TAX EXECUTIVES INSTITUTE – COMMISSIONER OF INTERNAL REVENUE AND LARGE BUSINESS & INTERNATIONAL DIVISION
LIAISON MEETING
June 4, 2014
MINUTES

On June 4, 2014, a delegation from Tax Executives Institute met with the Commissioner of Internal Revenue, John A. Koskinen, and other officials of the Internal Revenue Service. The following minutes were prepared by Tax Executives Institute, and, although reviewed by the IRS, they have not been formally approved by the agency. The agenda for the meeting was submitted in advance and was published in the July-August 2014 issue of The Tax Executive magazine and on TEI's website.

Commissioner John A. Koskinen welcomed Institute President Terilea J. Wielenga and the TEI delegation, saying that TEI is an important resource for the IRS for information, recommendations, and ideas. On behalf of TEI, Ms. Wielenga thanked the IRS for its ongoing commitment to an active dialogue with taxpayers. Both organizations, she said, share the goal of ensuring that taxpayers file complete and accurate returns while minimizing administrative and compliance burdens. The liaison meeting affords an opportunity to assess where improvements can be made to enhance the tax system's efficiency. The IRS and TEI delegations to the meeting are set forth below.

IRS Delegation

John A. Koskinen, *Commissioner of Internal Revenue*
John M. Dalrymple, *Deputy Commissioner for Services and Enforcement*
William J. Wilkins, *IRS Chief Counsel*
Terry Lemons, *Chief, Communications and Liaison*
Kirsten Wielobob, *Chief, Appeals*
Christopher B. Sterner, *Deputy Chief Counsel, Operations*
Erik H. Corwin, *Deputy Chief Counsel, Technical*
Michael Danilack, *Deputy Commissioner (International), LB&I*
Laura Prendergast, *Acting Deputy Commissioner (Domestic), LB&I*
Samuel Maruca, *Director, Transfer Pricing, LB&I*
Diana L. Wollman, *Director, International Strategy, LB&I*
Thomas A. Vidano, *Deputy Division Counsel LB&I*
Nikole Flax, *Assistant to the Chief of Appeals*
John Lipold, *Chief, Relationship Management, Office of National Public Liaison*
Candice Cromling, *Director, Office of National Public Liaison*
Jane Agule, *Communications and Liaison, Office of National Public Liaison*
Candace E. Hadley, *Director, Communications and Liaison, LB&I*
Kathryn Gregg, *Stakeholder Liaison Program Manager, LB&I*

TEI Delegation

Terilea J. Wielenga, Allergan Inc., *TEI International President*
Mark C. Silbiger, The Lubrizol Corporation, *TEI Senior Vice President*
Charles N. (Sandy) Macfarlane, Chevron Corporation, *TEI Secretary*
Timothy J. Golden, Syngenta Corporation, *TEI Executive Committee*
Robert L. Howren, BlueLinx Corporation, *TEI Executive Committee*
Donald J. Rath, *TEI Executive Committee*
Katrina H. Welch, Texas Instruments, Inc., *TEI Executive Committee*
Ernest N. Gates, Wal-Mart Stores, Inc., *Chair, TEI IRS Administrative Affairs Committee*
Eli J. Dicker, *TEI Executive Director*
W. Patrick Evans, *TEI Chief Tax Counsel*

Jeffery P. Rasmussen, *TEI Senior Tax Counsel*
Daniel B. De Jong, *TEI Tax Counsel*
Benjamin R. Shreck, *TEI Tax Counsel*

I. Commissioner's 2014 Priorities and IRS Budget and Staffing Challenges

Ms. Wielenga invited an update on the Commissioner's 2014 priorities. Since the financial downturn, she noted, taxpayers and the IRS have been stretched to do more with fewer resources and the budget process has exacerbated the IRS's challenge. The Commissioner noted that the agency is vital to the government's operations and touches every American, but obtaining adequate resources continues to be a challenge. The IRS strives to be innovative and as efficient as possible, but there is a limit to what it can do with fewer and fewer resources without cutting back on services. Because of a mandated, across-the-board one-percent pay increase for federal employees, he said, the IRS needs a $225 million budget increase just to stay even with prior years' service levels and enforcement activities. He added that, although the IRS does not expect to receive the entire amount of the Administration's proposed budget, draconian cuts to the budget proposal are unlikely. One reason the IRS is different from other agencies, he observed, is that every dollar of increase in the budget will generally produce between four and five dollars more revenue for the government. Hence, the Administration is seeking a program integrity cap adjustment under the Budget Control Act for IRS appropriations.

