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Call to Action for U.S. Transfer Pricing Compliance

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INTRODUCTION

Multinational enterprises (MNEs) in the United States have faced consistent exposure to transfer pricing examinations for decades. However, the historically poor track record of the Internal Revenue Service (IRS) in transfer pricing litigation reduced the threat to those MNEs regarding the outcome of transfer pricing litigation, penalties, and financial reporting requirements. In light of this status quo of perceived enforcement weakness, many MNEs have adopted behavior whereby they annually produce rollover documentation on material transactions to avoid penalties and wait to see whether they will be examined, with no or relatively modest tax reserves for uncertain tax positions on financial statements.

That status quo has begun to change. First, over the last three years, the IRS has achieved unprecedented success in transfer pricing cases. Whether a whole or partial victory in Tax Court, on appeal, or by out-of-court settlement, the IRS's fortunes in litigation have improved dramatically. Further, some of these cases involve important transfer pricing issues with relatively broad application, well-known taxpayers, and extremely large amounts of tax, penalties and interest. Second, the IRS has stated that it expects to increase its assertion of penalties in transfer pricing cases, even in cases where the taxpayer has documentation, if that documentation is deemed insufficient. Third, based on a recent investor lawsuit, it appears that the reporting of transfer pricing positions in financial statements may receive additional scrutiny.[1]

Based upon the combination of these changes, taxpayers would be well advised to re-evaluate their global transfer pricing compliance strategy for coverage, correctness of function and risk analysis, and global consistency of method and profitability. Further, taxpayers should update their documentation for any COVID-based changes to operations and any changed expectations as a result of the recent IRS wins. Finally, taxpayers should use any information developed through the re-evaluation to determine whether a proactive approach through the international compliance assurance program (ICAP) or advance pricing agreement (APA) program could reduce their global transfer pricing exposure.

STATUS QUO

Examinations

IRS management has long maintained a strong commitment to enforcing transfer pricing rules. However, proving the price that would have been agreed

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[1] Complaint, *Roofers Local No. 149 Pension Fund v. Amgen Inc. et al*, No. 1:2023-CV-02138 (S.D.N.Y. Mar. 13, 2023).

between similarly situated, unrelated parties has always been difficult for the IRS, which has suffered from the ambiguities of the arm's length standard, staff and training shortages, and changes to the regulations over time. The IRS has vigorously addressed the challenges of enforcing transfer pricing, liberally adding personnel and training, repeatedly refining the regulations, establishing the APA program and other procedural options to facilitate dispute resolution, organizing "campaigns" aimed at specific transfer pricing problems, and pursuing penalty legislation. However, the IRS's poor track record in transfer pricing litigation has hampered its transfer pricing enforcement efforts. Adverse litigation outcomes weaken the IRS position with taxpayers in examination, which is where the initial issue selection and development originates.

The IRS has taken meaningful steps to strengthen the transfer pricing exam process. One of the most important strategic changes occurred in 2012, when the IRS re-organized its Large and Mid-Sized Business division into the Large Business and International division (LB&I) to strengthen international tax enforcement. As part of the change, the Transfer Pricing Practice (TPP) was created to establish a group of transfer pricing specialists and to develop and coordinate LB&I's transfer pricing strategy, training, and operational approaches to key transfer pricing issues.[2] The TPP currently guides IRS training, choice of issue, and development of transfer pricing issues.

Litigation

From the earliest days, the IRS has struggled to win transfer pricing cases. Transfer pricing professionals recognize how difficult it is for the IRS to present arguments to the Tax Court that describe the business transactions of complex MNEs and apply the detailed, sometimes ambiguous, transfer pricing rules well enough to win the case. Further, the problems at examination— uncertainties in the proper application of the arm's length standard, staffing and training deficiencies, and changes to the regulations over time-carry over into the cases litigated by the IRS. Over the years, numerous commenters have pointed out the IRS's lack of success in transfer pricing cases.

The establishment of the TPP in 2012 was understandably helpful to the IRS goal of improving transfer pricing litigation outcomes, since as stated, case selection and early development occur at examination. Further, the IRS began to designate cases for litigation, a move not used since 1991.[3] The IRS even hired an outside law firm to advise it regarding litigation. Despite these measures, by 2016, the IRS had experienced a decade of losing large transfer pricing cases,[4] including *Xilinx*,[5] *Veritas*,[6] and *Altera*.[7]

In 2016, a new Associate Chief Counsel (International)(ACCI) exercised oversight of enforcement and litigation strategies for transfer pricing. Commenters speculated that LB&I and ACCI might coordinate to achieve better outcomes in transfer pricing cases.

