

# Updates on U.S. Transfer Pricing

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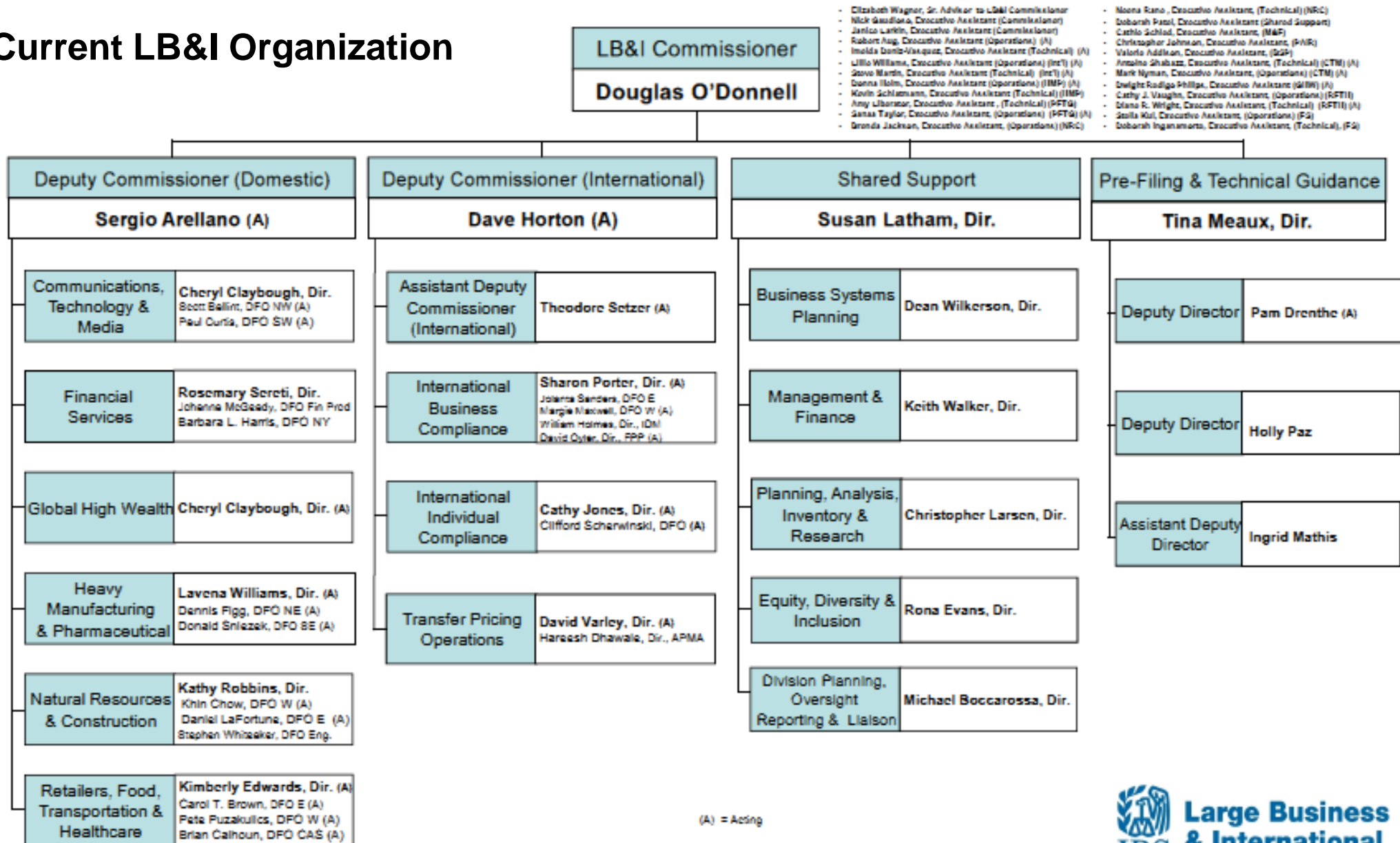
**Large Business  
& International**

# Updates on U.S. Transfer Pricing

- ❖ LB&I Organization Restructure and Impact to Transfer Pricing Organization (TPO)
- ❖ Transfer Pricing Examinations & the Audit Roadmap
- ❖ International Practice Service
- ❖ APMA Organization
- ❖ New APA & CA Procedures