Next, the Commissioner noted that the IRS had a smooth filing season in 2014 in part because there were few major tax changes affecting the average person. Preparing for the 2015 filing season will be challenging, however, because of the implementation of the Affordable Care Act (ACA). The IRS is projecting up to 11 million more calls may be made to its helplines as a result of the ACA. To reduce the call load and waiting times, the IRS is expanding its website guidance but even six million additional calls will be a heavy burden for the IRS to bear if funding remains limited. In addition to the ACA, the IRS will be implementing a number of new procedures and processes to take account of the Foreign Account Tax Compliance Act (FATCA). As important, the timing of any "tax extenders" legislation may adversely affect the filing season because the IRS will need to make adjustments to its systems and forms. Ensuring that statutory mandates, such as the ACA, FATCA, and tax extenders legislation, are implemented take precedence in setting the IRS's work priorities.

The Commissioner said that other major challenges the IRS is confronting include reducing the percentage and dollar amounts of improper earned income tax credit claims. There seems to be strong support for a legislative remedy for the EITC problem, he said. In addition, enactment of legislative proposals to permit the IRS to correct obvious W-2 errors based on alternative information sources without subjecting taxpayers to a full-scale examination would improve tax administration. Finally, enactment of legislative proposals confirming the IRS's authority to establish minimum competency standards for preparers would improve tax collections and taxpayer compliance.

FATCA, the Commissioner noted, is proving to be a watershed in the IRS's ability to combat offshore tax evasion. More than 77,000 foreign financial institutions have registered to report information under FATCA (or the intergovernmental agreements), and more than 43,000 taxpayers have come forward to pay more than $6 billion dollars in back taxes. As important, the improved compliance and reporting under FATCA and the voluntary offshore disclosure program sends a signal to average taxpayers that those with access to foreign bank accounts will pay their fair share of taxes or suffer the consequences for failing to doing so. Maintaining a high rate of voluntary compliance is a critical IRS mission, the Commissioner noted. For every one-percent decline in the voluntary compliance rate, the government loses approximately $30 billion in revenue that is legally due. The cost to adequately fund the IRS pales in comparison to this potential revenue loss. Enforcement and taxpayer services by the IRS are critical to minimizing the risk of noncompliance.

Ms. Wielenga thanked the Commissioner for his time and for his remarks. The Commissioner said that he appreciated the dialogue with TEI. The IRS values the "on-the-ground" feedback that TEI provides about how well things are working in the field.

II. Operating Division Challenges

A. *Budget and Staffing Priorities.* TEI invited the other IRS division heads to comment on their challenges and priorities given the budget constraints. Mr. Wilkins said that the Office of Chief Counsel sets its priorities through the Priority Guidance or "Business" Plan. The Office assesses which projects have the greatest effect, often in terms of revenues and numbers of affected taxpayers, and then applies the most resources to those matters first. For example, the guidance that computer code writers in the private sector and the IRS need to create mission critical tax compliance systems (*e.g.*, for FATCA or ACA) often draw the highest priority. After that, the Office determines the effect the guidance will have from most general to narrowest application and from highest to lowest revenue effect. In addition, guidance that eliminates disputes or minimizes controversies from the tax system on a wholesale basis is often accelerated. After the "must have" guidance, the "nice to have" guidance is addressed with the lowest priority assigned to the narrowest issues. The 2014-2015 Priority Guidance Plan, he said, is nearing completion and some previously identified guidance projects may be removed. Mr. Corwin added that mission critical items for taxpayers and the IRS, including expiring temporary regulations, have the highest priorities. In the coming year, there will also be an increased emphasis on ensuring that proposed regulations become final and do not remain proposed for extended periods.