Penalties

The §6662 valuation penalty for transfer pricing first applied in 1994. Section 6662(e) and (h) impose 20% and 40% non-deductible penalties for transfer pricing valuation misstatements that produce an increase in U.S. income tax. Adjustments are excluded from the net §482 adjustment calculation to the extent the taxpayer can demonstrate that it determined its price using one of the transfer pricing methods specified in the §482 regulations in a reasonable manner.[8] Although the regulations do not require transfer pricing documentation, documentation has become widespread, because careful documentation can demonstrate the reasonableness of transfer pricing determinations, thereby obviating transfer pricing penalties.

Historically, the transfer pricing penalty has been difficult for the IRS to impose. With regard to 1994, the first returns subject to the revised §6662 penalty, the IRS proposed a penalty on only one tax return.[9] In 1996, the IRS established a Penalty Oversight Committee to ensure the uniform application of the §6662

[2] *IRS Official Elaborates on Plans for Transfer Pricing Pilot Program*, 2010 Tax Notes Today 73-2 (Apr. 16, 2010).

[3] Rev. Proc. 2016-22, §3.03 (''Counsel will not refer to Appeals any docketed case or issue that has been designated for litigation by Counsel. In limited circumstances, a docketed case or issue that has not been designated for litigation will not be referred to Appeals if Division Counsel or a higher level Counsel official determines that referral is not in the interest of sound tax administration. For example, Counsel may decide not to refer a docketed case to Appeals in cases involving a significant issue common to other cases in litigation for which it is important that the IRS maintain a consistent position or in cases related to a case over which the Department of Justice has jurisdiction. If Counsel determines that a docketed case or issue will not be referred to Appeals, Counsel will notify the taxpayer that the case will not be referred to Appeals.'').

[4] D. Gregory, *Will IRS International Strategy Shift Under New Appointment?*, 24 TMTR 1557 (Issue No. 23, Apr. 14, 2016).

[5] *Xilinx, Inc. v. Commissioner*, 567 F.3d. 482 (9th Cir. 2009).

[6] *Veritas Software Corp. & Subs. v. Commissioner*, 133 T.C. No. 14 (Dec. 10, 2009).

[7] *Altera Corp. v. Commissioner*, 145 T.C. No. 3 (July 27, 2015).

[8] I.R.C. §6662(e)(3)(B)(i). Note that these methods are referred to as ''specified methods'' in the regulations for this section.

[9] *Lyons Reports First §6662 Penalty Case, Anticipates Number of Cases in Coming Months*, Transfer Pricing Rep. (Sept. 17, 1997).

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reasonableness and documentation standards. The committee reviewed all cases in which the IRS district office considered a penalty and collected data about cases where the penalty thresholds were met but no penalty was proposed. The number of penalty years approved declined from 54 penalty years for FY 2006 to 19 penalty years for FY 2010. The committee was dissolved in 2011, when the IRS decided that awareness and consistent application had been achieved.[10]

Financial Reporting

Before 2006, no specific rule restricted the financial reporting of transfer pricing issues. In 2006, the Financial Accounting Standard Board (FASB) addressed how companies identify, measure, and report uncertain tax positions (UTPs) on their GAAP financial statements, first with FASB Interpretation No. 48, Accounting for Uncertainty in Income Taxes—an Interpretation of FASB Statement No. 109 (FIN 48) and later with Accounting Standards Codification (ASC) 740. For this purpose, transfer pricing is considered a tax ''position.''

ASC 740 requires that tax positions be evaluated using a two-step process. The first step is recognition or non-recognition of a tax position: ''an enterprise shall initially recognize the financial statement effects of a tax position when it is more likely than not, based on the technical merits, that the position [will] be sustained upon examination.[11] The second step is measured as the largest amount of tax benefit that is greater than 50 percent likely of being realized upon ultimate settlement with a taxing authority that has full knowledge of all relevant information.''[12] The difference between the amount reported on the tax return and the measured amount is often referred to as the ''tax reserve'' or ''tax provision.'' The IRS requires similar reporting for corporations on Schedule UTP (Form 1120).[13]

RECENT CHANGES TO STATUS QUO

Examinations

IRS remains committed to examining transfer pricing issues. As Charles Rettig, IRS Commissioner, said during a 2019 Tax Executives Institute conference, ''This is not a commissioner who believes that the IRS loses because a judge rules against us in a transfer pricing case. It's a commissioner who thinks the IRS loses if it doesn't keep bringing those cases.'' The practices set in motion by the TPP regarding case selection, expert involvement, and case development, continue to be applied throughout this period. Further, hiring of transfer pricing personnel has increased, and recent budget increases aimed at examination of large corporations will surely include transfer pricing enforcement.

