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In this installment of Practically Speaking: Tax Controversy, the authors revisit the IRS's options for dispute resolution and provide updates and insights on the Large Business and International Division examination process and the fast-track settlement, accelerated issue resolution, and rapid Appeals process programs.

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In May we provided an overview of the federal tax dispute prevention and resolution options available to taxpayers.[1] Since then, there has been continued turnover at the IRS in leadership, managerial, and technical roles, as well as reduced spending and an unclear appropriations future for the fiscal year that began October 1 and beyond. As part of the IRS's strategic plan, and needing to continue its enforcement efforts both in closing examinations and opening new ones, the agency has made further changes to its postfiling dispute resolution programs and the Large Business and International Division examination process.

This article examines those recent changes in the context of how taxpayers can resolve their postfiling tax issues in a timely and efficient manner. In particular, it addresses: the heightened approval requirements necessary to deny fast-track settlement (FTS); clarifications concerning the accelerated issue resolution (AIR) program; the new post-Appeals mediation (PAM) pilot program; and the phaseout of the acknowledgement of facts information document request (AOF IDR). It also revisits the rapid Appeals process (RAP) program, which may be more attractive today than in the past.

I. ADR and LB&I Examination Process Changes

After several years with only minor changes to its alternative dispute resolution (ADR) programs, the IRS in January announced three ADR pilot programs concerning FTS and PAM[2] that expand the availability of those existing programs by relaxing the rules for what issues could be considered and when they could be considered.

[1] Andrew R. Roberson, Justin Donatello, and Kevin R. Harkins, "Dispute Prevention and Resolution Options — Which Is Right for You?" *Tax Notes Federal*, May 5, 2025, p. 849.

[2] IR-2025-14.

In July, further modifications were made to ADR options and the LB&I examination process, "aimed at reducing case cycle times for corporate taxpayers, making examinations more customer driven, consistent and efficient."[3] The IRS issued a memorandum to all LB&I employees providing guidance on the FTS consideration process, the applicability of AIR, and the elimination of the AOF IDR. More recently, on October 1, the IRS Independent Office of Appeals announced the launch of a two-year pilot program involving PAM.

A. FTS Consideration

The IRS announced pilot program changes to FTS in February to facilitate broader use of the program. One change was the requirement that FTS requests could not be denied without the approval of a first-line executive, which, for LB&I examinations, was the director of field operations. Further, taxpayers were to receive an explanation of any FTS denial.

In its July announcement, the IRS encouraged LB&I examiners to resolve issues and cases early in the examination process. In support of this goal, the agency reiterated that any recommendation to deny FTS requires written concurrence at the director of field operations level and a verbal explanation to the taxpayer. A notification to the LB&I Fast Track mailbox is also required. The announcement went a step further, requiring that IRS senior directors inform the LB&I deputy commissioner of a proposed denial of FTS before communicating the denial to a taxpayer. Finally, the announcement clarified that the decision to accept or deny a taxpayer's request to pursue FTS must be a business decision, not a legal one.

The recent requirements for concurrence by the director of field operations and notification to the LB&I deputy commissioner are significant for taxpayers. Previously, taxpayers were sometimes given little or no explanation for why FTS was denied, and those denials were made by the examination team. The new requirements reflect an increased emphasis on FTS for resolving disputes and supporting examination teams in achieving currency. We have seen several situations this year in which examination teams that previously denied FTS requests have come back to taxpayers and expressed a willingness and desire to pursue FTS. Indeed, we have even seen situations in which 30-day letters were withdrawn (before the cases were submitted to Appeals) and the parties have pursued FTS.

It remains to be seen whether the IRS's recent willingness to engage in FTS will continue or if it's merely an offer that IRS personnel are required to make to comply with the announcement (that is, "checking the box") and to offset reductions in IRS personnel. Regardless, in the current environment, taxpayers with issues suitable for FTS that are willing to compromise to reach resolution should not hesitate to request FTS or revisit a prior denial with their examination team. Notably, although FTS is available only before the 30-day letter is issued, we have seen some examination teams withdraw a 30-day letter if the case has not been transferred to Appeals and revisit FTS in an apparent attempt to comply with the spirit of the directive.

B. Applicability of AIR

The AIR program, which is voluntary, dates to the 1990s and allows the IRS and a taxpayer to carry forward an agreed issue in a current cycle to future years for which returns have been filed. As originally implemented, the program was limited to taxpayers in the coordinated examination program. In 2000 the IRS replaced the coordinated examination program and introduced the coordinated industry case program. In 2019 the IRS replaced the coordinated industry case program with the large corporate compliance program, effective for examinations of tax years 2017 and later. However, the IRS never updated guidance on the AIR program to clarify that it continued to apply to coordinated industry cases or large corporate compliance cases.

As part of the July 2025 changes, the IRS noted that the use of the legacy term "coordinated examination program" in the AIR procedures

[3] IR-2025-77.

"led to confusion regarding its availability and suppressed its use by the field."[4] The IRS thus clarified that AIR can be used in large corporate compliance cases. The IRS also advocated for the use of the program, highlighting the ability to get current on issues that were previously examined and reducing the burden on the parties while expediting tax certainty.

The AIR program can be a highly effective tool for both the IRS and large taxpayers in cases in which there are recurring issues that are resolved in a year under examination, and one or more future years remain open for assessment. The IRS's recent clarification — coupled with the agency's desire to get more current on audits — presents an opportunity for taxpayers to use the AIR program to gain more certainty while alleviating the burden of a subsequent examination of the same or a similar issue.

