



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

4.32.3

MARCH 9, 2023

EFFECTIVE DATE

(03-09-2023)

PURPOSE

- (1) This transmits revised IRM 4.32.3, Abusive Transactions, Coordination and Roles of Cross-Functional Units.

MATERIAL CHANGES

- (1) IRM 4.32.3.8.1.3: Updated current referral process for Tax Exempt Entities to TE/GE.
- (2) Throughout the IRM section, the following language was changed:

References to:	were replaced with:
Manual Transmittal	Changed approving office from Exam Case Selection to the Office of Promoter Investigations.
IRM 4.32.3.1	Update Policy and Program owner of IRM from Exam Case Selection to the Office of Promoter Investigations, (OPI)
IRM 4.32.3.1	Removed mention of Headquarters Examination who no longer has responsibility for the Abusive Transaction Program
IRM 4.32.3.1.3	Update responsibilities from the Director, Exam Case Selection to the Director, Office of Promoter Investigations, (OPI).
IRM 4.32.3.1.3	Update LDC Program Manager now reports to the Director of OPI.
Define Acronyms/Terms	Define and updates
IRM 4.32.3.3.1	Campus (Ogden) - delete section (1) process is no longer done in Ogden with regards to the participant list. Process is now completed at the local PSP or ATSU.
IRM 4.32.3.5.1.1.1; IRM 4.32.3.5.2 and IRM 4.32.3.5.3.1.1	Updated the delegation authority.

References to:	were replaced with:
IRM 4.32.3.5.1.1.1	Deleted subsection -Servicewide Compliance Strategy (SCS) Executive Steering Committee (ESC), which is no longer in operation.
IRM 4.32.3.5.1.1.2	Emerging Issues updated, Emerging Issues is now directing all users to IRM 4.34.1 SB/SE Emerging Issue Process, for guidance.
IRM 4.32.3.5.2	Update, removed reference to the Servicewide Compliance Strategy (SCS) Executive Steering Committee (ESC), which is no longer in operation.
IRM 4.32.3.5.2.1	Update section
IRM 4.32.3.5.2.1.1	Delete Section -"Servicewide Compliance Strategy Executive Steering Committee." no longer exist
IRM 4.32.3.5.2.1.2	OTSA updates and delete IRM 4.32.3.5.2.1.2 (2) & (3).
IRM 4.32.3.5.2.1.3	Update section, remove "LB&I Tax Shelter Steering Committee" it no longer exist. Campaigns replaces Executive Issue Owners.
IRM 4.32.3.5.2.1.4	Update section no longer called technical advisors, now named subject matter experts, (SMEs)
IRM 4.32.3.5.2.3.1	Update to include LB&I Technical Tax Shelter Promoter Committee (TTSPC).
IRM 4.32.3.5.2.3.4	LB&I and LB&I Division Counsel updates to include TTSPC in their Summonses review process.
IRM 4.32.3.5.3.1.1	Deleted - Servicewide Compliance Strategy (SCS) Executive Steering Committee (ESC), which is no longer in operation.

References to:	were replaced with:
IRM 4.32.3.5.3.1.2	TE/GE Servicewide Support - Removed content relative to SB/SE Emerging Issues. This content is now in IRM 4.34.1 SB/SE Emerging Issue Process, for guidance.
IRM 4.32.3.6.1	Updates - change to SB/SE LDC and OTSA to SB/SE LDC and LB&I promoter specialist team.
IRM 4.32.3.8.1.2	Organizational Point of Contacts -Update names

- (3) Minor editorial changes have been made throughout this IRM. Website addresses, legal references, and IRM references were reviewed and updated as necessary.
- (4) All reference to ATAT Investigations has been updated to Abusive Transactions Investigations, (ATI) and Office of ATAT to Office of Promoter Investigations, (OPI).

EFFECT ON OTHER DOCUMENTS

IRM 4.32.3, dated 01-29-2021, is superseded.

AUDIENCE

Small Business and Self-Employed (SB/SE) Examination area office employees, Tax Exempt and Government Entities (TE/GE) employees, W&I, and Large Business and International (LB&I) employees.

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SE:S:DCE:OPI Small Business/Self-Employed Division

4.32.3

Coordination and Roles of Cross-Functional Units

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4.32.3.1
(03-09-2023)
Program Scope and Objectives

- (1) **Purpose-** This IRM contains explanations of assistance other business operating divisions will provide in the development of an Abusive Transaction (AT) investigation.
- (2) **Audience-** This section provides guidance for Small Business and Self-Employed (SB/SE) Examination area office employees, Tax Exempt and Government Entities (TE/GE) employees, and Large Business and International (LB&I) employees.
- (3) **Policy Owner-** The Director, Office of Promoter Investigations (OPI) which is under the Commissioner, Small Business Self-Employed Division Examination.
- (4) **Program Owner-**The Lead Development Center within the Office of Promoter Investigations.
- (5) **Primary Stakeholders-** This IRM section may also be helpful to employees in Appeals, Campus Frivolous Return Program (FRP), Collection, Counsel, Criminal Investigation (CI), and Technical Services.

4.32.3.1.1
(08-28-2019)
Background

- (1) This IRM provides assistance to employees who are investigating tax transactions or tax promotions that are abusive or potentially abusive in nature. It serves to promote communication and coordination between the business units.

4.32.3.1.2
(08-28-2019)
Authority

- (1) SB/SE Delegation Order 1.23.50, Functions related to Potential Promoter/Tax Shelter Cases, delegates authority to approve and refer all SB/SE AT investigations to the SB/SE LDC Program Manager.