Ms. Prendergast said that LB&I's compliance plan is unchanged from prior years, with an emphasis on FATCA, increasing offshore compliance, and tax treaty issues. Mr. Danilack agreed that the technical issues of concern are not new. Much work and resources are also being devoted to the future of the examination process. With the workforce attrition and funding constraints, LB&I must take a more strategic approach in looking at issues under examination. Hence, considerable emphasis has been placed on the processes employed in coordinated issue cases (CIC). The questions being asked are whether the processes are efficient and whether the proper amount of resources are devoted to the right issues? LB&I is benchmarking its approach against what other countries do in order to obtain a more global view of what makes sense from an enforcement perspective. The budget constraints, he noted, are requiring LB&I to absorb the personnel attrition with no new hires, which is exacerbating the challenge of bridging the knowledge gap between newer and more experienced agents. Ms. Prendergast added that the International Practice Networks (IPNs) and Issue Practice Groups (IPGs) are designed to aid knowledge management and transfer by sharing best practices and issue evaluation. Mr. Danilack explained that LB&I started the knowledge management practices before the current budget environment took hold. This allowed the Division to connect less-experienced agents around the country with more seasoned employees.

In response to a question whether the process changes are trickling down to the field agents, Mr. Danilack said that part of Ms. Wollman's job is to marshal the knowledge bases and ensure that best practices are transferred to the field. He said that the Division has developed a training model and audit tools, but the Division's leadership is still scrubbing the practice units and guidance. LB&I is very close to releasing the first batch of guidance and practice units to the field. The guidance will also be released to the public. Ms. Wielenga encouraged LB&I to reach out to TEI for feedback and assistance in rolling out the training.

Ms. Wielobob noted that fifty percent of Appeals Team Case Leaders are likely eligible for retirement so the Appeals Division is also actively pursuing knowledge management and transfer. The number of CIC cases has declined, she added, which is attributable in part to the success of the Compliance Assurance Process (CAP) program. She explained that travel budgets are also highly constrained, which makes it challenging for training and for Appeals to hear cases. Sometimes the travel constraints are offset by taxpayer travel. For training, specialized outside training is sometimes required. The Appeals Division's focus is to ensure that travel and training budgets are used judicially.

B. *IRS Participation in Stakeholder Events.* TEI thanked the IRS for its willingness to participate in national, regional, and chapter events, but noted that during the past year travel restrictions had limited the IRS's ability to accept invitations. IRS participation, TEI noted, is invaluable in ensuring an open exchange of views on examination processes and invited an update on the prospects for increasing the number of educational events that IRS personnel attend. Ms. Prendergast said that during the past year the IRS had been compelled by budget restrictions to cut back on everything, including stakeholder meetings. Travel, she said, has to be justified as either mission critical or case related. She explained that the IRS recently reconsidered its travel policies, which means that more people are able to participate in more events. But, she added, there are new processes for approving participation in offsite events. To control costs, the IRS must also limit the number of people attending such events. The better the description of the session or program in the agenda, she added, the easier the case can be made for IRS participation in TEI events. In addition, attendance at meetings in the District of Columbia is easier to justify. For chapter or regional events, she said, it is important for TEI to contact a local IRS person early, because the approval process runs up through the LB&I chain of command from the territory manager to Director of Field Operations, to Industry Directors and often to Ms. Prendergast or Mr. Danilack, depending on whether the request relates to domestic or international issues. The IRS will review all the requests and take into account how the IRS's participation will advance the program agenda. She said that 60 days' notice would be great, and a request made sooner is always better than one made later. She said that approval of IRS participation is not just about the money spent, but also about ensuring that employees are taken care of and the right people are speaking to the audience. Even if an event is purely local, however, the IRS cannot, for example, justify sending 20 people to attend. Mr. Dalrymple added that any meeting location that has "spa" or "resort" in the title will create a perception problem that could inhibit IRS participation. In addition, travel to some cities may be problematic.

