

CLIENT ALERT

Director of APMA Hughes Discusses APAs and MAP at Crowell & Moring Tax Seminar

September 27, 2019

John C.C. Hughes, the Director of the Advance Pricing and Mutual Agreement Program (APMA), spoke on Thursday, September 12th at Crowell & Moring, LLP. As Director, Mr. Hughes oversees APMA's work in negotiating advance pricing agreements (APAs) with taxpayers and foreign governments and in resolving transfer pricing cases through the mutual agreement procedure (MAP) of U.S. income tax treaties with his counterparts within the tax authorities of our treaty partners.

To begin, Mr. Hughes discussed the current worldwide trends in APA and MAP cases. Mr. Hughes referred to the OECD statistics showing a worldwide increase in APAs and MAPs, and noted that the OECD now ranks countries' tax authorities on their success in resolving MAP cases and reducing APA inventory.

Mr. Hughes then outlined some best practices that taxpayers should follow before APMA. First and foremost, Mr. Hughes encouraged communication between the taxpayer and APMA personnel, and stressed that all information should be given to both APMA and the treaty partner, so that the tax authorities on both sides are prepared for the country-to-country negotiations and can efficiently work towards a resolution of the case. Mr. Hughes noted that the process is not adversarial and that taxpayers should view the proceedings as a collaborative process. As such, Mr. Hughes encouraged all taxpayers to consistently touch base and offer assistance to their APMA teams. In addition, taxpayers should provide APMA with as much information as possible at the start of the process. APMA recognizes that the up-front submission requirements are laborious, but they ensure that the process runs smoothly and prevent unwanted surprises.

Mr. Hughes explained that, in over 90 percent of the MAP cases, there is a settlement that avoids double taxation. APMA meets face-to-face with treaty partners up to three times a year to negotiate and resolve cases. Taxpayers should not view these meetings from a U.S. or an us-versus-them perspective. Mr. Hughes emphasized that APMA is striving to serve the needs of U.S. taxpayers while protecting the interests of the United States.

Mr. Hughes also addressed the recent LB&I memorandum requiring IRS Exam issue teams to consult with APMA on transfer pricing transactions involving a treaty partner. Mr. Hughes noted that APMA typically consults with Exam early in the process and provides input to Exam on, among other things, its perspective of the history APMA has had with the particular treaty partner on the type of issue being pursued. Mr. Hughes stressed, however, that APMA is independent from Exam and does not influence whether Exam will pursue a transfer pricing issue or a particular adjustment. That decision ultimately will be made by Exam.

Mr. Hughes also discussed the interaction of APAs and the BEAT. He stated that APMA does not opine on whether a given payment is a base erosion payment or not, but indicated that APMA's goal is to work with its colleagues in other parts of the IRS to try to find ways to provide as much certainty over BEAT payments as possible.

For more information, the 33rd Annual Crowell & Moring LLP Managing Tax Audits and Appeals Seminar materials [may be found here](#).

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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