



Game change: How new IRS processes, procedures and pronouncements will impact your examination

Oct. 17, 2012

Today's presenters



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Agenda

- Tiered issue process ends
 - Impact on Industry Director Directives (IDDs)
 - Risk assessment of issues
 - Do coordinated issues survive?
 - Using IDD tools
 - Impact on resolving and settling issues
- Introducing a network approach (IPGs/IPNs)
 - Overview, goals and objectives
 - Functions and areas of responsibility for IPGs
 - Group/network members
 - Workflows for IPNs
 - Impact of IPGs/IPNs on IRS examinations and Appeals processes
- Messages and announcements from key IRS executives
 - Steven Miller, IRS Deputy Commissioner, services and enforcement
 - Heather Maloy, Commissioner, LB&I
 - Ruth Perez, Deputy Commissioner, SB/SE
- New appeals programs
 - Rapid appeals
 - Prepayment appeals for international penalties

Tiered issue process ends

Tiered issue process ends

- LB&I commissioner on Aug. 27, 2012, announced the end of the tiered issue process
 - Effective immediately, all Tier I, II and III issues are no longer tiered
 - Each issue should be risk assessed and examined in the same manner as any other issue
 - Resolution of these issues is now in the hands of the local team handling the examination

IDDs are withdrawn

- All tiered issue Industry Director Directives (IDDs) are withdrawn and should no longer be consulted or followed
- All guidance tools included with the IDDs or relevant to risk assessing the issues continue to be available to the examination team
- References to tiered issues in IRS administrative guidance, including the Internal Revenue Manual, coordinated issue papers or industry guides, are no longer valid
- After further review, administrative guidance will be updated and revised

Risk assessing formerly tiered issues

- Risk assessment process
 - Should LB&I devote its resources to examining the particular issue for the year under examination?
 - Evaluation tools may include:
 - Schedule M-3 and Schedule UTP
 - Preliminary IDR
 - Interviews of taxpayer personnel key to the issue being risk assessed
 - Review of documents, news articles and industry practices
 - Strength of technical position

Impact of tiered issue and IDD announcements on resolving and settling issues

- Resolution of issues is back in the hands of the examination or appeals teams
 - What about Industry Specialization Program (ISP) issues?
 - What about Appeals Coordinated Issues (ACIs)?

Impact of IDD announcement: Examples

- Interchange and merchant discount fees (IDDs 1 and 2, 2008 and 2010)
 - Instructs that the IRS will no longer challenge whether interchange fee income earned in connection with a credit card transaction by a credit card issuer creates or increases original issue discount (OID)
 - However, IRS will review the OID computation and look at accounting method issues
 - Tools: Proforma IDRs

Impact of IDD announcement: Examples (cont.)

- State and local location tax incentives – treatment under sections 61 and 118
 - Previously a Tier I examination issue – “Agents must contact a retail technical advisor for additional guidance before consideration of any resolution other than full concession by the taxpayer”
 - Not subject to mandatory coordination with technical advisor
 - Agents will rely on coordinated issue paper for guidance

Impact of IDD announcement: Examples (cont.)

- Research tax credit
 - Claims for refund based on research tax credit were Tier I issues
 - Under Notice 2008-39, claims were filed separately at Ogden Service Center
 - IDD's no longer apply - now being considered as IPG
 - Questions to consider:
 - Do claims have to be separately filed with IRS?
 - Will mandatory IDR (IDR Q) be issued?
 - Will penalties be assessed under section 6676?
 - What is the role of the Technical Advisor?

Knowledge management networks

Network approach replaces tiered issue process

- Issue practice groups (IPGs) and international practice networks (IPNs)
 - New knowledge management strategy
 - Change from single technical specialist (TS) model to more collaborative model involving holistic view of an issue and its resolution
 - Transfer, retention of knowledge
 - Many legacy agents retiring or will soon retire
 - Many new agents coming from private sector
 - Blend into each IPG or IPN the best of the wide spectrum of experience and knowledge in LB&I and Chief Counsel

IPGs

- IPGs – how they will function?
 - As internal consulting firms for LB&I personnel who need assistance in making decisions, perhaps other divisions
 - Render written advice and consultation based on collaboration within the IPG
 - No mandates – decision-makers to make their own decisions and do not have to report final decisions to the IPG
 - Copy of each IPG response also goes to the requestor's supervisor and/or ultimate decision-maker
 - The IPG does not follow up to see what decision is made
 - IPGs to record and index the advice they issue for reference in future cases with similar issue; repository of knowledge, expertise in designated subject areas

IPGs (cont.)

