



Navigating the IDR Process

Effective Information Gathering





Front Matter Items

- ❖ The IRS Mission Statement
- ❖ 14 General Principles of Ethical Conduct for Federal Employees
- ❖ Your Rights as a Taxpayer





Objectives

- ❖ Describe the Information Gathering Process
- ❖ Describe the IDR Process
- ❖ Describe the Best Practices for Drafting IDR's
- ❖ Identify Taxpayer Noncompliance Responses to IDR's
- ❖ Describe Initial Transfer Pricing IDR Procedures
- ❖ Describe the IDR Enforcement Process



IDR Process: Introduction to Information Gathering (1 of 5)

- ❖ **Information Gathering is the most time consuming and resource intensive stage of an examination.**
 - Be sure to consult with the issue manager and team coordinator to map out an initial timeline of the audit. Refer to [IRM 4.46.3.8.1.3](#), Setting the Issue Timeline.
 - Always verify your statute expiration dates as early as possible.
 - Consult the Audit Plan to confirm all information



IDR Process: Introduction to Information Gathering (2 of 5)

- ❖ **There are many tools for information gathering – IDRs are one, and probably the primary, tool**
 - IDRs may be used to request relevant documents (transaction decks, contractual agreements, workpapers, etc.,)
 - IDRs should be used to confirm information in writing, which we will cover more later in the presentation
 - Some transactions may be best explained by requesting a walkthrough or presentation from the taxpayer
 - Additionally, you may also conduct interviews, tour the business site, determine a sampling technique, conduct balance sheet analysis, and analyze Schedules M-1, M-2, and M-3 (see [IRM 4.46.4.3\(1\)](#))



IDR Process: Introduction to Information Gathering (3 of 5)

- ❖ **Exam has the right to collect the information needed to perform the audit.**
 - The IDR enforcement process exists to aid the Exam team when Taxpayers are not inclined to cooperate. IDR enforcement should be considered as soon as cooperation issues are identified in the Examination.



IDR Process: Introduction to Information Gathering (4 of 5)

- ❖ **A taxpayer may be compelled to provide documents or testimony only through summons/ summons enforcement action.**
 - The Exam timeline should be set out with a view to preserve time for these processes to unfold.
 - IDR response due dates need to be upheld; only grant extensions in special circumstances.



IDR Process: Introduction to Information Gathering (5 of 5)

Summons Enforcement – The Powell Factors

- ❖ Note: IDRs are not required to comply with the Powell factors and summons rule, but worth considering in drafting focused IDRs.
 - The investigation will be conducted pursuant to a legitimate purpose;
 - The inquiry may be relevant to the purpose;
 - The information sought is not already within the IRS's possession; and
 - The administrative steps required by the Internal Revenue Code have been followed.
 - See *U.S. v. Powell*, 379 U.S. 48, 57-58 (1964).



IDR Process: Overview (1 of 2)

IDR Role in the LB&I Audits: Form 4564

- ❖ Initial IDR: Obtain general information, books and records (non-issue specific except for certain issues - Transfer pricing).
- ❖ Issue Specific/ focused IDR: To obtain information (documents, responses to questions) that may be relevant to an identified issue.
- ❖ Confirm Facts: Continued risk-assessment of issue as information is provided to determine viability of the issue with the technical support from Counsel ([IRM 4.46.4.10\(5\) & \(7\)](#)).
- ❖ Determine the Existence (or absence) of expected documents.



IDR Process: Overview (2 of 2)

IDR Role in the LB&I Audits: Form 4564 (cont'd)

- ❖ Determine the Existence (or absence) of expected documents.
- ❖ Document Information: Provided verbally or otherwise.
- ❖ Confirm Taxpayer's Legal Position
- ❖ AOF IDR (and draft 886-A): Required for most unagreed LB&I cases ([IRM 4.46.4.11](#)).



IDR Process: What can you request?

- ❖ Request documents
- ❖ Request for interview
- ❖ Issue focused information
- ❖ Ask for information that may be relevant to the issue

Section 7602 authorizes the IRS to examine “any books, papers, records, or other data which may be relevant or material.



IDR Process: IRM Direction

IRM Overview : [Exhibit 4.46.4-1 \(12-13-2018\)](#)

❖ IDR Process Requirements (emphasized)

- Discuss the issue related to the IDR with the taxpayer.
- Discuss how the information requested is related to the issue under consideration and why it is necessary.
- After this consultation with the taxpayer, determine what information will ultimately be requested in the IDR.
- Ensure the IDR clearly states the issue that is being considered.
- The IDR only requests information relevant to the stated issue.