4.32.3.1.3
(03-09-2023)
Responsibilities

- (1) The Director, Office of Promoter Investigations is the executive responsible for the authorized SB/SE AT investigations.
- (2) The LDC Program Manager reports to the Director, Office of Promoter Investigations, and is responsible for authorizing all AT investigations for SB/SE & TE/GE.
- (3) The LB&I Technical Tax Shelter Promoter Committee (TTSPC) approves all LB&I promoter and material advisor investigations.
- (4) The SB/SE investigations are conducted by specially trained Revenue Agents under the supervision of an SB/SE ATI Field Exam Group Manager.

4.32.3.1.4
(08-28-2019)
Program Management and Review

- (1) **Program Reports** Monthly reports, such as the LDC Inventory report and the Field Work in Process (WIP) report detail the current inventory of authorized investigations by Area, their status, and results for the current and past fiscal years are produced and provided to Examination Headquarters staff, Area Directors, TE/GE personnel and select others for monitoring purposes.
- (2) Ad-hoc reports are produced as requested by Exam personnel with appropriate permission.

4.32.3.1.5
(03-09-2023)
Terms/Definitions/ Acronyms

- (1) The various business operating units and divisions within those units that participate in the Abusive Transaction program identify their program with slightly different names. The list below indicates how each identifies their program:

- Small Business/Self Employed (SBSE) Abusive Transactions Investigations (ATI)
- Collection Abusive Tax Avoidance Transactions (ATAT)
- SB/SE Division Counsel (ATAT)
- Tax Exempt and Government Entities (TEGE) Division Counsel (AT)
- Tax Exempt and Government Entities (TE/GE) (AT)

(2) The table below defines the acronyms and terms found in this IRM.

Defined Acronyms/Terms

Acronym/Term	Definition
Abusive Transactions (AT)	The organization or sale of any plan or arrangement promoting false or fraudulent tax statements or gross valuation misstatements, aiding or assisting in the preparation or presentation of a return or other document to obtain tax benefits not allowed by law, and actions to impede the proper administration of the Internal Revenue Code (IRC).
ACI	Appeals Coordinated Issue
Appeals	Office of Appeals
ADR	Alternative Dispute Resolution
ARI	Alternative Resolution Implementation
ASG	Appeals Settlement Guideline
ASP	Appeals Settlement Position
ATAT	Abusive Tax Avoidance Transactions
ATI	Abusive Transaction Investigations
ATSU	Abusive Transaction Support Unit
Authorized	A lead or referral resulted in the SB/BE Program Manager or the LB&I TTSPC authorizing the investigations.
CI	Criminal Investigations
CIP	Coordinated Issue Paper
CIMIS	Criminal Investigation Management Information System
Client	A person who pays money to a promoter or preparer for their services or promotional material.

Acronym/Term	Definition
CSC	Compliance Strategy Council
DOJ	Department of Justice
EIN	Employer Identification Number
Examiner	IRS employee assigned to conduct the investigation.
FRP	Frivolous Return Program
FTA	Fraud Technical Advisor
FTS	Fast Track Settlement
IDR	Information Document Request
IMT	Issue Management Team
Investigation	The actions taken to determine if the allegations in the lead or referral are accurate.
LB&I	Large Business and International
LBI TTSPC	Large Business and International Technical Tax Shelter Promoter Committee
LDC	Lead Development Center
LDC WS	Lead Development Center Workload Selection
LDC ATSU	Lead Development Center Abusive Transaction Support Unit
Lead/Referral	Information submitted to the SB/SE LDC or OTSA regarding potentially abusive activity.
OPI	Office of Promoter Investigations
OPR	Office of Professional Responsibility
OTSA	Office of Tax Shelter Analysis
PSP	Planning and Special Programs
SAC	Special Agent in Charge
TE/GE	Tax Exempt and Government Entities
TE/GE CP&C	Tax Exempt and Government Entities Compliance, Planning and Classification
TEGEDC	Tax Exempt and Government Entities Division Counsel

Acronym/Term	Definition
TRO	Temporary Restraining Order
TTSPC	Technical Tax Shelter Promoter Committee

4.32.3.1.6
(08-28-2019)

Related Resources

- (1) IRM 4.32.2, The Abusive Transaction Process, is a primary guidance for the AT program.

4.32.3.2
(01-29-2021)

Appeals

- (1) The Office of Appeals has authority to consider and negotiate tax and penalty settlements as outlined in:
 - Delegation Order 8-8 (formerly DO-66, Rev. 15). See IRM 1.2.2.9.8, Delegation Order 8-8.
 - Policy Statement P-8-47, Consideration to be Given to Offers of Settlement. See IRM 1.2.1.9.6, Consideration to be Given to Offers of Settlement.
- (2) See IRM Part 8, Appeals, for a description of Appeals' mission, jurisdiction, and program.

4.32.3.2.1
(06-07-2012)

Appeals Role

- (1) Appeals provides an independent assessment of litigating hazards related to abusive tax avoidance transactions (ATAT).
- (2) This role is accomplished by using traditional appeals hearings and alternative dispute resolution (ADR) tools.

4.32.3.2.2
(08-28-2019)

Appeals Issue Coordination

- (1) Appeals coordinates AT issues where there is an approved Coordinated Issue Paper (CIP), otherwise known as a Compliance Coordinated Issue. Appeals also independently coordinates issues that have wide impact or importance, otherwise known as an Appeals Coordinated Issue (ACI). Appeals develops settlement guidelines for each CIP or ACI.
- (2) Once there is an approved CIP or ACI, the Appeals Technical Guidance Coordinator generally has review and concurrence authority for all settlements of the issue. See IRM 8.7.3, Technical Guidance and International Programs, for additional information.
- (3) Appeals also identifies emerging issues that are not officially coordinated within Compliance. This determination is based on the need to address some of the key aspects of an issue with appeals officers, assist them in the early stages of consideration of an issue, and promote consistency in the treatment of the issue in Appeals. In these cases, the Appeals Technical Guidance Coordinator serves as an information resource.

