

Elizabeth Stevens Comments on New IRS APA Guidance in Law360

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Recently published IRS internal guidance detailing how the agency will screen advance pricing agreement requests has some tax practitioners concerned that prospective certainty may be more difficult to secure.

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The IRS is signaling it will offer alternatives to taxpayers seeking APAs to resolve transfer pricing issues, such as a joint audit or the International Compliance Assurance Program, known as ICAP, according to the internal memo.

While those alternatives may be a positive thing for taxpayers if an APA request is declined, they aren't equivalent to an APA, Elizabeth Stevens at Caplin & Drysdale told *Law360*. In particular, a simultaneous audit for prior closed tax years doesn't provide the same kind of prospective certainty that an APA would provide, Stevens said.

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Stevens, of Caplin & Drysdale, said the memorandum reflects some protocols that should lead to positive results, including the detailed record-keeping during the new review process.

"There's a lot of emphasis in a memorandum about each person in the chain documenting their conclusions and the reasons for their conclusions in this internal system," Stevens said. "That seems super helpful."

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Stevens said the processes outlined in the memo aren't new — the guidance reflects typically how the IRS has screened APA requests in the past — but noted the memo includes some insight about how different teams are involved in the agency's program.

Stevens noted that the memo's reference to a transfer pricing risk assessment team, involvement of which she was previously unaware. It remains unclear what exactly that team's role is, "but they seem like a key player in evaluating APA requests under this guidance," Stevens said.

Stevens also noted the eight-week timeline detailed in the memo to complete the preliminary review on an APA request, which can be "the size of a dictionary," is ambitious.

Stevens, Wrappe and Varadharajan noted that the IRS has told taxpayers to expect updated guidance for APAs and mutual agreement procedures.

Stevens said it will be useful to recount taxpayer experiences with the IRS working under its new guidance a year from now.

"It will be interesting to get a sample of what people have experienced to see has this changed anything, are taxpayers receptive to it?" Stevens said.

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