



November 10, 2020

36TH ANNUAL TEI-SJSU
**HIGH TECH
TAX INSTITUTE**
VIRTUAL CONFERENCE

NOVEMBER 9-10, 2020



Federal Tax Controversy

36th Annual Tax Executives Institute-San Jose State University High Tech Tax Institute



Panelists

- **John Hinding**, Director, Cross Border Activities, IRS
- **Amanda T. Kottke**, Partner, Baker McKenzie
- **Robert J Kovacev**, Tax Partner, Norton Rose Fulbright US LLP
- **Chris Murphy**, Partner, Skadden, Arps LLP
- **Gloria Sullivan**, Director, Western Compliance Practice Area, IRS

Speaker bios are included in your materials, at the above links and posted at <https://www.sjsu.edu/taxinstitute/agendas/index.html>



Topics for Discussion

- **State of LB&I and Hiring**
- **Current priorities and Workload Prioritization**
 - Key portfolio work and issues
 - Other recent updates
 - TCJA and Campaign Updates
- **Data Analytics**
- **Post Pandemic Changes**
- **Appeals Changes**
- **Taxpayer First Act**
- **Appendix: International TCJA Guidance**



State of LB&I

FY2021 LB&I Strategic Goals

- Strengthen Compliance Activities
- Implement Major Program Priorities
- Expand Workforce Opportunity Horizons
- Innovate LB&I Operations
- Communicate Purposefully



State of LB&I and Hiring

LB&I Positions	PP20, 2019 (10/12/19)	PP17, 2020 (08/29/20)
Total Technical	2952	3066
Total Non-Technical	1502	1398
Grand Total	4454	4464

As of PP17, 2020 we had 361 new hires (add to rolls – external to LB&I).



Current Priorities and Focus Areas: Key Portfolio Items

- 2021 CAP Year – Application period ongoing, modified requirements for eligibility
- Global High Wealth – Examinations of high net worth individuals that extend beyond individual income tax returns to include examining the entities that these taxpayers control. LB&I working to increase its coverage in this area
- High-Income Exams – Joint effort between LB&I and the Small Business/Self Employed Division, in coordination with the Tax Exempt and Government Entities Division to address coverage for high-income taxpayers
- Flow-Through Work – Increased hiring and coverage planned; as well as a form improvement effort to support improved identification of noncompliance



Current Priorities and Focus Areas: Key Portfolio Issues

Ongoing focused effort on key issues:

- Syndicated Conservation Easements Campaign
- Micro-Captives Campaign
- Fraud Referrals and Promoter examinations
- Virtual Currency Campaign



Current Priorities and Focus Areas: Other recent efforts

- Workload Prioritization and Risk Assessment
- Rev Proc 94-69 Announcement
- Updated ASC 730 Directive
- Industry Subject Matter Expert Program



Current Priorities and Focus Areas: 965 Campaign

- Background
- Training/Support
- 965 and Other International TCJA Issues
- Forms
- Issues in Field
- Reg. Challenges

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Current Priorities and Focus Areas: LB&I TCJA Campaign

- Worked like traditional LBI examination, including risk analysis techniques
- Examiners and managers continue to have discretion over their cases within existing LB&I processes, procedures, and guidelines
- Issues may be added, when appropriate
- Assistance from Practice Networks and Counsel remain the same (and cadres)
- Passthrough Returns

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Current Priorities and Focus Areas: LB&I TCJA Campaign (continued)

- The TCJA campaign will monitor issues more closely and share information learned throughout LB&I and the IRS
- The goal of this campaign is to identify technical issues and better understand taxpayer behavior under the new law
- The treatment streams for this campaign may include examinations, soft letters, outreach, new and improved practice units and development of future issue-based campaigns

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Current Priorities and Focus Areas: 199 Claims Risk Review Campaign

- TCJA repealed the Domestic Production Activities Deduction (DPAD) for tax years beginning after December 31, 2017
- Practice Area: Enterprise Activities
- Lead Executive: Joe Banks
- Campaign Point of Contact: Ellen Kolpin
- This campaign addresses all business entities that may file a claim for additional DPAD under IRC Section 199.
- The campaign objective is to ensure taxpayer compliance with the requirements of IRC Section 199 through a claim risk review assessment and issue-based examinations of claims with the greatest compliance risk.

