerous goods and services act to promote their self-interest—are usually conducive to desirable market outcomes for the society as a whole. Mankiw, N. Gregory. (2007). Principles of Economics. South-Western, pp. 9-10.

²⁴ For example, see: Li, Jinyan. (2002). “Global Profit Split: An Evolutionary Approach to International Income Allocation.” Canadian Tax Journal, Vol. 50, Iss. 3, p. 3.

²⁵ I do not intend this statement to reflect a comprehensive opinion on transfer pricing rules and regulations in each country of the world. In that sense, it is possible that certain provisions in certain countries may not agree with the arm’s length standard, but it is the typical standard applied in valuations by economic practitioners in this field. See, for example: Organisation for Economic Co-operation and Development. (July 1995). Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrators, Chapter I; and Australian Taxation Office. (April 2005). “Applying the Arm’s Length Principle.” Retrieved 9 September 2008 from http://www.ato.gov.au/content/downloads/LBI_35285_Applying_arms_length_principle.pdf.

This hypothetical serves as a proxy for the intercompany transaction under arm's length circumstances.

36. Once the hypothetical arm's length transaction is fully defined and described, the second step in the process is the valuation itself. Valuation largely focuses on various benchmarks/comparables that would provide information (*e.g.*, price, fee, rate, margins, profit splits, etc.) about the expectations of the transaction's pricing at arm's length. By considering the relative strengths of the various benchmarks (*e.g.*, reliability, adjustments, etc.), a single point or range of values can be determined.

B. Transfer Pricing Step 1: Defining the Hypothetical Transaction

37. The arm's length standard would price a related party transaction at the level that would be expected if the parties were hypothetically operating at arm's length. As such, it is important to define all of the important characteristics that would be inherent in such a hypothetical arm's length transaction. This definition potentially includes:

- a description of the product, service, intangible, etc. being transferred;
- the timing of the transfer;
- the primary terms in the transaction (*e.g.*, time period, product liability, termination terms, etc.);
- the characteristics of the seller that would potentially influence its bargaining power; and
- the characteristics of the buyer that would potentially influence its bargaining power.

38. While the definition step in transfer pricing is quite important, it often requires relatively little analysis, as it simply reflects a listing of known facts.²⁶ That is, for example, describing the

²⁶ Thus, most research and discussion on transfer pricing focuses on the valuation step as opposed to the definition step. For instance, while most transfer pricing textbooks and guidelines stress the importance of comparability analysis and the factors determining comparability, they typically focus more on the actual valuation methodologies for determining arm's length prices or profit levels. See, for example, Feinschreiber, Robert. (2004). Transfer Pricing Methods. John Wiley & Sons, Inc: New Jersey.

provision of transportation services or the sale of commodity products is typically a relatively simple exercise.²⁷ In certain cases, however, further adjustments/descriptions are required:

- **Terms not followed:** Related parties do not face market forces that require them to follow the terms of their agreements. As such, related parties' behavior does not always coincide with the terms in their intercompany agreements. In such cases, the transaction's description in the hypothetical construct would focus on the actual behavior of the parties, not the terms stated in the intercompany agreements.²⁸
- **Seller Market Power:** The seller may have market power by virtue of owning intangible assets and/or having other characteristics. Assuming that the hypothetical seller would be represented by any typical competitive company would not capture this dynamic.²⁹
- **Agreement Risk:** In addition to the *functions* of the parties in the related transaction, it is necessary to match the *risks* in the hypothetical construct. For example, a related party seller of the results of the R&D it created on its own behalf would generally not be correctly portrayed by a hypothetical contract R&D service provider.
- **Identity of the Selling/Licensor Party Itself Being Transferred:** In most transfer pricing analyses, the product/service/asset being transferred is of primary importance, while the identity and characteristics of the selling entity itself have less importance. However, in cases where the identity and characteristics of the selling entity are essentially being transferred/licensed (*i.e.*, royalty rate for company name, guarantee fee, etc.), the focus of the hypothetical description would be more heavily weighted to the seller's characteristics.³⁰

²⁷ The triviality of this definitional step often essentially results in the definitional step being implicitly incorporated into the second step (valuation). Thus, many transfer pricing reports do not explicitly separate their analyses into these two steps as such.

²⁸ This includes both (agreement) stated activities not being performed as well as unstated activities that are being performed.

²⁹ An analogous discussion could be made from the buyer perspective.

³⁰ Analogously, the characteristics of the buyer would potentially be more relevant in some of these situations also.

C. Transfer Pricing Step 2: Valuation

39. Transfer pricing economic reports are similar to other economic reports in that they are better served with not only the economist's opinion, but also with a description of the data, methodologies, and assumptions applied in arriving at such opinion. In the case of transfer pricing, the valuation methods largely center on: (1) the search for and consideration of benchmark data (comparables) that have been naturally impacted by market forces; and (2) the potential comparables' relevance to the pricing of the hypothetical transaction at issue.

40. There are various types of data available publicly—and/or confidentially through the multinational taxpayer being analyzed—that show the impact of market forces. Prices, royalty rates, and service fees agreed to in transactions between unrelated parties provide one such type of benchmark data, or comparable.³¹ Transactional gross margins also provide potential comparable data used by economists to calculate transfer prices. In addition to transactional benchmarks, overall corporate or product line profitability provides a common comparable used in transfer pricing where one (or both) of the parties to the transaction has its profits set at a level determined by comparables.³²

41. In the valuation step in transfer pricing, the various methods (including their comparables) would be evaluated based upon their relative reliability. In this sense, the economist would compare how close (“exact”) the comparables are to the hypothetical construct at issue. To the degree differences exist, the economist would evaluate the adjustments for such differences³³—if they could be quantified at all. In general, methods that are more direct and require fewer adjustments are preferred to less direct methods requiring significant adjustments and assumptions/estimations. In transfer pricing terminology, this process would ultimately determine a best method(s) and a resulting transfer price.³⁴

³¹ In transfer pricing, it is common practice to refer to the arm's length benchmarks (impacted by market forces) as comparables. See, for example: Feinschreiber, Robert. (2004). Transfer Pricing Methods. John Wiley & Sons, Inc: New Jersey, p. 86; and Broomhall, David. (21 March 2007). “Updating Comparables in Advance Pricing Agreements.” Tax Management Transfer Pricing Report, Vol. 15, No. 22.