On a side note, OECD Base Erosion and Profit Shifting (BEPS) final reports, released in 2015, encouraged countries to provide additional rigor to transfer pricing rules and compliance. The OECD has acknowledged that the BEPS-related changes to transfer pricing, especially the Country-by-Country Reporting (CbCR) requirements, would further increase the number of transfer pricing disputes. Following BEPS and CbCR, global disputes have increased greatly, and that trend will certainly affect disputes between taxpayers and the IRS. These private tax disputes are exacerbated by the near-term expectation for public disclosure of CbCR which could damage an MNE's public image as a responsible taxpayer.

Litigation

The most recent three years have seen a drastic improvement in transfer pricing case outcomes for the IRS. Whether due to case selection, improvement of case development, changes in tax law, or any other proffered explanation, the fact remains that the IRS has achieved at least a partial win in the following five substantive transfer pricing cases in a three-year period:

Altera—On June 22, 2020, the U.S. Supreme Court declined to review the 9th Circuit decision in favor of the IRS. The case, *Altera Corporation & Subsidiaries v. Commissioner*,[14] focuses on the 2007-2009 impact of the 2003 cost-sharing regulations that required the inclusion of stock-based compensation (SBC) in cost-sharing cost pools of approximately $81 million.

Coca-Cola—On Nov. 18, 2020, the U.S. Tax Court issued its opinion in *The Coca-Cola Company & Subsidiaries v. Commissioner*.[15] The IRS rejected the taxpayer's reliance on a 1996 settlement agreement between the IRS and Coca-Cola that applied a formulary apportionment method and instead re-allocated income from foreign manufacturing affiliates to the U.S. taxpayer and intellectual property (''IP'') owner based on a comparable profits method analysis with the for-

[10] *IRS Dissolves §6662 Penalty Committee Effective Immediately*, 20 Transfer Pricing Rep. 368 (Sept. 8, 2011).

[11] FASB Interpretation No. 48, Accounting for Uncertainty in income Taxes—An Interpretation of FASB Statement No. 109 (June 2006).

[12] *Id.*

[13] Instructions for Schedule UTP (Form 1120).

[14] Nos. 16-70497 and 16-70497 (9th Cir. 2019).

[15] 155 T.C. No. 10.

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eign manufacturing affiliates as the tested party. The IRS also rejected the taxpayer payment of dividends as not consistent with the rules governing that treatment.

The opinion upheld an IRS reallocation of approximately $9 billion of income to the U.S. in the tax years 2007-2009. The court found for the taxpayer regarding the satisfaction of the royalty obligation with dividends paid by foreign manufacturing subsidiaries, reducing the total IRS adjustment by $1.8 billion.

3M—On February 9, 2023, the U.S. Tax Court ruled in favor of the IRS in a ''blocked income'' case, *3M Company & Subsidiaries v. Commissioner*.[16] There were two issues in the case. First, whether the IRS can use §482 to allocate additional royalty income (at 6% of net sales, which was the global policy, instead of 1% of net sales, which was the local rate applied) to 3M. Second, 3M argued that Treas. Reg. §1.482-1(h)(2) was invalid because proper administrative procedures were not followed. The case resulted in a $27.3 million adjustment.

Medtronic – Upon receiving the case, *Medtronic, Inc. and Consolidated Subsidiaries v. Commissioner* for a second time (re-trial), the Tax Court applied an unspecified method.[17] The Court again rejected the IRS comparable uncontrolled transaction (CUT) arguments, finding that Medtronic Puerto Rico's (PR) manufacturing was not routine, and the IRS method did not compensate Medtronic PR for its quality control function and product liability risk. The Court ultimately applied a 3-step unspecified method to determine the appropriate royalties payable. Step 1-a modified CUT as a starting point for an appropriate royalty. Step 2-a comparable profits method (CPM) modified for the asset intensity of Medtronic operations. Step 3-an 80/20 split of the remaining profit between Medtronic US and Medtronic PR, respectively. The case resulted in approximately $1.4 billion in adjustments for 2005-2006.

