INTERNAL REVENUE SERVICE

IRS News Release

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IRS Announces Position on Unilateral APA Applications Involving Maquiladoras

IR-2016-133, Oct. 14, 2016

WASHINGTON — The Internal Revenue Service today announced that U.S. taxpayers with maquiladora operations in Mexico will not be exposed to double taxation if they enter into a unilateral advance pricing agreement (APA) with the Large Taxpayer Division of Mexico's Servicio de Administración Tributaria (SAT) under terms discussed in advance between the U.S. and Mexican competent authorities.

Maquiladoras typically operate in Mexico as contract manufacturers of foreign multinationals.

This announcement represents the culmination of two years of collaboration between the competent authorities to address SAT's current inventory of approximately 700 pending unilateral APA requests in the maquiladoras industry. It is an important step forward in strengthening ties between the two governments and providing certainty in the taxation of multinationals.

In 1999, the U.S. and Mexican competent authorities reached an agreement on transfer pricing and other aspects of the tax treatment of maquiladoras of U.S. multinational enterprises. The new agreement updates and expands upon the 1999 agreement in order to reflect recent revisions to Mexican domestic tax rules governing transfer pricing rules, documentation requirements and other tax attributes of maquiladoras.

The centerpiece of the discussions between the competent authorities is an election SAT would extend to qualifying taxpayers with pending unilateral APA requests. These taxpayers may elect to apply a transfer pricing framework that the U.S. and Mexican competent authorities have agreed in advance will produce arm's length results. Qualifying taxpayers that decline the election may apply the safe harbors provided by the 1999 Agreement or file a request for a bilateral APA with the U.S. and Mexican competent authorities. (See Rev. Proc. 2015-41, 2015-35 IRB 263, for further information on filing a bilateral APA request with APMA.)

SAT will release details shortly about the election and will directly notify qualifying Mexican taxpayers. The notification will include details on the steps the taxpayers must take with regard to their pending unilateral APA requests.

Because the transfer pricing framework adopted under SAT's program was discussed and agreed upon with the U.S. competent authority in advance, the transfer pricing results set forth in unilateral APAs executed between SAT and Mexican affiliates of U.S. taxpayers pursuant to this program will be regarded as "arm's length" under section 482 of the Internal Revenue Code.

In conjunction with the 1999 agreement, this announcement will provide certainty for U.S. taxpayers regarding double taxation, foreign tax credits and permanent establishments in relation to transactions with their maquiladoras. Further guidance on the U.S. taxable years and tax consequences of these unilateral APAs will be included in a forthcoming IRS practice unit.

Taxpayers with questions about this announcement should contact Greg Spring, Senior Manager, APMA (202-317-8751), or John Hughes, Acting Director, APMA (202-317-8983).

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