³² This description of potential comparables and methodologies is not intended to be exhaustive. In various contexts, economists consider market values, useful lives, interest rates, Betas, debt ratings, and debt/equity ratios. Rosenblum, Jeffrey I. (16 October 2002). “Estimating an Arm's-Length Interest Rate on Intercompany Loans.” Tax Management: Transfer Pricing. Vol. 11, No. 12, p. 602.

³³ In theory, any benchmark could potentially be adjusted to any hypothetical, but some are easier to imagine than others. For example, it would be relatively difficult to adjust the price of a refrigerator to the rate charged in a guarantee fee.

³⁴ See, for example, Feinschreiber, Robert. (2004). Transfer Pricing Methods. John Wiley & Sons, Inc: New Jersey, pp. 40-42.

V. Arm's Length Valuation of the GE Guarantee Fees

A. Conditions/Circumstances of Actual Transaction

42. My assignment for this report focuses on the guarantee fees that would be expected at arm's length between GE CANADA and GE CAPITAL. As the actual transaction between GE CANADA and GE CAPITAL did *not* occur at arm's length, I focus on the pricing of a hypothetical transaction. I begin this first step of the transfer pricing analysis by creating/describing the hypothetical transaction that best satisfies the economic conditions that would exist at arm's length.

43. The first step is to describe the terms of the actual transaction (including the parties transacting) at issue and to determine which of these characteristics could/should be incorporated into the hypothetical arm's length transaction. **Table 5** details some of the potentially more important characteristics of the transactions, the guarantor, and the debtor at issue, including:

- Transaction: The guarantee fee consistently covered more than \$1 billion of debt issuances.
- Parties' Characteristics: The characteristics of the parties to the transaction may assist in understanding the value of, and the need for such a guarantee.
- Parent Characteristics: Both the guarantor and debtor are part of (the same) *a* multinational company, and conduct transactions with their related parties. Since not all multinational companies have the same characteristics, it is helpful to describe some of GE COMPANY's characteristics.

Table 5: Characteristics of the Actual Transaction Between GE CAPITAL (Guarantor) and GE CANADA (Debtor)

Characteristics	GE CAPITAL	GE CANADA	Source
Transactions			
Intercompany Transaction at Issue	Provides Explicit Guarantee	Receives Explicit Guarantee	(1)
Debt Issuances Guaranteed	More Than \$1 Billion Annually	More Than \$1 Billion Annually	(1)
Major Characteristics of Parties			
Part of Multinational?	Yes	Yes	(2)
Ultimate Parent	General Electric Company	General Electric Company	(2)
Explicitly Guaranteed by Ultimate Parent?	No	No	(2)
Implicitly Guaranteed by Ultimate Parent?	Yes	?	(2)
Description	U.S. Subsidiary of General Electric	Canadian Subsidiary of General Electric	(2)
Owns	Many Subsidiaries	Many Subsidiaries	(3)
Related to	Hundreds of Companies	Hundreds of Companies	(3)
Debt Rating as Part of Multinational	AAA	?	(2)
Debt Rating of Ultimate Parent	AAA	AAA	(4)
Other Transactions with Related Parties?	Yes	Yes	(5) & (6)
Ability to Use Multinational Name?	Yes	Yes	(7)
Year of Incorporation	1943	1963	(1) & (5)
Ultimate Parent Part of Dow Jones Industrial Average?	Yes	Yes	(8)
Ranking of Ultimate Parent's Name Value Worldwide	4th	4th	(9)
Ranking of Ultimate Parent's Market Value Worldwide	3rd	3rd	(10)
Operations	Financial Activities	Financial Activities	(1) & (5)
Financial Results			
Financial Results of Company. (1996-2000 Average)			
Sales	Over \$40 Billion (USD)	Over \$2 Billion (CAD)	Tables 3 & 4
Pre-tax Income	Over \$4 Billion (USD)	Over \$135 Million (CAD)	Tables 3 & 4
Assets	Over \$260 Billion (USD)	Over \$8 Billion (CAD)	Tables 3 & 4
Equity	Over \$20 Billion (USD)	Over \$630 Million (CAD)	Tables 3 & 4
Financial Results of Ultimate Parent (1996-2000 Average)			
Sales	Over \$100 Billion (USD)	Over \$100 Billion (USD)	(11), (12) & (13)
Pre-tax Income	Over \$13 Billion (USD)	Over \$13 Billion (USD)	(11), (12) & (13)
Assets	Over \$350 Billion (USD)	Over \$350 Billion (USD)	(11), (12) & (13)
Equity	Over \$35 Billion (USD)	Over \$35 Billion (USD)	(11), (12) & (13)

Sources:

- (1) General Electric Capital Canada Inc. v. Her Majesty the Queen. (20 April 2006). "Notice of Appeal (Part I Reassessments)." Tax Court of Canada.
- (2) General Electric Capital Canada Inc. v. Her Majesty the Queen. (31 August 2006). "Reply." Tax Court of Canada. Case No. 2006-1385(IT)G.
- (3) General Electric Company. (1 January 2000). "Copy of Chart Prepared by General Electric Company, Re: Corporate Structure."
- (4) Retrieved February 17, 2009 from <http://www.usatoday.com/money/general/2002/05/30/triplea-rating.htm>.
- (5) General Electric Capital Corporation. (23 March 2001). Form 10-K for fiscal year ended December 31, 2000.
- (6) General Electric Capital Canada Inc. (2003). Consolidated Financial Statements for fiscal years ended December 31, 2000-2002.
- (7) Fax transmission from Osler, Hoskin & Harcourt LLP. (9 February 2009). "Response to Question 1318."
- (8) "Dow Jones Industrial History." Retrieved on April 23, 2008 from http://www.djindexes.com/mdsidx/downloads/DJIA_Hist_Comp.pdf.
- (9) "The Best Global Brands." (6 August 2001). [BusinessWeek](http://www.businessweek.com).
- (10) Retrieved August 11, 2008 from <http://www.forbes.com/lists/home.jhtml?passListId=38&passYear=2000&passListType=Company>.
- (11) General Electric Co. (23 March 2001). Form 10-K for fiscal year ended December 31, 2000.
- (12) General Electric Co. (25 March 1999). Form 10-K for fiscal year ended December 31, 1998.
- (13) General Electric Co. (27 March 1998). Form 10-K for fiscal year ended December 31, 1997.