4.32.3.2.3
(01-29-2021)

Alternative Dispute Resolution Tools

- (1) Appeals has additional tools available for moving cases through the system: Fast Track Settlement and Servicewide Delegation Order 4-25. See IRM 1.2.2.5.21, Delegation Order 4-25 (Rev. 2).

- (2) SB/SE Fast Track Settlement program (SB/SE FTS) provides an expedited format for resolving disputes with SB/SE Taxpayers. See Rev. Proc. 2017-25, SB/SE Fast Track Settlement Program, SB/SE FTS can be used to resolve both factual and legal issues and may be initiated at any time after the issue is fully developed. Refer to IRM 4.10.7.5.5, SB/SE Fast Track Settlement for additional information.
- (3) Announcement 2012-34 provides an opportunity for entities with issues under examination by the Tax Exempt and Government Entities Division (TE/GE) to use Fast Track Settlement (FTS) to expedite case resolution.
- (4) Fast Track Settlement (FTS), described in Rev. Proc. 2003-40, LB&I Appeals Fast Track Settlement Procedure, is a broader process that can be elected by taxpayers. FTS is a collaborative alternative dispute resolution process that uses mediation techniques to focus on issues and lead the parties to earlier resolution of the dispute. FTS takes place while the case is in Compliance jurisdiction and is designed to be completed in approximately 120 calendar days. Refer to IRM 4.51.4, LB&I Appeals Fast Track Settlement Program (FTS), for further information on the FTS process.
- (5) Under Servicewide Delegation Order 4-25 Rev. 2, IRM 1.2.2.5.21 (1 - 13), Settlement Offers, Closing Agreements, and Settlement Agreements under Section 6224(c) in Cases with Technical Advisor (TA) Program Issues and Appeals Technical Guidance Program (Compliance Coordinated and Appeals Coordinated) Issues, LB&I team managers and SB/SE territory managers offer a settlement using an approved Appeals Settlement Guideline (ASG). The manager must get the review and concurrence of both the Appeals Technical Services Coordinator and the SB/SE program analyst or LB&I technical advisor for the specified industry or issue before finalizing a settlement with a taxpayer.
- (6) Under Servicewide Delegation Order 4-25, Rev. 2 IRM 1.2.2.5.21 (14- 26), Settlement Offers, Closing Agreements, and Settlement Agreements under Section 6224(c) in Cases with Technical Advisor (TA) Program Issues and Appeals Technical Guidance Program (Compliance Coordinated and Appeals Coordinated) Issues, technical advisors and managers may offer a settlement using an approved ASG, without need for concurrence of the Technical Services Coordinator, for specific coordinated issues designated by the Chief Appeals.

4.32.3.2.3.1 (08-28-2019)

Appeals Interaction with Abusive Transaction Issues

- (1) Appeals interaction includes:
 - Tax administration within Appeals;
 - Providing direction to appeals officers as quickly as possible about potentially significant or strategically important issues;
 - Identifying inventory that may be forthcoming in Appeals;
 - Listening to factual and legal presentations, making inquiries to facilitate understanding or clarification of facts surrounding a particular issue, and reviewing redacted or non-case specific forms, pro-forma revenue agent reports, and coordinated issue papers;
 - Issuing an Appeals Settlement Guideline (ASG) or determining an Appeals Settlement Position (ASP) where the issue is not well defined by Compliance and Counsel has not addressed the legal aspects of the issue(s) raised by Compliance;
 - Evaluating and resolving issues on a case-by-case basis where no uniform settlement position has been identified and approved;

- Obtaining information from outside stakeholders via taxpayer protests, alternative dispute resolution programs (see IRM 4.32.3.2.3, Alternative Dispute Resolution Tools), hosting external stakeholder meetings, soliciting information directly from external stakeholders, and adopting other approaches as deemed necessary.
- Providing information about Appeals, alternative dispute resolutions, Delegation Order 4-25 and taxpayers' appeal rights, as explained in Pub 5, Your Appeal Rights and How To Prepare a Protest If You Don't Agree, and Pub 4227, Overview of the Appeals Process Brochure; and
- Assisting in writing settlements and/or resolutions that are simple to administer, as well as easily understood by Compliance, Appeals and taxpayers.

4.32.3.3
(03-09-2023)
Campus (Ogden)

- (1) The Campus Frivolous Return Program (FRP) also coordinates with ATI. The FRP identifies individuals or promoters preparing or promoting frivolous returns, claims or documents and educates them on their tax responsibilities.
- (2) All frivolous documents received in the Campuses are processed at the Ogden Compliance Services Campus.
- (3) The program participates in coordinating new system identification of frivolous filings whenever possible and makes referrals to affected stakeholders such as Office of Professional Responsibility (OPR), CI, SB/SE LDC, OTSA and Communications and Government Liaison.
- (4) For additional information regarding the FRP, see IRM 4.32.2.5, Frivolous Return Program (FRP).

4.32.3.4
(08-28-2019)
Collection

- (1) Collection's early involvement is an important and necessary step in working ATI cases to ensure all issues are addressed.
- (2) SB/SE should coordinate with the Area ATAT Collection Coordinator at the start of a promoter or preparer investigation. A list of Collection ATAT Coordinators can be found on the Knowledge Management Library, *ATAT Collection Coordinator Contacts by State*.
- (3) Area Collection Coordinators will in turn determine if an ATAT revenue officer should be assigned to assist in the investigation. If deemed beneficial to the investigation, the ATAT Collection Coordinator will assign the case to a revenue officer.
- (4) LB&I Team Managers assigned to promoter investigations also should coordinate with the Area ATAT Collection Coordinator whenever the collectibility of a potential penalty is in question or assistance from Collection would be beneficial.
- (5) SB/SE and LB&I should contact the ATAT Collection Coordinator and request that a revenue officer be assigned to assist in the investigation when the following circumstances are present:
 - The subject has existing balance due liabilities.
 - The examiner is having difficulty locating the subject and requests assistance.

