

TAX EXECUTIVES INSTITUTE – COMMISSIONER OF INTERNAL REVENUE AND  
LARGE BUSINESS & INTERNATIONAL DIVISION  
LIAISON MEETING  
February 23, 2016  
AGENDA

I. Welcome and Introductions

II. Commissioner’s Vision of the “Future State” of the IRS and 2016 Priorities

Responding to unprecedented budget and staffing challenges, the IRS has begun to retool its operations and deploy new ways of fulfilling its mission. TEI appreciates the vision and leadership Commissioner Koskinen and his executive leadership team are providing to the agency at this challenging time, and we look forward to working with IRS officials in the implementation phase of these new initiatives.

During the past year, Commissioner Koskinen and other IRS executives have spoken about the “Future State”—*i.e.*, where the IRS wants to be in the next five years—and the operational and technological advances necessary to achieve that goal. We invite a discussion of Commissioner Koskinen’s vision of the Future State and how large-business taxpayers’ interactions with the IRS will differ in this new environment. We also invite discussion of the time horizon for implementing these initiatives and the Commissioner’s other priorities for 2016.

It was recently reported that the IRS intends to roll out an online system that would allow individuals to self-correct a previously filed return within some parameters without the need to file an amended return.<sup>1</sup> We invite discussion on the scope of self-corrections that will be available and whether the IRS intends to extend this same opportunity to large-business taxpayers.

III. Agency-Wide Budget and Staffing

Last December, as part of the spending bill that funds federal agencies through September 2016, Congress approved a \$290 million increase in the IRS’s budget. This welcome boost marks the first IRS funding increase over the past five fiscal years. Nevertheless, the current IRS budget remains roughly \$1 billion below its 2010 funding level. TEI’s members have begun experiencing first-hand the impacts of these cuts: communications with IRS Service Centers have suffered, exam and appeals cycle times have increased, and agent morale in the field seems to be at an all-time low.

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<sup>1</sup> Tax Notes Today, “IRS ‘Future State’ Won’t End Agency Contact With Taxpayers,” 2016 TNT 19-6 (Jan. 29, 2016).

We invite discussion of staffing expectations for fiscal 2016 in this challenging environment. Questions of particular importance to TEI members include:

- Will the hiring freeze that has significantly impacted the IRS's work with large-business taxpayers be loosened?
- Will there be positive or negative changes in levels of Agency resources allocated to LB&I and the sections of Chief Counsel and Appeals that work with large-business taxpayers?
- Are there any large-business programs that will be directly impacted by these resource constraints?

It has been reported that the IRS's fiscal 2017 budget proposal will divide requested funds among four agency priorities: taxpayer services, enforcement, operations support, and business systems modernization.<sup>2</sup> The proposal will also identify specific funding levels the IRS seeks for designated initiatives and request that Congress hold the agency accountable for achieving promised results.<sup>3</sup> We invite discussion of this new budget strategy and, in particular, of large-business taxpayer initiatives that will be identified to support specific funding levels.

#### IV. LB&I

##### A. Budget/Staffing

LB&I has been hard-hit by the IRS's decreasing budget. The division is losing a significant number of experienced agents and executives, the hiring freeze is hindering the search for replacements, and reductions in training budget are making it more difficult to fill gaps in expertise. TEI's members work with LB&I professionals on a daily basis and are concerned about the impacts of these staffing issues and budget cuts. To inform TEI member expectations, we invite discussion of near-term implications of these challenges in the context of expected increases or decreases in current year staffing, program challenges resulting from resource constraints, and impact on specialists.

One area of particular concern to TEI members is staffing levels of the Advance Pricing and Mutual Agreement program (APMA). The OECD's BEPS project has increased international tax enforcement activities around the world and will pose significant challenges to both U.S. multinationals and the U.S. government. We invite discussion of LB&I's budget and staffing plans for APMA and the steps this operating unit is taking to prepare for the inevitable increase in activity.

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<sup>2</sup> Tax Notes Today, "Koskinen Says IRS Will Try New Budget Strategy in Fiscal 2017," 2015 TNT 206-8 (Oct. 26, 2015).

<sup>3</sup> *Id.*

## B. Division Reorganization & Centralized Risk Assessment

### 1. How the Reorganized LB&I Division Will Function in Practice

LB&I is in the midst of a division-wide restructuring of both its operating structure and its examination process. This is a unique, yet challenging, opportunity. Changes of this magnitude are infrequent and difficult to implement. If successful, however, the reorganization could vastly improve the efficiency and effectiveness of LB&I's operations.