Caterpillar – In the third quarter of 2022, Caterpillar Inc. reached a settlement with the IRS that resolved transfer pricing issues for 2007-2016. The settlement which involved spare parts transactions with a Swiss subsidiary, was for $490 million in taxes and $250 million in interest, without penalties. The amount is far less than the $2.3 billion the company had been disputing for years in its case, *Caterpillar, Inc. v. Commissioner*.[18]

Penalties

For some time, the IRS has been messaging its intention to more aggressively assert transfer pricing penalties, including situations where existing documentation is incomplete and insufficient. In 2018, the IRS Advisory Council Large Business and International Subgroup issued a report asserting that the quality of transfer pricing documentation had declined and recommended that the IRS issue guidance how documentation could be improved.[19] In 2020, the IRS issued the *Transfer Pricing Documentation Best Practices Frequently Asked Questions (FAQs)*, which detailed documentation weaknesses and how documentation could be improved.[20] Over the last year, multiple IRS executives have indicated that the IRS is looking to assert more transfer pricing penalties in appropriate cases. No doubt this initiative was triggered by the poor documentation practices mentioned, but those efforts are certainly bolstered by the IRS's increased success in transfer pricing litigation.

Financial Reporting

As mentioned above, ASC 740 reporting requires a two-step analysis to determine the reportability of UTPs, such as transfer pricing determinations. Until recently, taxpayers and their financial auditors discussed the application of ASC 740 and little background information made its way into the taxpayer's financial statements.

The UTP determination reference for a large and high-profile case like *Coca-Cola* contains some detailed information in in the footnotes. The footnote in Coca-Cola's latest 10-K acknowledges the loss in the Tax Court, but concludes that Coca-Cola is more likely than not to prevail upon appeal, updating its tax reserve to $423 million. Further, Coca-Cola estimated that if the IRS position were upheld and applied to subsequent years through December 2022, the potential aggregate incremental tax and interest liability would be $14 billion.[21]

On March 13, 2023, a shareholder suit, *Roofers Local No. 149 Pension Fund v. Amgen Inc. et al.*,[22] charges that Amgen failed to reveal in its quarterly reports (10-Q) the amount of IRS proposed adjustments with regard to transactions with its Puerto Rican affiliate for tax years 2010-2015. Amgen disclosed the existence of the transfer pricing dispute, expressed the

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[16] 160 T.C. No. 3.

[17] T.C. Memo 2022-84 (Aug. 18, 2022).

[18] Docket No. 10790-13 (2013).

[19] https://www.irs.gov/pub/irs-prior/p5316—2018.pdf

[20] https://www.irs.gov/businesses/international-businesses/transfer-pricing-documentation-best-practices-frequently-asked-questions-faqs

[21] *Coca-Cola Co. v. Commissioner*, 155 T.C. 10 (U.S.T.C. 2020) ($9 billion income adjustment for 2007-09). The taxpayer has indicated that it will appeal. Should the Tax Court decision be affirmed, the taxpayer estimates a potential tax deficiency of $14 Billion through tax year ending December 2022. The Coca-Cola Company, Form 10-K for FY 2022.

[22] No. 1:2023-CV-02138.

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belief that the IRS positions are without merit, but did not disclose that the IRS positions, if successful, would result in additional taxes, penalties and interest of $10.7 billion.

UPGRADING THE GLOBAL TRANSFER PRICING COMPLIANCE APPROACH

In light of the significant changes to the U.S. transfer pricing enforcement environment and expected outcomes, taxpayers should upgrade and update their transfer pricing compliance approach. In addition to a reaction to the changed U.S. enforcement environment, taxpayers should update their documentation for creeping changes to functions, risks and intangibles imposed by COVID-based changes to operations, and increased emphasis on global consistency imposed by BEPS and CbCR.

How to Upgrade Transfer Pricing Documentation

Transfer pricing documentation should be more robust in light of penalties now being more aggressively levied. Many MNE's have approached their transfer pricing documentation compliance obligations based on materiality and/or likelihood for tax audit. Further, many companies have used automated transfer pricing documentation platforms to perform this compliance exercise. Tax departments always face strict budgets; therefore, many companies have viewed transfer pricing documentation with a focus on cost rather than quality due to the perceived lack of IRS transfer pricing enforcement success. With the IRS (and other tax administrations) winning court cases and assessing penalties, this approach can no longer be relied upon.