- The examiner has knowledge the subject is liquidating assets or otherwise attempting to place them beyond the reach of the government.
- (6) If a revenue officer is assigned to assist in the investigation, the SB/SE or LB&I examiner is responsible for arranging a meeting with Collection to be held within two weeks of case assignment. The purpose of these meetings is to exchange information between Examination or LB&I and Collection and to formulate an investigation strategy. The attendees generally include the examiner, the revenue officer, their respective managers, Counsel and, if possible, the Area ATAT Collection Coordinator. The revenue officer should be prepared to identify any outstanding assessments against the subject, and the examiner should be prepared to provide information available in the investigation case file.
 - (7) If it is determined the Service's ability to collect is jeopardized by the subject moving assets outside the reach of the Service, the examiner is responsible for any jeopardy assessment actions. The revenue officer is responsible for any required jeopardy levy actions. The examiner and revenue officer should coordinate their respective actions.
 - (8) When the examiner has completed the investigation and is considering asserting penalties under IRC 6700 or IRC 6701, the examiner should notify the local Collection ATAT Coordinator, who, in most cases, will assign a revenue officer if one has not already been assigned.
 - (9) Current collectibility should not be a consideration when determining whether to assert a penalty under IRC 6700 or IRC 6701. There may be rare situations when it is appropriate to consider collectibility, such as when the subject is deceased and there are no assets in the subject's estate. Unless such a rare situation exists, the penalty should be assessed regardless of current collectibility.
 - (10) Refer to IRM 5.20.8, Promoter/Preparer Investigations, for more information on Collection ATI casework.

4.32.3.5
(06-07-2012)
Counsel

- (1) This section provides information on Counsel's role in the ATAT process.

4.32.3.5.1
(08-28-2019)
SB/SE Division Counsel

- (1) SB/SE Division Counsel provides legal support and guidance during each step of a promoter or preparer investigation.

4.32.3.5.1.1
(06-07-2012)
Servicewide Support

- (1) SB/SE Area and Division Counsel are integral partners in the Service's efforts to combat abusive tax avoidance transactions. SB/SE Counsel coordinates with the Department of Justice (DOJ) and all operating divisions, counsel divisions and Associate Chief Counsel offices. SB/SE Counsel provides coordination and guidance on the early identification of abusive tax avoidance transactions, including formulation of policy and legal positions and continues its support throughout the ATI process.

- 4.32.3.5.1.1.1
(03-09-2023)
Emerging Issues
- (1) SB/SE Division Counsel receives information on emerging issues and provides early leadership and guidance regarding ATI issues. For more information on the Emerging Issues Process, see IRM 4.34.1 SB/SE Emerging Issues Process.
- 4.32.3.5.1.2
(08-28-2019)
SB/SE Lead Development Center (LDC)
- (1) SB/SE Division Counsel provides program advice to the SB/SE LDC on promoter and preparer investigations (authorizations, processing, closing, and contempt). SB/SE Counsel also assists in SB/SE training programs and interactive video teletrainings (IVTs).
- 4.32.3.5.1.3
(08-28-2019)
Promoter/Preparer Investigations
- (1) SB/SE Counsel attorneys provide legal support and guidance to the Service's promoter and preparer investigations, including first amendment issues. Counsel assists the Service as necessary in every aspect of its AT investigations. Examiners, revenue officers, and other support functions should not hesitate to call on SB/SE Counsel for advice.
- 4.32.3.5.1.3.1
(06-07-2012)
Initiation of Investigation
- (1) SB/SE Area Counsel attorneys and managers provide input and guidance during six-way conferences and examination/collection meetings.
- 4.32.3.5.1.3.2
(08-28-2019)
Promoter and Preparer Meetings
- (1) SB/SE Area Counsel attorneys generally review and provide assistance in preparing information document requests (IDRs), summonses, and interview questions.
- (2) SB/SE Area Counsel attorneys are available to attend initial meetings with promoters or preparers, to answer questions, and to assist examiners in interviewing promoters or preparers.
- 4.32.3.5.1.3.3
(08-28-2019)
Summonses
- (1) SB/SE Area Counsel attorneys review and refer all summonses related to promoter and preparer investigations directly to Department of Justice (DOJ) Civil Trial Section, Central Region for summons enforcement. This directive does not change any of the general rules regarding level of review or required coordination within Chief Counsel, e.g., cases involving first amendment issues.
- 4.32.3.5.1.3.4
(06-07-2012)
Ongoing Investigation
- (1) SB/SE Area Counsel attorneys are an integral part of the Service's team and are available to provide assistance during each ATAT investigation.
- 4.32.3.5.1.3.5
(06-07-2012)
Injunction Referral to Counsel
- (1) SB/SE Area Counsel attorneys assist examiners in determining whether there is sufficient evidence to refer a case to DOJ for an injunction
- 4.32.3.5.1.3.6
(08-28-2019)
Injunction Referrals to DOJ
- (1) Once a promoter or preparer case is referred to SB/SE Area Counsel, the assigned attorney analyzes the evidence to determine if is sufficient to warrant an injunction. If the evidence is deemed sufficient, the Area Counsel attorney prepares an injunction suit letter and refers the case directly to DOJ, Civil Trial Section, Central Region.

