

New IRS LB&I Compliance Campaigns:

- OVDP Declines-Withdrawals
- Repatriation
- Form 1120-F Non-Filers
- Inbound Distributors

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Notice

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- The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.



Panelists

- Paul Curtis, Director of Field Operations, LB&I Division, IRS
- Erwin Walker, Territory Manager, LB&I Division, IRS
- Tom Greenaway, KPMG LLP
- Jon Schimmer, Procopio LLP



Agenda

- LB&I Compliance Campaign Process
- Focus on Campaigns
 - OVDP Declines-Withdrawals
 - Repatriation
 - Form 1120-F Nonfilers
 - Inbound Distributors
 - Related Party Transactions



Guiding Principles



Campaign Function

- Campaigns involve LB&I **harnessing the combined intellect** of the IRS team to make intentional decisions about compliance risks
- Campaigns are a **fundamental change** in the way the Service has been selecting and performing work
- Campaigns allow IRS to focus its limited resources in the right areas to **drive specific compliance objectives**. The **right issues, right resources, and right combination of treatment streams**
- By using LB&I's combined intellect, IRS will **improve its understanding** of taxpayer compliance risks and how it responds to them. The idea is not to audit more returns, but to respond with a variety of treatments to maintain high compliance across the LB&I filing population



The Four Guiding Principles of LB&I

Flexible, Well-Trained Workforce

Cultivate an environment of continuous learning to support a flexible workforce with focused training, foundational skillsets, specialized knowledge, and dynamic tools

Selection of Better Work

Utilize data analytics and examiner feedback to select better work with intended compliance outcomes

Tailored Treatments

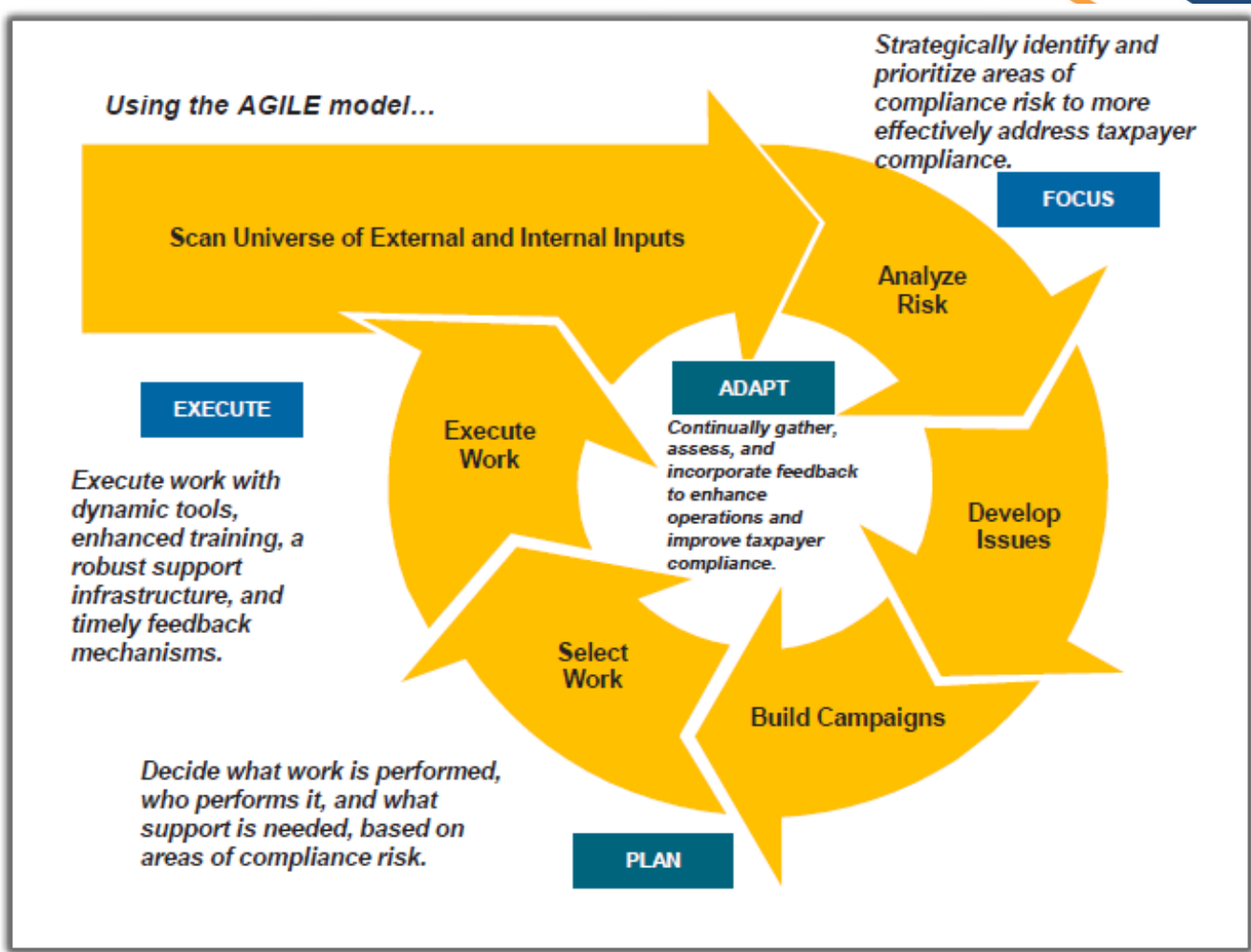
Employ an integrated set of tailored treatment streams to improve flexibility to address current and emerging issues and achieve compliance outcomes

