



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

4.46.3

JANUARY 4, 2024

## EFFECTIVE DATE

(01-04-2024)

## PURPOSE

- (1) This transmits revised IRM 4.46.3, LB&I Examination Process, Planning the Examination.

## SCOPE

- (1) Examinations vary in scope, size, and complexity; therefore, portions of this IRM may be more applicable to some cases than others.

## MATERIAL CHANGES

- (1) Significant changes to the IRM are listed in the table below:

IRM Reference	Description of Change
IRM 4.46.3.2.2.1	Defined the role of the Files Operation.
IRM 4.46.3.2.7	Expanded initial contact procedures.
IRM 4.46.3.2.7.1	Expanded no response/no show procedures.
IRM 4.46.3.3.5	Added risk analysis factor related to the taxpayer's application for or filing of a change in accounting method.
IRM 4.46.3.3.6	Incorporated LB&I-04-0423-0005, Interim Guidance on Deviation from Mid-Cycle Risk Analysis for Micro-Captive Insurance Cases dated April 21, 2023, into paragraph (4) of this subsection.
IRM 4.46.3.3.5.1	Updated examination procedures related to Schedule UTP.
IRM 4.46.3.4.8.9	Updated to include applicable content from LB&I-04-0122-0004, Electronic Communications with Taxpayers dated January 25, 2022, into this subsection. Updated to include applicable content from LB&I-04-0821-0011, Video Meetings with LB&I Taxpayers and their Representatives dated September 3, 2021, into this subsection. Added general information about secure email messaging, TDC, EEFax, Microsoft Teams and virtual servers. Added procedures on conducting virtual meetings in Microsoft Teams with external participants, including taxpayers and representatives.
IRM 4.46.3.7.1.1	Added note regarding the prompt filing of certain formal credit claims within the 30-day window.

IRM Reference	Description of Change
IRM 4.46.3.7.2	Added a note that research credit claims are subject to the requirements of both Treas. Reg. 301.6402-2 and Treas. Reg. 301.6402-3, regardless of whether they are filed either before or after the 30-day window.
IRM 4.46.3.7.3	Added paragraph (2) that examiners must determine if a claim constitutes a request for a retroactive change in accounting method, and if so, whether the claim should be allowed.
IRM 4.46.3.7.6	Added this subsection to incorporate LB&I-04-1222-0026, Updated Interim Guidance on Claims for Refund that Include a Claim for Credit for Increasing Research Activities dated December 7, 2022. Clarified that the IRS extended the transition period to perfect a research credit claim through January 10, 2025.
IRM 4.46.3.10.1	Clarified that examiners may also prepare Form 13744-I for LCC/LPC cases, as described in IRM 4.46.3.9.5, Issue-Based Examination Plan.
IRM 4.46.3.10.3.1	Updated to include applicable content from NHQ-01-1121-0004, Approval to Accept Images of Signatures and Digital Signatures and Approval to Receive Documents and Transmit Encrypted Documents by Email dated November 18, 2021, into paragraph (3) of this subsection.
IRM 4.46.3.10.3.6	Updated to include applicable content from NHQ-01-1121-0004, Approval to Accept Images of Signatures and Digital Signatures and Approval to Receive Documents and Transmit Encrypted Documents by Email dated November 18, 2021, into paragraph (1), item (b) of this subsection.
IRM 4.46.3.10.4	Incorporated LB&I-04-0423-0004, Interim Guidance for Approval of Penalties under Internal Revenue Code (IRC) 6751(b)(1) for LB&I Examinations dated April 27, 2023, into paragraph (1), item (j) of this subsection.

IRM Reference	Description of Change
Exhibit 4.46.3-5	Added a note that if the examiner completed the compliance checks early in the examination, the examiner can use their own discretion to determine if additional compliance checks are needed later in the examination. Clarified that the LIN link page will include all returns that are LIN imaged for the taxpayer. Returns not meeting the LIN scanning requirements are not available in the LIN system. Other sources may be used to access those returns, i.e., EUP, requesting a copy from the taxpayer, etc.

- (2) Obsolete content was removed, hyperlinks were updated, and editorial changes and corrections have been made throughout this IRM.

**EFFECT ON OTHER DOCUMENTS**

Incorporated the following Interim Guidance Memoranda:  
 LB&I-04-1222-0026, Updated Interim Guidance on Claims for Refund that Include a Claim for Credit for Increasing Research Activities, dated 12/7/2022  
 LB&I-04-0423-0005, Interim Guidance on Deviation from Mid-Cycle Risk Analysis for Micro-Captive Insurance Cases, dated 4/21/2023  
 LB&I-04-0423-0004, Interim Guidance for Approval of Penalties under Internal Revenue Code (IRC) 6751(b)(1) for LB&I Examinations, dated 4/27/2023  
 Incorporated applicable content from the following Interim Guidance Memoranda:  
 LB&I-04-0821-0011, Video Meetings with LB&I Taxpayers and their Representatives, dated 9/3/2021  
 NHQ-01-1121-0004, Approval to Accept Images of Signatures and Digital Signatures and Approval to Receive Documents and Transmit Encrypted Documents by Email, dated 11/18/2021  
 LB&I-04-0122-0004, Electronic Communications with Taxpayers, dated 1/25/2022

IRM 4.46.3 dated January 23, 2023 is superseded.

**AUDIENCE**

LB&I is the primary user. The international referral criteria and procedures in sections 4.46.3.2.6.1 through 4.46.3.2.6.7 apply to LB&I, SB/SE and TE/GE personnel.

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4.46.3

Planning the Examination

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4.46.3.1  
(01-19-2022)  
**Program Scope and Objectives**

- (1) **Purpose:** This IRM section describes the planning phase of the LB&I Examination Process (LEP). This IRM section also provides guidance and technical information on international referral criteria and procedures.
- (2) **Audience:** LB&I is the primary user. The international referral criteria and procedures in sections 4.46.3.2.6.1 through 4.46.3.2.6.7 apply to LB&I, SB/SE and TE/GE personnel.
- (3) **Policy Owner:** Assistant Deputy Commissioner Compliance Integration (ADCCI)
- (4) **Program Owner:** The LB&I Policy Office within ADCCI.
- (5) **Primary Stakeholders:** LB&I, SB/SE and TE/GE personnel

4.46.3.1.1  
(01-19-2022)  
**Background and Overview**

- (1) Planning is crucial for an efficient examination. In order to use resources efficiently, examinations must be effectively planned employing an issue-driven strategy. A successfully executed plan requires active engagement by LB&I and the taxpayer, starting with the planning phase and continuing throughout the entire examination process.
- (2) Work identified under the Campaign Development Process (IRM 4.50) will follow the LB&I Examination Process (LEP) when the treatment stream is an examination. Examinations vary in scope, size, and complexity; therefore, portions of this IRM section may be more applicable to some cases than others. Cases identified through the campaign process have at least one issue identified; the risk analysis portion of the planning phase must be tailored accordingly.
- (3) The planning phase begins with an assessment of the tax return for examination potential. Once a return has been selected for examination, the examination team members should address the relevant planning considerations. These considerations include reviewing the information contained in the case-built file (CBF), the team members familiarizing themselves with the taxpayer and/or their industry, potential issues requiring specialist involvement, pending statute dates along with distribution of case file/taxpayer information to those involved with the risk analysis of the return.
- (4) Initial planning discussions lay the groundwork for a mutual exchange of information and understanding that will assist both the examination team and the taxpayer in defining and carrying out an issue-driven examination. Depending on the scope of the examination and the type of taxpayer's enterprise, the number and type of meetings will vary.
- (5) Collaborating internally as well as with the taxpayer will allow the development of a well-defined, issue-driven, examination plan. Success will largely depend on the transparency, cooperation, and responsiveness of everyone involved in the examination.
- (6) IRM 4.60.6, International Referral Criteria and Procedures, was incorporated into IRM 4.46.3. These procedures apply to LB&I, SB/SE and TE/GE personnel. The rest of the LEP IRM applies only to LB&I personnel.

4.46.3.1.2  
(12-18-2018)  
**Authority**

- (1) See IRM 4.46.1.1.2, Authority.

- 4.46.3.1.3  
(01-19-2022)  
**Responsibilities**
- (1) See IRM 4.46.1.1.3, Roles and Responsibilities (LB&I only).
  - (2) LB&I, SB/SE and TE/GE are responsible for the international referral criteria and procedures incorporated into IRM 4.46.3.2.6.1 through 4.46.3.2.6.7.
- 4.46.3.1.4  
(12-18-2018)  
**Program Management and Review**
- (1) See IRM 4.46.1.1.4, Program Management and Review.
- 4.46.3.1.5  
(12-18-2018)  
**Terms/ Definitions/Acronyms**
- (1) See IRM Exhibit 4.46.1-1 , Glossary of LB&I Terms and IRM Exhibit 4.46.1-3 , Quick Reference Guide – Acronyms Only.
- 4.46.3.1.6  
(01-04-2024)  
**Related Resources**
- (1) The LB&I intranet sites <https://irsgov.sharepoint.com/sites/LBI/> and <https://irsgov.sharepoint.com/sites/ETD-KMT-KB051> are resources for learning more about the concepts and procedures in this section. Type key words in the search box on the LB&I home page or virtual library for more information about a specific item.
- 4.46.3.2  
(01-23-2023)  
**Initial Risk Analysis of the Return**
- (1) An initial assessment of the tax return should be completed upon receipt of a non-campaign return to determine if an examination is warranted. The LB&I Examination Issue Selection and Collaboration Process (ISCP) will be completed when required by the case manager and specialist manager(s) to determine if a return should be examined or surveyed. Claim(s) received should be risk assessed in the same manner as any other return.
  - (2) If it is determined that the return will be assigned for examination, the team coordinator (TC) and case manager should consult and collaborate with specialist manager(s) and issue team member(s) to develop a comprehensive initial risk analysis. If the return is not selected for examination, the return should be surveyed. See IRM 4.4.21.5, Surveys, for survey procedures.
  - (3) If the examiner receives inventory related to a campaign, they must review the instructions and follow the guidance provided. It is important to remember that a risk analysis for a campaign return is a streamlined analysis to expeditiously identify issues which may have a significant compliance impact. The focus of the risk analysis for a campaign return is to promptly determine which issues are worthy of our resources.
  - (4) Potential risk issues will be provided to the examiner from the LB&I classification process for Large Partnership Compliance (LPC) program returns. The examiner will conduct their own risk assessment for LPC program returns.
- 4.46.3.2.1  
(01-23-2023)  
**LB&I Examination Issue Selection and Collaboration Process (ISCP)**
- (1) The Issue Selection and Collaboration Process (ISCP) focuses on issue identification on a return prior to assignment to an examiner. It has two assessment tools for return and issue selection:
    - Manager Initial Risk Assessment (MIRA)
    - Specialist Initial Risk Assessment (SIRA)

The ISCP also uses a resource allocation tool called Collaboration Assessment Matrix (CAM). See IRM 4.46.3.2.6.1, Specialist Referrals and Exhibit 4.46.3-4, Collaboration Assessment Matrix.

- (2) The source of the workload determines the applicability of the two components. The CAM can be used for all inventory. The MIRA/SIRA is not required for:
- Large Corporate Compliance (LCC) cases
  - Large Partnership Compliance (LPC) cases
  - Compliance Assurance Process (CAP) cases
  - Joint Committee cases, claim cases or tentative refund cases where the refund is less than \$25 million for corporate returns and less than \$10 million for individual returns
  - Prior and subsequent year pick-up returns
  - Related party pick-up returns that are not part of the High Income Initiative (HII)
  - Form 1042 Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, returns
  - Form 1120-F, U.S. Income Tax Return of a Foreign Corporation, returns
  - Penalty cases
  - Cases controlled for APA purposes
  - Form 1040, U.S. Individual Income Tax Return, that are not part of the High Income Initiative (HII)
  - Single-issue campaign cases
  - Pathway hire program training cases with activity codes 215 and 217 (SBSE returns) that are generally worked in the first two years of the Pathway program
- (3) The following subject matter practice area specialist (SMPA) should complete the ISCP:
- Treaty and Transfer Pricing (including Economists)
  - Foreign Payments Practice
  - Cross Border Activities
  - Financial Products
  - Engineering
- The ISCP does not apply to the following specialists:
- Computer Audit Specialists (CAS) - CAS should be involved in ISCP issue discussions
  - Tax Computation
  - Employment Tax
  - Excise Tax
  - Tax-exempt and Government Entities
- (4) When the case manager receives inventory to which the ISCP applies, the case manager will forward a copy of the Form 3210, Document Transmittal, to the SMPA managers based on the potential audit site location. The case manager (or their designee) will access and complete the MIRA via the Team Website (TWS) to determine if there are any potential Geographic Practice Area (GPA) and SMPA issues. Once the MIRA has been completed, the case manager will assign Case Built File (CBF) access to each SMPA manager for which a SIRA is required. A SIRA is required when any SMPA question on the MIRA form has a “yes” or positive response. The MIRA will be available for

viewing in the TWS to assist the SMPA manager (or their designee) in preparing the SIRA to identify SMPA issues that merit examination or review. The designee can be an assigned revenue agent or specialist who will assist in preparing the MIRA or SIRA input for review and submission by the manager. A designee can fill out a MIRA or SIRA but cannot submit the final MIRA or SIRA. The case manager or SMPA manager is required to review, make any required corrections, and submit the completed MIRA or SIRA.

- (5) The issues identified on the MIRA/SIRA will be discussed at a manager collaboration meeting within the timeframe agreed to by the managers. The use of these tools, along with manager discussions, will help the managers to identify and select the most strategically important issue(s) and cases for examination and determine resource availability.
- (6) If the return is selected for examination at this meeting, the selected issue(s) and subject matter practice area specialist/SME who will work them, if identified, will be shared with the TC.

#### 4.46.3.2.2 (01-04-2024)

#### Decision to Survey a Return

- (1) Returns can be surveyed either before or after assignment. To survey a return an analysis and evaluation of audit potential and resources must be completed. If the managers decide the return has no audit potential, then the case manager will survey the return before assignment. If the return is selected for examination, the TC may still survey the return after further analysis of the return at any time before an actual inspection of the taxpayer's books and records. If the return contained a manager's recommendation to examine, the TC must discuss with the manager before surveying the return after assignment. Time spent to survey returns after assignment in which no contact with the taxpayer was made, except for Joint Committee (see (3) below), should be charged to Examination Activity Code 615, General - Survey. See IRM Exhibit 4.9.1-1, Definitions of Miscellaneous Examination Activity Codes.
- (2) A return may be surveyed after assignment provided both the following conditions are met:
  - a. The taxpayer (or representative) has not been contacted, or if contact has been made, no taxpayer books and records have been inspected, and
  - b. The examiner determined an examination will most likely not result in a material change in the taxpayer's tax liability.
- (3) There are special rules for Joint Committee surveys. Refer to IRM 4.36.3.4, Joint Committee Procedures, Examination Team Responsibilities, Survey After Assignment Criteria. Time spent for all surveys after assignment meeting Joint Committee criteria should be charged to Examination Activity Code 596, Joint Committee Survey. A Joint Committee case is identified on AIMS with a Project Code 0077.
- (4) For partnerships subject to the centralized partnership audit regime (BBA), refer to IRM 4.31.9.7.8(9) for survey after assignment procedures.

**Note:** LPC returns may not be surveyed without program management approval. The knowledge learned from these examinations will be used to improve case selection.

- (5) A Survey Reason Code (SRC) is required for all LB&I returns that are surveyed either before or after assignment (Disposal Code 31 or 32). The SRC values and definitions are as follows:
- a. **Survey Reason Code A:** No Large, Unusual or Questionable (LUQ) Items– This code should be used if the primary reason for the survey is because there are no LUQ items on the return.
  - b. **Survey Reason Code B:** No Change in Prior Year– This code should be used if the primary reason for the survey is that the same issues identified on the current year return were just as significant in either of the two preceding years and were no-changed or had a small tax change.
  - c. **Survey Reason Code C:** Beyond Cycle (includes statute issue)– This code should be used if the primary reason for the survey is based upon currency and/or statute considerations. Currency for LCC cases means the last two filed return years are in open, closed, surveyed, merged or decontrolled status. Cycle time refers to the time for completing the examination and disposition of income tax returns.
  - d. **Survey Reason Code D:** Lack of Resources– This code should be used if the primary reason for the survey is due to a lack of resources. This survey code cannot be used with Disposal Code 32, Survey After Assignment. It can only be used for survey before assignment cases.
  - e. **Survey Reason Code E:** Other– This code should only be used if the primary reason for the survey is other than those indicated in Survey Reason Codes A through D or F through I.
  - f. **Survey Reason Code F:** Collectability– This code should be used when there is doubt as to collectability of any potential understatement of tax.
  - g. **Survey Reason Code G:** Combat Zone– This code should be used if the taxpayer is serving in a combat zone.
  - h. **Survey Reason Code H:** Timing Issue– This code should be used when the only issues identified are timing issues.
  - i. **Survey Reason Code I:** De Minimis Tax– This code should be used when it is determined that the issues at risk would result in de minimis tax.
- (6) When preparing a case file for survey, one of the SRC values must be entered on the closing form (i.e., Form 4251, Return Charge-Out; or Form 5351, Examination Non-Examined Closings; or Form 5546, Examination Return Charge-Out Sheet) to the right of the Disposal Code. The SRC must also be entered in ERCS when closing the return from the group. Only one reason code can be entered. If more than one reason code applies, only use the code that reflects the primary reason for the survey.
- (7) For returns using SRC E, “Other,” the case manager must include a separate form in the administrative case file that clearly explains the reason for the survey. Either Form 14235, LB&I Income Tax Survey or Form 1900, Income Tax Survey, can be used for this purpose. The form will remain in the case file when it is closed.
- (8) For paperless surveys, see IRM 4.46.3.2.2.1, Paperless Survey - Non-Examined Closures Using a Paperless Process.
- (9) Survey Claims After Assignment - IRM 4.10.2.5.3, Surveying Claims, provides guidance on surveying claims after assignment.

4.46.3.2.2.1  
(01-04-2024)  
**Paperless Survey -  
Non-Examined Closures  
Using a Paperless  
Process**

- (1) Certain non-examined returns surveyed before (DC 31) and after assignment (DC 32) may be closed using a paperless process if the original return was **never** requested and no documentation needs to go to Files.