IDR Process: IDR Form

IDR Form/Issuance Requirements

- ❖ Per IRM 4.46.4.7.1, A paper or electronic Form 4564, IDR, should be used to request information from the taxpayer. Three copies of the form should be prepared and distributed as follows:
 1. The original will be given to the taxpayer.
 2. A copy of the IDR (paper or electronic) will be filed in the IDR Log (if a paper log is maintained). TC is responsible for maintaining the IDR Log and IMS is used to track IDR status and enforcement.
 3. A copy of the IDR (paper or electronic) will be maintained by the issuing examiner with the issue workpapers.



IDR Process: Drafting (1 of 2)

General IDR Drafting Requirements

- ❖ Should include a purpose statement.
 - Examples of unhelpful purpose statements:
 - “This IDR follows up on _____ IDR.”
 - Simply stating the name of the adjustment you are pursuing/developing.
 - “The purpose of this IDR is to ask for information.”
 - An example of good purpose statements:
 - “This IDR requests additional information about the _____ (project, engagement, calculation, etc.). This request follows up on the information initially requested in _____ IDR.”



IDR Process: Drafting (2 of 2)

General IDR Drafting Requirements (cont'd)

- ❖ Must Identify Time Period and/or Audit Years
- ❖ Must identify clearly what is being requested
- ❖ Must identify date of issuance and deadline for response
- ❖ Should only identify one issue

Note: The initial IDR does not have to list an issue – it can be more broad. Once an issue is identified, the IDRs that pursue that issue should be specific to that issue.



IDR Process: Best Practices (1 of 5)

Drafting and Issuance Best Practices

- ❖ Well Organized
 - Only one issue should be addressed on each IDR (with the exception of the initial IDR).
 - Utilize numbers or letters on the IDR for clarity.
 - Ensure that the IDR is written using clear and concise language.
 - Ensure that the IDR is customized to the taxpayer or industry.

- ❖ The IDR questions should be clear and written in plain English
 - Ask yourself if you received this IDR, would you understand what it is seeking?
 - Ask if your question is subject to one or more interpretations? A good question leaves no room for interpretation.



IDR Process: Best Practices (2 of 5)

- ❖ Clear Identification: What you are requesting
 - Use specific terms and project names, etc., wherever possible
 - Include relevant date ranges
 - Be specific on the type of document you are requesting: e.g., board minutes, org charts, limited partnership agreements/amendments, emails
 - Consider whether you want to specify where documents should be searched, such as
 - By a custodian (person)
 - By corporate division (e.g., tax department or C-suite)
 - By document location: cloud, laptop, paper documents



IDR Process: Best Practices (3 of 5)

- ❖ Clear Identification: What you are requesting (cont'd)
 - Do not draft vague IDRs by using general, broad terms in an effort to “capture” whatever the taxpayer may have but may determine is “beyond the scope of the IDR”
 - If you realize you have asked for too narrow of scope of information, issue additional IDRs
 - Be sure you are only addressing one issue within each IDR



IDR Process: Best Practices (4 of 5)

- ❖ Confirm understanding of how the taxpayer maintains its documents and records and tailor the IDR accordingly
 - For example, if taxpayer stores all documents on a cloud system, it would not be effective to ask for records on an employee's laptop
 - Consider how relevant records may be retained under the taxpayer's document retention protocols, particularly for former employees
 - Consider that some older documents, particularly paper, may be located in offsite storage locations



IDR Process: Best Practices (5 of 5)

- ❖ Confirm Understanding Request and Timing
 - Provide a draft of the IDR and discuss its contents with the taxpayer. Generally, this process should be completed within 10 business days
 - Confirm that the taxpayer understands the request
 - Determine a reasonable timeframe for a response to the IDR
 - If agreement on a response date cannot be reached, the examiner or specialist will set a reasonable response date for the IDR
 - Issue the IDR (an IDR may be issued immediately following a discussion of the draft IDR with the taxpayer)



IDR Process: General Drafting Tips

Consider the Focused IDR

❖ Benefits of issuing focused IDRs

- Focused IDRs less likely to result in significant negotiation/push back from taxpayer
- Documents produced will be more likely to answer your questions with less irrelevant documents (faster review)
- Documents will be easier for the taxpayer to locate and produce (faster IDR response)



