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LB&I launches 13 “campaigns” focusing on issue identification, audit guidance

The IRS’s Large Business & International (LB&I) division today announced detailed information on the first tranche of issues to be addressed using a new method for audits of large corporate taxpayers.

Today’s [announcement](#) comes 16 months after the IRS stated there would be major changes in the way it audits the country’s largest companies.

Overview

Specifically, LB&I has released information on 13 different “campaigns” and, in some cases, has identified a variety of “tailored treatments” designed to improve tax compliance from an already identified (but not disclosed) group of business taxpayers. The information released from LB&I includes:

- The practice area and lead executive responsible for each campaign
- A short description of each campaign
- The IRS’s designated tailored treatment(s) associated with each campaign

These campaigns were developed using feedback and suggestions from LB&I employees, information received from treaty partners and other sources, and data analytics.

Tailored treatments range from clarifying the governing rules by developing new guidance and procedures, often through direct collaboration with industry stakeholders through the Industry Issue Resolution (IIR) process, to issuing so-called “soft letters” to affected taxpayers, to conducting full-fledged examinations of the specified issue, often in a particular market.

Today's announcement identifies the LB&I executives who are assigned responsibility for the campaigns and, significantly, invites feedback from taxpayers, practitioners, and other stakeholders about the campaigns and treatments.

Campaigns

The announced campaigns are, in most cases, narrowly tailored, reaching both domestic and international issues and a variety of taxpayers. Five different LB&I "Practice Areas" are involved, with the vast majority (seven) of the campaigns falling under the responsibility of the "Enterprise Activities" practice area. Two campaigns are aimed specifically at mid-market companies.

The titles of the 13 campaigns are:

- IRC Section 48C Energy Credit Campaign
- OVDP Declines-Withdrawals Campaign
- Domestic Production Activities Deduction, Multi-Channel Video Program Distributors (MVDP's) and TV Broadcasters Campaign
- Micro-Captive Insurance Campaign
- Related Party Transactions Campaign (mid-market focus)
- Deferred Variable Annuity Reserves & Life Insurance Reserves IIR Campaign
- Basket Transactions Campaign
- Land Developers-Completer Contract Method (CCM) Campaign
- TEFRA Linkage Plan Strategy Campaign
- S Corporation Losses Claimed in Excess of Basis Campaign
- Repatriation Campaign (mid-market focused)
- Form 1120-F Non-Filer Campaign
- Inbound Distributor Campaign

As today's release notes, this is the first wave of LB&I's issue-based compliance work, and more campaigns will be identified, approved, and launched in the coming months.

KPMG observation

The LB&I campaign release notes that its initial group of campaigns marks a significant step forward in the reorganization that was announced in September 2015. According to today's release and to comments made by LB&I executives at various conferences and other meetings, the IRS intends to bring substantial transparency to

its campaigns initiative. Thus, LB&I is expected at some point to post the practice units associated with each campaign on the IRS website. Indeed, although not identified in today's announcement, some of these practice units are already available on the [IRS website](#).

In addition, today's announcement makes clear that practice units for some of the campaigns are still in the developmental stage. These, too, will presumably be made public at some point in the near future. Tax professionals anticipate that as each of these campaigns is rolled out, more guidance will be provided to the public.

The IRS release makes clear that LB&I is inviting feedback on the campaigns—and suggestions for new ones—from its employees and the tax community at large. The feedback will presumably focus not only on the analysis of the relevant technical issues contained in the practice units, but also on the efficacy of the designated treatment streams. The precise contours of the feedback loop are unclear at this time, but the IRS has incorporated a mechanism to allow the public to provide feedback related to the currently issued practice units (this can be found at the [IRS webpage](#) for practice units).

Based on the campaign descriptions and the stated reliance on data analytics, LB&I has already identified some, if not most, of the taxpayers that will be affected by the campaigns. Thus, although not certain, if a taxpayer has an issue that is addressed in one of the campaigns, that taxpayer needs to consider and probably anticipate an inquiry from the IRS. However, just because a taxpayer has “an issue” identified in a campaign does not mean an examination is inevitable.

In particular, it is not yet clear how the announcement of these campaigns will affect taxpayers that are already under audit (unless the issue is identified in the examination plan). Because the essence of the campaign/treatment methodology is centralized risk assessment, it may be reasonable to assume that IRS Examination teams are not going to raise these issues on their own, but rather are to revert to the “lead executive” about whether the issue is of sufficient importance to merit consideration. [It may be that the issue will not be examined until the next cycle.]

Background

Prompted in part by resource constraints, LB&I in September 2015 announced a fundamentally new approach to ensuring compliance is undergirded by four guiding principles: (1) a flexible, well-trained workforce; (2) the selection of better work; (3) tailored treatments; and (4) an integrated feedback loop. To advance these principles, LB&I not only changed the division's core structure, but also its overall approach to ensuring compliance.

On the structural front, effective February 2016, LB&I transformed from an organization based on industries to one based on either geography or subject matter. Thus, LB&I created four geographically based “Practice Areas” (western, central, eastern, and northeastern), and five Practice Areas differentiated by their subject

focus: Pass-through entities, enterprise activities, cross-border activities, withholding and international individual compliance, and treaty and transfer pricing operations.

KPMG observation

The structural changes in LB&I are undeniably significant, among other reasons because of questions about how the different Practice Areas will interact with one another and with taxpayers whose activities involve multiple Practice Areas. The more fundamental—and perhaps daunting—changes, however, spring from a fundamental shift in terms of who, what, and how the IRS will scrutinize the activities of particular taxpayers.

At a high level, LB&I's core approach is shifting from comprehensive, enterprise-wide audits to one focused primarily on centrally identified tax compliance issues. The traditional audits of old will not entirely disappear—the largest companies in the country will invariably still be subject to continual audits by teams of revenue agents (which, once assigned to a case, are assigned responsibility for determining which issues are to be scrutinized). Enterprise-based audits will constitute a smaller percentage of LB&I's workload going forward. In the place of traditional audits will be an ever evolving group of “campaigns” and “treatments” aimed at addressing centrally identified compliance risks.

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