Thought Leadership

Transfer Pricing Audits under the New IRS Roadmap and Disputing Proposed Adjustments

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Transfer prices can be an effective part of corporate tax planning for multinational taxpayers. Legal counsel and their economic advisers should be aware of the Service's current approach to transfer pricing audits and of the avenues for disputing any proposed transfer price adjustments.

Introduction

Multinational businesses today face unprecedented taxation challenges as governments around the world become increasingly aggressive in their search for revenue.

These enhanced taxation enforcement efforts, together with an increased level of cooperation among government tax agencies, present extraordinary income tax compliance challenges for multination companies.

Due to its inherent subjectivity and potential for abuse, the transfer pricing of intercompany transactions continues to receive intense scrutiny by national tax authorities. The Internal Revenue Service ("Service") recently made ambitious changes in its approach to these examinations, and taxpayers are feeling the effects of those changes.

First, this discussion describes the Service's current approach with respect to transfer pricing examinations.

Second, this discussion highlights some practical considerations at different decision points of the examination.

Finally, this discussion explores some of the avenues for the disputing of—and for the seeking relief from—any transfer pricing adjustments proposed by the Service team.

Brief Background on Transfer Pricing and Why It Matters for Income Tax Purposes

Transfer pricing generally refers to the setting of prices for cross-border transactions (generally involving goods, services, or intangible property) between related companies. For example, if Affiliate A manufactures widgets in Country X and sells those widgets to Affiliate B in Country Y, the price that Affiliate A charges Affiliate B for those widgets is the transfer price of those widgets.

Other common examples of transfer pricing transactions include cross-border intercompany loans and leases of either tangible or intangible property. The interest rates charged for the loans and the royalty/rental rates charged for the use of property is the transfer price of those items.

The reason for the Service and other national taxing authorities' intense focus on transfer pricing may be easily illustrated by returning to our first example.

If Country X (where the widgets are manufactured) has a lower tax rate than Country Y (where the widgets are ultimately sold to unrelated parties), then there may be an economic incentive for the consolidated company to maximize the amount of the taxable income from the widget sales in Country X and minimize the taxable income in Country Y.

One way to accomplish this objective is to set the transfer price of the widgets from Affiliate A to Affiliate B at a relatively high sales price so that Affiliate B's profit (sales price minus purchase price) from the sale of the widgets is minimized in Country Y.

National taxing authorities are well aware of strategies that shift income from one country to another, and thus require that transfer prices be set at arm's length.

The Service May Determine a Taxpayer's "True Taxable Income"

Internal Revenue Code Section 482[1] allows the Service to reallocate items of income and expense among controlled taxpayers to clearly reflect income. The essence of Section 482 is to place "a controlled taxpayer on a tax parity with an uncontrolled taxpayer by determining the true taxable income of the controlled taxpayer."[2]

A controlled taxpayer's "true taxable income" is determined as though the taxpayer had dealt "at arm's length" with an uncontrolled taxpayer.[3]

This analysis is inherently subjective, however, because oftentimes affiliates may not sell their goods or services to unrelated parties. Therefore, there may be no uncontrolled transaction for the taxpayer and the Service to use as a benchmark.

The Service's Sea Change Approach to Transfer Pricing Audits

In late 2010, the Service announced the creation of a "Transfer Pricing Practice" staffed by the "most experienced transfer pricing examiners and economists."[4]

As stated by the first director of the Transfer Pricing Practice, "[t]he No. 1 target . . . is the need to develop the important cases and develop them well. Nothing changes taxpayer behavior more than a winning IRS position."[5]

The Service Releases Transfer Pricing Audit Roadmap

To that end, in 2014 the Service released a "Transfer Pricing Audit Roadmap" (the "roadmap") and a September 30, 2013, memorandum setting forth the "IBC – TPP Rules of Engagement."

