



New IRS Coordinated High Wealth Audit

Are Your Tax Advisors Ready and Coordinated?

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On a web conference sponsored by NYU School of Professional Studies and CPA Academy the IRS Large Business and International Division (“LB&I Division”) commissioner, Douglas O’Donnell, announced that between July 15 and September the IRS will start the audit of several hundred high-income individuals and one or more related entities, typically one or more pass-throughs. This new effort appears to be an operational start of the IRS “global high wealth operation” or “GHW” which is described in a new segment of the Internal Revenue Service Manual (4.52.1. dated 12-26-2019) as:

“GHW was formed to take a holistic approach in addressing the high wealth taxpayer population; to look at the complete financial picture of high wealth individuals and the enterprises they control or have a large ownership (“Enterprise”). A GHW enterprise case consists of a key case, generally an individual income tax return, and related income tax returns where the individual has a controlling interest and significant compliance risk is deemed to exist. Controlling interest can include significant ownership of or significant influence over an entity or multiple entities within the enterprise. The enterprise case may include interests in partnerships, trusts, subchapter S corporations, C corporations, private foundations, gifts, and the like. GHW personnel work with other personnel from other business operating divisions within the IRS to address noncompliance across the entire enterprise. GHW consists of two functions, Workload Services (WLS) and the field examination groups.”

Careful and Coordinated Taxpayer Response is Needed.

The Internal Revenue Manual does not require the taxpayer to be informed that he or she is the subject of a GHW audit. The coordinated action by the IRS requires a coordinated response by the taxpayer and his or her advisors and the advisors of the related partnerships, trusts, corporations, and foundations. This is a new development by the IRS and, from the outset of the first audit, requires a carefully coordinated response to the examining agents. There will also be growing pains and new start-up difficulties on the IRS side that will undoubtedly make the audit harder on the people dealing with the IRS for the taxpayer and related entities.

More Details on the GHW Program.

The GHW program is under the Pass-Through Entities Practice Area in LB&I. The IRS has used data analytics and computations to determine the examination potential of the Enterprises controlled by high-wealth individual taxpayers. The returns with the highest risk indicators are further risk assessed and individual taxpayers and their related entities are selected for audit. This new program will undoubtedly have start-up and growing pains as the IRS divisions have traditionally operated independently and audited specific aspects. Supposedly before the audit begins a GHW manager will have identified a group of returns of the various trusts, partnerships, etc. that will be worked together as a single case from the IRS side of the table. Under the GHW audit, the identified trusts (which are traditionally handled by the Small Business/Self Employed Division), partnerships and tiered partnerships (traditionally under LB&I’s jurisdiction),

retirement plans and private foundations (traditionally under Tax-Exempt and Government Entities Division's jurisdiction) will all be examined in a coordinated manner with identified issues being rolled up inside the IRS to a GHW manager. The examining agents will have access to a GHW Toolkit which will have audit guides, sample information document requests ("IDRs"), instructions and training materials for use in the audit. More importantly IRS experts and counsel for the various areas will be coordinating and reviewing/directing the activity and reviewing the responses across the board.

Once an Enterprise case is assigned, the IRS will create an electronic virtual case team folder on a secure shared drive for case building, examination work papers, and examination-related materials. One or more of the following forms may be included (i) individual tax return; (ii) partnership income tax return; (iii) corporate tax return; (iv) S corporation tax return; (v) estate and trust income tax returns, (vi) return of organization exempt from tax; (vii) private foundation returns; (viii) exempt organization business income tax returns (ix) estate and generation-skipping transfer tax returns; and (x) gift (and generation-skipping transfer) tax returns.

The responses to IDRs will be scanned as PDF files that are text searchable and placed within the electronic virtual case team folder, normally within five business days from receipt by the GHW manager. This shared drive permits the GHW examiners, managers, examination technicians, field specialists, technical specialists and counsel to share information and documentation. The examining agents that the individual and each entity is dealing with are not necessarily the ones doing the evaluation and making recommendations. Even after the audit

is complete, these files will be retained for 15 years.

While there will be an individual LB&I case examination plan that may be separately shared with the taxpayer and the related entities, there will also be an Enterprise Plan document that is for official use only ("OUO") and is NOT shared with the taxpayer. This Enterprise Plan is a compilation of the examination of an individual taxpayer and the related entities comprising the individual taxpayer's financial Enterprise. The manual states:

"The Enterprise Plan is an internal document, which consolidates all these separate return examination plans into one examination plan from an issue driven and resource perspective. It is constructed as an Excel document that provides a roll-up of each examined return within the Enterprise and includes summaries of issues, time, and examiners assigned for each return being examined. This document is for OUO purposes and is not to be disclosed or shared outside the IRS." (emphasis added)

Taxpayer Action

The news is not simply that the IRS is going to audit large numbers of high net worth individuals, but the manner in which the audit will be conducted. Often the individual, trust and business entities have different counsel and at times different tax advisors. Even if the same tax advisors are used, different people within a firm may be involved with the different entities or aspects. Do the individuals in the various specialties talk and coordinate with each other in real time? A high net worth individual should be aware of this new audit direction and should be sure that his or her tax advisors are coordinated and reviewing the questions and responses to the IRS together. The IRS may well not inform the taxpayer or the entities in the Enterprise that

a GHW audit is underway. Since the IRS will have counsel resources involved with access to the electronic virtual case team folder, the key individual taxpayer should consider having an experienced tax attorney on his or her team from the outset. If the IRS is able to successfully implement this program, the response to one IDR can and will be used against the others in the Enterprise. Even an appropriate response in one area, if not articulated correctly, can create a misinterpretation in other places and cause serious problems elsewhere. In this niche, the IRS is coming out of its silos. High net worth taxpayers, their related entities and their advisors should do the same.



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