On November 3, 2017, the Large Business & International Division (LB&I) of the Internal Revenue Service (IRS) released a list of 11 new campaigns, adding to the 13 campaigns that it initially launched in January. Eversheds Sutherland released a general alert discussing the initial campaigns and closely analyzed the campaigns on micro-captive insurance companies and basket transactions. These latest campaigns are part of an ongoing shift within LB&I to focus its resources on issues instead of organizing its operations around different industries and taxpayers.

More broadly, this approach is part of the large-scale reorganization of LB&I that began in 2015 with the aim of reallocating its resources to achieve increased efficiencies. Generally, the main themes of the reorganization have been to direct LB&I’s resources toward areas of known or suspected noncompliance, to utilize flexible treatment streams in addressing these issues, and to continuously incorporate feedback from agents, taxpayers and practitioners to keep its practices up-to-date. The issue-based approach is likely to broaden the audit base by touching more taxpayers, but those audits will be more limited in scope as LB&I moves away from enterprise-based audits.

It is reasonable to assume that campaign issues will be more centralized than other audit issues. Indeed, in this latest release, LB&I explained that campaign “development requires strategic planning and deployment of resources, training and tools, metrics and feedback. LB&I is investing the time and resources necessary to build well-run and well-planned compliance campaigns.” In campaign-based examinations, it will be important to determine who within the IRS has control over the issue and how much discretion is vested in the examination team.

Generally, the newest group of campaigns, announced through a posting on the IRS website, is similar in many respects to the first group. Like the original 13 campaigns, this list covers a range of substantive areas of federal tax law and provides for the use of various approaches to address any noncompliance. Several observations can be made about the new campaigns:

- They are more focused on cross-border issues than the first batch of campaigns.

- They raise more “technical issues” than the first batch. Representatives of LB&I had previously indicated that the initial wave of campaigns avoided highly complex issues to ease the transition to the new system. The inclusion of more technical issues in the new wave of campaigns suggests that LB&I has become more comfortable with the new campaign-based model.
Each of the new campaigns includes examination as a potential treatment stream, and for five of the new campaigns examination is the only treatment stream. While several of the new campaigns indicate that examination is only one of the possible treatment streams (one mentions that the use of soft letters is under consideration as a treatment), this round of campaigns suggests that examination will be the norm. The first round of campaigns, on the other hand, seemed to stress alternative treatment streams, such as the use of soft letters, as a means of addressing potential noncompliance.

Finally, LB&I concluded by indicating that more campaigns will be released in the coming months.

New Campaigns

LB&I’s descriptions of the campaigns follow, view the full release. For your convenience, we have reproduced the campaigns and their descriptions in full below.

- **Form 1120-F Chapter 3 and Chapter 4 Withholding Campaign**

  This campaign is designed to verify withholding at source for 1120-Fs claiming refunds. To make a claim for refund or credit to estimated tax with respect to any U.S. source income withheld under chapters 3 or 4, a foreign entity must file a Form 1120-F. Before a claim for credit (refund or credit elect) is paid, the IRS must verify that withholding agents have filed the required returns (Forms 1042, 1042-S, 8804, 8805, 8288 and 8288-A). This campaign focuses upon verification of the withholding credits before the claim for refund or credit is allowed. The campaign will address noncompliance through a variety of treatment streams including, but not limited to, examinations.

- **Swiss Bank Program Campaign**

  In 2013, the U.S. Department of Justice announced the Swiss Bank Program as a path for Swiss financial institutions to resolve potential criminal liabilities. Banks that are participating in this program provide information on the U.S. persons with beneficial ownership of foreign financial accounts. This campaign will address noncompliance, involving taxpayers who are or may be beneficial owners of these accounts, through a variety of treatment streams including, but not limited to, examinations.

- **Foreign Earned Income Exclusion Campaign**

  Individuals who meet certain requirements may qualify for the foreign earned income exclusion and/or the foreign housing exclusion or
deduction. This campaign addresses taxpayers who have claimed these benefits but do not meet the requirements. The Internal Revenue Service will address noncompliance through a variety of treatment streams, including examination.

• Verification of Form 1042-S Credit Claimed on Form 1040NR

  - This campaign is intended to ensure the amount of withholding credits or refund/credit elect claimed on Forms 1040NR, U.S. Nonresident Alien Tax Return, is verified and whether the taxpayer has properly reported the income reflected on Form 1042-S, Foreign Person’s U.S. Source Income Subject to Withholding. Before a refund is issued or credit allowed, the Internal Revenue Service verifies the withholding credits reported on the Form 1042-S. The campaign will address noncompliance through a variety of treatment streams including, but not limited to, examinations.