The roadmap is a "work in process" and "provide[s] the transfer pricing practitioner . . . with audit techniques and tools to assist with the planning, execution and resolution of transfer pricing examinations."[6]

The roadmap emphasizes "up-front planning . . . at the earliest possible stage" and divides a 24-month audit cycle into three stages: planning, execution, and resolution. The roadmap bears striking similarities to a litigator's trial plan and calls for the early development of a "working hypothesis" (which may be adjusted) and robust factual development.

The roadmap goes so far as to instruct which examination team members should be involved in each stage and discussion. Not surprisingly, the roadmap provides the most guidance and details on the planning and factual development on an issue.

Until recently, it was unclear to many practitioners and taxpayers as to who on the Service examination team was in control of the transfer pricing audit.

The "IBC – TPP Rules of Engagement" memorandum, addressed to Service employees in the Internal Business Compliance unit and Transfer Pricing Practice, attempts to clear up this issue by stating that neither group has "control" of transfer pricing issues and that the Service should "work transfer pricing issues together, as a unified team."

This can be frustrating in practice, as the local economist assigned to the Service examination team may not see eye-to-eye with those in the Transfer Pricing Practice.

The roles and level of engagement of the Transfer Pricing Practice team members varies from case to case, and is "flexible and dynamic to adjust to the circumstances of the audit, which may change over time." This level of involvement ranges from "limited" to "moderate" to "extensive."

The memorandum explains that "in many or even most cases, the TPP, as a result of its limited resources, will have no involvement in the day-to-day management of the issue. However, the IBC and TPP management teams have joint responsibility for the national transfer pricing inventory."

The Service audit plan provided to taxpayers towards the beginning of an audit typically identifies the members of the examination team, so taxpayers should be able to determine early on whether the Transfer Pricing Practice is involved and plan accordingly. The authors experience is that the Service is quite open about the level of involvement of the Transfer Pricing Practice.

Pre-Examination/Planning Stage

This first stage of the transfer pricing audit consists of the initial risk assessments and may last more than six months and include time before the 24-month audit cycle begins. During this stage, the Service examination team reviews the taxpayer's returns for controlled transactions and disclosure of uncertain tax positions.

The examination team also reviews publicly available information (such as SEC filings) to learn more about the company's background and business operations, and to compute financial ratios for the company. Looking forward to a potential dispute, the roadmap notes that the information gathered during this stage "will become part of the 'Background' section of any transfer pricing NOPA [Notice of Proposed Adjustment] and the related economist report."

Examination teams are also instructed to request a company's transfer pricing report with the initial examination contact letter, and taxpayers should stay mindful that the tax law requires that the transfer pricing report be provided to the Service within 30 days of the request, in order to avoid the application of certain accuracy-related penalties.[7]

Taxpayers should also be prepared to make a detailed presentation of their transfer pricing to the Service early on in the examination (this presentation is referred to in the roadmap as the "transfer pricing orientation meeting"). One decision that taxpayers should make early on is who is the best person to lead this required presentation to the Service.

Options include in-house personnel, the preparer of the transfer pricing reports, and the company's tax counsel. There are advantages and disadvantages to each, and companies should carefully consider options with their counsel.

Taxpayers should not approach this presentation haphazardly, as it may affect the entire trajectory of the examination. This is because the Service examination teams are instructed to hold a reassessment meeting after this orientation to determine which transactions need further development and which can be eliminated from further analysis. Taxpayers may approach this meeting as their last shot to convince the Service not to continue its audit.

Taxpayers and their advisers must also pay close attention to any facts or representations made verbally and/or on the slides presented during the orientation meeting. The safest approach is to assume those slides and/or statements will be used as an exhibit by the examination team in a later dispute.

The authors recently attended an orientation meeting where the taxpayer was asked to discuss, among other things, "all intercompany transactions in the years under the exam," "the transfer methods reported on the tax return and an explanation of why the method was chosen," and the "functions performed, assets employed and risks assumed by each controlled party to the respective intercompany transaction."