B. Characteristics to Replicate in the Hypothetical Construct

44. I attempt to construct a hypothetical arm's length transaction that is as comparable to the related party transaction at issue as possible.³⁵ In this way, I define a hypothetical transaction with the *exact* same characteristics of the transaction at issue, *except that the guarantor and debtor are not related parties*. Thus, as seen in **Table 6**, with this one exception, the hypothetical transaction has the *exact same* characteristics as the actual transaction summarized in **Table 5**.

³⁵ This terminology is most commonly used when comparing arm's length benchmarks to the hypothetical transaction being targeted. However, the concept generally applies when creating/defining the hypothetical transactions from the actual transaction. See, for example: Feinschreiber, Robert. (2004). Transfer Pricing Methods. John Wiley & Sons, Inc: New Jersey, p. 86; and Broomhall, David. (21 March 2007). "Updating Comparables in Advance Pricing Agreements." Tax Management Transfer Pricing Report, Vol. 15, No. 22.

Table 6: Characteristics of the Hypothetical Transaction Between Arm's Length Guarantor and Debtor

Characteristics	Hypothetical Guarantor	Hypothetical Debtor
Transactions		
Arm's Length Transaction at Issue	Provides Explicit Guarantee	Receives Explicit Guarantee
Debt Issuances Guaranteed	More Than \$1 Billion Annually	More Than \$1 Billion Annually
Major Characteristics of Parties		
Part of Multinational?	Yes	Yes
Ultimate Parent	"AB"	"CD"
Explicitly Guaranteed by Ultimate Parent?	No	No
Implicitly Guaranteed by Ultimate Parent?	Yes	?
Description	U.S. Subsidiary of "AB"	Canadian Subsidiary of "CD"
Owns	Many Subsidiaries	Many Subsidiaries
Related to	Hundreds of Companies	Hundreds of Companies
Debt Rating as Part of Multinational	AAA	?
Debt Rating of Ultimate Parent	AAA	AAA
Other Transactions with Related Parties?	Yes	Yes
Ability to Use Multinational Name?	Yes	Yes
Age of Company	1943	1963
Parent Part of Dow Jones Industrial Average?	Yes	Yes
Ranking of Ultimate Parent's Name Value Worldwide	6th	6th
Ranking of Ultimate Parent's Market Value Worldwide	3rd	3rd
Operations	Financial Activities	Financial Activities
Financial Results		
Financial Results of Company: (1996-2000 Average)		
Sales	Over \$40 Billion (USD)	Over \$2 Billion (CAD)
Pre-tax Income	Over \$4 Billion (USD)	Over \$135 Million (CAD)
Assets	Over \$260 Billion (USD)	Over \$8 Billion (CAD)
Equity	Over \$20 Billion (USD)	Over \$630 Million (CAD)
Financial Results of Ultimate Parent (1996-2000 Average)		
Sales	Over \$100 Billion (USD)	Over \$100 Billion (USD)
Pre-tax Income	Over \$14 Billion (USD)	Over \$14 Billion (USD)
Assets	Over \$350 Billion (USD)	Over \$350 Billion (USD)
Equity	Over \$35 Billion (USD)	Over \$35 Billion (USD)

45. The above does not imply that I would expect to locate an actual transaction perfectly matching *all* of these characteristics from which the arm's length standard has been constructed.³⁶ Rather, the hypothetical transaction is the pricing *goal* from which various arm's length benchmarks would be considered once the "valuation step" began. All else being equal, arm's length benchmarks closely matching more of the hypothetical's characteristics would be

³⁶ In transfer pricing language, "exact comparables" do not always exist. See, for example, Turner, Bob; Okawara, Ken; and Miall, Robert. (September 2003). "The Role of Comparable Company Benchmarks in Transfer Pricing." *International Tax Review*, pp. 43-45.

given stronger consideration than benchmarks matching fewer of the hypothetical's characteristics.³⁷

C. Rationale for Hypothetical Matching Characteristics of Related Party Transaction

46. Transaction characteristics—like those inherent in the guarantees between GE CANADA and GE CAPITAL—have the potential to impact prices at arm's length. In this case, some characteristics that might impact guarantee fee pricing include:

- The transaction itself. For example, an economist would not expect the price of a refrigerator to be similar to a fee for a guarantee.
- The size of the transaction. The transaction dynamics of a guarantee covering \$1 million worth of assets might be different than one covering \$3 billion worth of assets.
- Relationship with ultimate parent. The guarantor's and debtor's terms of operating within their multinational operations (*e.g.*, ability to use corporate name, amount of other intercompany transactions, etc.) would potentially influence credit ratings and guarantee fee payments.³⁸
- Characteristics of the ultimate parent. Operating within a multinational with worldwide sales of \$5 million might be different than operating within a company the size of GE COMPANY.

47. Regardless of whether the characteristic has an obvious or subtle impact on arm's length pricing, the *goal* for this step in the transfer pricing analysis is to match as many of the characteristics as possible in the hypothetical construct. In a more general sense, there is no economic logic in *knowingly departing* from one or more of the characteristics of the transaction at issue in creating a hypothetical transaction to quantify its price. That is, given a choice between a perfect twin and a hypothetical that has a clear difference from the actual transaction;

³⁷ This statement over-simplifies the issue, as certain characteristics are more important than others in different circumstances.

³⁸ GE CAPITAL, for example, would have had a lower credit ranking by Moody's (in 2003) if it was not owned by GE COMPANY. Moody's Investors Service. (April 2003). "General Electric Capital Corporation," p. 2.

one would certainly choose to hypothetically create a perfect twin.³⁹ Deviations in characteristics from a perfect twin potentially change the dynamics between the parties in the transaction. Different dynamics can create different prices at arm's length.

D. Matching of Organizational Structure

48. Consistent with the other characteristics in a related party transaction, it is important to consider the dynamics of the *organizational structure* of the transaction at issue when constructing the hypothetical transaction to price. As seen below in Section E, changes to the organizational structure of the parties—from those existing in the actual transaction—have the potential to change the bargaining dynamics between the guarantor and debtor. For example, moving the debtor “up” the organizational structure by assuming it to be a parent of a multinational might cause the guarantee—by a subsidiary of another multinational—to be priced at a relatively modest value. Conversely, moving the debtor “down” the organizational structure by assuming it to be a small, generically-named, independent party might cause the guarantee to be priced higher than it would to a subsidiary of a multinational.⁴⁰

49. The actual transaction at issue involves two subsidiaries that are part of a (the same) large multinational company. Their respective positions within the multinational help define their business, operations and bargaining power—as their operations outside of the GE family are relatively modest and not indicative of their overall operations.⁴¹ In creating the *hypothetical* transaction, these entities could no longer be related *GE* subsidiaries, but they would each still need to be structured as part of a multinational company to retain their positions/identities. That is, instead of a guarantor or a debtor being part of a *single* multinational, they would each be subsidiaries of *different* multinational companies. Matching the details of this case, I would define each of the two hypothetical entities' places within a multinational in the same way as GE CAPITAL and GE CANADA operate within the GE family.