**Note:** The Files Operation manages the storage or archiving of paper case files or paper case documents

Generally, the paperless survey process is used when the return was established on AIMS using an electronic print and the original return was never requested. For purposes of this section, electronic prints are:

- a. LIN images
  - b. IDRS prints (BRTVUE, CDE, TRDBV, TRPRT, TRDBB, IMFOLT, TXMOD, BMFOLT, RDBV, RTVUE)
  - c. MeF/ELF returns
- (2) If the return was requested when the record was established on ERCS/AIMS, the paperless procedures do not apply. Before requesting a paperless closure, pull an AMDISA and if the words "RETURN REQUESTED" appear on page 2 - line 8, then a paperless closure CANNOT be requested.
- (3) Only survey returns closed at the group level with disposal code 31 or 32 can use the paperless survey process.
- (4) Only a Form 5351, Examination Non-Examined Closings, and a Form 3210, Document Transmittal, are needed for a paperless survey. If the SRC is "E" (Other), then a Form 14235, LB&I Income Tax Survey Form, or Form 1900, Income Tax Survey, is also required. Email the required documents to:

<b>CCP Ogden Surveys (LB&amp;I Exam Areas 320-329)</b>	<b>CCP Cincinnati Surveys (LB&amp;I Exam Area 330)</b>
<i>*LB&amp;I CCP Ogden Paperless Surveys Only</i>	<i>*SBSE CCP Exam Cincinnati</i>

- (5) Complete Form 5351 as follows:
- a. Use only one MFT per Form 5351.
  - b. List only one tax period per label block.
  - c. More than one disposal code may be used.
  - d. The case manager must sign their name in the "Approved By" box at the top of Form 5351 and enter the current date.
  - e. Enter the taxpayer's name, TIN, MFT, and tax year.
  - f. Enter the disposal code in the lower left corner of the block. If a label is available, list the disposal code on the label below "STATUS."
- (6) **Do not send electronic prints, asset locator research, or charge-out documents to CCP.** These documents should be shredded. If there is information that must be retained, then the paperless survey closure cannot be used.

4.46.3.2.3  
(01-19-2022)  
**Conflict of Interest and P-4-5 Requirements**

- (1) Review and consider both Policy Statement 4-5 (P-4-5) and Policy Statement 4-6 (P-4-6) for all cases when considering assignment of resources. For more detail see the following IRM subsections:
- IRM 1.2.1.5.3, Policy Statement 4-5 (Rev. 1), Restrictions on Examiners' and Specialists' Consecutive Survey or Examination Responsibilities, describes restrictions on consecutive survey or examination responsibilities. IRM Exhibit 4.46.3-9, LB&I Transition Rules for Implementation of Revisions to Policy Statement 4-5 and IRM Exhibit 4.46.3-10 ,, Policy Statement 4-5 Guidance provide additional guidance applicable to all LB&I employees on the most recent changes to P-4-5.
  - IRM 1.2.1.5.4, Policy Statement 4-6, Examiner may not examine return if relationship impairs impartiality, states that managers and examiners may not examine a return if certain relationships impair impartiality.
  - IRM 4.10.2.2.3, Conflict of Interest
  - IRM 4.10.2.2.4, Restrictions on Consecutive Audit or Survey by the Same Examiner - Policy Statement 4-5
  - IRM 4.46.3.4.3, Financial Interests or Other Conflicts of Interest and Disclosure

4.46.3.2.4  
(01-23-2023)  
**Planning - Return Assignment**

- (1) Certain factors should be considered when assigning a return for examination. These factors are listed below:
- a. **Statute of Limitations** – The first responsibility of the examination team when a return is assigned is to determine when the statute of limitations for assessment will expire. Careful consideration should be given to the earliest statute of the tax year or years when creating the examination plan.
  - b. **LB&I Strategic Goals** – Returns selected for examination will be in line with LB&I strategic goals. Case managers will collaborate with specialist managers when reviewing inventory. Examiners are expected to follow the guidance and instructions issued with campaign-generated returns.
  - c. **Case Built File (CBF) Information** - The CBF serves as a repository for case related information that is available to an employee assigned to examine a return. Types of items included are: campaign instructions, classification sheets, Taxpayer Information Gateway (TIG) reports, Selection, Workload and Classification (SWC) reports, yK-1 reports, CDW Knowledge Graph Environment (CKGE) reports, Financial Data and Risk Assessment Reports, Schedule UTP information, Office of Tax Shelter Analysis disclosure documents and risk assessment documentation assembled by classifiers using the Content Management and Collaboration system. CKGE and yK-1 perform data analytics from information in the Compliance Data Warehouse (CDW). The CDW is a repository of information and not considered an authoritative source. Therefore, CKGE and yK-1 should be used in conjunction with an authoritative source such as the Integrated Data Retrieval System (IDRS).The case manager will forward the CBF information to the appropriate managers to ensure comprehensive risk analysis. The CBF can be uploaded to IMS.

**Reminder:** CBF information should be obtained and shared early in the examination process.

**Note: CKGE, yK-1 and any other data analytic tool Disclosure:** The output from tools such as the CKGE Link Analysis Tool, yK-1 (electronic or hardcopy) or any other similar data analytic tool contains

tax return information of multiple taxpayers. Pursuant to IRC 6103, 7213, and 7431, this information cannot be disclosed to the taxpayer or their representative.

- d. **Resources Available** - Planning an examination is a collaborative effort between case and specialist managers leveraging all available resources. Consultations with practice area specialists and local counsel are valuable resources that should also be used.
- e. **Auditor's Workbench** - This program displays tax return information and incorporates custom reporting and analysis tools useful in the review and audit of taxpayers. The source of data for the use of the program is the XML files that can be downloaded from the LIN system.
- f. **Form 1065 and 1120S Schedule K1 Reconciliation Application:** To assist with planning, agents can use the Form 1065 and 1120S Schedule K1 Reconciliation Application to reconcile the Schedule K against the Schedule K-1's for the Form 1065, U.S. Return of Partnership Income, and 1120-S, U.S. Income Tax Return for an S Corporation, tax returns.
- g. **IMS Input Requirements** – Accurate and contemporaneous information must be input in IMS to allow for appropriate decision making regarding case development and resource allocations.

- (2) Managerial approval is needed for opening examination with less than 12 months on statute. See IRM 25.6.23.5.1.4, Initiation of Controls by an Examiner or Specialist - Area Offices and Campus Operations.

4.46.3.2.5  
(12-18-2018)  
**Planning - Review of Return**

- (1) After a return is assigned, the TC will review and update the preliminary assessment/classification information and familiarize themselves with the taxpayer's business operations. This research will assist in setting a preliminary examination scope and determining whether additional issue team members not already identified by the case manager may be needed. If the return was selected as part of a campaign, follow the instructions provided in the CBF.
- (2) For each potential issue where it was determined in the ISCP that a specialist is required, a referral should be submitted as early as possible in the Specialist Referral System (SRS) to document the collaborative risk analysis process. The SRS referral submitted should include the information relied upon during the initial return assessment, including the ISCP, to ensure proper resources are assigned. The case manager should collaborate with specialist peers to ensure that resources are available during the audit time frame. For more information on SRS see IRM 4.46.3.2.6, Specialist Referral System.
- (3) The case manager should estimate the examination starting date, so that resources can be identified in a timely manner. Priorities should be established through an issue-driven risk process, which compares the potential benefits to be derived from examining an issue to the resources required to perform the examination. The risk analysis should document any considerations regarding selection and control of any related returns.

4.46.3.2.6  
(01-23-2023)  
**Specialist Referral System (SRS)**

- (1) Automated System for Requesting Specialist Assistance – The Specialist Referral System (SRS) automates the referral process requesting specialist assistance. Agents generate referral requests online and SRS automatically notifies the appropriate specialist managers of the request.

- (2) The SRS referral system should be used with all cases, including cases using the ISCP. The requester should use the comments section (located at the bottom of the page for each specialist requested) to document one of the following case types:
  - a. IC cases
  - b. Mandatory work (claims, JCC, etc.)
  - c. Campaign cases (issue-based treatment stream)
  - d. CAP case
  - e. LCC (or replacement program cases)
  - f. LPC (or replacement program cases)
  
- (3) Specialists covered by the SRS – The following specialist services must be requested using SRS:

Specialist Service	Corresponding IRM
Computer Audit Specialist	IRM 4.47
Computer Audit Specialist - Statistical Sampling (CAS use only)	IRM 4.47.3
Employee Plans (TE/GE)	IRM 4.71
Employment Tax (SB/SE)	IRM 4.23
Engineering Specialty	IRM 4.48
Engineering Specialty - Art Appraisal Group	IRM 4.48.2
Estate and Gift Tax	IRM 4.25
Excise Tax	IRM 4.24
Exempt Organizations (TE/GE)	IRM 4.75
Federal, State and Local Governments (TE/GE)	IRM 4.75.7
Financial Products and Transactions	IRM 4.37
Indian Tribal Government (TE/GE)	IRM 4.88
International (CBA and TTPO)	IRM 1.1.24.3.3, IRM 1.1.24.3.5, IRM 4.60, IRM 4.61
Outside Expert Program	IRM 4.46.10
Referrals to Collection	IRM 4.20
Tax Computation Specialists (LB&I)	IRM 4.46.6
Tax-exempt Bonds (TE/GE)	IRM 4.81
TEFRA	IRM 4.31
WEIC - Withholding on Foreign Payments	IRM 1.1.24.3.4, IRM 4.63

- (4) The SRS is accessible through the LB&I intranet at <https://srs.web.irs.gov/>.

4.46.3.2.6.1  
(01-19-2022)  
**Specialist Referrals**

- (5) The SRS is a database of referral information. Reports are only available on ad-hoc basis by requesting them from the SRS administrator at: \*SRS
- (1) For LB&I cases requiring specialist assistance, managers will collaborate to determine the issues and resources needed for each issue identified. The case manager will provide specialist managers access to the LIN link (along with the CBF) to review the relevant case information.
- (2) The LB&I TC will use SRS to input notification, identify and request specialist resources. The LB&I TC will utilize the comment section of the SRS referral to indicate the necessary information to enhance the issue selection and assignment process.
- (3) The specialist manager will use the SRS system to identify and assign specialist resources to the case, as warranted. The specialist manager will provide specialist team members access to the LIN link (along with the CBF) to review the relevant case information.
- (4) Computer audit specialists (CAS), as warranted, should be among the first specialists considered for the LB&I examination team. The CAS will assess the availability and quality of machine-sensible records and obtain access to appropriate records and documentation for analysis. The LB&I case manager and CAS manager should discuss the lead time and resources needed to provide tools used in the planning and risk analysis process. The case manager will ensure the return is placed in status 12 and initial contact has been made with the taxpayer, so that the CAS can perform these tasks.
- (5) A request for international assistance may be either a formal request for the assignment of a CBA representative to the case, or an informal request that simply seeks a response to a specific question. In either case, the Specialist Referral System (SRS) will be used to request international assistance. All returns meeting the mandatory referral criteria in IRM 4.46.3.2.6.3 # will be referred using SRS.
- (6) International referrals are forwarded to the International Referral Recipient (IRR) based on geographical practice area logic established by the CBA territory managers and communicated to the CBA analyst that maintains the listing. See IRM 4.46.3.2.6.6, International SRS System Maintenance, for contact information. Confirmation of the forwarding referral is sent by email to both the requester and the requestor's manager.
- (7) The IRR can view requests by accessing the system. If the LIN link is not provided, IRR can use EUP or will coordinate with the requestor to obtain relevant portions of the returns. Referring examiners are encouraged to include additional information that will assist the IRR in evaluating whether to assign a CBA representative to the examination.
- (8) Comments for CBA may be included in the SRS system or, if voluminous, may be sent directly to the IRR. In most cases, other information that comprises the basis for making the referral will also be required from the requestor. Circumstances where supporting documentation is not required include: formal referrals on LCC and LPC cases and requests for informal assistance. The IRR may accept the referral by assigning a CBA representative to the case, assigning a CBA representative to assist on a consultation basis, transferring the referral to another team with available resources, or rejecting the referral. Upon assignment, a CBA representative will receive e-mail notification. Addi-

tionally, the requestor and the requestor’s manager will receive e-mail notification of the IRR’s action. The CBA representative may then access the SRS and view the referral.

- (9) The CAM tool will be used by LB&I to determine the level of specialist involvement needed. The CAM (see Exhibit 4.46.3-4) is a decision tool designed to facilitate ongoing discussions between the TC and potential issue team members including specialty disciplines. During the discussion, the TC and potential issue team members will consider the technical aspects, complexity and skills needed to examine the potential issue(s). Each completed CAM should be uploaded into IMS as part of the case workpapers.
- (10) SRS will also be used to request or modify specialist resources needs throughout the examination. When another year (subsequent or prior) or a related return requiring a referral is added to an examination, a new referral is needed to add the additional year or taxpayer to the referral.
- (11) The team submitting the referral should not set an ECD until all issues are identified as per IRM 4.46.3.9.1.1, Case Timeline. Also see IRM 4.46.1.1.3, Roles and Responsibilities and IRM 4.46.1.3, Principles of Collaboration.

4.46.3.2.6.2  
(01-04-2024)  
**International Referrals -  
Supporting  
Documentation and  
Informal Assistance**

- (1) Supporting documentation, such as return information and other relevant taxpayer information, assists the IRR in evaluating a referral. Although generally required, an exception for LCC and LPC cases exists under the premise that those types of cases typically have extensive documentation and the timing of the engagement is frequently planned well in advance so that the submission of a referral is simply a formality. In LCC engagements where this is not the case, the IRR should contact the first level team manager of the referring agent and make arrangements to assess the audit potential of the referred case.
- (2) The IRR will review the tax return to evaluate international examination potential and whether a CBA representative should be assigned to the examination except as discussed in (1) above. In most situations, this will be accomplished using the LIN link that should be included in the SRS referral or by using EUP. IRR will coordinate with the requestor if additional return information is needed. The IRR Guidelines for Evaluating International Referrals, which can be accessed at <https://irs.gov.sharepoint.com/sites/IBCS/SiteAssets/Forms/AllItems.aspx>, provide general recommendations IRRs can consider when evaluating referrals.
- (3) Informal assistance questions limited to 100 words are submitted to the IRR through the SRS. Limited detailed information is required from the requestor. An IRR receives the question via e-mail. This ends the SRS’s involvement in the informal assistance request. The IRR reviews the question and assigns it to a CBA representative by forwarding the e-mail. The CBA representative assigned to an informal assistance request has the option of responding by phone or e-mail.

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4.46.3.2.6.5  
(01-04-2024)  
**EOI/JITSIC/TAIT/APMA  
Referral Procedures**

- (1) The following offices under the authority of the Commissioner, LB&I - who is the delegated United States Competent Authority for tax matters - rely on the expertise of LB&I and SB/SE examiners for assistance with their programs:
  - a. Exchange of Information (EOI) program
  - b. Joint International Taskforce on Shared Intelligence and Collaboration (JITSIC)
  - c. Treaty Assistance and Interpretation Team (TAIT), and
  - d. Advance Pricing and Mutual Agreement (APMA) program

These offices are collectively referred to as the “requesting office.” The assistance provided by the LB&I and SB/SE personnel to the requesting office is referred to as “field services.”
- (2) The EOI program and JITSIC are administered by EOI and JITSIC analysts based primarily in Washington, DC. At times, these offices request the assistance of LB&I or SB/SE personnel in order to fulfill foreign-initiated specific requests for exchange of information made pursuant to international exchange agreements (such as income tax treaties and Tax Information Exchange Agreements). These offices forward such requests for assistance to LB&I IRRs (for requests involving large case entities and/or complex international issues) or to SB/SE Examination Area Directors (for requests involving individuals and SB/SE entities). The IRRs and Examination Area Directors assign the requests to examination offices within their respective business divisions. LB&I and SB/SE examination offices assigned to these assistance requests will strive to conclude all requested field work within 60 days of receipt in the groups. The assigned LB&I or SB/SE personnel will route the results back to the originating EOI or JITSIC analyst. These procedures are in accordance with the Memorandum of Understanding between LB&I and SB/SE regarding the Assignment of Specific Requests for Exchange of Information signed in September 2005. More detailed procedures for processing foreign-initiated specific requests for exchange of information may be found in IRM 4.60.1, Exchange of Information.
- (3) Any request from the Treaty Assistance and Interpretation Team (TAIT) involving taxpayers and/or returns that meet the following criteria will be forwarded directly to the Director, WEIIC, LB&I:
  - a. Individual taxpayer with a foreign address
  - b. Individual taxpayer with an APO or FPO address
  - c. Form 2555, Foreign Earned Income, is attached to the tax return
  - d. Form 1120-F, U.S. Income Tax Return of Foreign Corporations (\$10 Million and under), or
  - e. Form 1040-NR, U.S. Non-Resident Alien Income Tax Return
- (4) For a request in which LB&I assistance is required, the requesting office will use the listing of LB&I IRRs to identify who should receive the request. To access the IRR Listing, go to the CBA Practice Area SharePoint site <https://irsgov.sharepoint.com/sites/IBHome/SitePages/Home.aspx>, scroll down to **References** and click on the link International Referral Recipient (IRR) Listing to open the spreadsheet.
- (5) The LB&I IRR or SB/SE Examination Area Director will maintain a log of all requests received, noting the date of the request, the accountable LB&I or SB/SE examination action office, and the date forwarded to the accountable office.

- (6) For a request to LB&I, the IRR will forward the request for field services to the accountable office (i.e. the appropriate LB&I examination action office team manager) within five business days of receipt.
  - a. The identification of the appropriate team manager will be established by local agreement among all of the international teams servicing a particular geographic area with the concurrence of the respective territory managers and practice area directors.
  - b. The IRR should exercise reasonable diligence in meeting the five-day requirement.
- (7) Upon receipt of a request for field services, the team manager of the accountable LB&I or SB/SE office will notify the requesting office that the request has been received and provide the name of the examiner assigned. This communication should occur as soon as possible, but in no event later than five business days from the date the request is received by the team manager. For an LB&I accountable office, the team manager will also notify their territory manager and/or practice area director in accordance with procedures established by each practice area.
- (8) If a request to LB&I is sent by a requesting office to an IRR in error (e.g. incorrect geographical area or practice area), the IRR will, as soon as practicable, establish communication with the requesting office and forward the request to the appropriate IRR.
- (9) If a request to LB&I is sent by an IRR to an LB&I team manager in error (e.g., not in accordance with the local agreement in paragraph (6) above), the team manager will, as soon as practicable, establish communication with the IRR and forward the request to the appropriate recipient. The IRR will record in their log the date the request was sent to the correct accountable office.
- (10) The requesting office will transmit a request for LB&I field services to the IRR in a manner appropriate for the nature of the request. For example, the APMA program prefers to speak to the CBA representative assigned to the request for services prior to shipping voluminous documents and data. Requests for field services may be submitted in two forms:
  - a. Notice
  - b. Detailed request
- (11) Notices may be transmitted by phone, fax, e-mail, or regular mail, and will contain the following:
  - Name and address of the taxpayer
  - Nature of request
  - Suspense date
  - Point of contact in the requesting office

Taxpayer information, which includes names and addresses, can be transmitted by e-mail only in an encrypted attachment.
- (12) Detailed requests are mailed to the IRR and must contain all of the information needed by the accountable office to take the proper action.
- (13) The requesting office will set a suspense date to reflect the period of time within which the requesting office would like the field service completed. The suspense date does not apply to APMA teams, but does apply to the review of

APMA annual reports. If additional time is needed to complete the field services, the team manager of the accountable office will coordinate with the requesting office in establishing a revised suspense date.