The IRS's 2020 FAQs on transfer pricing documentation elaborates on various areas in which taxpayers appear to be lacking in their transfer pricing documentation. First, the IRS expects a detailed explanation of the data used in its analysis. Rather than simply providing high level income statement items of revenue, costs, and profit, the FAQs make clear that detailed income statements and balance sheets, with detailed calculation of any TP adjustments, are expected. Further, if segmentations are conducted, the transfer pricing documentation needs to include a detailed description of how that segmentation ties to the overall income statement.

Second, the FAQs advise that documentation should contain detailed descriptions of the general business risks underlying the intercompany transaction and of how those risks are allocated among the controlled participants to the transaction based on the intercompany policies and agreements. For example, in a traditional manufacturer/distributor relationship where the distribution company is the tested party earning a set profit, a description of how a change in volume could impact the profitability of the manufacturer would be helpful as that aligns to the transfer pricing policy.

According to the FAQs, transfer pricing documentation should also describe how profits are allocated among the related parties. In the example above of a manufacturer and distributor, if by fixing the return of the distributor with the CPM the manufacturer ends up with much higher returns than suggested by its manufacturing contributions, the documentation should explain where the excess returns come from and which controlled party is entitled to these returns. If manufacturing-related inventory or other balance sheet adjustments are made to improve a transfer pricing benchmark's degree of comparability during COVID-years, these should also be periodically reviewed and updated.

As a result of these additional asks by the IRS, companies also need to update their process to comply. A mix of in-house staff, outsourced tax professionals and technology need to be deployed to allow companies to provide as much coverage as possible.

How to Best Use In-House and Outsourced Tax Professionals or Technology

With the increase in transfer pricing enforcement and compliance, resource deployment needs to be done efficiently to minimize effort. In-house tax teams tend to be best situated to identify and assess business-driven supply chain changes (e.g., due to Covid-19, etc.), and they have direct access to the data used in analyses. Outsourced tax advisors with expert knowledge in new international tax and treaty rules and local transfer pricing practices can assist in-house tax teams by providing tax technical risk-assessments for supply chain changes and advising form(s) of documentation to defend against such risks. The changes in supply chains not only have intercompany pricing implications but also affect other areas of tax. Additionally, if intercompany pricing were deemed to be incorrect, UTP can also become a topic for discussion. Outsourced tax providers can assist in this process by providing technical input on remediation efforts as well as provide global assistance in localizing any transfer pricing documentation for local rules and regulations.

Finally, automated platforms need to be deployed to minimize effort and broaden the number of countries for which transfer pricing documentation is prepared. These platforms should enable taxpayers to easily comply with local rules while providing a uniform ex-

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planation of the company, its value drivers, valuable IP, and other transfer pricing elements.

Not only are the documentation reports themselves important, but workflow and data storage are essential. With global teams working on any given engagement, and email traffic filling inboxes quickly, an automated tool that provides all involved parties with both easy access to all information and an understanding of where in the process each documentation report stands is necessary. Further, given that tax audits can be conducted a year or two after documentation reports are completed, access to background data and information used to develop those reports is necessary to answer any tax authority queries. This data retention gives companies an easy way to retrieve data quickly.

Outcomes

After companies have had a chance to upgrade and update their transfer pricing documentation reports, the view then shifts to risk identification and remediation. The data collected and analyzed through their technology solutions can then be used to assess risks and determine how best to move forward in managing those risks.

ALTERNATIVE APPROACHES TO MANAGING RISK

As discussed above, the IRS has put considerable effort into transfer pricing enforcement over the past decades, and those efforts appear to be paying off for the agency. At the same time, the IRS has taken steps to assist taxpayers with transfer pricing compliance and to prevent the sort of costly, protracted disputes described above. Taxpayers that want proactively to manage their transfer pricing compliance should use any information developed through the re-evaluation to determine whether ICAP or APA could reduce their global transfer pricing risk. Whether an MNE chooses to pursue ICAP, APA, or a combination of the two will depend on several factors, including the level of certainty desired, the number of years, countries and transactions to be covered, and the cost and resources available.

