On July 19, 2019, the Large Business and International (LB&I) Division of the Internal Revenue Service (IRS) announced the addition of six compliance campaigns, bringing to 59 the total number of active campaigns. These six new campaigns focus on:

- S Corporations Built-in Gains (BIG) tax
- post-OVDP compliance
- expatriation filing requirements
- high-income non-filers
- erroneous refundable credits claimed by residents of U.S. territories
- Section 457A deferred compensation attributable to services performed before January 1, 2009.

The IRS noted that these new campaigns were identified through LB&I data analysis and IRS employee suggestions. The announcement also reflected LB&I’s goals, consistent with those announced in connection with previous campaigns, to improve return selection, identify issues representing a risk of non-compliance and make the greatest use of limited resources.

Eversheds Sutherland released a general alert discussing the initial 13 campaigns. And it released other IRS campaign-related alerts in November 2017, March 2018, July 2018 and April 2019. A full list of all 59 active LB&I campaigns can be found here.

LB&I’s descriptions of the six new campaigns (denoted by italics), along with Eversheds Sutherland observations, are included below:

**S Corporations Built-in Gains Tax Campaign**

*C corporations that convert to S corporations are subjected to the Built-in Gains tax (BIG) if they have a net unrealized built-in gain and sell assets within five years after the conversion. This tax is assessed to the S corporation. LB&I has found that S corporations are not always paying this tax when they sell the C corporation assets after the conversion. LB&I has developed comprehensive technical content for this campaign that will aid revenue agents as they examine the issue. The goal of this campaign is to increase awareness and compliance with the law as supported by several court decisions. Treatment streams for this campaign will be issue-based examinations, soft letters and outreach to
practitioners.

Eversheds Sutherland Observation: The BIG tax can apply within five years following either conversion to S corporation status or certain carryover basis asset acquisitions. BIG generally is measured by reference to the difference between tax basis and fair market value of the assets at the time of conversion/acquisition; and the taxpayer bears the burden of proof to demonstrate that recognized BIG is less than gain recognized. This is an area where it becomes ever more important to retain business records, and converting corporations should consider obtaining appraisals at the time of conversion.

Post OVDP Compliance

US persons are subject to tax on worldwide income. This campaign addresses tax noncompliance related to former Offshore Voluntary Disclosure Program (OVDP) taxpayers’ failure to remain compliant with their foreign income and asset reporting requirements. The IRS will address tax noncompliance through soft letters and examinations.

Eversheds Sutherland Observation: For taxpayers who entered into OVDP, this campaign is an important reminder that the need to comply is not over. The IRS will be looking through the OVDP files to make sure that taxpayers who entered the program are continuing to remain compliant in their offshore asset reporting requirements. And if a taxpayer who enjoyed OVDP immunity is now non-compliant, the IRS is unlikely to look upon the taxpayer kindly.

Expatriation

US citizens and long-term residents (lawful permanent residents in eight out of the last 15 taxable years) who expatriated on or after June 17, 2008, may not have met their filing requirements or tax obligations. The Internal Revenue Service will address noncompliance through a variety of treatment streams, including outreach, soft letters and examination.

Eversheds Sutherland Observation: This campaign seems likely to focus on taxpayers who elected to expatriate rather than to enter OVDP or otherwise come into compliance. Given the lookback period of more than 11 years, taxpayers who have expatriated should consider speaking to a tax attorney about what, if any, IRS filings need to be corrected or supplemented.

High Income Non-filer

US citizens and resident aliens are subject to tax on worldwide income. This is true whether or not taxpayers receive a Form W-2 Wage and Tax Statement, a Form 1099 (Information Return) or its foreign equivalents. Through an
examination treatment stream, this campaign will concentrate on bringing into compliance those taxpayers who have not filed tax returns.

**Eversheds Sutherland Observation:** With the increased collection of data by the IRS and the Department of Justice, and the prioritization of data analytics, taxpayers should expect an increase in the number of high-income individuals who are flagged for examination. It is also important to note that the US Senate recently ratified a number of long-stalled international tax treaties, including treaties with Switzerland and Luxembourg, which allow the IRS to obtain even more information from these other countries on high income, non-compliant US taxpayers.

**US Territories—Erroneous Refundable Credits**

Some bona fide residents of US territories are erroneously claiming refundable tax credits on Form 1040, US Individual Income Tax Return. This campaign will address noncompliance through a variety of treatment streams including outreach and traditional examinations.

**Eversheds Sutherland Observation:** Taxpayers should await more information from the IRS as to what tax credits it believes are being erroneously claimed. The outreach and traditional examinations that the IRS plans to conduct will presumably shed more light on what, as of now, is a relatively bare-bones description from LB&I.

**Section 457A Deferred Compensation Attributable to Services Performed before January 1, 2009**

This campaign addresses compensation deferred from nonqualified entities attributable to services performed before January 1, 2009. In general, Internal Revenue Code (IRC) Section 457A requires that any compensation deferred under a nonqualified deferred compensation plan shall be includible in gross income when there is no substantial risk of forfeiture of the rights to such compensation. The campaign objective is to verify taxpayer compliance with the requirements of IRC Section 457A through issue-based examinations.

**Eversheds Sutherland Observation:** Section 457A was enacted to target compensation earned by hedge fund managers who managed money for investors using foreign corporation that are not subject to US taxation. Understanding the facts and potential risks should be the first step for companies or executives that suspect that they fall within the scope of this campaign.

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.