

IRS Joins FCPA Enforcement

At the recent ACI FCPA Boot camp, held in Houston, there was an interesting new angle presented in the enforcement panel. Clarissa Balmaseda, a special agent in charge of Internal Revenue Service (IRS) criminal investigation, joined Nathaniel B. Edmonds, Assistant Chief from the US Department of Justice's (DOJ) Fraud Section - Criminal Division, and Jason Rose, Senior Attorney, FCPA Specialization Unit, a representative from the Securities and Exchange Commission (SEC), in discussing the most current Foreign Corrupt Practices Act (FCPA) enforcement trends. This was the first time I had seen an IRS agent participate in a FCPA conference on behalf of the US government.

So what does the IRS bring to a FCPA investigation? Edmonds stated that the IRS has skills and experience in looking at financial patterns and tracing money. He noted that usually FCPA violations are tied to other legal violations, for example money-laundering or fraud, and that the IRS can comb through financial records to find patterns in payments. He also stated that the IRS has significant experience in investigating corporate shell structures which can be part of an ongoing criminal attempt to obtain bribes and then conceal the location of the money.

Agent Balmaseda stated that the IRS would be looking into financial statements for mis-characterization of bribe payments, specifically focusing on tax returns. Similarly, the IRS would also investigate to determine if companies were amending their financial statement filings, including tax returns, to correct such mis-characterizations after disclosure of any such payments. She later added that the same type of analysis would be applied to any monies which were initially mis-characterized on a company's books and records, such as gifts, travel, entertainment or charitable contributions.

Agent Balmaseda also discussed some of the red flags the IRS will be looking for in any FCPA investigation in which their assistance is requested. These red flags may include the following:

1. Timing of contract award - Vis-à-vis payment to an agent at, or near, the award of a contract may indicate that monies paid to an agent are being used to pay a bribe.
2. Amount of contract - Check if contract is increased during its term. If there is no corresponding business justification, this may be evidence of corruption.
3. How was a payment made and to whom? - This analysis will look at the methods of payment and delivery.
4. Employee expense reports - While most investigations focus on payments to agents, the IRS may well look more closely at employee expense reports to see if any overall patterns are developing which might indicate corrupt payments are being made elsewhere.
5. The importance of a strong company Internal Audit investigative team - Here Agent Balmaseda emphasized that during a company's internal investigation it is important to

speak with the business unit controller because they decide how payments are categorized. She also emphasized that tax filings and their amendments are important.

The addition of the IRS to any FCPA investigation brings additional specialization and sophistication to the government's effort. Agent Balmaseda's remarks provide a company with clear guidance on the types of analysis that the IRS can, and will, perform. Companies should use this information and begin to perform these types of investigations internally before the government comes knocking. Lastly, a corporate tax return may provide fertile grounds for an investigation. Companies which now perform an internal investigation but do not self-report may find themselves in deeper trouble.

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