

# Around the World

## United States

### Maruca Says Case Development Top Priority, Speaks to Challenges of Identifying Issues

**W**hile the Internal Revenue Service is in the process of developing its transfer pricing strategy, uncertainties remain in several areas, including tax positions, and case identification and development remain a priority, the Service's transfer pricing director said June 28.

In an interview with BNA Tax Management, Samuel Maruca, who became the IRS's first director of transfer pricing operations in May, said one of his chief areas of focus will be on the case development process and identifying those cases "that represent a genuine threat to the tax base."

At a recent BNA and Baker & McKenzie transfer pricing conference in Washington, D.C., Maruca spoke to the need for the IRS to "produce some winners" to improve its credibility in the transfer pricing area (20 *Transfer Pricing Report* 152, 6/16/11).

Maruca's full remarks to BNA Tax Management appear in the Interview section of this issue.

**Identifying Transactions.** After being in office for only a few weeks, Maruca says he has developed an agenda outlining his priorities.

An important item "on the to-do list" is an assessment of the techniques currently in use for identifying transactions of interest from a transfer pricing perspective, he said, adding, "Another aspect is the extent to which UTP filings will prove useful."

The IRS in September 2010 adopted a schedule requiring large and mid-sized businesses to report their uncertain tax positions under a five-year phase-in plan. The largest corporations—those with \$100 million or more in assets—were required to file for tax years beginning with 2010; those with \$50 million in assets will begin filing two years later; and those with \$10 million in assets will begin filing two years after that. The final schedule, rather than assigning a specific maximum adjustment, requires a taxpayer to rank its uncertain tax positions on a scale of highest to lowest based on the size of the position (19 *Transfer Pricing Report* 655, 10/7/10).

As far as litigation is concerned, Maruca said, "the goal is to pursue only those matters in which we can make a strong case for meaningful adjustments or legal principles we'd like to establish."

Meanwhile, a 2007 strategy for identifying issues of particular interest to the IRS—the "industry issue focus approach," which depended on the involvement of issue management teams—may soon be obsolete, at least in the transfer pricing area, according to Maruca.

"I believe you'll see the transfer pricing practice replace the IMTs in the transfer pricing area. It doesn't

make sense to have a program like the one we're building and IMTs covering the same turf," the official said.

**Pilot Program.** According to Maruca, five or six cases presently in the transfer pricing practice pilot program have raised a variety of issues in a range of industries. "The work on one of those cases was recently completed and the case closed successfully," he added.

Under the pilot, announced by IRS Deputy Commissioner (International) Michael Danilack in April 2010 as part of his transfer pricing strategy, the IRS identified a handful of cases to audit using its best international examiners, technical advisers, and economists (18 *Transfer Pricing Report* 1215, 4/22/10).

As the pilot program evolves into the permanent transfer pricing practice, Maruca said the IRS "will need to carefully manage the change from a more 'siloed' approach to a flatter, expertise-based approach."

**Maintaining a Global Perspective.** Danilack has said the realignment of the IRS's international work will employ initiatives that are global, rather than merely U.S. international, in scope.

Maruca said he believes that the distinction between global and U.S. international is significant.

"We have to remember that the rest of the world is watching us closely. It is very important that we take principled, well-grounded, and clearly articulated approaches to the difficult pricing issues, so that we are in a position to ask that our treaty partners do the same. Otherwise we will be in a race to the bottom," Maruca said.

**Challenges Ahead.** Among the several challenges in the foreseeable future, Maruca noted managing the centralization process. Success, he said, will depend on getting "the highest and best use out of all the players, whether they be computer audit specialists, generalist examiners, financial experts, or transfer pricing experts. And we will have to roll this out mindful of our budget constraints."

In the spirit of "getting the best use out of all of the players," Maruca noted that training is an essential component.

Knowing the rules is only a part of the process, he said. "We need to be sure that our analysts, regardless of where they sit, understand and appreciate the larger tax context in which the transfer pricing rules operate," Maruca said.

"We want everyone to appreciate how accounting for taxes affects the behavior of multinational taxpayers," he said. In addition, "we need to bolster our expertise in the mechanics of case development, so that we are working the right cases the right way. I think that involves understanding the facts on the ground first, before exploring for comparables or selecting the best method," Maruca said.

**Scope.** As for the scope of the transfer pricing practice, Maruca said that in some cases, such as more routine ones, the IRS will merely provide advice, while in others it will play a more active role in case development. The second scenario likely will be more common, he said.

“I expect that in the vast majority of cases we touch, the transfer pricing practice team member will be working shoulder to shoulder with the field team,” Maruca said.

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