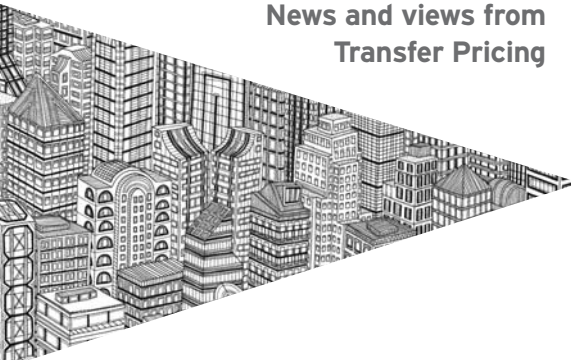


International Tax Alert

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IRS LB&I issues Competent Authority Statistics

Executive summary

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The Internal Revenue Service (IRS) released the Large Business & International (LB&I) Division FY 2011 Competent Authority Statistics Report on 16 December 2011. The report provides a statistical update of the Competent Authority Program, including a summary of year-end case inventory and the average processing time of closed cases. The report also provides information regarding percentages of cases where competent authority relief has been granted and gives some indication of the relief that companies received as a result of competent authority assistance.

In the year ended 30 September 2011, the US Competent Authority received a total of 166 allocation (transfer pricing) cases. While the vast majority of the competent authority cases relate to transfer pricing disputes, competent authority also deals with non-allocation cases, such as limitation on benefits, permanent establishment or withholding tax issues. In 2011, the US Competent Authority received 141 cases due to foreign-initiated transfer pricing audit adjustments and 25 cases due to US-initiated transfer pricing audit adjustments. Expressed in percentage terms 85% of the competent authority cases received in 2011 were due to foreign-initiated transfer pricing case adjustments compared to 77% in 2010.

During 2011, double taxation was eliminated for over 79% of the total dollar adjustments in dispute. This was accomplished by a combination of the initiating country withdrawing some or all of its adjustment and the other country allowing a correlative relief for some or all of the adjustment in dispute. During 2011, US-initiated competent authority cases were processed in 859 days on average, an increase from the 2010 processing time of 779 days on average. However, the average time to process foreign-initiated Competent Authority cases decreased from 937 days in 2010 to 847 days in 2011.

Background

A US citizen or resident can request assistance from the US Competent Authority if the actions of the United States, a treaty country, or both, results or will result in taxation that is contrary to the provisions of the tax treaty. For example, if a taxpayer is undergoing a transfer pricing audit and the tax authority has indicated it will propose a tax adjustment, but has not completed its analysis to determine the amount of the adjustment; the taxpayer may make a protective filing at that time. Once the adjustment amount is finally determined, a formal competent authority request for assistance may be filed.

Except where otherwise provided in an applicable treaty, taxpayers have discretion over the time for filing a request; however, delays in filing may preclude effective relief. Taxpayers that request competent authority assistance may file a timely protective claim for credit or refund of US taxes in accordance with Section 9 of Revenue Procedure 2006-54, 2006-2 C.B. 1035, and should take appropriate actions under the procedures of the foreign country to avoid the lapse or termination of the right to appeal under the foreign country's income tax law.

The US Competent Authority cannot consider requests involving countries with which the US does not have an applicable tax treaty.

The competent authority process is a remedy to avoid the denial of treaty benefits and to avoid double taxation. Although resolution of an issue through the competent authority procedures may result in full relief from double taxation, the full range of outcomes include:

- ▶ Full relief of double taxation when:
 - correlative relief is granted for the entire amount of the agreed adjustment;
 - competent authorities agree on an amount less than originally proposed adjustment;
 - the full adjustment is withdrawn by the taxing authority who originally proposed the adjustment;
- ▶ Partial relief of double taxation when the adjustment is not fully agreed on by both countries; or
- ▶ No relief of double taxation when the competent authority assistance is denied or a resolution is not achieved.

Listed below is statistical data regarding the 2011 processing times, inventory of allocation cases, closed allocation cases, and data on relief granted.

Processing time on all closed cases (average days)*

Year	US initiated	Foreign initiated	Combined
2006	646	756	732
2007	397	654	570
2008	424	791	649
2009	699	738	722
2010	815	886	868
2011	787	859	840

* Includes only Allocation, Non-allocation, Permanent Establishment, and Limitation on Benefits cases.

Competent Authority Relief**

Relief	2007	2008	2009	2010	2011	5-year average FY07- FY11
Correlative adjustment	35.61%	56.45%	34.76%	33.03%	22.06%	36.38%
Adjustment withdrawn	60.14%	32.81%	60.83%	63.59%	55.68%	54.61%
Partial relief	0.23%	3.34%	3.40%	1.78%	0.78%	1.91%
No relief	4.02%	7.40%	1.01%	1.60%	21.48%***	7.10%

** Includes Allocation and Non-allocation cases only; figures represent a percentage of the total dollar adjustment. Amounts do not include taxpayer withdrawals.

*** 83% of this figure is attributable to a single case on which no relief was granted.

Inventory - Allocation (transfer pricing) cases only

Fiscal year	US initiated		Foreign initiated		Year end inventory
	Received	Disposed	Received	Disposed	
2007	28	13	93	57	227
2008	23	22	98	70	256
2009	24	30	134	55	329
2010	23	31	77	115	283
2011	25	18	141	119	312

Processing time on closed Allocation cases (average days)

Fiscal year	US initiated	Foreign initiated	Combined
2007	687	646	653
2008	857	804	816
2009	893	740	795
2010	779	937	903
2011	859	847	849

Implications

The competent authority relief statistics reflect a positive result in that double taxation was eliminated for almost 78% of the dollar amount of the adjustments at issue, either by a correlative adjustment being allowed by the requested country or the initiating country withdrawing some or all of its adjustment. Eighty-three percent of the unresolved double tax amounts for 2011 relate to one case for which double tax was not eliminated. The five year data trend further confirms the effectiveness of the competent authority process as a mechanism to resolve double tax disputes, particularly after adjusting for the impact of one significant case in 2011 for which no relief was granted as noted by the IRS.

With the increasing interest in transfer pricing enforcement by tax authorities around the globe, the number of foreign-initiated competent authority cases should continue to trend upward. In addition, the IRS has also made clear its intention to step up transfer pricing enforcement which should eventually result in more US-initiated cases. Both of these factors strongly suggest that taxpayers should be knowledgeable about the competent authority process in the United States and other jurisdictions. Failure to make a timely notification of the potential need for competent authority assistance as required by certain treaties (e.g., Canada, Mexico, and Netherlands) or to

timely file a request for assistance can result in denial of assistance and failure to eliminate double taxation.

The growing number of competent authority cases has threatened to overwhelm the US Competent Authority staff. However, the staffing has been increased recently by the addition of more than 35 analysts, economists and managers, which should help improve case processing times. In addition, the introduction of an arbitration provision in the US tax treaties with Belgium, Canada, France and Germany, should also assist in resolving double tax disputes in a much shorter period of time and in a more efficient manner.

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SCORE no. CM2673

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