

TAX EXECUTIVES INSTITUTE, INC.
INTERNAL REVENUE SERVICE & INDEPENDENT OFFICE OF APPEALS
2020 LIAISON MEETING
FEBRUARY 27, 2020
AGENDA

I. Welcome and Introductions

II. Agency-wide Priorities

We invite Deputy Commissioner Lough to share her observations on the current state of affairs at the IRS. What immediate challenges do you see for the agency in 2020 as it moves past the initiation of filing season, and what are the agency's short- and long-term priorities for the future?

We invite discussion of efforts being undertaken to balance the Commissioner's agenda of increased enforcement with Congress's mandates, through enactment of the Taxpayer First Act (Public Law 116-25), to expand and strengthen taxpayer rights and organizationally reform the IRS into a more taxpayer friendly agency. In particular, we would like to learn more about the Commissioner's ideas on how the agency should be reorganized and how TEI might best inform his deliberations through constructive engagement. TEI was actively engaged in the legislative and implementation processes of the Internal Revenue Service Restructuring and Reform Act of 1998 (Public Law 105-206), and we stand ready to contribute to this new effort.

III. LB&I

A. Key Challenges, Priorities, and New Initiatives

We invite LB&I leadership to comment on key challenges the division faces in 2020, as well as its priorities and new initiatives planned for the year. What impact, if any, do you foresee the Taxpayer First Act having on LB&I and its interactions with large business taxpayers?

Human Capital Management. We read with interest the LB&I staffing changes reported in the *FY2020 LB&I Focus Guide*. We invite discussion of the overall decline in LB&I's leadership team and how it will impact the division's operations during the fiscal year. The number of tax law specialists increased by almost 400% (from 24 to 91). We invite discussion of why this area of LB&I's staffing increased so dramatically. We would also appreciate a report on hiring expectations for 2020, including specific areas where LB&I believes it is particularly understaffed.

Technology. In April 2019, the IRS released a modernization plan to improve information technology ("IT") systems. In its December progress report provided in Publication 5382, the IRS promotes its drive to modernize its IT systems, make online accounts more accessible to taxpayers, and simplify identity verification for data security and identity theft protection. The report asserts:

Modernization will enable us to accomplish a lot more, in less time. Depending on budget considerations, as technology evolves, we will continue to modernize our systems to improve the internal and external services provided. We are continuing to deliver capabilities that put taxpayers first and enhance every perspective of the taxpayer experience.

IRS Pub. 5382 at 41. We welcome discussion of how LB&I will benefit from this modernization effort and how LB&I expects new technology to impact large business taxpayers in the near and long terms.

Taxpayer Service. Historically, large business taxpayers in the CIC program have relied on Exam team members assigned to their case to assist them obtain status reports on and other assistance with agreed items being processed at IRS Service Centers and similar processing units. Under LB&I's new issue-focused examination approach, some of these taxpayers no longer have Exam teams assigned to their case. We invite discussion of LB&I's plans to provide account support services to such taxpayers.

B. LB&I Examinations

LB&I Examination Process (LEP) Progress Update. Several years ago, LB&I shifted its organizational structure and began implementing an approach focused on centrally identified tax compliance risk. The division identified four core principles that would guide its operations going forward:

- A flexible, well trained workforce;
- Better work selection;
- Tailored treatment streams; and
- An integrated feedback loop.

We invite LB&I leadership to comment on these four principles in terms of progress achieved to date, challenges that remain, and plans for areas that need improvement.

Identifying returns for examination. In May 2019, LB&I rolled out a new administrative process for the selection of large corporate tax returns for examination. The process, known as the Large Corporate Compliance program or LCC, replaces the Coordinated Industry Case (CIC) program and applies beginning with returns filed for the 2017 tax year. We understand the process first uses automated pointing criteria to identify returns to be included in the LCC audit selection process. LCC returns are then classified into categories of risk based on data analytics, and LB&I determines compliance treatment streams to be applied to LCC returns based upon the return's overall category of risk and available resources. According to the IRS's May 16, 2019 News Release (IR-2019-95):

LCC works in tandem with LB&I agents and examiners who apply their experience and expertise in undertaking compliance actions and determining compliance treatment streams of the biggest and most-complex corporate taxpayers. Each enhances the other.

The program includes continuous improvement using an agile model principle to continually monitor and improve based on feedback from stakeholders including field teams, practice networks, and data scientists.

