

LB&I Officially Ends Issue Tiering

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The IRS Large Business and International Division announced August 17 that it is officially ending its tiered issue program and will turn over review of previously listed issues to the newly organized issue practice groups (IPGs) and international practice networks (IPNs). The announcement brought unanimous praise from the tax community.

The announcement, issued as a directive from LB&I Commissioner Heather Maloy, caps the internal review the division instituted last year in response to long-standing complaints from taxpayers and practitioners that issue tiering impeded audit resolution and ignored important factual distinctions among taxpayer cases. Although the tiering framework was developed in 2006 as an audit tool to combat perceived corporate tax shelter transactions, LB&I acknowledged that its approach to some issues needed reexamination. (For LB&I-04-0812-010, see *Doc 2012-17527*. For prior analysis, see *Doc 2012-7448* or *2012 TNT 69-1*.)

The new IPGs and IPNs are focused on building internal knowledge management that can deliver more decentralized technical advice to exam teams. The intentional integration of collaborative information sharing into the groups' design is meant to "balance the need for consistency with the recognition that there is no 'one size fits all' approach," according to the directive. (For prior coverage, see *Doc 2012-10216* or *2012 TNT 93-19*.)

As a result, the directive says, all prior directives referencing tiered issues "are withdrawn and should no longer be consulted or followed," and other internal guidance addressing the program (such as Internal Revenue Manual references) "are no longer valid." Previously tiered issues will be "risk-assessed and examined in the same manner as any other issue in an audit," while information document requests involving abusive tax shelter issues that were part of the tiered process will continue to be used but are undergoing review, the directive says.

LB&I said that despite the end of tiering, its goal remains the same: "To continue to produce high quality work but with an increased emphasis on cooperation and collaboration among all parties involved in the examination process."

Phillip A. Pillar of Greenberg Traurig LLP said the directive is significant because in ending the tiered issue program and withdrawing prior directives, LB&I "acknowledges that the current enforcement focus is changing" from a tax shelter mentality. Also, "while encouraged to use the IPGs and IPNs, team coordinators and managers are responsible for deciding how to handle these issues," he said.

George A. Hani of Miller & Chevalier said that while there is still much that hasn't been revealed about how the IPGs and IPNs will work in practice, "they certainly appear

more flexible and avoid the vise-grip control that the issue management teams used to exert in the exam process." Although the hope is that taxpayers will have some ability to interact and influence the IPG/IPN process, even if not, taxpayers can still have meaningful dialogue with the exam team, he said.

"It will be interesting to see how the new era of coordination works," Hani said, adding that the IPG/IPN framework is somewhat reminiscent of past coordination efforts in which the IRS National Office took exam positions and issued field guidance but had no interaction with the exam team unless asked.

"Time will tell, but the new knowledge management process has the potential to be more flexible, efficient, and reactive to taxpayers' specific situations, so I regard today's announcement as a very positive development," said Alex E. Sadler of Ivins, Phillips & Barker. The objectives of the tiered issue program to strategically allocate the IRS's limited compliance resources and to ensure consistent treatment of similarly situated taxpayers were certainly legitimate, he said. But the program's structure, driven by issue management teams, "quickly became unpopular with taxpayers because it limited field agents' decision-making authority, made it more difficult to resolve issues, and seemingly resulted in generic one-size-fits-all positions on issues," he said.

That level of coordination worked well in combating corporate tax shelters, but it "doesn't fit the next generation of issues," Hani agreed, saying the tiered issue program "dropped an anchor" in resolving contentious exam issues. Although the directive disavows previous guidance involving tiered issues, those positions may still be considered by exam teams, even if now less meaningful, he said.

Kevin M. Johnson of Pepper Hamilton LLP said that national coordination generates concern for taxpayers and tax controversy attorneys "because those types of programs generally take the decision-making authority away from the frontline IRS employees, i.e., agents and appeals officers."

Such coordination "generally makes it more difficult to resolve cases because you are dealing with the unknown wizard behind the curtain who is calling the shots but doesn't interact directly with the taxpayer," Johnson said. "In tax shelters and other abusive or marketed transactions, it may be necessary to coordinate issues at a national level, but the national coordination creates its own problems as well and frequently increases the amount of time and money that taxpayers spend resolving issues."

Walter Goldberg of Grant Thornton LLP said tax professionals hope that "with the Service's emphasis on transparency, taxpayers will have better access to IPGs" than they had with the issue management teams. "The import of this notice is that it gives back to the field the ability to resolve issues without having to go through national coordination," he said.

Goldberg said one important question not answered in the new directive is how the IRS intends to deal with taxpayers who are under audit with tiered issues. "There is no information on that at this point," he said. "With previous industry directives being withdrawn, this will hopefully allow the field to resolve those issues."

Mary A. McNulty of Thompson & Knight LLP lauded LB&I "for their continued focus on making the most effective and efficient use of their resources and treating similar issues consistently." However, "unique taxpayer facts warrant different treatment," she said. "The move away from tiered issues will allow specific taxpayer facts to be taken into account more when determining the proper resolution of an issue."