TEI members share a common interest in the success of the LB&I reorganization and invite an update on the status of LB&I's efforts to implement its new structure. What aspects of the reorganization have been completed and what remains to be done? What have been the key challenges thus far and what key challenges does LB&I expect to encounter in the near-term?

We understand the new LB&I will have four regional practice areas and five subject matter practice areas. Each practice area will study compliance issues within their area of expertise and suggest campaigns to be included in a compliance plan. Further, pursuant to a real-time review process (*i.e.*, the integrated feedback loop), the compliance plan for a particular taxpayer will be adjusted in real time based on examination experience.

TEI members work for large-business taxpayers whose examinations regularly consist of a wide variety of disparate issues. To set our expectations for working with LB&I in this new structure, we invite discussion on the following questions:

- What are the fundamental objectives LB&I seeks to achieve through the new operating structure? How will meeting these objectives improve the efficiency and effectiveness of LB&I's operations?
- How does the new structure align with the new issue-focused examination process?
- How will campaigns be developed and used during the course of an audit?
- Will issues be examined outside the "campaign" process? If so, how will they be raised and how will the process be managed?
- How will the integrated feedback loop be accomplished in practice? Will taxpayers have an opportunity to participate?

### 2. Centralized Risk Assessment

Since 2012, the IRS has been working to modernize its risk assessment capabilities in an effort to conserve resources and improve case development and resolution. Centralized risk assessment is now the cornerstone of LB&I's new examination strategy. We invite discussion of what LB&I has learned from past experience and how the division intends to risk assess and select issues that will be examined in the issue-focused examination process. What categories of LB&I professionals will be involved in the risk assessment process? What types of training will be used to train LB&I agents in risk assessment techniques? Is LB&I open to assembling a working group of historically cooperative large-business taxpayers to help refine the risk assessment program?

There is growing global consensus among tax authorities that the presence and testing of a business taxpayer's internal governance and tax control framework should be an integral part of tax authorities' risk assessment protocols. Will LB&I include review of corporate governance and tax control framework in their risk assessment and, if so, how will LB&I train its staff to be conversant in this area?

### C. LB&I Examination Process Implementation

#### 1. Status Update

LB&I's new issue-focused examination process is top-of-mind to many TEI members. TEI's membership works with LB&I field personnel on a day-to-day basis and will experience first-hand the challenges of implementing the new process. We invite LB&I to comment on the current status of the examination process rollout. When will updated rules of engagement be published in the IRM?

#### 2. Shift to Centralized Decision Making

For decades, LB&I has accomplished its enforcement function by assigning returns to exam teams and relying on field agents to identify issues warranting examination. Exam teams have operated autonomously, and their agents have grown accustomed to making enforcement decisions. Movement to a centralized risk assessment and issue identification platform is a complete paradigm shift. TEI members are eager to hear how this process will work in practice and how LB&I intends to change the mindset of its agents. To start the conversation, we invite discussion of the following questions:

- What are the key changes in culture that must be addressed and how does LB&I intend to address them?
- How will exam team metrics be modified to align with the new centralized campaign strategy?
- How will LB&I's Practice Areas work together and communicate to ensure resources are efficiently deployed to the field during an examination of a large-business taxpayer with multiple issues?
- Does LB&I contemplate having a macro-level program coordinator role charged with efficiently allocating issue teams among various taxpayers?
- How will agent authority to unilaterally raise new issues be limited?

#### 3. Case Management Challenges

In a historic case-based examination, team coordinators served as the taxpayer's principal point of contact with the examination team (*e.g.*, primary document custodian), facilitated the organization and coordination of exam team activities (*e.g.*, meeting coordinator), and served as a resource to resolve administrative issues (*e.g.*, resolution of computer-generated lien notices). We understand that in the new issue-based process, a taxpayer will not have an examination team assigned to its entire case. Rather, LB&I will form Issue Teams, designate Issue Managers, conduct issue meetings with the taxpayer, develop individual issue completion dates, and

construct an overall case timeline based on the individual issue timelines. The examination of the issue with the longest timeline would begin first, and the other issues would be scheduled so their examination would conclude by or before the completion of the issue with the longest timeline.