III. Appeals

TEI thanked Ms. Wielobob for her participation in the 2014 Audits and Appeals seminar and said that TEI members looked forward to continuing the dialogue about the issues addressed in Ms. Wielobob's luncheon remarks. TEI requested an update on the status of Appeals' operations. Ms. Wielobob reported that over the three fiscal years from 2011 to 2013 there had been a 17 percent decline in the number of cases in Appeals. The decline is attributable in part to attrition in the number of Appeals' employees, which has decreased from about 2,111 to 1,830 employees. In fiscal 2013, case closures were down about nine percent from the prior year with 237 CIC closures (down 40 percent) and 2,241 IC case closures (an increase of about 17 percent). There were about 70,610 cases in inventory as of June 30, 2013. Receipts were down about nine percent from fiscal 2012, with CIC cases at 98. IC cases declined about five percent. The IRS furlough and CAP both contributed to the decrease in the number of cases submitted to Appeals for consideration.

With respect to the time required to opening conference, non-docketed CIC cases generally required about 145 days in 2013, an increase of about 12 days from 2012, but significantly lower than the time required in 2006. For non-docketed IC cases, the time to the opening conference was about 116 days. The time to case closure in non-docketed CIC cases is running about 948 days and about 428 days in non-docketed IC cases. Ms. Wielobob added that the complexity of the issues in a case will drive whether experts are brought in and this can significantly affect the cycle time from opening to closing a case.

TEI inquired whether any new initiatives were being considered or implemented by the Appeals Division. Ms. Wielobob explained that the second phase of the Appeals Judicial Approach and Culture (AJAC) initiative will be implemented soon. The first phase of the guidance, which was released in July 2013, included 12 changes to collection procedures and a couple of changes relating to examinations. No new issue resolution guidelines were released. The new AJAC guidance will also involve examination and collection changes. She explained that the largest challenge for Appeals — and the IRS generally — is how to handle new information presented by the taxpayer at Appeals. The overarching philosophy has always

been that the Appeals Division is not the finder of facts. As a result, where taxpayers present significant new information, the case must be returned LB&I's jurisdiction for review. Where a new argument is raised, the case will remain under Appeals' jurisdiction, but will be returned to LB&I for review and comment. One other initiative, she said, will be to employ the rapid appeals process (RAP) for all LB&I cases as well as estate and gift tax cases. RAP will no longer be limited to cases where an Appeals Team Case Leader is assigned.

TEI inquired about the effect of AJAC on Appeals' ability to resolve cases and issues more rapidly. Ms. Wielobob acknowledged that remained an open question, saying that she would evaluate the process and assess whether additional changes are needed to improve case cycle times.

TEI inquired about the scope of the guidance defining what constitutes a "new issue" or "new argument" that would cause a case to be returned to the field for additional examination. Ms. Flax said that the pending guidance, which will be released soon, includes a number of factual scenarios delineating when the Appeals Division should return the case to the Examination Division. She added that the guidance should be released by the end of the current year. TEI inquired whether RAP would become a routine or standardized practice. Ms. Wielobob explained that Appeals views RAP as a "best practice" to be used whenever possible. One recommendation under study is to formalize when and how RAP should be employed by Appeals officers because, as one of the tools in the toolbox, everyone should understand when and how to use it. She added that some tax practitioners have expressed differing views about the efficacy of RAP. In many cases, Ms. Wielobob noted, the efficacy of RAP may depend on the taxpayer's relationship with the examination team.

TEI inquired whether the IRS's resource constraints have caused Appeals to reconsider how it obtains advice from the Office of Chief Counsel, and whether there is any prospect of assigning dedicated personnel or resources from the Chief Counsel's Office to the Appeals Division. Ms. Wielobob said that the Division is comfortable with when and how it obtains advice from Counsel, both in the field and the National Office. The advice Counsel provides is one factor considered in resolving cases, she said, but ultimately the Appeals officer must make an independent assessment of both the facts and the application of law to those facts.

