

Pricing Knowledge Network

Focusing on the impact of major intercompany pricing issues

July 28, 2011

PKN Alert United States - IRS moves APA program out of Chief Counsel's office; creates new Advance Pricing and Mutual Agreement Program

A Transfer Pricing
Publication

On July 27, 2011, the Internal Revenue Service (IRS) announced that the Advance Pricing Agreement (APA) Program and the Tax Treaty Office staff who handle Mutual Agreement Procedure (MAP) transfer pricing cases, will be combined into one office in the Large Business & International (LB&I) Division's international operation. As a result, the APA Program will move from the IRS Office of Chief Counsel to LB&I. The new "Advance Pricing and Mutual Agreement Program" will be directed by one executive, and the office will be under the jurisdiction of the new IRS Transfer Pricing Director, Sam Maruca.

The APA Program, which negotiates and executes advance pricing agreements for taxpayers to resolve transfer pricing issues prospectively, historically has worked in combination with the Tax Treaty Office to negotiate and execute bilateral APAs. In the context of bilateral APAs, the APA Office developed the support for the IRS's initial negotiating position, while the Tax Treaty Office primarily negotiated the final position with U.S. treaty partners. Recently, the Tax Treaty Office has begun negotiating bilateral APAs from start to finish to assist with the increasing backlog of



APA requests in the APA Program. The realignment is designed to increase staffing available for the APA Program and create efficiencies with the APA process. The realignment also signifies the importance the IRS Commissioner has assigned to international tax administration.

In addition, the IRS announced a new position, the Assistant Deputy Commissioner (International), which will head the competent authority and international coordination functions to facilitate IRS coordination with U.S. treaty partners on non-transfer pricing matters. The new Assistant Deputy Commissioner (International) will be responsible for overseeing the IRS Exchange of Information program, IRS participation in JITSIC¹ and OECD, and pursuing competent authority agreements with U.S. treaty partners on non-transfer pricing issues. The new Assistant Deputy Commissioner (International) will also be responsible for managing the activities of the IRS Tax Attachés and providing support for negotiating tax treaties and tax information exchange agreements.

Observation:

Combining the APA Program and the MAP into one office with increased staffing should allow the IRS to work through its very large backlog of pending APA requests more efficiently. The process for negotiating and executing bilateral APA's should become more streamlined by assigning the same personnel to negotiate the terms of a bilateral APA with a taxpayer and with a U.S. treaty partner, instead of the prior process which required a "hand-off" between the APA Office and the Tax Treaty Office. In the longer-term, this realignment should place the IRS in a stronger position to address the continuing surge in the number of APA requests filed and the increasing complexity of these requests, and perhaps facilitate more consistency between the initial negotiating positions put forth by the IRS and the final positions negotiated with U.S. treaty partners.

More details regarding the realignment are anticipated, including information on the internal organizational structure of the new "Advance Pricing and Mutual Agreement Program."

¹ JITSIC is the Joint International Tax Shelter Information Center, a forum for certain governments to share information about cross-border "tax shelters" and other international tax administration issues.

For more information, please do not hesitate to contact:

<i>Rich Barrett</i>	<i>+1 202 414 1480</i>	<i>richard.f.barrett@us.pwc.com</i>
<i>Greg Ossi</i>	<i>+1 202 414 1409</i>	<i>greg.ossi@us.pwc.com</i>
<i>Barry Shott</i>	<i>+1 646 471 1288</i>	<i>barry.shott@us.pwc.com</i>
<i>Jana Lessne</i>	<i>+1 202 414 1635</i>	<i>jana.lessne@us.pwc.com</i>
<i>Joseph Dewald</i>	<i>+1 202 346 5079</i>	<i>joseph.p.dewald@us.pwc.com</i>

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