• Agricultural Chemicals Security Credit Campaign

  - The Agricultural chemicals security credit is claimed under Internal Revenue Code Section 45O and allows a 30 percent credit to any eligible agricultural business that paid or incurred security costs to safeguard agricultural chemicals. The credit is nonrefundable and is limited to $2 million annually on a controlled group basis with a 20-year carryforward provision. In addition, there is a facility limitation as outlined in Section 45O(b). The goal of this campaign is to ensure taxpayer compliance by verifying that only qualified expenses by eligible taxpayers are considered and that taxpayers are properly defining facilities when computing the credit. The treatment stream for this campaign is issue-based examinations.

• Deferral of Cancellation of Indebtedness Income Campaign

  - During 2009 and 2010, taxpayers who incurred cancellation of indebtedness (COD) income from the reacquisition of debt instruments at an issue price less than the adjusted issue price of the original instrument may have elected to defer the COD income. Taxpayers must report the COD income ratably over five years beginning in 2014 and running through 2018. Further, when a taxpayer defers the COD income, any related original issue discount (OID) deductions on the new debt instrument, resulting from debt-for-debt exchanges that triggered the COD must also be deferred ratably and in the same manner as the deferred COD income. The goal of this campaign is to ensure taxpayer compliance by verifying that taxpayers who properly deferred COD income in 2009/2010 properly report it in subsequent years beginning in
2014, unless an accelerating event requires earlier recognition under IRC §108(i); and/or properly defer reporting OID deductions during the deferral period under IRC Section108(i)(2). The treatment stream for this campaign is issue-based examinations. The use of soft letters is under consideration.

• Energy Efficient Commercial Building Property Campaign

  - The Energy Efficient Commercial Building Deduction (Section 179D) allows taxpayers who own or lease a commercial building to deduct the cost or portion of the cost of installing energy efficient commercial building property (EECBP). If the equipment is installed in a government-owned building, the deduction is allocated to the person(s) primarily responsible for designing the EECBP. This goal of this campaign is to ensure taxpayer compliance with the section 179D deduction. The treatment stream for this campaign is issue-based examinations.

• Corporate Direct (Section 901) Foreign Tax Credit ("FTC")

  - Domestic corporate taxpayers may elect to take a credit for foreign taxes paid or accrued in lieu of a deduction. The goal of the Corporate Direct FTC campaign is to improve return/issue selection (through filters) and resource utilization for corporate returns that claim a direct FTC under IRC section 901. This campaign will focus on taxpayers who are in an excess limitation position. The treatment stream for the campaign will be issue based examinations. This is the first of several FTC campaigns. Future FTC campaigns may address indirect credits and IRC 904(a) FTC limitation issues.

• Section 956 Avoidance

  - If a Controlled Foreign Corporation (CFC) makes a loan to its US parent, Section 956 generally requires an income inclusion equal to the amount of the loan. This campaign focuses on situations where a CFC loans funds to a US Parent (USP), but nevertheless does not include a Section 956 amount in income. The goal of this campaign is to determine to what extent taxpayers are utilizing cash pooling arrangements and other strategies to improperly avoid the tax consequences of Section 956. The treatment stream for this campaign is issue based examinations.

• Economic Development Incentives Campaign
Taxpayers may be eligible to receive a variety of government economic incentives. These incentives include refundable credits (refunds in excess of tax liability), tax credits against other business taxes (i.e. payroll tax), nonrefundable credits (refunds limited to tax liability), transfer of property including land, and grants including cash payments. Taxpayers may improperly treat government incentives as non-shareholder capital contributions, exclude them from gross income and claim a tax deduction without offsetting it by the tax credit received. The goal of this campaign is to ensure taxpayer compliance. The treatment stream for this campaign is issue based examinations.

Individual Foreign Tax Credit (Form 1116)

Individuals file Form 1116 to claim a credit that reduces their U.S. income tax liability for the amount of foreign taxes paid on foreign source income. This campaign addresses taxpayer compliance with the computation of the foreign tax credit limitation on Form 1116. Due to the complexity of computing the Foreign Tax Credit and challenges associated with third-party reporting information, some taxpayers face the risk of claiming an incorrect Foreign Tax Credit amount. The IRS will address noncompliance through a variety of treatment streams including examinations.

If you have any questions about this legal alert, please feel free to contact any of the attorneys listed under ‘Related People/Contributors’ or the Eversheds Sutherland attorney with whom you regularly work.