The presentation was attended in-person by approximately 10 Service employees who took copious notes and were active participants during the presentation. The examination team followed up the meeting by issuing a number of additional requests for information related to the topics covered during the presentation (often quoting the slides and the taxpayer's verbal responses to questions asked by the Service during the presentation).

Taxpayers who continue to receive questions about their transfer pricing after this orientation meeting should be wary that the examination team's working hypothesis may be that the taxpayer's transfer pricing is not arm's length (especially if those questions come from the Transfer Pricing Practice team members).

The last step of the planning phase includes completing the audit plan and risk analysis, and then sharing both with the taxpayer after the examination team receives managerial approvals.

Execution Phase

The execution phase of a transfer pricing audit lasts approximately 14 months and is comprised of the following two stages:

1. Fact finding
2. Issue development

The roadmap notes that "[t]ransfer pricing cases are usually won and lost on the facts. The key in transfer pricing cases is to put together a compelling story of what drives the taxpayer's financial success, based on a thorough analysis of functions, assets, and risks, and an accurate understanding of the relevant financial information."

Taxpayers should expect to receive requests for additional documents, to interview taxpayer personnel, and receive tours of the taxpayer's facilities. The authors' recent experience is that the examination teams are focusing on the audited financial statements of foreign affiliates and organizational charts with the names of individuals rather than just the individual's job title. The Service will often request to interview those individuals.

The entire examination team also performs a comparability and functional analysis during this stage. The functional analysis "is a critical aspect of any transfer pricing examination" that "identifies the economically significant activities performed in connection with the transaction." Economically significant activities are those that materially affect the prices charged and profits earned from a transaction.

The examination team also requests that the taxpayer confirm (in writing) the material facts developed during the audit or explain why the examination team's version of the facts are inaccurate, aiming for "an agreed set of facts."

Again, taxpayers and their advisers should be careful that any facts agreed to are accurate, as the Service notes "[t]ransfer pricing cases are usually won and lost on the facts."

The Service examination team then completes its draft of the background and factual write-up to be used in the draft NOPA and draft economist report. The draft NOPA and draft economist report are shared with the taxpayer for input.

Issue Resolution

After meeting with the taxpayer and considering any input provided by the taxpayer, the examination team issues an NOPA setting forth the examination team's proposed adjustments.

The receipt of an NOPA is a major decision point for taxpayers in a transfer pricing exam. One decision is whether the taxpayer should request assistance from the U.S. competent authority.[8]

If the adjustments in the NOPA are ultimately sustained, the taxpayer may be subject to double taxation of the same income by the United States and a foreign country.

Going back to the widget example, if Affiliate A reported a transfer price of 10 in Country X on the widget sales, but Country Y determines that the transfer price should have been 8, then the "extra" 2 may be subject to tax in both Countries X and Y.

If the United States has a tax treaty with the other country that could be affected by the proposed adjustment, the taxpayer may request that the U.S. competent authority assist in eliminating that double taxation.[9]

The international examiner is required to notify the taxpayer by letter of the potential double taxation and the taxpayer's right to request competent authority assistance.[10]

Double Taxation, Competent Authority Assistance, and Advance Pricing Agreements

The purpose for requesting competent authority assistance is for the U.S. competent authority to consult with the treaty country's competent authority to reach an agreed upon resolution of adjustments by either country that would be contrary to the provisions of the treaty, such as double taxation. The procedure whereby the competent authorities consult with each other pursuant to provisions of the treaty is commonly referred to as the mutual agreement procedure, or "MAP."[11]

If the United States accepts a request for assistance, it generally will consult with the foreign competent authority and attempt to reach a mutual agreement that is acceptable to all parties.[12]

In the context of a U.S.-initiated transfer pricing adjustment, the U.S. competent authority's primary goal typically is to obtain a correlative adjustment from the treaty country.[13]

There are some risks for taxpayers who choose to bypass competent authority assistance. For example, if a taxpayer enters into a binding settlement with the Service appeals division, the U.S. competent authority will limit its assistance to attempting to obtain a correlative adjustment from the treaty country.[14] This may not eliminate double taxation.

