



IRS issues Transfer Pricing Examination Process to replace Transfer Pricing Roadmap

Global Transfer Pricing Alert 2018-022

The IRS's Treaty and Transfer Pricing Operations of the Large Business and International (LB&I) division on June 29 released the [Transfer Pricing Examination Process \(TPEP\)](#) to replace the Transfer Pricing Audit Roadmap that was previously issued on February 14, 2014. The TPEP is a guide for IRS agents on audit steps, best practices, and helpful references when auditing transfer pricing issues. The TPEP will be shared with the taxpayers at the start of any transfer pricing examination.

The TPEP provides more comprehensive audit steps than the Roadmap, and a list of tools for auditing transfer pricing examinations.

Discussion

The TPEP acknowledges that transfer pricing examinations are "resource intensive for both the IRS and taxpayers" and that "if the facts of the case show that the taxpayer's results fall within an appropriate arm's length range, then our resources should be applied elsewhere. Likewise, teams should continually assess opportunities for issue resolution with taxpayers during the examination process."

Similar to the Roadmap, the TPEP provides examination teams, in particular IRS persons involved in the audit of transfer pricing issues, a guide to audit techniques to assist with the planning, execution, and resolution of transfer pricing examinations consistent with Publication 5125, *the Large Business & International (LB&I) Examination Process (LEP)*.

For each of the transfer pricing examination phases, the TPEP provides detailed audit steps to be considered, tools that may be used, other guidance and materials, including materials in the Internal Revenue Manual, Internal Revenue Forms and Instructions, outside resources for business financial analytics, and best practices in auditing transfer pricing. The audit steps, tools, and other guidance and materials in the TPEP are more comprehensive than those listed in the Roadmap.

Notable differences between Roadmap and TPEP

The TPEP removes the language in the Roadmap that states that “transfer pricing cases are usually won and lost on the facts.”

Unlike the Roadmap, which states that “the objective in a transfer pricing audit is to determine a reasonable result under the facts and circumstances of any given case,” the TPEP asserts that the goal of transfer pricing audits is to determine an arm’s length result, which may be a range of results, under the facts and circumstances of the case. The TPEP states that “if the facts of the case show that the taxpayer’s results fall within an appropriate arm’s length range,” then the IRS should apply its resources elsewhere.

The TPEP focuses on continual assessment of opportunities for resolution on transfer pricing issues.

The TPEP does not provide an audit timeline, or an estimated timeline of the three phases of a transfer pricing examination. Instead, the exhibits in the TPEP provide general timelines as a guide for different audit phases for a 24-month and a 36-month examination.

The TPEP limits the transfer pricing orientation to selected intercompany transactions in the year(s) under examination rather than all intercompany transactions as stated in the Roadmap. The transfer pricing orientation is a comprehensive presentation by the taxpayer to discuss its transfer pricing transactions, including but not limited to the business operations, worldwide structure, transfer pricing policies, as well as the background, history, rationale, and value drivers related to the transaction.

The TPEP revises the audit steps related to the best method selection process. Previously, the Roadmap guided IRS agents to “begin to formulate the best method analysis to include assessment of taxpayer’s selected method.” However, the TPEP does not tell the IRS agent “to formulate the best method analysis”; rather, the TPEP only advises the IRS agents to “evaluate the taxpayer’s selection of the best method.”

The TPEP provides that, as a “best practice,” an Acknowledgement of Facts (AOF) IDR should be issued for all transfer pricing issues, whether potentially agreed or unagreed.

The TPEP reaffirms that the IRS requires 365 days to remain on the statute of limitations for taxpayers to protest a case at

Appeals, as required by Internal Revenue Manual 25.6.22.2.1 (02-09-2018), *Assessment*, and Phase 2 of the Appeals Judicial Approach and Culture (AJAC) Project effective September 2, 2014.

The TPEP lists the following audit steps in separate sections, which were previously embedded in the body of the Roadmap:

- Developing a detailed Preliminary Working Hypothesis, meeting with the taxpayer regarding the team's working hypothesis(es) and preliminary findings, and reassessing/adjusting the working hypothesis as needed;
- IRC Section 6662(e) Documentation Request, whereby IRS agents are no longer required to issue the mandatory 6662(e) transfer pricing IDR and the IRS agents have to follow the [Interim Instructions on Issuance of Mandatory Transfer Pricing IDR in LB&I Examinations](#), a memorandum dated January 12, 2018, for all LB&I employees;
- The Review of IRC Section 6662(e) Response, which guides the IRS agent to consider whether the 6662(e) documentation satisfies the requirement of Treas. Reg. §1.6662-6(d)(2)(iii), whether the documentation addresses the controlled transactions, and whether the conclusions reached can be considered reasonable;
- Penalties consideration; and
- The Appeals process.

The TPEP added the following sections that were not included in the Roadmap:

- Collaboration with Advance Pricing Mutual Agreement Program
- Analyze the country-by-country (CbC) report and provide the taxpayer an opportunity to voluntarily walk through the issues listed on the report
- U.S. Competent Authority request and Competent Authority request concerning U.S.-initiated actions.
- Sections that should be included in the Notice of Proposed Adjustment and Economist Report.

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Resources

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- [Arm's length standard](#)
- [Transfer pricing alerts](#)

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