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In this installment of Practically Speaking: Tax Controversy, the authors explore options the IRS provides for dispute prevention and resolution and the agency's new pilot programs for alternative dispute resolution.

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An important objective for all taxpayers is achieving certainty and finality for their tax return positions — those yet to be taken and those already reported. The IRS offers several options for dispute prevention and resolution to assist taxpayers with this goal. Although many options are geared toward large corporate taxpayers, some are available to all.

I. Overview of Dispute Prevention and Resolution Options

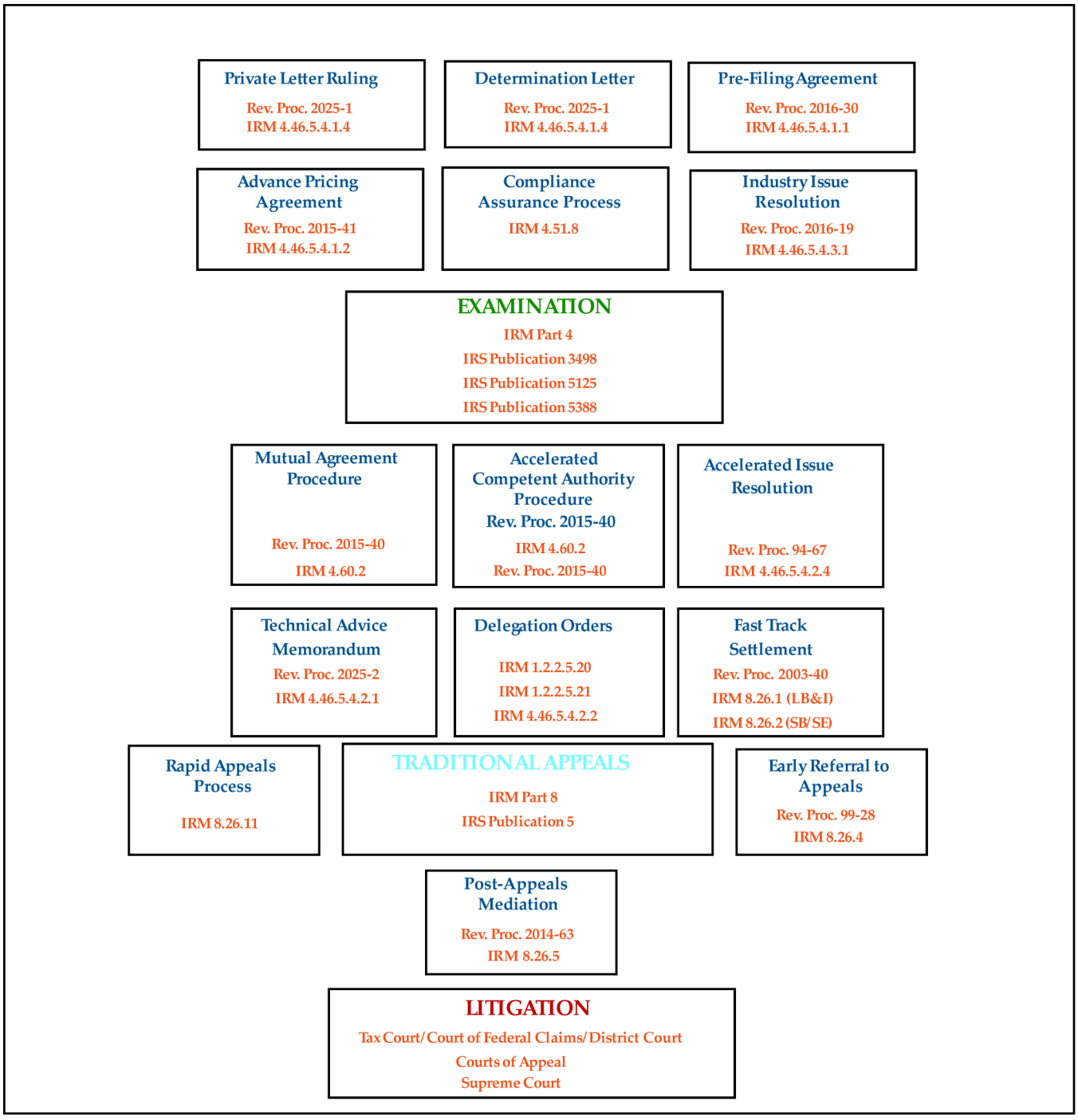
The IRS provides several options to prevent tax disputes before the filing of a tax return or to resolve disagreements that arise during examination after a return is filed. Whether one or more of these options should be pursued depends on several factors, such as the type of taxpayer, the amount potentially in dispute, the issues involved, and the resources and user fees necessary to proceed. The figure identifies the dispute prevention and resolution options available and where they fit into the IRS examination process.

