

# New LB&I Knowledge Management Strategies: IPGs and IPNs

By: Robert D. Adams, CPA, J.D.



IRS Large Business and International (LB&I) Division executives have referred several times in recent months to issue practice groups (IPGs) and international practice networks (IPNs).<sup>1</sup> These groups have been mentioned or described generally in formal speeches by IRS Commissioner Douglas Shulman and Steven T. Miller, deputy commissioner for services and enforcement, as well as the commissioner and deputy commissioner (international) for LB&I, as part of a new knowledge management strategy. Eleven IPGs are being piloted at the time this is written, and the first two IPNs were launched early this summer.<sup>2</sup>

LB&I's adoption of the IPG and IPN knowledge management network became official on Aug. 17, when in a memorandum to all LB&I employees, LB&I Commissioner Heather C. Maloy stated:

In place of the Tiered Issue Process, LB&I is developing a knowledge management network (currently being piloted) through the use of Issue Practice Groups ("IPGs") for domestic issues and International Practice Networks ("IPNs") for international issues. IPGs and IPNs are designed to provide ex-

amination teams the technical advice they need to manage their cases efficiently, consistently and with a high degree of technical proficiency. IPGs and IPNs are designed to foster effective collaboration and the sharing of knowledge and expertise across LB&I and Chief Counsel. LB&I views the IPGs and IPNs as a better mechanism than the Tiered Issue Process for balancing the need for consistency with the recognition that there is no "one size fits all" approach to examining and resolving issues.<sup>3</sup>

*Author's note:* This article results from discussions between the author and IRS executives who were involved in the design and approval of the IPG and IPN concepts.

<sup>1</sup> A good example of references to IPGs in LB&I directives can be found in LB&I-4-0312-004, *LB&I Directive for TPs Who Adopted a Method of Accounting Relating to the Conversion of Capitalized Assets to Repair Expense Under I.R.C. § 263(a)* (March 15, 2012) (referring to LB&I IPGs for deductible and capi-

tal expenditures and changes in accounting method).

<sup>2</sup> Herzfeld, "Budget Constraints Increase Value of Cooperation, LB&I Officials Say," *Daily Tax Report*, G-6 (May 21, 2012), and Gregory, "IPNs to Provide 'Intellectual Nerve Center' for Transfer Pricing at IRS, Maruca Says," *Daily Tax Report*, G-14 (May 14, 2012).

<sup>3</sup> LB&I Directive LB&I-4-0812-010 (8/17/12), available at [tinyurl.com/czqe9wa](http://tinyurl.com/czqe9wa).

Maloy noted that LB&I had used the tiered issue process since 2006 “to set exam priorities and address certain corporate tax issues that it believed posed challenges to compliance.” But, she wrote, the division now needs a broader framework for managing compliance priorities and providing guidance to examiners. She wrote:

This new approach should:

- Provide LB&I examiners clear and timely guidance on how to address issues;
- Promote collaboration among LB&I employees;
- Increase accountability and transparency in the resolution of issues; and
- Enable robust lines of communication with taxpayers.<sup>4</sup>

Although this is still an evolving area, it is an opportune time to explore the nuts and bolts of IPGs and IPNs.

### IPGs and IPNs in General

With IPGs and IPNs, LB&I is trying to tackle some age-old concerns and some relatively new ones. One of the chief goals of both IPGs and IPNs is to bring to bear within each practice group or network the best of the wide spectrum of experience and knowledge within LB&I and the Chief Counsel’s office. Many revenue agents (RAs) will retire soon, subtracting vast audit experience from LB&I. Some newer RAs hired from private-sector accounting firms and corporate tax departments are specialists in various areas of tax law, business operations, and specific industries but may not have much experience in audits or IRS process and systems. These more recently hired RAs make up over half of all RAs in LB&I. Before the soon-to-be retirees’ deep experience in IRS audit techniques, internal process, and face-to-face dealings with taxpayers is lost, LB&I needs to find a way to gather, transfer, and retain those attributes.

Second, it is not easy to identify and access special subject matter expertise

around the country within LB&I or among Chief Counsel’s field attorneys. Even if these experts are identified, they might not be permitted to spend much time on the matter since they may have previous assignments from direct supervisors who have to meet their own annual commitments. Work rules of the National Treasury Employees Union (NTEU) may prohibit or at least inhibit such cross-use of bargaining unit time as well. Therefore, there needs to be a bridge that allows expertise and knowledge of particular personnel to be used where it is needed, regardless of reporting lines.

