

LB&I Campaigns Including Goals And Justifications ‘Coming Soon’

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The IRS Large Business and International Division is preparing to announce its initial set of possibly seven or eight audit campaigns, which will touch on issues that cross the filing population and will provide a rationale for each campaign and details on what the division hopes to achieve.

“It’s coming soon, just not today,” LB&I Deputy Commissioner Rosemary Sereti said, adding that either she or LB&I Commissioner Douglas O’Donnell will make the campaign announcement. Speaking October 28 in Washington at the International Tax Enforcement and Controversy Conference sponsored by the American Bar Association Section of Taxation and the Tax Executives Institute, she said LB&I received several hundred campaign suggestions from its employees.

Sereti noted that the effort has been expanded from its previous focus on the mid-market, saying, “We want to show that we have a variety of issues, and we also want to demonstrate that we are going to use various treatment streams for those particular compliance issues.”

“When we do come out, we’ll talk about why we’re in that space and what we expect to achieve in those campaigns,” Sereti said. She stressed that even after the campaigns are officially announced, “there will be an opportunity to adjust [them] based upon some feedback. Some of them might even have feedback incorporated into the campaign itself.”

Jennifer E. Breen, a partner at Morgan, Lewis & Bockius LLP, asked Sereti whether reports of three existing campaigns — one on the transfer pricing practice and inbound distributors and another two involving basket options and captive insurance — were mistaken. (Prior coverage: *Tax Notes*, Sept. 26, 2016, p. 1807; and *Tax Notes*, Sept. 5, 2016, p. 1366.)

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Sereti said that while those issues were not part of the official announcement regarding the campaigns, a lot of the work involving examinations on those issues has “already been out there.” She wouldn’t say whether those three issues will be part of the initial set that goes out but stressed that LB&I

“will continue to stay in that space” and that those three issues “are what you might expect from a campaign.”

The delay in the campaign announcement is partly because of the desire at LB&I to show that it has “other issues, other compliance matters that we want to demonstrate” that involve more nontraditional treatment streams, Sereti said. “We are trying to get away from the traditional examination approach on our issues,” she said.

At an earlier session, O’Donnell stressed that while identifying an issue as a campaign is an indication that the IRS thinks there’s noncompliance in the area, “we’re not sure. So just because we start a campaign does not mean that we know that there’s rampant noncompliance.”

Acknowledgment of Facts IDRs

Sereti said LB&I is fixing an issue raised by Publication 5125, *Large Business & International Examination Process*, which directs LB&I exam teams to “seek taxpayer acknowledgement” of all relevant facts. Lately, taxpayers have been receiving “acknowledgment of facts” information document requests asking them to stipulate to specific facts. (Prior coverage: *Tax Notes*, June 13, 2016, p. 1461.)

Field agents are “putting down the facts as they’re given, but from what I’m hearing, the taxpayer doesn’t quite understand where the IRS might be going with the issue, so it’s very hard for them to acknowledge those facts if they don’t understand exactly what the IRS’s position is,” Sereti said.

Alexandra Minkovich of Baker & McKenzie said taxpayers “don’t have a full sense of what the IRS’s theory of the case is, so it’s a little hard to evaluate whether or not all of the facts that have been presented to you are relevant [and] if there are relevant facts that are missing.” She said the exercise also calls into question what’s a fact versus a characterization. “Perhaps there was an expectation on the part of the private bar that this would look a little more like the Tax Court stipulation process,” Minkovich said.

Sereti indicated that a possible fix may involve changing the process to add the acknowledgment of facts when the notice of proposed adjustment is provided to the taxpayer because the notice would clarify what the government’s position is. By doing that, the IRS may be able to “eliminate a step. If in fact we have an agreed case, there’s no need for this acknowledgment of facts,” she said. “But you can’t do that without an analysis of the facts and what the government’s position is.”

A team from LB&I will be reaching out to external stakeholders, Sereti said. “We’re not just going to make a change” without input from outside groups such as TEI, ABA, and the American Insti-

tute of CPAs, she said, adding, “I don’t know that I need a formal comment letter, but I want the right representation at the table and so I’ll make sure that I reach out to a variety of folks.”

Kitchen Sink IDRs

Diana L. Wollman of Cleary Gottlieb Steen & Hamilton LLP asked about IDRs in which agents ask for any and all emails that mention a transaction. She said they are fairly common and refuted that they occur only in cases that go to litigation. “We see it in audits that don’t even go to appeals,” she said.

Those IDRs don’t appear to be in line with LB&I’s February 2014 directive (LB&I-04-0214-004) requiring that agents request only information relevant to the issue under exam.

O’Donnell said that if it’s early on in the examination, he didn’t see a basis for any-and-all IDRs. The IRS should be having a conversation with the taxpayer and should give that person some idea of what it’s worried about, he said, adding that the IRS doesn’t generally have the capability to process “every document that mentions a person or the transaction . . . and I don’t know how it actually helps us.”

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Thomas J. Kane, LB&I division counsel, said he has “a problem with any-and-all” IDRs but that he can understand how it might happen if an agent “thinks that they don’t have all the facts and are going to lose out on something if they try to be more specific.”

Taxpayers and the IRS need to take a more collaborative approach, Kane said. “I’d like to see cases better developed so that we have a grasp of the issues and we have a grasp of the facts and we don’t have to ask for any and all. The knee-jerk reaction to any and all to me is a problem,” he said. ■