

- 5 The original schedule proposed by the OECD may be found on page 15 of the OECD’s “Discussion Draft on Transfer Pricing Documentation and CbC (Country-by-Country) Reporting released on January 30, 2014. Information regarding specific intercompany transactions has been removed in later iterations of this schedule. Please see <http://www.oecd.org/tax/transfer-pricing/public-consultation-transfer-pricing-documentation.htm>
- 6 See Treas. Reg. §1.6662-6(d) and chapter V of the OECD *Transfer Pricing Guidelines* for a summary documentation. From a high level, transfer pricing documentation includes an explanation of how the business operates in each country under review; an overview of how business is affected by industry conditions; an assessment of the pricing or profitability of intercompany transactions under review; and selection and application of the “Best Method” or “Most Appropriate Method” for benchmarking intercompany transactions. In the U.S., transfer pricing documentation is not required, but in the event of a large transfer pricing adjustment, the IRS can issue 20% or 40% nondeductible penalty on the additional tax due. If a company does have documentation in place by the filing of the corporate tax return, penalties are not assessed. Other countries do require that transfer pricing documentation is prepared. Documentation reports of over a hundred pages are not uncommon.
- 7 Ernst & Young Global Transfer Pricing Surveys, *2013 Global Transfer Pricing Survey* (2013), [http://www.ey.com/Publication/vwLUAssets/Tax_Alert_2013_No_36/\\$FILE/TaxAlert2013No36.pdf](http://www.ey.com/Publication/vwLUAssets/Tax_Alert_2013_No_36/$FILE/TaxAlert2013No36.pdf)
- 8 In March 2013 alone, over 30 SEC listed companies disclosed new transfer pricing developments or disputes in public filings. These issues ranged from Yahoo! regarding a 2005 issue to a company with \$28 million in annual revenue.
- 9 I.e. on an “arm’s-length” basis as specified under Treas. Reg. §1.482 and the OECD Transfer Pricing Guidelines.
- 10 As an example, if a tax authority in Country B issues a transfer pricing adjustment raising taxable income, the company may not automatically reduce taxable income in Country A and request a refund for overpaying tax in Country A. The “Mutual Agreement Process” (“MAP”) specified in international tax authorities requires that governments negotiate over the amount of a transfer pricing adjustment before any tax refunds are granted – in this example, Country A. In other words, the MAP procedure is the only way to alleviate double taxation after a transfer pricing adjustment.
- 11 “United States: Danilack Says “No” to Indian APAs, Citing Backlog of 140 MAP Cases,” 21 Tax Mgmt. Trans. Pricing Rep. 962, 7 February 2013.
- 12 Bloomberg BNA Tax Management Transfer Pricing Report “Danilack: BEPS Forcing U.S. to Focus on Inbound Activity, Protecting Tax Base” May 9, 2014 http://news.bna.com/tmln/TMTRWB/split_display.adp?fedfid=46440433&vname=tmtrnot&fn=46440433&jd=46440433
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Section Member Profile: Frederick A. Acomb

Frederick A. Acomb, FCI Arb, is the International Dispute Resolution Section Chair at Miller Canfield. For more than twenty years, Acomb has devoted his practice to prosecuting and defending international arbitration and litigation matters for clients from all over the world. His work regularly takes him around the globe, and he has appeared before arbitration tribunals in multiple continents including Asia, Europe, and North America.

Another area of focus for Fred is the defense of sales commission disputes; he has defended over 70 of them as of this writing. As former general counsel to the firm, he has a unique perspective on client service that he endeavors to bring to every engagement.

Q. How do you define “international law”?

The body of law that governs the legal relations between parties from different nations.

Q. Why did you choose to work in international law (or a related field)?

I’d never been anywhere, and I wanted to see the world. Also, dealing with multiple legal systems and cultures is challenging, and keeps me interested in my job.



Frederick A. Acomb

Q. Where did you go to law school?

The University of California, Hastings College of the Law.

Q. What would you want people who know you professionally to know about you personally?

I have a terrific wife and five children, and they are the cornerstone of my life. I grew up well below the poverty level, and this informs my view of the world and my place in it. 🌍