³⁹ It is always possible to create a perfect *hypothetical* twin, as the economist has the ability to construct the hypothetical to mirror the related party transaction at issue. In the second step of the analysis—using arm's length comparables to determine how the hypothetical transaction would be priced—it, however, may not be possible to locate a perfect twin (exact comparable) among actual transaction subject to market forces. This is addressed in Chapter IV and later in this chapter.

⁴⁰ As detailed in Section E below, this discussion could also be made (in opposite directions) with the guarantor.

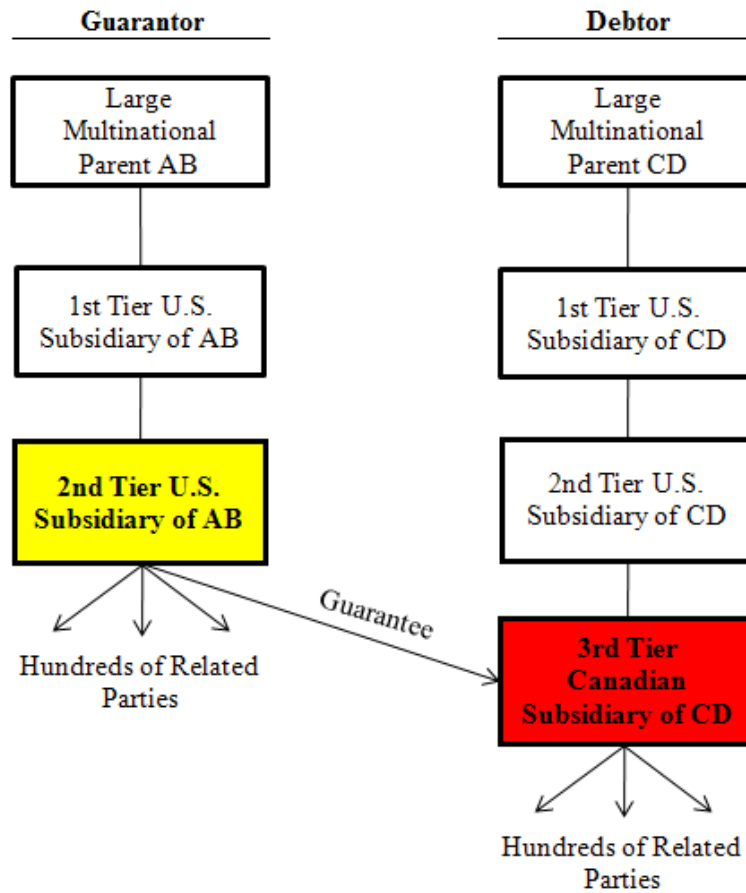
⁴¹ Although significant for both entities, this issue would be particularly important for GE CAPITAL. That is, its non-GE transactions/operations would only represent a small portion of its total operations. That is, GE CAPITAL without use of the GE name and/or relationships within the GE family would be quite different from the company as it actually exists. For example, in 2002, Standard & Poor's granted a good credit rating to GE CAPITAL despite its high leverage partially due to its: (a) ownership by GE COMPANY; and (b) its global business diversity. The latter, of course, was often conducted through related parties like GE CANADA. Standard & Poor's. (18 April 2002). “General Electric Capital Corp.”, p. 11.

50. The hypothetical guarantor would occupy a position within the first of these multinationals (“AB”), equivalent to GE CAPITAL’s position within GE COMPANY’s organizational structure. In that sense, the guarantor would: (a) own more than a dozen entities directly; (b) have common ownership with hundreds of other entities; (c) enjoy certain rights to use the AB name; etc.

51. Following similar logic, the debtor would operate as a subsidiary within multinational “CD”—occupying an equivalent position to GE CANADA within the GE family’s organizational structure. See **Table 7**. The hypothetical debtor would own several entities within the CD family, and be related to hundreds of other entities via common ownership by the CD parent.⁴² See **Tables 6 & 7**.

⁴² Hypothetical multinationals AB and CD would also have the financial results, market value/credit ratings, reputation, etc. consistent with GE COMPANY.

Table 7: Appropriate Hypothetical Construct with Guarantor and Debtor as Subsidiaries of Two (Different) Large Multinational Corporations

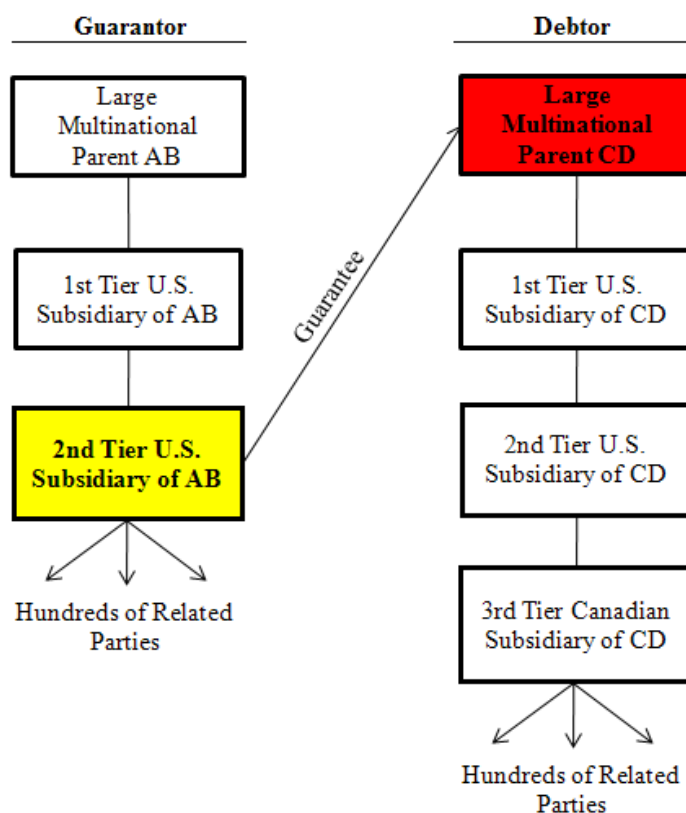


52. The tables and discussions above stress the importance of retaining the existing organizational structures when defining the hypothetical transactions to price. Keeping this same structure assures that the comparables chosen—to match with the hypothetical in the valuation step of the transfer pricing process—will be closer matches to the dynamics of the actual transaction at issue at arm’s length. This process will lead to a more reliable result than one in which valuation methods—and their associated comparables/benchmarks—are targeted to an organizational structure *different* from the transaction at issue. In this sense, organizational structure is one of several transaction characteristics that should be replicated in the hypothetical transaction to assure reliability and completeness of the analysis.