IV. Compliance Assurance Process

TEI observed that the CAP program is one of the most successful and innovative compliance tools that the IRS has implemented. The program requires a significant change in the mindset of both taxpayers and IRS agents. In addition to being an effective issue identification and resolution tool for taxpayers and the IRS, the program affords the IRS and TEI a forum — through TEI's IRS Administrative Affairs CAP Subcommittee — in which to meet regularly, exchange views, and move forward collaboratively on best practices and procedures for examinations. TEI noted that a transfer-pricing roadmap tool released by LB&I calls for a 24-month timeline for the development of transfer-pricing issues. TEI inquired how the roadmap fits within the CAP environment, which generally calls for resolution of issues within a more expedited timeframe. Mr. Danilack said that the 24-month period called for in the roadmap is a flexible framework rather than a guideline that must be followed. Mr. Maruca agreed with this observation, noting that the 24-month period was merely a construct, not a standard period for all examinations. Mr. Danilack explained that where issues can be examined and resolved more expeditiously, they should be. If a CAP taxpayer has a transfer-pricing issue, he said, the IRS would like to resolve it within the CAP timeframe, but the complexity of the facts and issues may not afford a resolution of the issue within that period. As a result, the IRS is still looking at the matter. One possibility, though not a panacea, he said, would be for the CAP taxpayer to obtain an Advance Pricing Agreement (APA) to remove the transfer-pricing issue from consideration.

TEI said that one key to resolving transfer-pricing issues in a CAP environment might be to develop a means to process the transfer-pricing adjustments on a prospective rather than a retrospective basis. For example, the IRS might consider developing an election similar to making section 481(a) adjustments for

accounting method changes. In other words, the adjustment would be run through the current examination cycle rather than filing amended returns to take account of the adjustments. Mr. Danilack acknowledged that the proposal has been discussed in other contexts (*e.g.*, competent authority proceedings). He encouraged TEI to develop a proposal for consideration. Ms. Wollman noted that one challenge to that approach is that many states might not accept a rollforward adjustment similar to section 481(a) adjustments because, for example, the state apportionment factors may differ from prior years. The taxpayer would still be required to amend state returns for the transfer-pricing adjustment.

TEI noted that the Government Accountability Office had issued a report on the CAP program calling for the IRS to develop measures to gauge the efficacy of the CAP program as an enforcement tool. Ms. Prendergast said that the Prefiling and Technical Guidance Division, which has responsibility for administering CAP, is responding to the GAO report and developing suitable metrics.

TEI noted that one obstacle to expanding the CAP program is the volume of resources that taxpayers and the IRS must devote to closing multiple issues and multiple cycles of examinations in pre-CAP tax years. TEI inquired how the pre-CAP program is working from the IRS's perspective. Ms. Prendergast said that the Pre-CAP program is designed for taxpayers that are ready for the next step, and acknowledged that some taxpayers may not be ready if they have too many open pre-CAP years. Challenges also arise where taxpayers file multiple claims in pre-CAP years. She said that taxpayers should ensure that they have the resources to address the examination of pre-CAP years and minimal claims before applying for the pre-CAP program. On the IRS side, there will be consultation up and down the line from the examination team to the Industry Directors, to Directors of Field Operations, and specialists (such as the transfer-pricing operations) to ensure that a case is ready for CAP.

V. Evolving Approaches in Examinations and Transfer Pricing Operations

A. *Global Tax Enforcement Initiatives*. TEI noted that a number of countries, including United Kingdom and the Netherlands, have adopted collaborative compliance arrangements that are supplemented by risk assessments of business taxpayers in order to determine the scope and degree of examinations of a taxpayer's return. TEI inquired whether LB&I has studied these tax administration models and considered implementing part or all of their approaches.

Mr. Danilack acknowledged that collaborative compliance approaches are the wave of the future that the IRS needs to study. The traditional IRS examination model, which is to take the return as filed by the taxpayer and have the agents identify issues and compliance risks and follow up with information requests, is reactive rather than proactive. The Forum on Tax Administration of the Organisation for Economic Co-operation and Development (OECD) released a report in 2013 summarizing the cooperative compliance programs in several jurisdictions, including Canada and the Netherlands. In effect, the collaborative compliance approach would take the CAP program to the next level, but the IRS has not looked at it very deeply. Even for the countries highlighted by the OECD report, though, the approach is still in its earliest stages. To implement a true risk-based assessment model, he explained, tax administrators must know far more about a business's operations and strategies. That, in turn, will require a substantial investment in research by the IRS. To that end, the IRS's efforts at improving its knowledge database are facilitating the development of technology that will enable a risk-based compliance approach. He added that IRS agents on the front lines are beginning to see what is needed and gathering the data to build such a system, but much more work needs to be done before a collaborative compliance model can be rolled out.