Third, consistency needs to be maintained across the country so that similarly situated taxpayers are treated similarly in resolving their issues, regardless of geography. Without a structure at the top that can see all the facets of similar issues across the nation, similar issues likely will not be resolved in a similar manner.

In general concept, IPGs and IPNs are to be the repository of knowledge and expertise in designated subject areas. From them, advice and/or operational rules are imparted to others so that the best decisions may be made in resolving controversial issues. LB&I intends to establish a clear line of sight between people needing help and the IPGs or IPNs, to resolve such issues consistently across the country. IPGs will focus on specific issues, Code sections, or narrow industry matters, just as technical specialists (TSs) do currently, while IPNs will focus on broader subjects that generally align with newly identified areas of emphasis in LB&I’s international strategy.<sup>5</sup>

In short, LB&I wants to use IPGs and IPNs to leverage all its experience and knowledge in the best, most efficient way to gain robust internal dialogue among its agents for deeper understanding and sharing within LB&I. The division wants to foster consistency, based on taxpayer-specific situations. For example, it wants to rely not only on the personal expertise of a single TS but rather on the best collective knowledge and experience of all its personnel, so that it can create and maintain continuity of expertise as individual experts retire.

## EXECUTIVE SUMMARY

- The IRS’s Large Business and International (LB&I) Division announced that it will no longer employ the tiered issue process and that it has deployed a knowledge management strategy based on issue practice groups (IPGs) and international practice networks (IPNs). Both are key to a new approach to leveraging experience and knowledge to help the division resolve taxpayer issues more efficiently and consistently.
- IPGs bring together technical specialists and revenue agents to address domestic technical areas in specific industries or issues. Upon request, they consult with and give written advice to personnel in LB&I and other divisions.
- IPNs will address broad areas of international tax planning strategies by U.S. and foreign multinational companies and individuals, such as transfer pricing, intellectual property transfers, managing foreign tax credits, inbound financing, and withholding reduction strategies.

<sup>4</sup> Id.

<sup>5</sup> The former title “technical advisers” was changed to “technical specialists” in August 2011.

Sustained and robust communication and collaboration within and among the groups and between LB&I and Chief Counsel personnel will be key to success. Knowledge, expertise, deliberation, advice, and a group's decision cannot be shared up, down, or across without communication and collaboration. Training and mentoring will also be important to the groups' success.

## Issue Practice Groups How Do IPGs Function?

In essence, IPGs will function as internal consulting firms for LB&I personnel who need assistance in making decisions. They will render written advice and consultation based on collaboration in which knowledge is transferred and merged across all LB&I functional boundaries. But IPG advice is just that—advice—not a mandate. Decision-makers make their own decisions and do not have to report to the IPG about those decisions. A copy of each IPG response also goes to the requestor's supervisor and/or the ultimate decision-maker. The IPG does not follow up to see what decision is made. IPGs do record and index the advice they issue so that it can be referred to in future cases with similar issues.

For example, a team manager may seek from an IPG some advice or confirmation of the applicability of the law to facts in an audit situation. The members of the IPG would discuss the matter collaboratively and within five days would render a written memo of advice that responds to the team manager's question or concern. The team manager would then make a decision with the benefit of the advice in hand. However, 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.

**Observation:** A welcome side effect of IPGs, or perhaps a purposeful design element, is a refreshment or reinvigoration of the concept that issues should be resolved at the lowest possible level. Some might say that concept was lost with the adoption of the tiered issue process.

## What Is the Scope of an IPG?

Generally, IPGs will cover technical areas such as those currently covered by TSs that report to the Pre-Filing and Technical Guidance (PFTG) function within LB&I. For example, TSs currently cover many specific industry subject areas or Code sections, such as food and beverage, gaming, motor vehicles, petroleum, railroads, pharmaceuticals, property and casualty insurance, life insurance, change of accounting methods, capitalization (vs. repairs), Sec. 118, Sec. 199, Sec. 263A, etc. IPGs will primarily focus on LB&I subject areas currently covered by TSs other than international matters, which will be covered by IPNs.