E. Distortions from Changes in Organizational Structure

53. Changes in the structure from the appropriate hypothetical construct can distort the dynamics and potentially diminish the reliability of the transfer pricing valuation. For example, the hypothetical debtor’s bargaining power might change if the debtor’s place within the “CD” multinational company moved from being a subsidiary of the parent to being the parent itself. That is, the CD parent would not likely benefit as much from a guarantee as a subsidiary would because the parent would have *direct and explicit* access to more capital and assets than its subsidiary. See **Table 8**.

Table 8: Inappropriate Hypothetical With Debtor as the Multinational Parent



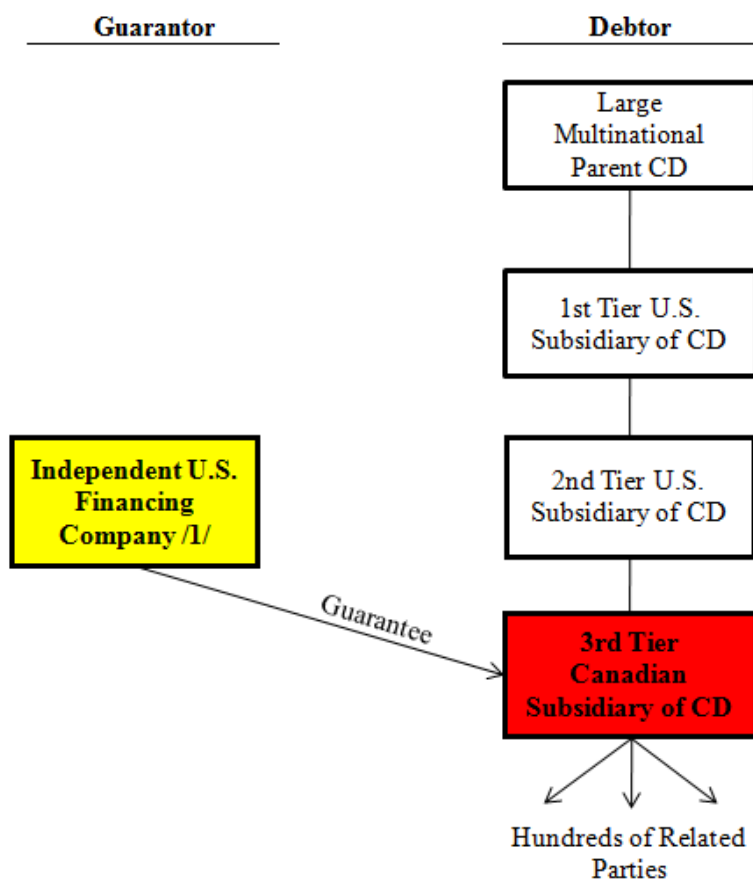
54. The strategic considerations might also change if the guarantor is assumed to be an independent company, as opposed to being a subsidiary of the large hypothetical multinational company, AB. See **Table 9**. For example, it would not have an internal network of hundreds of related companies and it could not use the well-known name of the multinational company in its operations. Similarly, it would not have any implicit or explicit support from a parent company. As such, its guarantee might be less valuable in the marketplace (than as part of multinational,

AB), all else being equal. That is, ratings companies consider the financial viability of an ultimate parent like GE COMPANY when rating subsidiaries like GE CAPITAL:

(from Standard & Poor's) The strong support [of GE COMPANY] continues to provide stability to the current ratings.⁴³

(from Moody's) [GE CAPITAL's] ratings consider a host of factors with the implicit and explicit support from its parent, [GE COMPANY] as the most important factor.⁴⁴

Table 9: Inappropriate Hypothetical With Independent Guarantor



Note:
/1/: No related parties.

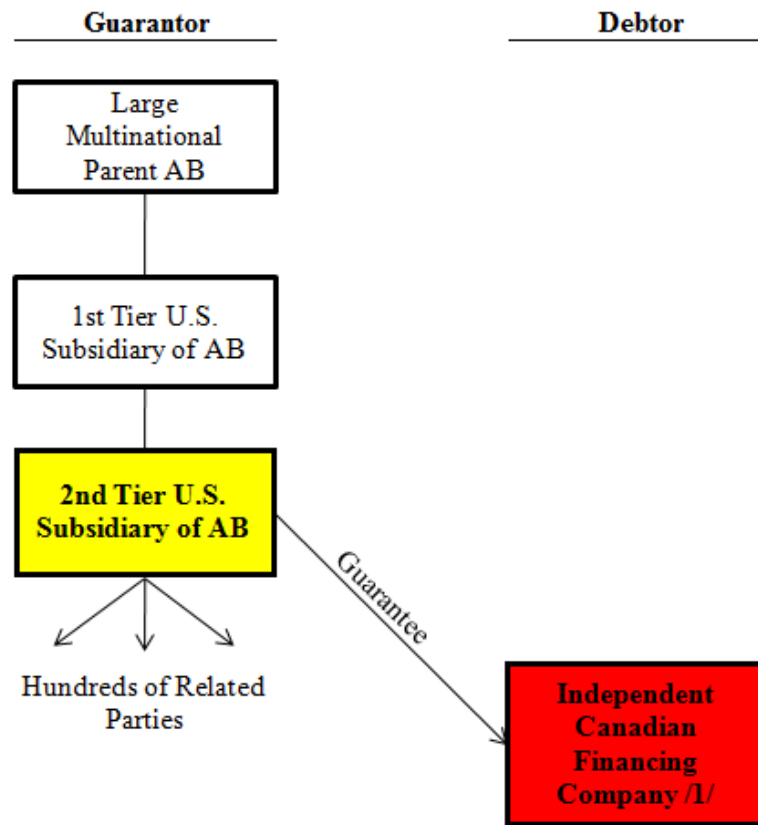
⁴³ Standard & Poor's. (18 April 2002). "General Electric Capital Corp," p. 5.