- IPGs – how they will function?
 - Example: Team manager seeks from an IPG some advice or the confirmation of the applicability of the law to a set of facts in an audit situation. Members of the IPG would discuss the matter and within five days render a written memo of advice that is responsive to the team manager's question or concern. The team manager then makes a decision with the benefit of the advice in hand, but the team manager could decide differently. There would be no follow-up by the IPG to disturb the team manager's decision since the team manager is the owner of the audit and is supposed to make the final decisions concerning the resolution of issues.

IPGs (cont.)

- IPGs – makeup of an IPG
 - Experts in the particular subject matter area
 - Will include:
 - The current subject matter TS (who may be the coordinator)
 - Senior auditors who have deep practical experience auditing the subject
 - Less-senior auditors that have good practical experience auditing the subject
 - Counsel dedicated to LB&I
 - Others with expertise in the subject, like agents recently hired from the private sector with relevant hands-on experience

IPGs (cont.)

- Pilot program - currently 11 IPGs
 1. Changes in accounting method
 2. Deductible and capital expenditures
 3. Non-life insurance
 4. Life insurance
 5. RICs, REITs and REMICs
 6. Inventory costs and accounting
 7. Flow-throughs (partnerships and TEFRA, S corporations and cooperatives)
 8. General business credits, including R&E credit
 9. Financial instruments
 10. Penalties
 11. General corporate issues (income, losses and consolidated returns, corporate distributions and adjustments, executive compensation)

IPNs

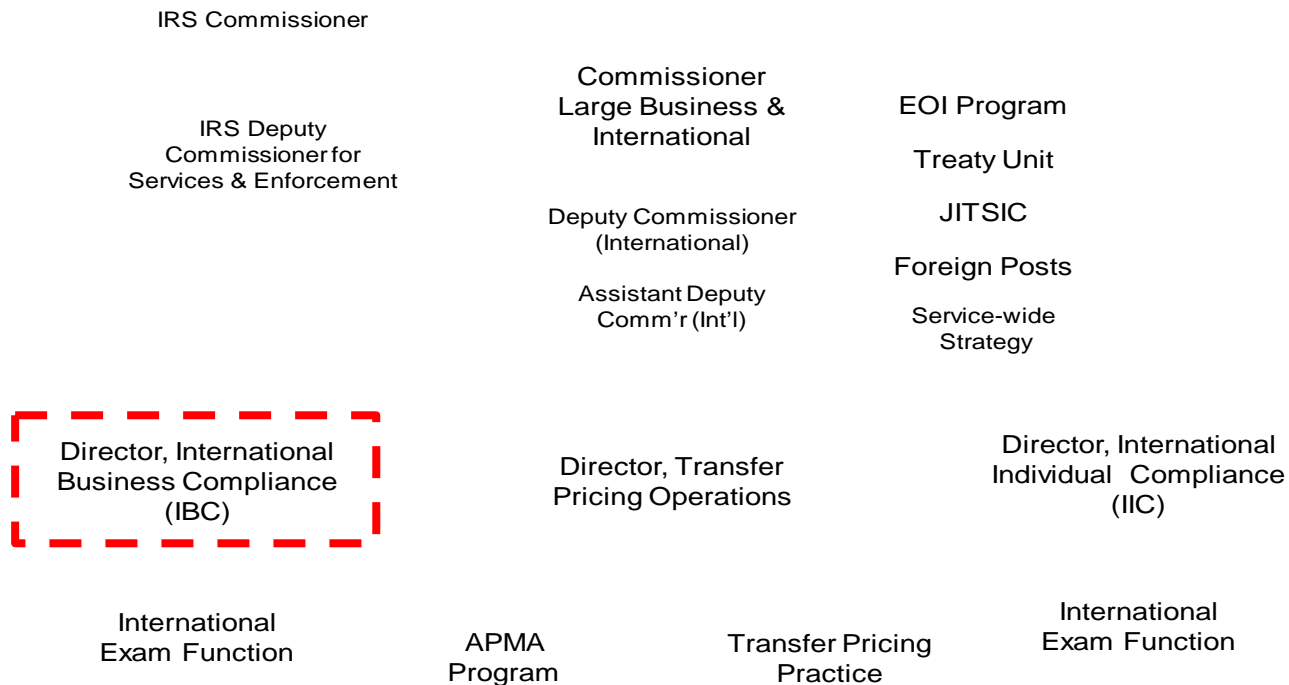
- IPNs
 - Similar to IPGs in some respects
 - Transfer, retention of knowledge
 - Blend into each practice group or network the best of the wide spectrum of experience and knowledge in LB&I and office of Chief Counsel
 - Collaboration
 - Different in that:
 - IPNs will focus on broader subject matter areas that generally align with newly identified areas of emphasis in LB&I's international strategy
 - Based on how taxpayers do their tax planning for international activity

IPNs (cont.)

