Presenters

- Wendy Abkin, Partner - *Morgan Lewis & Bockius LLP*
- Cabell Chinnis, Partner – *Mayer Brown LLP*
- Robert J. Kovacev, Partner – *Norton Rose Fulbright US LLP*
- Emily Lam, Partner - *Skadden, Arps LLP*
- Don Murray, Director, Field Operations West, CBA, LB&I - *IRS*
- Eric Slack, Director, Field Operations-West - *IRS*
- Gloria Sullivan, Director - Western Compliance Practice Area - *IRS*
Topics for Today

- Current workforce -- staffing and hiring
  - Context for priorities and initiatives
- LB&I Portfolio of Compliance Programs
- Implementation of Major Priorities
- Key Compliance Issues – LB&I and Western Compliance
- Tax certainty and Risk assessment
- Focus for FY 2020
- Tax Cuts and Jobs Act Compliance Planning for Cross Border Activities
- LB&I’s Appeals Activities

Current workforce -- staffing and hiring

![Bar Chart: LB&I Staffing Year-Over-Year](chart.png)
LB&I Hiring – FY19

- Add to Rolls: 387
- All Job Classifications
  - Revenue Agents – including CAS, International, Transfer Pricing, FPs
  - Engineers
  - Economists
  - Appraisers
  - Tax Law Specialists

Western Practice Area – Staffing & Hiring

- Sept 2019 Revenue Agents on Staff: 559
- 2019 Hiring to date:
  - Revenue Agents Added to Rolls: 62
    - Bay Area: 11
    - LA Area: 9
    - Denver: 9
    - Houston: 8
    - Dallas: 7
    - Seattle: 6
LB&I Portfolio

or

How did this case get selected for exam?

LB&I Compliance Portfolio
(Types of Compliance Work)

- LCC (successor program to CIC) – C Corporations
- CAP – Publicly held C Corporations
- Campaigns – Single Issue Focus – Any return
- Global High Wealth – Enterprise approach, begins with 1040
- Flow-Through - Partnerships & S-Corps
- Mandatory (i.e., Claims)
- “Discretionary” - Other Corporate Exams
- Individual International Compliance – 1040s
- Taxpayer Initiated – PFA’s, APA’s, Voluntary Disclosures

LB&I Portfolio workplan balances goals of ‘next best case’ and coverage. Compliance practice area examiners will work all of these types.
Workload Selection: Data Sources & Analytical Tools To Identify Cases Depend Upon Focus Area or Compliance Goal

- **Data Sources**
  - Internal
  - External

- **Analytical Tools**
  - Statistics
  - Algorithms
  - Risk Models
  - Filters
  - Unstructured Data (Text Mining)

- **Examples of Use:**
  - DAS Scores - Used for identifying Corp returns
  - Used to identify LCC Population
  - Identifies Partnership population
  - Limited issue campaigns
  - Risk assessment & scoping of Forms 8886

LB&I continues to develop and refine tools to identify potential high risk returns. Feedback used to adjust priorities and strategies.

Classification & Risk Assessment Process

1. Returns identified for potential exam
2. Classification process (except LCC)
   - Centralized, Cadres
   - Manual generally
3. Highest Risk Sent to field managers with classification info
4. Risk Assessed by managers – includes specialist areas
5. Decision: Examine v Survey
The LCC program announced in May 2019.

- Improve case selection
- 2017 tax year will be included in the LCC audit selection process.
- CAP is not included in the LCC program.
- Prior CIC cases will be completed and closed as CIC cases.
- LB&I case manager and relevant personnel will determine scope
- Revenue Procedure 94-69

Compliance Programs – CAP & CAP Recalibration

- August 2016 - Evaluate the CAP program.
- August 2018 - 2019 CAP year changes announced.
  - 18 Statements of Interest Received
  - Tax Control Framework Questionnaire
  - Review and establish baseline TCF requirements for a CAP taxpayer.
- September 2019 – Application Period open through October 2019
Centralized risk assessment
- Resource assessments are a win/win for IRS and taxpayers.
- Research Credit Questionnaire
- MITT (Material Interco Transaction Template) Required

Implement 1 and 1 (1 open year and 1 unfiled year) criteria but with expanded exceptions.

CAP FAQs are online at IRS.gov

Acceptance will depend on application volume, suitability, resources, and risk assessment.