## What Is the Makeup of an IPG?

IPGs will be composed of experts in the particular subject area and will include the current subject matter TS (who may be the coordinator), senior RAs who have deep practical experience auditing the subject, less-senior RAs who have good practical experience auditing the subject, counsel dedicated to LB&I, and perhaps others with expertise in the subject. The RAs and counsel will be assigned "collateral duty" to their IPGs, which means that, pursuant to NTEU rules, no more than 25% of their time can be spent on IPG duties, as opposed to their duties as auditors or in other regular jobs.

IPG members will likely be chosen from different geographical areas of the country, partly as a likely outcome of seeking the most expertise in a subject area, but mainly because views should be incorporated from different regions and advice be made consistent among them. RAs, team managers, specialists, issue champions, and other personnel will no longer look to a single TS for guidance or advice but to the wisdom and knowledge of a whole IPG. Thus, each member of an IPG will be a subject matter expert, there will be no hierarchy in IPGs, and each voice will matter in finalizing written advice. This makeup will allow for sharing, transferring, and recording knowledge, hopefully accomplishing a major goal of the IPG design, which is continuity of expertise.

IPGs will not include personnel from the Office of Appeals as members. While Appeals can be briefed on a generic, non-case-specific basis, Appeals will not be involved in issue identification, coordinated issue paper preparation, etc.

IPGs will report to the director of PFTG, which is the current reporting line for TSs, and PFTG will continue to report directly to the commissioner of LB&I. Although the IPG concept is an LB&I program, IPGs will advise other IRS divisions, just as TSs do currently.

## The IPG Pilot Program

An IPG pilot program was commenced some months ago covering five subject areas: changes in accounting method; deductible and capital expenditures; non-life insurance; life insurance; and regulated investment companies, real estate investment trusts, and real estate mortgage investment conduits. Recently, six new subject areas were added to the pilot program: inventory costs and accounting; flowthroughs (partnerships and TEFRA, S corporations, and cooperatives); general business credits; financial instruments; penalties; and general corporate issues (income, losses and consolidated returns, corporate distributions and adjustments, and executive compensation).

The pilot program has no termination date at this time, and it is scheduled to run at least through calendar year 2012.

## International Practice Networks

The IPN concept shares many similarities with IPGs, but with some fundamental differences. IPNs are not yet as fully developed as IPGs, but their initial basic design concept has been established.

All international tax matters are included within International, the large specialty area in LB&I. International is managed as a single unit with its own deputy commissioner. The structure of International is unlike that of the rest of LB&I, which has a matrix organizational structure based on industry groupings and geographical location of major segments of primarily large and midsize business taxpayers within those industry groupings. International, on the other hand, is

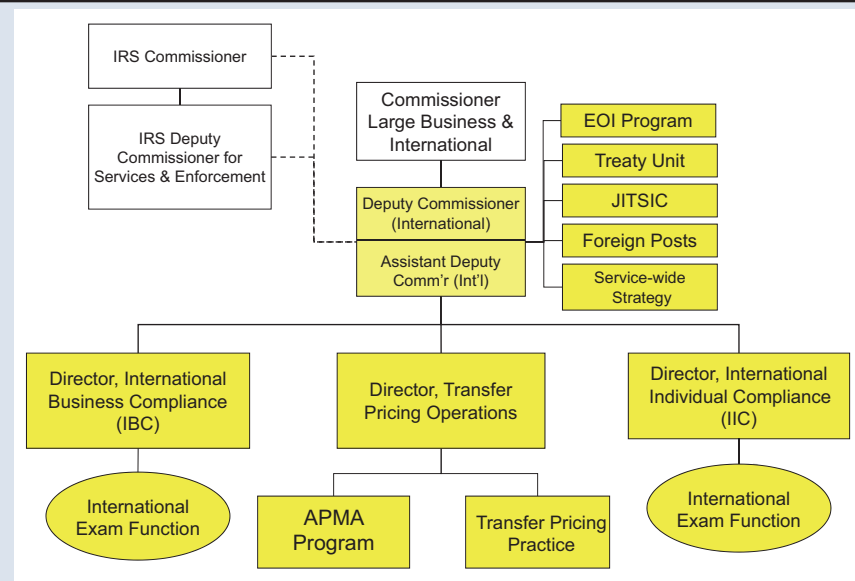
responsible for *all* things international within the IRS, and it covers all individuals as well as all businesses that may be subject to U.S. tax, regardless of their location in the world or their size. International's personnel work with other IRS personnel on audits and advisory efforts, but International has areas of operations, such as transfer pricing and competent authority, that are unique because they involve other jurisdictions' taxation of U.S. taxpayers.