Integrated Feedback Loop

Drive continual collection and analysis of data and feedback to enhance ability to focus, plan, and execute work, and promote innovation and feedback-based improvement



New LB&I Workflow



Other Changes and Takeaways

- High-risk issues prioritized over high-risk taxpayers
- Individual agents will receive particular direction and training on audit issues
- International issues remain in focus
- Collaborative model of enforcement
- Campaigns will evolve over time



Campaigns



13 Campaigns Announced January 2017

- IRC 48C Energy Credits
- OVDP Declines/Withdrawals
- Domestic Production Activities Deduction, Multi-Channel Video Program Distributors & TV Broadcasters
- Micro-Captive Insurance
- Related Party Transactions
- Deferred Variable Annuity Reserves & Life Insurance Reserves
- Basket Transactions
- Land Developers – Completed Contract Method
- TEFRA Linkage Plan Strategy
- S Corporations Losses Claimed in Excess of Basis
- Repatriation
- Form 1120-F Non-Filer
- Inbound Distributors



Today's Focus

Campaign	Lead Executive
OVDP Declines-Withdrawals	John Cardone
Repatriation	John Hinding
Form 1120-F Nonfilers	John Hinding
Inbound Distributors	Jennifer Best
Related Party Transactions	Peter Puzakulics



OVDP Declines-Withdrawals

Eligible taxpayers are encouraged to consider entering one of the offshore programs if they have yet to resolve their non-compliance

Affected taxpayers: About 6,000 OVDP applicants who applied for pre-clearance but were either denied access by CI or withdrew from the program prior to acceptance (not opt-out taxpayers)



OVDP Declines-Withdrawals

- See 2016 TIGTA Report: a significant portion of these taxpayers may still be non-compliant and recommends IRS review denied or withdrawn OVDP applications for potential FBAR penalty assessments and potential criminal investigation
- Will include taxpayers residing abroad



OVDP Declines-Withdrawals

- Broad timeframe: 2009 to current
- Possible treatment streams:
 - no further action may be taken by the IRS or needed from the taxpayer if the taxpayer has become compliant
 - taxpayers whose non-compliance is considered immaterial may receive “soft letter” with options for compliance
 - examination, with possible referral to CI



Repatriation

- “LB&I is aware of different repatriation structures being used for purposes of tax free repatriation of funds into the U.S. in the mid-market population.
- “It has also been determined that many of the taxpayers do not properly report repatriations as taxable events on their filed returns.
- “The goal of this campaign is to simultaneously improve issue selection filters while conducting examinations on identified, high risk repatriation issues and thereby increase taxpayer compliance.”



