

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

I. Welcome and Introductions

II. Commissioner's 2014 Priorities

In testimony to the Senate Finance Committee in connection with his recent confirmation, the Commissioner identified several key challenges that the IRS faces today, including a decline in budget resources, an increase in workload, and a loss of public trust and confidence. We invite a discussion of the Commissioner's priorities in addressing these and other challenges faced by the agency.

III. Budget and Staffing Challenges

A. Agency-Wide

The IRS's enforcement responsibilities have grown significantly over the past few years, yet the agency's budget has been reduced by almost \$1 billion since fiscal 2010 and is presently below fiscal year 2009 appropriation levels. We invite the Commissioner to provide an update on the IRS's current budget, increases or decreases in current year staffing, and budget and staffing expectations for the next fiscal year, including prospects for obtaining increased funding.

B. Operating Divisions

TEI invites senior leaders of the IRS's operating divisions to discuss the challenges arising from budget cuts and resource drains (*e.g.*, the Affordable Care Act and FATCA implementation) on their particular divisions and the steps the divisions are taking to overcome these challenges, in particular:

- Effects on guidance projects;
- Effects on examination teams;
- Effects on IRS Service Center resources dedicated to large case taxpayers; and
- Effects on Appeals' staffing of Appeals Team Case Leaders and subject matter experts.

C. IRS Participation in Stakeholder Events

Tax administration is enhanced through interactions between revenue officials and taxpayers outside the enforcement environment. For example, IRS participation in TEI's national, regional, and chapter educational events provides the IRS with an avenue for communicating technical positions and policy shifts with one of its largest stakeholder groups, as well as a means for gathering unfiltered taxpayer comments on tax administration issues. We appreciate the efforts IRS officials have made to attend our educational sessions. Over the

past year, however, TEI has seen a significant decline in IRS participation in its educational events, due in large part to the IRS's budget constraints. We are hopeful that the IRS will be able to ease travel restrictions and allow officials to have greater face-to-face contact with stakeholders at all levels.

We invite representatives from Chief Counsel, LB&I, and Appeals to provide their thoughts on this topic, as well as on IRS operating procedures that impact IRS participation in stakeholder events and how TEI can assist IRS personnel navigate through the approval process.

#### IV. Appeals

##### A. Update on Appeals Operations

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.

In addition, TEI members would benefit from a discussion of new initiatives being implemented or considered (e.g., new alternative dispute resolution procedures).

##### B. Implementation of "Appeals Judicial Approach and Culture"

In 2012, Appeals initiated its judicial approach and culture (AJAC) project to clarify the office's independent, quasi-judicial role within the IRS. Under AJAC principles, Appeals will not raise new issues and will not reopen otherwise closed issues. Further, Appeals will not function as the initial reviewer of records and thus will send a case back to Examination if a taxpayer provides new information. In July 2013, the IRS issued guidance to Appeals personnel on how to use AJAC principles in working cases. With this backdrop, TEI invites a discussion on steps the Appeals Division is taking to implement AJAC. How have funding issues impacted training? In addition, we invite discussion on what processes and procedures have been identified that require updating to coalesce with AJAC principles, the timing of forthcoming guidance on what constitutes a new issue as opposed to a new argument, and the prospects for the Appeals organization having dedicated Appeals counsel.

#### V. Compliance Assurance Process

TEI's membership includes employees of 114 different taxpayers that participate in the CAP program. In 2005, TEI established a CAP subcommittee to provide a forum for its members to share information and provide feedback to senior LB&I officials who oversee the program. For the past several years, leadership of the subcommittee have had monthly conference calls with LB&I officials to discuss common concerns and best practices and to propose solutions

to recurring problems encountered by taxpayers during CAP examinations. We believe this cooperative, transparent environment is key to the CAP program and are hopeful that it will continue. Our members have generally been pleased with the CAP program's results, and the IRS professionals charged with implementing and administering the program should be commended. As CAP continues to evolve and expand, we encourage the IRS to stay true to CAP's guiding principles of risk-based, "trust and verify" examinations within a designated timeframe. With this backdrop, we invite a discussion of LB&I's views on CAP, in particular:

- Will the CAP program remain an agency-priority for the foreseeable future?
- Are there plans to expand the program to a larger population of taxpayers?
- Given budget pressures, what steps has the IRS taken to ensure there will be sufficient resources to resolve complex issues within expedited CAP timeframes, particularly for international tax issues?
- What steps is LB&I taking to ensure the international and other specialists who assist audit teams understand and follow CAP's fundamental principles of focusing the examination on particular issues and resolving them in expedited time frames?
- How do transfer pricing issues and the new transfer pricing roadmap fit into the CAP audit framework? Is it a realistic expectation for transfer pricing issues to be resolved within normal CAP timelines?
- Does LB&I anticipate allocating increased resources to training agents on CAP principles and conducting CAP audits?