Another option for taxpayers is to request simultaneous consideration by Service Office of Appeals ("Appeals") and the U.S. competent authority under the Simultaneous Appeals procedure.[15]

Taxpayers currently may request the Simultaneous Appeals procedure when:

1. an NOPA is issued and it requests U.S. competent authority assistance,

2. the taxpayer files a protest and decides to sever the competent authority issue and seek competent authority assistance while other issues are referred to Appeals, or
3. the case is already in Appeals and the taxpayer decides to request competent authority assistance.

Additionally, a taxpayer may request the Simultaneous Appeals procedure after a case is under consideration by the competent authority. If, however, the competent authority has already provided the U.S. position paper to the foreign competent authority, the request generally will be denied.[16]

If the taxpayer has requested the Simultaneous Appeals procedure, the appeals officer will consult with the taxpayer and the U.S. competent authority in an attempt to reach a tentative agreed resolution of the issues. If a tentative resolution is reached, the U.S. competent authority would then present it to the foreign competent authority in an effort to reach an agreed resolution with the foreign competent authority.[17]

If the competent authorities fail to agree, or if the agreement is not acceptable to the taxpayer, the taxpayer may withdraw its request for competent authority assistance. The taxpayer may then pursue all rights otherwise available to it under the laws of each country.[18]

Taxpayers should consult with their tax counsel before rejecting a proposed resolution reached between competent authorities.

Advance pricing agreements (APA) have also been used to minimize disputes with the Service. An APA is an agreement between the taxpayer and a taxing authority setting forth the transfer pricing of intercompany transactions.

Although the word "advance" indicates the agreement is for future years, they may include a "roll back" for the years under examination. Some taxpayers seek APAs offensively when they believe the examination team may propose an adjustment and that a better result may be obtained through an APA.

This strategy is debatable, because the examination team may be part of the APA process and the transfer pricing director should be working closely with the APA director. The authors are aware of instances where this strategy did not work as intended.

Moreover, if the taxpayer attempts to secure an APA and fails, the Service examination team may feel emboldened and Appeals may not want to compromise on an issue that the APA team has considered. APAs also generally take a long time to secure.

Having said all that, sometimes APAs are the way to go. The authors have assisted taxpayers with obtaining APAs, and the decision to request an APA and the timing of doing so should be discussed with tax counsel.

The Service, in Notice 2013-78, has proposed a new revenue procedure for requesting competent authority assistance that would update and supersede the existing revenue procedure, Revenue Procedure 2006-54. The proposed revenue procedure is lengthy and proposes numerous substantial changes. Because it is in proposed form, this discussion will not describe it in detail, but this discussion will make a few observations about the more significant changes.

The proposed revenue procedure would reflect structural changes that were implemented at the Service subsequent to Revenue Procedure 2006-54, including the establishment of the Large Business and International (LBI) division. The LBI division currently includes the office of the U.S. competent authority and separate offices under the U.S. competent authority that handle different types of requests for assistance.

Regarding requests for competent authority assistance, the proposed revenue procedure includes a number of significant changes. The proposed revenue procedure clarifies that issues that may be considered may arise as a result of taxpayer-initiated positions.[19]

The proposed revenue procedure also clarifies that the U.S. competent authority is available for informal consultations on competent authority-related issues. Such informal consultations can include whether a MAP issue may exist. It also can include advice about steps to take to achieve greater certainty that the taxpayer has exhausted all effective and practical remedies to reduce its income tax liability under foreign law for purposes of qualifying for the foreign tax credit. Such informal advice would be advisory in nature and not binding on the Service.[20]