IDR Process: Examples of Ambiguous versus Broad Requests

Consider the Focused IDR

- ❖ Examples: Ambiguous/Overly Broad vs. Focused Requests.
 - Ambiguous/overly broad: Provide all documents relating to the restructuring
 - More focused: Provide board minutes and associated board materials, org charts, and press releases related to the restructuring of the manufacturing business (often referred to as Project Orion)
 - Ambiguous/overly broad: Provide all documents relating to the limited partnership A's economics
 - More focused: Provide all limited partnership agreements and amendments, side agreements, term sheets, and other agreements setting forth the economic rights for partnership A



IDR Process: Final Drafting Process Tips (1 of 2)

❖ Additional General Drafting Tips

- Less is more – use short questions
- Break up compounded questions, into separate questions or subparts
- Limit questions to one topic per question
- Avoid “any and all” questions - ask for information you are prepared to review (overly broad questions may lead to a data dump)
- Define terms if needed (to focus the request) and ensure common understanding of the terms)
- Provide relevant context/ background to a question in a simple, concise, and objective manner



IDR Process: Final Drafting Process Tips (2 of 2)

❖ Form of Production/Response

- Consider whether to specify what format you want the documents produced in:
 - An IDR could request that the documents be sent in native version (e.g., Word, Excel, email) or PDF format
- Discuss advantages of various forms of documents to be provided:
 - Native versions can have comments, track changes, and metadata that may be helpful if specific details about the documents are important
 - PDFs may be easier to read, not require specific applications, and be easy to convert to text-searchable format (for scanned documents)



IDR Process: Issuance and Response

IDR Response Considerations

- ❖ Delay: Taxpayers may attempt to negotiate the scope of the IDR, delay issuance of an IDR, or ask for more time to respond
 - Exam should discuss the IDR with the taxpayer. Exam may immediately issue the IDR even if the taxpayer still disagrees with the request or believes it is unclear (a common delay tactic).
 - Negotiating IDR scope and requesting extensions of time to respond may be intended to delay the audit or to avoid producing certain documents, but may also reflect taxpayer's concerns regarding the burden and cost of the request
 - When considering whether to issue an IDR, a good rule of thumb is to ask yourself if you would be comfortable explaining your need for that information to a judge?



IDR Process: The IDR Response

IDR Response Considerations

❖ Taxpayer indicates noncompliance: Clear statement

- If taxpayer states that any requested information will not be provided without a summons, immediately move to issue a summons
- If IDR response contains documents marked as “FRE 408” or “For Settlement Purposes Only,” See [IRM 4.46.5.3](#), Resolution vs. Settlement, then request (in writing) that the taxpayer re-submit the documents without any such markings
- If taxpayer fails to submit responsive documentation or says that documentation may be located outside the United States, contact your local counsel and the Cross Border Activities (CBA) Information Gathering Practice Network team for assistance with formal document request under IRC 982
- Claims of Privilege



IDR Process: The IDR Response

IDR Response Considerations

❖ Taxpayer withholds on “relevance” grounds:

- As a general rule, this is not an acceptable argument
- Relevance based arguments may be an effort to avoid producing certain documents unhelpful to the taxpayer, but may also reflect taxpayer’s concerns regarding the burden and cost of the request
- Discuss the relevance (trial standard) v. “may shed light” summons case law standard
 - Stated differently, admissibility in court is not relevant in the exam stage. If the taxpayer turns over something that may not be admissible, the time for that argument is once the case is docketed. Exam has a much broader ability to obtain information which “may shed light” on the tax return than what Counsel can obtain in discovery.
 - See *United States v. Arthur Young & Co.*, 465 U.S. 805, 814 (1984).



IDR Process: The IDR Response (cont'd)

IDR Response Considerations – Relevance Issues

- ❖ Note that the standard for exam's authority to collect information is much broader than Counsel's authority in the discovery stage of litigation
- ❖ Exam's authority is any information that “might throw light upon the correctness of a return.” *U.S. v. Arthur Young & Co.*, 465 U.S. 805, 814-815, n. 11 (1984) (emphasis added).
- ❖ Counsel's authority is to “only seek discovery that ‘is relevant . . . and proportional to the needs of the case.’ Put differently, civil discovery weighs relevance against burden.” *United States v. Eaton Corp.*, No. 1:23-mc-00037, 2024 BL 168491 (N.D. Ohio May 16, 2024), citing *Fed. R. Civ. P. 26(b)(1)*.



