AGENDA

- LB&I Reorganization and Impact
- Campaign Process
- Virtual Library – Practice Units
- LB&I Examination Process
- Advance Pricing Agreement (APA) & Competent Authority (CA) Procedures
- APMA in Appeals and Other ADR Processes
Future State Initiative
LB&I Future State Reorganization

- LB&I Future State Initiative
  - IRS effort to improve and modernize taxpayer service in an efficient and effective manner
  - Initial changes implemented in February 2016

- Practice Areas – Overall LB&I organization
- Practice Networks – knowledge sharing
- Campaigns – improve taxpayer compliance
LB&I Practice Areas

LB&I is now organized into Practice Areas

- Headquarters and Support
  - Assistant Deputy Commissioner, Compliance Integration
  - Assistant Deputy Commissioner, International
  - Program and Business Solutions

- Practice Areas
  1) Cross Border Activities Practice Area
  2) Enterprise Activity Practice Area
  3) Pass Through Entities Practice Area
  4) Treaty and Transfer Pricing Operations Practice Area
  5) Withholding and International Individual Compliance Practice Area
  6) Central Compliance Practice Area
  7) Eastern Compliance Practice Area
  8) Northeastern Compliance Practice Area
  9) Western Compliance Practice Area
LB&I Practice Areas

LB&I org chart as of July 1, 2016
LB&I - TTPO Organizational Chart

LB&I Commissioner
Douglas O'Donnell

LB&I Deputy Comm.
Rosemary Sereti

Director, Treaty & Transfer Pricing Operations PA
Sharon Porter

Director of Field Operations
Transfer Pricing Practice
Cheryl Teifer

Acting Director, Advance Pricing Mutual Agreement
John Hughes

Director, Treaty Administration
Deborah Palacheck

Eight additional Practice Areas
Update of LB&I Restructuring

- Why Restructure LB&I
  - Greater efficiencies in line with budget challenges
  - More agility to design compliance strategies and evaluate intended compliance outcomes

- Principles of Restructure
  - Flexible, well-trained workforce
  - Better return selection
  - Tailored treatments
  - Integrated feedback loop

- Centralized approach to assessing compliance risk
- Move away from CIC or “continuous” exam paradigm to issue focus
A campaign is an LB&I plan focused on the right “strategic” issues using the right resources and the right combination of treatment streams to achieve the intended compliance outcomes

- Strategic approach to address particular types of noncompliance
LB&I Campaigns (cont.)

- LB&I will use campaigns to identify, prioritize, and allocate resources to compliance issues
  - In the future, LB&I workload selection will be centrally selected, prioritized, and risk assessed based on campaigns and defined compliance goals
- If the Practice Area director and Compliance Integration Council approve a campaign proposal, then a campaign owner will be assigned, resources will be allocated to it, treatment streams will be determined, and a campaign monitoring schedule will be used
Practice Networks

- The Service’s initiative includes a large knowledge sharing component
  - Managed within Practice Areas
  - Conduct network calls for issue discussions, data sharing
  - Communicate best practices and facilitate networking among those working similar issues
  - Virtual Library (in-development)
    - Example TTPO Practice Networks
      - Income shifting inbound and outbound PNs
      - Economics PN
      - Treaties PN
  - Transaction based approach to training
  - Released both internally and externally
    - Focus on issues and strategies
Update of LB&I Restructuring

What LB&I restructure means for you

- Little change in the short term
- Shift to centralized return / issue selection and campaign structures will be long term effort
- CIC designation and procedures under discussion
- CAP Process under review to align with LB&I future state objectives
- Issue teams and campaign teams will drive exams in the future
- Other treatment streams
Effective May 1, 2016

New - LB&I Examination Process (LEP) publication 5125

- Replaces Pub 4837 commonly referred to as Quality Examination Process (QEP).
- Sets clear expectations for LB&I examiners, taxpayers, and representatives.
- Encourages taxpayers and/or representatives to work transparently with examiners to provide an overview of business activities, operational structure, accounting systems and a global tax organizational chart.
- Examiners are expected to work collaboratively and transparently with taxpayers to fully understand their business and openly share any issues identified for examination.
- Establishes expectations for working collaboratively to develop audit steps, timelines and providing appropriate personnel to actively assist in the development of the issue(s) identified.
New - Claim for Refunds Requirements

- Requires adherence to Treas. Regs. 301.6402-2 and 301.6402-3.
- Defines a 30 day period from the opening conference for the acceptance of informal claims.
- Allows for early identification of issues and resource needs in the exam planning stage.