Repatriation: What is at Issue?

- Focus on mid-market segment: \$10 million to \$250 million in assets
- See Notice 2016-73 (addressing triangular reorganizations)
- Implicates published practice unit on inbound liquidations.



Repatriation: What is at Issue? (2)

- Section 332 – Complete liquidations of subsidiary provides for non-recognition of gain/loss if:
 - Subsidiary completely liquidates
 - Subsidiary has a corporate S/H which owns 80% or more
 - Subsidiary is solvent at the time of the liquidation
 - 80% corporate S/H receives payment for its stock in the liquidation
- Section 337 – Non-recognition for property distributed to parent in complete liquidation of subsidiary
- *See Illinois Tool Works v. Commissioner.*



Form 1120-F Nonfilers

- LB&I has data suggesting that many foreign companies doing business in the US are not meeting their 1120F tax filing and payment obligations
- Affected taxpayers: protective 1120F filers and foreign companies with any presence in the US (fixed place of business, dependent agent, etc.)
- Use various external data sources to identify US nexus and PE, including company's own website



Form 1120-F Nonfilers

- Treatment streams include:
 - “soft letter” outreach
 - if the company does not take appropriate action, LB&I will conduct examinations to determine the correct tax liability
- Regs. § 1.882-4(a): Deductions and credits may be disallowed if 1120F not filed within 18 months of due date (*Swallows Holding, Ltd. v. Comm’r*)
- Other issues:
 - Refund freezes
 - Rev. Rul. 91-31



Inbound Distributor Campaign

- “U.S. distributors of goods sourced from foreign-related parties have incurred losses or small profits on U.S. returns which are not commensurate with the functions performed and risks assumed. In many cases, the U.S. 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.”
- Cases worked by domestic revenue agents supported by international examiners and economists.



Inbound Distributor Campaign: What is at Issue?

- Again, focus on mid-market segment
- Well-developed International Practice Units available online:
- [Inbound CPM Simple Distributor Inbound](#)
- [Resale Price Method Routine Distributor](#)
- [Best Method Determination for an Inbound Distributor](#)



Related Party Transactions

- “This campaign focuses on transactions between commonly controlled entities that provide taxpayers a means to transfer funds from the corporation to related pass through entities or shareholders.
- “LB&I is allocating resources to this issue to determine the level of compliance in related party transactions of taxpayers in the mid-market segment.”



Related Party Transactions: What is at Issue?

- Again, focus on mid-market segment
- Could cover a broad category of transactions, including:
 - Transfer pricing
 - Debt/equity recharacterization
 - Reasonable compensation
 - Loss transactions



Takeaways



IRS Campaign Takeaways

- Who will be most affected?
 - Mid-market taxpayers may see more scrutiny under new campaign approach
 - Resources will be shifted away from larger taxpayers whose returns do not involve campaign issues
 - Feedback is designed into the process



IRS Campaign Takeaways

- Issue selection:
 - Many issues were already in focus at IRS
 - More campaigns are expected to be announced – for clues taxpayers can look at past IRS priorities and IRS practice units



IRS Campaign Takeaways

- Risk reduction:
 - Taxpayers affected by campaign issues may consider taking proactive measures to review their positions and documentation
 - “Soft” letters merit careful consideration – even if no external response is required
- Audit process:
 - Campaigns are designed to address potential compliance risks in the LB&I filing population. A critical part of addressing the compliance risk is continuous feedback from the individual agents addressing these risks. This feedback will be used to make modifications to campaigns when necessary
 - Opportunities arise under the Service’s new commitment to collaboration and transparency



Questions & Answers



Thank You



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