⁴⁴ Moody's Investors Service. (April 2003). "General Electric Capital Corporation," p. 1.

55. This issue is, of course, not restricted to financial/guarantee issues in transfer pricing, as recasting a subsidiary as an independent company (not related to or transacting with entities within its multinational group) can have the potential to create redundancies and inconsistencies in many circumstances. For example, a subsidiary company may look very different when one *does not consider* any of its transactions with related parties in defining the hypothetical transaction. This can be demonstrated if, for example, McDonald's acquired Burger King. A Burger King franchisee would derive relatively little value from receiving access to the McDonald's name if it was already using (and paying for) the Burger King name. However, if the franchisee's organizational structure was altered to assume the hypothetical franchisee was an independent operation with no name or relationships, the resulting company would be a nameless fast food operation. Such a company might be willing to pay a significant price for the use of the McDonald's name. In such a case, the transfer pricing conclusion would have a franchisee essentially paying for both the McDonald's and Burger King names despite the fact that it could only use one.

56. Similar to **Table 9** above, the strategic market forces that would exist between GE CAPITAL and GE CANADA at arm's length would also be distorted if the hypothetical construct forced the debtor to operate *independently of* a multinational corporation. As an independent operation, the hypothetical debtor would not have the rights to the multinational name and/or access to its network of related entities around the world that GE CANADA enjoyed. See **Table 10**.

Table 10: Inappropriate Hypothetical With Independent Debtor



Note:
/1/: No related parties.

57. Generally, *any* organizational structural changes have the potential to create differences between the actual transaction at issue and the hypothetical transaction targeted for valuation. There are hundreds of combinations of potential changes that could be made to the structures of the guarantor and the debtor. No one deviation from the actual organizational structure would be appropriate for the hypothetical construct,⁴⁵ as they would each be defining a transaction that is *not* the same as the related transaction at arm's length.

58. These, or other, changes to the organizational structure in the actual transaction could potentially alter the resulting arm's length guarantee fee valuations. With multiple ways to (inappropriately) distort the organizational structure, the resulting calculated transfer price could have multiple values. The potential to compute multiple values for the guarantee fees simply

⁴⁵ That is, except that the transacting parties would not be part of the same multinational organization.

provides one additional reason to *target* the hypothetical transaction's characteristics to be as similar to the actual transaction's (except for being related parties) as possible.

F. Valuation Exercise

59. While the definition/creation of the hypothetical construct—that resembles the actual transaction in all characteristics but the common ownership of debtor and guarantor—is an important first step in this valuation analysis, the mechanics of valuing such a hypothetical transaction would not be trivial. In this case, once the hypothetical construct has been created to largely align with the characteristics in the related party transaction, the valuation exercise would be highly dependent on data availability. In that sense, the valuation exercise would search for and assess arm's length data that would help illuminate the expectation of arm's length fees associated with these guarantees. The search for data would likely include:

- Guarantees charged in similar arm's length situations where the guarantor and debtor had the characteristics described in the hypothetical construct. To the degree the arm's length transactions' characteristics differed from the hypothetical construct, the ability to adjust for such differences would potentially be relevant to their applicability.
- The difference in corporate debt ratings (and the resulting interest rates) of companies with similar characteristics to the guarantor and debtor in the hypothetical construct described above. To the degree such ratings are not publicly available, one could potentially compute the ratings from publicly available (and commonly used) formulas.^{46, 47} The differences (if any) in interest rates received by these types of companies would potentially help establish a bargaining range between an independent guarantor and debtor.⁴⁸
- Profitability of independent companies in similar lines of business may provide some guidance (and/or test of reasonableness) as to the profits that would accrue to companies paying (or receiving) arm's length guarantees. How such profits should be measured (*e.g.*, operating profit, EBIT, pre-tax

⁴⁶ This exercise is potentially complicated by the treatment of GE CANADA's guarantee fees reported in its financial statements. For example, GE CANADA would be under-reporting its profit if it overpaid its guarantee fees (and vice versa).

⁴⁷ As with any method, accuracy would be important in this approach. This would include, for example, the likelihood of the formula/process resulting in the correct debt rating.

⁴⁸ For a more detailed discussion of bargaining power/range, see Friedman, James W. (1986). Game Theory with Applications to Economics. Oxford University Press: New York.

profit, etc.) and in relation to what financial figure (*e.g.*, sales, assets, equity, operating expenses, etc.) would potentially require further analysis.

APPENDICES

APPENDIX A



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EDUCATION

The Wharton School of the University of Pennsylvania, Philadelphia, PA

- Ph.D., Applied Economics (1993)
- M.A., Applied Economics (1991)

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- B.A., Applied Mathematics and Economics (1988)

PRESENT POSITION

PRECISION ECONOMICS, LLC, Washington, DC, 2001 - present

President and CEO

- Prepared more than 250 transfer pricing reports for taxpayers, the IRS, the Australian Taxation Office, and other tax authorities on a variety of issues, including tangible property, cost sharing, intangible property, intercompany loans, guarantee fees, and service fees.
- Served as a lead transfer pricing economic expert for the IRS in the largest transfer pricing dispute and settlement on record, GlaxoSmithKline Holdings (Americas) v. Commissioner of Internal Revenue, in which Glaxo paid \$3.4 billion.
- Served as an economic expert witness in the first major transfer pricing litigation in Australia--providing direct and cross examination testimony in support of a written expert report in Roche Products Pty. Ltd. vs. Federal Commissioner of Taxation.
- Provided testimony and economic reports involving catfish, various steel products, and pineapples in hearings before the U.S. International Trade Commission.
- Determined lost sales and profits to a retailer damaged by the 9/11 disaster, in an expert report and in oral testimony before an arbitration panel.
- Provided written and oral expert valuation testimony in U.S. Tax Court involving minority interests in a privately held publishing business.
- Submitted an economic expert report and provided testimony in an intellectual property and business valuation dispute before Delaware Chancery Court.
- Submitted economic expert witness affidavits in investor class action litigation involving the specialists of the New York Stock Exchange.