New - Acknowledgement of Facts (AOF) — impact on cases going to appeals
New - Issue Driven Examination Process

- Focuses the right resources on selected issues.
- Encourages collaboration within issue teams where every examiner and their managers are equally responsible and accountable for the examination.
- Leverages knowledge transfer among technicians.
- Establishes a case timeline as determined by the most complex issues.
- Provides examiners an optional issue-driven risk analysis form (13744-I). See IRM 4.46.3.8.5
- Encourages a dialog around issue exit strategies as a part of issue resolution.
Update of LB&I Restructuring

- What restructure means for Treaty & Transfer Pricing Operation (TTPO):
  - TPP & APMA has expanded and will remain under the Director. Treaty Administration (TAIT, EOI) will become part of the new organization
  - TTPO will be a Subject Matter Practice Area, responsible for transfer pricing strategies; case selection; strategic litigation; transfer of knowledge and skills
  - Income Shifting and Economic Practice Networks are embed in TPP
  - TTPO will identify, lead & participate in campaigns
Treaty and Transfer Pricing Operations Practice Area formed out of TPP, APMA, and Treaty Administration (comprising TAIT and EOI)

- **APMA** primarily handles transfer pricing (Article 9) and allocation (Article 7) issues and Advance Pricing Agreements
- **TAIT** primarily handles everything other than Article 5 (PEs)
  - TAIT = Treaty Assistance and Interpretation Team
- **APMA and TAIT** jointly work on PE (Article 5) issues
What is APMA?
APMA’s primary functions are centered around double tax (or MAP) cases and APAs

- These core functions have not changed under the Future State initiative
- Instead making relatively small modifications to improve taxpayer service, to be more efficient, and to make effective use of technology and other resources
APMA Organization

- APMA staffing is presently 62 Team Leaders, 20 Economists, 10 Senior Managers, 2 Assistant Directors, and 1 Director
- Team leaders and their managers are generally assigned to cases involving specific countries
  - However, expertise and experience are taken into account
- Economists are typically assigned to cases within their groups
  - May assist with Exam cases from time to time
- APMA has offices in 7 cities: Washington, DC, New York City, Chicago, San Francisco, San Jose, Los Angeles, and Laguna Niguel
The IRS has numerous Alternative Dispute Resolution procedures that may resolve a transfer pricing dispute, including APAs and Competent Authority:

- Fast track settlement, delegation order 4-24, AIR Program, Appeals as well as its mediation or arbitration, & others

APMA Processes:

- Mutual Agreement Procedure (MAP or double tax resolutions)
- APAs – bilateral / multilateral and unilateral APAs
- Simultaneous Appeals Competent Authority (SAP)
- Accelerated Competent Authority Procedure (ACAP)
- Arbitration
Current APA and CA Procedures

- Current Revenue Procedures
  - Rev. Proc. 2015-40 (competent authority)
  - Rev. Proc. 2015-41 (APAs)

- Broad Themes
  - “Broad access to the U.S. competent authority”, coupled with expectation of taxpayer responsibility to all stakeholders before and during the CA and APA processes
  - Clarity of procedural choices (and consequences) in order to allow taxpayers to decide which route they wish to pursue to address taxation not in accordance with the applicable treaty
  - Integration of CA and APA processes as complementary programs of tax and treaty administration
Focus on APAs: Why an APA?

- Uncertainty pervades in current international transfer pricing environment
- Taxpayers interested because the focus is on the transfer pricing, and they are involved in the discussion in a much more active way than a typical audit
- Taxpayers obtain certainty that their transfer pricing method (TPM) will be accepted, which generally means the TPM application will avoid double tax
- The IRS benefits with an effective use of resources, obtains knowledge of taxpayers’ businesses and transfer pricing practices in what is intended to be a cooperative environment
How Does an APA Work?