In its August 2013 report on CAP, the GAO recognized that the program holds the promise of increased certainty about tax liability and reduced administrative burden for taxpayers, while having the potential of saving IRS resources that could be reallocated to increase audit coverage. The report also identified several recommendations for increased measuring and monitoring of program participants. We invite LB&I's comments on the GAO report and on how the CAP program may change in response to the report.

## VI. Changing Approaches in Examinations and Transfer Pricing Operations

### A. New Examination Initiatives to Increase Transparency and Collaboration between Taxpayers and Examiners

TEI members seek to partner with tax administrators to create transparent, cooperative relationships that foster certainty and efficiency. These hallmarks of good tax administration benefit both parties. Thus, we were pleased to see the Commissioner's confirmation testimony about promoting efficiency and transparency of IRS administration and are hopeful that the culture of the IRS will continue to evolve towards a more collaborative and cooperative relationship with the business tax community. Several countries, notably Australia, the United Kingdom, and the Netherlands, have successfully implemented cooperative compliance arrangements that have a high degree of transparency and collaboration between taxpayers and examiners. Generally speaking, these countries classify taxpayers based on objective risk assessment criteria, which are openly shared with taxpayers. After the risk assessment is concluded, taxpayers are informed of their risk rating and then have an opportunity to improve that rating by taking objective, measurable steps.

Taxpayers with favorable risk ratings are not subjected to normal course, detailed audits. Rather, the examination follows a course of “trust but verify” and focuses on areas where material tax issues may arise. Thus, in these programs, taxpayers have certainty that if they conform to favorable risk assessment criteria, they will not be subjected to lengthy, normal course examinations. History has shown that taxpayers are willing to improve internal controls and forgo aggressive tax behavior to obtain the benefits of increased certainty and efficiency in the audit process.

With this backdrop, we invite a discussion of LB&I’s views on audit techniques that save time and resources, such as focusing examination efforts on significant issues in a return and using transparent risk assessments to identify high-risk taxpayers. TEI members would benefit from additional insight into whether implementation of these or similar techniques will be an agency priority in the coming year.

#### B. Global Tax Enforcement Initiatives (bi-lateral and multi-lateral efforts)

The OECD’s base erosion and profit shifting (BEPS) project signals a potential sea change in the rules governing the international tax system. At the May 2014 ABA Tax Section meetings, LB&I’s Deputy Commissioner (International) addressed the potential impact these policy changes may have on U.S. tax administration. In his remarks, the Deputy Commissioner indicated that the BEPS project may cause a shift in IRS audit focus from outbound to inbound taxation and encouraged taxpayers to work with the IRS in preventing erosion of the U.S. revenue base. We invite a discussion on the extent to which the IRS has consulted with Treasury in formulating U.S. positions on BEPS issues and measures LB&I is taking to prepare for the outcome of the BEPS project.

Increased worldwide cooperation in information reporting and sharing, whether under FATCA and its accompanying IGAs or the ever growing network of TIEAs, is one example of increased multi-jurisdictional coordination among taxing authorities. We invite LB&I’s views on global tax enforcement in the following areas:

##### 1. Collaborative Tax Administration

- In addition to cooperative information sharing, what collaborative tax administration efforts are underway or soon to commence between the United States and other jurisdictions?
- Does the IRS continue to find promise and efficiencies in joint audits, whether bilateral or multilateral?
- How many joint audits are currently being conducted and with which jurisdictions?

##### 2. New Initiatives

- What new initiatives is the IRS considering in global tax enforcement?
- What areas or issues may be addressed by such initiatives?
- Are there key foreign jurisdictions that the IRS envisions partnering with in pursuit of these initiatives?

### C. LB&I Examination Process

In fiscal year 2013, LB&I renamed its examination process, the LB&I Examination Process, and began focusing on improving the transparency and effectiveness of its audits. Changes being considered include:

- eliminating the designation of cases as Coordinated Industry Case (CIC) or Industry Case (IC) based on taxpayer size and corporate structure and instead applying audit resources to complex issues that raise significant compliance challenges;
- moving from an agent grading structure based on particular case assignments to a model based on expertise and ability to advise and train others on complex tax issues; and
- increasing transparency with taxpayers in all aspects of an examination, particularly the issues being considered in an audit.

We invite an update on the changes LB&I has made to its audit process to date and those that will be made in the near future, particularly those affecting taxpayers under continuous audit. In addition, we would appreciate LB&I's views on the following questions:

- How will these process changes lead to greater transparency? Does LB&I intend to release redacted IRS training materials to the public?
- How are these changes being rolled out to the field? Will directives be issued setting forth detailed rules of engagement?
- We understand that discussions are taking place with the National Treasury Employees Union (NTEU) regarding employee grades and moving from a grade based on size of taxpayer to one based on expertise and other factors. What changes are anticipated in how agents are compensated under an issue focused examination?

