

## **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)**

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