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Panel 6: Alternative Dispute Resolution and Judicial Review

The United States federal tax system relies on self-reporting by taxpayers in the form of the filing of appropriate tax and information returns. The Internal Revenue Service (IRS) is the governmental agency tasked with enforcing the internal revenue laws. The IRS does this in a variety of ways, either through pre-filing initiatives or post-filing examinations. The most common scenario involves the selection and examination of the taxpayer's return to ensure compliance. In a typical examination, the taxpayer provides information to the IRS and the IRS determines whether to propose an adjustment to the taxpayer's return. If an adjustment is proposed, the taxpayer may take advantage of one or more types of alternative dispute resolution (ADR) options to try and resolve the dispute with the IRS. If resolution cannot be reached administratively, a taxpayer must either accept the adverse results or seek relief in the appropriate judicial forum.

These options can be separated into two categories: pre-filing or pre-audit resolution options and post-filing issue and case resolution options. Each is summarized below.

Pre-Filing / Pre-Examination Options

- Private Letter Ruling (PLR) – the taxpayer submits a request to the IRS to gain certainty on a specific issue prior to the filing the return.
- Determination Letter – similar to a PLR, but less authority and finality.
- Pre-Filing Agreement (PFA) – the taxpayer seeks agreement on factual issues that are likely to be disputed in a post-filing examination and may receive a closing agreement or other binding contract for up to four future tax years.

- Advance Pricing Agreement (APA) – the taxpayer seeks to secure an agreement to avoid a transfer pricing dispute with the IRS and one or more treaty partner administrations.
- Compliance Assurance Process (CAP) – a real-time resolution tool where the IRS essentially examines the taxpayer's anticipated reporting position prior to return filing and the parties attempt to reach agreement before the return is filed.
- Industry Issue Resolution Program (IIR) – a program whereby an issue that affects a significant number of taxpayers can be resolved for an industry either before or after a return is filed.

Post-Filing Options

- Mutual Agreement Procedure (MAP) – mechanism to seek tax certainty or advice regarding tax results under a U.S. tax treaty to avoid denial of treaty benefits or imposition of double taxation.
- Accelerated Competent Authority Procedure (ACAP) – a procedure that allows extending the coverage of a MAP agreement.
- Accelerated Issue Resolution (AIR) – an agreement for large corporate taxpayers under audit who seek assurance that resolved issues in the current examination will be extended to all tax returns that have already been filed.
- Traditional Appeals Process – the quasi-judicial forum for taxpayers to appeal to an independent IRS office a proposed adjustment after an examination is completed.
- Fast Track Settlement (FTS) – a process by which a trained IRS mediator works with the taxpayer and the IRS examination team to try and resolve a dispute without having to go the traditional Appeals route.
- Early Referral to Appeals – an option that allows the taxpayer to take some issues to IRS Appeals while continuing to seek resolution of other issues still being examined.

- Rapid Appeals Process (RAP) – a process that can be used to seek agreement after a request for a traditional Appeals conference has been made but the parties believe that a quick resolution may be possible.
- Post-Appeals Mediation (PAM) – a mediation process available to some taxpayers if no agreement can be reached during the traditional Appeals process.

If one of the above ADR options is not accomplished and litigation is necessary, taxpayers may still have opportunities to utilize ADR during litigation. For example, the United States Tax Court offers both voluntary binding arbitration and voluntary nonbinding mediation. Additionally, many federal appellate courts require that taxpayers and the government engage in nonbinding mediation after a case is appealed.

The above ADR options are not available to all taxpayers and the decision to engage in ADR is made on a case-by-case basis. Generally, taxpayers in the United States have reported satisfaction with the ADR options and the IRS has expressed willingness to utilize such options in appropriate cases to avoid the time and expense of litigation.