



## Tax Talk

by Ryan J. Kelly and Parisa J. Manteghi

# The New Advance Pricing and Mutual Agreement Program: Are We Entering the Golden Age of APAs?

### In one of the most significant U.S. transfer pricing

developments of 2012, the IRS formally launched its new Advance Pricing and Mutual Agreement (APMA) Program. This IRS reorganization combined the Advance Pricing Agreement (APA) Program, previously located in the Office of the Chief Counsel, and the Mutual Agreement Program (MAP) located within the U.S. Competent Authority (USCA).<sup>1</sup>

Before the merger, the APA Program focused exclusively on reaching pre-filing agreements with taxpayers on transfer pricing. A pre-filing agreement is a conclusive settlement between the parties on specific issues relating to a tax return before the return is filed.<sup>2</sup> The MAP Program concentrated primarily on bilateral resolution of transfer pricing disputes with U.S. treaty partners.<sup>3</sup> The new joint office falls under the transfer pricing director in the IRS's Large Business & International division.<sup>4</sup> The APMA Program resolves transfer pricing and other allocation issues by negotiating APAs with taxpayers and foreign taxing jurisdictions. It also develops mutual agreement procedures and resolves issues related to the attribution of profit to a permanent establishment. The primary reasons for the IRS reorganization included a need for resources, more efficient processing, a better structure, and increased integration with the IRS's new Transfer Pricing Practice.<sup>5</sup> The creation of the APMA Program resulted in a burst of hiring activity. Before the realignment, the APA Program and MAP Program had a combined staff of about 70.<sup>6</sup> The APMA Program now has a staff of more than 120 team leaders, economists, managers, and support staff.<sup>7</sup> The increased number of economists from both the private and the public sector has boosted the program's transfer pricing expertise as well as allowed the program to deploy resources more strategically.

A major priority of the APMA Program has been to significantly cut the processing time required to close APAs. Richard J. McAlonan serves as the first director of the APMA Program. In October 2011, McAlonan pledged that the APMA Program would complete 100 APAs in 2012 and hoped to complete closer to 200 APAs per year in the future.<sup>8</sup> To this end, the APMA Program has adopted the motto: "Certainty Sooner." According to the IRS's 2012 annual

report on APAs, "the APMA Program saw immediate returns from the merger of functions, increased resources available, and processing efficiencies implemented throughout the year, and increased the number of APAs executed from 42 in 2011 to a single-year high of 140 in 2012."<sup>9</sup>

Improved processing was due in part to the elimination of "hand-offs."<sup>10</sup> Before the merger, the APA team leader would hand off a developed APA position to a USCA analyst who would discuss the case with the treaty partner. When the USCA reached agreement with the treaty partner and entered into a mutual agreement, the agreement was handed back to the APA Director and team leader to draft the domestic APA. Now, the same team that develops the IRS position is also responsible for discussing the case with the treaty partner, obtaining an agreement, and finalizing the APA with the taxpayer. The APMA Program expects that the average processing time for APAs will continue to decrease over the next few years as the APMA Program uses its increased resources to reduce its older inventory of pending cases and accelerate processing of newer cases.

Despite noticeable improvements, taxpayers continue to express frustration about the lengthy processing time and growing backlog of cases. Many taxpayers remain skeptical about the APMA Program overall, with the number of APA applications filed declining from an all-time high of 144 in 2010 to 126 in 2012.<sup>11</sup> In 2012, APA cases took an average of 41 months to be resolved, but McAlonan appears determined to improve these numbers. At a conference in March, he said a large number of executed APAs took over four years to complete, adding that "[t]hree years is a fairly long time for almost anything."<sup>12</sup> When discussing one APA that closed in 2012 but had been pending since 2004, McAlonan stated, "that's eight years ... you serve less time for manslaughter."<sup>13</sup> McAlonan understands that if the processing time does not speed up, the entire APMA program could be in jeopardy.<sup>14</sup>

McAlonan emphasizes that efficiency must be coupled with the proper kind of review. To improve the speed of processing, the APMA Program is focused on giving APA applications different

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levels of review based on their size and complexity whereas before the IRS tended to use a “one-size fits all” approach.<sup>15</sup> McAlonan continually stresses that quality needs to be maintained along with enhanced efficiencies. Efficiency, however, “does not mean we are giving away the store,” he told taxpayers at an October 2012 conference.<sup>16</sup>

Improving processing time will likely require speedier and open communication from all parties, including taxpayers. McAlonan believes that taxpayers should be more open and transparent and submit timely, well-written, and thorough documents.<sup>17</sup> Providing identical information simultaneously to each government involved in the APA process and discussing any concerns about the foreign country with IRS officials can shorten the APA process.<sup>18</sup> “Just be open and transparent,” McAlonan said at a panel discussion during the Tax Executives Institute’s midyear conference in March.<sup>19</sup> He added, “eventually, all of the facts are going to come out, so it’s better to put them on the table at the start. It makes it go a lot easier, and it helps build trust, which is very important.”

