

Updates on U.S. Transfer Pricing

John Hinman, Assistant to Director,
Transfer Pricing Operations

John Hughes, Senior International Advisor,
Transfer Pricing Operations

Crowell & Moring LLP Tax Seminar
October 1, 2015



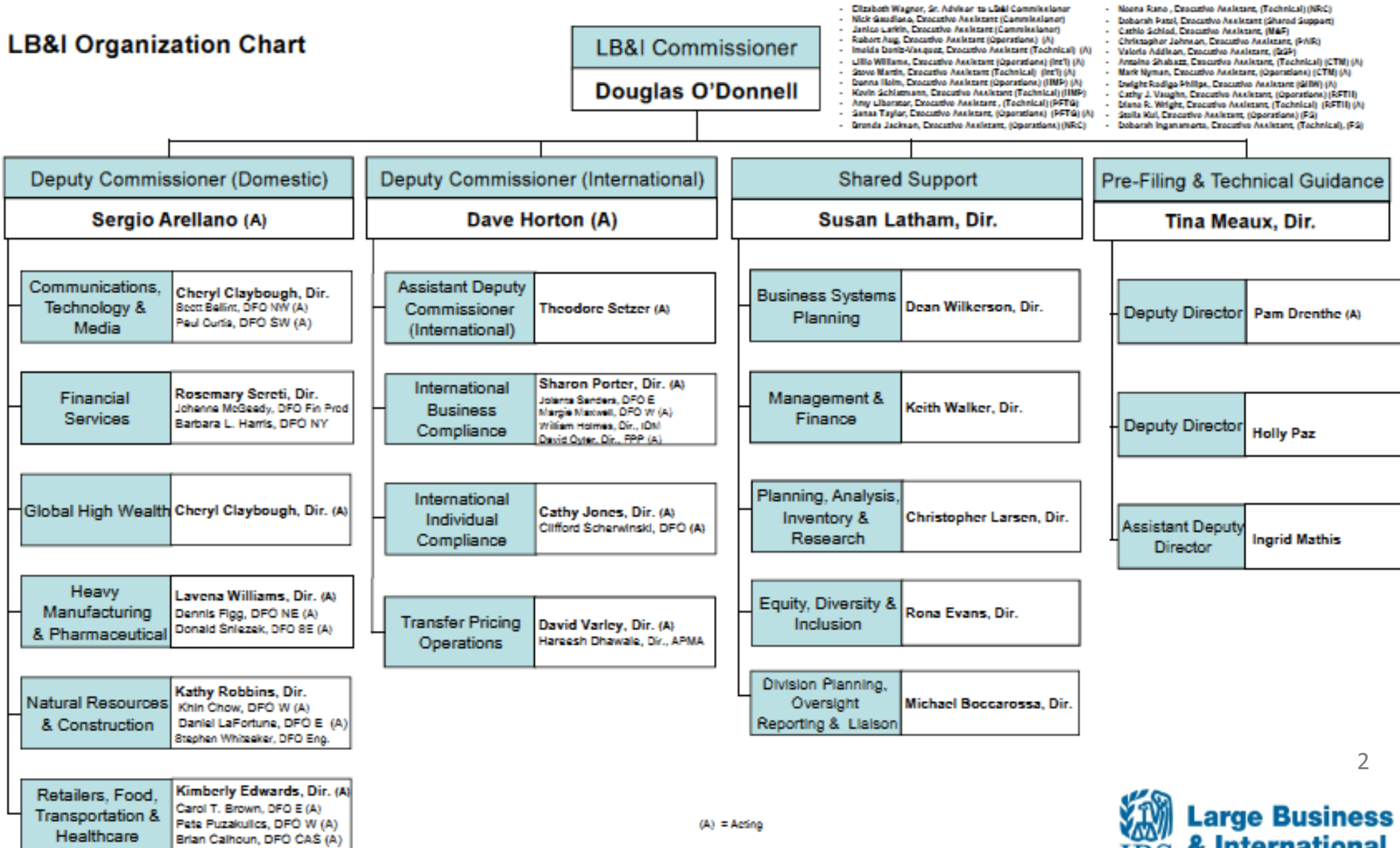
**Large Business
& International**

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

LB&I Organization Chart



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 (JITSIC, TAIT,EOI) will become part of TPO
- TPO will be a Subject Matter Practice Area
- Income Shifting IPNs will embed in TPP
- TPP will expand/ APMA recently expanded
- TPP will identify, lead & participate in campaigns
- Consistent with original goals of TPP
 - Better case selection
 - 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		2014	
09-10-2015	Inbound Liquidation of a Foreign Corporation into a U.S. Corporate Shareholder	12-15-2014	Interest Income Derived by CFC or QBU Engaged in Banking Financing or Similar Business
09-09-2015	Accounting for Intangibles and Services Associated with the Sale of Tangible Property - Outbound	12-15-2014	Computing Foreign Base Company Income
08-28-2015	Foreign-To-Foreign Transactions – IRC 367(b) Overview	12-15-2014	Subpart F Overview
08-28-2015	Overview of IRC 482	12-15-2014	Disposition of a Portion of an Integrated Hedge
08-21-2015	Short Term Loan Exclusion from United States Property	12-15-2014	Asset Valuation using the FMV Method for Interest Expense Allocation to Calculate FTC Limitation
08-21-2015	Bona Fide Residence Test for Purposes of Qualifying for IRC § 911 Tax Benefits	12-15-2014	Overview of Interest Expense Allocation and Apportionment in Calculation of the FTC Limitation
08-21-2015	U.S. Persons Residing Abroad Claiming Additional Child Tax Credit	12-15-2014	French Foreign Tax Credits