A. Prefiling or Preaudit Resolution Options

As shown, there are six types of prefiling or preaudit resolution options. Five are taxpayer specific, while the sixth is designed to address issues common to a group of taxpayers or an industry. An overview of these options follows.

1. Private letter ruling.

A private letter ruling is a written determination that interprets and applies the tax law to a taxpayer's particular facts. A taxpayer must submit a written inquiry requesting a ruling, ordinarily before filing a tax return, and in most cases must also submit a user fee of $43,700, which is refundable only if the IRS declines to issue a



ruling. The purpose of a letter ruling is to establish the federal tax consequences of a transaction with certainty, either before the transaction is completed or before the taxpayer's return is filed. If the IRS grants the taxpayer's request, the letter ruling will be binding on the IRS so long as the proposed transaction is fully and accurately described and the transaction is carried out as described. The IRS may not entertain private letter ruling requests for certain issues.

The obvious benefit of a favorable letter ruling is certainty for the taxpayer receiving it. However, if an unfavorable letter ruling is received, a taxpayer that moves forward with the transaction will face difficulty in persuading the IRS (either during an examination or at the Independent Office of Appeals) to go against the ruling.

Moreover, letter rulings may not be relied on as precedent by other taxpayers or the IRS.[1]

Although private letter rulings are publicly available, they are redacted to protect the identities of taxpayers and provide anonymity. However, there are sometimes unique facts that can be traced to publicly available information that may lead to the identification of the taxpayer.

2. Determination letter.

A determination letter is a document that applies principles and precedents previously announced by the IRS to a particular set of facts.[2] Determination letters are only issued when there are already clearly established rules in a statute, regulation, tax treaty, revenue ruling, or judicial authority representing the IRS's position.

3. Prefiling agreement.

A prefiling agreement (PFA) is an agreement between the IRS and a taxpayer concerning factual issues that are well settled in the tax law and that can be resolved by the tax return filing date (plus extensions). The taxpayer must first submit an application to the PFA program, which is evaluated by chief counsel, the examination team, and subject matter experts. The IRS then unilaterally decides whether to accept or deny the application.

A successful PFA may take the form of a closing agreement or a nonstatutory agreement that can apply for up to four future years. While not always the case, the goal is to resolve the PFA before the filing of the tax return. This provides certainty from both a tax and a financial accounting perspective. Further, a PFA may be used to establish the appropriate method for determining tax consequences affecting future years. The purpose of a PFA is to reduce the cost and burden associated with a postfiling examination and provide certainty to the IRS and the taxpayer.

PFAs have not been widely used in recent years. During the calendar years 2019 to 2022, the IRS received 20 applications, accepted nine, rejected seven, and closed eight cases.[3] The average processing time for a PFA also increased during this time, from 256 days in 2019 to 349 days in 2022. Acknowledging these low numbers, the IRS last fall encouraged taxpayers to consider the PFA program.[4]

The fee for a PFA is $181,500. Thus, the size and continuing nature of the issue that is the subject of the PFA must be considered in determining whether to pursue this option. Corporate taxpayers with large section 165(g) or section 41 issues should consider using a PFA to gain certainty on issues and avoid the time and resources required by an IRS examination.

4. Advance pricing agreement.

An advance pricing agreement is an agreement between the IRS and a taxpayer concerning transfer pricing methods to allocate income between related parties under section 482. APAs can be unilateral (IRS and taxpayer only), bilateral (IRS, taxpayer, and another country), or multilateral (IRS, taxpayer, and two or more countries). An APA generally covers (1) the factual nature of the intercompany transactions subject to the APA, (2) the appropriate transfer pricing method to be applied, and (3) the expected range of results from applying the agreed-on method to the transactions.