- (14) The team manager of the accountable office should inform the requesting office when the examiner has completed the request. Delivery of the completed report and/or provision of requested documents should be arranged on a case-by-case basis.

4.46.3.2.6.6  
(01-19-2022)

**International SRS  
System Maintenance**

- (1) Each specialty is required to maintain the routing logic on the SRS. The CBA analyst that maintains the IRR list is responsible for and has administrative access to the routing logic within SRS. All IRR changes shall be communicated to the CBA analyst who maintains that listing.
- (2) A team manager can edit and delete team members. Territory managers can change or delete managers in their territory. For temporary absences, a manager can assign an acting manager. To access the edit menu from the SRS home page, click on “Managers” and select “Edit Specialist Group/Team Information”.
- (3) The SRS will not properly route referrals or track activity when a personnel vacancy occurs. There must always be valid routing paths in place. When a vacancy occurs, someone must be designated the responsibility to assign referrals to CBA representative. Similarly, a vacancy at the team or territory level will impair the SRS’ managerial reporting function. Information about changes that cannot be handled by the team or territory manager must be communicated to the CBA analyst with administrative access over SRS.
- (4) The following actions require changes to SRS routing:
- a. New team manager enters the program
  - b. Current team manager leaves the program
  - c. Change in acting team managers
  - d. Change in territory managers

4.46.3.2.6.7  
(01-19-2022)

**International Subject  
Matter Practice Area  
Controlled Returns**

- (1) A CBA representative examining a foreign controlled return will generally focus only on international issues. If material domestic issues are identified during the examination, a geographic practice area agent may be assigned to the examination as a team member, or the CBA representative may examine the domestic issue. The CBA representative maintains administrative control of the return.
- (2) The CBA representative charged with the return will assume all examination and case control responsibilities, including, but not limited to:
- a. Maintaining timely AIMS and IMS updates
  - b. Following all examination procedures and directives pursuant to IRM instructions
  - c. Preparing all relevant examination reports pursuant to IRM instructions
  - d. Preparing all relevant closing documents pursuant to IRM instructions
- (3) The CBA representative charged with the return is responsible for maintaining statute controls and securing timely extensions of statutes when warranted.
- (4) The Commissioner, LB&I and NTEU signed a Letter of Understanding (LOU) on September 5, 2002, that in part, stipulates: “The CBA representative will be

responsible for all elements of case control and statute control that are contained in the Internal Revenue Agent Standard Position Description and detailed in IRM 25.6.23, Examination Process - Assessment Statute of Limitations Controls.”

4.46.3.2.6.8  
(01-04-2024)

**Centralized Risking of Research Issues Under IRC 41 and IRC 174**

- (1) The centralized risking of cases with potential research issues under IRC 41 and IRC 174 applies to LB&I examinations of IC cases, LCC cases, LPC cases, all claims and amended returns. These procedures do not apply to Research Issues Campaign inventory or CAP program cases.
- (2) The Research Risk Review Team (RT) is a national strategy to improve the identification of the highest risk research issues under IRC 41 & IRC 174. The RT consists of subject matter experts, engineers, revenue agents and other specialists. The RT promotes compliance by focusing its efforts on helping identify high risk returns, including claims, and engages in knowledge sharing through collaboration with field employees. Taxpayers and examination teams will benefit from a comprehensive risk analysis that provides a proper depth and scope of the exam which supports a consistent direction for the efficient examination of research issues.
- (3) Research issues relate to the research credit under IRC 41 and research eligible expenditures under IRC 174.
- (4) Research issues under IRC 41 refer to any regulatory requirements to claim the research credit for:
  - IRC 41(d) issues of whether and to what extent qualified research activities were performed by the taxpayer to develop new or improved business components
  - IRC 41(b) issues of whether expenditures estimated and allocated to qualified research are allowable and credible
  - IRC 41(c) issues of whether the taxpayer properly substantiated an increase in qualified research expenses over their base amount.
- (5) Research issues under IRC 174 and the regulations thereunder refer to:
  - Whether research activities constitute research and development within the meaning of IRC 174
  - Whether expenditures connected with the research credit are first eligible for treatment as research or experimental expenditures under IRC 174
- (6) The RT is required to review and concur with the preliminary risk analysis for new examinations of research issues. When applicable, the first step is the Issue Selection and Collaboration Process (ISCP) which involves the preliminary risk analysis where only issues with the highest compliance impact should be selected. Case managers will continue to use the Manager Initial Risk Assessment (MIRA) and Specialist Initial Risk Assessment (SIRA) tools per IRM 4.46.3.2.1.
- (7) When the risk analysis process, using the MIRA/SIRA tools, is complete, the possible outcomes are as follows:

<b>RT Review and Concurrence Required if:</b>	<b>RT Review and Concurrence is Not Required if:</b>
The case and specialist managers agree to examine the research issue.	The case and specialist managers agree not to examine the research issue.
The case and specialist managers disagree on whether to examine the research issue.	

- (8) The RT Must be Contacted for Review and Concurrence when:
- An IC return does not meet the MIRA/SIRA guidelines, and the case and/or specialist manager wants to examine a research issue.
  - An LCC or LPC return is risk assessed, and the case and/or specialist manager wants to examine a research issue.
  - Any subsequent year and/or related return pickup has a research issue that will be examined.
  - Research issue claims or amended returns are received during an examination, whether informal or formal, where the research issue will be examined.
  - The scope and depth of the research issue changes at any point during the examination.
  - Pre-filing agreements are received and considered with a research issue.
- (9) The exam team will contact the RT by inputting a request on the Research Risk Review Team SharePoint site at <https://irsgov.sharepoint.com/sites/ResearchRiskReview/SitePages/Home.aspx> by clicking on the “Request Risk Review” icon. The RT SharePoint site contains job aids and tools to assist agents with completing initial risking activities.
- (10) Examiners and managers can contact the RT team with any questions via secure email to *\*LB&I RT Team* and note in the subject line “RT Directive Question.”

4.46.3.2.7  
(01-04-2024)

#### Contacting the Taxpayer

- (1) After the case has been selected for examination and assigned, contact with the taxpayer should be timely initiated.
- (2) All initial contacts with taxpayers to commence an examination must be made by mail using the appropriate initial contact letters. For the LB&I examination of a corporation or other business return types, examiners will use Letter 2205-L, LB&I Initial Contact Letter. For the LB&I examination of a partnership return, examiners will use Letter 2205-D, Initial Contact to Schedule Appointment - Partnership Returns. Both Letter 2205-L and Letter 2205-D are only applicable to business returns and include a reference to a web link to access and download Publication 1 and Notice 609 at [www.irs.gov/businesses](http://www.irs.gov/businesses). Examiners can initiate contact by telephone with the taxpayer after mailing the contact letter, and allowing sufficient time for the taxpayer to respond (allow 14 calendar days from mailing the letter).
- (3) Refer to IRM 25.4.1 and IRM 25.4.2 for guidance in dealing with taxpayers designated under the “Potentially Dangerous Taxpayer” (PDT) and “Caution

Upon Contact" (CAU) programs, respectively. Additional information can also be found on the Office of Employee Protection website.

- (4) For individual taxpayers, LB&I will use Letter 2205, Initial Contact, to ensure that taxpayers who have limited access to the web receive the required publications and notices. Pub 1, Your Rights as a Taxpayer, and Notice 609, Privacy Act Notice, must be included with the letters as required by RRA 98. See IRM 4.10.2.8, Initial Contact: Overview. Receipt of Publication 1 and Notice 609 will be confirmed at the first in-person meeting with the taxpayer and should be documented in the case file.
  - a. In cases when the taxpayer does not confirm receipt of Pub 1 or Notice 609, both publications will be provided at the opening conference/meeting.
  - b. Pub 3498, The Examination Process, explains the audit process from the initiation of the examination through an overview of the appeals and collection processes. It is mailed with all preliminary 30-day letters. See IRM 4.10.8.12.1, 30-Day Letters.
- (5) Prior to issuing the applicable initial contact letter, examiners must conduct research on IDRS command code CFINK for any Form 2848 on file that corresponds with the tax matter and tax year under examination. If so, examiners must mail a copy of the initial contact letter to the representative(s) designated on Form 2848 to receive copies of IRS notices and communications.
- (6) When the taxpayer calls to schedule the initial appointment, examiners must follow the procedures in IRM 4.10.2.8.2, Initial Telephone Conversation.
- (7) If the examiner receives a phone call from an individual other than the taxpayer, do not discuss any confidential return information until you secure Form 2848 or Form 8821.

**Exception:** A power of attorney is not needed to discuss tax matters with partnership representatives and corporate officers described in IRM 11.3.2.4.2, Partnerships and IRM 11.3.2.4.3, Corporations, respectively.

- (8) Taxpayers and their representatives have the option of submitting Form 2848 or Form 8821 directly with the examiner or by filing online on IRS-approved platforms Submit Forms 2848 and 8821 Online at <https://www.irs.gov/tax-professionals/submit-forms-2848-and-8821-online> and Tax Pro Account at <https://www.irs.gov/tax-professionals/use-tax-pro-account>.

**Note:** Tax Pro Account is only available for specific individual income tax matters.

- (9) If you receive a Form 2848 or Form 8821 from the taxpayer or representative, verify that the form is accurate and complete and the representative is authorized to practice before the IRS. Refer to IRM 4.11.55, Power of Attorney Rights and Responsibilities.
- (10) After the initial telephone conversation with the taxpayer or representative, issue one of the following letters to confirm the initial appointment:
  - Letter 3253, Taxpayer Appointment Confirmation Letter, is used for individual taxpayers.
  - Letter 3253-L, LB&I Taxpayer Appointment Confirmation, is used for corporate, partnership or other return types.

- Letter 3254, Representative Appointment Confirmation Letter, is used when the initial appointment is scheduled with the representative. A copy of the letter must be sent to the taxpayer.

**Note:** Attach a Form 4564, Information Document Request to the appointment confirmation letter, listing all the information needed at the initial appointment (e.g., basic books and records, organizational charts, Board minutes, and/or general information about the taxpayer's business).

- (11) When additional years are added to an open examination, provide written notification to the taxpayer using Letter 5968, Prior or Subsequent Year Pickup. Provide a copy of the letter to the taxpayer representative if there is a Form 2848 on file.
- (12) Letters, forms and other documents issued to taxpayers or representatives can be signed digitally. However, the digital signature must display an image of the IRS employee's handwritten signature in the signature block and the date signed. Refer to IRM 4.10.1.4.4, Digital Signatures.

#### 4.46.3.2.7.1 (01-04-2024)

#### No Response/No Show Procedures

- (1) If the taxpayer fails to respond to the initial contact letter after 14 calendar days, and it was not returned as undeliverable, or the taxpayer does not "show" for the initial appointment, examiners must determine why the taxpayer is not responding. For BBA partnerships, refer to IRM 4.31.9.7.6.8, Irresponsive Partnership.

**Note:** A no show case occurs once all attempts have been made to contact the taxpayer by telephone and/or certified/registered mail (see (4) below for certified/registered mail), and the examiner has confirmed a "deliverable" address exists (see paragraph (4) below), but the taxpayer never responds or shows for a scheduled appointment.

- (2) Follow-up attempts must be made to contact the no response taxpayer (including by telephone) to encourage the taxpayer to schedule an appointment. If practicable, a revenue agent may conduct a field visit to the taxpayer's residence and/or business.

**Caution:** If there is a POA on file for the tax year(s) under audit, examiners must follow-up with the representative if there is no response to the initial contact letter.

- (3) If follow-up attempts to contact the taxpayer or representative by telephone (or field visit) are successful, examiners should document in activity record and confirm the initial appointment.
- (4) If follow-up attempts to contact the taxpayer or representative are **not** successful, examiners must reissue the initial contact letter or send Letter 2295, Follow-up to Initial Contact Letter. Letter 2295 advises the taxpayer their tax liability will be changed based on information on hand, or a summons may be issued. The original initial contact letter or Letter 2295 must be sent by:
  - a. Certified mail with return receipt requested, when the taxpayer resides in the U.S., or
  - b. Registered mail with return receipt requested, when the taxpayer resides outside the U.S.

- (5) Examiners can use the unique article number to check the United States Postal Service (USPS) online feature called "USPS Tracking" to determine the delivery status of the certified or registered mail.
- (6) Follow the procedures below depending on the outcome of the return receipt:

If...	Then...
The return receipt indicates the taxpayer or member of the household signed for	This confirms you have a "deliverable" address and the taxpayer has received the certified letter. Allow 10 calendar days from the date the certified mail was delivered for the taxpayer to call to schedule the appointment. If the taxpayer is not responsive, revenue agents must continue with normal audit procedures, including minimum income probes, summons and third-party contacts as needed, etc.
The return receipt and envelope are returned as refused or unclaimed	This confirms you have a "deliverable" address and the taxpayer has refused or failed to claim the certified letter. If the taxpayer is not responsive, revenue agents must continue with normal audit procedures, including minimum income probes, summons and third-party contacts as needed, etc.

If...	Then...
The return receipt indicates a new address for the taxpayer	<p>The U.S. Post Office will forward the mail to the new address unless the forwarding order has expired.</p> <p>If the forwarding order has expired, revenue agents must reissue the initial contact letter or Letter 2295 to the new address using certified mail, return receipt requested.</p> <p>After the mail has been sent to the new address, revenue agents must follow the procedures in this table depending on the result of the return receipt.</p> <p><b>Caution:</b> In addition, if the taxpayer does not respond, revenue agents must issue the report to the last known address on Master File and the current address confirmed by the U.S. Post Office. For procedures regarding updating a change of address, see IRM 4.10.2.11.</p>
The certified letter is returned undeliverable	Additional steps must be taken to locate the taxpayer. Revenue agents must follow the procedures in IRM 4.10.2.8.4.

- (7) If the taxpayer does not respond or cannot be located, examiners must consider the following:
- For certain LB&I workstreams where risks are identified before case assignment, such as HII, GHW, campaigns, or cases subject to MIRA/SIRA, examiners will disallow the classified audit issues.
  - All the necessary related or automatic adjustments will be made.
  - The IRS has no legal requirement to estimate expenses, including cost of goods sold. If the examiner has actual taxpayer information regarding expenses, then taxpayer specific information (not industry averages) should be used to determine expenses.
  - If the sale of securities is an issue and in cases where the taxpayer has not substantiated stock basis, the IRS has no legal requirement to obtain basis information from third-party sources, despite the fact that the proceeds of stock sales are included in income.
  - Penalties will not be asserted solely due to the taxpayer's failure to appear for an audit or respond to an inquiry or notice. However, the

facts and circumstances from the return and the case file may warrant assertion of the accuracy-related penalty attributable to negligence. See IRM 20.1.5.8.1, Negligence paragraph (5) and IRM 20.1.5.9.2, Penalty Assertion, paragraph (5), for examples when accuracy-related penalties are warranted on no show cases.

- Consideration will be given to picking up prior and subsequent years.

4.46.3.3  
(01-23-2023)  
**Risk Analysis Process**

- (1) Risk analysis is an on-going process throughout the examination. To leverage and effectively utilize our resources, a comprehensive risk analysis should be conducted by the examination team with consideration of input from the taxpayer and focus on issues that raise significant compliance challenges. The detail and depth of the risk analysis may vary according to the type and complexity of the tax return. For documenting the risk analysis see IRM 4.46.3.3.6. Refer to IRM 4.31.9.7.1, Risk Analysis, for risk analysis procedures for BBA cases.
- (2) A comprehensive risk analysis should be used to:
  - Define the scope of the audit
  - Assign the right resources to the issues
  - Establish the case timeline based on all the issue timelines

4.46.3.3.1  
(01-04-2024)  
**Examiner’s Preliminary Risk Analysis - Information Resources**

- (1) Inventory received may contain preliminary risk analysis information and instructions. Review all information transmitted with the return. If no guidance is received, the agent must conduct a preliminary risk analysis using the information resources that are available to the examiner. Financial information resources available will depend on whether the entity is publicly or privately held.
- (2) Publicly held entities have published financial information that provides a basis for understanding the entity’s business activities, operations, accounting and financial data and policies. In contrast, privately held entities may have limited public information. When public financial information is not available, the examiner should determine whether any published financial information is necessary to develop the risk analysis and request it during the opening conference.
- (3) Internal information resources available for preparing the preliminary risk analysis include:
  - Tax return information
  - Information contained in the CBF
  - Historical examination information (see Exhibit 4.46.3-1): prior RARs, prior years’ IMS information, historical files, Appeals Case Memoranda (ACMs), etc.
  - Internal information systems (IMS, ERCS, IDRS, etc.)
  - IRS Source (<https://irsgov.sharepoint.com/sites/IRSSource>)
  - IRS Virtual Library (<https://irsgov.sharepoint.com/sites/ETD-KMT-VirtualLibrary>)
  - Practice area subject matter experts
  - Practice Units (<https://www.irs.gov/businesses/corporations/practice-units>)
  - Counsel
  - yK-1

- Auditor's Workbench
- Manager Initial Risk Assessment (MIRA)
- Specialist Initial Risk Assessment (SIRA)

(4) External resources include:

- Financial statement information
- Securities and Exchange Commission (SEC) filings
- Taxpayer website(s)
- Internet research
- Contracted vendor services (i.e. Bloomberg Tax, Westlaw, Accurint, Capital IQ, etc.)
- Publications such as newspapers, trade magazines, industry journals, etc.
- Regulatory agencies
- Any other third parties (see IRM 25.27.1, Third Party Contact Program, for procedures)

4.46.3.3.1.1  
(12-18-2018)

**Federal, State and Local Agencies**

- (1) Most LB&I taxpayers deal with one or more regulatory agencies, either federal or state. These agencies may have conducted detailed examinations of the taxpayer's operations. The case manager can obtain information that can save significant time by reviewing available audit reports and workpapers of those governmental agencies. If the taxpayer does not voluntarily make the reports available, the examination team should request the information directly from the regulatory agency, or alternatively, summons it from the taxpayer. If requested through the regulatory agency, a request for the reports should be made through Privacy, Governmental Liaison and Disclosure (PGLD). See IRM 11.4, Office of Governmental Liaison.
- (2) When contacting third parties to obtain non-public information about the taxpayer under examination, see IRM 4.46.3.4.1, Third-Party Contacts.

4.46.3.3.2  
(12-18-2018)

**Counsel and/or Subject Matter Experts**

- (1) To facilitate the understanding of potential industry issues, any recent legislative changes and emerging issues, consider contacting LB&I Area Counsel or subject matter experts. They can provide assistance in risk analysis and other aspects of the case planning process. Counsel and SMEs are valuable technical resources.