The proposed revenue procedure also adds that the U.S. competent authority can initiate a MAP case in the absence of a MAP request, or it can expand the scope of an existing MAP case. This can include adding treaty countries, issues, or taxable years. The proffered reason for this is that the U.S. competent authority has a strong interest in resolving all potential MAP issues in a timely manner.[21]

The proposed revenue procedure also elaborates on the potential interaction of requests for competent authority assistance with advance pricing agreements. The U.S. competent authority's goal is

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to seek MAP resolutions and APAs that achieve substantive and procedural consistency.[22]

The proposed revenue procedure would also provide new pre-filing agreement procedures applicable to MAP cases. This would include mandatory submission of a pre-filing memorandum and participation in a pre-filing conference in certain cases. The pre-filing memorandum would be required in cases raising certain issues.

The list of issues is fairly lengthy, but includes taxpayer-initiated positions, the licensing or other transfer of intangible property in connection with an intangible development arrangement, and any arrangement that qualifies as a "global trading arrangement."

Additionally, in cases where it is not mandatory, a taxpayer may submit a pre-filing memorandum and request a pre-filing conference.[23]

The proposed revenue procedure also establishes the Simultaneous Appeals procedure as the primary means of obtaining Appeals involvement in a competent authority matter. It would be the only procedure by which a taxpayer could present a U.S.-initiated adjustment to Appeals for its review and still retain the possibility of obtaining the U.S. competent authority's help in securing a correlative adjustment.

The proposed revenue procedure places strict time limits on requesting the Simultaneous Appeals procedure, which is 60 days from when the U.S. competent authority notifies the taxpayer that its request for assistance has been accepted.[24]

Fast Track Settlement

Another decision upon receipt of an NOPA is whether a taxpayer should request to participate in the "Fast Track Settlement" program ("fast track").[25]

Fast track is an optional mediation program in which an Appeals officer serves as a mediator between the examination team and the taxpayer.

Because fast track is not available after a taxpayer has requested U.S. competent authority assistance, taxpayers and their advisers should discuss the pros and cons of fast track before the NOPA is issued, as the time to make a decision is often short.

Both parties (examination team and taxpayer) must agree to utilize fast track, meaning that the examination team can decline to participate. If the examination team and taxpayer agree to fast track, the parties submit an application, together with the NOPA and the taxpayer's written response to the NOPA, to Appeals. If Appeals accepts the case, the aim of the program is to resolve the dispute within 120 days.

During fast track, an appeals team case leader (or an appeals officer supervised by an appeals team manager) trained in mediation techniques serves as a mediator. Both the taxpayer and examination team present their case to Appeals, and the Appeals mediator can propose settlement terms, which the parties can accept or reject.

The proceeding usually includes breakout sessions, and both the taxpayer and the Service examination team must have someone with decision-making authority at the session.

One of the main issues for taxpayers to consider before entering fast track is the willingness of the examination team to mediate and settle the issue. For fast track to be successful, all three participants—the taxpayer, the examination team, and Appeals—must agree to the settlement.

If the examination team's position is immovable for whatever reason, then it may be futile to participate in fast track. Also, the authors' experience is that the Apeals mediator may not view his or her role as strictly a mediator. We have participated in fast track conferences where the Appeals mediator wanted different settlement terms from those for which the examination team had agreed.

If fast track is successful, the settlement is recorded in a "Fast Track Session Report" signed by both parties and the Appeals mediator. Afterwards, the Appeals mediator will prepare formal settlement documents. If fast track is not successful, the taxpayer still retains all of its otherwise applicable appeal rights, including the right to a traditional conference before Appeals.

