Indian competent authority and US Internal Revenue Service discussions continue

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Meetings in Washington between the Indian competent authority and Internal Revenue Service (IRS) officials during the week of 10 February 2014 have produced "no obvious, mutually acceptable resolution path" on stalled treaty mutual agreement procedure cases, according to Samuel Maruca, transfer pricing director, IRS Large Business and International Division.

Speaking during a 12 February Deloitte webcast on IRS transfer pricing examinations, Maruca also discussed the IRS transfer pricing practice (TPP). The latest meetings continued discussions that Maruca and US competent authority Michael Danilack, deputy commissioner (international), LB&I, had with their counterparts in India last September. (For prior coverage, see India and US working to 'normalise' competent authority relationship.)

When asked to explain how the TPP works with the international practice network, which makes decisions, and how each group is involved in the audit process on a day-to-day basis, Maruca said, "The process has not reached full flower," but is "a collaborative effort."

Maruca pointed out that TPP has "a very small staff, 70 people to cover the entire national footprint," and that it must work closely with the LB&I international business compliance (IBC) function. The IRS has a system where the "TPP management team and the IBC management team – and to some extent the liaison with industry – all work together," he said. The teams work together around issues such as risk assessment and decide if "a case is one we want to pursue, and if so, how do we staff it," Maruca said.

If a taxpayer has a transfer pricing issue, Maruca said, "The taxpayer should talk to the international examiner manager but, in any event, [IBC] will be talking with TPP, [so the process] is not siloed." If the international examiner and transfer pricing practitioner disagree, "they are expected to engage, and if no resolution occurs, they are expected to elevate it to the next level," he said.

Asked whether the TPP reveals all transfer pricing adjustments before they are proposed, Maruca said "no" and added that TTP "does not have the capacity." He said, "We try to be aware of the big cases, and we try to weigh in at some point, but there is no systematic oversight," to the degree that would stop a case from proceeding. "That's not the way it works and that's not the way it is intended to work," Maruca said.

Maruca also mentioned that a TPP goal is to conduct better audits. "The goal is to have substantive tax tools as part of the larger goal of creating a collaborative culture," he said, adding that TPP wants to "harness the collective wisdom and experience of everyone."

"I think we are beginning to make headway in the arena of intelligent, upfront issue selection so we have better tools, better filters for getting to the work quicker by getting the right work out to the fields," Maruca said.

He said that working with the OECD has "been an interesting process," noting that he is "at the table and . . . part of the larger US team." Maruca added that the US is "focused on what comes out of that process is as neutral and traditionally arm's length as we can make it."

Maruca said that to the extent the US will pursue antiabuse rules, which it is doing under the aegis of the OECD base erosion and profit-shifting project, the US doesn't want to incorporate these changes unnecessarily into "rules that need to be clear, neutral, and transparent."

He added that the US wants to construct these rules in a way that will let the IRS continue to use traditional tools effectively as it goes about its work, which consists primarily of traditional transfer pricing activity around the world. "That's very important to us," Maruca said.