

Case Analysis and Fact Development

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Agenda

- PRE-FILE
 - ORGANIZATION
 - DUE DILIGENCE
 - ANALYSIS
 - NEGOTIATION
 - DRAFTING

Pre-File

- Purpose of Pre-filing
- Anonymous or Named
- Requirement of Filing
- Pre-File Script
- Issues

Organization

- Forming the Team
 - APA Staff
 - Field Compliance Staff
 - Field Economist
 - LMSB Counsel
 - Appeals
 - Competent Authority

Team Building

- The Pep Talk
- The Buy-In
- The Pay Off
- The Responsibilities
- The Time Table

The Field and APA

- Differences between the APA Process and the Field Compliance Function
- Relationship of the Field to APA
- Success of the APA Program

Differences between the APA Process and the Field Compliance Function

- Taxpayer Motivation
- Taxpayer Behavior
- Areas of IRS Involved in Process
- Time to Complete
- Work Cycles
- Type of Work Product

Taxpayer Motivation

- APA – Taxpayer Perceives Benefits
 - Timely Process
 - Overall Compliance Cost Savings
 - Certainty
- Compliance – Taxpayer Perceives
 - Open Ended Process
 - High Compliance Costs
 - Uncertainty as to Final Outcome

Taxpayer Behavior

- APA
 - Voluntary Action
 - Relatively Full Disclosure
 - Responsive to APA Due Diligence
- Compliance Field Audit
 - Involuntary Action
 - Minimal Disclosure
 - Resists Answering IDRs
 - Summons Frequently Needed

Functions of IRS Involved in Process

- APA
 - APA – Chief Counsel International
 - LMSB (Domestic, International, Economists)
 - Appeals
 - LMSB Counsel
 - Competent Authority (Bilateral Cases)

- Compliance
 - LMSB (Domestic, International, Economists)
 - LMSB Counsel

Time to Complete

- APA
 - Unilateral Target – 1 Year to Completed APA
 - Bilateral Target – 9 Months to Negotiating Paper
 - Renewal Target – 6 Months to APA or Neg. Paper
 - Small Business Target – 6 Months to APA

- Field Compliance Audit
 - 18 Months to 2 Years to Complete Audit
 - Additional Time to Resolve in Appeals or Counsel

Time Cycles for Economic Work

- APA – Economic Analysis Occurs
 - Unilateral APA – Months 2 thru 10
 - Bilateral APA – Months 2 thru 8
 - Renewal – Months 2 thru 5
 - Small Business APA – Months 2 thru 5

- Field Compliance Audit
 - Various Months in 18 Month to 2 Year Target Period

APA Economic Work

- Transfer Pricing Work Only
- Read Detailed Submission Provided by Taxpayer
- Formulate Focused Questions in Due Diligence
- Digest Responsive Answers Provided by Taxpayer

- Perform Economic Analysis
- Write Brief Memos of Economic Conclusions with Supporting Detailed Tables
- Participate in Negotiating Settlements

Field Compliance Work

- Many Issues – Not only Transfer Pricing
- Issues are Defined as Audit Proceeds
- Taxpayer Resists Providing Information
- Time Consuming Process of Obtaining Information from the Taxpayer
- Difficulties in Performing Economic Work due to lack of Information from Taxpayer
- Time Consuming Detailed Written Economic Report Needed to Support Conclusions

Relationship of the Field Economist to APA

- The Field Economist Group Provide the Equivalent of 9 Full Time Economists to APA (APA has 4 Full Time Program Analysts Performing APA Economic Analysis - An Additional 3 will be Hired)
- The Field Economists have over 70 APA Cases Open in their Inventory as Compares with 200 Cases Open in the APA Program's Inventory
- Some APAs have both an APA Economist and a Field Economist. They work as Team Members.

Differing Inventory Levels (Due to Differing Work)

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| <ul style="list-style-type: none"> • <u>APA Program Analysts</u> <ul style="list-style-type: none"> – 10 to 30 Cases – Average 25 Cases – Average Closings 10 Annually | <ul style="list-style-type: none"> • <u>Field Economists</u> <ul style="list-style-type: none"> – 1 to 15 Cases – Average 4 to 7 Cases – Average Closings 3 to 4 Annually |
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Success of the APA Program

- Depends on the Timely Completion of APAs
- Depends on the Continued Use of Field Resources

Due Diligence

- Analysis of the Submission
- Questions to the Taxpayer

- The First Meeting
 - The Bipartisan Pep Talk
 - Submission Run Through
 - Case Plan & Schedule
- Site Visits
- Subsequent Meetings

APA Principles

- Open & Honest
- Principled Positions
- Supporting Economic/Financial Analysis
- Alternative Dispute Resolution
- Consistency – R Drive

APA Mantras

- Make Decisions and Move Cases
- Practical Solutions to Complex Transfer Pricing Issues

APA Players

- Branch Chief (Coach)
 - Coordinator
 - Reviewer
- Team Leader (Quarterback)
 - Organizer
 - Analyst
 - Negotiator
 - Drafter
- Economist/Financial Analyst (Fullback)
 - Analyst
 - Negotiator

Methods of Analysis

- CUP
- Resale Price
- Gross Profit
- Cost Plus
- Comparable Profit Method

- Profit Split
- Cost Sharing

Areas of Analysis

- Annual Reports
- Roll Backs
- APA Trigger
- Parent's Financials
- Comparable Analysis
- Converging Analysis
- Asset Intensity Adjustments

Annual Reports

- Consistently Low Performers
- Expectations versus Results
- Unforeseen Problems

Rollbacks

- APA Motivation
- Negotiation Issue – Field Issue
- Competent Authority Issue

Selection of Comparables

- Functions
- Contractual Terms
- Risks Borne
- Economic Conditions
- Property or Services

Negotiation

- Supported by Analysis
- Tempered by the Alternative Resolution Mode
- Influenced by Treaty Partner Positions

Drafting

- Due Diligence Questions
- Economic Analysis
- Meeting and File Memos
- Executive Memos & Recommended Negotiating Position Papers
- APA Contracts

Due Diligence Questions

- Produced by Team Members
- Edited by Team Leader
- Direct
- Focused
- Relevant
- Necessary
- Not Burdensome

Economic Analysis

- Tables and Short Memos
- Contain Screen Criteria
- Show Comparables
- Show Inter-quartile Range
- Show Time Frames
- Indicate whether Asset Intensified
- Compare to Taxpayer's Position
- Note Differences in Results from Taxpayer

Meeting & File Memos

- Create a Case History
- Highlight and Resolve Issues
- Show Meeting Agenda
- Document Case Progress

Executive Memos (EMs) and Recommended Negotiating Position Papers (RNPPs)

- EMs - Clearly States APA Terms and TPM
- RNPPs - Clearly Indicates Negotiating Position

- Both - Principal Historical Document
- Both - Shows Case Development
- RNPPs - Shared with the Taxpayer as limited by Competent Authority Concerns

APA Contracts

- Simple English
- Proper Limited Use of Critical Assumptions
- New Boiler Plate
- Enforceable
- Sharing Drafts