The fee for most APAs is $121,600, but the price is reduced for renewal requests ($65,900) and amendments ($24,600).[5] Transfer pricing examinations are heavily fact-intensive and can take up substantial time and resources of the taxpayer. They also address uncertainty about the size of any proposed adjustments and their effects on tax obligations to other countries. For this reason, many taxpayers seek to enter APAs to

[1] Section 6110(k)(3). But letter rulings may be cited as evidence of the IRS's administrative practice, and some courts have relied on them as such. *See, e.g., Baker v. Commissioner*, 122 T.C. 143, 167 n.25 (2004) (collecting cases).

[2] *See* reg. section 601.201(a)(1).

[3] IRS, "Fact Sheet: Pre-Filing Agreement (PFA) Program — January 2023" (last reviewed Nov. 27, 2024). Since 2019, applications have been submitted for (1) losses on liquidation of a foreign subsidiary, (2) sale and leaseback transactions, (3) section 165(g) worthless stock deductions, (4) section 41 research credit claims, (5) loans for federal tax purposes, (6) section 856 real estate investment trust issues, and (7) passthrough elections.

[4] Nathan J. Richman, "IRS Working on Tweaks to Alternative Dispute Resolution Programs," *Tax Notes Federal*, Sept. 16, 2024, p. 2369.

[5] *See* Thomas D. Bettge and Mark R. Martin, "IRS User Fees for APAs Increase but Remain Attractive," Procedurally Taxing blog, Feb. 23, 2024. The IRS recently released its report on APAs under the advance pricing and mutual agreement program. *See* Announcement 2025-13, 2025-15 IRB 1392.

achieve certainty and avoid disputes with the IRS.[6]

5. Compliance assurance process.

The compliance assurance process program is a real-time audit process that seeks to resolve the tax treatment of all issues before a tax return is filed. It began in 2005 as a pilot program and was made permanent in 2011. Various changes to the CAP program have occurred over the years; today it has three facets: (1) the CAP phase, (2) the compliance maintenance phase, and (3) the bridge plus phase.[7]

The CAP program has obvious advantages for taxpayers, such as gaining certainty and finality for both tax and financial accounting matters at an early date. For issues not agreed on, taxpayers generally strive to reach a resolution through fast-track settlement. Some potential disadvantages of the CAP program include a heightened level of transparency of transactions and tax return positions and frequent disclosures to the IRS. The CAP program may also not be a good fit for taxpayers with transfer pricing issues (in the absence of an APA)[8] or complex research credit issues.

6. Industry issue resolution.

The industry issue resolution program, which is not taxpayer specific, seeks to resolve frequently disputed or burdensome issues affecting a significant number of taxpayers or an industry. The process is designed to be collaborative between the industry, the IRS, and Treasury. The IIR program is available to all business taxpayers, whether served by the IRS's Large Business and International Division, the Small Business/Self-Employed Division, or the Tax-Exempt and Government Entities Division. Business tax issues appropriate for the program must have at least two of the following characteristics[9]:

- the proper tax treatment of a common factual situation is uncertain;
- the uncertainty results in frequent and often repetitive examinations of the same issue;
- the uncertainty results in a burden to taxpayers;
- the issue is significant and affects many taxpayers (either industrywide or across industry lines); and
- the issue requires extensive factual development, so industry practices and views would assist the IRS in determining the proper tax treatment.

The submission of an issue for IIR, which does not require a user fee, may be done by business taxpayers, industry associations, or other interested parties. Several interested parties at the IRS and Treasury will review and determine whether to select the issue for further review. The resolution of any issue usually takes the form of a revenue ruling or revenue procedure.

Applications to the IIR program, like PFAs, have been limited over the years. The IRS's website indicates that there are no IIRs in progress.[10] But in the appropriate situation, taxpayers should consider whether seeking an IIR on a common industry issue may be a worthwhile option.[11] For example, in 2017 the IRS issued an Accounting Standards Codification Topic 730 directive in the context of the research credit through the IIR process.

B. Postfiling Resolution

After a tax return is filed, taxpayers have several options to resolve any disagreements that may arise before the only option left is litigation.[12] An examination of these postfiling resolution options follows.

1. Mutual agreement procedure.

In a mutual agreement procedure, the IRS, through its role as U.S. competent authority, can assist a taxpayer by adjusting tax results when the

[6] Martin et al., "Record APA Execution Rates Indicate Return to Prepandemic Operations," *Tax Notes Federal*, July 8, 2024, p. 307.