- (2) Counsel, designated as the referral authority pursuant to IRC 7401, authorizes DOJ through the injunction suit letter to file a complaint for injunctive relief against the promoter or preparer under one or more of the following code sections:
 - IRC 7402
 - IRC 7407
 - IRC 7408
- (3) SB/SE Area Counsel provides a copy of all injunction suit letters to the SB/SE LDC Senior Program Analyst, assigned Revenue Agent, and Group Manager.
- (4) If the scheme involves a significant issue requiring Associate Chief Counsel office review, it is deemed a coordinated referral case. SB/SE Area Counsel attorneys must coordinate technical legal positions in these cases with the SB/SE Special Counsel, ATAT, and the appropriate Associate Chief Counsel Office as early as possible. Counsel must follow existing Chief Counsel coordination procedures before referring these cases to DOJ.

4.32.3.5.1.3.7
(06-07-2012)

Post Referral

- (1) SB/SE Area Counsel continues to assist examiners and DOJ throughout the litigation process.

4.32.3.5.1.4
(08-28-2019)

Penalties

- (1) SB/SE Area Counsel provides advice regarding promoter and preparer penalty assessments.

4.32.3.5.1.5
(08-28-2019)

Examination of ATI Clients

- (1) SB/SE Counsel is available to provide support for ATI client examinations, such as:
 - Summons language and enforcement
 - Taxpayer meetings and interviews
 - Statutory Notice of Deficiency language
 - Designating cases for litigation

4.32.3.5.1.6
(06-07-2012)

Litigation

- (1) SB/SE Area Counsel defends the Service's positions and facilitates its goals through litigation and other alternatives.

4.32.3.5.1.7
(08-28-2019)

Collection of Assessments

- (1) SB/SE Division and Area Counsel provide guidance on the collection of assessments, liens, levies, other collection avenues, and program management.
- (2) See IRM 4.32.3.4, Collection, and IRM 5.20, Abusive Tax Avoidance Transactions (ATAT), for further information on the role of Collection in the ATI process.

4.32.3.5.1.8
(08-28-2019)

Bankruptcy

- (1) The United States Attorney's Office represent the United States in Bankruptcy Court to protect the Service's claims and interests regarding ATAT penalties and unpaid taxes arising from participation in abusive tax avoidance transactions.

- 4.32.3.5.2
(03-09-2023)
LB&I Division Counsel
- (1) LB&I Division Counsel helps to coordinate Servicewide response to abusive tax avoidance transactions and promotions.
- 4.32.3.5.2.1
(06-07-2012)
LB&I Oversight
- (1) LB&I Division Counsel has involvement in the following functions.
- 4.32.3.5.2.1.1
(08-28-2019)
Office of Tax Shelter Analysis (OTSA)
- (1) LB&I Division Counsel provides program advice to OTSA on legal issues associated with OTSA's responsibilities.
- 4.32.3.5.2.1.2
(08-28-2019)
Campaigns
- (1) Certain campaigns involve abusive transactions and LB&I Counsel can be assigned to assist. See IRM 4.50.1 for campaigns.
- 4.32.3.5.2.1.3
(03-09-2023)
Assistance to Audit Teams and Coordination
- (1) LB&I Counsel attorneys are available to provide legal support and guidance to audit teams during each step of a promoter investigation and/or a client examination. They may also coordinate with LB&I subject matter experts (SMEs), LB&I campaign teams, LB&I promoter teams, OTSA, and other Counsel divisions and Associate offices, as appropriate.
- 4.32.3.5.2.2
(06-07-2012)
Coordination with the Department of Justice (DOJ)
- (1) LB&I Division Counsel confers with the DOJ on a regular basis to coordinate the litigation of ATI cases and provides cohesive processes in promoter cases.
- (2) LB&I Division Counsel attorneys serve on DOJ trial teams for selected ATI cases.
- (3) LB&I Division Counsel coordinates with DOJ on a continuing basis regarding the issuance and enforcement of promoter summonses.
- 4.32.3.5.2.3
(06-07-2012)
Promoter Investigations
- (1) This section provides information on LB&I Counsel's role in LB&I promoter investigations.
- 4.32.3.5.2.3.1
(06-07-2012)
LB&I Technical Tax Shelter Promoter Committee (TTSPC)
- (1) An Area Counsel and the Special Counsel designated by LB&I Division Counsel are members of the LB&I TTSPC and is authorized to approve all LB&I tax shelter promoter contacts and investigations. PTE Director is the chairperson of the LB&I TTSPC.
- 4.32.3.5.2.3.2
(06-07-2012)
Initiation of Approved Promoter Investigations
- (1) Once the LB&I TTSPC has approved a promoter investigation, LB&I Area Counsel assigns an attorney to provide legal assistance to the examiner conducting the investigation.
- 4.32.3.5.2.3.3
(08-28-2019)
Promoter Meeting
- (1) Information Document Request (IDR) Assistance - Area Counsel attorneys work with examiners to obtain any necessary documentation from promoters, including assisting in the drafting of language for IDRs.
- (2) Assigned attorneys assist examiners in conducting interviews of promoters, clients, and third parties. Interviews may or may not be conducted pursuant to

summons. Servicewide Delegation Order 25-1, Summons, Oaths, Certifications and Related Functions, authorizes LB&I Counsel attorneys to take testimony from a summoned witness.

- (3) During promoter investigations, the assigned attorney, team manager, and examiner may meet with the promoter to discuss the status of the investigation and give the promoter an opportunity to provide documents requested or to present arguments about why a penalty or other actions should not be imposed.

