

LB&I Campaigns: Key Points from Recent Webinar Series

Tax Alert

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The Internal Revenue Service (IRS) Large Business & International Division (LB&I) is transitioning to a centralized compliance and examination process that focuses on issue-based campaigns. LB&I announced its first 13 campaigns in January 2017, but the announcement left many questions unanswered. Some additional details subsequently trickled out this spring over the course of eight webinars featuring LB&I executives, the last of which was on June 20, 2017. This alert identifies six key points from those webinars that taxpayers should keep in mind when facing an LB&I campaign.

1. Treatment streams are not limited to examinations.

Each LB&I campaign will have one or more treatment streams, which will differ from campaign to campaign. The treatment stream for some campaigns is a full, issue-based examination, but the treatment stream for others may be changing an IRS form or its instructions, publishing additional IRS guidance, or sending a taxpayer a soft letter. Although soft letters will likely vary from campaign to campaign, the general idea is to communicate the IRS's position on a particular issue, identify possible non-compliance, and allow the taxpayer an opportunity to file an amended return. Some LB&I officials have indicated that taxpayers are expected to respond to soft letters, while other officials have said only that failing to respond to a soft letter could lead to an IRS examination. A taxpayer should consider its particular facts and circumstances in determining whether and how to respond to a soft letter.

2. The LB&I examination process remains unchanged.

The campaign approach changes the way LB&I selects its workload but does not change LB&I's examination processes. IRS Publication 5125 (Large Business & International Examination Process) continues to apply to LB&I examinations, as does LB&I guidance on the information document request process and the IRS's summons authority. In addition, traditional dispute-resolution mechanisms such as Fast Track Settlement and conferences with the IRS Office of Appeals remain available. There is also no change to the IRS Office of Chief Counsel's role in LB&I examinations.

3. Campaign-based examinations are not necessarily limited in scope.

Although campaigns are issue focused, an examination initiated under a campaign's treatment stream is not necessarily limited in scope. Rather, LB&I examiners can add campaign issues or non-campaign issues by obtaining managerial approval. This raises questions about whether LB&I could add a campaign issue at the very end of an examination or whether campaign issues must be raised relatively contemporaneously. A staggered approach to raising campaign issues could alleviate constraints on taxpayer resources but might also unnecessarily delay the examination.

4. Taxpayers can ask whether an examination is part of a campaign.

LB&I will not proactively notify a taxpayer if an examination is part of a campaign, but will disclose that information if the taxpayer asks. That approach is curious as it is unclear what LB&I stands to gain by taking a purely reactive stance. In any event, taxpayers should ask whether an examination (or a particular component thereof) is part of an LB&I campaign. This may be accomplished by asking the question at the opening conference and again during periodic meetings with the examination team, as it is possible for the IRS to add a campaign issue after an examination begins. Knowing whether an examination is part of an LB&I campaign will likely inform the taxpayer's approach to responding to information document requests, interacting with the proper decision maker, and elevating concerns to LB&I management if necessary.

5. "Midmarket" taxpayers may see more examination activity.

The campaigns regarding related-party transactions and repatriation explicitly address "midmarket" taxpayers and LB&I officials have said that the inbound-distributor campaign has a similar focus. Some background is helpful in understanding what LB&I means by "midmarket." LB&I is responsible for examining corporations and partnerships with at least \$10 million of assets. Within that

taxpayer population, LB&I designates the largest taxpayers as Coordinated Industry Case (CIC) taxpayers and all others as Industry Case (IC) taxpayers. LB&I officials have explained that "midmarket" taxpayers are those that are large enough to be in LB&I's taxpayer population (*i.e.*, at least \$10 million of assets) but smaller than a CIC taxpayer. Hence, "midmarket" is synonymous with "Industry Case." Although LB&I has traditionally examined IC taxpayers less frequently than CIC taxpayers, IC taxpayers with an issue covered by a campaign focused on midmarket taxpayers should prepare for an uptick in IRS examination activity.

6. More campaigns are coming.

LB&I officials have said that the first 13 campaigns are not necessarily the highest-priority issues for LB&I, but rather are simply the campaigns that were "ready to be rolled out." LB&I officials have also said that additional campaigns are coming, but have been hesitant to commit to a firm timeline. Now that the eight-part webinar series has concluded, additional campaigns could come any day. Recently controversial topics such as related-party debt and outbound transfers of intangibles seem to be likely candidates for future campaigns.

Taxpayers within the scope of LB&I's first 13 campaigns should begin to prepare for potential IRS contact and all LB&I taxpayers should stay tuned for additional LB&I campaigns. This is particularly true given the breadth of the first 13 campaigns, which touch on international and domestic issues, as well as corporate and pass-through taxpayers.

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