In the abstract, this proposed methodology seems reasonable. However, executing the process with a large-business taxpayer with a variety of complex issues may prove challenging. TEI invites discussion of the following points:

- *Determining tax years included in an audit cycle:* Historically, LB&I examinations have covered a range of taxable years, generally three years. The logic underlying this practice is issues tend to carry over from year to year, and it is quite inefficient, for both LB&I and taxpayers, to examine the same issue in repetitive single-year examinations. How will the duration of audit cycles be determined in the new examination process? If the new process will focus only on issues and not tax return years, at what point will a taxpayer receive notice that the examination of a tax year has closed?
- *Managing disparate issue teams with differing agendas:* It appears the high-level perspective of the entire case traditionally held by the team coordinator will be lost in the new examination process. TEI members are concerned that the Issue Team concept and multiple issue managers involved in a case may lead to audit completion date slippage, particularly when a case coordinator fails to actively manage a case. In an issue-centric environment, who will ensure individual Issue Teams stay on track and ultimately work together towards the closure of a case, as opposed to closure of their individual issues? When schedules conflict or a particular Issue Team stagnates, who will have overall authority to instruct that Issue Team to finish according to schedule or drop the issue?
- *Resolving internal stalemates and closing case (i.e., having an ultimate decision-maker in a case):* In a case-based examination, the team coordinator has the overall case perspective and incentive to resolve issues at the examination level as a means of settling the overall case. TEI members have experienced first-hand the positive impact a proactive case coordinator who is willing to make hard decisions can have on an examination. Our members have also experienced the repetitive stalemates and inefficiencies that occur when the case coordinator refuses to do so. Exams stagnate and the number of unagreed issues transferred to Appeals increases.

Who will be the ultimate decision-maker in the new examination process when stalemates arise? Will that person have authority to instruct an Issue Manager to strategically abandon or modify an issue? Will that person have authority to override decisions of an Issue Manager when necessary to drive an examination to timely completion?

- *Managing and safeguarding taxpayer documents in a decentralized work environment:* Under the Issue Team approach, examiners with expertise in a

particular subject matter will be deployed to cases where that issue exists. Thus, there will be an increase in offsite examination work, as compared to the case-based examination approach where assignment to cases is based in part on the geographic location of the examiner. The increase in offsite work raises significant document security concerns. How does LB&I intend to protect confidential taxpayer information in a remote work environment? Does LB&I envision any changes in policies concerning electronic transmission of documents? Would LB&I entertain the use of password-secured electronic data rooms where documents can be stored and accessed remotely?

- *Instilling accountability:* LB&I's ability to execute its new examination process and deliver positive results will be directly tied to agent- and management-level accountability. How does LB&I intend to hold its professionals accountable for following the new examination process? What are the implications if an agent unilaterally raises new issues during the course of an examination or a case is not closed on time?

#### 4. Currency and Examination Efficiency

Since the early 2000s, LB&I and its predecessor organization, LMSB, have emphasized audit currency and cycle time as key operating metrics. Currency of audits is important in many ways – financial certainty, availability of knowledgeable individuals, ability to plan resources, etc. This emphasis has had a positive impact on taxpayer behavior, which, in turn, has helped the IRS attain its currency goals. For example, many large-business taxpayers have begun to proactively disclose transaction details and assist with their interpretation and evaluation with the aim of achieving more efficient audits. The popularity and success of the CAP program is a case in point.

TEI members are concerned that these currency objectives may be getting lost in the push to implement the new examination process. In particular, it is unclear how an audit will stay on track when there are multiple Issue Teams with their own agendas and with the absence of a common goal of resolving the entire case on time and in an efficient manner. We invite discussion of the importance of currency in the new examination process and what incentives Issue Teams will have to complete their work on time so the entire case remains on schedule. Does LB&I have the requisite resources to manage bottlenecks of Issue Team resources? Does LB&I have the budget for Issue Teams to travel to distant taxpayers?

#### 5. Retaining and Expanding CAP and Other Best Practices

At TEI's 2015 Midyear Conference, Commissioner Koskinen singled out CAP as a particularly efficient program and mentioned it had been highlighted at a recent meeting of the 46-country Forum on Tax Administration as an example of how tax authorities could work more efficiently and collaboratively with taxpayers. He stated further that despite budget reductions, he hoped the CAP program would continue to expand.

TEI members share the Commissioner's sentiments and firmly believe there is a place for CAP in LB&I's new issue-based examination platform. CAP examinations are by definition issue based and require high levels of taxpayer disclosure and overall participation that should, if managed properly, result in more streamlined and efficient audits for LB&I exam teams. TEI invites discussion of the future of CAP and how the program fits within LB&I's new organization and audit process.