[7] More information on each phase is available on the IRS's website. *See* IRS, "Compliance Assurance Process (CAP): Frequently Asked Questions (FAQs)" (last reviewed Oct. 28, 2024).

[8] *See* Martin et al., "CAP Updates Bring Transfer Pricing Issues to the Fore," *Tax Notes Federal*, July 22, 2019, p. 489.

[9] IRS, "Fact Sheet: Industry Issue Resolution (IIR) Program (March 2023)" (last reviewed June 14, 2024).

[10] IRS, "Industry Issue Resolution Program" (last reviewed Feb. 6, 2025).

[11] For more background on the IIR program, see Rosemary Sereti, "Resolving Contentious Issues Through the IIR Program," the Tax Adviser (Mar. 1, 2019).

[12] The litigation process, which varies depending on the forum, level of judicial review, and other factors, is beyond the scope of this article.

taxpayer is faced with double taxation or denied treaty benefits. MAPs can address most U.S. or foreign-initiated actions (including examinations, adjustments, and withholding).[13]

The procedures and requirements for a MAP are contingent on the nature of the underlying transaction. Special rules apply for requests involving the limitation on benefit provisions,[14] pension plans, and residency issues. In addition, U.S. income tax treaties with Belgium, Canada, France, Germany, Japan, Spain, and Switzerland provide for mandatory binding arbitration of cases not resolved in a MAP.

2. Accelerated competent authority procedure.

An accelerated competent authority procedure (ACAP) allows a taxpayer to request that a MAP resolution be extended to cover subsequent tax periods for which the taxpayer has filed tax returns. Thus, an ACAP may allow a taxpayer to extend the cover of a MAP agreement, and taxpayers can request that an ACAP proceeding be combined with an ACAP.

A request for an ACAP may be made either with a MAP request or separately. If the request is made after the MAP request, it must be submitted before certain determinations are made in the original proceeding. The availability of an ACAP varies by treaty country: Canada has a formal ACAP program, and some other jurisdictions such as Denmark, the Netherlands, and Switzerland may be able to provide ACAP-like relief on a case-by-case basis, while others are not willing or able to extend MAP resolutions to subsequent periods.[15]

3. Accelerated issue resolution.

The accelerated issue resolution (AIR) option may allow the IRS and the taxpayer to carry forward a resolved issue in a current audit cycle for all years for which returns have been filed. AIR is a voluntary procedure available only to corporate taxpayers that are under the large corporate compliance program. An eligible taxpayer may request an AIR agreement in writing from the examination team. That request may be granted when there is a mutual advantage to having the issues permanently determined for the years covered by the agreement, or if the taxpayer shows good reason for requesting the agreement and the IRS is not disadvantaged. If an agreement is reached using the AIR process, the parties execute a closing agreement.

4. Technical advice memorandum.

A technical advice memorandum is similar to a private letter ruling in that it interprets the law concerning the facts of a particular taxpayer. However, there are some differences. A technical advice memorandum may be requested by the IRS or a taxpayer, and it typically is drafted during the examination phase (but may be drafted while a case is at Appeals) and relates to a transaction that has already occurred. Requests for technical advice originating from within the IRS are given priority and intended to be processed expeditiously. Taxpayer requests for technical advice may be appropriate when there is a lack of uniformity on an issue or it is complex or unusual.

Like private letter rulings, a favorable technical advice memorandum provides certainty for the taxpayer, while an unfavorable one limits the opportunity to resolve the issue at the examination or Appeals level.

5. Delegation orders.

In certain situations, the IRS may delegate authority within the agency. Federal agencies like the IRS are expected to document, publish, and maintain records of policies, authorities, procedures, and organizational operations. The Internal Revenue Manual is this source for the IRS and provides several delegation and redelegation rules.

Taxpayers sometimes have recurring issues on which Appeals effected a prior settlement. Under Delegation Order 4-24 (IRM 1.2.2.5.20), LB&I team managers may accept settlement offers on any issue under their jurisdiction if Appeals effected a

[13] For a detailed discussion of the MAP, see Bettge et al., "Mutual Agreement Procedure: Progress Without Perfection," *Tax Notes Federal*, Apr. 24, 2023, p. 627; Martin et al., "MAP: Past, Present, and Future," *Tax Notes Federal*, Apr. 12, 2021, p. 219.