- General chronological process from IRS perspective (see Rev. Proc. 2015-41, Section 3, et seq.):
  1) APA request is filed (prefiling requirements met, complete submission filed, and fee paid)
  2) Due Diligence process (APMA team formed, questions, responses, meetings, etc.)
  3) APMA and taxpayer (and treaty partner) discuss results of analysis
  4) Bilateral APA: Negotiations with other government(s), mutual agreement reached, bilateral case closed
  5) Unilateral APA: Negotiation and agreement reached with taxpayer
  6) US domestic agreement executed between the IRS and taxpayer
The APA Process & Concerns

- The IRS has a preference for bilateral and multilateral APAs vs unilateral agreements
  - A unilateral APA may limit the taxpayer and the IRS from resolving a transfer pricing dispute with another country despite coverage in the APA
  - Bilateral / multilateral APAs generally bring all of the stakeholders into the discussion and make for a more complete resolution

- APA processing time varies
  - Many factors can influence the time involved, including decisions by taxpayers – completeness of request, responsiveness to questions, data availability, etc.
  - APMA continuously seeking improvements in its own handling of APA process to increase efficiency
When do APAs tend to work the best?

- Field exam team involvement and status
- Nature of the issues
- Clarity of transactions and reliability of data
- Financial impact of the transactions
- Other governments involved
- Internal taxpayer support for the process

Changing facts and circumstances may make an APA inappropriate (e.g., mergers)
Competent Authority and MAP

- Intended to resolve “taxation not in accordance with” the treaty under the MAP article (e.g., in the US-Japan treaty it is Article 25)
- May be a US or foreign initiated adjustment, or taxpayer-initiated (with restrictions)
- Request filed with both governments to resolve past years (tax returns filed)
  - See Rev. Proc. 2015-40, Section 3 and Appendix, regarding filing requirements
  - No filing fee for transfer pricing disputes
- Treaty arbitration processes may possibly apply depending on the specific treaty involved
Tax Treaty Protective Claims

- Rev. Proc. 2015-40, Section 11.01
  - Most tax treaties allow for the MAP to resolve an issue despite any time limits or other procedural limitations (i.e., statutes of limitation)
  - A few treaties have time notification limits, and unless the competent authorities are notified in time, then no MAP is available for those years past the time limit (e.g., with Japan and Canada)
  - A protective claim allows for the notification of a potential issue to be made to the U.S. CA and thereby comply with the treaty requirement for the MAP
  - Statutes of limitation are still critical
Coordination with Appeals

- Rev. Proc. 2015-40, Section 6, sets forth general principles regarding coordination between Appeals and U.S. competent authority. It also sets forth the only options for presenting a U.S.-initiated adjustment to both U.S. competent authority and to Appeals:
  1) Simultaneous Appeals Procedure ("SAP") review,
  2) Severing CA issues, and
  3) Presenting issues to Appeals after competent authority process is unsuccessful
     - Taxpayers wishing to contest a U.S.-initiated adjustment are advised to understand these coordination rules

- Section 6.04(2): SAP review
  - Part of U.S. competent authority’s unilateral review of a competent authority request
  - Appeals works jointly with U.S. competent authority and taxpayer
  - Decisions over requests for SAP review, conduct of SAP review, and takeaways from SAP review lie solely with U.S. competent authority

- Section 6.04(3): Severing CA issues
  - Taxpayer may pursue Appeals and then sever competent authority issue within 60 days of opening conference
  - Taxpayer will not have access to competent authority if issue is not severed before 60 days
Accelerated Competent Authority (ACAP)

- A taxpayer may have a proposed adjustment related to past years for which it intends to request that USCA resolve through the treaty MAP process (not an APA).

- If there are intervening years, the taxpayer may be able to request accelerated competent authority procedure (ACAP) consideration.
  - Example: The IRS proposes an adjustment related to 2010 and 2011, but the same issue or transaction exists in 2012 – 2015. ACAP may possibly be used to resolve the later years in the same process as 2010 and 2011.

- Availability of ACAP may be limited by the other country involved.

Questions?