4.32.3.5.2.3.4
(06-07-2012)
Summonses

- (1) Area Counsel attorneys assist examiners in preparing and issuing administrative summonses, including dual purpose, third-party, and "John Doe" summonses to promoters.
- (2) All summonses in promoter cases must be pre-reviewed by LB&I Area Counsel, the LB&I Area Counsel assigned to the TTSPC, LB&I Division Counsel and then sent to DOJ for pre-issuance review.
- (3) Area Counsel attorneys must coordinate technical legal positions in these cases with the LB&I Division Counsel and the appropriate Associate Chief Counsel Office as early as possible. All existing Chief Counsel coordination procedures must be followed before referring the case to DOJ, and a copy of the injunction suit letter should be sent to the TTSPC.
- (4) See IRM 25.5, Summons, for additional information on summonses.

4.32.3.5.2.3.5
(06-07-2012)
**Penalty/Injunction
Determination**

- (1) Area Counsel attorneys assist examiners in determining if penalties or injunctive relief are applicable to a promoter. If the evidence is deemed sufficient, the attorney prepares an injunction suit letter for referral of the case to DOJ, Civil Trial Section, Central Region.
- (2) Counsel, designated as the referral authority pursuant to IRC 7401, authorizes DOJ through the injunction suit letter to file a complaint for injunctive relief against the promoter under one or more of the following code sections:
 - IRC 7402
 - IRC 7407
 - IRC 7408
- (3) Area Counsel attorneys must coordinate technical legal positions in these cases with the LB&I Division Counsel and the appropriate Associate Chief Counsel Office as early as possible. All existing Chief Counsel coordination procedures must be followed before referring the case to DOJ, and a copy of the injunction suit letter should be sent to the TTSPC.

4.32.3.5.2.3.6
(06-07-2012)
**Referral to Criminal
Investigation (CI) / Office
of Professional
Responsibility (OPR)**

- (1) Area Counsel attorneys assist examiners in determining whether a referral to CI and/or the OPR is warranted.

- 4.32.3.5.2.3.7
(06-07-2012)
Final Memorandum
- (1) Area Counsel attorneys assist examiners in preparing a final memorandum to the LB&I Director of Field Operations recommending action to be taken against the promoter.
- 4.32.3.5.3
(08-28-2019)
TEGE Division Counsel
- (1) TEGE Division Counsel (TEGEDC) provides legal support and guidance throughout each step of promoter or preparer investigations and client examination cases that involve either TE/GE Operating Division taxpayers or issues. See IRM 4.70, TE/GE Examinations, for additional TE/GE procedures.
- 4.32.3.5.3.1
(08-28-2019)
Servicewide Support
- (1) TEGEDC is an integral partner in the Service's effort to combat ATs. TEGEDC coordinates with the Department of Justice (DOJ) and all operating divisions, counsel divisions and Associate Counsel offices. TEGEDC and Employee Benefits, Exempt Organizations and Employment Tax Associate Chief Counsel provides coordination and guidance on the early identification of technical shelters, including formulation of policy and legal positions, and continues support throughout the AT process.
- 4.32.3.5.3.2
(08-28-2019)
Promoter/Preparer Investigations
- (1) TEGEDC attorneys provide legal support and guidance to the Service's preparer and promoter investigations, regardless of which Operating Division is conducting the investigation, whenever the investigation involves either TE/GE Operating Division taxpayers or issues. TEGEDC assists the Service as necessary in every aspect of its AT investigations. Examiners, revenue officers, and other support functions should not hesitate to call TEGEDC for advice.
- 4.32.3.5.3.3
(08-28-2019)
Penalties
- (1) TEGEDC provides advice regarding promoter, preparer, and client penalty assessments.
- 4.32.3.5.3.4
(08-28-2019)
Examination of ATI Clients
- (1) TEGEDC is available to provide support with ATI client examinations, such as:
- Summons language and enforcement
 - Taxpayer meetings
 - Statutory Notice of Deficiency language
 - Designating cases for litigation
- 4.32.3.5.3.5
(08-28-2019)
Litigation
- (1) TEGEDC defends the Service's positions and facilitates its goals through litigation and alternatives to litigation.
- 4.32.3.6
(08-28-2019)
Criminal Investigations (CI)
- (1) This section describes roles that the CI Operating Division plays in the AT process.
- 4.32.3.6.1
(08-28-2019)
Notification to CI by the Civil Operating Divisions
- (1) The SB/SE LDC and LB&I promoter specialist team forward a recommendation memorandum summarizing their findings to the Abusive Schemes Analyst in the Financial Crime Section of CI Headquarters, and state their desire to open an investigation under IRC 6700, IRC 6701, IRC 6707, and/or IRC 6708.
- (2) See IRM 4.32.2.4, Lead Identification and Investigation Authorization, for further information.

4.32.3.6.2

(08-28-2019)

**Role of the Designated
CI Headquarters Section**

- (1) The Abusive Schemes Analyst in the Financial Crime Section of CI Headquarters is responsible for coordination with SB/SE and LB&I.
- (2) When the Abusive Schemes Analyst in the Financial Crime Section of CI Headquarters receives a memorandum from the SB/SE LDC or OTSA, Criminal Investigation Management Information System (CIMIS) research is conducted. The preliminary deconfliction process simply involves a search by name and taxpayer identification number, associate identity or DBA for any numbered CI investigation. If the CIMIS check fails to disclose any open investigations or associate identities, the CI Analyst sends a notification e-mail to SB/SE LDC/OTSA advising that there is no conflict in proceeding with a civil investigation under IRC 6700, IRC 6701, IRC 6707, or IRC 6708.
- (3) If the CI's CIMIS check reveals an open investigation or associate identity, a notification e-mail is forwarded to the Special Agent in Charge (SAC) of the respective Field Office requesting a determination whether there is a "conflict" or "no conflict" between the proposed civil action and the criminal investigation. A "conflict" determination means that a civil investigation would greatly harm the ongoing criminal investigation. A "no conflict" determination means that pursuing a civil investigation (parallel investigation) would not harm the criminal investigation.
- (4) See the following IRM sections for further information on CI's involvement in the AT process:
 - a. IRM 4.32.2.4.5, Coordination with Criminal Investigation (CI)
 - b. IRM 4.32.2.7.3, Six-Way Conference
 - c. IRM 4.32.2.7, Parallel Investigations