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BRIAN C. BECKER, Ph.D.

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BRIAN C. BECKER, Ph.D.

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BRIAN C. BECKER, Ph.D.

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- 2) “The Economics of Cost Sharing Buy-Ins: Questions and Answers,” *Tax Management Transfer Pricing Report*, Vol. 16, No. 24, April 24, 2008, pp. 950-953.
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- 4) “An Examination of Goodwill Valuation Methodologies,” *Corporate Governance Advisor*, Vol. 10, No. 4, July/August 2002, pp. 35-40 (with M. Riedy and K. Sperduto).
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- 8) “Further Thoughts on Cost Sharing Buy-Ins: A Review of the Market Capitalization and Declining Royalty Methods,” *Tax Management Transfer Pricing Report*, Vol. 10, No. 6, July 11, 2001, pp. 195-197.
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- 14) "Using Average Historical Data for Risk Premium Estimates: Arithmetic Mean, Geometric Mean, or Something Else?," *Business Valuation Review*, December 1998, Vol. 17, No. 4, pp. 136-140 (with I. Gray).
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- 19) "Minority Interests in Market Valuation: An Adjustment Procedure," *Business Valuation Review*, Volume 16, Number 1, March 1997, pp. 27-31.
- 20) "Capital Adjustments: A Short Overview," *Tax Management Transfer Pricing Report*, Vol. 5, No. 19, January 29, 1997, pp. 613-619.
- 21) "Multiple Approaches to Valuation: The Use of Sensitivity Analysis," *Business Valuation Review*, Volume 15, Number 4, December 1996, pp. 157-160.
- 22) "The Robin Hood Bias: A Study of Biased Damage Awards," *The Journal of Forensic Economics*, Volume 9, No. 3, Fall 1996, pp. 249-259.
- 23) "Three Technical Aspects of Transfer Pricing Practice: Distinguishing Methods, Using Statistical Ranges, and Developing Data Sets," *Tax Management Transfer Pricing Report*, Vol. 5, No. 4, June 19, 1996, pp. 97-103.
- 24) "The Final Transfer Pricing Regulations: The More Things Change, the More they Stay the Same," *Tax Notes*, Volume 64, #4, pp. 507-523, 1994 (with G. Carlson, et. al.).
- 25) "Philadelphia's Luxury Hotels: Boom or Bust?," *The Cornell Hotel and Restaurant Administration Quarterly*, Volume 33, #2, pp. 33-42, 1992.

PROFESSIONAL SEMINARS

- "Economic Aspects of Transfer Pricing Principles," Speaker, CITE Conference on U.S. Transfer Pricing Planning and Controversies, Chicago, Illinois, November 2-3, 2009 (forthcoming).
- "Fundamentals of Transfer Pricing," Conference Chair, IIR Seminar, London, UK, October 29, 2008.
- "Fundamentals of Transfer Pricing," Speaker on Transfer Pricing Methods, IIR Seminar, London, UK, June 11, 2008.
- "Transfer Pricing," Guest Lecturer at The George Washington University Law School, March 26, 2008.
- "Economics of Private Student Loans," Speaker on the 2008 National Council of Higher Education Loan Programs Leadership Conference: As the Dust Settles, Sarasota, FL, January 9, 2008.
- "Economists in Transfer Pricing: Intangibles, Audits, and APAs," Council for International Tax Education, Inc.: U.S. Transfer Pricing Planning and Controversies, Houston, TX, October 15, 2007.
- "New IRS Rules for Transfer Pricing of Services," Strafford Publications Teleconference Speaker on Methods and Services Sharing Agreements, July 10, 2007.



BRIAN C. BECKER, Ph.D.

“New IRS Rules for Transfer Pricing of Services,” Strafford Publications Teleconference Speaker on Methods and Services Sharing Agreements, May 8, 2007.

“Economists in Transfer Pricing: Intangibles, Audits, and APAs,” Council for International Tax Education, Inc.: U.S. Transfer Pricing Planning and Controversies, Washington, DC, April 23, 2007.

“Profitability and R&D for PhRMA,” Pharmaceutical Research and Manufacturers of America Conference, Charlottesville, VA, January 26, 2007.

“Economics of Mass Tort: Lead Paint,” Gerson Lehrman Group Seminar, New York, NY, November 16, 2005.

“Understanding the Issues Involved in the Valuation of Intangibles,” Transfer Pricing: Best Practices for Managing the Corporate Transfer Pricing Function, Infonex Seminar, San Francisco, CA, October 27, 2005.

“Maximizing Revenue, Minimizing Taxpayer Burden,” Emcee and Speaker for Discussion of “Revenue Matters,” National Press Club, Washington, DC, June 7, 2005.

“Intangible Valuation in Transfer Pricing,” Transfer Pricing Roundtable: Best in Class Practices for Companies, Infonex Seminar, New York, NY, May 25, 2005.

“Transfer Pricing Workshop,” Workshop Chair and Speaker, IIR Ltd., London, UK, April 25, 2005.

“The Steel Industry: An Automotive Supplier Perspective,” National Press Club, Washington, DC, February 16, 2005 (with Kevin Hassett.)

“Probability and Statistics,” Digital Sandbox Risk Analysis Seminar Series, Reston, Virginia, October 14, 2004.

“The Economics of Transfer Pricing: Independent Arm’s Length Analysis,” Council for International Tax Education: U.S. Transfer Pricing Planning & Controversies, New York, NY, August 16, 2004.

“Transfer Pricing Workshop,” Workshop Chair and Speaker, IIR Ltd., London, UK, April 21, 2004.

“Economists in Transfer Pricing: Independence, Methodologies, and Case Study,” Council for International Tax Education: U.S. Transfer Pricing 101, New York, NY, February 23, 2004.

“Profitability Analysis of NYSE Trading Specialists,” American Enterprise Institute Seminar Series, Washington, DC, October 8, 2003.

“Economists in Transfer Pricing: Independence, Cost Sharing, and CPM Volume Effects,” Council for International Tax Education: U.S. Transfer Pricing Planning & Compliance, New York, NY, August 18, 2003.

“Economists in Transfer Pricing: Profit Splits, Volume Effects, Cost Sharing, and Real Options,” Council for International Tax Education: U.S. Transfer Pricing Planning & Compliance, Washington, DC, May 6, 2003.