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Data Analytics

- Continued emphasis on data analytics and innovation to identify noncompliance
- Several Form Improvement Efforts – Ongoing
- Improved Reporting
- Centralized risking
- Forms 8275/8275R
- Fraud Referrals



Impact of COVID-19, CARES Act

COVID-19 Impact

- Continuing to monitor impact to taxpayers and our workforce and respond accordingly and afford flexibility where feasible.
 - Revised IDR Directive Guidance
 - Revised Case Processing Procedures
- Expansion of digital transmissions will continue until further notice.
- Temporary deviation through 12/31 allowing digital signatures on certain specified paper filings.

CARES Act

- Forms 1139 entering exam workstream
- Joint Committee Review Process
- Anticipate increase in filings of preliminary returns, followed by subsequent filing of a superseding return.



Taxpayer Digital Communications (TDC)



Taxpayer Digital Communication Secure File Sharing - Secure Messaging A New Way to Connect with the IRS



Ever wish for a faster way to communicate and exchange information about your current IRS Large Business and International (LB&I) Division audits?

The IRS now has an easier way to communicate with taxpayers: it's called the IRS Taxpayer Digital Communication Secure File Sharing-Secure Messaging (TDC SFS-SM). With this service, you and your authorized representative will be able to send and receive messages and digital documents related to your IRS audit quickly and easily.

With TDC SFS-SM, you can:

- Correspond with an IRS agent through your web browser at your convenience
- Submit and receive digital documentation quickly and securely
- Message with safety and security with no downloads, certificates or tokens to install
- Connect anytime from anywhere
- Avoid time on the phone
- Eliminate paper and postage costs



Taxpayer Digital Communications (TDC)

Who can use TDC SFS-SM?

Both taxpayers currently under audit with Large Business and International (LB&I) and authorized employees of your company will be able to use secure messaging relating to your IRS audit. TDC SFS-SM will enable digital exchange of messages and attachments with IRS agents.

How does TDC SFS-SM work?

IRS TDC SFS-SM is similar to a web-based email service. Messages can be securely sent to you by IRS representatives and you may respond and even include document attachments pertaining to your IRS audit.

The IRS will save all messages as digital record of your communications. You will be notified when you have a secure message waiting for you via a notification email to the addresses provided on your signed consent (See *How do you sign up?*).

The notification will include a link to your secure messaging center. In order to protect your privacy and reduce the potential for identity theft, no personal information will be included within this notification email.

How do you sign up?

If your company is currently under an IRS audit, you may be asked if you want to participate in the TDC SFS-SM system by your IRS agent. If not, you may ask your IRS agent to participate in TDC SFS-SM.

You will be provided a Taxpayer Consent form, which you should review, sign and return to your IRS agent. Next you will receive a system-generated email notifying you that you have been added to the system, including a username and a link to the system, asking that you log in and create your password.

Taxpayer representatives

If you are a representative of a taxpayer/business that has been invited to use TDC SFS-SM, you may access the application as long as you have an appropriate designation on Form 2848 (Power of Attorney), have signed the Consent form and completed the authentication process.

Once you have an account, just log in to your Secure Message account. Follow the instructions and you'll soon be set to use the new system.



Appeals Changes

- Telephone or WebEx conferences
- In July, Appeals began scheduling telephone or virtual conferences for **docketed** cases
- As of August 27, Appeals will no longer suspend cases due to a Taxpayer's request for an in-person conferences for **nondocketed** cases
- Best Practices:
 - Use visual aids
 - Include Counsel and Specialist on the team



Taxpayer First Act (TFA)

- Three Major Components – Comprehensive Customer Service Strategy, Organizational Structure and Training Strategy
- Draft report in progress
- Feedback from affected stakeholders informs the key objectives. (proactive outreach, seamless experience, expanded digital services).
- Formal submission of Report to Congress at the end of this year.
- Training as a priority
- Case Designation Procedures



TCJA Implementation (Appendix)