IDR Process: Taxpayer Considerations

Taxpayer or Issue Specific

- ❖ Taxpayer Type:
 - Large Corporate
 - Large Partnership
 - Form 1065 Risk Analysis
 - Passive/Active Income
 - Verify Deductions
 - Balance sheet walk-thru
 - Information about trade/business
 - Accurate information of partners/sale of partnership
 - Enterprise Approach or Transaction Approach for audit
 - IDR for transaction to identify all parts
 - IDR for understanding complex partnership



IDR Process: Issue Considerations (1 of 2)

- ❖ Issue Type: Transfer Pricing IDR - IRC 6662(e)
Documentation [IRM 4.61.3.4.3.1](#)
 - Procedure for initial Transfer Pricing Documentation IDR for IRC 6662(e)
 - The Initial Transfer Pricing Documentation IDR is specifically provided for within the IRM. If the template assumes documents that have not already been provided, see next item.
 - Issue team will collaborate with TPP on the issuance of the Initial Transfer Pricing Documentation IDR.
 - IDR to be issued early in the examination process in order to close the examination in a timely manner.
 - IDR should include a request for principal documents.



IDR Process: Issue Considerations (2 of 2)

- ❖ Issue Type: Transfer Pricing IDR - IRC 6662(e) Documentation [IRM 4.61.3.4.3.1](#)
 - Procedure for initial Transfer Pricing Documentation IDR for IRC 6662(e) (cont.)
 - The taxpayer responds within 30 calendar days. The 30-day response period required by statute starts with the date the Initial Transfer Pricing Documentation IDR is issued. IRC 6662(e)
 - The issue team should use 30-day period to perform analysis of currently available information (i.e. tax return, SEC filings)
 - IRC 6662(e) penalties apply when the taxpayer fails to create or to timely provide IRC 6662(e) documentation or documentation is unreasonable or inadequate. If thresholds are met. See [IRM 4.61.3.4.18](#), Penalty Considerations, below.



IDR Process: The IDR Response (1 of 3)

Exceptions to the IDR Enforcement process

- ❖ Per [IRM 4.46.4.7.3 \(3\)](#), the mandatory IDR Enforcement procedure is not required for:
 - Listed transactions,
 - Transactions of interest,
 - Micro Captive Syndicated Conservation Easement cases
 - In such cases, follow the procedures in [IRM 25.5](#), Summons



IDR Process: The IDR Response (2 of 3)

Document Production: The IDR Response

- ❖ Itemize and summarize responses
- ❖ Strategies for reviewing information received from an IDR
 - Timely review of produced documents is critical to evaluating whether the taxpayer responded to the IDR adequately and how these documents relate to the tax matters at issue
 - Catalogue every IDR response- good recordkeeping is key for overall examination's success and any summons enforcement that may be necessary
 - If the document production appears incomplete, consult with local counsel



IDR Process: The IDR Response (3 of 3)

Document Production: The IDR Response cont'd

- For IDRs with multiple questions, pay particular attention to whether certain requests were left unanswered or partially answered
- If we do not review responses or do not follow up on incomplete answers, our ability to seek information through summons will be compromised



IDR Process: Specialized IDR (1 of 2)

The AOF IDR ([IRM 4.46.4.11](#))

- ❖ How it differs from other IDRs
 - The AOF IDR “will be used on all potentially unagreed issues, unless an exception is met”
 - The AOF IDR should include pertinent facts and should state them objectively (rather than stating them in a way that makes them favorable to Exam)
- ❖ Strategies to make the AOF IDR productive
 - Be sure to include all facts relied on in reaching a conclusion. If less than all facts are put forward, the taxpayer may not be able to accurately clarify something that is incorrect or missing



IDR Process: Specialized IDR (2 of 2)

The AOF IDR ([IRM 4.46.4.11](#))

- ❖ When not to use an AOF IDR ([IRM 4.46.4.11\(12\)](#))
 - When fraud is present
 - When there is an imminent statute
 - If there is some other risk of harm to the development of the issue

- ❖ Role of Counsel
 - Counsel can assist with phrasing and terminology
 - Locating additional caselaw or other supporting materials
 - Helping Exam to see how the issue at hand fits into the big picture of the case to ensure no relevant facts are overlooked



IDR Process: IDR Enforcement

IDR Enforcement : Preparation and Procedure

- ❖ Strategies for dealing with uncooperative taxpayers
 - No Response
 - Partial Production