TEI inquired about the scope and extent of the IRS's participation in the OECD's project on Base Erosion and Profit Shifting (BEPS) as well as its views on the work performed to date. Mr. Danilack said that the IRS has a considerable administrative stake in many of the issues addressed by the OECD, including especially the country-by-country (CbC) reporting template, and has a close working relationship with the U.S. Treasury Department on the BEPS project. He said that the IRS has concerns about whether the discussions are focused on producing clear and administrable rules. If the discussions are too theoretical, the

taxation principles too amorphous, or tax "abuse" is essentially defined as "we know it when we see it," taxpayers will be subject to multiple taxation. That, in turn, will create challenges for resolution of issues by the competent authority. The BEPS participants must focus on clear, concise rules of application; otherwise tax administration will suffer.

TEI concurred with Mr. Danilack's view on the need for clear, concise, and administrable rules and noted that the proposed CbC template will impose a significant reporting burden on taxpayers. Moreover, TEI said, the information may be misused by tax authorities for formulaic adjustments. Mr. Danilack said that the CbC template is potentially a huge burden for the IRS to administer as well. There are very few countries with which the IRS currently exchanges information. As important, the country requesting the information under a treaty information exchange provision must demonstrate a clearly defined tax-administration reason to support its request. If the CbC template is to be used for "risk assessment" purposes, it is unclear how the IRS would exercise proper discretion over CbC information requests. A foreign government's request for information to conduct a "risk assessment" may be a disguised fishing expedition for information. The IRS, he said, does not wish to conduct an examination on behalf of a foreign government, but it may have to exercise audit-like judgments to determine whether a country's request for "risk assessment" data is proper. Moreover, the CbC template opens the door to additional requests for information. TEI agreed with Mr. Danilack's observation, saying that once the CbC template is developed, tax administrators may expand the scope, degree, and nature of the information to be included. Even with the more limited scope of the currently proposed CbC template, taxpayers have substantial concerns about maintaining confidentiality of proprietary business information TEI said.

B. *LB&I Examination Process.* TEI invited an update on the issues noted in the written agenda including prospective process changes and their effects on field examination approaches. Ms. Prendergast noted that the Quality Examination Process is still the benchmark for the conduct of examinations for CIC cases and the IRS still observes the distinction between CIC and IC cases. The redesigned "LB&I Examination Process," which is being finalized with changes to be incorporated in the Internal Revenue Manual, will apply to all returns and taxpayers under the jurisdiction of LB&I. Under the new approach, the process for developing and issuing information document requests (IDRs) will be similar to the current rules of engagement, requiring substantial communication between the examination team and the taxpayer to ensure that IDRs are issue focused. She noted that LB&I held a meeting with TEI members in New Jersey to review the IDR process and brought in a number of IRS managers for training.

The current examination model depends on the classification of taxpayer cases as CIC or IC. But in an issue-focused examination, LB&I will have to look at audits differently. It may not make sense, she said, to examine the same taxpayers every year. As a result, LB&I, with the assistance of the National Treasury Employees Union, has put together a team to develop a new pilot model for examination approaches. The team has worked with experienced taxpayers to review how CIC return issues are identified and classified, with a goal of determining when and how IRS employees — from team coordinators to international examiners and other specialists — are brought into a case. As examinations move to an issue-based focus, IRS employee position descriptions will also be tied to the issues.

TEI noted that press stories about the new IDR process have indicated that IRS has had discussions about imposing a limitation on the timeframe during which affirmative adjustments and claims can be made by taxpayers during examinations. TEI inquired whether the IRS has made a decision on any timing or procedural limitations for affirmative claims. Ms. Prendergast replied that the IRS has studied how taxpayer claims and the timing of the claims affects the QEP process. Many examinations have become bogged down with claims, and a window — possibly as small as 30 days — for making affirmative claims and adjustments may be necessary to keep the examination process moving forward. The specific timeframe and process will be described in forthcoming guidance, she said.