We welcome your feedback.
lbi.irs.cap.program@irs.gov

Campaigns – 2016 ---> present

- Transition to issue focused campaigns
- Capitalize on collective experience
- Holistic response
- Campaigns may cover any type of LB&I return. Some are cross-BOD.
- Over 1,000 campaign suggestions received.
- Over 50 LB&I Compliance Campaigns announced.
- Practice units, Lessons learned
- On-going Announcements
- Increasing percentage of overall Portfolio.
- Current focus on TCJA
Global High Wealth & Flow-Through Exams

- The Global High Wealth group was organized in 2009
- Enterprise approach.
- Increasing GHW coverage
- Increasing Large Partnership and S-corp coverage
- Form Improvement efforts
- BBA Implementation – procedural guidance now in place

Implementation Priorities for LB&I

- Bipartisan Budget Act (2015, effective 2018)
  - Identifying and prioritizing areas of potential non-compliance
    - Audit Currency
    - Comparative analysis – risk assessment
    - Campaigns
    - International Focus
  - LB&I collaboration across all practice areas
- Taxpayer First Act
  - Changing Landscape in Tax Administration
  - Implementation efforts underway
Key Compliance Issues

- Syndicated conservation easements
- Micro-captive insurance
  - Exams, Promoter Investigations
  - Litigation
  - New Settlement Initiative
- Virtual currency
- Fraud referrals - Commissioner Rettig announced a new Fraud Referral initiative.

Western Compliance – Key compliance issues

- Research Credit
  - IRS and taxpayer resources
  - Opportunities to streamline audits – Big Picture
    - Industry based
    - Risk Tools, Risk Review Teams
    - Leverage Research Credit Directive
    - MITRE referral process – review
    - Exit strategies (agreements on methodology)
  - Work with stakeholders (including TEI)
  - Claims
  - Engineer Resources – hiring
Western Compliance – Key Compliance Issues

- **Section 199**
  - Claims Campaign Ongoing
  - Areas of Significant Compliance Risk

- **Transfer Pricing**
  - Transfer Pricing Examination Process (TPEP)
    - Publication 5300 released in 2019.
      - TTPO working with TEI on improvements
    - Guide to best practices and processes to assist with planning, execution and resolution of Transfer Pricing examinations.
    - Centralized Risk Assessment

- **Repeal of SBC Directive following 9th Cir decision in Altera**

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Tax certainty and risk assessment

- **Research Credit** – Centralized risk assessment in CAP
- **Transfer Pricing** – MITT used in CAP and helped improve our selection/deselection of issues.
- **Merger & Acquisition Transactions** – Significant deselection of issues
- **Centralized Risk Assessment Cadres**
Focus for FY2020

- Hiring
- TCJA compliance
- Improved use of data analytics to improve case selection
- Training: New Hires, TCJA Guidance
- Communication/Engagement
- Improved internal operations including technology

CBA Tax Reform Presentation

Don Murray
November 5, 2019

Campaign development materials relate to examination selection standards; examination selection standards and the underlying data for determining such standards are protected under the law from disclosure. Access to these materials should be restricted, and in all cases these materials should not be shared beyond anyone that has a need to know.
Implementation Updates

- Guidance

- Forms & Instructions

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Implementation Updates, continued

- Implementation Risks

- Compliance Issues
Training

- International Overview Training
- Face to Face Training
- CBA Revenue Agent Deep Dive Training
- New Hire Training

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Compliance Planning

- Overview
- International Matrix
- E&P Resources Team
- Support of CAP Teams

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Independent Office of Appeals
Overview

Appeals’ role in IRS

Dispute resolution
The IRS Independent Office of Appeals is an administrative appeal function available to taxpayers. Appeals can review a tax matter after Compliance has made its decision (non-docketed case) or after a taxpayer has petitioned the Tax Court (docketed case)

Mission
To resolve tax controversies, without litigation, on a basis which is fair and impartial to both the Government and the taxpayer in a manner that will enhance voluntary compliance and public confidence in the integrity and efficiency of the Service

Independence
The independence of the appeals function is mandated by statute and includes the prohibition on ex parte communications between Appeals and other IRS employees to avoid the appearance of improper influence
Receipts by type