[14] Unlike other types of MAP requests, requests for discretionary limitation on benefit relief can provide coverage for future as well as prior periods. These requests come with a user fee if accepted by the competent authority. *See* Martin and Bettge, *U.S. International Taxation: Practice and Procedure*, (WG&L) para. 9.04[2][f] (2025).

[15] *See* Bettge et al., "The Accelerated Competent Authority Procedure: Rolling Forward MAP Resolutions," *Tax Notes Federal*, July 31, 2023, p. 779.

settlement for a prior tax period for the same issue of the same taxpayer, or of another taxpayer that was directly involved in the transaction or taxable event. Thus, in appropriate situations, use of a delegation order may allow resolution of an issue based on a prior settlement without the need for pursuing appeals or other alternative dispute resolution (ADR) options.

6. Fast-track settlement.

Introduced as a pilot program in 2001, fast-track settlement (FTS) was formally established in 2003.[16] It was developed as an ADR process with the primary objective of resolving tax disputes at the earlier stages of an exam.[17] FTS was designed to:

- Resolve examination issues at the earliest stage,
- Leverage Appeals settlement authority and mediation skills,
- Decrease overall time from return filing to case closure,
- Ensure the process meets the needs of the LB&I population,
- Reduce taxpayer burden with optimal use of IRS resources.[18]

FTS takes place while the matter is within Exam's jurisdiction and is designed to be completed within 120 days of Appeals accepting the FTS application. FTS allows taxpayers and exam personnel the opportunity to mediate their dispute with an Appeals officer trained in mediation acting as an independent party. FTS also allows consideration of the hazards of litigation when considering whether to resolve a case — something that an examination team is normally prohibited from doing. The examination team and the taxpayer must agree on the terms of any resolution while the Appeals officer ensures that the resolution fits within an acceptable range as determined by an analysis of the hazards of litigation. Both the examination team and the taxpayer must have a decision-maker physically present — or immediately available by other means — at the FTS meeting.

A taxpayer can request FTS any time after an issue is fully developed, but the request must be before issuance of the 30-day letter.[19] Another benefit of FTS is that because it occurs before the issuance of a 30-day letter, so-called hot interest does not accrue on any potential underpayment.[20] In normal situations, taxpayers formally request FTS consideration after they receive Form 5701, "Notice of Proposed Adjustment." The request sets forth the areas of disagreement, the relevant facts and law, the taxpayer's position, and a statement requesting FTS. The FTS process usually involves presentations by both parties and meetings (together and separately[21]) with the Appeals officer to identify areas of agreement, hazards of litigation on both sides, and potential settlement scenarios.[22]

When used appropriately by both parties, FTS can be a valuable and efficient tool for timely dispute resolution. However, both sides must commit to some level of compromise. FTS is not a situation in which the examination team will concede an issue entirely. If a resolution is reached based on a hazards of litigation settlement, the parties usually execute a closing agreement of Form 870-AD, "Offer to Waive Restrictions on Assessment and Collection of Tax Deficiency and to Accept Overassessment." For a nonhazards settlement, other closing documents may be used to resolve the dispute.[23]

However, key to a successful FTS is the willingness on both sides to compromise. When it becomes apparent that an issue will be unresolved, taxpayers considering FTS may want to raise the ADR option early and often with the examination team. Although the examination

[16] Rev. Proc. 2003-40, 2003-1 C.B. 1044.

[17] *See* IRM 4.51.4.1(1) and IRM 8.26.1.1(1).

[18] *See* IRM 4.51.4.1.1(2).

[19] Certain issues are not eligible for FTS, including issues designated for litigation (or under consideration for that designation), issues under competent authority, whipsaw issues for which mediation would not be consistent with sound tax administration, and issues identified in a chief counsel pronouncement as excluded from FTS.

[20] "Hot interest" refers to the additional 2 percent interest charged on large corporate underpayments under section 6621(c).

[21] Unlike in traditional appeals, the taxpayer must agree to waive the restriction on ex parte communications between the Appeals officer and the examination team.

[22] Either party may withdraw from the FTS process at any time. Importantly, if FTS is unsuccessful the taxpayer retains its traditional IRS Appeals rights.