❖ The table below lists certain international TCJA regulatory published guidance

Project	Status
Section 965 (transition tax)	Final Regulations published on 2/5/19
Section 951A (GILTI)	Final Regulations published on 6/14/19 Proposed Regulations for high tax exception published on 6/14/19 Proposed Regulations for prepaid royalties published on 4/8/20 Final Regulations for high tax exception published on 7/23/20
Section 59A (BEAT)	Final Regulations published on 12/2/19 Additional Final Regulations published 10/9/20
Section 250 (FDII)	NRPM published on 3/6/19 Final Regulations published on 7/15/20
Sections 245A(e) & 267A (Hybrids)	Finals Regulations published on 4/8/20 Proposed Regulations for certain HDA adjustments under section 245A published on 4/8/20 Additional Final Regulations addressing hybrid deduction accounts, conduit arrangements, and disqualified payments under GILTI published 9/29/20
Section 245A and section 954(c)(6) (DRD and section 954 look-through exception)	Final & Temporary Regulations published on 6/18/2019 Additional Final regulations published on 8/27/20

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TCJA Implementation

❖ The table below lists certain international TCJA regulatory published guidance

Project	Status
Section 245A and 951A coordinate extraordinary disposition rule under section 245A with the disqualified basis rule under section 951A	NPRM published 8/27/20
Section 245A and section 956 (DRD and Investment in U.S. Property)	Final Regulations Published 5/23/19
Foreign Tax Credits Sections 902, 969, 78 etc.	Final Regulations published on 12/2/19 Additional Final Regulations Published 9/29/20 Proposed Regulations published 9/29/20 providing additional guidance including expense allocation and section 905(a)
Section 163(j) (interest deductibility)	NPRM published on 11/26/2018 Final Regulations, Proposed Regulations, and Notice published on 8/7/20
Section 864(c)(8) (transfers of partnership interest)	NPRM published on 12/27/18 Final Regulations released for public viewing on 9/21/20 to be published as TD 9919
Section 1446(f) (withholding on disposition of partnership interest)	NPRM published on 3/15/19 Final Regulations released for public viewing on 10/07/20 to be published as TD 9926

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TCJA Implementation

- ❖ **The table below lists certain international TCJA regulatory published guidance**

Project	Status
Section 959 and 961 (previously taxed earnings and profits ("PTEP"))	Notice 2019-01 issued on 12/14/18
Section 1297(b)(2)(B) (PFIC insurance income exception)	NPRM published on 7/11/19
Section 958(b)(4) (constructive ownership)	NPRM published on 10/2/19 Rev. Proc. 2019-40 issued 10/1/19 Final Regulations published on 9/22//20 addressing modifications to subpart F, including the repeal of § 958(b)(4) and the modification of § 951(b) under the TCJA. Proposed Regulations issued 9/22/20 addressing the repeal of §958(b)(4) under the TCJA
Section 863(b) & 865(e) (inventory sourcing)	NPRM published on 12/30/2019 Final Regulations published on 9/29/20

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COVID-19-Related Guidance

- ❖ **[Rev. Proc. 2020-30](#)** provides that certain temporary activities in foreign countries that would not have occurred but for COVID-19-related emergency travel disruptions do not give rise to a foreign branch separate unit under section 1503(d). In addition, such activities will not give rise to a foreign branch under either §1.367(a)-6T(g)(1) or §1.989(a)-1(b)(2)(ii) that would require the filing of Form 8858.
- ❖ **[U.S. Trade or Business FAQ](#)** provides that certain U.S. business activities conducted by a nonresident alien or foreign corporation will not be counted for up to 60 consecutive calendar days in determining whether the individual or entity is engaged in a U.S. trade or business or has a U.S. permanent establishment, but only if those activities would not have been conducted in the United States but for travel disruptions arising from the COVID-19 emergency.
- ❖ **FAQs about Carrybacks of NOLs for Taxpayers who have had Section 965 Inclusions** <https://www.irs.gov/newsroom/frequently-asked-questions-about-carrybacks-of-nols-for-taxpayers-who-have-had-section-965-inclusions>

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CARES Act Guidance

- ❖ [Rev. Proc. 2020-22](#) provides procedural guidance to taxpayers wishing to implement changes made by the CARES Act to the section 163(j) business interest deduction limitation.
- ❖ [Rev. Proc. 2020-24](#) provides guidance for taxpayers that want to waive a new provision requiring the carryback of NOLs arising in tax years beginning in 2018, 2019, and 2020. An [FAQ](#) was also issued to address the interaction the carryback provision with section 965.

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