# Updates on U.S. Transfer Pricing: LB&I Restructure

## Current LB&I Organization



(A) = Acting

Rev. September 8, 2015

# Updates on U.S. Transfer Pricing: LB&I Restructure

## ❖ Why Restructure LB&I

- Greater efficiencies in line with budget challenges
- More agility to design compliance strategies and evaluate intended compliance outcomes
- Principles of Restructure
  - Flexible, well-trained workforce
  - Better return selection
  - Tailored treatments
  - Integrated feedback loop

## ❖ Proposed LB&I Restructure

- Domestic and International under one LB&I Deputy Commissioner for greater cohesion

# Updates on U.S. Transfer Pricing: LB&I Restructure

## ❖ Proposed LB&I Restructure

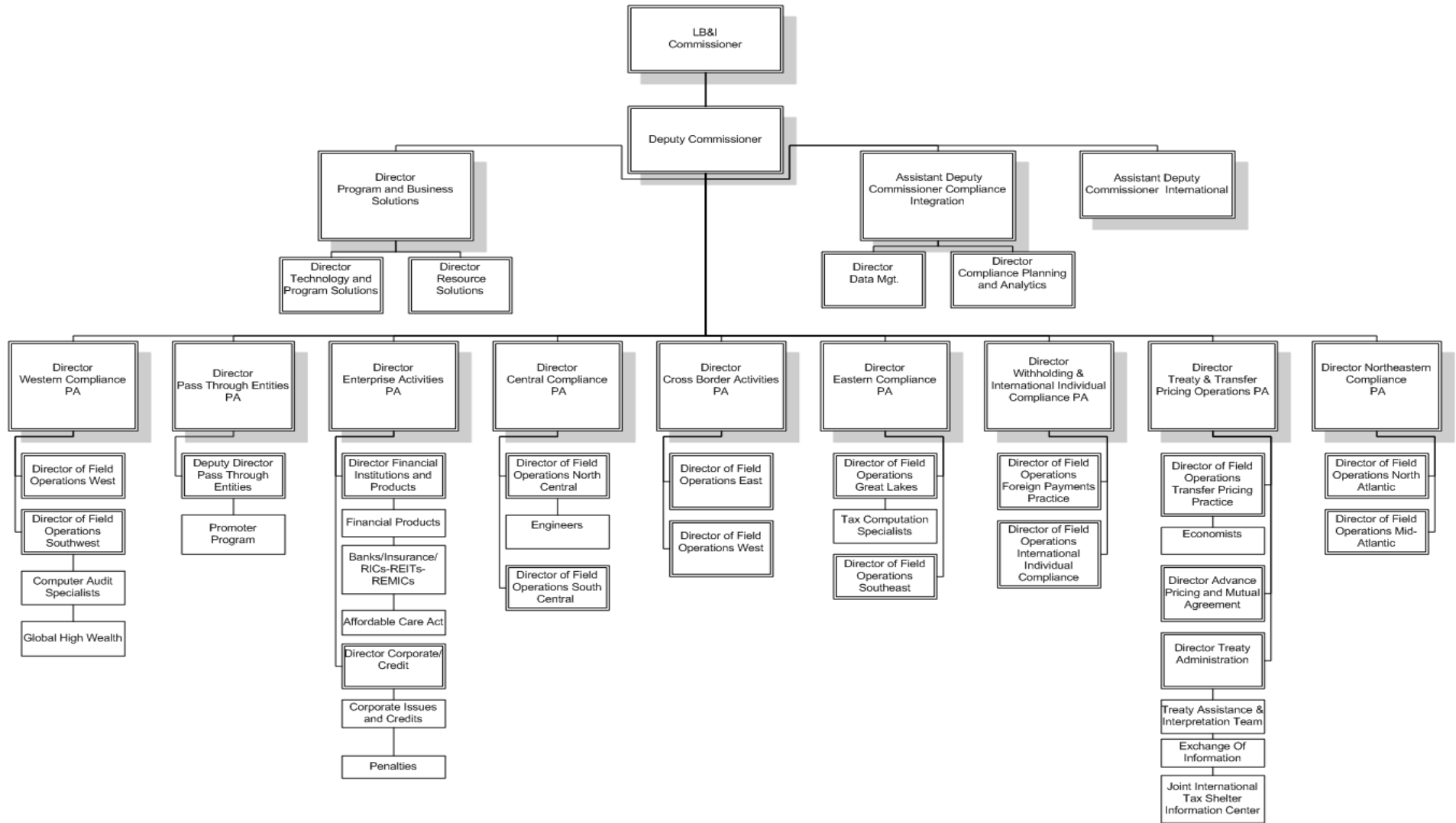
- Nine practice areas, including Transfer Pricing Office
  - Five Subject Matter practice areas
  - Four Compliance practice areas
- Centralized approach to assessing compliance risk
- Driven by campaign concept and strategies to close compliance gap
  - A campaign can include exams and/or alternate treatment
- Move away from CIC or “continuous” exam paradigm to issue focus