4.32.3.6.3

(08-28-2019)

CI Field Office Actions

- (1) The SAC makes a conflict/no conflict determination within 10 days of receiving the CI HQ analyst e-mail and sends the determination to the SB/SE LDC or OTSA. See IRM 4.32.2.4.5, Coordination with Criminal Investigation (CI), for further information on CI's involvement in determining if a parallel investigation should be initiated.
- (2) If the Field Office opens a Primary Investigation (PI) after the IRC 6700, IRC 6701, IRC 6707, and IRC 6708 investigation has started, the Special Agent and immediate supervisor are responsible for scheduling and conducting a six-way conference. This conference assists CI in evaluating criminal potential and provides an opportunity to discuss conducting parallel civil and criminal investigations.
- (3) If a fraud referral has been developed with the assistance of a Fraud Technical Advisor (FTA) or by the referring Division, CI handles it as a regular fraud referral. See IRM 25.1.3, Criminal Referrals, for additional information.
- (4) See IRM 4.32.2.7.3, Six-Way Conference.

4.32.3.7

(06-07-2012)

**Referrals to the
Department of Justice
(DOJ)**

- (1) IRC 7401 authorizes the Secretary to make referrals to the Attorney General to bring civil suit.
- (2) All promoter and preparer injunction cases are referred to the DOJ Civil Trial Section, Central Region.
- (3) Attorneys in DOJ Tax Division bring injunctive actions in federal district court under one or more of the following code sections:

- IRC 7402, Jurisdiction of District Courts
- IRC 7407, Action to Enjoin Tax Return Preparers
- IRC 7408, Actions to Enjoin Specified Conduct Related to Tax Shelters and Reportable Transactions

- (4) A DOJ trial attorney from the Civil Trial Section generally makes all the court appearances and prepares the pleadings, motions, etc. In some cases the local US Attorney's Office, a branch of DOJ, makes court appearances on behalf of DOJ.

4.32.3.7.1
(08-28-2019)

Steps in an Injunction Case

- (1) The steps in an injunction case involves several actions that the DOJ trial attorney deems appropriate and necessary. These actions are determined by the DOJ trial attorney based on evidence that examiners have accumulated.
- a. The DOJ trial attorney may request that the examiner perform additional case development.
 - b. The initial action taken by DOJ is the filing of a complaint in the appropriate federal district court. The complaint contains a written narrative describing the conduct of the subject and the attributes of the promotion or transaction.
 - c. If the conduct of the subject is so egregious and the harm to the government is significant, damaging, and ongoing, DOJ may ask for an immediate halt to the subject's activities through a request for a temporary restraining order (TRO). TROs are only in effect for a short time, usually no more than 30 days.
 - d. If DOJ does not believe a TRO is warranted or it is not granted by the court, but determines that the subject's conduct should be stopped during the pending injunction suit, a motion for a preliminary injunction may be filed with the court. DOJ will determine the best time to file this motion, if one is necessary.
 - e. The court order for a preliminary injunction, orders the subject to immediately terminate the abusive activities in order to prevent continuing harm to the government. However, as the name implies, it is only preliminary.
- (2) If, after the subject has been enjoined by the court, the IRS learns that a subject has violated the terms of the injunction order, contempt proceedings may be instituted. Promoters and preparers are subject to either civil or criminal contempt charges based on the judgment of the DOJ attorney. Penalties for violating court orders include fines, imprisonment, or both.

4.32.3.7.2
(08-28-2019)

Requests by DOJ Trial Attorneys

- (1) The DOJ trial attorney assigned to the injunction case may continue to request other evidence, documents, testimony, and requests for other assistance from the IRS throughout the litigation process. These requests may include:
- a. Requests for IRS assistance in preparing declarations to be filed with the court. A declaration is a summary of the examiner's portion of the case and contains relevant information vital to obtaining an injunction against the subject. The declaration generally is drafted by the DOJ attorney assigned to the case.
 - b. Requests related to depositions. Examiners may be deposed under oath by subjects or their representatives once DOJ has filed the complaint. This happens in the discovery phase of the injunction process and may occur on more than one occasion. Examiners should never appear at a deposition without the presence and counsel of a DOJ trial attorney.

- c. Requests related to hearings. DOJ attorneys may request that examiners testify in court during court hearings. Examiner testimony usually occurs at hearings for requests for preliminary injunctions. Examiners prepare to testify with the assistance of attorneys from DOJ and the Office of Chief Counsel.

4.32.3.8
(08-28-2019)
**Tax Exempt and
Government Entities
(TE/GE)**

- (1) Compliance, Planning, and Classification (CP&C) is responsible for formulating a uniform and consistent approach to AT investigations involving TE/GE entities and TE/GE functions.
- (2) For additional information and points of contact related to abusive transactions contact the *TE/GE Fraud Specialist* through the links on TE/GE Fraud webpage of the Intranet.

4.32.3.8.1
(06-07-2012)
**Coordination of
Procedures between
TE/GE and SB/SE**

- (1) The purpose of this section is to outline the procedures for TE/GE and SB/SE regarding promoter investigations involving TE/GE taxpayers or issues. This section is intended to effectively provide support and efficiently allocate resources to ensure proper consideration, development and exchange of information on TE/GE-related promotions and promoters.

