

I.R.S. ADDS NEW ISSUES OF FOCUS FOR CROSS-BORDER AUDITS

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On October 30, 2018, the I.R.S. Large Business and International Division (“LB&I”) announced the approval of five additional compliance campaigns.

First announced in January 2017, the “campaign” audit strategy is an issues-based approach to examinations, aimed at identifying issues of large businesses and cross-border activities that pose the greatest compliance risk. Since the initial 13 campaigns were introduced,¹ 32 additional campaigns were approved by LB&I.

The five additional campaigns are the following:

INDIVIDUAL FOREIGN TAX CREDIT

Subject to limitations and certain requirements, Code §901 provides relief from double taxation through a credit against U.S. tax on foreign-source income in the amount of foreign taxes paid on that income.

This campaign addresses taxpayers who have claimed a foreign tax credit but do not meet the requirements. The I.R.S. will address noncompliance through a variety of treatment streams, including examinations.

OFFSHORE SERVICE PROVIDERS

The focus of this campaign is U.S. taxpayers who engaged offshore service providers to create foreign entities and tiered structures to conceal the U.S. beneficial ownership of foreign financial accounts and assets, generally, for the purpose of tax avoidance or evasion. The treatment stream for this campaign will be issue-based examinations.

F.A.T.C.A. FILING ACCURACY

The Foreign Account Tax Compliance Act (“F.A.T.C.A.”) was enacted in 2010 to detect, deter, and discourage offshore tax abuses through increased transparency, enhanced reporting, and strong sanctions that apply not only to U.S. taxpayers but also to Foreign Financial Institutions (“F.F.I.’s”). Under F.A.T.C.A., F.F.I.’s and certain Non-Financial Foreign Entities (“N.F.F.E.’s”) are generally required to report accounts held by U.S. persons and by foreign persons with substantial U.S. owners.

This campaign addresses those entities that have F.A.T.C.A. reporting obligations but do not meet all their compliance responsibilities. The I.R.S. will address

¹ “I.R.S. LB&I Announces 13 New ‘Campaigns’ for Audit Guidance,” *Insights* 4, no. 3 (2017).

noncompliance through a variety of treatment streams, including termination of F.A.T.C.A. status.

FORM 1120-F DELINQUENT RETURNS

Foreign corporations engaged, or considered to be engaged, in a U.S. trade or business must file a true and accurate Form 1120-F, U.S. Income Tax Return of a Foreign Corporation, on a timely basis. Filing Form 1120-F allows foreign corporations to claim deductions and credits against its U.S. effectively connected income and be taxed on a net basis. Form 1120-F is generally considered to be timely if it is filed no later than 18 months after the due date of the current year's return. Under Treasury Regulations, in certain circumstances where the foreign corporation establishes to the satisfaction of the I.R.S. that it acted reasonably and in good faith in failing to timely file the return, the filing deadline may be waived. In February 2018, LB&I established procedures to ensure waiver requests are applied in a fair, consistent, and timely manner under the regulations.

The objective of this campaign is to encourage foreign corporations to timely file Forms 1120-F and address the compliance risk for delinquent returns. This is accomplished by field examinations and external education outreach programs.

WORK OPPORTUNITY TAX CREDIT

This campaign addresses the consequences of a delay in issuing a Work Opportunity Tax Credit ("W.O.T.C.") certifications and the burden of the requirement to file amended Federal and state tax returns to claim a W.O.T.C. This burden on taxpayers, coupled with any resulting I.R.S. examinations of the amended returns, is an inefficient use of both taxpayer and I.R.S. resources.

The W.O.T.C. year of credit eligibility issue has been added to the Industry Issue Resolution ("I.I.R.") program. The intention is to provide remedies that reduce the burden on taxpayers, promote consistency, and decrease examination time in order to more effectively use I.R.S. resources.

The objective of the campaign is for LB&I to collaborate with other I.R.S. divisions and with industry stakeholders to develop a directive for taxpayers experiencing late certifications and to promote consistency in the examinations of W.O.T.C. claims.

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