08-21-2015	Calculating Foreign Earned Income Exclusion -Self-Employed Individual	12-15-2014	Exhaustion of Remedies
08-21-2015	Sourcing of Fringe Benefits for FTC Limitation	12-15-2014	Exhaustion of Remedies and Transfer Pricing
08-21-2015	U.S. Territories – Determining Bona Fide Residency Status	12-15-2014	Exhaustion of Remedies in Non Transfer Pricing Situations
08-21-2015	Sourcing of Salary and Compensation	12-15-2014	How to Allocate and Apportion Research and Experimental Expenses
08-21-2015	Calculating Foreign Earned Income Exclusion -Employee	12-15-2014	Interest Expense Limitation Computation under IRC 163j
08-21-2015	Payee Documentation for Treaty Benefits	12-15-2014	Issuing a Formal Document Request when a US Taxpayer is Unresponsive to an IDR
08-21-2015	Effectively Connected Income (ECI)	12-15-2014	Section 861 Home Office and Stewardship Expenses
08-04-2015	Branch-Level Interest Tax Concepts	12-15-2014	License of Foreign Owned Intangible Property by US Entity
08-04-2015	Non-Services FDAP Income	12-15-2014	Management Fees
07-17-2015	CFC Purchased From Related Party with Same Country Sales	12-15-2014	Purchase of Tangible Goods from a Foreign Parent CUP Method
07-17-2015	CFC Sale to Related Party With Same Country Unrelated Party Manufacturing	12-15-2014	CPM Simple Distributor Inbound
07-17-2015	Receipt of Dividends or Interest from a Related CFC	12-15-2014	Foreign Shareholder Activities and Duplicative Services
		12-15-2014	Best Method Determination for an Inbound Distributor
		12-15-2014	Services Cost Method Inbound Services

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

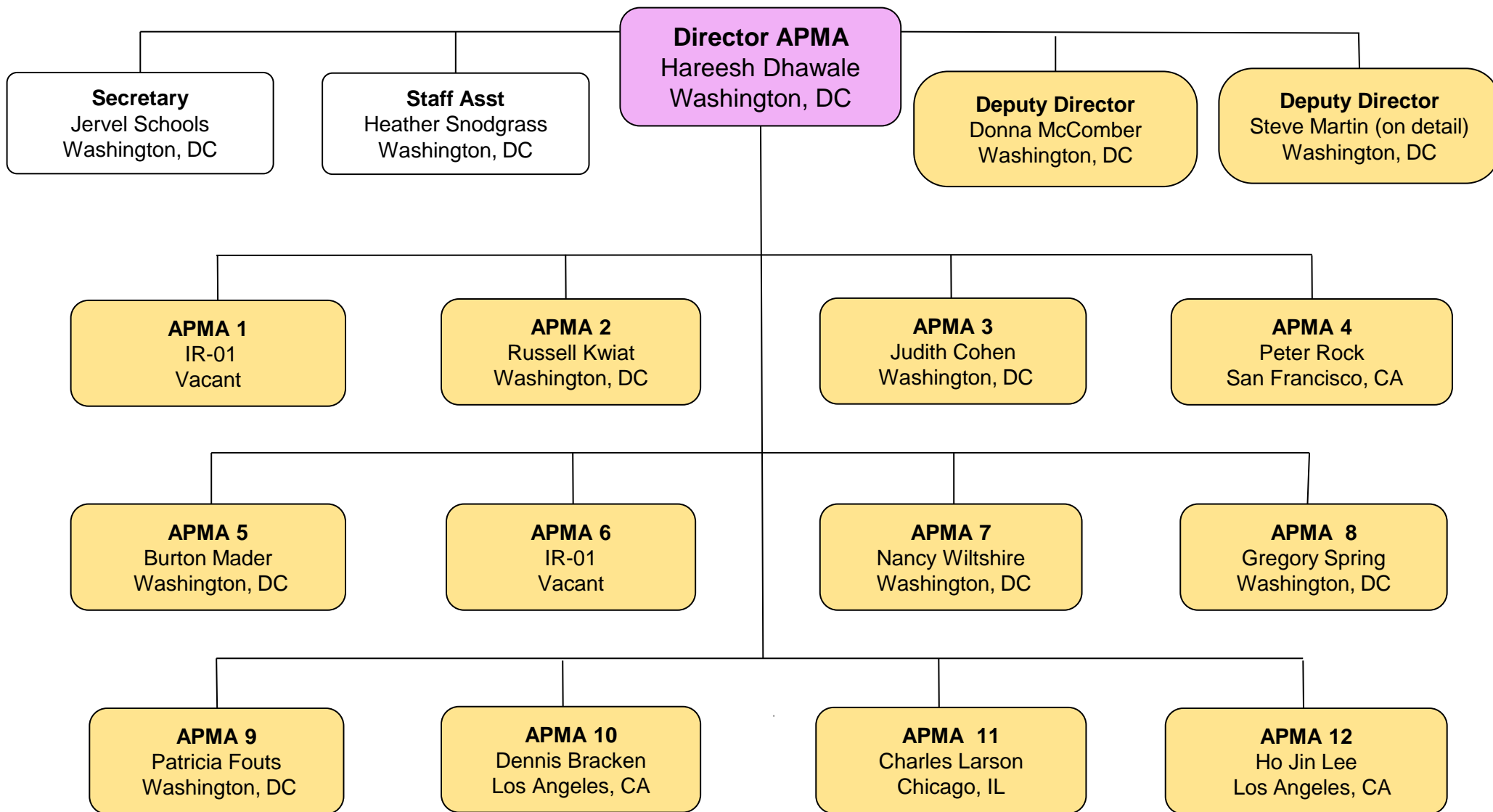
❖ Overview of APMA Responsibilities

- 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 (August 12)
 - 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