C. Elimination of AOF IDR

For almost a decade, the IRS has been issuing an AOF IDR at the end of LB&I's examination of an issue to try and reach agreement on the relevant facts. The goal of the AOF IDR is generally twofold: (1) to ensure that the examination team has all the relevant facts in front of it before reaching a final conclusion on an issue; and (2) to present as clear a factual picture as possible to facilitate the use of dispute resolution options such as FTS or traditional Appeals.

In theory, the AOF IDR can be a powerful tool to narrow or eliminate factual issues, and it allows the parties to focus on the strengths and weaknesses of their respective legal positions. However, in practice, the AOF IDR process presented difficulties, given that taxpayers sometimes believed that their responses were not being incorporated or given due consideration as part of the process. Thus, different approaches were taken in response to an AOF IDR, ranging from not responding at all to providing detailed comments that effectively rewrote the facts presented by the examination team.

In response to feedback from taxpayers that "the AOF process adds time but little value to the exam process," the IRS announced that it will be eliminated in 2026.[5] Until then, taxpayers will be given the option to participate in the AOF process. Despite the elimination of the AOF process, examination teams are directed to conduct issue discussions, share proposed adjustments, and solicit feedback from taxpayers on their positions before making a final proposed adjustment.

Reaching agreement on the underlying facts can be important for both taxpayers and the IRS. Absent at least an agreement on the basic facts, it might be difficult for the IRS to properly gauge hazards of litigation, whether in the FTS setting or at Appeals. Further, if a taxpayer introduces new facts at Appeals, it runs the risk that the Appeals officer will send the case back to the examination team for further consideration or provide the examination team with additional time to review and weigh in on the new facts. Given that the IRS's workforce reduction has affected the workload of Appeals officers, this will only lengthen the time before resolution can be reached.

D. PAM Pilot Program

On October 1, Appeals announced a two-year pilot program to make PAM "more attractive to taxpayers."[6] PAM is an option that taxpayers can request after an unsuccessful Appeals proceeding and, if accepted, the taxpayer and the Appeals officer who presided over the unsuccessful proceeding mediate (usually for one day) with an Appeals mediator with no prior connection to the case. Taxpayers are encouraged to include a co-mediator at their own expense.

Under the new pilot program, the case will be assigned to a new Appeals team with no prior involvement. That new team will then represent Appeals during PAM before the Appeals mediator and any co-mediators.

This change is a welcome development. In the past, some taxpayers have been unable to reach resolution during PAM because they were negotiating with the same Appeals team they had been unable to reach agreement with in the traditional Appeals setting. Given this fact, other taxpayers may have been discouraged from

[4] LB&I-04-0725-0008, "Interim Guidance on Reinforcing the Customer Focused, High Efficiency LB&I Examination Process" (July 23, 2025).

[5] *Id.*

[6] IR-2025-100.

incurring the time and expense of PAM. The change to substitute a new Appeals team will hopefully, as the pilot program announcement says, "facilitate an expedited fresh look at the case in which mediators help the parties explore all potential paths to resolution prior to potential litigation."

II. RAP Opportunities

In our prior article, we characterized RAP as a hybrid of FTS and traditional Appeals and pointed out that, in our experience, it is a seldom-used ADR option. However, taxpayers might want to rethink RAP in the current environment.

As mentioned above, the IRS has made changes to FTS to encourage resolution at the examination level, and there appears to be an agencywide effort to get current on examinations. For taxpayers with matters that are now in Appeals' jurisdiction — that is, the 30-day letter has been issued, a protest has been submitted, a rebuttal to the protest has been filed (if done by the examination team), and the case transferred to Appeals — examination teams might be more inclined to reach resolution without the need for a full-blown Appeals conference. FTS historically mandated that when one issue was ineligible for FTS, the taxpayer's entire case would be rendered ineligible. There may be situations in which, absent the ineligible issues, the examination team and the taxpayer could have resolved one or more issues beyond the ineligible issue but were procedurally barred from doing so.

The Internal Revenue Manual provides that if, for certain specified reasons, an issue is determined to be ineligible for RAP, the remaining issues might still be eligible.[7] In cases in which there are multiple eligible issues, it is unclear whether the IRS and a taxpayer must include all issues in the RAP working conference or whether one issue could go through the RAP process while others are preserved. Given the IRS's desire to reach resolution more quickly and efficiently, it may be prudent for a taxpayer willing to compromise on one issue but not on others to consider whether to request RAP for that issue.

III. Conclusion

Given the reduced size of the IRS workforce and the desire for the agency to get more current on its examinations, now is an opportune time for both the IRS and taxpayers to revisit and consider the various postfiling dispute resolution options examined above to achieve timely, principled examination results.[8] ■

[7] IRM 8.26.11.3. The specified ineligible issues are: (1) constitutional issues; (2) issues designated for litigation or docketed in any court; (3) issues under consideration for designation for litigation; (4) issues for which a taxpayer requests the simultaneous Appeals/competent authority procedure described in Rev. Proc. 2015-40, 2015-35 IRB 236, section 6; (5) international individual compliance cases; (6) issues that are part of a whipsaw transaction; (7) issues identified in a chief counsel notice, or advice, as excluded from the RAP process; and (8) issues for which mediation is not consistent with sound tax administration. IRM 8.26.11.6.

[8] The foregoing information is not intended to be "written advice concerning one or more Federal tax matters" subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230. The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser. This article represents the views of the authors only and does not necessarily represent the views or professional advice of KPMG LLP.