4.46.3.3.3  
(12-18-2018)

**Risk Analysis Decision Points**

- (1) A risk analysis must be completed during the planning stage of the examination. This risk analysis should be reviewed and updated throughout the examination as warranted. Risk analysis decision points to consider include:
- a. Related return(s) received in group
  - b. Pre-contact analysis
  - c. Issue identification
  - d. Mid-cycle risk analysis (see IRM 4.46.3.3.6)
  - e. Ongoing factual development
  - f. Taxpayer's acknowledgment of the facts
  - g. Issue resolution

4.46.3.3.4  
(01-04-2024)  
**Risk Analysis  
Collaboration**

- (1) Team members should collaborate at the earliest point of the planning phase to finalize the initial risk analysis of the return. The case manager in consultation with specialist manager(s) will collectively assess potential issues identified, approve issues and establish issue priorities. Throughout the risk analysis process, an ongoing dialogue should occur among the team members. For example, depending on the complexity of the return, informal discussion(s) prior to the internal planning meeting are encouraged to discuss logistical concerns such as assignment of issue(s), overlapping of multiple specialties, assignment of a team member to multiple issue teams, etc. The informal discussions will enhance the internal planning meeting by resolving issues beforehand. Any informal agreement(s) discussed should be formalized at the internal planning meeting.
- (2) As a reminder for cases subject to the ISCP process, the case managers and specialist managers, or their designees, should collaborate using the MIRA and SIRA process to determine the potential issues and availability of examiners having knowledge about each issue identified. See also IRM 4.46.3.2.1 for details about which specialists are subject to the MIRA and SIRA process.
- (3) LB&I examiners are required to contact the Merger & Acquisition (M&A) Project Team for an assessment of whether the case should be part of the M&A Project when their case has 40 or more planned staff days related to potential M&A issues. Contact with the M&A Project Team must be made early in the examination planning stage by emailing the case name, potential M&A issue(s) and respective planned staff day information to *\*LB&I M&A Project Team*. If the case is selected to be part of the M&A Project, the M&A Project Team will assist the examination team in the planning, examination and resolution of the M&A issue(s). Refer to the Corporate Issues Knowledge Base in the Virtual Library at <https://irs.gov.sharepoint.com/sites/ETD-KMT-KB020> for information on potential M&A issues. M&A issues may include, but are not limited to:
  - Asset acquisitions
  - Corporate carryovers
  - Corporate distributions
  - Corporate liquidations
  - Corporate organization
  - Corporate reorganizations
  - Transaction costs
  - Worthless stock losses

4.46.3.3.5  
(01-04-2024)  
**Risk Analysis Factors to  
Consider**

- (1) The risk analysis is a process that is based on experience, judgment, and objective analysis. An issue-based approach should be used when performing the risk analysis to identify issues that are material or have significant compliance risk. Other goals of the issue-based approach are to:
  - Improve the audit planning process
  - Reduce examination cycle time
  - Improve currency
  - Efficiently use compliance resources
- (2) The risk analysis is an ongoing process and should be periodically revisited and updated. Priorities can be established when weighing the potential impact on voluntary compliance and resources needed. Many factors can be consid-

ered during the risk analysis process which may change as additional facts are developed. Some of the factors that may be considered in conducting the risk analysis include the following:

- a. Return information, including related returns, should be reviewed to determine possible large, unusual and questionable amounts. The risk analysis should consider the size and complexity of the return which may include related entities, changes between years and locations of entities.
- b. Claims and voluntary disclosures
- c. Potential tax adjustment compared with the resources needed.
- d. Significant interrelated issues which, if fully developed, would require additional returns to be brought under examination. For example, recognition of income and deduction of expenses between related parties or the tax treatment and valuation of assets in mergers and acquisitions may require expansion of examination to include related returns.
- e. Weighing the magnitude of compliance risks against the resources required to examine a highly complex issue.
- f. Consideration should be given to prior cycle issues that have been settled or are pending in Appeals. For issues that have been resolved, consideration should be given to settlement authority. See IRM 4.46.5.4.2.2, Delegation Orders. If the issue is open, teams should have ongoing discussions with the taxpayer on the status of the issue before Appeals, and when settled, obtain the Appeals Case Memorandum (ACM). For those issues still pending, the ex parte rules must be followed. See Rev. Proc. 2012-18 and IRM 8.1.10, Appeals Function, Ex Parte Communications.
- g. Any applications for change in accounting method or consent letters attached to the return should be reviewed to determine whether the accounting method change was proper and the corresponding adjustments were computed correctly. See IRM 4.11.6 , Changes in Accounting Methods for additional information.
- h. Compliance consideration or items of strategic importance
- i. Financial condition of the entity - collectability
- j. Materiality - adjustment potential
- k. Recurring nature of the issue and potential impact on future years
- l. Effect of legislative changes
- m. Litigation consideration
- n. Business risks that may result in material misstatements in financial statements
- o. Significant changes in entity such as large acquisitions, reorganizations, or other unusual events
- p. Significant changes in the taxpayer's industry
- q. Significant new products, services, or new lines of business
- r. Tax haven locations and significant changes in or expansion to different tax jurisdictions
- s. Operations in areas with unstable economies
- t. High degree of complex regulations
- u. Effective Tax Rates (ETR) – changes and trends in US and worldwide rate
- v. Foreign Tax Credits/ limitations
- w. Taxpayer's system and controls
- x. Amended returns
- y. Carryback and carryover items
- z. Any other relevant risk factors identified but not listed above

4.46.3.3.5.1  
(01-04-2024)

**Schedule UTP Guidance**

- (1) In December 2022, the IRS released an updated Schedule UTP and instructions.
- (2) Taxpayers subject to Schedule UTP reporting complete:
  - Column (c) or (d) (whichever applies), to identify the authoritative source in conflict with the tax position.
  - New columns (i) through (k) to disclose the amount of the line item on the taxpayer’s return that includes the unrecognized tax benefit.

In addition, the revised instructions make clarifications to the concise description section on Part III of the Schedule.

- (3) LB&I examiners and managers are required to complete Schedule UTP training (Courses #75012r and #67038) available on Integrated Talent Management (ITM), before reviewing a return that includes Schedule UTP or examining an issue disclosed on the schedule. This training requirement extends to case managers and territory managers of both Geographic Practice Area (GPA) and issue examiners. .
- (4) A Disclosure Review Team reviews and evaluates all concise descriptions of UTPs to assess compliance with the Schedule UTP instructions. In instances where information contained on the Schedule UTP is deemed not to have met the requirements of the instructions, the Disclosure Review Team will send Letter 5191, Uncertain Tax Position (UTP) 1st Notice, to the taxpayer. The audit team receives notification of insufficient disclosures filed by taxpayers in the Case Built File (CBF). Examiners and specialists should review all UTP disclosures and contact the Review Team if they have questions about the adequacy of the concise descriptions. .
- (5) When a return with a Schedule UTP is assigned, the CBF will contain the Sch. UTP Case Assignment Instructions and Sch. UTP Examination Job Aid. The UTP guidance documents will outline the administrative procedures such as the project and tracking codes for Schedule UTP returns and the IMS Issue Tracking Attribute Code (ITAC) required for all Schedule UTP issues (4579). If a Schedule UTP return is assigned and the CBF does not contain the UTP Case Assignment Instructions, or Examination Job Aid, examiners or managers should contact the Schedule UTP Team or access these documents on the Uncertain Tax Positions section of the Virtual Library.
- (6) When a Schedule UTP is attached to the return, but no issues are disclosed:
  - The team should check line 14 of Form 1120 Schedule K and determine whether the taxpayer answered “yes” or “no” to the question that asks whether the corporation is required to file Schedule UTP.
  - If the taxpayer has answered “no” on Line 14 of Schedule K and signed the tax return under penalties of perjury, the team can ask the taxpayer to confirm that there are no issues to be disclosed according to the Schedule UTP reporting requirements. The team can also inform the taxpayer to consult the instructions to Schedule UTP to determine the reporting requirements when there are no tax positions to report.
  - If the taxpayer has answered “yes” on Line 14 of Schedule K and signed the tax return under penalties of perjury, the team should ask the taxpayer to provide a revised Schedule UTP, following the Schedule UTP instructions.

- (7) If the taxpayer's financial statements reflect an increase in unrecognized tax benefits, but the filed return did not include a Schedule UTP:
- The team should consider risks associated with issues not properly disclosed on Schedule UTP.
  - The team can ask the taxpayer to confirm that there are no issues to be disclosed according to the Schedule UTP reporting requirements.
  - The team cannot ask the taxpayer about the makeup of the unrecognized tax benefits or what the increase in unrecognized tax benefits relate to.

4.46.3.3.5.1.1  
(01-04-2024)

**UTP Guidance -  
Responsibilities and  
Involvement**

- (1) Refer to IRM 4.46.1.1.3 for LB&I examination process roles and responsibilities of the practice areas and issue teams.
- (2) **Case Manager Responsibilities:**
- Review the return to determine if there is a Schedule UTP attached.
  - Update AIMS and ERCS for the Schedule UTP tracking and project codes (0547) if necessary.
  - The case manager should alert examiners, specialists, and their respective territory managers of the assignment of a return with a Schedule UTP.
  - Ensure a comment is made in the Specialist Referral System if the case includes a return with Schedule UTP.
- (3) **Issue Manager Responsibilities:**
- The issue manager is responsible for planning, executing, and resolving assigned issues, including those reported on Sch. UTP.
  - The issue manager coordinates the issue team and participates in the ongoing risk analysis of Sch. UTP issues throughout the exam.
  - The issue manager should alert examiners, specialists, and their respective territory managers of the assignment of a return with a Schedule UTP.
  - The issue manager must agree with any decisions to expand an exam of a Sch. UTP issue to a prior or subsequent year.
- (4) **GPA Territory Manager and Issue Territory Manager Involvement:**
- Territory managers should be involved in team discussions during the pre-exam analysis when there is a Schedule UTP attached to the return. These discussions should take place before meetings begin with the taxpayer.
  - The territory manager's subsequent level of involvement will vary for each case depending on factors such as the nature of the issues disclosed on the Schedule UTP, the relationship with the taxpayer, audit history, etc.
- (5) **Primary Team Coordinator Involvement:**
- The primary team coordinator must add a comment on the Specialist Referral System that the return has a Schedule UTP attached.

4.46.3.3.5.1.2  
(01-04-2024)  
**UTP Guidance -  
Planning the Audit**

- (1) When auditing a return with a Schedule UTP, examiners should conduct the risk analysis and planning activities consistent with the Initial Risk Analysis of the Return subsection in IRM 4.46.3.2, the Risk Analysis Process subsection in IRM 4.46.3.3, and the Internal Planning and Internal Planning Discussions subsection in IRM 4.46.3.4.
- (2) Issues disclosed on Schedule UTP must be reviewed and evaluated for materiality as part of the risk analysis process of the overall return.
  - Materiality risk indicators on Schedule UTP can include entry of a major tax position, the ranking of tax positions, permanent and/or temporary timing codes, and the dollar amount on the line of the return where the position is reported.
  - Increases in current and prior year unrecognized tax benefits, as well as tax position narrative disclosures in the financial statement income tax footnote, can also be indicators of materiality risk.
  - The Schedule UTP concise descriptions should be carefully reviewed and evaluated for potential risk associated with vague disclosures, emerging and/or controversial issues, and positions taken contrary to a rule or Treasury Regulation.
- (3) When Schedule UTP has been used to report items or transactions contrary to regulations or other guidance in lieu of filing Form 8275-R, Regulation Disclosure Statement, or Form 8275, Disclosure Statement, Territory Managers, Issue Managers, and Counsel should be involved in the pre-exam analysis and should coordinate with the IRS National Office.
  - Positions disclosed should be analyzed to determine whether they are due to interpretation of the regulation or guidance or constitute a challenge to such regulations or other guidance.
  - Territory Managers, Issue Managers, and Counsel should have continuous involvement in cases with positions contrary to regulations or other guidance.
- (4) As with any issue, the issue manager must concur with examination of issues on Schedule UTP.
- (5) A decision to survey a return with Schedule UTP must include an analysis and evaluation of the audit potential and the resources available. See IRM 4.46.3.2.2.
- (6) The planning of the examination of a return with Schedule UTP should take into consideration the specific requirements related to Schedule UTP.
  - When an issue disclosed on the Schedule UTP was an issue in a prior year audit, the issue team should review the issue in the current year, verify the facts, and consult with the Territory Manager and Issue Manager for concurrence on whether the issue merits examination.
  - When making specialist referrals, note in the comments section that the return has a Schedule UTP.
  - Ensure that the AIMS / ERCS UTP project (0547) and tracking (0547) codes are applied to the return. When the return is also part of other programs or projects, refer to IRM 4.1.21.2.3 for guidance on project and tracking codes.
  - Input ITAC 4579 in IMS for all issues disclosed on Schedule UTP that are selected for audit.

- (7) Based on the modified policy of restraint (Announcement 2010-76), we **cannot** ask the following:
- Why the taxpayer recorded an unrecognized tax benefit for a tax position?
  - What is the dollar amount of the unrecognized tax benefit?
  - What is the makeup of the unrecognized tax benefits (federal, state, or foreign)?
  - Why the taxpayer thinks a tax position is uncertain?
- (8) Under the modified policy of restraint, we cannot request:
- Tax accrual work papers (TAWs), unless the case meets the unusual circumstances standard outlined in IRM 4.10.20.3.1, or falls within the listed transaction exception (IRM 4.10.20.3.2) to the IRS's policy of restraint.
  - Any documents privileged under the attorney-client privilege, the tax advice privilege in section 7525 of the Code, or the work product doctrine where the document was provided to an independent auditor as part of an audit of the taxpayer's financial statements.
  - Working drafts, revisions, or comments concerning the concise description of tax positions reported on Schedule UTP.
  - The amount of any unrecognized tax benefit related to a tax position reported on Schedule UTP.
  - Computations determining the ranking of tax positions to be reported on Schedule UTP or the designation of a tax position as a Major Tax Position.
- (9) While we **cannot** ask the taxpayer about the makeup of the liability for unrecognized tax benefits, we **can** ask for the following:
- Confirmation that there are no (additional) issues to be disclosed on Schedule UTP.
  - The relevant facts of an issue.
  - How an issue was treated for tax purposes (deduction, excluded from income, etc.).
  - Information pertaining to the nature of the position giving rise to the uncertainty.
  - Details that extend beyond cited authority (IRC, ruling, regulation section).
  - Factual description and the legal issues presented.
  - Identify the specific entity, country, or transaction.
  - Relationship of position to other assets or activities.
  - Whether the position disclosed relates to computational issues, substantiation issues, sampling methodologies, or legal interpretation.

4.46.3.3.5.1.3  
(01-04-2024)  
**UTP Guidance -  
Executing the Audit**

- (1) Execute your examination and your audit plan consistent with the principles of IRM 4.46.3, Planning the Examination, and IRM 4.46.4, Executing the Examination.
- (2) During the planning or execution phase of the examination, if a team thinks that an issue disclosed on the Schedule UTP should be addressed in a prior year that is under examination, the approval of the Territory Manager and Issue Manager are required before the issue is included in the audit plan or a discussion occurs with the taxpayer. Further, if the team thinks that an issue

disclosed on the Schedule UTP should be addressed in a prior year not under examination, the approval of the Territory Manager and Issue Manager are required to open a prior year return. The involvement of the territory manager will vary depending on the nature of the issues disclosed on the Schedule UTP, the relationship with the taxpayer, audit history, etc.

**Note:** For positions contrary to regulations or guidance, see additional requirements in IRM 4.46.3.3.5.1.2.

(3) Issue IDRs as outlined under IRM 4.46.4.7, following these principles:

- Identify the issue and state the purpose of the IDR using plain language.
- Request only relevant and necessary information that is appropriately focused to ensure that the information requested and/or questions asked add value to the identification and resolution of the issue.
- Discuss the request with the taxpayer before issuing the IDR.

4.46.3.3.5.1.4  
(01-04-2024)  
**UTP Guidance -  
Penalties**

- (1) The accuracy-related penalty due to disregard of rules or substantial understatement of income tax for items other than listed transactions or transactions of interest can be avoided if a tax position is adequately disclosed on Schedule UTP, Form 8275, or Form 8275-R, and the taxpayer has reasonable basis for taking the position.
- (2) With a complete and accurate disclosure of a tax position on Schedule UTP, a separate Form 8275 or Form 8275-R, is not required to be filed to avoid certain accuracy related penalties with respect to that tax position. The filing of Form 8275 or Form 8275-R, however, will not be treated as if the corporation filed a Schedule UTP.
- (3) In situations where Schedule UTP is filed in lieu of Form 8275 or Form 8275-R, incomplete or insufficient Sch. UTP disclosures do not satisfy the accuracy related penalty avoidance requirements offered with Forms 8275 or 8275-R.
- (4) Incomplete or insufficient Schedule UTP disclosures can generally be evidenced by the issuance of Letter 5191, Uncertain Tax Position (UTP) 1st Notice.
- (5) In the case of transactions that are not reportable transactions, complete disclosure of a tax position on Schedule UTP satisfies the disclosure requirement of IRC 6662(i). which imposes an increase in penalties for nondisclosed non-economic substance transactions.
- (6) Disclosure of a tax position on the Schedule UTP will not be treated as if a corporation filed a Form 8886, Reportable Transaction Disclosure Statement.
- (7) There is no penalty imposed for filing incomplete or insufficient UTP disclosures.

4.46.3.3.5.1.5  
(01-04-2024)  
**UTP Guidance -  
Resolving the Audit**

- (1) Resolve issues during your examination by following the guidance provided in IRM 4.46.5.2, Issue Resolution.

- (2) The issue team members are responsible for fully and completely developing issues under examination and following the acknowledgment of facts process in reaching agreement with the taxpayer as to the relevant facts.
- (3) When a Schedule UTP issue is audited resulting in a Notice of Proposed Adjustment (NOPA), the issue team should:
  - Discuss the issue with the taxpayer and confirm the facts of the issue in question.
  - Clarify the taxpayer's position.
  - Ensure open collaboration and consultation has occurred in the issue development process with involvement of subject matter experts, management, and Counsel as appropriate.
  - Ensure that the principles of plain writing have been used in stating the government's legal position(s) and the taxpayer's position.
  - Use Alternative Dispute Resolution programs, as appropriate, such as Fast Track Settlement, Rapid Appeals Process, Early Referral to Appeals, and Case Manager Settlement Authority.
  - In cases where there is a position contrary to a regulation or other guidance, you must consult with the Territory Manager and Counsel to coordinate with National Office.