Traditional Appeals Hearing

If the dispute is not resolved after the NOPA is issued or at fast track, the examination team issues the taxpayer a revenue agent's report (commonly referred to as a "30-day letter"). The 30-day letter starts the clock for the taxpayer to file a formal protest with Appeals. The examination team typically reviews the protest and prepares a rebuttal.[26]

The taxpayer may request that the case be assigned to an Appeals office in a particular part of

the country, and that the hearing be held there.[27] Appeals will usually grant such a request, but it is not required to, and sometimes does not, depending on caseloads in the various Service offices.

In cases with significant international issues like transfer pricing, Appeals will usually assign the case to an appeals officer who has substantial experience with international issues, and the conference may involve a team of appeals officers.

The authors' experience is that it typically takes longer than a year for complex cases, such as a transfer pricing case, to be resolved in Appeals.

In July of 2013, Appeals began implementing the "Appeals Judicial Approach and Culture" (AJAC). This has involved significant changes in Appeals' policies and procedures, which are designed to promote a quasi-judicial approach to the way that Appeals conducts business.

Under these new policies and procedures, Appeals will generally not send a case back to the examination team for further development, and instead, the appeals officer will attempt to resolve the issues based on the information available in the file.[28]

Under AJAC, Appeals will also not raise new issues.[29] A taxpayer may raise new issues or provide new information or evidence, but if it does, Appeals will typically send the case back to the examination team for additional analysis or investigation before Appeals will consider the new issue or evidence.[30]

This new policy may deter taxpayers from holding back important pieces of evidence until the case is in before Appeals, because the case will take longer if it is sent back to the Service examination team.

Appeals now requires that there be at least 365 days remaining on the statute of limitations before accepting a case (this is a change from the prior policy of 180 days). The statute extension needs to be secured with the examination team if a taxpayer wishes to proceed to Appeals at the conclusion of the examination.

Bypassing Appeals Division

Sometimes taxpayers will choose to completely bypass Appeals consideration. One of the reasons for doing so is the delay in closing the administrative consideration of the case. Going to Appeals may take years, and some taxpayers do not wish to keep the statute of limitations on assessment open for that long.

Another potential reason to bypass is if the taxpayer does not believe it is likely that Appeals will settle the case. If the taxpayer has an issue that the Service has taken a hard-line approach on, and the taxpayer doesn't believe it can settle, going to Appeals may just delay the inevitable trial of the issue.

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Ultimately, the appeals officer will hold a conference with the taxpayer. The taxpayer may offer to hold the conference at its representative's office. This often benefits the taxpayer in terms of planning and preparation for the meeting, logistics, and handling contingencies. It also provides the taxpayer some level of comfort in holding the meeting in a friendly environment.

The appeals conference typically begins with a preconference meeting that includes the appeals officer, examination team, and taxpayer. This gives the appeals officer a chance to ask the examination team questions about the case and provides the examination team an opportunity to state their views.[31]

Some appeals officers expect the taxpayer to comment during the preconference meeting, while others do not. The authors typically try to avoid engaging in unsolicited back and forth debate during the preconference.

Taxpayers will also need to determine who should attend the appeals conference. Transfer pricing cases are often complex, and taxpayer personnel and their economists' technical knowledge and expertise may be necessary for the conference.

At some point, the appeals officer should reach the point where they can discuss potential settlement terms with the taxpayer. This could happen as early as the first appeals conference, or it could happen after post-conference follow-up communications with the appeals officer, providing additional information or a supplemental written response regarding a particular argument or issue.

If the taxpayer and the appeals officer settle the dispute, the appeals officer will prepare settlement documents.

If no settlement is reached, the taxpayer may await a notice of deficiency and then file a petition with the U.S. Tax Court to fight the purported deficiency without first paying it. Or, the taxpayer may pay the purported tax due, file a claim for refund, and possibly litigate in the U.S. District Court or U.S. Court of Federal Claims.

There are a number of issues that taxpayers should discuss with their tax counsel before selecting a forum to litigate the tax dispute. However, if the taxpayer cannot afford to pay the purported deficiency, then the decision is made, as the U.S. Tax Court is the only forum where the taxpayer can litigate the dispute without first paying.