- ❖ Extensions to IDR response due dates should only be granted if absolutely necessary
 - Insisting on more time is a common delay tactic which risks creating an expectation that the taxpayer is in control of the timeline of an audit



IDR Process: IDR Enforcement (cont'd)

IDR Enforcement : Preparation and Procedure (cont'd)

- ❖ Insisting that the exam team respect “blackout periods” are also common delay tactics, which may be reasonable around significant holidays, but should be very restricted in the rare instances where blackout periods are agreed to with the taxpayer
- ❖ If a taxpayer repeatedly raises a lack of manpower due to filing deadlines, provision deadlines, or other internal restrictions/obligations, consider whether it is appropriate to remind the taxpayer that a statute extension may be needed



IDR Process: 3 Step Process

IDR Enforcement Steps

- ❖ Delinquency Notice - [Letter 5077](#) (Delinquency Notice)
- ❖ Pre-Summons Letter - [Letter 5078](#) (Pre-Summons Letter)
- ❖ Summons



IDR Process: Requesting Information from 3rd Parties

Third party contacts/IDRs ([IRM 25.27.1](#) and IRC 7602(c))

❖ Generally

- Third Party Contact Definition – [IRM 25.27.1.2](#)
- Exam must provide [Letter 3164](#)
- Generally speaking, the revenue agent must track all contacts with someone who is not a current employee of the taxpayer (or the taxpayer themselves).
- The IRM includes a list of exceptions
- The [Form 12180](#), Third-Party Contact Authorization Form may be used if the taxpayer is willing and/or supportive of Exam reaching out to a given third-party
 - If the Form 12180 is executed, any third-parties listed on that form may be contacted immediately – there is no waiting period
 - If you have any questions about this process, please reach out to local counsel



IDR Process: Foreign Evidence Gathering (1 of 2)

General Tools for Gathering Information Outside the U.S.

- ❖ Formal Document Request – IRC 982
 - A formal document request (FDR) is a request issued during an investigation or examination and made after the normal request procedures have failed to produce the requested foreign-based documents. IRC 982(c)(1)
 - Always consult with managers and local counsel for the preparation of an FDR and consider issuing a summons concurrently with it



IDR Process: Foreign Evidence Gathering (2 of 2)

General Tools for Gathering Information Outside the U.S. (cont'd)

- ❖ IRC 6038A – Information with respect to certain foreign-owned corporations
 - Enacted to assist IRS in obtaining records from foreign shareholders of US corporations (Domestic Reporting Corporation - DRC) that are at least 25% foreign owned
 - Has document requirements
- ❖ Treaties and TIEAs: EOI Request Procedures [IRM](#)
[4.60.1.2.1.1](#)



IDR Process: Foreign Located Witnesses

Foreign-located witnesses (Role of Counsel)

- ❖ Cases where a witness is outside the US
 - How will the testimony be gathered?
 - Where is the witness located?
 - What is the timing in the case?

- ❖ Process for Clearing
 - Agent determines testimony or contact needs to be made with witness located outside the US.
 - Contact local counsel

**These requests are prioritized – you will receive a response as quickly as possible



IDR Process: Role of Counsel (1 of 2)

Role of Counsel : Where can Counsel assist?

- ❖ Assist with IDR drafting: Counsel may assist in drafting IDRs for clarity, relevance to tax law, and enforceability (if it becomes necessary)
- ❖ Evaluate IDR responses: Counsel may advise on the completeness of the response, assist in analyzing key documents related to tax issues, and advise on how produced documents support Exam's vs. the taxpayer's legal positions



IDR Process: Role of Counsel (2 of 2)

Role of Counsel : Where can Counsel assist? (cont'd)

- ❖ Evaluate basis for refusal to produce documents:
Counsel may advise on privilege claims, privacy laws, and other reasons taxpayers cite for not producing documents
- ❖ When information or witness sought are outside of the United States



Summary

You are now able to:

- ❖ Describe the Information Gathering Process
- ❖ Describe the IDR Process
- ❖ Describe the Best Practices for Drafting IDRs
- ❖ Identify Taxpayer Noncompliance Responses to IDRs
- ❖ Describe Initial Transfer Pricing IDR Procedures
- ❖ Describe the IDR Enforcement Process



Resources

- ❖ IRM
- ❖ Local Counsel
- ❖ Subject Matter Expert



IDR Process:

Questions?