An APA is a voluntary process under which an MNE files a request that sets out relevant facts, background materials and economic analyses for the proposed covered transactions. Following the request, the involved tax authorities generally issue information requests to supplement the submitted materials, followed by meetings and negotiations with the MNE. The process can be long and labor-intensive, with the due diligence and negotiation process often lasting nearly four years for bilateral or multilateral negotiations APAs. The process can be expensive. The user fee for an original APA is currently $113,500, with advisor fees often incurred to prepare the submission, respond to information requests, and attend meetings. At the end of the process, the MNE and the involved government or governments execute a binding agreement setting out the APA transactions, transfer pricing method, agreement duration, and other relevant terms. As long as the MNE adheres to those terms, the covered transactions cannot be adjusted if audited. Having an APA also frees the taxpayer from the need to prepare documentation studies and UTP analyses on the covered transactions, reduces Customs exposure, and, in the case of a bilateral or multilateral APA, eliminates the possibility of double tax on the covered transactions.

Like an APA, ICAP is a voluntary process, but it is a newer vehicle and differs from an APA in timeframe for completion, coverage of years, transactions and countries, and cost. An ICAP submission is generally limited to information an MNE should already have on hand, such as transfer pricing studies, recent CbCR's, and financial data, among others. The process is expected to last between 24 and 28 weeks following receipt by the tax administrations of requested information; the actual completion timeframe likely varies depending on the complexity of the transactions and the number of countries involved. ICAP can cover several transactions and countries at once, provided those countries are among the 22 currently participating in the program. By contrast, most APAs are bilateral and cover only two countries. ICAP does not require a user fee, so the costs should be limited primarily to the time spent internally and by external advisors in preparing the documents for submission, and in meeting with involved tax administrations. Unlike an APA, which can cover several years prospectively and can be rolled back to filed years, ICAP generally covers only two filed years, and, under certain conditions, can be rolled forward an additional two years. ICAP does not provide the high level of certainty that an APA does. ICAP can provide an MNE with "assurance" that participating tax administrations do not anticipate further review of the covered risks for a defined period. Where a tax administration is not able to reach such a conclusion, it may make recommendations on how to resolve the issue, including an APA.

As stated, the transfer pricing re-evaluation process should include an analysis of whether ICAP, APA, or a combination of the two is appropriate. For an MNE that engages in several intercompany transactions and that wants assurance that its transfer pricing is acceptable to the involved tax administrations, without the need to incur significant costs over several years, ICAP may be the appropriate forum. For an MNE that wants to have certainty over a longer term on fewer

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transactions that may be more complex and subject to frequent audit, an APA may be more fitting. A taxpayer that has both types of transactions may pursue the two programs simultaneously. The table below sets out the key factors that are relevant in the decision.[23]

[23] *See also Is APA or ICAP the Best Tool for the Job?. . . Depends on the Job*, 52 Tax Mgmt. Int'l J. No. 4 (Apr. 7, 2023).

		APA	ICAP
Certainty		Binding written agreement on treatment of covered transactions	Assurance or recommended steps detailed in outcome letter
Timeframe for Completion		Two to four years	Six to twelve months
Coverage	**Years**	Five or more years prospectively at time of submission, plus rollback if applicable	Two back years, potentially two forward years
	Transactions	Generally limited to those proposed by MNE for coverage	Potentially all transactions involving participating jurisdictions
	Countries	Most cases are bilateral and cover two countries. Some cases are unilateral and cover only one country. Multilaterals are available but rare.	Potentially all participating countries in which the MNE has transactions
Cost		User fee (up to $113,500) + cost of preparing submission, meetings, negotiations, due diligence	No user fee. Costs involved in preparing and participating are low relative to APA costs
Resources and Commitment		Requires commitment from MNE to prepare extensive submission, respond to IDRs and negotiate over several months	Documentation requirements generally include information MNEs have readily available; some meetings and additional information required

The factors set out in the table should form the basis for an MNE's determination on whether to pursue ICAP, APA or both. Used judiciously, the programs offer significant benefits for businesses, including greater certainty, reduced risk and increased operational efficiency.

CONCLUSION

Changes made by the IRS in the selection, development and litigation strategy of transfer pricing issues have improved IRS outcomes in transfer pricing litigation. The improved IRS outcomes may also strengthen the IRS position in transfer pricing examinations. Further, the IRS expects to increase its assertion of penalties in transfer pricing cases, even in cases where the taxpayer has documentation. Finally, a recent investor lawsuit may place additional scrutiny on the reporting of transfer pricing positions in financial statements. The combination of these changes compel taxpayers to upgrade and update their global transfer pricing compliance approach and use any information developed through that process to determine whether proactive approach such as APA or ICAP could reduce its global transfer pricing exposure.

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