Conclusion

Multinational corporations are facing unprecedented challenges as governments around the world aggressively increase their search for revenue. These enhanced enforcement efforts, together with an increased cooperation among government tax agencies, present extraordinary income tax compliance challenges for multinational companies.

Despite these challenges, transfer pricing can be an effective part of corporate tax planning. Practitioners and their economic advisers should be aware of the Service's current approach to transfer pricing audits and the avenues for disputing any proposed transfer price adjustments.

This discussion focused on the Service's current approach to transfer pricing examinations, and highlights some practical considerations at different decision points of the examination. This discussion then explored some of the avenues for disputing any Service-proposed transfer pricing adjustments.

Notes:

1. All "Section" references in this article are to the Internal Revenue Code of 1986, as amended, unless otherwise indicated.
2. Treas. Reg. § 1.482-1(a)(1).
3. Treas. Reg. § 1.482-1(b)(1).
4. IR-2010-122, December 9, 2010.
5. 199 DTR G-11, October 14, 2011.
6. Both are available on the Service website.
7. Treas. Reg. § 1.6662-6(d)(2)(iii).
8. If the taxpayer requests U.S. competent authority assistance before the examination team has proposed adjustments in writing (e.g., in an NOPA), the U.S. competent authority generally will deny the request as premature. Rev. Proc. 2006-54, § 9.01.
9. The procedures for requesting U.S. competent authority assistance are set forth in Rev. Proc. 2006-54, 2006-2 C.B. 1035 (2006). The Service, in Notice 2013-78, has informed taxpayers that it intends to issue a new revenue procedure prescribing how to request competent authority assistance. That revenue procedure has not been issued as of the date this article was prepared.
10. Revenue Procedure 2006-54; I.R.M. § 4.60.2.1; roadmap, p. 23. The international examiner is also required to prepare a report (a "Mutual Agreement Procedure" report or "MAP report") in all cases involving potential double taxation, regardless of whether the taxpayer has requested competent authority assistance. The MAP report accompanies the examination report. If the taxpayer makes a request for competent authority assistance, the MAP report is provided to the U.S. competent authority, and the U.S. competent authority will typically rely on the MAP report in order to develop a negotiating position on the issue. I.R.M. § 4.60.2.4.
11. Rev. Proc. 2006-54, §§ 1.02, 2.01, 2.03.
12. Rev. Proc. 2006-54, § 2.03.
13. Rev. Proc. 2006-54, § 12.07.
14. Rev. Proc. 2006-54, § 7.05.
15. Rev. Proc. 2006-54, § 7.02.
16. Rev. Proc. 2006-54, § 8.02.
17. Rev. Proc. 2006-54, § 8.05.
18. Rev. Proc. 2006-54, § 12.05.
19. Prop. Rev. Proc. § 2.02.
20. Prop. Rev. Proc. § 2.05, 2.06.
21. Prop. Rev. Proc. § 2.08.
22. Prop. Rev. Proc. § 2.10.
23. Prop. Rev. Proc. § 3.02.
24. Prop. Rev. Proc. § 8.
25. The Fast Track Settlement Program is jointly administered by LBI and Appeals, under Revenue Procedure 2003-40, 2003-1 C.B. 1044 (2003).
26. The examination team must provide a copy of the rebuttal to the taxpayer at the time that the case is forwarded to Appeals. See Rev. Proc. 2012-18, 2012-10 I.R.B. 455 (2102), § 2.03(4)(c).
27. See Treas. Reg. § 601.106(e)(1).
28. See I.R.M. § 8.2.1.5.
29. Policy Statement 8-2; I.R.M. § 8.6.1.6.
30. See I.R.M. §§ 8.6.1.6.4, 8.6.1.6.5.
31. There are "ex-parte" rules prohibiting Appeals from discussing the case with the examination team outside the presence of the taxpayer.

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