4.46.3.3.5.1.6  
(01-04-2024)  
**UTP Guidance -  
Feedback**

- (1) Feedback on Schedule UTP is collected by the Office of Tax Shelter Analysis (OTSA) to evaluate the usefulness of Schedule UTP in examinations. Your feedback provides useful input and suggestions for future efforts to improve Schedule UTP.
- (2) Schedule UTP Feedback can be provided for all returns assigned to the field with a Schedule UTP attached, including surveys before assignment, surveys after assignment, examinations, and CAP examinations. Your feedback is requested during the exam planning stage when the audit team is preparing its initial risk analysis or considering whether to survey a return.
- (3) Schedule UTP feedback is accessible in the **LB&I Taxpayer Registry (LTR) Feedback Tool**. All Team Members assigned to tax returns in IMS and case managers assigned to returns on the CBF will have access to complete the UTP feedback.
- (4) Go to the BEARS website at <https://bears.iam.int.for.irs.gov/home/Index>. Request entitlement **PROD USER LTR-LBI (LB&I TAXPAYER REGISTRY)** to access the LTR Feedback Tool. Once your BEARS application request is approved, you can access and complete the UTP feedback as follows:
  - Go to the LTR Feedback Tool.
  - Click on "Feedback Entry Page" under Links.
  - Click the green "Proceed" button on your personalized welcome page. Your feedback inventory will display.
  - Open a UTP feedback form by clicking anywhere on the row that identifies your tax return and indicates "Schedule UTP Field Feedback" as the Campaign/Project Description.
  - Scroll down the page and respond to the questions in the form; then click the green "**Submit**" button at the bottom to complete the feedback. Once the feedback has been submitted, the tax return will no longer display in the team members' feedback inventory.

- (5) Additional feedback will be retrieved from the data you input in IMS with the UTP ITAC of 4579. The Schedule UTP Specialist Team may contact field examiners to gather further information on specific issues or experiences related to Schedule UTP.
- (6) Questions about Schedule UTP and the feedback procedures can be sent to *lbi.utp.communications@irs.gov*.

4.46.3.3.5.2  
(12-18-2018)  
**Overall Tax Impact**

- (1) Overall tax impact should be considered when risk assessing issues. For example:
  - a. Offset of potential adjustments by different issues for correlative adjustments (e.g., foreign tax credit may be reduced or increased by an unrelated issue adjustment).
  - b. Offsetting impact of potential adjustments on prior years (e.g., research credit adjustment may provide offsetting adjustment to prior year(s) research credit amount) that may be reduced or increased by issue adjustment.
  - c. Overall tax effect of partnership adjustments. (For example, look at the big picture regarding potential dividend adjustments, which may be negligible if the primary partner is a tax-exempt entity owning an 80 percent equity base for which dividends may be exempt.)

4.46.3.3.5.3  
(03-14-2016)  
**Analyzing Schedules M-2 and M-3**

- (1) Schedule M-3 is a critical schedule for identifying potential tax issues resulting from both temporary and permanent differences between financial and tax accounting.
- (2) It is important to verify that net income per the taxpayer's books agrees with net income per Schedule M-3. It is also crucial to reconcile the taxpayer's worldwide net income (or loss) on Schedule M-3 to the financial statements.
- (3) The taxpayer's workpapers should be obtained for selected Schedule M-3 adjustment calculations and corresponding supporting schedules. Schedule M-3 adjustments should be reviewed to identify potential issues. Inquiries should be made regarding items or transactions that have a different treatment for book and tax that are not shown on Schedule M-3.
- (4) Schedule M-2 is used to analyze all changes in the retained earnings account per books during a given accounting period.
- (5) Retained earnings and their tax effect should be reviewed when material changes are made by the taxpayer.
- (6) Tie net income per the financial statements to the Schedules M-2 and M-3 and to the year-end trial balance.

4.46.3.3.5.4  
(03-14-2016)  
**Materiality**

- (1) Materiality is a relative concept relating to the significance of an amount, transaction or discrepancy. When risk assessing a return, information is material if a decision is changed or influenced based on the magnitude of an omission or misstatement of accounting information in light of surrounding circumstances. Absence of an item may be material.
- (2) The assessment of what is material is a matter of professional judgment. In setting materiality thresholds, the examination team should consider both quantitative and qualitative factors. These factors include but are not limited to:

- a. Dollar value
- b. Permanency

**Note:** Given equal dollar value, an item which causes a permanent difference in tax liability is more material than an item which causes a timing difference.

- c. Timing

**Note:** Before selecting an area for examination that might result in a timing adjustment, consideration should be given to the number of years income is deferred or an expense is accelerated.

- (3) Principles of materiality may be outweighed by other factors such as policy or compliance considerations – tax shelters, emerging issues, fraudulent items, or items contrary to public policy.

#### 4.46.3.3.5.5 (01-04-2024)

#### Outside Expert Program (OEP)

- (1) LB&I's Outside Expert Program (OEP) provides access to outside expert services at the examination and Appeals levels. The Outside Expert Budget Committee (Committee) provides outside expert funding to LB&I examination teams to assist in the development of significant issues and to supplement the work of in-house personnel. The Committee provides cross-business unit management level oversight and guidance and acts as liaison for the OEP.
- (2) The services of the outside experts may be needed in special situations such as the following:
  - Strategically managed issues
  - Cases involving high impact precedent setting issues
  - High dollar issues
  - High impact compliance issues
  - Significant issues where in-house expertise is limited or not available
- (3) When considering the use of an outside expert, the examination team management should discuss potential outside expert needs with team members who will have a primary responsibility for examination of the issue, including specialists and their management.
- (4) Some key factors that should be considered when requesting outside expert assistance include the following:
  - Lack of availability of in-house expertise
  - Strategic initiatives impacted
  - Compliance/precedence impact
  - Tax revenue impact
  - Significant emerging issues
  - Counsel support for the legal foundation of the subject issue
  - High potential for litigation
- (5) More information can be found in IRM 4.46.10, Outside Expert Program and the Outside Expert Exam Procedures Knowledge Base at <https://irs.gov.sharepoint.com/sites/ETD-KMT-KB051/SitePages/LBIExamProcedures/PlanningTheExam/OutsideExpert.aspx>.

4.46.3.3.6  
(01-04-2024)  
**Documenting the Risk Analysis**

- (1) To facilitate issue development, on-going risk analyses should occur in all cases. All issue teams must document an initial risk analysis.
- (2) Mid-cycle risk analysis is required on all LCC and LPC cases (or successors to the LCC and LPC programs) and must be approved by the territory manager. This should occur when the case reaches the earliest of either 50% of time applied or 50% of time lapsed based on ECD.
- (3) Mid-cycle risk analysis is optional on LB&I IC cases with ECDs of less than 12 months. Should the ECD of any LB&I case be extended to exceed 12 months, an updated risk analysis is required. The issue team's risk analysis is approved by the issue manager(s) and forwarded to the case manager for concurrence. Depending upon local management's practices, the risk analysis may need to be forwarded to the territory manager for approval. At mid-cycle, the issue team will submit the issue team's risk analysis to the case manager with a recommendation to continue, expand, or reduce the scope of the examination.
- (4) Mid-cycle risk analysis is not required for micro-captive insurance cases if:
  - The case is part of the Micro-Captive Insurance Campaign (project code 1138)
  - The only issue is captive insurance
- (5) Because the risk analysis is an ongoing process, when significant events occur such as adding new issues or additional examination years, the risk analysis should be updated/revised as actions occur.
- (6) The initial, mid-cycle, and or updated risk analyses documents will be shared with the taxpayer once the updated documents have been approved by the case and issue managers.

4.46.3.4  
(12-18-2018)  
**Internal Planning and Internal Planning Discussions**

- (1) A major objective for every examination is the efficient use of resources. This requires thoughtful planning by all parties involved prior to meeting with the taxpayer. Internal planning discussions are essential when multiple team members and consultants are involved in the examination of a return. These discussions will help to develop a unified, coherent and consistent preliminary examination plan that will facilitate discussions with the taxpayer. Communication and collaboration between team members, taxpayers and managers on issues, audit procedures, timelines and other responsibilities will lead to efficient planning and execution of the examination.
- (2) The goals for internal planning include the following:
  - a. Preliminary issue identification
  - b. Preliminary examination procedures
  - c. Preliminary identification of LB&I issue team members
  - d. Preliminary target dates
  - e. Communication and administrative items
- (3) Factors that must be considered in planning the examination include:
  - a. The complexity of taxpayer's organizational structure
  - b. The magnitude or complexity of potential issues
  - c. Availability of specialists
  - d. Time availability

- e. Geographic differences
- f. Statute of limitations

These factors may lead to one or multiple planning discussions. It is important that the discussion(s) be held in a timely fashion to assure progression and continuity.

4.46.3.4.1  
(01-19-2022)  
**Third-Party Contacts**

- (1) The need to contact third parties should be considered early in the examination or as soon as the need arises. IRC 7602(c) provides that IRS personnel may not contact third parties with respect to the determination or collection of tax liability without providing advance notice to the taxpayer. IRS personnel are required to maintain a record of such contacts and provide taxpayers with this record upon request.
- (2) Section 1206 of the Taxpayer First Act amended IRC 7602(c)(2), Notice of Contact of Third Parties, and now requires IRS to:
  - Issue advance notice before any third-party contacts are made
  - Intend, at the time such notice is issued, to contact third parties (the notice must state the intent)
  - Specify in the notice the time period, not to exceed one year, in which IRS intends to make third-party contact(s)
  - Send the notice at least 45 days before the first contact with a third-party
- (3) Case and issue managers and examiners should refer to IRM 25.27.1, Third-Party Contact Program, for procedures and exceptions to the notification requirements.

4.46.3.4.2  
(12-18-2018)  
**Correspondence**

- (1) RRA 98 Sec. 3705(a) provides that any manually or computer-generated correspondence shall include the name, telephone number, and unique identifying number (employee identification number) of an IRS employee who can be contacted with respect to the correspondence and resolve any subsequent inquiries.

4.46.3.4.3  
(12-18-2018)  
**Financial Interests or Other Conflicts of Interest and Disclosure**

- (1) The case manager will ensure that all personnel on the LB&I examination are aware of and understand the statute requiring disclosure of any financial interests or other conflicts of interest that might create a real or apparent conflict of interest. See Document 12011, Internal Revenue Service Ethics Handbook, for conflict of interest rules. Also see IRM 4.10.2.2.3, Conflict of Interest.
- (2) If an employee has a conflict, financial or otherwise, Form 6782, Certification of a Financial Interest in a Work Assignment, will be completed by the employee and given to their manager. This form will be completed only when a potential conflict exists. Managers will remove examiner(s) with potential conflicts of interest from the case unless determination(s) granting exemption are properly approved.
- (3) LB&I employees who are not issue team members on an examination, but have a potential conflict of interest (financial, personal, or business) in a work assignment should complete the Form 6782 at the beginning of their involvement. Such employees will be removed from the case unless determination(s) granting exemptions are properly approved. Examples of employees that may be affected include, but are not limited to:

- Territory managers
- Directors of field operations
- Practice area directors who will impact the decision or treatment of an issue or return
- Subject matter experts
- Personnel from other programs where the taxpayer's identity is known or inferred, and the employee will impact the decision or treatment of an issue or return
- Tax computation specialists
- Joint Committee specialists involved in the review of a return

4.46.3.4.4  
(12-18-2018)  
**Internal Planning  
Preparation**

- (1) There are various internal and external sources of information available to assist the case manager and agents in identifying potential issues, determining staffing requirements and the general approach to the examination. See IRM 4.46.3.3.1, Examiner's Preliminary Risk Analysis - Information Resources.
- (2) Depending on the resources deployed, the number of issues and complexity of those issues, use professional judgment to determine the depth of the procedures needed to efficiently prepare for the examination.

4.46.3.4.5  
(12-18-2018)  
**Internal Planning  
Discussion(s)**

- (1) Depending upon the complexity of the return, internal discussions may involve only the TC and the case manager.
- (2) When the examination involves multiple issue team members, team members assigned to the case should have more formalized internal discussions prior to meeting with the taxpayer.
- (3) Team members assigned to the case will assess the risks of the potential issues with respect to their specialties. All team members will come to the internal planning meeting with a listing of the potential material issues and related preliminary audit procedures for consideration and collaboration.

4.46.3.4.6  
(12-18-2018)  
**Internal Planning  
Discussion Agenda**

- (1) An agenda should be created to emphasize the objectives of the internal planning discussions. See Exhibit 4.46.3-2, Sample Agenda Topics for Initial Internal Planning Meetings, for a suggested list of agenda items to cover in the planning discussions.

4.46.3.4.7  
(12-18-2018)  
**Notification of Planning  
Discussion(s)**

- (1) Specialist examiners and their managers who will be involved in the examination should be notified of:
  - The date, time and method of the internal planning discussion(s)
  - The scheduled starting date of the examination
  - Data available for review
- (2) Other participants who may be invited to the planning discussion(s) (depending on the size and complexity of the case) may include the following individuals:
  - Support personnel
  - Subject matter experts
  - Territory manager(s)
  - Director of field operations
  - Area counsel
  - Tax law specialists

- 4.46.3.4.8  
(12-18-2018)  
**Holding the Internal Planning Discussions**
- (1) Major topics to consider in internal planning discussions should include:
- a. Team member briefing
  - b. Issue identification/risk analysis
  - c. Resource allocation and utilization (issue teams)
  - d. Setting tentative timelines for the examination and issues
  - e. Review and documentation of preliminary examination procedures
  - f. Consolidation of common examination procedures
  - g. Preparation for discussions with the taxpayer
  - h. Time schedule coordination
  - i. Communication methods
  - j. Administrative procedures
- 4.46.3.4.8.1  
(12-18-2018)  
**Team Member Briefing**
- (1) Sharing important taxpayer information and issue expertise amongst the team members may answer questions and address concerns raised from their initial risk analysis of the return.
- 4.46.3.4.8.2  
(12-18-2018)  
**Issue Identification/Risk Analysis**
- (1) During internal planning discussions, potential issues identified will be discussed and risk assessed. If a return is received with a pre-identified issue (e.g., campaign), then follow the instructions that come with the Case-Built File.
- 4.46.3.4.8.3  
(12-18-2018)  
**Resource Allocation and Utilization (Issue Teams)**
- (1) In the internal planning phase, a tentative identification of an issue team would be useful in some cases as a starting point prior to discussions with the taxpayer. For example, depending on the issue, issue team member(s) may want to consult with subject matter experts from international, economists, engineering, financial products, and/or computer audit. Discussion of the skills and experience of the potential team members and managers regarding the issues identified will help in determining the effective selection of the issue team members/manager.
- (2) Once an issue(s) is identified, the CAM can be used to assign resources to an issue. The issue team members will take various factors into consideration for assigning resources, these include:
- a. the issue's technical aspects
  - b. the complexity of factual circumstances
  - c. the experience and level of expertise of each issue team member
- Documentation of the decisions reached should be included as part of the audit planning process to show the procedures and tasks assigned to each issue team member. Once finalized, the CAM should be uploaded into IMS as part of the case file workpapers.
- 4.46.3.4.8.4  
(12-18-2018)  
**Setting Tentative Timelines for the Case and Issues**
- (1) During internal planning, a tentative case timeline should be established based on the projected issue(s) under consideration. The examination team may have historical knowledge of the taxpayer or issues that may help develop a timeline. Other factors may include statute of limitations concerns and anticipated administrative or legal complexities for case processing. This tentative timeline will be used to collaborate with the taxpayer during the joint planning discussions. Examples of situations with administrative or legal complexities may include:
- a. Use of issue resolution tools such as Pre-Filing Agreements (PFAs).

- b. Time specific or sensitive administrative procedures such as Joint Committee, TEFRA, BBA or whistleblower claims (i.e., Form 211, Application for Award for Original Information).

For more information see IRM 4.46.3.9.1.1, Case Timeline, and IRM 4.46.3.8.1.3, Setting the Issue Timeline.

4.46.3.4.8.5  
(03-14-2016)  
**Review and Documentation of Preliminary Examination Procedures**

- (1) Case and issue managers should collaborate to review examination procedures for each individual issue to ensure that they are appropriate. For example, audit procedures may take into consideration prior examination procedures or the applicability of issue resolution tools and prior closing agreements, etc.

4.46.3.4.8.6  
(12-18-2018)  
**Consolidation of Common Examination Procedures**

- (1) Issue teams should collaborate to consolidate common examination procedures and leverage taxpayer presentations such as organizational structures, product development or tours of facilities. Communication on examination procedures among issue teams will lead to efficient resource utilization.

4.46.3.4.8.7  
(12-18-2018)  
**Preparation for Meetings with Taxpayer**

- (1) Discuss potential topics for subsequent meetings with the taxpayer. Planning for subsequent meetings with the taxpayer should focus on objectives and each meeting should have an agenda or plan with each party knowing their individual responsibilities. For suggested topics to be discussed at meeting(s) with the taxpayer, see Exhibit 4.46.3-3, Sample Agenda for Opening Conference/Meeting and IRM 4.46.3.8, Issue Discussion Meetings.
- (2) Invite the IRS personnel to attend each meeting based on the agenda and the subject matter. All issue team members should be required to attend taxpayer meetings only when discussions will pertain to the entire team.
- (3) When the examination team is scheduling a meeting with the taxpayer, the relevant issue team member should communicate the planned agenda in advance and request that the taxpayer provide their own relevant personnel who can add value to the meeting. Regular communication between the taxpayer and the examination team should be ongoing to ensure attendance of essential personnel for each particular meeting.

4.46.3.4.8.8  
(03-14-2016)  
**Time Schedule Coordination**

- (1) Team members should share time availability for items such as planned leave and other commitments such as other cases, special details or projects.
- (2) Consideration should be given to scheduling regular and periodic status discussions with and without the taxpayer for IDR updates, issue status updates, etc.

4.46.3.4.8.9  
(01-04-2024)  
**Communication Methods and Technology Tools**

- (1) Consideration should be given to using all available forms of communication and technologies.
- (2) LB&I employees should make taxpayers aware of available electronic communication options that may be suitable for the specific communication need. In addition, LB&I employees must accommodate requests by taxpayers to use an approved available method of electronic communication.

- (3) Communication methods include secure messaging applications, EEFax, Microsoft Teams, or other approved alternatives.

4.46.3.4.8.9.1  
(01-04-2024)

**Secure Email Messaging Systems**

- (1) SEMS is a platform for LB&I employees to communicate online with their business taxpayers and representatives. LB&I Secure Email uses a feature of Microsoft Outlook and IBM Lotus Notes to encrypt email messages and attachments, allowing LB&I employees to exchange SBU data with other Secure Email users.

**Note:** The LB&I Secure Email program is not intended for use by individual taxpayers to exchange secure emails with the IRS.

