

IRS Releases Initial List of LB&I Campaigns

The IRS Large Business and International Division (LB&I) on 31 January announced the identification and selection of 13 "campaigns" that will be the focus of the agency's enforcement efforts.

Last year, as part of its reorganization, LB&I announced that it would be implementing campaigns to identify the most serious tax administration risks, create specific plans to move toward expected compliance, and then deploy IRS resources accordingly. This initial wave of campaigns shows that LB&I is moving forward with its plan to focus on issue-based examinations and compliance. This approach is intended to make use of IRS knowledge and deploy the right resources to address those issues.

Overview

The initial 13 campaigns, as organized within LB&I's five substantive practice areas, are as follows:

- Treaty and Transfer Pricing Operations
 - Inbound Distributors
- Cross-Border Activities
 - Repatriation
 - Form 1120-F non-filers
- Withholding and International Individual
 - OVDP (Offshore Voluntary Disclosure Program) Declines – Withdrawals
- Enterprise Activities
 - IRC §48C energy credit
 - Domestic production activities deduction, multi-channel video program distributors (MVPDs) and TV broadcasters
 - Micro-captive insurance
 - Related-party transactions
 - Deferred variable annuity reserves & life insurance reserves and Industry Issue Resolution (IIR) program
 - Basket transactions
 - Land developers – completed contract method (CCM)
- Passthrough Entities
 - TEFRA (Tax Equity and Fiscal Responsibility Act of 1982) Linkage Plan Strategy
 - S Corporation Losses Claimed in Excess of Basis

The announcement stated that these campaigns were identified through LB&I extensive data analysis, suggestions from IRS compliance employees, and feedback from the tax community. LB&I's goal is to improve return selection, identify issues representing a risk of non-compliance, and make better use of limited resources.

Inbound Distributor Campaign

The initial campaign rollout includes the inbound distributor campaign. Sharon Porter, director of the Treaty and Transfer Pricing Operations Practice Area, will be the lead executive for this campaign. Its goal is to verify whether inbound distributors receive an arm's length return rather than the losses or small profits some inbound distributors, especially in the middle market, have been earning. The IRS announcement describes the inbound distributor campaign as follows:

US distributors of goods sourced from foreign-related parties have incurred losses or small profits on US returns which are not commensurate with the functions performed and risks assumed. In many cases, the US taxpayer would be entitled to higher returns in arm's-length transactions. LB&I has developed a comprehensive training strategy for this campaign that will aid revenue agents as they examine this IRC Section 482 issue. The treatment stream for this campaign will be issue-based examinations.

This campaign grew out of a pilot program called the Inbound Distributor Project, whereby the IRS determined that there was a widespread practice of not adequately compensating inbound distributors in the middle market.

Other Campaigns

The other 12 campaigns relate to non-transfer-pricing issues, although the related-party transactions campaign should be mentioned. That campaign will be overseen by the Enterprises Activities Practice Area, which generally focuses on domestic issues, and is described as focusing on transactions that provide taxpayers a means to transfer funds from a corporation to related pass-through entities or shareholders. Based on this description, we do not believe the campaign will relate to transfer pricing, even though the transactions at issue involve commonly controlled entities. Nevertheless, we will monitor this campaign and will provide updates as appropriate.

Observations

As noted in the TIGTA Audit released 3 November 2016, transfer pricing issues account for approximately 46 percent of the LB&I's international issues inventory and 71 percent of the potential total dollar adjustment amounts of all international tax issues. The focus on transfer pricing seems unlikely to change, even though only one transfer pricing campaign was announced in this initial rollout.

Going forward, therefore, we anticipate more transfer pricing campaigns to be announced as LB&I continues to transition to its new approach. The new regulations under IRC §367(d) that were issued on 15 December 2016, in T.D. 9803, along with the new IRS international practice unit released on 4 January 2017, may be harbingers of campaigns to come.

— Philippe G. Penelle (Washington, DC)
Tax Principal
Deloitte Tax LLP
ppenelle@deloitte.com

David Varley (Washington, DC)
Tax Principal
Deloitte Tax LLP
dvarley@deloitte.com

Joseph Tobin (Washington, DC)
Senior Manager
Deloitte Tax LLP
jtobin@deloitte.com

Jamie Hawes (Washington, DC)
Senior Manager
Deloitte Tax LLP
jhawes@deloitte.com

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