

The APA alternative — avoiding a transfer pricing audit

An idea worth considering | July 20, 2010

The Internal Revenue Service (IRS) and other taxing authorities around the world are increasing their enforcement capabilities specifically targeting transfer pricing. The IRS has funding to hire hundreds of international examiners, specialists and economists; has created a new Transfer Pricing Practice Group of experienced professionals within their Large and Mid-Size Business Division; and recently announced plans for a pilot program to conduct transfer pricing audits using its best examiners. The IRS will use this pilot program to train international examiners how to conduct a transfer pricing audit. Add to this a new proposed form for companies to file with their tax returns disclosing uncertain tax positions, and you can begin to sense the years of easy transfer pricing audits are over.



The APA alternative

Preparing contemporaneous documentation year after year may provide relief from penalties but doesn't stop the audit and the possibility of an adjustment. Why spend the company's money and get little in return when for almost the same cost of five years of documentation studies you can be certain the company's transfer pricing is appropriate in the United States and/or another jurisdiction and avoid the costly time and effort involved in defending an audit? After all, one of the concerns for considering an advanced pricing agreement or APA, in the past, was voluntarily providing information to the IRS. However, it looks like transparency is a reality with or without an APA. Why not be certain and avoid the adversarial and possibly detrimental audit and adjustment?

What is an APA?

An APA is an agreement between the taxpayer and the IRS (and another taxing jurisdiction in a bilateral APA) binding the taxpayer to a defined transfer pricing methodology and providing, in return, if the conditions of the agreement are satisfied, assurance the IRS will not challenge on audit the transactions covered under the agreement. An APA is generally entered into for a period of five years during which time the taxpayer merely files an annual report confirming its compliance

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with the APA. The covered transactions are not subject to audit and there is no need for transfer pricing documentation.

Is an APA the right approach?

Consider a pre-file meeting

Maybe it sounds appealing but you aren't quite convinced. Here is the real beauty. You can arrange a pre-file meeting with the APA office that is either named or anonymous. The pre-file meeting provides the opportunity to get input from the APA team about whether they agree preliminarily with the company's transfer pricing approach and, if not, what additional information might be necessary/important to include in an APA submission. For a bilateral APA the competent authority analyst also attends the meeting and can provide valuable insight about the relationship and potential for agreement with the foreign jurisdiction.

Grant Thornton can help

Companies must be prepared for the U.S. government's heightened interest in enforcing transfer pricing. The days of collecting transfer pricing documentation and putting it to the side are over. Instead, once an experienced international examiner, transfer pricing expert and/or economist reviews the documentation, there may be numerous requests for additional information. What you don't know is how onerous the requests might be and how significant the possible adjustment.

Grant Thornton's transfer pricing practice has specific, firsthand experience with the APA program, how it works, how to effectively and efficiently manage cases through the process, and how to achieve positive results. If you are looking for highly qualified transfer pricing professionals to address your questions regarding requesting an APA to avoid an audit, why not give us a call today?

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