4.32.3.8.1.1
(08-28-2019)
**Identification of
Promoters and
Participants**

- (1) As TE/GE identifies potential promoter leads, it will submit referrals to the SB/SE LDC on Form 14242, Report Suspected Abusive Tax Promotions and Preparers.

4.32.3.8.1.2
(03-09-2023)
**Organizational Points of
Contact**

- (1) TE/GE will annually provide the names and contact information for the following personnel:
 - TE/GE CP&C Program Manager
 - TE/GE Fraud Specialist
 - TEGEDC
 - TE/GE Fraud, Promoter and AT Subject Matter Expert for Exempt Organizations (EO), Employee Plans (EP), Government Entities (GE) Indian Tribal Government (ITG) and Tax Exempt Bonds (TEB))
- (2) SB/SE will annually provide the names and contact information for the following personnel:
 - SB/SE OPI LDC Program Manager
 - SB/SE LDC Abusive Transaction Support Unit (ATSU) Group Manager
 - SB/SE LDC Workload Selection (LDC WS) Group Manager
 - SB/SE Headquarters AT Counsel
 - SB/SE ATI Senior Program Analysts, TE/GE Liaison
 - SB/SE AT Listkeeper

4.32.3.8.1.3
(01-29-2021)
Information Sharing

- (1) The SB/SE LDC will track promoter investigations involving TE/GE taxpayers or issues and provide reports to the TE/GE Promoter Investigation Coordinator.
- (2) The TE/GE Fraud Specialist and/or CP&C Program Manager and the SB/SE TE/GE Liaison will maintain ongoing communication to share best practices, discuss promoter investigations, and address case and issue coordination

matters. The TE/GE Fraud Specialist will ensure appropriate LDC personnel are invited to participate in quarterly roundtable discussions with TE/GE Compliance personnel.

- (3) If a case involves a tax-exempt entity engaging in a prohibited tax shelter transaction (listed transaction, confidential transaction, or transaction with contractual protection), the manager should ensure it has been referred to TE/GE on Form 5666, TE/GE Referral Information Report.
- (4) To prepare a referral:
 - a. Complete Form 5666, TE/GE Referral Information Report, for all referrals, following instructions attached to the form. Explain in detail why you're referring the organization with the pertinent facts in Item O. Provide identifying information for the organization (EIN, Name) and details about why the organization is being referred and any facts/information to support the referral.
 - b. E-mail the form to your manager for signature.
 - c. Download relevant information from the case file and save it as a pdf.
 - d. E-mail the signed Form 5666 and relevant information from the case file to TE/GE Compliance, Planning and Classification at *eclass@irs.gov*. See also IRM 25.1.9.5.4, Fraud Handbook, Tax Exempt/Government Entities (TE/GE) (fraud scenarios in exempt organizations). TE/GE entities include charities, donor advised funds, social welfare organizations, labor unions, golf and swim clubs, retirement funds, Indian tribes, tax exempt bonds, and state and local governments. TE/GE entities may engage in prohibited tax shelter transactions to offset unrelated business taxable income, or to accommodate taxpayers seeking to shelter income with a deduction for a charitable contribution or other expense, or diversion of taxable income into an exempt entity.

4.32.3.8.1.4
(08-28-2019)
Monitoring

- (1) TE/GE currently receives bi-monthly update requests from the SB/SE LDC regarding promoter investigations with TE/GE issues or TE/GE taxpayers. TE/GE will validate this data and notify the SB/SE LDC of any changes or updates to the database.

4.32.3.9
(08-28-2019)
Technical Services (TS)

- (1) Technical Services (TS) supports the AT program by conducting in-process case reviews and examination end processes where the authority for such processes is delegated to TS managers and its employees. Alternative Resolution Implementation (ARI) Program represents Technical Services as a member of the AT Issue Management Teams or Programs. ARI assists in the implementation of approved settlement strategies such as Commissioner's Initiatives, Global Settlement Initiative, Appeals Settlement Guidelines and other alternative resolutions. The role of ARI is to continually engage the Issue Management Teams (IMT) to provide technical and procedural guidance to assist with the development, coordination and implementation of alternative resolution strategies and procedures as it relates to abusive transactions. ARI ensures Technical Services groups are consistent in applying processes and procedures to specific abusive transactions. For example, Technical Services will:
 - Conduct in-process case reviews were agreed to by the TS Director and the Examination Area Director or upon a specific request and agreement by the Examination Area Director to the TS Territory

- Manager (TSTM). See IRM 4.8.7.2.3, In-Process Case Reviews, and IRM 4.8.2.3, Cases Requiring Action By Technical Services.
- Perform Closed Case Reviews by coordinating with Issue Management Teams, Counsel and Appeals. See IRM 4.8.1.4.1, Case Reviews and IRM 4.8.5, Post Examination Case Processing Requirements.
 - Prepare and issue Notices of Deficiency with AT approved language for various abusive transactions. See IRM 4.8.9, Statutory Notices of Deficiency.
 - Review and execute Closing Agreements using AT pre-approved language. See IRM 4.8.8.3, Closing Agreements, and IRM 8.13.1, Processing Closing Agreements in Appeals.
 - Suspense promoter or investor cases in bankruptcy, IRC 1254, fraud, or grand jury suspense statuses where agreement to place cases in suspense has been reached between the TSTM and the Area Territory Manager (TM) assigned AT program oversight. See IRM 4.8.2.11, Suspense Cases, and IRM 4.8.5, Post Examination Case Processing Requirements.

Note: Parallel investigation cases are suspended at the group level.

- Coordinate technical assistance at a local level upon specific request were agreed to by the TSTM and the Area TM assigned AT program oversight. See IRM 4.8.7.2.2, Technical and Procedural Inquiries.