<table>
<thead>
<tr>
<th>Workstream</th>
<th>FY 2017</th>
<th>FY 2018</th>
<th>JUL FY 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Collection Due Process (CDP)</td>
<td>37,667</td>
<td>35,168</td>
<td>29,505</td>
</tr>
<tr>
<td>Offers in Compromise (OIC)</td>
<td>9,564</td>
<td>8,864</td>
<td>5,676</td>
</tr>
<tr>
<td>Innocent Spouse</td>
<td>3,407</td>
<td>2,657</td>
<td>1,378</td>
</tr>
<tr>
<td>Penalty Appeals</td>
<td>10,652</td>
<td>8,190</td>
<td>4,726</td>
</tr>
<tr>
<td>Coordinated Industry Cases</td>
<td>88</td>
<td>65</td>
<td>35</td>
</tr>
<tr>
<td>Industry Cases</td>
<td>955</td>
<td>885</td>
<td>657</td>
</tr>
<tr>
<td>Examination</td>
<td>30,657</td>
<td>27,290</td>
<td>20,203</td>
</tr>
<tr>
<td>Other</td>
<td>10,584</td>
<td>9,311</td>
<td>6,927</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>103,574</strong></td>
<td><strong>92,430</strong></td>
<td><strong>69,057</strong></td>
</tr>
</tbody>
</table>
Appeals settlement authority

- Appeals is expressly authorized to enter into settlements that take into consideration hazards of litigation.
- A “litigating hazard” is a substantial uncertainty in the event of litigation as to:
  - How the courts would interpret and apply the law
  - What facts the courts would find or
  - The admissibility of or weight that would be given to a specific item of evidence

Independence policies

Appeals will not raise new issues or reopen issues agreed to by taxpayer and Compliance (except for fraud or malfeasance).

Appeals will attempt to settle a case based on factual hazards when the case is not fully developed and taxpayer presents no new information or evidence.
Independence policies

Limitations period
Most new case receipts in Appeals must have at least one year remaining on the statute of limitations.

New information
Appeals generally returns non-docketed cases to Compliance when taxpayer submits new information or evidence or raises a new issue warranting investigation or additional analysis (exceptions apply).

New arguments
Appeals generally engages Compliance for review and comment (subject to ex parte requirements) when taxpayer raises a new theory or alternative legal argument on a non-docketed case.

Mediation options

<table>
<thead>
<tr>
<th>Fast track mediation—collection</th>
<th>Fast track settlement</th>
<th>Rapid appeals process</th>
<th>Post appeals mediation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Voluntary process for OIC and Trust Fund Recovery Penalty (TFRP) cases</td>
<td>Voluntary process for examination cases</td>
<td>Voluntary process for large business and E&amp;G cases</td>
<td>Voluntary process available for exam, OIC and TFRP cases if traditional appeals negotiations fail</td>
</tr>
<tr>
<td>Appeals employee serves as mediator and has no settlement authority (hazards of litigation may not be considered)</td>
<td>Appeals employee serves as mediator and may propose settlement based on litigating hazards</td>
<td>After pre-conference, ATCL may suggest mediation between taxpayer and Compliance as an alternative to a traditional conference</td>
<td>Taxpayer may request PAM, but Appeals manager decides if case should get PAM</td>
</tr>
<tr>
<td>If no resolution, taxpayer retains traditional appeal rights</td>
<td>If no settlement, taxpayer retains traditional appeal rights</td>
<td>If a RAP is unsuccessful, Compliance leaves and settlement negotiations are conducted between the ATCL and the taxpayer</td>
<td>New Appeals employee serves as mediator between original Appeals employee and taxpayer</td>
</tr>
<tr>
<td>(Non-docketed cases only)</td>
<td></td>
<td></td>
<td>Must use Appeals mediator, but taxpayer may also use non-IRS co-mediators (at own expense)</td>
</tr>
</tbody>
</table>
Appeals conferences

- **Conference techniques include:**
  - Telephone
  - In person
  - Virtual (WebEx)
  - Correspondence

- **In-person conferences**
  - Upon request, a taxpayer may obtain an in-person conference; Appeals will use its best efforts to schedule the in-person conference on a date and in a location that is **reasonably convenient for taxpayer and Appeals**
    - Limits apply (e.g., workload, availability of subject matter experts, CDP regulations)

Taxpayer first Act of 2019

Appeals-related provisions:
- Changed name to IRS **Independent** Office of Appeals
- Codified mission statement
- Codified right to an appeal of most IRS determinations
- Codified Appeals’ right to legal advice from Chief Counsel
- Guaranteed access to certain contents of administrative case file at least 10 days prior to conference for specified taxpayers
- Required reporting of cases designated for litigation by Chief Counsel
ATCL conferencing initiative—Pilot

- Appeals developed a pilot to test Compliance attendance at conferences in large cases
- Participating Appeals Team Case Leaders (ATCLs) invite Compliance to participate in all of their conferences
  - Approximately 1/3rd of ATCLs are participating in pilot
  - Taxpayers cannot opt out
  - Compliance does not attend settlement negotiations
  - Pilot is being extended for an additional year
- External participants will be surveyed by an outside contractor
- Appeals will post an outline of practices used in the pilot to www.irs.gov