[23] IRM 4.51.4.2 provides that resolutions based on competing legal interpretations are deemed hazards of litigation settlements requiring a closing agreement of Form 870-AD, whereas resolution based on factual disputes will generally not result in a closing agreement.

team cannot consider hazards of litigation outside the FTS process, discussions should take place to determine whether, if FTS is pursued, there is a potential range for a settlement that both sides find acceptable. For example, if the taxpayer believes it is entitled to 80 percent of an issue but would move to 65-75 percent, and the examination team indicates it is in the range of allowing the taxpayer 20-30 percent, FTS is probably not a viable option.

It should be emphasized that if FTS is unsuccessful, the examination team could adjust its arguments based on the information presented at the FTS session. We have seen an examination team change its valuation to propose an increased adjustment after FTS was unsuccessful.

7. IRS Appeals.

Most cases with unresolved issues end up before Appeals. Of those cases, almost all follow the traditional Appeals process. However, embedded within cases under Appeals' jurisdiction are several ADR options that may be appropriate for taxpayers.

a. Traditional Appeals process.

Traditional appeals occur when the examination team issues a 30-day letter with Form 886-A, "Explanation of Items," and other reports (commonly referred to as the revenue agent's report). As the name indicates, a taxpayer that wants to dispute a revenue agent's report has 30 days[24] within which to submit a protest identifying the issues disagreed with. The protest is sent to the examination team, which will review and decide whether to prepare a rebuttal. Once the rebuttal is complete, the examination team will send a copy of the rebuttal to the taxpayer and submit the matter to Appeals.

An Appeals officer will contact the taxpayer notifying it that the case has been assigned and that all three parties will work together to find a time to address the matter. Normally, the Appeals officer will schedule a so-called expectations call before the meeting to discuss logistics and go over what is in dispute. During this call, the Appeals officer will raise the potential for using the rapid Appeals process.

Once the parties agree on a date for the Appeals hearing, the taxpayer will need to determine what materials and testimony (if any) it may want to submit.[25] The hearing involves a preconference, at which the examination team will set forth its position. Taxpayers are not required to be at the preconference but have a right to attend and should always take advantage of this right. After the preconference, the matter moves to formal conference, when the taxpayer presents its side of the matter. Historically, the examination team would depart after the preconference, but for larger taxpayers it has become more normal for the examination team to stay for the formal conference.

After the taxpayer has presented its position and any factual disagreements or clarifications are cleared up, the examination team is dismissed from the conference. The Appeals officer and taxpayer then engage in settlement discussions. Settlements can take many forms, from percentage-based settlements to dollar amounts.[26] If a settlement is reached, Appeals and the taxpayer will memorialize it in a closing agreement or Form 870-AD. If there are multiple issues and not all are resolved, the settlement may encompass the agreed-on issues, with the taxpayer retaining the right to pursue litigation on the unresolved issues.

Most cases are resolved at the IRS Appeals level. However, the wait times for receiving an Appeals conference can be lengthy, ranging from months to years. Moreover, some taxpayers have experienced difficulty in obtaining satisfactory results at Appeals in recent years. Thus, taxpayers may decide to forgo Appeals and move straight to litigation in the hope of resolving a dispute faster and with better results.

[24]For complex issues, the examination team will normally allow an additional 15 to 30 days for the submission of the protest. Longer periods may be allowed in limited circumstances but often require approval further up the IRS chain of command.

[25]Note, however, that if new facts are introduced at Appeals, the Appeals officer can send the case back to the examination function. Thus, it is imperative that taxpayers provide all relevant facts during the course of the examination.

[26]Some cases may involve coordinated issues, and there may be settlement guidelines that require additional review and concurrence before a resolution can be reached. *See* IRS, "Appeals Coordinated Issues and Appeals Settlement Guidelines" (last reviewed Apr. 16, 2025).

b. Early referral to Appeals.

The early referral to Appeals process is designed to resolve fully developed issues while other issues remain in examination and a substantial amount of time is expected to develop those other issues. For example, this situation may arise when all issues are agreed on except for transfer pricing and the taxpayer is pursuing competent authority.

The early referral process proceeds the same way as the traditional Appeals process explained earlier. However, if resolution is reached during the early referral process, the matter cannot be closed until resolution of the other issues at the examination level. If the lingering issues remain unresolved, the taxpayer may take them to Appeals but will not have the opportunity to reargue any issues that were previously before Appeals as part of the early referral process.

c. Rapid Appeals process.

