



PHILLIPS LYTLE LLP CLIENT ALERT INTERNATIONAL



NOVEMBER 2016

IRS will Accept APAs for Maquiladora (IMMEX) Operations

In an October 14, 2016 release (IR-2016-133), the Internal Revenue Service (IRS) and the Mexican tax authority, Servicio de Administración Tributaria (“SAT”), announced that they have negotiated a new transfer-pricing framework aimed at tackling double-taxation exposure affecting U.S. taxpayers with maquiladora operations in Mexico. In general, maquiladoras (operating under the IMMEX program) have a special tax status allowing for tax-free importation of materials and equipment used to assemble and manufacture goods for export.

Under this new framework, qualifying maquiladoras may enter into a unilateral advance pricing agreement (“APA”) with Mexico’s SAT, and the IRS will recognize and accept the APA. An APA is an agreement setting an appropriate transfer-pricing methodology that will not be contested by the IRS. The IRS has stressed that, under this framework, the transfer pricing results set forth in unilateral APAs, executed between the SAT and the Mexican affiliates of U.S. taxpayers, will be regarded as meeting the “arm’s length” transaction standard set forth under § 482 of the Internal Revenue Code.

The IRS states that this arrangement will provide certainty for U.S. taxpayers regarding double taxation, foreign tax credits and permanent establishments in relation to transactions with their maquiladoras. The IRS will provide further guidance on the U.S. taxable years and the tax

consequences of these unilateral APAs in a forthcoming IRS practice unit. Mexico’s SAT has announced that it too will soon release details about the new election and that it will directly notify qualifying Mexican taxpayers of the steps they must take regarding pending unilateral APA requests. The IRS release can be accessed here: <http://bit.ly/2emuiOt>.

Phillips Lytle will be following these future announcements and provide further updates on any relevant information. U.S. businesses with maquiladora operations should take note of this development and consult with tax and legal advisors to take advantage of this new transfer-pricing framework. It should be further noted, however, that this new framework does not affect transfer-pricing rules for customs valuation purposes under laws and regulations administered and enforced by U.S. Customs and Border Protection.

Additional Assistance

For assistance with U.S.-Mexico, NAFTA, and other customs and trade matters, please contact Jon P. Yormick at jyormick@phillipslytle.com or (716) 847-7006. ■



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