# Updates on U.S. Transfer Pricing: LB&I Restructure

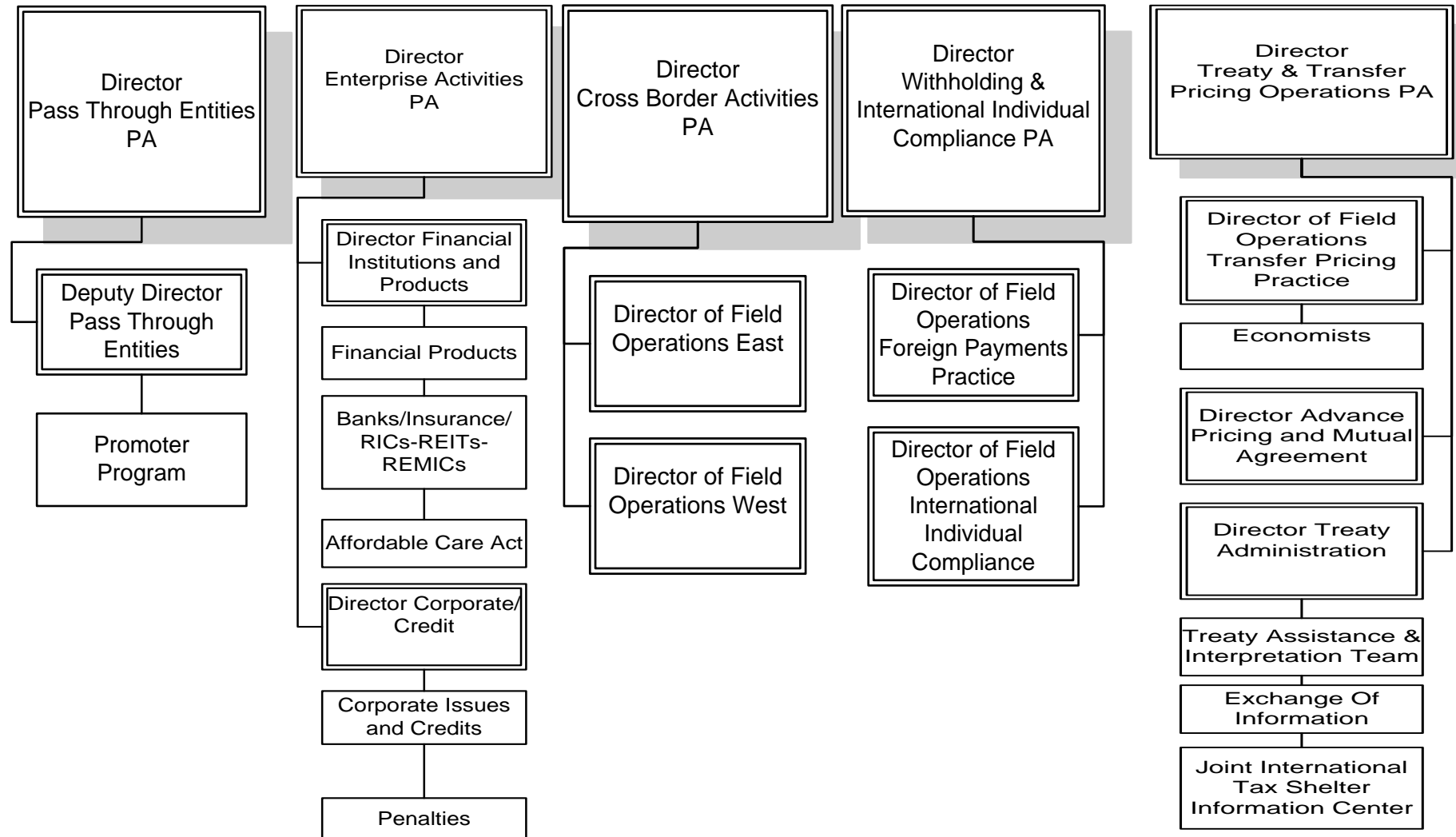
## ❖ What restructure means for TPO:

- TPP & APMA will remain under the TPO Director & Treaty Administration will become part of TPO
- TPO will be a Subject Matter Practice Area
- TPP will grow
  - Expand from three territories to four
  - Economists will all move to TPP
- Income Shifting IPNs will embed in TPP
- APMA recently expanded
- The Competent Authority will operate at assistant deputy commissioner level- external facing

# Updates on U.S. Transfer Pricing: LB&I Restructure



# Updates on U.S. Transfer Pricing: LB&I Restructure





# Updates on U.S. Transfer Pricing: LB&I Restructure

- ❖ What restructure means for TPP
  - TPP will identify, lead & participate in campaigns
  - TPP will focus exclusively on income shifting compliance
  - Restructure is consistent with original goals of TPP
    - Better case selection
    - Focus on specialization concept
    - Strategic litigation
    - Improve training and increase skills

# Updates on U.S. Transfer Pricing: LB&I Restructure

- ❖ What LB&I restructure means for you
  - Little change in the short term
  - Shift to centralized return / issue selection and campaign structures will be long term effort
  - Eventually CIC designation and procedures will end
  - Issue teams and campaign teams will drive exams in the future- consistent with exam reengineering
  - Other treatment streams – remains to be seen

# Updates on U.S. Transfer Pricing: The Audit Roadmap

## ❖ Transfer Pricing Audit Roadmap

- Good foundational platform for procedural (not substantive) guidance in anticipation of expansion
  - Focus on socializing it more broadly within LB&I and with taxpayers
  - Encourages two-way communication and transparency
  - Opportunity to showcase reasonableness of the numbers
  - Expectation of a fully developed case puts greater burden on everyone to cooperate or face burdensome audit
  - Resolution is a desired goal
- We are in the process of refreshing and updating the Roadmap

# Updates on U.S. Transfer Pricing: The Audit Roadmap

- ❖ The Audit Roadmap: Taxpayer Takeaways
  - Provide comprehensive presentations of your transactions, studies and accounting
  - Be open to in helping us understand the critical facts and agreeing to what the critical facts are
  - Respect our need to independently verify and judge
  - Take opportunity to dialogue about the progress of the transfer pricing exam
  - Be clear about your willingness to resolve

# Updates on U.S. Transfer Pricing: International Practice Service (IPS)

- ❖ International Practice Service (IPS)
  - Managed within IPNs (Int'l Practice Networks)
  - Part of International's knowledge sharing and knowledge transfer efforts
  - Library of published technical units
  - Transaction based approach to training
  - Released both internally and externally
    - Focus on issues and strategies
  - IPS Units for income shifting is very robust
    - 25 published units to date; 25+ in process

# Updates on U.S. Transfer Pricing: International Practice Service (IPS)

- ❖ Examples: <http://www.irs.gov/Businesses/Corporations/International-Practice-Units>



2015	
09-10-2015	<a href="#">Inbound Liquidation of a Foreign Corporation into a U.S. Corporate Shareholder</a>
09-09-2015	<a href="#">Accounting for Intangibles and Services Associated with the Sale of Tangible Property - Outbound</a>
08-28-2015	<a href="#">Foreign-To-Foreign Transactions – IRC 367(b) Overview</a>
08-28-2015	<a href="#">Overview of IRC 482</a>
08-21-2015	<a href="#">Short Term Loan Exclusion from United States Property</a>
08-21-2015	<a href="#">Bona Fide Residence Test for Purposes of Qualifying for IRC § 911 Tax Benefits</a>
08-21-2015	<a href="#">U.S. Persons Residing Abroad Claiming Additional Child Tax Credit</a>
08-21-2015	<a href="#">Calculating Foreign Earned Income Exclusion -Self-Employed Individual</a>
08-21-2015	<a href="#">Sourcing of Fringe Benefits for FTC Limitation</a>
08-21-2015	<a href="#">U.S. Territories – Determining Bona Fide Residency Status</a>
08-21-2015	<a href="#">Sourcing of Salary and Compensation</a>
08-21-2015	<a href="#">Calculating Foreign Earned Income Exclusion -Employee</a>
08-21-2015	<a href="#">Payee Documentation for Treaty Benefits</a>
08-21-2015	<a href="#">Effectively Connected Income (ECI)</a>
08-04-2015	<a href="#">Branch-Level Interest Tax Concepts</a>
08-04-2015	<a href="#">Non-Services FDAP Income</a>
07-17-2015	<a href="#">CFC Purchased From Related Party with Same Country Sales</a>
07-17-2015	<a href="#">CFC Sale to Related Party With Same Country Unrelated Party Manufacturing</a>
07-17-2015	<a href="#">Receipt of Dividends or Interest from a Related CFC</a>