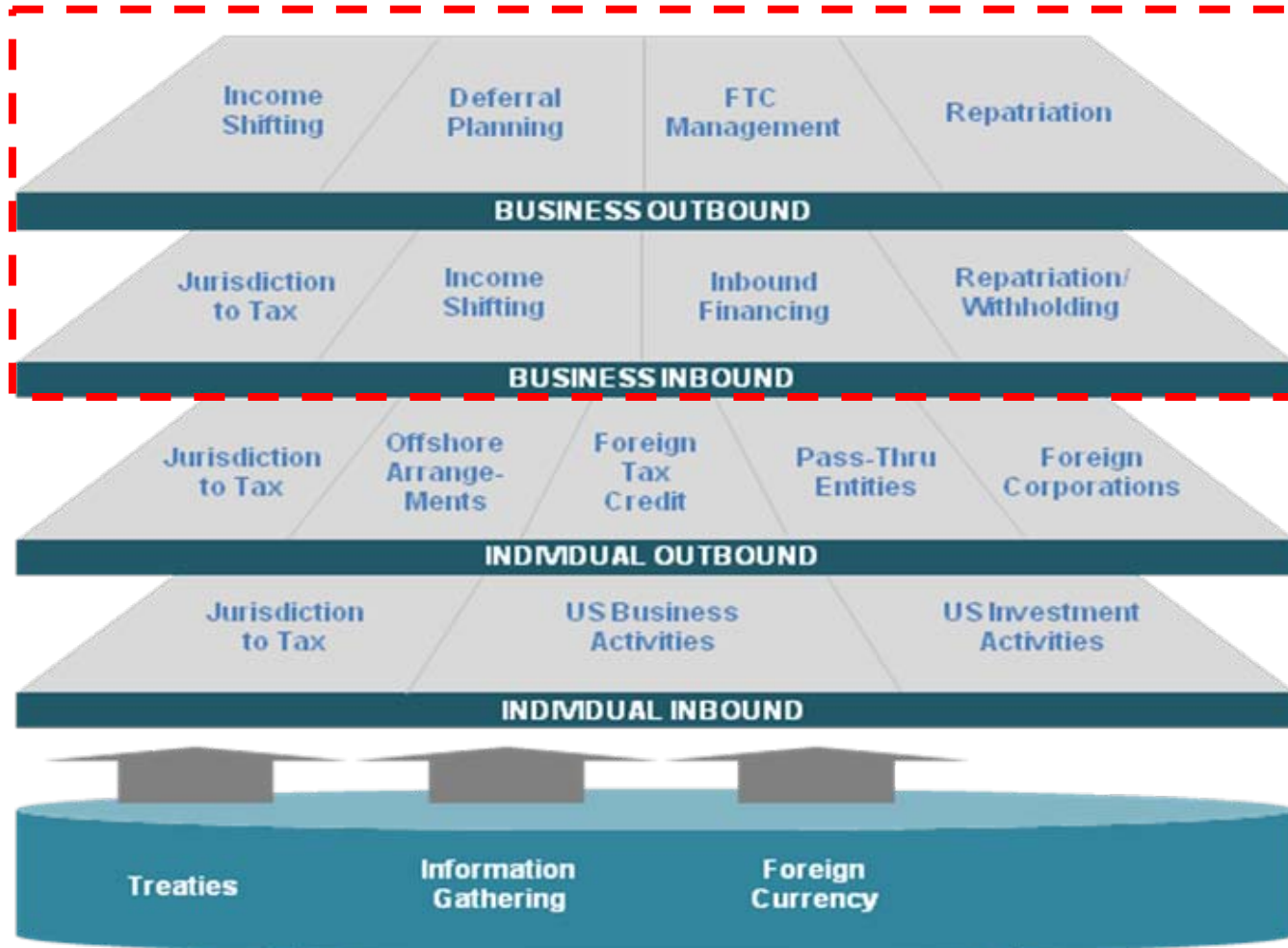
- Remarks of Doug Shulman, IRS Commissioner (Sept. 15, 2012, ABA Joint Fall CLE Meeting)
 - “Historically, IRS pursued international issues through the lens of individual code sections . . . and that must change. For example, when a U.S. corporation shifts income to a low-tax jurisdiction, you have to look at the entire structure that was created to accomplish this. You have to understand the overall planning paradigm. You have to ask the questions that get right to the heart of the matter.
 - What's motivating the company? What are the benefits? What are the most aggressive positions? How are they managing tax exposure? In other words, why are they trying to do this?
 - Put another way, we're shifting our approach to be more strategic, and to view taxpayers through the prism of their business objectives and tax planning strategies.”