We invite discussion of practical differences large business taxpayers should expect to see beginning with the examinations of their 2017 tax years. Will revenue agents still have the same level of autonomy for selecting issues to examine?

Identifying more productive, current work. In recent remarks, Commissioner Rettig stated, “I don’t want us to be doing examinations that we should not be doing, I don’t want us to have cases in appeals that shouldn’t be in appeals, I don’t want us to litigate cases that shouldn’t be litigated.” 165 Tax Notes Federal 1043 (Nov. 11, 2019) (reporting on the 35th annual High Tech Tax Institute in Palo Alto, California, sponsored by the Tax Executives Institute and San Jose State University). TEI members agree with the Commissioner’s comments and believe issue selection practices of revenue agents is a critical aspect of overall exam efficiency. We invite discussion of efforts, other than campaigns, LB&I leadership is undertaking to ensure its agents are selecting productive issues to examine.

Materiality is a concept that revenue agents and taxpayers often interpret differently. We invite discussion of LB&I leadership’s efforts to ensure revenue agents select material issues for examination and avoid adjustments that require significant time to develop yet result in immaterial adjustments.

It is not uncommon for revenue agents to raise and re-examine issues that have been decided adversely to Exam in prior examination cycles, either through an Appeals proceeding or after review by IRS Counsel or National Office specialists. This is true even in cases where there have been no changes in facts, administrative rulings, or case law. We invite discussion of guidance revenue agents receive on determining whether to re-examine issues resolved in favor of the taxpayer in prior audit cycles. We believe significant time and resources could be saved by instructing revenue agents when it is appropriate to raise or not to raise such issues.

Adherence to LB&I’s policies and procedures. With a workforce of over 4,500, we appreciate the difficulties LB&I leadership may have ensuring its staff adhere to the division’s policies and procedures. The *FY2020 LB&I Focus Guide* indicates LB&I is working to stand up a centralized policy office to ensure accountability, consistency and coordination of LB&I policies and procedures. We invite discussion of this new office and the extent to which it will focus on ensuring adherence to LB&I’s examination policies.

Stakeholder outreach. We are encouraged by the increased level of stakeholder outreach that occurred throughout 2019. We firmly believe more can be achieved when the IRS works in collaboration with stakeholders and welcome discussion of additional areas in which TEI members can collaborate with LB&I.

C. TCJA Implementation Issues

Large business taxpayers encountered significant challenges interpreting TCJA provisions, responding to evolving regulatory guidance, and determining how to report items in IRS forms filed for the 2018 tax year. We invite discussion of the TCJA transition and

compliance issues LB&I experienced during examinations of CAP taxpayers' 2018 returns. In particular, given the new GILTI, BEAT, and FDII regimes, has LB&I seen any trends in compliance issues or consistent areas of disagreement with taxpayers?

We invite discussion of the section 965 transition tax campaign and areas of noncompliance LB&I examiners are focusing on.

D. Research Credit Examination Issues

We invite discussion of LB&I's views of how the September 2017 safe-harbor directive for computing qualified research expenses is operating in practice and challenges Exam teams are experiencing when examining research credits computed under the safe-harbor.

In 2019, LB&I modified its guidelines for applying the directive, instructing examiners to "verify that the costs reported are certified and audited by external third parties as ASC 730 R&D." See revised FAQs - IRC 41 QREs and ASC 730 LB&I Directive, Certified Audited Financial Statements A2. We invite discussion of how this verification should occur in practice and the extent to which revenue agents should or should not examine and question amounts accounted for as ASC 730 R&D in the taxpayer's financial statements.

The involvement of MITRE in a case frequently upsets the operational dynamics of an otherwise efficient examination plan. It is common for MITRE representatives to disregard examination process commitments agreed to at the onset of an examination (e.g., not adhering to timeline commitments set forth in the examination plan, causing unreasonable delays in closing examinations, not following agreements concerning in-person interviews). We invite discussion of what rules of engagement apply to MITRE and what taxpayers should do if they are not followed. We invite discussion of what legal training MITRE representatives receive and the extent to which they should be making legal determinations in their examinations, e.g., determining the applicability of Treasury regulations to a particular tax year or otherwise interpreting guidance and making policy calls.

IV. Independent Office of Appeals

A. Key Challenges, Priorities, and New Initiatives

We invite leadership of the recently renamed, Independent Office of Appeals, to comment on key challenges Appeals faces, as well as its priorities and new initiatives planned for 2020.

