Comments by

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at

Public Hearing on

Advance Pricing Agreement Program

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My name is Les Ezrati. I am the Senior Vice President of Tax for Hewlett-Packard Company in Palo Alto, California.

HP Experience with the APA Program

- HP has entered into six APAs, 3 unilateral and 3 bilateral.
- Our most recent unilateral APA covers transactions between the US and more than 50 countries.
- The total yearly dollar value of the transactions covered exceeds $40-50 billion.
- The matters resolved by these APAs have been areas of dispute between HP and the IRS for over 30 years.

The APA program provides significant benefits to the Federal Government

- Overall less resources are devoted to intercompany pricing issues.
- The program generates more revenue than a field audit and it generates that revenue much sooner.
- The program enhances the expertise in intercompany pricing of IRS field personnel. This expertise is also more current as it focuses on transfer pricing practices of today rather than those of past years. This expertise can be extended to audits of other taxpayers. In effect, the APA program provides an excellent training program for the field.
- Despite what others have said about this, every APA I have participated in has taken place in an environment of cooperation and professionalism. This serves to build a positive relationship between the field and the taxpayer that will extend for the entire audit and later audits.
- Provides opportunity for National Office, Exam, and specialist Agents to work together as a team over an extended period of time, while dealing with the taxpayer in a non-contentious environment.

The APA program provides significant benefits to taxpayers

- In a Sarbanes-Oxley world, stability and certainty can often be more valuable than tax savings. HP's APA removes a significant amount of time from our financial accounting audit and Sarbanes-Oxley work.
- Less litigation costs. No matter how expensive the APA process is (and it really isn't that much) litigation will always be more expensive. APAs can also be done more with internal company resources that are dramatically less expensive than outside resources.
- For those taxpayers that have adopted a tax strategy based on cooperation with the IRS (some do this, some don't), the use of the APA program enhances this strategy.

Suggestions for Improvement

- Negotiating the APA

  a) Delegate issues. The entire IRS team does not have to understand, negotiate, or be part of the resolution of every issue. This will permit issues to be worked in parallel rather than serially.

  b) Keep reviewers in the loop. Preliminary decisions on major issues should be reviewed as they come up not at the end.

  c) Agree on scope early on. Get this decision reviewed and approved.

  d) Use examples to gain clarity and to illustrate decisions whether as part of the APA document or not.

  e) Consider using a mediator.

  f) Involve the taxpayer more closely in bilateral negotiations. The taxpayer should always be on-call while the two tax authorities are meeting. Factual matters can be quickly resolved by calling the taxpayer during the meeting rather than waiting.

- Streamlining the process

  a) Establish a workplan and stick to it. Advise the taxpayer if there will be delays.

  b) Use taxpayer resources to document decisions, draft language, draft review memorandum, and organize meetings.

  c) Make it clear who the decision makers are on both sides.

  d) Always schedule the next meeting at the current one, even if only to touch base and schedule the next meeting.

  e) Don't leave too much time between meetings.

  f) The IRS team should always meet after the meeting with the taxpayer is concluded to discuss open points, assign responsibilities, and even reach consensus while matters are fresh.

g) Ask the taxpayer to assign a program manager to the case. See attached.

h) Meet often. Monthly. Weekly, if needed.

i) Use telephone, web or video meetings.

j) Visit taxpayers non-U.S. sites early in the process. Take only the team members who need to attend.

k) Only invite actual team members to meetings.

l) Use an economist. One economist.

m) If an engineer won't help, don't use one.

n) Do not over emphasize pre-submission meetings. Nothing real happens until the APA request is submitted.

o) Permit e-mail communications.

- Facilitating compliance with the APA.

  a) Beef up the Annual Report. Specify in the Annual Report exactly what the Examination team will need to audit compliance with the APA.

  b) Document major points for the benefit of both sides in the future.

  c) Facilitate expedited APA amendments in the case of changed circumstances.

Critical Assumptions

- Rather than critical assumptions use pre-determined adjustments to accommodate specific types of changes. For example, if U.S. R&D spending is different than anticipated, the transfer pricing methodology would be adjusted to take this into account.

Consistency

- The APA program already fosters consistency as compared to the traditional audit process. By centralizing review in the APA office, transfer pricing methods and processes get a review for consistent treatment. Resolution of transfer pricing issues in Exam or even Appeals is not reviewed for consistency with other taxpayers. Litigation doesn't consider at all.
- Consistency between in-bound and out-bound transactions is critical.

APA Program Management
Role and Responsibilities

Act as a single point of contact and accountability for the overall success of the project

- Communication within and outside of the core team, what to communicate when and to whom
- Issues needing resolution are dealt with
- Keep the team focused on meeting the project, management and team needs and expectations

Manage the project scope, planning, and control change

- The goals of the project are well understood and agreed to and the project has some sort of formal launch
- Ensure objectives and tasks are well defined, owned and tracked
- Resources needed to meet the goals/deadlines are available and in budget
- Ensure appropriate project controls are in place such as Deliverable/Action Item and Agreement/Decision tracking
- Travel is planned as early as possible to deal with conflicting schedules

Manage risk to the project

- Roles and responsibilities of each participant is clear
- Manage a repository, and a back up, for all project documentation and communication
- Identify barriers/risks and ensure contingent plans are developed
- Deliverables are tracked for completion and escalated if going off-track for resolution
- Ensure built in flexibility to deal with issues quickly and efficiently
- Understand the environment within which the project is being managed

Meeting facilitation/management

- Meeting planning i.e., agenda and goal setting, time management, location
- Ensure conversations stay on track and are taken off-line to either resolve, or for a cooling-off period
- Help identify who will lead a conversation versus who will make decisions
- Desired decisions are made, issues are tracked, action items are assigned to owners
- Meeting attendance is appropriate to the topic
- Break out sessions are used for private conversations to mitigate conflict
- Weekly core team meeting management

Closing the project and Post Mortem

- All project documents are inventoried and archived
- What went well, what did not session conducted