
Transfer Pricing Penalty Oversight Committee

Announcement 96-16

Following issuance on February 9, 1996 of final regulations under section 6662(e) of the Internal Revenue Code dealing with the imposition of penalties in the case of certain reallocations of income under section 482 of the Code ("transfer pricing penalties"), taxpayers have requested clarification of the purposes and functions of the Transfer Pricing Penalty Oversight Committee (the "Committee"). This announcement clarifies the purposes and functions of the Committee.

Background

Congress enacted the transfer pricing penalties of section 6662(e) as part of the Omnibus Budget Reconciliation Act of 1990. The transfer pricing penalties are generally applicable to taxable years ending after November 5, 1990. Proposed regulations interpreting section 6662(e) were issued in January 1993, and temporary regulations were issued in February 1994. The temporary regulations were amended in July 1994 and are effective for taxable years ending after December 31, 1993. Revenue Procedure 94-33, issued on April 18, 1994, provided that contemporaneous documentation would be required for taxable years beginning after April 21, 1993 and before January 1, 1994. Final regulations issued on February 9, 1996 are effective as of that date. Taxpayers may elect to apply the final regulations to all open taxable years beginning after December 31, 1993.

Penalty Oversight Committee

Several months ago, the Internal Revenue Service established the Committee to monitor and gather information on the application of the transfer

pricing penalty. The Committee consists of personnel from International, Examination, Appeals and Chief Counsel. The goal of the Committee is to ensure uniform application of the reasonableness standard and the documentation requirements on a nationwide basis. For that purpose, the Committee will review all cases in which a district director is considering the assertion of the penalty. The Committee also will collect data from district offices relating to cases in which the statutory thresholds for imposition of the penalty were met but the penalty was not recommended. This monitoring function will enable the Committee to evaluate the application of transfer pricing penalties by the districts and to share information within the Service regarding the administration of section 6662(e).

The Committee will not provide an administrative forum for taxpayers to appeal a preliminary recommendation by the field that the transfer pricing penalty should be imposed. Rather, the review function performed by the Committee is an internal procedure related to the uniform administration of section 6662(e) by the Service. If transfer pricing penalties are asserted, the taxpayer may use regular administrative and judicial procedures for appeal.

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