TEI members strongly believe tax systems operate more fairly and efficiently when they offer the possibility of having administrative decisions reconsidered before resorting to litigation. The Taxpayer First Act provides several safeguards to ensure taxpayers who want to administratively challenge a deficiency notice have the opportunity to do so. We invite discussion of the policy set forth in section 8.6.3.3 of the Internal Revenue Manual, which

clarifies Appeals will not review cases in which the sole issue is an abuse of discretion.¹ This policy results in taxpayers not having access to Appeals review of a range of issues—including elective accounting method changes, discretionary penalties, and section 9100 relief, among others—contrary to the general right to an appeal provided under new section 7803(e)(4). *See* section 7803(e)(4) (“Right of appeal. The resolution process described in paragraph (3) shall be generally available to all taxpayers.”)

B. Update on Case Resolution Procedures

A key facet of the Taxpayer First Act was to increase the independence of Appeals, both actual and perceived. The taxpayer advocate’s 2019 annual report found that continuing to include counsel and compliance in Appeals conferences “fundamentally alters the role of Appeals and runs counter to the congressional priority of an independent Appeals process.” National Taxpayer Advocate Annual Report to Congress 2019 at 62. This view is shared by many TEI members, as well as many others in the tax practitioner community some of whose experiences are captured in the Taxpayer Advocate’s report. We invite discussion of Appeals’ current views of this practice in light of mounting pressure to end it, as well as steps Appeals intends to take in response to the perception, as evidenced by enactment of the Taxpayer First Act, that its operations need to be more independent from the IRS.

We invite discussion of Appeals’ experience using WebEx software for conducting virtual Appeals conferences. What are the expectations for future use of this or similar technology?

V. Office of Chief Counsel

A. Key Challenges, Priorities, and New Initiatives

We invite discussion of key challenges facing the Office of Chief Counsel, as well as its priorities and new initiatives planned for 2020.

B. Tax Regulatory Process – Enhancing Notice-and-Comment Rulemaking

We commend the IRS for reaffirming its commitment to a tax regulatory process that encourages public participation, fosters transparency, affords fair notice, and ensures adherence to the rule of law. Given the high volume and complexity of TCJA regulations, however, we invite the IRS to seriously consider returning to its traditional 90-day deadlines for submitting comments on proposed regulations. We note that doing so would not only afford the public a more meaningful opportunity to comment, but also enable the public to better apprise the government of relevant information that it may not possess or alert the government to consequences that it may not foresee.

¹ *See* I.R.M. section 8.6.3.3, Procedures If Appeals Conclusion is Contrary to Service Position (stating “Appeals will not partially or fully concede an issue in a case where the Associate Chief Counsel office has issued a decision with regard to an issue that a court reviews using an abuse of discretion standard”).

C. Bridge to Compliance – Creative Solutions to TCJA Implementation Issues

We commend Chief Counsel Desmond’s recent acknowledgement that the IRS and taxpayers share a common interest in developing creative solutions to TCJA implementation and compliance issues. The reporting, compliance, and audit complexities resulting from iterative administrative guidance are beginning to surface and could pose immense administrative challenges for both taxpayers and the IRS if left unaddressed. Given the shared interest in avoiding the specter of preparing, filing, processing, and examining multiple rounds of amended returns, we invite discussion of several areas that are potentially ripe for streamlined reporting processes or other generally applicable relief, including:

- accounting method changes;
- bonus depreciation elections under section 168(k); and
- foreign tax credit redeterminations under section 905(c).

Separately, the IRS recently recognized that unique circumstances may lead to double taxation under section 965 and expressed an openness to providing “one-off, taxpayer-specific” relief in certain sympathetic cases. We invite comment on whether the IRS would be open to providing similar relief in contexts outside of the transition tax where unintended consequences result from the application of TCJA guidance.

D. Bridge to Compliance – Respecting Reasonable Tax Return Positions

The complexity of the TCJA regulations coupled with the amount of time it takes Treasury and the IRS to issue them can create significant hardships for taxpayers seeking in good faith to comply with the statute pending the issuance of final regulations. If a taxpayer reasonably interprets a statutory provision in a manner that is different from or inconsistent with the position adopted by the IRS in a subsequently issued regulation, the taxpayer may be subject to additional taxes, penalties, and interest. Accordingly, we encourage chief counsel and its division counsel offices to respect taxpayers’ reasonable and consistent interpretations of existing law in cases where final regulations have yet to be issued by the timely filing of the taxpayer’s return for the taxable year.