IPNs (cont.)

LB&I International Function



IPNs (cont.)



IPNs (cont.)

- It can be seen from these figures that International has organized its areas of emphasis in accordance with the areas taxpayers might focus on when doing international tax planning

Impact of IPGs/IPNs on the examinations and appeals processes

- Opportunity for industry to bring commercial knowledge to IPGs/IPNs?
 - IRS-taxpayer collaboration
 - Roundtables, focus groups
- Will IPGs and IPNs share advice and resolution parameters?
- Will speedier formal guidance result, perhaps?
- Team manager is once again the decision-maker
 - Industry may have to manage consistency across country
 - Cite previous IPG/IPN advice, resolution parameters
 - Potential return to “personality-driven” processes

Messages and announcements
from key IRS executives

Messages from the top

- Remarks of Steven T. Miller, IRS Deputy Commissioner, Service and Enforcement (March 26, 2012, TEI Mid-Year Conference)
 - IRS will remain a visible and vibrant enforcement presence in the large corporate sector
 - LB&I is requesting Appeals to send back cases where taxpayers bring significant new facts or information to light for the first time in Appeals, so that LB&I can consider the new facts
 - IRS will continue to ramp up on international
 - IRS will move more deeply into the mid-market – firms and partnerships between \$10 and \$250 million in assets
 - IRS will find more resources to examine and study financial products

Messages from the top (cont.)

- Remarks of Heather Maloy, Commissioner, LB&I (May 20, 2012, ABA Tax Section Meeting)
 - The goal of the government should not be to win, but instead to find and follow the correct interpretation of the law
 - Transparency, for the IRS, means that taxpayers should know at the beginning, middle and end of the examination, the issues the examiner is considering raising and the legal arguments the examiner is relying on and the examiner's views on the issue
 - If others in the organization are consulted to develop a position, the fact should be shared with the taxpayer, and if the taxpayer wants to speak to those individuals, it should be arranged

Messages from the top (cont.)

- Remarks of Ruth Perez, Deputy Commissioner of SB/SE (Sept. 14, 2012, ABA Tax Section Meeting)
 - LB&I and SB/SE are developing a joint strategy for addressing partnership issues
 - The IRS envisions a three-tier approach that involves workload and issue identification, as well as additional training for agents

Impact of IRS management messages on IRS examinations

- Increased areas of focus
 - Pass-throughs
 - Mid-market
 - International
 - Financial products
- Transparency initiatives
 - Two-way street
 - More taxpayer access to decision-makers

New appeals programs

New Rapid Appeals Process (RAP)

- Voluntary process for LB&I cases
- Appeals opening conference is a joint session, appeals, taxpayer and LB&I
- Areas of agreement and disagreement are isolated, providing appeals with an improved roadmap to begin settlement discussions
- Expected to be in IRM
- Impact
 - Relationship with exam team
 - Speed of settlement process
 - Future exam cycles

Prepayment appeals for international penalties

- Historically, uncertainty as to whether appeals could review and settle international penalties that have been assessed, but unpaid, for failure to file or to provide complete information (Forms 5471, 5472, 8865, 926, 8854, 3520, 3520-A)
- Taxpayers often paid the penalty and went to appeals or sued for a refund
- New manual section (IRM section 8.11.5) allows “Category 1 Taxpayers” with assessed international penalties to elect accelerated prepayment appeals review and “Category 2 Taxpayers” to elect non-accelerated prepayment review

Category 1 vs. Category 2 taxpayers

- Category 1: Persons with assets \geq \$100 million (or those specifically designated by the IRS) with assessed international penalties under sections 6038A(d), 6038C(c), 6038(b), 6038B(c) or 6038D during an examination
 - Can elect the accelerated prepayment review by appeals, which will be completed within 120 days of the case being transferred from LB&I
 - Protest of the penalties must be filed
 - International specialist coordinator will oversee the case
- Category 2: All taxpayers except Category 1 taxpayers with an assessed international penalty during an examination
 - Can elect prepayment review by filing a protest under non-accelerated (standard) appeals procedures

Additional considerations

- The request for prepayment review is made immediately after assessment (which may be before the examination is complete)
- Under either prepayment process, if the penalties are not abated by appeals:
 - No further appeals review (unless refund claim filed and denied)
 - No Tax Court review (must sue for refund after payment)
- If the prepayment appeals review is not elected, taxpayer can pay the penalty and go to appeals after payment under standard claim procedures

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