### D. Revised IDR Process

A central aspect of a tax audit is information gathering, generally through the use of information document requests (IDRs). As part of reengineering the examination process, LB&I has overhauled its IDR procedures to hold taxpayers and examiners accountable for timely and efficient fact gathering. TEI invites a discussion about the rollout of LB&I's new IDR procedures, including what is going well and what difficulties have been encountered, as well as the status of IRM updates.

We also invite discussion on the following topics:

- Guidance being provided to territory and team managers for purposes of exercising their discretionary authority to approve an extended IDR due date (*e.g.*, for extenuating circumstances that arise after an IDR is issued);
- Guidance being provided to agents concerning the principles that IDR deadlines must be negotiated in good faith based on the scope and content of the IDR and must consider both the availability of taxpayer resources to produce the information and IRS resources to review the information timely;

- Guidance being provided to agents with respect to retracting IDRs after issuance;
- Guidance on the ramifications of an agent's failure to review IDR responses in a timely manner and taxpayers' recourse; and
- LB&I's plans for continued agent training and release of redacted training materials.

#### E. Maximizing Specialists' Resources

In May 2012, LB&I began the institutional shift to knowledge management networks known as IPNs (for international issues) and IPGs (for domestic issues). More recently, in January 2014, LB&I de-coordinated all Coordinated Issue Papers and moved guidance and tools relevant to resolving formerly coordinated issues to the IPG and IPN community websites. The IPN/IPG networks are designed to provide examination teams the technical expertise they need to manage their cases efficiently, consistently, and with a high degree of technical proficiency, but are not intended to dictate how an agent handles a particular case. TEI invites a discussion of the steps LB&I is taking to develop and deploy industry knowledge throughout its knowledge management networks. Will information contained in the IPNs and IPGs be disclosed to the public? What training has LB&I established concerning IPNs and IPGs?

In addition, to help resolve some of the uncertainties surrounding IPNs and IPGs among our membership base, we invite discussion of the following:

- The process for referring taxpayers to an IPN or IPG, the expected outcome of a referral, and the roles of taxpayers and taxpayers' counsel in the process;
- The manner in which IPN/IPG teams are formed to participate in a case;
- Safeguards LB&I has implemented to ensure revenue agents and international examiners do not automatically apply IPN/IPG positions to resolve issues without consideration of the issues, facts, and circumstances in each case;
- Ability of IPN/IPG teams to request informal guidance, such as CCAs, TAMs, and GLAMs, with respect to a particular case;
- Ability of taxpayers or their representatives to have direct communications with IPN/IPG team members and opportunities for taxpayers and their representatives to participate in the process, *e.g.*, by providing factual information;
- Escalation and dispute resolution process when disagreements arise between field agents and specialists.

#### F. Ongoing Study of Schedule M-3

Schedule M-3 is an extremely complicated form that TEI believes has questionable utility for IRS examiners. In its 2013 Public Report, the Internal Revenue Service Advisory Council (IRSAC) explained the complexities of the schedule, as well as its limited use by examiners, and recommended that the IRS eliminate parts II and III of the schedule and replace them with Schedule M-1. IRSAC noted that the IRS's M-3 Study Group made this recommendation for taxpayers having assets between \$10 million and \$50 million and expressed the view that the filing burden should also be alleviated for larger taxpayers. TEI

strongly supports IRSAC's recommendation and encourages the IRS to continue studying this issue.

Consistent with the M-3 Study Group's recommendation, the IRS announced that beginning in tax year 2015, taxpayers with \$10 million to \$50 million in total assets may file Schedule M-1 instead of Schedule M-3, parts II and III. An IRS representative explained the rationale for the change as "substantially reduc[ing] the burden for these taxpayers while preserving the most key information for the IRS." IRS Announces Changes to Schedule M-3 Filing Requirement, 2013 Tax Notes Today 92-81 (May 10, 2013). With this backdrop, we invite a discussion of the current status of the M-3 Study Group. Specifically, is the IRS continuing to study the costs/benefits of requiring large corporate taxpayers to file Schedule M-3, parts II and III, and is the IRS evaluating other reporting redundancies among the overlapping requirements of Schedule UTP, Form 8275, Form 8275-R, and Form 8886?

G. Transfer Pricing Operations, Including the APMA Program

1. Status/Progress of the Reorganization of Transfer Pricing Operations (TPO)

TEI invites an update on LB&I's TPO, including what is going well and what difficulties have been encountered, as well as any further changes on the horizon.