- (2) Follow six steps to establish a secure email arrangement:
1. Verify taxpayer meets the criteria
  2. Authenticate the identities of the taxpayer/representative
  3. Sign a Memorandum of Understanding (MOU)
  4. Download/exchange digital certificate
  5. Add taxpayer/representative to Outlook contacts or Lotus Notes address book
  6. Exchange encrypted secure emails
- (3) For additional information, see the Secure Email Messaging Systems (SEMS) Program Overview page at: [https://irs.gov.sharepoint.com/sites/ETD-KMT-KB051/SitePages/LBIExamProcedures/ITResources/SecureEmailMessagingSystems\(SEMS\)ProgramOverview.aspx](https://irs.gov.sharepoint.com/sites/ETD-KMT-KB051/SitePages/LBIExamProcedures/ITResources/SecureEmailMessagingSystems(SEMS)ProgramOverview.aspx).

4.46.3.4.8.9.2  
(01-04-2024)

**Taxpayer Digital Communication (TDC) Secure File Sharing – Secure Messaging (SFS-SM)**

- (1) TDC SFS-SM is a platform for LB&I employees to communicate online with their taxpayers for specific case matters. The IRS TDC SFS-SM is similar to a web-based email service. Secure messaging uses encrypted files, when transmitting sensitive or confidential tax-related information.
- (2) Messages are securely sent by IRS representatives and can include document attachments. This is an enhanced process of securely exchanging taxpayer data and other tax-related information. It increases efficiency of interactions between the IRS and taxpayers. Individuals, authorized employees of the company, and authorized taxpayer representatives will be able to use secure messaging relating to their LB&I cases.
- (3) LB&I employees who wish to obtain access to the TDC SFS-SM platform, must complete the following ITM training:
- Course #78384r: Taxpayer Digital Communication (TDC) Secure File Sharing – Secure Messaging (SFS-SM) Video Podcasts
  - Course #78634r: Taxpayer Digital Communication (TDC) Secure File Sharing Secure Messaging (SFS-SM) System
- (4) Upon completion, LB&I employees should forward ITM Certificates to *\*LB&I TDC*.
- (5) Submit a BEARS request at <https://bears.iam.int.for.irs.gov/home/Index> for entitlement **PROD USER TDC SEC MSG LBI**.

- (6) For additional information, see the Taxpayer Communication (TDC) page at [https://irs.gov.sharepoint.com/sites/ETD-KMT-KB051/SitePages/LBIExamProcedures/ITResources/TaxpayerDigitalCommunication\(TDC\).aspx](https://irs.gov.sharepoint.com/sites/ETD-KMT-KB051/SitePages/LBIExamProcedures/ITResources/TaxpayerDigitalCommunication(TDC).aspx).

4.46.3.4.8.9.3  
(01-04-2024)

**Enterprise e-Fax (EEFax)**

- (1) LB&I examiners have the ability to send and receive electronic fax documents directly from their workstations via EEFax.
- (2) EEFax does not require a special user interface; you use Outlook to send a fax directly from your computer to any fax number. You can e-Fax information on your computer, or you can scan a paper document and e-Fax it.
- (3) Most e-Fax recipients receive incoming faxes as Adobe Acrobat files attached to Outlook email messages, allowing them to view the fax transmissions without printing.
- (4) Tax information should only be faxed in situations where the authorized recipient has approved (written or verbal depending on the facts and circumstances) use of the faxing method for the information involved. See IRM 4.10.1.3.6, Use of Fax Machine or Enterprise e-Fax (EEFax) for Outgoing Taxpayer Communications, IRM 10.5.1.6.9.4, Faxing and IRM 21.2.3.5.5, Using Electronic Fax Services.
- (5) For instructions on requesting a toll-free EEFax number, visit the Getting Your EEFax Number website at <https://irs.gov.sharepoint.com/sites/ETD-KMT-KB051/SitePages/LBIExamProcedures/ITResources/GettingYourEEFaxNumber.aspx>.

4.46.3.4.8.9.4  
(01-04-2024)

**Microsoft Teams (Teams)**

- (1) Teams is the chat, voice, video, file sharing, and collaboration platform that is part of the Microsoft 365 suite of cloud-based tools. Teams is the standard collaboration and meeting tool for all IRS employees.
- (2) LB&I examiners are authorized to use Teams for IRS-related business meetings with participants outside the IRS, including taxpayers and representatives.
- (3) During initial contact with taxpayers and representatives, inform them of the option to hold video meetings. If a taxpayer or representative requests a video meeting or conference in lieu of an in-person or telephone discussion, the LB&I employee will grant the request and document the case activity record accordingly.

**Note:** In-person meetings remain a permanent option. The facts and circumstances of the case will dictate whether the examiner should hold video meetings, i.e., remote audit, taxpayer requested a virtual meeting, etc.

If ...	Then ...
The taxpayer requests or agrees to participate in a video meeting	<ul style="list-style-type: none"> <li>• Explain that a high-speed internet connection is required</li> <li>• Determine an agreeable date/time</li> <li>• Obtain a valid email address from the taxpayer to send the meeting invite</li> <li>• Obtain a contact number from the taxpayer for use in the event of technology issues during the meeting</li> <li>• Advise the taxpayer to join the meeting from a secure location</li> </ul>

- (4) When requesting an email address from the taxpayer, explain that it is only to send them the link for the video meeting and important meeting information. IRM 10.5.1.6.8.1, Emails to Taxpayers and Representatives, provides that when taxpayers request email contact and accept the risk of such, you may send an email with a brief, unencrypted message confirming the date, time or location of an upcoming appointment, but not the nature of the appointment. Do not send via email SBU data, including PII and tax information.
- (5) You must establish a professional environment before starting your video meetings. Some helpful hints include:
- Use a hardwired connection instead of wireless
  - Keep your background professional and free of distractions
  - Remove any background information you should not display or do not wish to display (personal photos, identifying information, political pictures, or items in violation of the Hatch Act)
  - Use a neutral background (blank wall, draped background, virtual background). Refer to Add custom backgrounds at [https://irs.gov.sharepoint.com/sites/IT4U/SitePages/Microsoft%203654416.aspx](https://irs.gov/sharepoint.com/sites/IT4U/SitePages/Microsoft%203654416.aspx) to learn how to change or blur your virtual background on Teams or display an IRS-branded template
  - Reduce or remove any extraneous movement (active ceiling fans, active TV screens and the like)
  - Try to keep controllable interruptions to a minimum and mute your audio when you aren't talking to reduce the effect of background noise
  - Ensure proper lighting
  - Position your camera at eye level and arms-length distance
  - Look directly at your camera to "make eye contact"
  - Be aware of your facial expressions
  - Dress professionally from head-to-toe
- (6) External participants can't join the meeting until you start it and admit them to the meeting. Join the meeting 5-10 minutes before the scheduled start time to check the quality of the connection, video equipment and audio levels.
- (7) Encourage external participants to join the conference a few minutes before the scheduled time.

- (8) Authenticate the identities of external participants before starting the meeting to avoid unauthorized disclosures of PII or taxpayer information. See IRM 21.1.3.2.3, Required Taxpayer Authentication and IRM 21.1.3.3, Third-Party (POA/TIA/F706) Authentication.

**Note:** If you admit an external participant before authenticating their identity, do not disclose any PII and remove them from the meeting.

- (9) If you realize that an external participant joined the event from a public location or an open environment where third parties might be able to view content or overhear audio, advise the attendees that you will end and/or reschedule the meeting.
- (10) PII is allowed to be displayed and discussed during external Teams meetings. However, refrain from uploading files or case documents to the platform.
- (11) For additional Teams resources, see the LB&I, Technology & Program Solutions Microsoft Teams Information website at <https://irs.gov.sharepoint.com/sites/M365Community/SitePages/TeamsInfo.aspx?csf=1&web=1&e=A3upbt&cid=a4065490-7822-4ee5-9fc7-0f72b973e816>.

4.46.3.4.8.9.5  
(01-04-2024)  
**Virtual Servers**

- (1) LB&I audits often require the management of large amounts of electronic files consisting of IRS and taxpayer data. This data needs to be secure and accessible at the IRS audit site and other remote locations.
- (2) Virtual server access provides data storage for the IRS audit team’s data and eliminates the need for a physical data storage device at the examination site. LB&I BSP works with IRS IT to deploy virtual server access to LB&I audit and campaign teams.
- (3) Team coordinators assigned to complex and large cases should discuss with their case managers the possibility of requisitioning a server. Virtual server assignment requests and questions regarding virtual server access, should be sent to *\*LB&I Technology Integration Team*.

4.46.3.4.8.10  
(12-18-2018)  
**Administrative Procedures**

- (1) Discussions regarding administrative procedures should be held to promote consistency for case administration, taxpayer contacts and expectations for both managers and team members. Some items that should be considered include:
  - a. Instructions to team members for preparation of workpapers, and IMS input and synchronization expectations
  - b. Discussion of procedures for requesting information from taxpayers and monitoring the IDR management process
  - c. Discussion of procedures for requesting conferences/meetings with taxpayers
  - d. Expectations for on-site visits by case managers

4.46.3.4.9  
(03-14-2016)  
**Documenting the Internal Planning Discussion(s)**

- (1) Minutes - Upon completion of the internal planning discussion, the discussion outcomes should be summarized in narrative form. The planning agenda should be used as a template when preparing the minutes. The minutes should capture the agreements, decisions, arrangements, etc. made during the internal planning discussion.

4.46.3.5  
(03-14-2016)

**Compliance Checks  
Summary**

- (1) Conducting compliance checks will aid in risk analysis and help to determine the scope of the audit. See Exhibit 4.46.3-5, Compliance Checks Tool.

4.46.3.6  
(12-18-2018)

**Opening  
Conference/Meeting**

- (1) The opening conference/meeting sets the foundation for an effective exchange of information and will assist both the examination team and the taxpayer in defining the scope and setting expectations for carrying out the examination process.
- (2) Key objectives of the opening conference/meeting are to explain the LEP to the taxpayer and to reach agreements on accommodations and coordination of the flow of communication between the taxpayer and LB&I. Depending on the timing of the opening conference/meeting, another key objective is to discuss the preliminary risk analysis of issues identified for examination.
- (3) Publication 5125, LB&I Examination Process, must be shared and interactively discussed with the taxpayer. Agenda items discussed at the opening conference/meeting can vary depending on the type of entity, the size of the entity, the complexity of the potential issues and the audit history of the taxpayer. See Exhibit 4.46.3-3, Sample Agenda for Opening Conference/ Meeting.
- (4) A successful opening conference/meeting occurs when both parties understand their responsibilities and agree to be accountable for how the audit is planned, executed and resolved.

4.46.3.6.1  
(12-18-2018)

**Opening  
Conference/Meeting  
Agenda**

- (1) The examination team should exercise professional judgment when determining what items to include on the agenda, when to hold the opening conference/meeting and who should attend. For complex examinations it may be necessary for the TC, issue team members and their respective managers to attend the opening meeting. On less complex cases, the opening meeting may include only the team coordinator and the taxpayer.
- (2) An agenda should be prepared that covers mandatory topics as well as recommended items, including the items identified during internal planning. The examination team will provide a copy of the agenda and the preliminary risk analysis in advance to the taxpayer. The taxpayer may add any items they would like to address during the opening conference/meeting.
- (3) Disclosure Safeguards - The case manager or designee is responsible for making all arrangements authorizing discussion and exchange of information between team members and the taxpayer's personnel. It may be necessary to hold separate opening conferences in the following circumstances:
- a. Separate meetings may be required if corporate authority is decentralized into various operating components of the company.
  - b. Separate meetings may be required to avoid unauthorized disclosure of information between related entities. (Note that the taxpayer, in these instances, may request separate examination plan sections for some of the entities.)
  - c. Only corporate officers who have the authority under state law to bind the corporation are authorized to receive confidential return information absent a power of attorney or other authorization. Examiners should always be aware who is in the room and that the individual has authori-

zation to receive confidential information from the IRS. See IRM 11.3.2.4.3, Corporations, which discusses which individuals in a corporation may have access to return and return information. Also see IRM 11.3.3.3.2., Requirements for Oral Authorization.

4.46.3.6.1.1  
(12-18-2018)  
**Sample Agenda**

- (1) IRM Exhibit 4.46.3-3, Sample Agenda for the Opening Conference/Meeting, lists recommended agenda items for discussion at the opening conference/meeting and should be tailored depending on the type of entity, size, complexity and industry of the taxpayer, and whether the taxpayer is publicly or privately held. The agenda can also be tailored to include potential tax issues and/or transactions of the taxpayer such as: reorganizations, bankruptcies, major acquisitions or dispositions.
- (2) The agenda should include the Notification to Taxpayers of Potential Double Taxation. See IRM 4.60.2.5.

4.46.3.6.1.2  
(03-14-2016)  
**Publicly Held Entity**

- (1) Entities that are publicly held have published financial information that provides a basis for understanding the taxpayer’s business activity, operations, accounting systems and policies, and financial data. When preparing for the opening conference/meeting, the examination team should leverage relevant public information and other tools used to assist in the preparation of the preliminary risk analysis. See IRM 4.46.3.3.1, Examiner’s Preliminary Risk Analysis - Information Resources, for a list of available information.

4.46.3.6.1.3  
(03-14-2016)  
**Privately Held Entity**

- (1) The type of agenda items and inquiries in an opening conference/meeting for a privately held entity may be different from those of a publicly held entity. Public information may not be as readily available for a privately held entity and; therefore, the opening conference is an opportunity for the examiner to obtain information about the entity. The opening conference/meeting is a method to obtain information needed to reach informed decisions to help establish the scope and depth of an examination. See IRM 4.46.3.3.1, for a list of available information.

4.46.3.6.1.4  
(12-18-2018)  
**Suggested Inquiries**

- (1) Suggested inquiries to assist in setting the scope of the examination include, but are not limited to:
  - An understanding of the internal controls of the company, the taxpayer’s financial and accounting policies, business activities and structure of operations. See IRM 4.10.3.5, Evaluating the Taxpayer’s Internal Controls.
  - An understanding of how the books and records of the taxpayer are maintained and organized.
  - Understanding what, if any, foreign activities the taxpayer is engaged in.
  - A review of the company’s certified and audited financial statements or other company financial or regulatory reviews.
  - An explanation of potential tax issues identified for examination including large, unusual or questionable items on the tax return.
  - A review of significant transactions.
- (2) LB&I examiners will use their judgment with respect to the review of internal controls. IRM 4.10.3.5, Evaluating the Taxpayer’s Internal Controls, has an in-depth discussion on internal controls. Limited or no review of internal controls may be warranted when:

- The entity is publicly traded.
- The entity is privately owned but has independently audited financial statements that address internal controls.
- Planned issues are limited and technical in nature.

4.46.3.6.2  
(01-19-2022)  
**Timing of Opening  
Conference/Meeting**

- (1) Depending on the size and type of the entity, the examination team may decide it is more efficient to hold an administrative opening conference before the internal planning meeting. If the internal planning meeting has occurred, the opening conference/meeting would be combined to include both the administrative items and a discussion of the preliminary risk analysis.
- (2) The timing of the opening conference and whether to hold an administrative-only opening conference or combined with the preliminary risk analysis is up to the judgment of the examination team.
- (3) The opening conference for a BBA partnership can be scheduled for a date only after the Notice of Administrative Proceedings issuance date. Refer to IRM 4.31.9.8.1, Notice of Administrative Proceeding (NAP)

4.46.3.6.3  
(03-14-2016)  
**Administrative-Only  
Opening  
Conference/Meeting**

- (1) Audits may require a separate opening conference to discuss administrative items and a separate meeting to discuss the preliminary risk analysis.
- (2) For example, during the examination of a small, privately-held entity with limited public information, the TC may want to hold the opening conference before an internal planning meeting to gain a better understanding of the taxpayer's business and activities, and to review the taxpayer's books and records, before submitting a referral for a specialist. In this situation, the TC can make a more informed specialist referral or consult after the opening conference/meeting and then conduct the internal planning meeting with the specialist(s).
- (3) In another example, with large complex taxpayers, the opening conference/meeting may serve only as an administrative meeting before the internal planning meeting is held. In this situation, the preliminary risk analysis would be prepared after the administrative opening conference/meeting. A subsequent meeting would then be scheduled for the examination team and the taxpayer to discuss the preliminary risk analysis.

4.46.3.6.4  
(03-14-2016)  
**Combined  
Administrative and  
Preliminary Risk  
Analysis Opening  
Conference/Meeting**

- (1) The opening conference/meeting can be combined to include administrative items as well as a discussion of the preliminary risk analysis prepared during internal planning meeting(s). The examination team may determine that it is more efficient to combine the administrative items and the preliminary risk analysis discussion during the opening conference/meeting.

4.46.3.6.5  
(12-18-2018)  
**Discussion of  
Preliminary Risk  
Analysis**

- (1) The preliminary risk analysis will be shared and discussed with the taxpayer with the intent of obtaining information that will help the examination team to narrow or focus the scope of the audit on the most significant issues.
- (2) The examination team should discuss with the taxpayer the reasons each tax issue was selected for audit. In this discussion, the team should carefully consider any information provided by the taxpayer that could explain what was initially risked as a large, unusual, or questionable item, and take this informa-

tion into consideration in determining whether to continue with the issue, and if so, the appropriate audit steps. The following objectives should be addressed at either the opening conference/meeting or at separate issue discussion meeting(s) with the taxpayer:

- a. Select which issues or aspects of a particular issue warrant examination
- b. Identify LB&I team members and taxpayer personnel to include on each issue team
- c. Establish effective and efficient initial audit steps
- d. Determine an estimated timeline and issue completion date for each issue as needed

4.46.3.6.6  
(12-18-2018)  
**Opening  
Conference/Meeting  
Participants**

- (1) The opening conference/meeting should be conducted by the case manager (or delegated to the TC) and attended by the TC and other issue team members including their manager(s) whose attendance adds value by being able to discuss potential issues or assist in gathering information. It is important to remember that the opening conference/meeting is a working conference/meeting. If the taxpayer will be presenting a thorough overview of their business activities, operational structure, and accounting systems, team members that will benefit should attend. Participants who add value can be determined during internal planning or other discussions with the TC, case manager, and issue manager(s).
- (2) For complex cases or large examination teams, there may be value in conducting an internal pre-meeting before the opening conference/meeting to review the opening conference/meeting agenda and confirm the role of each examination team member attending. In some instances, the pre-meeting may coincide with the internal planning meeting.
- (3) The opening conference/meeting should include the head of the tax department and other appropriate key employees who can adequately discuss the agenda items as well as the preliminary risk analysis. Only corporate officers are authorized to receive confidential return information absent a power of attorney or other authorization. Examiners should always be aware who is in the room and that the individual has authorization to receive confidential information from the IRS. See IRM 11.3.2.4.3, Disclosure to Persons with a Material Interest – Corporations and IRM 11.3.3.3.2, Disclosure to Designees and Practitioners – Requirements for Oral Authorization.
- (4) If the preliminary risk analysis is to be discussed at the opening conference/meeting, the examination team member(s) who can explain to the taxpayer why each issue is being considered for examination should attend. For issues selected for examination, the appropriate taxpayer personnel and examination team member(s) should work together to develop initial audit steps.