When a government organization restructures, generally there is a concern that the end result will only mean more bureaucratic inertia and red tape. In this case, the APMA Program appears committed to capitalizing upon its new synergies and streamlined structure. With Japan and Canada interested in speeding up their processes as well, McAlonan says it could soon be the “golden age of APAs.”<sup>20</sup> The APMA Program is still developing a new strategy for processing renewals.<sup>21</sup> In the long term, the APMA Program will consider entering into safe harbor agreements with treaty partners. In hopes of participating in APAs involving multiple countries, McAlonan has already had high-level discussions about engaging in multilateral APAs with interested parties.<sup>22</sup> With an ambitious agenda, the APMA Program is a work in progress and where it ultimately ends up remains to be seen. The results published in the IRS’s 2012 annual report on APAs suggests that progress is being made, but only time will tell if the APMA Program delivers as intended. Stay tuned. ☺

## Endnotes

<sup>1</sup>IRS, APA and Mutual Agreement Program Realignment FAQs, FAQ 1, available at [www.irs.gov/Businesses/APA-and-Mutual-Agreement-Program-Realignment](http://www.irs.gov/Businesses/APA-and-Mutual-Agreement-Program-Realignment).

<sup>2</sup>INTERNAL REVENUE SERVICE, U.S. DEP’T OF THE TREASURY, PRE-FILING AGREEMENT PROGRAM, [www.irs.gov/Businesses/Pre-Filing-Agreement-Program](http://www.irs.gov/Businesses/Pre-Filing-Agreement-Program).

<sup>3</sup>INTERNAL REVENUE SERVICE, U.S. DEP’T OF THE TREASURY, *IRS Takes Next Steps in International Realignment; Bolsters Transfer Pricing Compliance Programs and International Coordination* (July 27, 2011), available at [www.irs.gov/uac/IRS-Takes-Next-Steps-in-International-Realignment;-Bolsters-Transfer-Pricing-Compliance-Programs-and-International-Coordination](http://www.irs.gov/uac/IRS-Takes-Next-Steps-in-International-Realignment;-Bolsters-Transfer-Pricing-Compliance-Programs-and-International-Coordination).

<sup>4</sup>See IRS, APA and Mutual Agreement Program Realignment FAQs, FAQ 1, *supra* note 1.

<sup>5</sup>See generally *id.*

<sup>6</sup>Dolores W. Gregory, *More Resources, Better Applied, Essential to MAP Programs Worldwide*, Danilack Says, BNA DAILY TAX



REPORT, 23 DTR G-1 (Feb. 4, 2013).

<sup>7</sup>*Id.*

<sup>8</sup>Amy S. Elliott, *Year in Review: LB&I Realigns Domestic Operations, APMA Program*, TAX NOTES TODAY, 2013 TNT 6-5 (Jan. 9, 2013).

<sup>9</sup>INTERNAL REVENUE SERVICE, U.S. DEP’T OF THE TREASURY, ANNOUNCEMENT AND REPORT CONCERNING ADVANCE PRICING AGREEMENTS (Mar. 25, 2013), available at [www.irs.gov/pub/irs-drop/a-13-17.pdf](http://www.irs.gov/pub/irs-drop/a-13-17.pdf).

<sup>10</sup>Dolores W. Gregory, *APMA Closes 140 Cases in 2012, Exceeding New Applications Received*, BNA DAILY TAX REPORT, 13 DTR G-1 (Jan. 18, 2013).

<sup>11</sup>See Elliott, *supra* note 8.

<sup>12</sup>Jaime Arora, *APAs Should Take IRS No More Than 3 Years to Complete, Official Says*, TAX NOTES TODAY, 2013 TNT 54-2 (Mar. 20, 2013).

<sup>13</sup>Dolores W. Gregory et al., *Public Outrage Over ‘Profit Shifting’ Puts Transfer Pricing Center Stage*, DAILY TAX REPORT, 2 DTR S-30 (Jan. 30, 2013).

<sup>14</sup>Julie Martin, *ABA Meeting: Quick Turnaround Is Top Priority for IRS’s New APMA Director*, TAX NOTES TODAY, 2013 TNT 6-5 (May 14, 2012).

<sup>15</sup>Alex M. Parker, *McAlonan: APMA Program Departing From ‘One Size Fits All’ APA Approach*, BNA DAILY TAX REPORT, 55 DTR G-1 (Mar. 21, 2013).

<sup>16</sup>Dolores W. Gregory, *IRS Closes 70 APAs, Could Top 100 by Year’s End, McAlonan Predicts*, BNA DAILY TAX REPORT, 31 TMWR 1423 (Oct. 29, 2012).

<sup>17</sup>Dolores W. Gregory, *APA Applicants Can Help Speed Process With More Transparency, IRS Official Says*, BNA DAILY TAX REPORT, 64 DTR G-6 (Apr. 3, 2013).

<sup>18</sup>Jaime Arora, *Sharing Identical Information with IRS and Foreign Governments Helps APA Process, McAlonan Says*, TAX NOTES TODAY, 2013 TNT 64-2 (Apr. 3, 2013).

<sup>19</sup>See Parker, *supra* note 15.

<sup>20</sup>Julie Martin, *IRS Hopes to Complete 100 APAs in 2012*, TAX NOTES TODAY, 2012 TNT 203-4 (Oct. 19, 2012).

<sup>21</sup>See Gregory, *supra* note 10.

<sup>22</sup>Jaime Arora, *supra* note 18.