One way to look at the rapid Appeals process (RAP) is as a hybrid of FTS and traditional Appeals. The RAP is generally offered during the expectations call preceding the actual Appeals conference. If the parties agree to the RAP, the preconference becomes a working conference in which Appeals uses mediation techniques to resolve any unresolved issues. If the RAP is unsuccessful, the traditional Appeals process continues.

In the RAP, the parties are encouraged to present prior resolution discussions and offer any proposals for settlement. Like FTS, the Appeals officer must still make an independent evaluation of the hazards of litigation to ensure that they are within an acceptable range. And, unlike FTS, the case is in Appeals' jurisdiction, so closer scrutiny of any proposed settlement may occur.

In our experience, the RAP is seldom used. However, that does not mean it should not be considered in appropriate situations. For example, FTS may not have been discussed before the issuance of the 30-day letter, subsequent developments may shift the hazards of litigation in favor of one party, or an issue may not have been eligible for FTS but would be eligible for the RAP. Under these, and potentially other circumstances, the RAP may be a means of reaching a resolution short of a full-blown Appeals conference. It may also avoid a situation in which an Appeals officer offers only a minimal settlement to the taxpayer.

d. Post-Appeals mediation.

Post-Appeals mediation (PAM) was formally established after a pilot program finished on January 15, 2022.[27] PAM is a nonbinding process that uses the services of a mediator as a neutral third party to help Appeals and the taxpayer attempt to reach a negotiated settlement.[28] In PAM, the taxpayer may also elect to include a non-IRS comediator (at the taxpayer's expense) to assist in resolution. PAM has gone through a few modifications, with the most recent via Rev. Proc. 2014-63, 2014-53 IRB 1014.

PAM is similar to traditional Appeals except that instead of the taxpayer and the examination team presenting their respective positions, it is now the taxpayer and the original Appeals officer acting in the role otherwise filled by the examination team. PAM can be an effective tool when the parties were close to resolution at traditional Appeals but could not reach the finish line. Whether to pursue PAM usually depends on how far apart the parties were at traditional Appeals, but there may be other factors involved.

Historically, PAM was only available to taxpayers after settlement discussions with Appeals were unsuccessful, and only after all other issues were resolved.[29] Further, PAM was not available to taxpayers that previously pursued FTS. As explained below, these rules were recently changed.

II. ADR Pilot Programs

In May 2023 the Government Accountability Office issued a report addressing six ADR programs.[30] Although the GAO report noted the benefits of these ADR options, it said the IRS was missing opportunities to help increase taxpayer

[27] Rev. Proc. 2002-44, 2002-2 C.B. 10. The statutory authority for the PAM program is found in section 7123(b)(1).

[28] *See* IRM 8.26.5.1(3).

[29] *See* Rev. Proc. 2014-63.

[30] GAO, "IRS Could Better Manage Alternative Dispute Resolution Programs to Maximize Benefits," GAO Publication 23-105552 (2023). The six ADR programs addressed were (1) LB&I Fast Track Settlement, (2) SB/SE Fast Track Settlement, (3) Collection Fast Track Settlement, (4) Rapid Appeals Program, (5) Examination Post Appeals Mediation, and (6) Collection Post Appeals Mediation. *Id.* at 51-54.

willingness to use ADR as well as to maximize its benefits.[31] For example, some examination teams were unfamiliar or inexperienced with the FTS option, and many taxpayers were not aware of the opportunity to use FTS to resolve their disputes.

In April 2024 the IRS announced the creation of the Alternative Dispute Resolution Program Management Office within Appeals.[32] According to then-IRS Commissioner Daniel Werfel, the ADR Program Management Office "will revitalize existing programs and pilot new initiatives as part of IRS transformation efforts in alignment with the IRS Strategic Operation Plan."[33] The announcement explained that the office would pilot changes to FTS, remove barriers to participation in PAM, perform outreach and education, coordinate the training and support of mediators, and collect data and monitor the effectiveness of ADR offerings.