4.46.3.6.7  
(03-14-2016)  
**Materiality Threshold  
Discussions**

- (1) During the opening conference/meeting, materiality thresholds should be discussed as appropriate. Setting a materiality threshold involves both quantitative and qualitative factors. There is no economic or mathematical formula or standard that should be applied to determine whether an amount is material in an examination. See IRM 4.46.3.3.5.4, Materiality. The issue team(s) should use their professional judgment and experience in establishing materiality thresholds.
- (2) As with any other agreement, agreed materiality thresholds should be memorialized in the examination plan and should apply to issues examined as well as

claims. The issue team and taxpayer will have to weigh all the facts and circumstances in assessing materiality either by category type (such as credits, deductions, etc.) or as specifically defined in the examination procedures of an issue.

- (3) Materiality threshold agreements should apply equally to both the examination team and the taxpayer. A cooperative and transparent taxpayer will use the same materiality thresholds before filing any claims.

4.46.3.6.8  
(01-19-2022)

#### **Claims Discussion**

- (1) The examination team will discuss the claim expectations at the opening conference/meeting.
- (2) The opening conference/meeting will also trigger the start of the 30 calendar-day window for submitting informal claims. LB&I examination teams will consider informal claims that are fully documented and supported within 30 days of the opening conference/meeting. However, after the 30-day window, claims for refund should be filed using Form 1120-X, Form 1040-X or Form 843 and a copy provided concurrently to the team along with supporting documentation to enable the examination team to make a tax determination without the use of IDRs. See IRM 4.46.3.7, LB&I Claims Process.
- (3) For partnership examinations subject to the centralized audit regime (BBA), informal claims may not be filed after the 30-day window. Refer to IRM 4.31.9.8.3, Informal Claims (LB&I Taxpayers). BBA partnerships cannot file an Administrative Adjustment Request (AAR) after a Notice of Administrative Proceeding (NAP) letter has been issued. Refer to IRM 4.31.9.7.7, Administrative Adjustment Request (AAR) and Other Subsequent Filings.

4.46.3.6.9  
(12-18-2018)

#### **Concluding the Opening Conference/Meeting**

- (1) The case manager or their designee should conclude the conference/meeting by reviewing all agreements and understandings reached with the taxpayer.
- (2) Any modifications or additions to the preliminary risk analysis should be reviewed and approved. Also, arrangements made for future issue discussion meetings, presentations, site visits, review of corporate minutes, etc. should be scheduled and confirmed.
- (3) Upon completion of the opening conference/meeting, the discussion outcomes should be summarized in narrative form. The planning agenda should be used as a template when preparing the minutes. The minutes should capture the agreements, decisions, arrangements, etc. made during the opening conference/meeting.

4.46.3.7  
(01-04-2024)

#### **LB&I Claims Process**

- (1) LB&I spends considerable time and resources in the planning phase to assure that its examinations are effective and efficient. In setting the examination plan, LB&I understands that taxpayers invariably will identify items requiring corrections, including items that could result in an overpayment of tax for which the taxpayer could file a claim. Of course, resources can be best allocated if claims are brought to the attention of the examination team during the planning phase or early in the examination process. In addition, resources are significantly preserved when a taxpayer submits the supporting documentation upon which it relied in making its claim in order that the examination team can make its tax determination, ideally without issuing a Form 4564, Information Document Request (IDR).

- (2) Claims submitted after the examination team has completed its examination plan result in inefficiencies because of the need to reallocate resources from other compliance matters and/or increase the anticipated time period for completing the examination.
- (3) All claims, formal and informal, must meet the standards of Treas. Reg. 301.6402-2 regardless of when submitted. A valid claim must:
  - Set forth in detail each ground upon which the credit or refund is claimed
  - Present facts sufficient to apprise the IRS of the exact basis for the claim
  - Contain a written declaration that it is made under penalties of perjury
  - Be in writing

**Note:** See IRM 4.46.3.7.1.1, The 30-Day Window Expectation, paragraph (2).

- (4) LB&I will not require a formal claim if an issue has been identified for examination, unless IRS published guidance specifically requires formal claims to be filed for an issue, for example, Notice 2008-39, (2008-13 IRB 684) for research credit claims. See also IRM 4.46.3.7.6 Determining the Validity of Refund Claims that Include a Claim for the Credit for Increasing Research Activities.
- (5) Claims for issues not identified for examination or specifically requiring formal claims must meet the requirement set forth in Treas. Reg. 301.6402-3. In other words, claims will be required to be filed through the campus on Form 1120-X, Form 1040-X, or Form 843. See IRM 4.46.3.7.6 Determining the Validity of Refund Claims that Include a Claim for the Credit for Increasing Research Activities.
- (6) A taxpayer's failure to timely notify the teams of anticipated claims, timely submit claims, or provide supporting information with the claims could lead to unnecessary refund litigation.
- (7) For an illustration of the LB&I claims process see IRM Exhibit 4.46.3-7, LB&I Guidelines for Reviewing Non-Research Credit Claims and IRM Exhibit 4.46.3-8, Risk Assessing Non-Research Claim Issue(s).
- (8) The case manager has the responsibility for reviewing claims to ensure they meet the LB&I expectations for timeliness and completeness and must collaborate with specialist managers when risk assessing claims where appropriate. If it is determined that a claim will be examined, it should be added to the examination plan and an issue team should be identified to examine the issue. When appropriate, the case ECD and statute of limitations will be extended to allow sufficient time for the issue team(s) to properly examine all claim issues.
- (9) Examiners should consider IRC 6676, Erroneous Claim for Refund or Credit, when examining claims. The penalty applies to all claims, formal and informal, relating to federal income taxes. Refer to IRM 20.1.5.18, IRC 6676, Erroneous Claim for Refund or Credit Penalty.
- (10) For further guidance on processing claims refer to the procedures in IRM 4.10.8.10, Claims for Refund and Overassessments.

4.46.3.7.1  
(03-14-2016)

**Expectations with  
Respect to Claims**

- (1) The earlier the examination team receives a fully substantiated claim, the sooner it can be risk assessed to determine whether it should be accepted or examined. To improve efficiency in LB&I examinations, LB&I has set forth the following claim expectations.

4.46.3.7.1.1  
(01-04-2024)

**The 30-Day Window  
Expectation**

- (1) LB&I has established a 30-day window to allow taxpayers to submit informal claims which should enable LB&I and the taxpayer to efficiently identify and assign the appropriate resources to address claim issue(s). The 30-day window also provides the taxpayer an opportunity to submit informal claims and may reduce their burden of filing amended returns.

**Note:** Examiners should also encourage taxpayers to submit certain formal credit claims within the 30-day window (e.g., research credit claims or issues for which IRS published guidance requires the filing of a formal claim). Stress that prompt filing of those claims will expedite their review and lessen audit cycle time or lead to a quicker resolution of the matter. For additional information on research credit claims, see IRM 4.46.3.7.6.

- a. The 30-day window is determined to be 30 calendar days from the opening conference/meeting. If the last day of the 30-day window falls on a weekend or holiday, the last day to consider informal claims is the next business day. The specific date identifying the 30-day window should be documented in the agreement section of the examination plan.
  - b. When adding subsequent or prior period(s) to the existing examination, the 30-day window for the new tax period(s) will begin when the taxpayer is notified of the start of the examination of the new tax period(s). The 30-day window for the new tax period(s) should be added to the examination plan after discussion with the taxpayer.
- (2) LB&I examination teams will consider valid informal claims (i.e. meet the standards in Treas. Reg. 301.6402-2) that are received **within 30 calendar days of the opening conference/meeting** and respond to the taxpayer within a reasonable time.
- a. If an informal claim is valid and includes sufficient documentation to make a tax determination, it may be accepted or examined. See IRM 4.46.3.7.3, Risk Assessing Claim Issue(s) paragraph (2).
  - b. If an informal claim is valid but does not include documentation to permit the examination team to make a proper tax determination without issuing an IDR, the examination team should remind the taxpayer of LB&I's claim expectation to provide fully documented claims before deciding if an IDR should be issued. See IRM 4.46.3.7.3, Risk Assessing Claim Issue(s) paragraph (3).
  - c. If an informal claim is not valid (does not meet the standards of Treas. Reg. 301.6402-2), the examination team must discuss the deficiencies with the taxpayer. See IRM 4.46.3.7.2.2, Claims Not Meeting the Standards of Treas. Reg. 301.6402-2, paragraph (2).
- (3) All claims received **after the 30-day window** must be filed with the campus using Form 1120-X, Form 1040-X or Form 843. Treas. Reg. 301.6402-3 gives the Commissioner the authority to require that a claim for credit or refund be filed on a formal claim. The taxpayer should be advised to file the correct claim form with the campus and promptly provide a copy with supporting documentation to the examination team.

**Reminder:** BBA partnerships cannot submit claims after the 30-day window. Refer to IRM 4.46.3.6.8, Claims Discussion paragraph (3).

- a. If a formal claim is valid and includes sufficient documentation to permit the examination team to make a tax determination, it should be timely risk-assessed before deciding whether to accept it as submitted or add the claim issue to the examination plan. See IRM 4.46.3.7.3, Risk Assessing Claim Issue(s) paragraph (2).
  - b. If a formal claim is valid but does not include documentation to permit the examination team to make a proper tax determination without issuing an IDR, the examination team should remind the taxpayer of LB&I's claim expectation to provide fully documented claims before deciding if an IDR should be issued. See IRM 4.46.3.7.3 , Risk Assessing Claim Issues paragraph (3).
  - c. If a formal claim does not meet the Treas. Reg. 301.6402-2 standards, the examination team must discuss the deficiencies with the taxpayer. See IRM 4.46.3.7.2.2, Claims Not Meeting the Standards of Treas. Reg. 301.6402-2 paragraph (2).
  - d. If an informal claim is valid and is received after the 30-day window, the territory manager must decide whether the examination team should accept or decline to act on the informal claim. See IRM 4.46.3.7.2.5, Claims Not Meeting the Standards of Treas. Reg. 301.6402-3 paragraph (2).
- (4) The formal claim requirement under Treas. Reg. 301.6402-3 may be waived by the exam team if a valid informal claim is received for the following reasons:
- a. Issues already identified for examination, unless a formal claim is specifically required by other IRS guidance
  - b. Schedule K-1's
  - c. Appeals Case Memorandum (ACM) impacting the year(s) under examination
  - d. Published guidance impacting the period(s) under examination with territory manager concurrence
  - e. Exception granted by the territory manager. See IRM 4.46.3.7.2.5, Claims Not Meeting the Standards of Treas. Reg. 301.6402-3 paragraph (2).

4.46.3.7.1.2  
(03-14-2016)  
**Fully Documented  
Claim(s)**

- (1) Claims that properly set forth the legal and factual grounds, along with sufficient documentation will allow examination teams to expeditiously determine whether to accept or examine a claim without requiring the use of IDRs.
- (2) If a claim fails to meet the fully documented expectation, the examination team should reiterate the fully documented claim expectation with the taxpayer. See IRM 4.46.3.7.3, Risk Assessing Claim Issue(s) paragraph(3).
- (3) The burden of proof is on the taxpayer to fully support their claim and issuing IDRs for a claim is not effective tax administration or an efficient use of LB&I resources.

4.46.3.7.1.3  
(01-19-2022)

**Timely Notification**

- (1) Claims should be brought to the attention of the examination team as soon as the taxpayer becomes aware of any potential claim for refund. Early discussions about claims that the taxpayer has submitted or filed will allow the examination team to incorporate the claims into the examination plan in order to better ascertain the resources required for the entire examination and establish a reasonably accurate examination timeline.
- (2) Verbal notification is not a valid claim. No examination action should be taken until a claim is received in writing and the examination team determines that the claim meets the standards of Treas. Reg. 301.6402-2.
- (3) Taxpayers must file formal claims with the campus as early in the examination as possible, but no later than the milestone date established during the opening conference for filing formal claims and indicated on the case timeline. The examination team should remind taxpayers to provide a copy concurrently to the team along with supporting documentation, including all information the taxpayer relied on when preparing the claim.
- (4) Claims not submitted timely to the examination team may cause a less efficient examination, which may result in a need to extend the estimated closing date (ECD) and the statute so that all claim issue(s) can be properly examined.
- (5) A partnership may file an AAR under IRC 6227 with respect to any partnership-related item and correct errors on a previously filed partnership return before a Notice of Administrative Proceeding (NAP) letter is issued. Refer to IRM 4.31.9.7.7, Administrative Adjustment Request (AAR) and Other Subsequent Filings.

4.46.3.7.2  
(01-04-2024)

**Guidelines for Reviewing LB&I Claims**

- (1) Regardless of when a claim, formal or informal, is submitted during the examination, the examination team must timely review the claim to ensure the claim meets the standards of Treas. Reg. 301.6402-2. After the 30-day window, the claim must be filed using the prescribed form and in the manner specified in Treas. Reg. 301.6402-3. For an illustration of the LB&I claim review process, see Exhibit 4.46.3-7, LB&I Guidelines for Reviewing Non-Research Credit Claims.

**Note:** Research credit claims are subject to the requirements of both Treas. Reg. 301.6402-2 and Treas. Reg. 301.6402-3, regardless of whether they are filed either before or after the 30-day window. For specific guidelines on reviewing research credit claims, see IRM 4.46.3.7.6.

- (2) Claim issue(s) should be risk assessed in the same manner as any other potential audit issue, after the claims have satisfied the appropriate treasury regulations. See IRM 4.46.3.7.3, Risk Assessing Claim Issue(s)

4.46.3.7.2.1  
(03-14-2016)

**Claims Meeting the Standards of Treas. Reg. 301.6402-2**

- (1) All claims must meet the standards contained in Treas. Reg. 301.6402-2 to be considered a valid claim before LB&I takes any action to examine a claim.
  - a. If a valid claim is received within the 30-day window, then risk assess the claim issue(s). See IRM 4.46.3.7.3, Risk Assessing Claim Issue(s).
  - b. If a valid claim is received after the 30-day window, unless an exception exists, it must be filed on a formal claim form before risk assessing. See IRM 4.46.3.7.2.4, Claims Meeting the Standards of Treas. Reg. 301.6402-3.

- c. If a claim, formal or informal, does not meet any of the standards, it is not a valid claim and should not be acted upon until discussed with senior management and/or counsel. See IRM 4.46.3.7.2.2, Claims Not Meeting the Standards of Treas. Reg. 301.6402-2.

4.46.3.7.2.2  
(01-04-2024)  
**Claims Not Meeting the Standards of Treas. Reg. 301.6402-2**

- (1) A claim failing to meet any standard of Treas. Reg. 301.6402-2 is not a valid claim and should not be acted upon until discussed with senior management and/or counsel. Counsel’s advice is essential in determining whether to act or decline to act on the taxpayer’s submission based upon whether it meets the standards for a claim under the regulations.
- (2) If the claim is not valid, the examination team must discuss the claim’s deficiencies with the taxpayer and provide the taxpayer an opportunity to correct the deficiencies within a specified target date determined by the examination team. The taxpayer can cure the defect by submitting a corrected claim with the examination team. .
- (3) Once the deficiencies have been corrected by the taxpayer, the claim is risk assessed in the same manner as any other audit issue. See IRM 4.46.3.7.3, Risk Assessing Claim Issue(s). If the corrected claim is received after the 30-day window, a formal claim is required; however, the territory manager may grant a formal claim exception if the claim was originally received before the 30-day window, depending on the timing of the perfected submission.
- (4) If the taxpayer does not correct the claim’s deficiencies within the specified target date, the examination team should discuss the claim’s deficiencies with senior management to weigh the risks, benefits and burdens before declining to act on a claim. Counsel’s advice is also essential in weighing the risks associated with declining to act on a claim. Senior management may determine if it is in the best interest of the government to risk assess the claim. A high-level discussion with senior management and the taxpayer equivalent should be held to address the deficiencies in the claim and to improve compliance with the standards of the treasury regulation for claims filed in the future.

4.46.3.7.2.3  
(12-18-2018)  
**Declining to Act on a Claim**

- (1) LB&I should not act on an incomplete or otherwise invalid claim if the taxpayer does not correct the claim’s deficiencies by the specified target date. Senior management has the discretion to accept an invalid claim after weighing the benefits and burdens but not before having a discussion with their taxpayer equivalent to address the deficiencies and improve compliance of future claims.
- (2) LB&I should not take any actions that could be deemed as examining the claim as such actions may be deemed to waive the defect in a claim that is not valid. Examination actions may include issuing IDRs, disallowing the claim, etc.
- (3) Senior management and counsel must concur that the claim does not meet the standards of the treasury regulation. A memorandum should be provided to the taxpayer explaining the reason(s) for declining to act on the claim.
  - a. An **informal** claim that is not valid requires a memorandum to the taxpayer explaining the claim’s defects. Suggested memorandum language:  
“LB&I has received what we believe you intended to be a claim for refund. However, your claim fails to meet the requirements set forth in

Treas. Reg. 301.6402-2, Claims for Credit or Refund. LB&I will not act on your defective claim for the reason(s) outlined below.”

- b. If counsel and senior management concur that a formal claim is not valid, in addition to providing the taxpayer the above memorandum, a Form 3870, Request for Adjustment, is required to reverse the transaction code posted to the master file and to remove freeze code “-A.”. A copy of the memorandum should be included when submitting the Form 3870 to the campus, along with any other supporting documentation. Refer to IRM 21.5.6.4.2, -A Freeze.

- (4) If the taxpayer does not correct the claim’s deficiencies within the specified target date, the taxpayer would then have to file a valid formal claim within the statute of limitations and wait six months before bringing a suit for refund, per IRC 6532(a).

