

TAX EXECUTIVES INSTITUTE – COMMISSIONER OF INTERNAL REVENUE AND
LARGE BUSINESS & INTERNATIONAL DIVISION
LIAISON MEETING
MARCH 1, 2019
AGENDA

I. Welcome and Introductions

II. Commissioner's 2019 Priorities

On behalf of TEI's 7000 members and staff, we congratulate IRS leadership for successfully navigating the agency through the perfect storm of tax reform implementation and partisan political conflict and kicking off the filing season not only on time, but one day earlier than 2018. This marks a tremendous beginning to a new chapter at the IRS, and we are looking forward to many positive outcomes to come. We sincerely thank Commissioner Rettig and new members of his leadership team for taking on one of the toughest jobs in the federal government and commit ourselves to providing a resource for open and candid dialog on matters involving large business taxpayers.

We invite Commissioner Rettig to share his observations on the current state of affairs at the IRS on the heels of a very long and difficult year of tax reform implementation work and the longest government shut-down in history. What immediate challenges do you see for the agency as it moves past the initiation of filing season and what are your short-and long-term priorities for the future?

For the past two decades, the IRS has been led by a series of business management executives. We invite the Commissioner's observations on how the direction of the IRS may change under the leadership of a seasoned tax practitioner.

III. Tax Reform Implementation Office (TRIO)

A. General Operations Update

We extend our sincere congratulations to Sunita Lough and her team at TRIO not only for a job well-done, but also for being recognized as *Tax Notes*' 2018 Person of the Year. We were pleased to see public recognition of this group's dedication and hard work. Our members would benefit from an update on where TRIO's tax reform implementation work stands one year into the process, how the government shut-down impacted these efforts, and expectations for future work in 2019 and beyond.

B. Tax Forms and E-file Schemas

Many TEI members are responsible for their employer's U.S. federal income tax compliance. As prodigious consumers of IRS forms and publications, we appreciate the challenges the IRS has confronted in creating or revising an estimated 450 forms, publications, and instructions and modifying about 140 interrelated tax return processing systems. We commend the extraordinary work that has transpired to date. Two areas that raise immediate concerns to our members are forms for pass-through entities and their owners and e-file schemas.

The TCJA created a number of significant tax issues for pass-through business entities that must be determined at the entity-level and passed through to and reported by the owners of the entities. Many of these technical issues remain unresolved, and thus, they are not reflected in the existing Schedule K-1, which owners of pass-through entities rely upon to accurately prepare their own returns. We invite a status update on the IRS's efforts to update the forms and publications pass-through entities and their owners will use to report tax items impacted by the TCJA and the timeline going forward for issuing draft forms for public comment. Our members would also appreciate guidance for affected taxpayers facing filing deadlines that arise before the IRS releases the impacted forms.

For large business taxpayers, e-file schemas are perhaps more important than the corresponding hard-copy forms. Without the schemas, taxpayers face the daunting challenge of manually inputting data into hundreds of static forms. We invite discussion of changes that can be implemented going forward to improve the current system in which it appears development of static forms takes precedence over their electronic counterparts. TEI would be pleased to assist in organizing a brainstorming session between the IRS and stakeholders in the tax technology vendor community.

C. IRS System and Return Processing Challenges

Some taxpayers that elected to pay the section 965 transition tax in installments received erroneous notices of underpayment of tax equal to the transition tax installment payments due in future years plus penalties and interest. We invite discussion of processes that are in place to assist taxpayers rectify these incorrect notices and the timeframe for implementing system changes necessary for the IRS to properly account for transition tax payable in installments. We also invite discussion of IRS system readiness to process 2018 returns impacted by the new TCJA regimes and challenging processing areas that may result in issues comparable to the transition tax issue described above.

IV. LB&I

A. Key Challenges, Priorities, and New Initiatives

We invite LB&I leadership to comment on key challenges the division faces in 2019, as well as its priorities and new initiatives planned for the year.

B. LB&I Examination Process (LEP)

Progress update. In early 2016, LB&I shifted its organizational structure and began transitioning from a historical focus on comprehensive audits of the largest business taxpayers to an approach focused on centrally identified tax compliance risk. LB&I 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.

Large Corporate Compliance Program. LB&I's 2019 Focus Guide identified as a major priority implementation of the successor to the historical CIC program, *i.e.*, the Large Corporate Compliance Program (LCC). We invite discussion of the LCC and how it will differ from the CIC.

Taxpayer Self-assessments. We understand LB&I has been evaluating the Australian Tax Office's use of taxpayer self-assessments of compliance risk and use of this information to deselect issues from examination early in the compliance process. We invite discussion of LB&I's views of this concept.

TEI members experiences with the LEP. TEI actively monitors its members' experiences with the LEP. The following three areas continue to be the most frequently cited areas of difficulty experienced with Exam teams:

- Overall case management and accountability for taking charge of a case;
- Transparent and collaborative issue selection and development; and
- Achieving closure in a timely manner (which has been adversely impacted throughout the past year by significant turnover within Exam teams).