On January 15, 2025, the IRS announced three ADR pilot programs.[34] Two of the pilot programs modify already existing ADR processes: FTS and PAM. The modifications are designed to expand the availability of FTS and PAM by loosening the rules regarding what issues will be considered by the IRS, and when those issues will be considered. The IRS intends to evaluate these pilot programs after two years to determine whether they should be discontinued, adjusted, or made permanent. The third pilot program, last-chance FTS, is directed at taxpayers under examination by SB/SE. Last-chance FTS is designed to better communicate to taxpayers their ability to participate in FTS to resolve more cases through mediation.

The FTS pilot program is intended to relax the rules regarding the use of FTS. For example, under the previous FTS program, if a taxpayer had multiple issues under examination and one of those issues was not eligible for FTS, that one issue would render the taxpayer's entire case ineligible for FTS consideration. Now, under the pilot program, FTS can be applied on an issue-by-issue basis. Moreover, under the pilot program, the use of FTS will not preclude a taxpayer from also participating in the PAM program; historically, participation in FTS would have prevented that. Finally, because the FTS pilot program is designed to increase access to FTS, requests to participate in FTS will not be denied without the approval of a first-line executive. When a request for FTS is denied, taxpayers will now receive a written explanation for the denial.

Under the PAM pilot program, a taxpayer can attempt to use mediation to resolve disputes with Appeals while its case is still being considered by Appeals. Moreover, much like with FTS, requests to participate in the PAM program will not be denied without approval of a front-line executive, and taxpayers will receive a written explanation for the denial.

The last-chance FTS pilot program applies when a taxpayer submits a protest following receipt of the 30-day letter. In that situation, the SB/SE group manager responsible for the case will ask Appeals to contact the taxpayer and inform it of its option to pursue FTS. This contact person from Appeals will function as a neutral resource, independent from the SB/SE examination staff proposing the adjustment or enforcement action, and will provide the taxpayer with information regarding FTS. If the taxpayer requests and SB/SE consents, the usual rules of FTS as modified by the pilot program will apply.

The last-chance FTS pilot program is not intended to be available to all SB/SE taxpayers. Instead, it will initially be limited to select cases under exam by SB/SE. Through this pilot program, the IRS is testing to see whether participation in FTS increases when taxpayers are made aware of their ability to use FTS immediately before their case goes under Appeals' jurisdiction.

III. Conclusion

Taxpayers and the IRS are well-served to resolve potential and actual tax disputes as soon as possible and at the most elementary level within the agency. The dispute prevention and

[31] For further discussion on the GAO report, its recommendations, and the IRS's response, see Sharon Katz-Pearlman, "The Long and Winding Road to Resolution — Can ADR Shorten the Distance?" *Tax Notes Int'l*, Aug. 21, 2023, p. 941.

[32] IR-2024-119.

[33] *Id.*

[34] *See* Announcement 2025-6, 2025-5 IRB 526; IR-2025-14; *see also* Benjamin Valdez, "IRS to Pilot Alternative Dispute Resolution Changes," *Tax Notes Federal*, Jan. 20, 2025, p. 598; LB&I Memorandum, "Interim Guidance for LB&I Pilot Program Changes to Fast Track Settlement (FTS)" (Feb. 20, 2025). The pilot programs are effective for all requests for FTS made on or after January 15, 2015, and expire on January 15, 2027.

resolution programs examined here, if used correctly, can help accomplish these goals. The recent changes to the FTS and PAM programs are a welcome development for taxpayers, although some may have hoped for even more changes. One rejected idea was to allow FTS at any point during the examination process so that issues that are fully developed can quickly be resolved (that is, an examination-level version of the early referral to Appeals process). Further, no changes were made to provide examination teams further discretion in the FTS process (that is, Appeals must still make its own independent determination that a resolution agreed to by the parties fits within an acceptable range for a hazards settlement).

Another uncertainty lies in the recent reduction in force at the IRS caused by layoffs and acceptance of deferred resignation offers,[35] which may limit the resources that the agency will have available for its various dispute prevention and resolution programs. Perhaps the IRS will determine that providing more of its resources to these programs, combined with further changes and internal education, will result in closing cases faster and reducing its inventory. Time will tell, but taxpayers should consider whether and to what extent to use these programs to prevent or mitigate future tax disputes or to resolve them postfiling.[36] ■

[35] *See* Valdez, "Nearly 20 Percent of IRS Staff Accept Second Resignation Offer," *Tax Notes Federal*, Apr. 21, 2025, p. 592.

[36] 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.