Whereas IPGs are aligned with many narrow specialty areas related either to a single Code section, a specific issue area, or a specific industry, IPNs will reflect broader areas of international tax planning—such as income shifting, i.e., transfer pricing<sup>6</sup>—that International considers important areas of strategic emphasis.

Essentially, International has four main functional divisions: transfer pricing; international individual compliance; international business compliance; and the office of the assistant deputy commissioner (International), which focuses on “outward-looking” matters such as non-transfer-pricing tax treaty issues, exchange of information, activities in multilateral tax forums, and coordination with other operating divisions on international matters (see Exhibit 1).

Notwithstanding these separate organizational functions, the IPNs are intended to work as one network because many of the issues and concepts cut across organizational boundaries. Indeed, the IPNs likely will serve as the glue that holds all of International together on substantive matters. This need for unity is reflected in the fact that some of the IPNs' subject matter, such as treaties, information gathering, and foreign currency, cuts across all International functions. As another example, it is obvious that questions on when the United States has the jurisdiction to tax profits can be very similar regardless of whether they involve an individual or corporate taxpayer. In this regard, consider Exhibit 2 on p. 672, which

### Exhibit 1: LB&I International function



Source: IRS.

is included here with the permission of LB&I.

International has organized its areas of emphasis in accordance with the areas taxpayers might focus on when doing international tax planning. That idea seems to have been signaled clearly by IRS Commissioner Shulman when he delivered a speech at the IRS/George Washington University 24th Annual Institute on Current Issues in International Taxation in Washington, D.C., on Dec. 15, 2011.<sup>7</sup>

[W]e are shifting our approach to be more strategic and to view taxpayers through their business objectives and tax planning strategies. The end game is to try to develop a way of organizing our international compliance programs to:

- Identify the highest compliance risks among our taxpayer base;
- Work cases as effectively and efficiently as possible;
- Not waste our and taxpayers' time on issues that do not pose compliance risk; and
- Find appropriate ways to resolve cases as soon as possible.

Allocation of resources will also follow more closely the way in which taxpayers plan and adopt tax positions. In other words, the strategy mirrors the tax planning paradigm. . . .

If we understand a taxpayer's objectives, we will then be able to look at international transactions in context. We are trying to train our examiners, agents, lawyers, and other experts to view a company through these lenses, understanding the company's tax objectives and profit drivers.

We are establishing internal networks of experts to help our personnel when they come across issues that are unfamiliar to them.

And we are trying a variety of new ways to bring international examiners, lawyers, economists, and other experts together in teams to work strategic issues collaboratively.

Shulman described this new approach, illustrated in Exhibit 2, as distinguishing, for example, between a U.S.-based company with overseas operations (an outbound situation) versus a foreign-based company with U.S. operations (inbound). For the former, he said, common corpo-

6 Gregory, "IPNs to Provide 'Intellectual Nerve Center' for Transfer Pricing at IRS, Maruca Says," *Daily Tax Report*, G-14 (May 14, 2012).

7 The full speech is available at [tinyurl.com/c86vkpj](http://tinyurl.com/c86vkpj).



rate tax planning goals and therefore areas of emphasis will include:

1. Income shifting via transfer pricing and intellectual property transfers;
2. Deferring U.S. tax on foreign earnings;
3. Managing foreign tax credits of foreign subsidiaries; and
4. Repatriating earnings to the United States using strategies to reduce or eliminate tax.

For inbound activities, Shulman identified major issues as:

1. U.S. jurisdiction under domestic law and international treaties to tax the foreign enterprise's activities;
2. Income shifting by allocating income away from the United States;
3. Inbound financing, in which a foreign group strips income through interest deductions or parental guarantee arrangements; and
4. Repatriating cash back to the foreign home office, using strategies to reduce U.S. withholding.

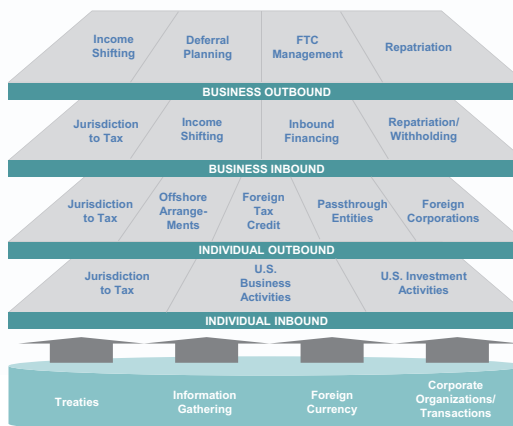
Besides aptly describing the IPN concept, the commissioner's remarks indicate the significance of IPNs to International's developing strategy, in that they occupied nearly half of his speech to a consequential international tax body.