C. *Revised IDR process.* TEI observed that there may be extenuating circumstances (*e.g.*, illness of tax department personnel) affecting a taxpayer's ability to reply timely to an IDR after the IDR is issued. TEI inquired whether the process and timelines for IDR responses will afford the field enough flexibility to accommodate changing circumstances. Ms. Prendergast said the enforcement of an IDR is subject to the judgment and discretion of the case manager who will be able to evaluate the facts and circumstances. TEI noted that under the proposed guidelines the ramifications of a taxpayer missing its deadlines for responding to an IDR are clear; however, the ramifications of an examiner missing a deadline are less clear. Ms. Prendergast said that the examiner's manager would be expected to review the circumstances. The expectations of both the taxpayer and the IRS should be addressed upfront in the opening conference, and IDRs should be discussed on an ongoing basis. TEI noted that many examinations commenced prior to the announcement of the new IDR process and, while examination teams have been told that they must comply with the new IDR process, some do not seem to understand them or apply the guidelines erroneously. Ms. Prendergast said that the guidance on the IDR process is clear. If examiners are not applying it properly, taxpayers should elevate the issue to territory managers or higher ranking members of the exam team for discussion. There is always the possibility that some examining teams will not understand the process and thus need additional guidance and encouragement to apply the revised guidelines.

D. *Specialist Resources.* TEI noted LB&I's institutional shift to IPN and IPG knowledge management networks and asked how well the IPNs and IPGs are working and whether taxpayers have access to the discussions that might take place regarding their individual cases.

Mr. Danilack noted that IPNs are not a direct corollary of the IPGs; the IPNs are networks of individuals and not groups *per se*. There is a steering group that guides the IPNs, but the IPNs are not separate groups of experts created to support the field on particular issues. The objective of IPNs is to impart accumulated agency expertise to agents through knowledge transfer and to build the IRS's knowledge database about when and where to use particular tools and audit techniques. IPNs do not have or publish any authoritative issue guidance. Individuals within the IPN steering committee may assist less experienced agents on cases, but the practice is no different from an informal mentoring or issue discussion that might occur from cubicle to cubicle at a taxpayer's office. The members of the IPNs are sharing their expertise, but are not acting in any capacity as field counsel in deciding how a taxpayer's issue should be resolved.

Ms. Prendergast said that the IPGs were designed to operate similarly to the IPNs. Taxpayers should not be approaching an IPG independently. Moreover, examination teams should independently evaluate an IPG's advice and be able to explain to taxpayers how and why the advice from the IPG is being applied. If the agent cannot explain the advice, the taxpayer and the agent should approach the IPG jointly. The issue discussion at the IPG level is intended to be a collaborative exchange of views and is not decisional authority that the agent must follow in any particular case. As with other issues, the case manager has the authority to decide whether to follow the advice given or follow a different path. If the taxpayer believes the case manager is routinely following the IPG advice as guidance, as opposed to a consideration in the case manager's own independent evaluation, the taxpayer should elevate the issue for discussion within the IRS.

E. *Schedule M-3.* TEI noted that it had filed comments with the IRS's Schedule M-3 Study Group. In addition, the IRS Advisory Council studied the Schedule M-3 Form and made a number of recommendations, including potentially eliminating Parts 2 and 3 of the form. TEI inquired whether the M-3 Study Group is still operating and whether the IRS is considering simplifying or streamlining the form. Ms. Prendergast replied that the Schedule M-3 Study Group is continuing its efforts. The IRS, she said, does not believe Schedule M-3 and Schedule UTP (*Uncertain Tax Positions Statement*) are duplicative, especially since no dollar amounts are disclosed on Schedule UTP. The IRS understands taxpayers' desire to eliminate Parts 2 and 3 of the form, but there are constituencies within the IRS that rely upon Schedule M-3 data for issue identification, risk assessment, and statistical analysis. The IRS continues to evaluate the efficacy of the information supplied on Schedule M-3, but it is unlikely to eliminate Parts 2 and 3 or revert to Schedule M-1 for larger taxpayers.

F. *Transfer Pricing Operations, including the Advance Pricing and Mutual Agreement Program.* TEI noted that the APA program was transferred from the Chief Counsel's Office to LB&I and integrated with the Mutual Agreement and Competent Authority Program. By all measures, TEI said, the transition and reorganization have gone smoothly and requested an update on the programs from the agency's perspective.

