



November 10, 2020



# Federal Tax Controversy

**36<sup>th</sup> Annual Tax Executives  
Institute-San Jose State University  
High Tech Tax Institute**



## Topics for Discussion

- State of LB&I and Hiring

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## 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



## 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:



## 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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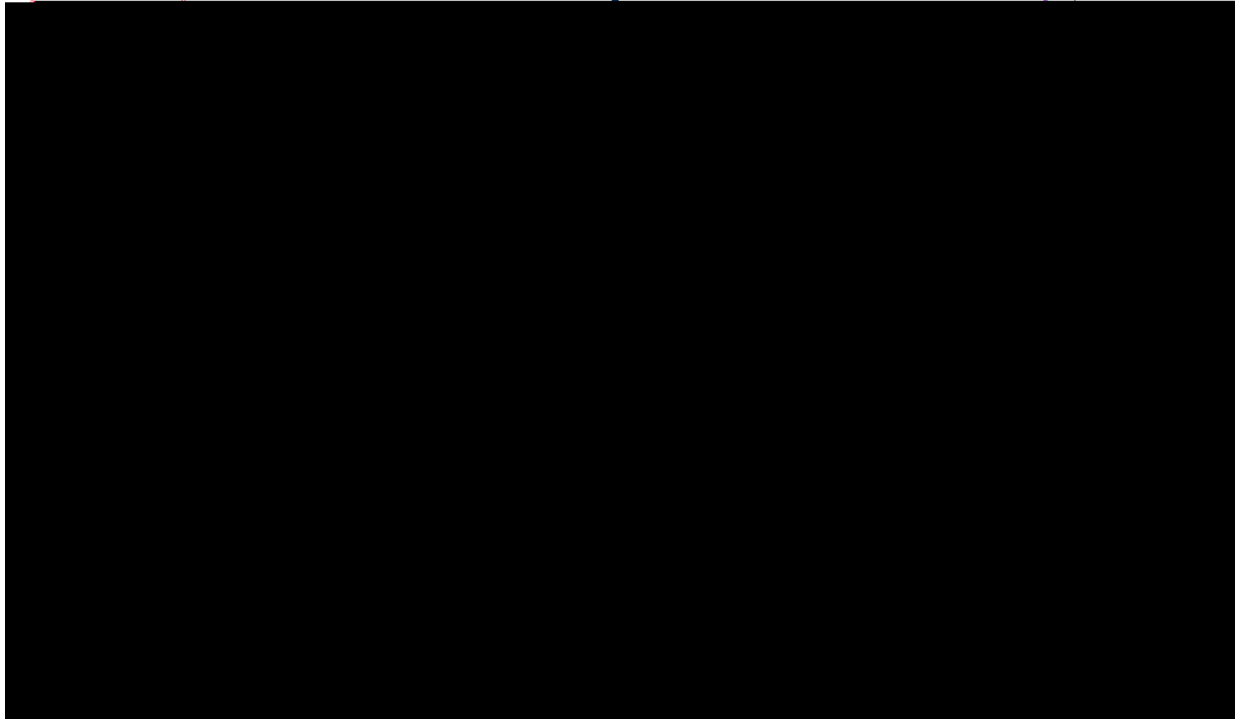
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- TCJA repealed the Domestic Production Activities Deduction (DPAD) for tax years beginning after December 31, 2017
  - Practice Area: Enterprise Activities
  - Lead Executive: Joe Banks
  - Campaign Point of Contact: Ellen Kolpin
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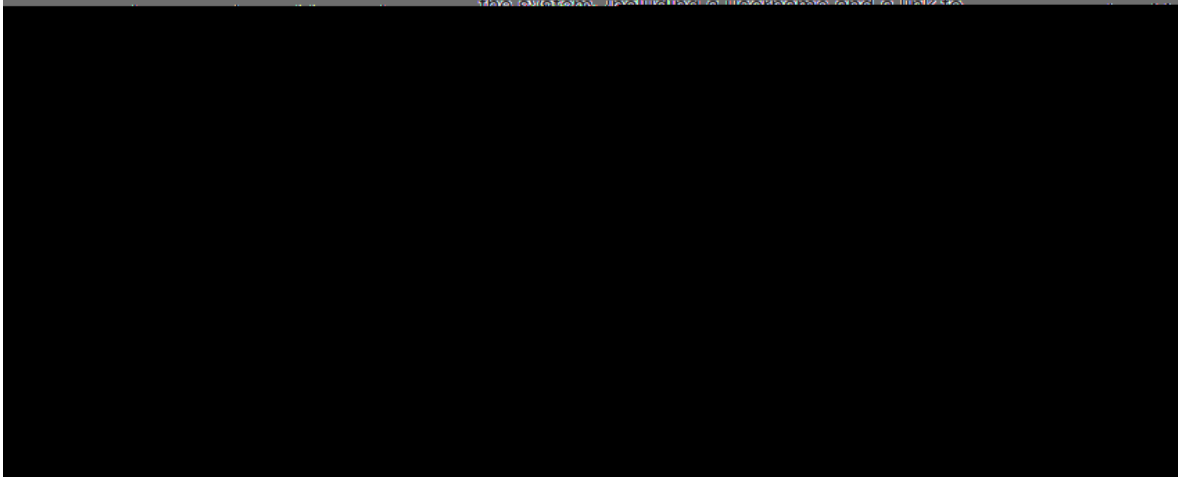
- Continued emphasis on data analytics and innovation to identify noncompliance
- Several Form Improvement Efforts – Ongoing
- Improved Reporting
- Centralized risking
- Forms 8275/8275R
- Fraud Referrals



Taxpayer Digital



What happens if you are currently under an IRS audit? Both taxpayers currently under audit with original returns filed in 2017 and 2018 will be asked if you want to participate in the TDC. Business and International (LB&I) and authorized representatives will be contacted by email and phone. You will be provided a Taxpayer Consent form. If you are currently under an IRS audit, you will be contacted by email and phone. You will be provided a Taxpayer Consent form. If you are currently under an IRS audit, you will be contacted by email and phone. You will be provided a Taxpayer Consent form.







## 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



## 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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**[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->





## 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



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