Each IPN will have a steering committee. Each IPN will include technical specialists whose expertise and specialty knowledge fit the IPN's needs. These individuals will come from various organizations throughout the IRS, including the office of Associate Chief Counsel International and LB&I and SB/SE (Small Business/Self-Employed) Division Counsel, both in the field and in the national office.

The wealth of knowledge and technical expertise in International will be put to good use in IPNs, and their success will depend on receiving input from field personnel, collaboration and knowledge sharing, employee participation in forums, meetings, etc. Also, it is planned that IPNs will use SharePoint<sup>8</sup> software to develop audit technique guides, index existing legal guidance and recent court cases, deposit training materials, post

Exhibit 2: Integrated international program

## The "Four Faces" of the Matrix



Source: IRS.

calendars of events (meetings, conference calls, training sessions, etc.), and host on-line discussion forums.

### IPGs and IPNs In, Tiered Issue Process Out

The unpopularity of the tiered issue process in the tax professional community has largely been due to the inability to directly contact issue champions to distinguish taxpayers' situations and to face the apparent decision-makers head-on. In addition, the strategy has been maligned in the private sector for slowing down the audit resolution process, removing the opportunity to resolve issues at the lowest level, and increasing the cost of tax controversies.<sup>9</sup>

Within LB&I, great efforts have been made and programs have been put into place to resolve issues at the lowest level, increase currency, and reduce audits' cycle time. Thus, LB&I appears to be admitting that the tiered issue process may have been counterproductive in continuing to achieve those goals.

Early this year, Miller, the deputy commissioner for services and enforcement and former LB&I commissioner,

expressed thoughts on this in his remarks to the Tax Executives Institute on March 26:<sup>10</sup>

[W]e have taken, and will continue to take, steps to increase the technical expertise and commercial awareness of our employees. One of the most significant ways we are doing this is through the establishment of issue practice groups and international practice networks.

These groups and networks provide a structure for bringing together subject matter experts who share knowledge, develop and maintain technical expertise, and enhance collaboration on issues throughout LB&I. They provide a robust network of expertise that agents can tap for answers to technical questions.

I must say that there is something compelling in the use of peer networks.

I believe they will work much better than the tiered process and that agents will support and seek out help in this fashion. During my tenure in LB&I, I supported the tiered process as the preferred method for consistency and

8 Microsoft SharePoint is a web-based system for creating and sharing document content and for managing documents electronically among persons given password-protected access to the system.

9 See, e.g., Coder, "LB&I Officially Ends Issue Tiering," 2012 TNT 161-4 (Aug. 20, 2012).

10 The full speech is available at [tinyurl.com/9zz2dfe](http://tinyurl.com/9zz2dfe).

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quality. I was wrong—this is a much better way forward.

The status of IPGs, IPNs, and the tiered issue process is now abundantly clear from Maloy’s memorandum—IPGs and IPNs are in, and the tiered issue process is out.

Effective with the issuance of this LB&I Directive, all Tier I, II and III issues are no longer tiered. These issues should be risk-assessed and examined in the same manner as any other issue in an audit. All prior Industry Director Directives (“IDDs”) relevant to these issues are withdrawn and should no longer be consulted or followed. To the extent any of the IDD’s included guidance or tools relevant to risking an issue, the guidance or tools will be made available through the IPG and IPN community websites. References to tiered issues in other IRS

Administrative Guidance, such as the IRM, Coordinated Issue Papers, or Industry Guides, are no longer valid. After a thorough review, such Administrative Guidance will be updated accordingly.

Examiners with questions should consult the relevant IPG, IPN or technical materials available on the LB&I website.<sup>11</sup>

### Conclusion

Since it was established as the Large & Mid-Size Business Division some 12 years ago, LB&I has striven to become more efficient in its operations. It has produced such programs as fast-track settlement, the compliance assurance process, and pre-filing agreements.

Hopefully, IPGs and IPNs will help LB&I succeed in achieving the goals outlined above and in Maloy’s memorandum.

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### EditorNotes

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<sup>11</sup> LB&I Directive LB&I-4-0812-010 (8/17/12).

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