In practice, the first and second points have a corollary effect on the third. If the Exam team is working behind the scenes with a decision-maker who has not engaged in direct conversations with the taxpayer, then the case will most likely be controversial and difficult to close timely. Resources are wasted on both the taxpayer and IRS sides in this kind of environment. We invite LB&I's reactions to these three challenging areas.

Achieving case closure is also being adversely impacted by retirements and other turnover of Exam team members. In a recent case, which is not uncommon to our members, a CAP examination was delayed six months because the Account Coordinator was waiting to hear back from an Economist who, unbeknownst to the Account Coordinator, had retired six months earlier. There was no communication to the Account Coordinator or Team Manager about the retirement, and no new Economist had been assigned. We invite discussion of the transition guidelines that are in place when an Account Coordinator, Case Manager, or Specialist resigns or is moved to another position.

Stakeholder outreach. We are encouraged by the increased level of stakeholder outreach that occurred throughout 2018. We firmly believe more can be achieved when the IRS works in collaboration with stakeholders and have identified three areas in which we believe LB&I would benefit from increased stakeholder input:

- Improving audit efficiency;

- Resolving systemic challenges in difficult examination areas (e.g., research credit and transfer pricing); and
- Improving industry knowledge and commercial awareness.

We welcome discussion of ways in which TEI members can work with LB&I to address these three areas.

C. Centralized Risk Assessment and Campaigns

Centralized risk assessment and issue identification are significant aspects of the LEP. We invite an update on the activities of LB&I's compliance integration group, including:

- How LB&I is using (or intends to use) data solutions and analytics to conduct centralized risk assessment;
- How this work is currently impacting examinations of large business taxpayers; and
- Progress that has been made to date.

We invite discussion on the status of LB&I's campaign program, including successes achieved, challenges that remain, and expectations for new campaigns in 2019.

D. U.S. International

Administration of the TCJA's international provisions. The TCJA substantially changed the U.S. approach to international taxation of cross-border business and transactions. The IRS will need to administer the new and modified Code provisions, which also present substantial compliance challenges for taxpayers. In light of these challenges, we welcome discussion of the following questions and issues:

- TEI members involved in CAP examinations have experienced wide variations in Exam team knowledge of the section 965 transition tax. Does LB&I anticipate deploying a coordinated approach to reviewing this issue in CAP and future non-CAP examinations?
- The process for issuing guidance on the new international provisions is ongoing and will not be completed before large business taxpayers file their 2018 returns. While the formal regulatory process moves forward, does the IRS have an interim plan to provide guidance to its field agents and audit teams on how to apply the new international provisions and propose adjustments, keeping in mind the interdependencies among these provisions?
- Will LB&I's approach to examining TCJA issues be coordinated at the National Level and, if so, what particular areas does LB&I anticipate addressing first?
- What areas of the TCJA could the IRS most benefit from taxpayer input in administering the new provisions?

Country-by-Country reporting. The first filing cycle for compulsory CbC reporting is now complete, and the IRS has begun sharing the reports under CbC Competent Authority Arrangements. TEI welcomes an update on how the collection and sharing process fared in 2018. In addition, TEI welcomes any observations the IRS can share about the CbC data received to date and any trends or surprises in the underlying data. We invite discussion surrounding the following questions:

- Do taxpayers appear to have taken a consistent approach in the data provided?
- How does the IRS anticipate using the CbC data, both for risk assessment and audit purposes?
- Will audit teams have access to individual taxpayer CbC reports? If so, what guidelines will revenue agents have to ensure they do not use the CbC information for improper purposes (such as making transfer pricing adjustments)?

OECD International Compliance Assurance Programme (ICAP). ICAP was launched in January 2018 and significant work on the pilot program continued throughout the year. We invite LB&I to provide an update on the year's activities. We invite further discussion on what LB&I has learned through its participation in the pilot and the expected next-steps for the program when the pilot concludes.

Transfer pricing examinations. Transfer pricing issues continue to be among the most time consuming and costly examination issues confronted by TEI members. We welcome the opportunity to collaborate with LB&I on ways to increase the efficiencies of these examinations and believe the recent proposal by the Internal Revenue Service Advisory Council (IRSAC) warrants thoughtful consideration.

In its November 2018 report, IRSAC proposed a series of FAQs aimed, in part, at providing guidance for taxpayers wishing to disclose enhanced transfer pricing documentation going beyond the requirements of Treas. Reg. § 1.6662-6(d)(2)(iii) in return for the increased possibility of early issue deselections and more efficient examinations. *See* IRS Publication 5316 (Nov. 2018) (the "Report") at 113-124. The Report goes on to recommend ongoing collaboration concerning "when and how deselections would generally occur, the benefits of improved documentation for taxpayers, and current observations of what the IRS believes are best practices in preparing transfer pricing documentation." *Id.* at 116. We understand LB&I leadership has endorsed the FAQs¹ and invite discussion on this development.