Mr. Danilack said that the reorganization of the International function within LB&I has substantially improved the IRS's ability to address international issues. There are challenges ahead, but the organization is well ahead of where it was three years ago. The consolidation of the APA and Mutual Agreement programs has led to a number of synergies in issue identification and made the group a "one stop shop" for issue resolution for unilateral and bilateral cases. Mr. Maruca explained that running the APA and MAP programs from the same office permits the IRS to shift resources quickly and flexibly as needed. There are field examiners who can lend substantial assistance on competent authority matters and competent authority personnel who can assist the field in examination matters. The biggest challenge, he said, is that the group is under-resourced compared to the magnitude and scope of the issues involved.

TEI noted that there is uncertainty among taxpayers about where and how transfer-pricing examinations fit within the audit cycle. Mr. Maruca replied that if the confusion is attributable to the transfer-pricing roadmap document, that guidance is notional and not binding on the field.

TEI noted that APAs require a substantial amount of time to complete — so much so that the term "Advance" may no longer apply by the time an agreement is reached. Mr. Maruca said that is a perfect example of the need for and importance of adequate resources for the group. The fifty percent uptick in personnel two years ago afforded the group an opportunity to work many more cases. Since then, there has been significant attrition in experienced employees and budget constraints have kept the IRS from replenishing its ranks. The IRS is always running behind on APA cases because it is a popular issue resolution tool. The MAP inventory, he added, is also running ahead of the IRS's ability to handle all the referrals. Mr. Danilack explained that government furloughs and the "stop-start" nature of the IRS budgeting process over the last two years have exacerbated the challenge of recruiting qualified personnel. If an employee leaves, the IRS must often wait for new budget authority to hire replacements. Delays in hiring authority, in turn, can discourage qualified applicants who may decline to pursue a position when funding is restored. Ideally, the group would have 125 full-time equivalent employees.

In response to a question from TEI, Mr. Danilack said that the IRS is still unable to undertake bilateral APAs with India. In the past, the Indian revenue authority believed that India was entitled to premium returns for a number of varying reasons, which makes it challenging to reach competent authority agreements on a principled basis. Recent discussions between the respective revenue authorities have been fruitful, and the new government in India may well set a new tone.

VI. FATCA Rollout

TEI commended the IRS for issuing Notice 2014-33 and confirming that it will treat calendar years 2014 and 2015 as transition years during which the IRS will take account of taxpayers' good faith efforts to comply with the FATCA regulations. Referring to the discussion of the issues set forth in the agenda, TEI asked whether any additional FATCA guidance would be issued to the field or to taxpayers.

Mr. Danilack said that the administrative approach in Notice 2014-33 is consistent with the implementation of other complex laws. As agents are examining taxpayers they should bear in mind the challenges that taxpayers encounter as they put their FATCA information gathering and processing systems in place.

VII. Regulatory Guidance

A. *Guidance Expectations.* TEI inquired whether there were any additional comments from the Office of Chief Counsel on the effects of IRS budget constraints on guidance priorities. Mr. Wilkins said that the issues had been discussed thoroughly earlier. Guidance to implement the ACA and FATCA consumed much time and attention during the past year and may continue to do so. High profile matters such as those and high compliance risk issues receive the most resources from the Office of Chief Counsel.

B. *Strategic Litigation.* TEI asked the IRS to describe how it establishes and pursues its criteria and priorities for litigating cases and issues. Mr. Wilkins said that strategic litigation is more often a matter of "recognizing" important issues and cases as they arise in the field. There are no set criteria telling agents what to look for in examinations. Rather, strategic litigation is more reactive, a result of "what happens to us," and where the Office of Chief Counsel has an opportunity to focus its resources. Other factors are important as well. For example, the wording of a decision will play a crucial role in determining whether to appeal a case or pursue similar cases in other venues. Where the constitutionality of a statute or validity of a regulation is challenged, the IRS view becomes more strategic because only the courts can determine whether the IRS should stop enforcing a statute or regulation. Finally, where the IRS and taxpayer are far apart in their estimates of the settlement value of a case (for example in the Son-of-Boss or other tax shelter cases), the litigation may take on strategic importance.

VIII. Conclusion

On behalf of the TEI delegation, Ms. Wielenga thanked the IRS representatives for their attendance and participation in the meeting. On behalf of Commissioner Koskinen and the IRS representatives, Mr. Lipold thanked TEI for its comments and the constructive dialogue.