2. Advanced Pricing and Mutual Agreement (APMA) Program

During 2013, the APMA program executed a record number of APAs, and the average time to complete an APA has decreased. These achievements are noteworthy particularly given the disruptions caused by the federal government shutdown and budget challenges the IRS encountered throughout the year. Although the APMA program has made progress, TEI members continue to experience significant delays and inefficiencies in the program. Thus, we are hopeful that the trend of increased productivity will continue at an accelerated pace. With this backdrop, we invite a discussion of the following:

- What are LB&I's expectations for achieving greater APA productivity and backlog reduction in 2014?
- Does LB&I anticipate adding additional staff and dedicating additional resources to the APMA program?
- Does LB&I anticipate any changes to the APMA program based on its experience to date?

We understand the United States is again making overtures to India to improve the MAP process. TEI members would benefit from an update on APMA's efforts to improve MAP efficiencies overall and specifically with India. In addition, India recently initiated its own APA program. Is TPO considering any specific efforts to use bilateral APAs with India as a possible vehicle to avoid the increasing backlog of transfer pricing cases?

3. TEI Member Experience

TEI members anecdotally report that their experience with the APA process, in terms of time and quality, varies widely depending on the APMA personnel assigned to their case. What training and other processes are in place to ensure that taxpayer experience with APA requests is uniform? What actions is TPO taking to improve the APA case backlog?

APA cancellations call the usefulness of the program into question. The costs incurred by taxpayers to enter into the APA process must be justified to senior management, and if the agreement can be cancelled without an administrative appeal, the utility of the program is diminished. We invite a discussion of whether additional administrative procedures should be implemented before an APA is cancelled. For example, in TEI's 1995 comments on the APA program, TEI suggested that an Appeal to the APA Policy Board should be afforded before an APA is cancelled. We recognize that there may be material mistakes or misrepresentations that justify cancellation. On the other hand, taxpayers cannot and should not be held to a standard of perfect compliance with the APA. The APA process is about ensuring substantial compliance, and an appeal should be considered before an APA is cancelled.

## VII. FATCA Rollout

In Notice 2014-33 (the Notice), the IRS announced that it will treat calendar years 2014 and 2015 as a transition period for the implementation of FATCA. During this period, the IRS will take into account the extent to which a taxpayer has made good faith efforts to comply with the requirements of the FATCA regulations. TEI welcomes the transition period and other relief provided by Notice 2014-33 and commends the IRS and Treasury Department for responding to taxpayer comments regarding the practical problems presented by FATCA compliance. TEI invites a discussion of the short term challenges the IRS anticipates with the impending July 1 FATCA implementation date, as well as its expectations for taxpayer compliance with the new reporting regime. Will any additional guidance (*e.g.*, FAQs) be forthcoming on what constitutes "good faith efforts" to comply with the chapter 4 regulations and the temporary coordination regulations? Non-financial institutions, in particular, would benefit greatly from additional details on good faith compliance with their FATCA obligations as withholding agents.

## VIII. Regulatory Guidance Expectations and Strategic Litigation Update

### A. Guidance Expectations

At the January 2014 American Bar Association Section of Taxation meeting, a representative of the Office of Chief Counsel noted that funding limitations are forcing the IRS to reprioritize and, in some instances, abandon guidance projects. We invite a discussion of areas that 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. How has the budget situation changed the criteria the IRS uses when prioritizing guidance? Is the Office of Chief Counsel embracing the concept of "good but not perfect" guidance as a means for increasing productivity?

In 2013, the IRS implemented further cutbacks to its private letter ruling program. What is the intended impact of Rev. Proc. 2013-32, which narrows the scope of certain private letter



rulings from the entire transaction to one or more significant issues, but expands the meaning of “significant issues” that may qualify for a letter ruling? Is this part of a trend to encourage increased transparency on the specific issue of concern to taxpayers?

## B. Strategic Litigation

The IRS has historically had a very energetic strategic litigation program through which the agency seeks to shape the tax laws. We invite a discussion of the following points concerning this program:

- What criteria does the IRS use when developing its approach to strategic litigation?
- Has the IRS’s approach to strategic litigation changed recently, either in response to the current funding situation or with respect to specific areas of the tax law (*e.g.*, transfer pricing, economic substance, characterization of instruments as debt or equity, section 199)? Is litigation the most effective means of developing guidance, including issues relating to the characterization of instruments as debt or equity?
- On what areas/issues is the IRS focusing its strategic litigation resources and what is the goal of the litigation with respect to these issues?
- What role, if any, does international cooperation (*e.g.*, with treaty partners, through TIEAs) play when developing issues for strategic litigation?
- What impact does the IRS anticipate the OECD’s BEPS project having on this process, or strategic litigation in general?