“Economists in Transfer Pricing: Profit Splits, Volume Effects, Cost Sharing, and Real Options,” Council for International Tax Education: U.S. Transfer Pricing Planning & Compliance, Dallas, TX, March 24, 2003.

“Topics in Transfer Pricing and Valuation,” Conference Chair, Discussion Topics “Cost Sharing Buy-In Valuations” and “Volume Effects of Intangibles,” Internal Revenue Service, Washington, DC, December 9-10, 2002.

“Economists in Transfer Pricing: Cost Sharing and Real Options,” Council for International Tax Education: U.S. Transfer Pricing Planning & Compliance, New York, NY, September 23, 2002.



BRIAN C. BECKER, Ph.D.

“Valuation of Intangible Property and Cost Sharing Arrangements,” Economist Group of the Internal Revenue Service, San Francisco, CA, June 25, 2002.

“Valuation of Intangible Property and Cost Sharing Arrangements,” Southeast Region of Internal Revenue Service, Atlanta, GA, May 10, 2002.

“Economists in Transfer Pricing: CPM and Cost Sharing,” Council for International Tax Education: U.S. Transfer Pricing Planning & Compliance, Washington, DC, May 6-7, 2002.

“Pricing Cost Sharing Buy-Ins and Other Intercompany Transfers,” Council for International Tax Education: U.S. Transfer Pricing Planning & Compliance, New York, NY, November 15-16, 2001.

“Pricing Cost Sharing Buy-Ins and Other Intercompany Transfers,” ATLAS Intermediate U.S. International Tax Update, Cleveland, Ohio, November 5, 2001.

“Cost Sharing Buy-Ins: Market Capitalization, Declining Royalty, and Other Methods,” Internal Revenue Service Annual Economist Convention, Washington, DC, July 25, 2001.

“The Relative Values of Early and Late Stage Research & Development,” presentation to Shaw Pittman, McLean, Virginia, March 28, 2001.

“Valuation Concepts in Family Limited Partnerships,” two hour presentation to Internal Revenue Service Northeast Engineers, Fort Monmouth, New Jersey, August 30, 2000.

“The Discounted Cash Flow Method and Other Valuation Concepts,” two hour presentation to IRS Kansas and Missouri District Estate & Gift Tax attorneys and managers, Kansas City, Kansas, October 4, 1999.

“The Discounted Cash Flow Method and Other Valuation Concepts,” presentation to IRS New York District Estate & Gift Tax attorneys and managers, New York, NY, August 16, 1999.

“Business Valuation,” national closed circuit televised broadcast for Internal Revenue Service Estate Tax Agents, September 23, 1997 (with J. Murphy).

“Valuation and Finance Principles Applied to Transfer Pricing,” a presentation to IRS and Treasury Department economists, Washington, DC, September 11, 1997 (with T. Reichert).

“The Peculiar Market for Commercial Property: An Economically Irrational Situation,” Southwestern Economics Association Annual Meeting, Houston, Texas, March 23, 1996.

“The Robin Hood Bias: A Study of Biased Damage Awards,” Southwestern Economics Association Annual Meeting, Houston, Texas, March 22, 1996.

“Quantifying Comparability for Applications in International Trade and Intercompany Transfer Pricing: The Weighted Distance Method of Analyzing Comparability,” Southwestern Economics Association Annual Meeting, Houston, Texas, March 21, 1996.

“Some Economic Issues in Transfer Pricing,” World Trade Institute: Tax Aspects of Intercompany Transfer Pricing, New York, NY, November 9-10, 1995.

MEDIA AND POPULAR PRESS

Bloomberg Television Interview, New York Stock Exchange Trading Specialists, October 8, 2003.

“Valuation Evaluation: How to Determine the Size of Interest in an LLC,” CFO.com, [Ask the Experts](#), August 31, 2001.



BRIAN C. BECKER, Ph.D.

CONSULTING EXPERIENCE

CRITERION FINANCE, L.L.C., Washington, DC, 2001 - 2001

Partner and Senior Vice President

- Authored expert reports and articles on various transfer pricing topics, including cost sharing buy-ins.
- Wrote an expert report and provided deposition testimony estimating damages to a music database corporation from the anti-competitive acts of a competitor.

LECG, LLC, Washington, DC, 1999 - 2001

Senior Managing Economist

- Served as an economic expert in a pharmaceutical patent dispute regarding the relative values of early and late stage compounds.
- Submitted expert report on the process used to determine financial viability for state certified transportation services.

ECONOMIC CONSULTING SERVICES INC., Washington, DC, 1995 - 1999

Senior Economist (promoted from Economist)

- Analyzed transfer prices for corporations in a number of industries, including oil products, pharmaceuticals, consumer products, and software.
- Testified as an economic expert in international trade matters before the Canadian International Trade Tribunal and the U.S. International Trade Commission.

ARTHUR ANDERSEN, L.L.P., Washington, DC, 1994 - 1995

Manager, Economics Group

- Directed more than 20 transfer pricing studies.
- Submitted an expert witness report on executive compensation in Tax Court.

DELOITTE & TOUCHE NATIONAL TAX OFFICE, Washington, DC, 1992 - 1994

Senior Consultant, Economics Group

- Performed numerous tax economic analyses, primarily transfer pricing.
- Participated in seminars regarding transfer pricing and international taxation.

PROFESSORIAL EXPERIENCE

THE JOHNS HOPKINS UNIVERSITY, Washington, DC, 1997 - 2002

Visiting Professor of Finance

- MBA level Corporate Finance and Derivative Security courses.



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MARYMOUNT UNIVERSITY, School of Business, Arlington, VA, 1993 - 1995
Visiting Professor of Statistics

- MBA and undergraduate level Statistics courses.

THE GEORGE WASHINGTON UNIVERSITY, School of Business and Policy Management,
Washington, DC, 1992 -1993
Visiting Professor of Management Science

- MBA level Productions and Operations Management course.

UNIVERSITY OF PENNSYLVANIA, The Wharton School, Decision Sciences Department,
Philadelphia, PA, 1988 - 1990
Instructor

- Undergraduate level Computer Applications courses.

March 2009

APPENDIX B

Appendix B: List of Documents Reviewed

1. Australian Taxation Office. (April 2005). "Applying the Arm's Length Principle." Retrieved 9 September 2008 from http://www.ato.gov.au/content/downloads/LBI_35285_Applying_arms_length_principle.pdf.
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28. Standard & Poor's. (18 April 2002). "General Electric Capital Corp."

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