

Lead Report

Changes to IRS APA Program Receive Mix of Praise, Concern

The Internal Revenue Service's plan to relocate its Advance Pricing Agreement Program to an office in the Large Business and International Division has received a mix of optimism and concern among private practitioners.

Under the planned relocation, efficiency and increased accessibility are expected to be key advantages, while some transitional details concern practitioners as Service employees undergo training for new job responsibilities.

As announced July 27, the program will be combined with the IRS's competent authority function to form the Advance Pricing and Mutual Agreement (APMA) program and will be under the IRS transfer pricing director. As part of the restructuring, the competent authority and international coordination functions also will be adjusted to come under a new position, the Assistant Deputy Commissioner (International) (20 *Transfer Pricing Report* 283, 7/28/11).

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GRAEME WOOD, PROCTER & GAMBLE

The new APA structure is designed to reduce the backlog of the agreements by expanding the resources devoted to them and by eliminating the hand-off between APA personnel, who were responsible for working with the taxpayer to develop the initial position in cases, and competent authority analysts, who then took that position and conducted the negotiations with the foreign government.

More Details to Come

IRS Transfer Pricing Director Samuel Maruca said Aug. 4 that the Service intends to maintain flexibility in the APA process. "We don't want any sort of structure that's a straightjacket," he said.

While the relocation "is very much a work in progress" and decisions about specific procedures have not been made in detail, Maruca said only one position paper will be prepared under the new process. He also confirmed that the written procedures for competent authority and APA cases would need to be revised, and indicated that APMA may be organized by geographic location.

Involvement of ACC(I)

Asked about the role of Associate Chief Counsel (International), which has had sign-off authority in APAs,

Maruca said that office "has been and will continue to be a true partner in the process" but may no longer be required to approve every case.

"More routine cases may not need sign-off, but in the case of matters that we identify as strategically significant . . . we would envision not just collaboration but ACC(I) approval," he said. "We want to run transfer pricing as one integrated program."

The IRS is looking to leverage its transfer pricing experience—whether in APAs, double tax cases, or examinations—across the practice, Maruca said. "ACC(I) interacts with all three of those components and we will continue to maintain a close working relationship," he said.

Improved Processing Times

Robert Cole with Alston & Bird LLP in Washington, D.C., said he remains hopeful that processing times will improve under the program's relocation.

"By using the personnel more efficiently, hopefully you won't have to wait so long," Cole said Aug. 1, noting that previously wait times had exceeded six months or more. Darrin Litsky with Deloitte Tax, LLP in New York, N.Y., agreed with Cole, noting that he also expects efficiency to improve.

"If they have more resources they should be able to process cases in a more timely manner," Litsky said on Aug. 1.

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Graeme Wood, director of transfer pricing in the global taxes division of Cincinnati-based Procter & Gamble Co., agreed. "I think it will bring some clarity for taxpayers that there is one end-to-end body," he told BNA Tax Management Aug. 1.

Transitional Challenges

Litsky said that while he is optimistic, he also remains realistic that the change may create some problems, at least initially.

"We can't expect it to be a purely seamless transition. There is training that needs to be done on both

sides, as both sides are taking on new job responsibilities,” he said.

Cole agreed. Under the current system, he said, “the roles have been pretty well worked out” between APA and competent authority analysts.

“I think there is going to be a process to know the other role they are going to play,” Cole said. A particular concern, he added, is the flexibility of former APA team leaders in negotiations with their foreign counterparts.

“They may be less used to compromising [than competent authority analysts] and that is going to be a learning curve for them,” he said.

Accessibility

David Bowen with Grant Thornton in Washington, D.C., said Aug. 2 that he is worried about practical access to the program for small and medium-sized multinationals.

“What is distressing has nothing to do with the program’s internal location within the IRS, but instead, deals with the lack of practical access to the program for mid-cap and similar multinationals. The time and expense of using the program renders it inaccessible for any but the largest of companies,” Bowen said. “Despite this need, the program now moves to an internal institution whose name begins with ‘Large.’ ”

But Maruca said he did not expect the move to have an adverse effect on smaller companies. In fact, he said it is possible that the increase in size and resources could have the “spillover effect” of making APAs more affordable for smaller companies.

BY STEVE SCHUSTER