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IRS Releases Directive on Information Document Request Enforcement Process

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The Internal Revenue Service Nov. 4 released its highly anticipated Large Business and International Directive on Information Document Request Enforcement Process (the Directive).

The Directive builds on earlier guidance to describe a collaborative process for issuing new information document requests (IDRs) and outlines a new three-step mandatory enforcement process if a taxpayer fails to satisfactorily respond to an IDR.

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The new IDR enforcement process is notable because it appears to limit an IRS examiner's discretion to extend the deadline for responding to an IDR. Taxpayers should carefully review the Directive to understand how new IDRs will be issued and what is required of them. Taxpayers should prepare to work with their IRS examiners in the next few months to ensure a smooth transition to the new IDR process.

New Process for Issuing IDRs

The IRS June 18 issued guidance describing three general requirements that must be met before a new IDR is issued. The Directive provides additional detail on how the IRS will issue new IDRs and raises several points for taxpayers to consider.

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The Directive requires all IDRs to be issue-focused. It obligates the examiner to discuss the issue and how the information requested relates to that issue. Further, it states that the IRS should provide a draft copy of the IDR and discuss its contents with the taxpayer prior to issuance.

Lastly, although the Directive states that the IRS and the taxpayer should agree on a response date, the IRS examiner "will set a reasonable response date" if agreement cannot be reached.

The Directive appears to rely on extensive collaboration between the taxpayer and the IRS before a final IDR is issued. Taxpayers may be able to take advantage of this opportunity by working with the IRS to narrowly tailor and clearly draft IDRs to capture the precise information being sought. However, this collaboration will require the taxpayer to assist the IRS in understanding its reporting positions before an IDR is finalized.

In addition, nothing requires the different IRS examiners to work together when issuing IDRs; as such, taxpayers should track negotiations with the IRS to ensure that multiple IDRs aren't due on the same date, and avoid overlap in subject matter.

If the information requested in the IDR isn't received by the response date, the examiner will follow the new IDR enforcement process.

New Process for Enforcing Compliance With IDRs

If the IRS believes that a taxpayer has failed to fully respond to an IDR, it will initiate a three-step summons enforcement process. This summons enforcement process is mandatory, and it deprives the examiner of the authority to act unilaterally to extend the deadline for responding.

Because features of the new enforcement process contemplate IRS communications with employees at various levels of seniority in the taxpayer's organization, internal tax practitioners should consider informing their superiors of the new process.

If a taxpayer fails to fully respond by the deadline in the IDR, the IRS examiner will first issue a "Delinquency Notice." The IRS examiner is expected to issue the Delinquency Notice within 10 days of the IDR response date, and should give the taxpayer no more than 15 days to comply. However, the Directive gives the IRS territory manager discretion to extend the 15-day deadline for responding if the circumstances warrant such an extension.

If the taxpayer fails to comply with the deadline in the Delinquency Notice, the IRS will issue a ''Pre-Summons Letter.'' The Pre-Summons Letter will be signed by the territory manager, and should generally be sent within 14 days of the deadline in the Delinquency Notice. However, the Pre-Summons Letter won't be sent to the same employee who received the Delinquency Notice. Instead, the Directive requires that it be sent to that person's direct supervisor.

The Pre-Summons Letter should allow the taxpayer an additional 10 calendar days from the date of the letter to comply, but the director of Field Operations can approve an extension if warranted. In addition, the Directive requires that the IRS examiner discuss the Pre-Summons Letter with IRS counsel before issuance, and the director of Field Operations must be made aware of it prior to issuance.

If the taxpayer misses the deadline in the Pre-Summons Letter, the IRS examiner will prepare a summons and coordinate its issuance with assigned counsel. If the taxpayer fails to comply, the IRS will seek to enforce the summons in U.S. District Court.

Issues to Consider

The new Directive is effective Jan. 2, 2014. IDRs outstanding as of that date that don't comply with the Directive are to be reissued, and will be subject to the new enforcement process upon reissuance.

The Directive raises several important issues for taxpayers to consider as they adapt to the new IDR process. First, the Directive appears to remove any discretion on the part of the examiner to extend a deadline contained in an IDR. Taxpayers have expressed concern that this lack of discretion could lead to increased summons enforcement activity, and the Directive appears to bear out that concern: It states that the enforcement process ''is mandatory and has no exceptions.''

However, although the Directive states that Delinquency Notices and Pre-Summons Letters should contain general deadlines, IRS officials can agree to extend those deadlines. Taxpayers who find that they cannot meet an initial IDR deadline should consider negotiating extended reply dates upon receipt of a Delinquency Notice or Pre-Summons Letter.

Taxpayers should also recognize that the new enforcement process may negatively affect the relationship between the examiner and the employee responsible for negotiating the final IDRs. The Directive requires that the Pre-Summons Letter be sent to that employee's superior; employees should update their superiors regularly about the IDR response process to avoid any potential surprises.

Taxpayers should also recognize that the IRS will involve IRS counsel early in the IDR enforcement process, to ''ensure[] that Counsel is prepared to enforce IDRs through the issuance of a Summons when necessary.'' Taxpayers should act accordingly and consider involving their own counsel to assist in responding to final IDRs, Delinquency Notices, or Pre-Summons Letters touching upon sensitive issues.

Lastly, taxpayers should remind the IRS that it is obligated to review IDR responses in a timely manner and inform the taxpayer whether its responses are satisfactory within the deadlines contained in the final IDR.