2014	
12-15-2014	<a href="#">Interest Income Derived by CFC or QBU Engaged in Banking Financing or Similar Business</a>
12-15-2014	<a href="#">Computing Foreign Base Company Income</a>
12-15-2014	<a href="#">Subpart F Overview</a>
12-15-2014	<a href="#">Disposition of a Portion of an Integrated Hedge</a>
12-15-2014	<a href="#">Asset Valuation using the FMV Method for Interest Expense Allocation to Calculate FTC Limitation</a>
12-15-2014	<a href="#">Overview of Interest Expense Allocation and Apportionment in Calculation of the FTC Limitation</a>
12-15-2014	<a href="#">French Foreign Tax Credits</a>
12-15-2014	<a href="#">Exhaustion of Remedies</a>
12-15-2014	<a href="#">Exhaustion of Remedies and Transfer Pricing</a>
12-15-2014	<a href="#">Exhaustion of Remedies in Non Transfer Pricing Situations</a>
12-15-2014	<a href="#">How to Allocate and Apportion Research and Experimental Expenses</a>
12-15-2014	<a href="#">Interest Expense Limitation Computation under IRC 163j</a>
12-15-2014	<a href="#">Issuing a Formal Document Request when a US Taxpayer is Unresponsive to an IDR</a>
12-15-2014	<a href="#">Section 861 Home Office and Stewardship Expenses</a>
12-15-2014	<a href="#">License of Foreign Owned Intangible Property by US Entity</a>
12-15-2014	<a href="#">Management Fees</a>
12-15-2014	<a href="#">Purchase of Tangible Goods from a Foreign Parent CUP Method</a>
12-15-2014	<a href="#">CPM Simple Distributor Inbound</a>
12-15-2014	<a href="#">Foreign Shareholder Activities and Duplicative Services</a>
12-15-2014	<a href="#">Best Method Determination for an Inbound Distributor</a>
12-15-2014	<a href="#">Services Cost Method Inbound Services</a>

# Updates on U.S. Transfer Pricing: IRS Appeals

## ❖ Effect of new Appeals Approach

- Appeals Judicial Approach and Culture (AJAC)
  - Emphasis on evaluating the facts and arguments and positions of the parties as submitted.
  - No independent fact finding by Appeals
  - New facts, arguments and positions will not be considered or will be returned to Exam for reconsideration
- Premium on getting it right the first time
  - Hiding the ball won't be rewarded.
  - Throwing the case over the fence for Appeals to figure out won't work.
- Statute Considerations

