

## IRS Still Vague On Large Business Audit Details

By Vidya Kauri

*Law360, New York (May 31, 2017, 9:38 PM EDT)* -- Two years after the Internal Revenue Service announced changes in how it would audit large corporations, practitioners say they are being left in the dark by vague guidance on how the new audits will work.

Over the last three months, the IRS has been presenting a series of webinars to explain its approach to auditing corporations with assets of more than \$10 million. The webinars follow the agency's January unveiling of 13 specific areas that the IRS said it will focus on during audits as it prepares to transition to issue-based examinations from a system of placing large multinational businesses under continuous audit by a rolling team of examiners.

The January announcement was the first major update since June 2015, when the IRS announced that it was revamping its Large Business and International Division — the arm responsible for auditing the largest corporations in the country. But the initial rollout of the 13 so-called campaigns was greeted with criticism from practitioners who had hoped to receive more specifics and substantive guidance after waiting two years.

Now, the six webinars that have been held so far to provide additional details have also disappointed taxpayers and practitioners yearning for more guidance.

George Hani, chair of Miller & Chevalier Chtd.'s tax department, who has attended most of the IRS webinars on the campaigns, said that there is still no clarity on how all the different facets of the audit process will work together. Questions remain over who controls and oversees the issues in an audit and whether taxpayers will have direct access to the IRS officials making the final decisions, he said.

"It's still fairly vague, and part of that may be because they still don't know how these things are going to unfold. I'm not sure I know more now than I did in January," Hani said.

One of the 13 campaigns, for example, deals with the reporting of S-corporation losses. The IRS has said that it may issue a "soft letter" to S-corporation shareholders who may have claimed seemingly excessive losses and who may not have fulfilled all the prerequisite reporting requirements.

The soft letter would give taxpayers an opportunity to correct mistakes, but it is not clear if the IRS will automatically launch an audit against taxpayers who don't respond to the soft letter and to what extent it will pursue action against them, Hani said.

Another area where the IRS has been particularly circumspect about giving away too much information is the campaign dealing with repatriation structures, according to Richard Hussein, the firmwide chair of the tax department at Baker Botts LLP.

"Some of it is a work in progress, but they were afraid that if they shared too much information, it would negatively impact the success of some of their audits," Hussein said. "I don't know if that's troubling, but it is something that is just a reality of the new world, that a lot of it is going to be understood only when it happens and not before it happens, and that's both by design of the IRS and also just by necessity because they haven't worked out all of the specifics yet."

Even though more information is needed on the practical aspects of the audits and what triggers would warrant more scrutiny, Hussein said that the IRS should be commended for its efforts at transparency. The use of webinars — being hosted in conjunction with leading accounting and law firms — is a relatively new approach for the agency to communicate with private practitioners, he said.

One area where taxpayers are being directly impacted by the IRS' seemingly slow progress on the campaigns is the Offshore Voluntary Disclosure Program, which allows taxpayers to avoid potential civil and criminal penalties by voluntarily resolving past noncompliance issues related to offshore income and the failure to file foreign information returns.

The "OVDP Declines-Withdrawals" campaign addresses taxpayers who were either denied entry into the program or who withdrew from it, according to the IRS.

According to Christopher Karachale, a tax attorney and partner at Hanson Bridgett LLP, some of his clients who were denied entry into the OVDP program have been stuck in limbo for three years and counting because the IRS has given contrary advice on how to proceed post-denial and the campaign provides little information on how they will be treated.

"These people have just been sitting there now for three or four years without any resolution," Karachale said. "If you're refused entrance into the program, there is this specter of criminal prosecution looming. So these guys have been losing sleep for years now."

The IRS said in a webinar on the OVDP campaign issue that the program is no longer an option for taxpayers who withdrew or were denied entry into the program. These taxpayers may receive a soft letter with options to become compliant, or they can amend all required returns and pay the necessary tax and penalties, the IRS said.

The IRS has said that it plans on releasing more campaigns in the coming months, but with the first 13

campaigns still appearing to be in their early stages, it seems that the old framework is still here to stay for some time, according to Brian Kittle, co-leader of Mayer Brown LLP's tax controversy and transfer pricing practice.

"It's not clear to me that they're giving much more information than what's already in the campaign itself," Kittle said of the webinars. "One thing that has been made clear is that the normal examination approach for large taxpayers ... isn't necessarily going to change as a result of the campaigns."

--Editing by Pamela Wilkinson and Jill Coffey.

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