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United States

IRS Official Defends Draft APA Procedure: Foreign Authorities Want 'Granular' Data

Kenneth Wood, senior manager at the Internal Revenue Service's Advance Pricing and Mutual Agreement (APMA) Program, defended a draft revenue procedure against claims from former directors of the predecessor program that it takes a strident, uncooperative tone.

''We are only there to help people,'' Wood said. ''But we aren't there to concede our tax base, unilaterally,'' said Wood, who spoke at a transfer pricing conference at the University of San Diego March 27.

Six former directors of the IRS's Advance Pricing Agreement Program—the predecessor to APMA—urged the IRS in written comments to reconsider the language in the draft revenue procedure governing APA applications. They expressed concern that the new language signalled a ''less-supportive'' attitude towards APAs within the agency (22 *Transfer Pricing Report* 1393, 3/20/14).

Wood claimed that the opposite is true. He joked that APMA is ''kind of a 'Jerry Maguire' operation,'' quoting one of the 1996 movie's signature lines, ''Help me help you.'' He said the program's primary focus is still on resolving double taxation issues and achieving consistency through APAs.

''These cases are intensely factual, and taxpayers have the facts. We need the facts so we can apply the principles and [Organization for Economic Cooperation and Development] guidelines,'' Wood said.

'Granular' Data. Wood said increased up-front information would help the IRS defend positions against foreign jurisdictions during mutual agreement procedures. Even with the information currently required through the MAP and APA processes, foreign tax authorities want ''granular'' data showing how assets—in particular, intellectual property—are used to create value.

''This is kind of a chronic problem, and it normally starts with the foreign jurisdiction saying, 'Well, [the asset] is worth nothing, because I don't know what it is,' '' Wood said.

He added that the IRS was hoping to have more perspective from ''operational'' employees, as opposed to tax practitioners, on how intangibles are exploited for profit. ''It's not really helpful to talk to the [representatives] or talk to the tax guys, often because they don't really know how the intellectual property benefits the company,'' Wood said.

Craig Sharon of Ernst & Young in Washington, D.C., a former APA Program director and one of writers of the letter, attended the panel as an audience member and continued to raise objections with the draft revenue procedure during a question-and-answer period. ''All of the obligations are on the taxpayer, and the IRS reserves all of the discretion. That's not inherent to the APA process; that's supposed to be voluntary and transparent,'' he said.

By Alex M. Parker

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