# Updates on U.S. Transfer Pricing: APMA Organization

## ❖ Overview of APMA Responsibilities

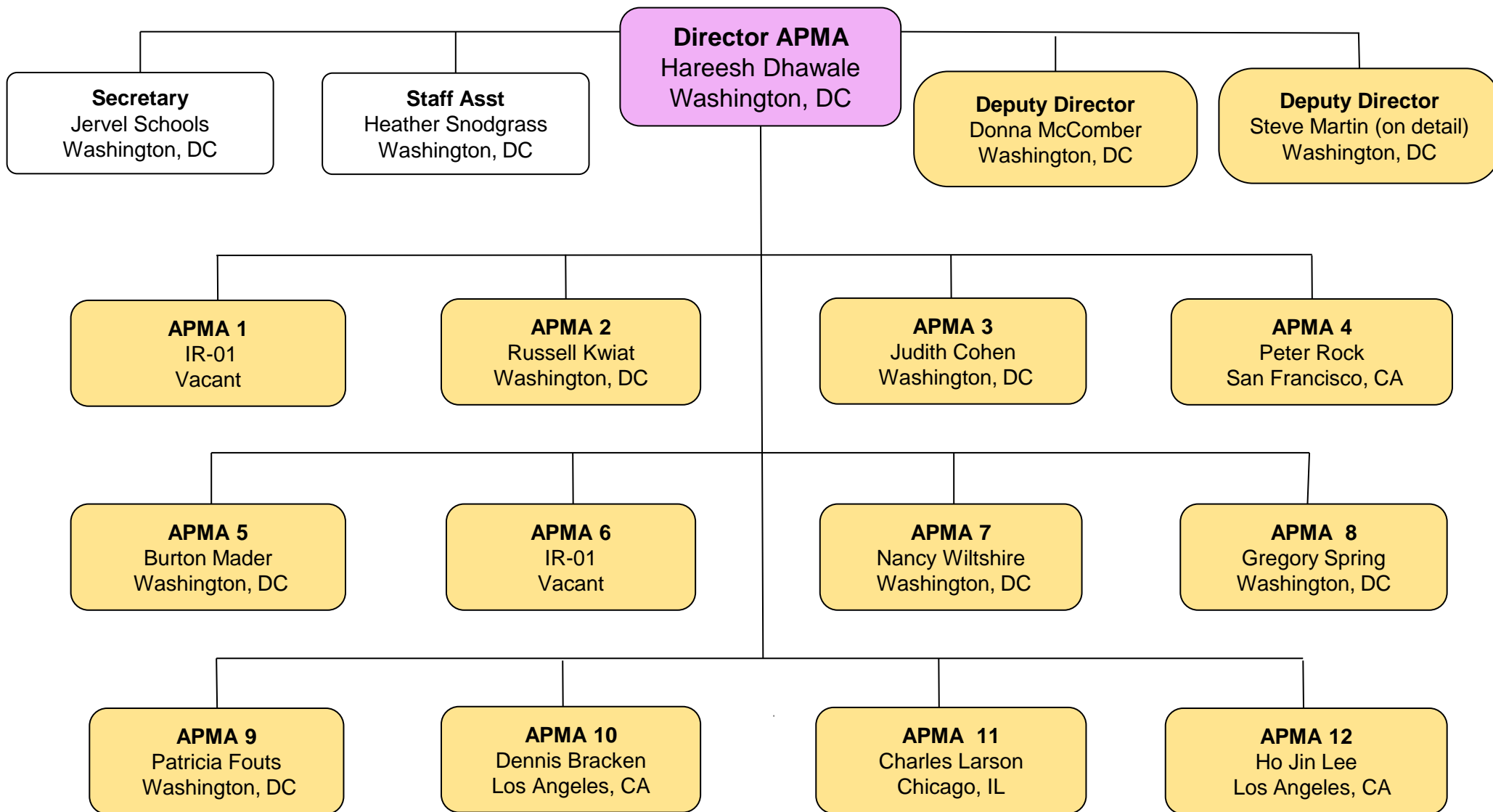
- Transfer pricing and allocation issues in
  - Advance Pricing Agreements
  - Competent Authority double taxation cases

## ❖ 2012 Restructuring

- Competent Authority and APA combined
- APA moved from Chief Counsel to LB&I
- Treaty issues other than transfer pricing and allocation moved to Treaty Assistance and Interpretation Team (TAIT)



# Updates on U.S. Transfer Pricing: APMA Organization



# Updates on U.S. Transfer Pricing: APMA Organization

- ❖ Assignment of Cases to Senior Managers
- ❖ Assignment of Economists
- ❖ Role of Economists
  - APA
  - Competent authority
  - Exam (TPP)

# Updates on U.S. Transfer Pricing: New APA and CA Procedures

## ❖ New Revenue Procedures

- Rev. Proc. 2015-40 (Competent authority)
- Rev. Proc. 2015-41 (APAs)

## ❖ Reasons for Updates

- Reorganization (including move of APA to LB&I from Chief Counsel)
- Codify existing “Best Practices”
- Increase efficiency in light of shrinking IRS resources

# Updates on U.S. Transfer Pricing: New APA and CA Procedures

## ❖ Notable APA procedures

- Pre-filing mandatory conferences and memoranda
- Voluntary (including anonymous) pre-filing conferences
- Codification of interrelated issues practice
- Expand rollback opportunities
- Statutes of limitations
- Detailed content and organizational requirements
- Procedural changes in review of denials

# Updates on U.S. Transfer Pricing: New APA and CA Procedures

## ❖ Notable Competent Authority procedures

- Encourage early Competent Authority involvement
  - Prior to IRS Appeals
  - Fast track permitted
- Encourage pre-filing conferences
- Interrelated issues practice
- Competent Authority Repatriation (CAR) (Rev. Proc. 99-32 relief)
- Detailed form and content requirements
- Procedure to confirm submission is complete

# Updates on U.S. Transfer Pricing: Competent Authority Arbitration

- ❖ Mandatory 2 years after submission complete
- ❖ Baseball-style arbitration
  - Currently arbitration protocols with Canada, Germany, France, & Belgium
  - Japan, Spain, & Switzerland awaiting Senate approval
- ❖ Effective dispute resolution tool