## 6. Stakeholder Involvement

The stakes are currently very high for LB&I leadership. The changes at hand are significant and will impact the division and its stakeholders for many years to come. We urge LB&I to recognize more can be achieved when working in collaboration with stakeholders than in isolation. TEI and LB&I have a long history of working together to improve efficiency and overcome difficult issues, both in terms of program development and training. For example, LB&I called on TEI members to assist with the design of Schedule M-3 and to better understand the use of pass-through entities by large-business taxpayers. TEI worked hand-in-hand with representatives of LB&I's predecessor in designing and implementing the Quality Examination Process. TEI members and IRS officials have also engaged in joint negotiation skills training, which proved invaluable to both parties.

Agent training and industry knowledge are two critical aspects of conducting efficient and effective examinations of large-business taxpayers. These are also two areas that may be adversely impacted by the current budget situation. TEI and its chapters would welcome the opportunity to work collaboratively with the IRS to develop and conduct joint training programs across the United States that would include technical tax issues, process issues, and industry issues. Such training could be held at or near IRS offices to minimize travel expense. Other areas where we believe LB&I would benefit from stakeholder collaboration include examination planning and execution (*i.e.*, the analog to QEP in the new examination process) and resolving systemic examination challenges (*e.g.*, improving efficiencies in research credit examinations and destigmatizing the elevation process). We invite discussion of the IRS's interest in pursuing these or other joint initiatives with TEI.

## V. Appeals

### A. Operations Update

TEI invites a discussion of the status of Appeals Office operations, including overall case volume, case closure rate, and average time-to-closure for Coordinated Industry Cases and Industry Cases. Further, we welcome Appeals' observations on realistic expectations for taxpayers entering the Appeals process with respect to:

- Time to an opening conference;
- Time to case completion; and
- Availability of experts – *e.g.*, economists, international specialists, and other subject matter experts.

## B. Budget and Staffing Challenges

The Appeals Division serves a vital role in the overall return examination and resolution process. Absent a well-functioning Appeals Division, case closures would stagnate and courts would quickly be overwhelmed with tax controversies. We invite discussion of near-term implications of budget and staffing challenges the division is facing, in particular:

- Expected increase/decrease in current-year staffing;
- Program challenges resulting from resource constraints;
- Impact on specialist resources; and
- Overall impacts on taxpayer experience.

## C. 2016 Priorities and New Initiatives

TEI members would benefit from a discussion of the Appeals Division's priorities for 2016 and any new initiatives being implemented or considered by the division (*e.g.*, new alternative dispute resolution procedures).

## D. Impact of LB&I's Reorganization and Movement to Issue Team Examination Platform

LB&I's movement to an issue-driven examination platform may have far-reaching effects to other divisions of the IRS, including Appeals. We invite discussion of how the new examination process will impact the division's operations, *for example*:

- Expected increase/decrease in the overall number of Appeals referrals from LB&I;
- Increase in the number of early referrals under Rev. Proc. 99-28;
- Changes in procedural rules covering transfers of jurisdiction (*e.g.*, will cases be bifurcated into distinct issues such that jurisdiction over an issue will be transferred to Appeals instead of an entire case?); and
- Changes in procedures for closing cases.

## E. Role of IRS Counsel in Appeals' Consideration of a Case

TEI members have reported increased instances of Appeals cases that appear to be held in abeyance pending review by and/or input from IRS Counsel. We invite discussion of the role of IRS Counsel in the Appeals process and whether policies guiding Counsel's involvement in Appeals cases have changed.

## VI. Office of Chief Counsel

### A. 2016 Challenges, Priorities and New Initiatives

TEI invites a discussion of the budget and staffing challenges the Office of Chief Counsel is facing in 2016 and how such challenges will impact Counsel's operations. TEI members



would also benefit from discussion of:

- Counsel's priorities for 2016;
- New initiatives Counsel intends to rollout in 2016;
- How LB&I's new examination process will impact Counsel's operations and/or interactions with that division; and
- New types of formal or informal guidance that Counsel will be using in the coming year.

#### B. Regulatory Guidance Expectations

We invite a discussion of areas in which taxpayers can expect guidance in the next few weeks or months, as well as other areas where guidance may be issued over the course of this calendar year. We also invite discussion of how the Tax Court's holding in *Altera* has affected the guidance process. Has Counsel developed new procedures for justifying its policy decisions?

#### VII. Implementation of New Tax Examination and Collection Regime for Partnerships

The Bipartisan Budget Act of 2015 fundamentally changed the rules governing the tax examination and collection process for entities treated as partnerships. We invite discussion of steps the IRS has taken to implement these sweeping changes. What is the timeframe for the IRS and Treasury to issue proposed regulations concerning the statutory revisions?