E. Examinations of Taxpayers Relying on the Research Credit Directive

Many TEI members have relied upon the September 2017 Research Credit Directive in determining qualified research expenses (QREs) reported in their employers' returns. The Frequently Asked Questions posted on the IRS website (*i.e.*, FAQs – IRC 41 QREs and ASC 730 LB&I Directive) provides that LB&I examiners will not challenge QREs that comply with the methodology, definitions, and certification requirements of the Directive. *See* FAQ 3. We

¹ *See* William Hoffman, *LB&I Chief Endorses IRSAC's Proposed Transfer Pricing FAQ*, 161 Tax Notes 1031 (Nov. 19, 2018).

invite discussion of instructions LB&I Exam team members have received for conducting examinations of taxpayers that have relied upon the Directive in determining their QREs.

F. CAP

TEI is an ardent believer in the mutual benefits of CAP. Over the years, leadership of TEI's CAP Subcommittee has worked hand-in-hand with LB&I to shape the CAP program and resolve issues as they have arisen. TEI members have enthusiastically supported LB&I's recalibration efforts over the past year, and we are eager to help refine and implement the redesigned program.

We invite discussion on the following points:

- MITT applications are being routinely rejected, even for taxpayers that received CAP acceptance letters for taxable year 2019 prior to the government shut-down on December 21. This appears to stem from a requirement that every column in the MITT be completed, even if it is not applicable to a particular taxpayer's case.
- The contemplated Bridge Phase continues to be controversial as it provides no benefit for CAP taxpayers in exchange for the transparency required to participate in the program. Thus, details of the Bridge Phase acceptance letter will be critically important to taxpayers' ongoing participation in the CAP program. TEI would appreciate the opportunity to review a draft of the Bridge Phase acceptance letter and provide comments before it is finalized.
- We would appreciate an update on development of the Entrance Audit procedures and the opportunity to review them and provide input before they are finalized.
- We would appreciate an update on development of the Control Environment Requirements and the opportunity to review them and provide input before they are finalized.
- We would appreciate an update on the process required to review and determine agreement or disagreement with a taxpayer's treatment of an issue within 90 days of the issue being fully disclosed, especially in light of the pending guidance for tax reform issues.

G. Schedule UTP

In a report dated March 23, 2018, the Treasury Inspector General for Tax Administration (TIGTA) recommended that the IRS consider the feasibility of either modifying Schedule UTP to include information needed to be useful for its intended purpose or removing the Schedule UTP filing requirement. In response to the recommendation, LB&I indicated it would consider the feasibility of modifying Schedule UTP in lieu of eliminating it completely. We invite discussion of LB&I's plans to modify Schedule UTP and request the opportunity to work with LB&I in this endeavor to ensure practical aspects of providing additional disclosures are fully considered and reflected in the modifications.

V. Appeals

A. Key Challenges, Priorities, and New Initiatives

The Appeals Division plays a vital role in the return examination process for large business taxpayers. Absent a well-functioning Appeals Division, case closures would stagnate and courts would quickly be overwhelmed with tax controversies. We invite Appeals Division leadership to comment on key challenges the division faces, as well as its priorities and new initiatives planned for 2018.

B. Update on Case Resolution Procedures

We invite discussion of any changes to case resolution procedures currently being contemplated by Appeals. We understand Appeals is experimenting with virtual conferences and invite Appeals to provide an update on experience to date and expectations for future use of this technology.

Taxpayers and practitioners continue to be concerned with the pilot program initiated in May 2017 to allow exam personnel to attend Appeals conferences. We welcome discussion of the Appeals Division's current views of the pilot program and any changes that are expected prior to its conclusion. We would also appreciate input on the following points:

- Does Appeals intend to conduct a taxpayer survey on experiences with the pilot program?
- What is Appeals Division leadership doing to ensure cases involved in the pilot program are run consistently?
- Stakeholders have expressed a need for Appeals to develop guidelines or best practices for the pilot program. We invite discussion of this recommendation.

VI. Office of Chief Counsel

A. Key Challenges, Priorities, and New Initiatives

The Office of Chief Counsel is facing changes on a number of fronts, including leadership transitions, implementing tax reform, and an executive order aimed at reducing federal regulations and controlling regulatory costs. We invite discussion of key challenges Chief Counsel faces, as well as its priorities and new initiatives planned for in 2019.

B. Formal and Informal Guidance Expectations

In general. We invite discussion of Chief Counsel's regulatory guidance priorities for 2019 and how the Administration's focus on deregulation will impact the types of guidance Chief Counsel issues.

"Qualified property" eligible for 100-percent bonus depreciation. The TCJA eliminated the separate definitions of qualified leasehold improvement, qualified restaurant, and qualified retail improvement property, and redefined "qualified improvement property" to mean "any

improvement to an interior portion of a building which is nonresidential real property if such improvement is placed in service after the date such building was first placed in service.” Due to an acknowledged scrivener’s error, however, the TCJA failed to include this newly consolidated category of qualified improvement property within the definition of “qualified property” eligible for 100-percent bonus depreciation.

We invite discussion of any remedial administrative guidance that may be forthcoming, pending the enactment of a legislative technical correction, to give taxpayers confidence that a position of 100% expensing of such property would not be challenged on audit.