4.46.3.7.2.4  
(01-19-2022)

**Claims Meeting the Standards of Treas. Reg. 301.6402-3**

- (1) Before LB&I acts on a claim received after the 30-day window, it must meet all of the standards contained in Treas. Reg. 301.6402-2 and be filed formally with the campus unless an exception is allowed. See IRM 4.46.3.7.1.1, The 30-Day Window Expectation paragraphs (3) and (4). Rules for BBA partnerships are different. For more guidance on informal claims filed by BBA partnerships, refer to IRM 4.31.9.8.3, Informal Claims (LB&I Taxpayers).
- (2) If a claim is valid and a formal claim was properly filed, risk assess the claim issue(s). See IRM 4.46.3.7.3, Risk Assessing Claim Issue(s).
- (3) After the 30-day window, if the claim is valid but was not properly filed, LB&I will decline to act on the claim unless an exception is allowed. See IRM 4.46.3.7.2.5, Claims Not Meeting the Standards of Treas. Reg. 301.6402-3

4.46.3.7.2.5  
(12-18-2018)

**Claims Not Meeting the Standards of Treas. Reg. 301.6402-3**

- (1) If a taxpayer does not comply with the claim expectation and submits a valid informal claim after the 30-day window that meets the standards of Treas. Reg. 301.6402-2, the examination team should reiterate to the taxpayer the LB&I expectation that the taxpayer properly file a formal claim and also set a target date for filing the formal claim, unless an exception applies. The following exceptions can be granted without seeking territory manager approval:
  - a. Issues already identified for examination, unless a formal claim is specifically required by other IRS guidance
  - b. Schedule K-1s
  - c. Appeals Case Memorandum (ACM) impacting the period(s) under examination where a settlement authority delegation order could be applied
- (2) If the taxpayer does not file a formal claim by the date set when the examination team reiterated the formal claim expectation, then the territory manager(s) must decide whether to grant a formal exception or to decline to act on the valid informal claim. Until a decision is reached by the territory manager(s), the examination team should not take any actions which could be deemed to be examining the claim such as issuing IDRs, disallowing the claim, etc.
  - a. If the territory manager(s) waives the formal claim requirement, risk assess the informal claim issue(s). See IRM 4.46.3.7.3, Risk Assessing Claim Issue(s).
  - b. If the territory manager(s) does not waive the formal claim requirement, counsel should be consulted before any action is taken with respect to the informal claim. Careful consideration must be given in deciding

whether there is an advantage for the IRS to consider the untimely informal claim, or whether the IRS is disadvantaged to adequately audit the claim without substantial additional resources and time.

- c. If senior management and counsel concur that the formal claim requirement should be enforced, the examination team should follow counsel's guidance before taking any action on the informal claim.
- d. The taxpayer can meet the requirement by properly filing a formal claim and providing a copy to the examination team.
- e. Informal claims may result in unnecessary refund litigation which reasonably can be avoided if a formal claim is filed. By declining to act on the claim, the taxpayer would need to file a valid formal claim within the statute of limitations and wait six months before bringing a suit for refund, per IRC 6532(a).

4.46.3.7.3  
(01-04-2024)  
**Risk Assessing Claims Issue(s)**

- (1) Claim issue(s) should be risk assessed in the same manner as any other audit issue. For an illustration of the LB&I claims risk assessing process see Exhibit 4.46.3-8, Risk Assessing Non-Research Credit Claim Issue(s).
- (2) Examiners must determine if the claim constitutes a request for a retroactive change in accounting method as outlined in IRM 4.11.6.7.5, IRC 446(e) - Taxpayer Files Amended Return or Claim (Formal or Informal) to Make Retroactive Change in Accounting Method, and if so, whether the claim should be allowed.
- (3) If the taxpayer provides sufficient documentation necessary for the examination team to make a proper tax determination, the examination team should weigh compliance and materiality against the risks, benefits and burdens of examining claim issue(s). Consideration should also be given to any materiality threshold agreements.
  - a. After risk assessing, accept the claim issue(s) not requiring examination and incorporate claim issue(s) allowed into the revenue agent's report (RAR). If appropriate, group accepted claim issues on one Form 5701, Notice of Proposed Adjustment. See IRM 4.46.3.7.4, Grouping of Claims and Affirmative Issue(s).
  - b. After risk assessing, add issue(s) and issue team(s) members to the examination plan. The issue team(s) should discuss with the taxpayer the resources needed, the issue timeline(s), and if necessary, the extension of the case ECD and statute of limitations.
- (4) The burden of proof is on the taxpayer to support their claim issue(s), and as such the taxpayer must provide all credible evidence to support its claims, ideally without issuing an IDR.
  - a. If the taxpayer provides all documentation necessary for the examination team to make a proper tax determination, the claim issue(s) should be risk assessed.
  - b. If the taxpayer does not provide sufficient documentation for a proper tax determination to be made, based on the facts and circumstances of the claim, it must be determined whether it is appropriate to issue an IDR or disallow the claim as the taxpayer has failed to meet the burden of proof. Generally, an IDR will be issued only in instances where the team believes that an IDR will focus and facilitate the taxpayer's production of documents sufficient to support its claim.

- (5) If an IDR is issued and the taxpayer does not respond by the IDR response date or the response is incomplete, the issue team must decide whether to disallow the claim based on the taxpayer's failure to satisfy its burden of proof. Generally, the IDR enforcement process should not be used since the taxpayer has an existing obligation to produce sufficient information to support its claim, without which the claim will be appropriately disallowed. Each situation has unique facts and circumstances; therefore, the issue manager in collaboration with the case manager must determine which option to follow and when it is appropriate to consult with senior management and/or counsel.
  - a. When disallowing a claim, refer to the procedures in IRM 4.10.11.2, Claims for Refund and IRM 4.31.9.8.3, Informal Claims (LB&I Taxpayers).
  - b. When following the IDR enforcement process, refer to IRM 4.46.4.7, Information Document Request Process. The issue team may elect to accelerate the IDR enforcement process for claim issues.
- (6) When fully or partially disallowing a claim, the written acknowledgment of facts process applies and must be followed. Taxpayers may attempt to present new information or evidence to Appeals on unagreed claim issue(s) and the added step of securing an acknowledgment of facts provides Appeals with a clear understanding of the facts that were presented to the examination team. Refer to IRM 4.46.4.11, Written Acknowledgment of the Facts (AOF).

4.46.3.7.4  
(12-18-2018)

**Grouping of Claims and Affirmative Issue(s)**

- (1) To reduce administrative burden, if appropriate, claim and affirmative issue(s) accepted without examination may be grouped by character and tax treatment (income, expense, credit etc.) when establishing issues in IMS, and combined on one Form 5701 for processing. If the explanation of the adjustment is longer than the space provided on the Form 5701, then a Form 886-A can be used to list and briefly explain each accepted affirmative and claim issue. When grouping claim or affirmative issues, consideration should be given to the potential impact grouping issues can have on other items on the tax return, and carryback or carry forward attributes.
- (2) To identify claims or affirmatives in IMS not warranting examination, it is recommended to use either SAIN 060 for Claims or SAIN 061 for Self-Audit Adjustments (Affirmative Adjustments). To identify the character or tax treatment of the grouped issues, a general UIL code may be used, such as 162.00-00 for expenses and 61.00-00 for income. When using these general UIL codes, it is recommended that adjustments in BNA are entered on line 10 for "other income" and line 26 for "other deductions."

4.46.3.7.5  
(01-19-2022)

**Netting of Claim Issue(s) After the 30-day Window**

- (1) After the 30-day window, all issues that have not been identified for examination that result in a claim for refund (i.e. taxpayer's favor), must be filed on a formal claim. The examination team should request that the taxpayer concurrently provide a copy of the formal claim to the team along with supporting documentation, including all information the taxpayer relied on when preparing the claim.
- (2) Occasionally, a taxpayer may net issues on an informal claim (i.e. issues in the government's and the taxpayer's favor); however, offsetting amounts do not preclude the requirement for filing a formal claim on issues that could result in a refund.

- (3) If the taxpayer submits a netted informal claim after the 30-day window, the examination team should explain that a formal claim is required for those issue(s) that result in a claim for refund (i.e. the taxpayer’s favor) unless there is an exception. See IRM 4.46.3.7.1.1(4).
- (4) Netting of claims after the 30-day window is not applicable to BBA partnerships. Refer to IRM 4.31.9.8.3, Informal Claims (LB&I Taxpayers).

4.46.3.7.6  
(01-04-2024)  
**Determining the Validity of Refund Claims that Include a Claim for the Credit for Increasing Research Activities**

- (1) Treas. Reg. 301.6402-2(b)(1) requires taxpayers that are filing a refund claim to apprise the Commissioner of the exact basis for the claim. To satisfy Treas. Reg. 301.6402-2(b)(1), taxpayers filing a claim for refund that includes a claim for the IRC 41 Credit for Increasing Research Activities “research credit claim” must provide, at a minimum, five items of information.

Item #	Information Needed	Description
1	Identify all the business components that form the factual basis of the research credit claim for the claim year.	Business components, as defined in IRC 41(d)(2)(B) must be identified.
2	All research activities performed by business component.	This must include a description of what the taxpayer did, and how they did it, by business component. It does not need to describe the four-part test under IRC 41(d)(1) in detail. Language that simply restates the requirements under the Code or Treasury Regulations is insufficient.
3	All individuals who performed each research activity by business component.	This can be a list, table, or narrative but must include the first and last name or title/position of the person or persons engaged in the research by business component. If a group of individuals worked together on research activities, they may be listed by name/title for each business component.
4	All the information each individual sought to discover by business component.	This can be a list, table, or narrative providing the information each individual sought to discover.

Item #	Information Needed	Description
5	The total qualified 1. employee wage expenses 2. supply expenses, and 3. contract research expenses.	The claim should provide the total amount of each of these expense types. If the Form 6765 or its equivalent is properly completed, that will satisfy this item.

- (2) In addition to the five items of information listed above, a declaration signed under penalties of perjury verifying that the facts provided are accurate is required. In most cases, the signature on Form 1040-X or Form 1120-X serves this function.

4.46.3.7.6.1  
(01-04-2024)

**Transition Period and  
Time to Perfect**

- (1) On November 1, 2023, the IRS announced an extension (through January 10, 2025) of the transition period during which taxpayers are provided 45 days to perfect a research credit claim for refund prior to IRS's final determination on the claim.
- (2) For research credit claims filed January 10, 2022 through **January 10, 2025** (the transition period), taxpayers will be given 45 days to perfect the research credit claim that is timely filed but does not provide the five items of information listed in IRM 4.46.3.7.6, Determining the Validity of Refund Claims that Include a Claim for the Credit for Increasing Research Activities.
- (3) Regarding timeliness, IRC 6511(a) provides the general rule that a claim for credit or refund must be filed within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever is later. IRM 25.6.1.6.15, provides guidance on when a document is treated as filed under the Internal Revenue Code.
- (4) During the transition period, a research credit claim that would otherwise be considered timely pursuant to IRC 6511(a) but does not meet the requirements of IRM 4.46.3.7.6, will be considered timely filed if perfected within the 45-day timeframe. Taxpayers that fail to provide the five items of information as listed in IRM 4.46.3.7.6 will be notified with Letter 6428, Claim for Credit for Increasing Research Credit Activities - Additional Information Required. The 45-day perfect period will start from the date Letter 6428 is issued. All research credit claims filed on or after **January 11, 2025**, will be subject to the general rules of IRC 6511(a).
- (5) Subsequent submissions of facts and statements to perfect a research credit claim must be accompanied by another written declaration regarding the accuracy of the information provided and signed under penalties of perjury.

4.46.3.7.6.2  
(01-04-2024)

**Claims Filed During the  
Transition Period**

- (1) For research credit claims filed January 10, 2022 through **January 10, 2025** that are routed to the field due to an open examination indicator, LB&I examiners will apply the following procedures for these claims, which are filed within the transition period and provide an opportunity to perfect deficient claims:
- a. Evaluate the research credit claim for the five items of information as listed in IRM 4.46.3.7.6 and verify that it is signed under penalties of perjury to determine validity and document the results of the evaluation in

the case file. This determination should generally be completed within 30 days after received in the field examination team.

- b. If the research credit claim is determined to be valid, examiners will follow appropriate risking procedures and determine if an examination of the claim is warranted.
- c. If a research credit claim is determined to be deficient, examiners will first issue Letter 6428, Claim for Credit for Increasing Research Credit Activities - Additional Information Required, allowing 45 days to perfect. If the five items of information as listed in IRM 4.46.3.7.6 are received within the 45 days provided, the examiner will continue under normal risking procedures. If sufficient information to perfect the claim is not received pursuant to the process set forth in the letter, the claim will be considered deficient, and taxpayers will be issued Letter 6430, No Consideration, Section 41 Claim. Management (i.e., Territory Manager) and Counsel must concur that the claim does not include the five items of information as listed in IRM 4.46.3.7.6 prior to issuing Letter 6430.
- d. If the research credit claim is deficient, do not consider the claim issues or include claim language in a report. In addition to providing the taxpayer Letter 6430, a Form 3870, Request for Adjustment, is required to reverse the transaction code posted to the master file and to remove freeze code “-A”. Submit Form 3870 to CCP to input a TC 290 for zero to release the freeze code. Refer to the CCP Exam EEFax Numbers webpage at [https://irs.gov.sharepoint.com/sites/ETD-KMT-KB051/SitePages/SBSECampusExamProcedures/ExamCentralizedCaseProcessing\(CCP\)/CCPEExamEFaxNumbers.aspx](https://irs.gov.sharepoint.com/sites/ETD-KMT-KB051/SitePages/SBSECampusExamProcedures/ExamCentralizedCaseProcessing(CCP)/CCPEExamEFaxNumbers.aspx) for submission instructions. See also IRM 21.5.6.4.2, -A Freeze.

4.46.3.7.6.3  
(01-04-2024)  
**Claims Filed After the  
Transition Period Ends**

- (1) Research credit claims that are filed after the transition period ends do not have the opportunity to perfect. LB&I examiners will apply the following procedures for research credit claims filed on or after **January 11, 2025** that are routed to the field due to an open examination:
  - a. Evaluate the research credit claim for the five items of information as listed in IRM 4.46.3.7.6 and verify that it is signed under penalties of perjury to determine validity and document the results of the evaluation in the case file. This determination should generally be completed within 30 days after received in the field examination team.
  - b. If the research credit claim is determined to be valid, examiners will follow appropriate risking procedures and determine if an examination of the claim is warranted.
  - c. If the research credit claim is determined to be deficient, examiners will issue Letter 6430, No Consideration, Section 41 Claim to the taxpayer. Management (i.e., Territory Manager) and Counsel must concur that the claim does not meet the criteria outlined in IRM 4.46.3.7.6 prior to issuing Letter 6430.
  - d. If the research credit claim is deficient, do not consider the claim issues or include claim language in a report. In addition to providing the taxpayer Letter 6430, a Form 3870, Request for Adjustment, is required to reverse the transaction code posted to the master file and to remove freeze code “-A”. Submit Form 3870 to CCP to input a TC 290 for zero to release the freeze code. Refer to the CCP Exam EEFax Numbers webpage at <https://irs.gov.sharepoint.com/sites/ETD-KMT-KB051/SitePages/SBSECampusExamProcedures/>

*ExamCentralizedCaseProcessing(CCP)/CCPEExamEFaxNumbers.aspx* for submission instructions. See also IRM 21.5.6.4.2, -A Freeze.

- 4.46.3.7.7  
(12-18-2018)  
**Claims Received Late in the Examination Adversely Impacting the ECD**
- (1) If a taxpayer submits a claim late in the examination that adversely impacts the ECD, the statute of limitations and/or resources, a high-level discussion with senior management and the taxpayer equivalent should be held to ascertain the reason for the late claim and to discuss methods to improve tax administration.
  - (2) If the claim is not valid or properly filed, and is not perfected by the target date, LB&I may decline to act on the claim. See IRM 4.46.3.7.2.3, Declining to Act on a Claim.
  - (3) If the claim is valid and properly filed, the examination team should risk assess the issues on the claim. See IRM 4.46.3.7.3, Risk Assessing Claim Issue(s). The examination team and the taxpayer should determine the appropriate resources and issue timeline for all claim issue(s) that need to be examined. The case ECD and statute will be extended, if necessary, to allow sufficient time for the issue team(s) to properly examine all claim issues.
  - (4) If the examination team determines that a claim issue(s) is material or has an impact on compliance and cannot be examined in the current cycle, the examination team and the taxpayer should collaborate on the most efficient option to examine the claim. Options may include, but are not limited to: examining the claim issue(s) in a separate examination or resolving the issues through an existing resolution tool. In the event the current cycle is unagreed, coordination with Appeals is required if the claim issue will be examined in a separate examination.
- 4.46.3.7.8  
(12-18-2018)  
**IMS Time Codes for Examining Claims**
- (1) Time spent examining the protection of the revenue base must be kept separate from regular examination time. This is accomplished using the codes in IMS and ERCS. For guidance on how to correctly use the N, P, and R codes when reporting time, refer to the procedures in IRM 4.9.1.5.6, Protection of Revenue Base, and use IMS help topic "Handle claims in IMS."
- 4.46.3.8  
(12-18-2018)  
**Issue Discussion Meetings**
- (1) Issue discussions are conducted with the taxpayer after the preliminary risk analysis has been prepared. Large or complex issues may require multiple issue discussions to achieve the objectives below, while less complex issues can be combined into one issue discussion meeting or held during the opening conference/meeting. In some instances, it may be appropriate to hold issue discussions on a conference call with the taxpayer. Each examination has different facts and circumstances and; therefore, the forum used to hold issue discussion meetings is up to the judgment of the issue team.
  - (2) The preliminary risk analysis should be shared with the taxpayer prior to the issue discussions to allow the taxpayer sufficient time to identify knowledgeable personnel on the potential tax issue(s) and arrange for their participation.
  - (3) Successful issue discussions occur when both sides collaborate to define how issues selected for examination are to be efficiently examined. The examination team should discuss with the taxpayer the reasons each tax issue was selected for audit. In this discussion, the team should carefully consider any information provided by the taxpayer that could explain what was initially risked as a large, unusual, or questionable item, and take this information into consid-

eration in determining whether to continue with the issue. If the issue will be continued, the discussion should be used to obtain the taxpayer’s input to facilitate the development of the audit steps and issue timeline. Ultimately, the issue team retains the authority to determine which issues will be examined, and what audit steps are needed to conduct the examination of the issue.

- (4) Issues or concerns can be elevated by either the taxpayer or the issue team using the principles of collaboration. See IRM 4.46.1.3, Principles of Collaboration.

4.46.3.8.1  
(12-18-2018)  
**Issue Discussion Objectives**

- (1) During the issue discussions, potential tax issues that are identified in the preliminary risk analysis are discussed with the following joint objectives:
  - a. Select which issues or aspects of a particular issue warrant examination
  - b. Finalize the issue team members along with taxpayer personnel for each issue
  - c. Establish effective and efficient audit steps
  - d. Prepare an issue timeline, as necessary
- (2) The issue manager is ultimately responsible for working with the taxpayer in setting the issue timeline, approving the audit steps, and managing the issue. The issue manager should coordinate with the case manager and team coordinator when setting the issue timeline.
- (3) Issues selected for examination, audit steps, issue team members, and issue timelines will be documented in the examination plan. As a part of the planning process, the case manager will collaborate with the issue manager(s) to determine the issues that warrant a separate timeline and the issues that run on a concurrent timeline. Once all issue timelines are determined, the overall case timeline and estimated case closing date will be driven by the tax issue requiring the longest time to complete.

4.46.3.8.1.1  
(03-14-2016)  
**Finalize Issue Team Members**

- (1) During issue discussions, issue team members necessary to most efficiently examine each issue will be finalized and added to the examination plan. Taxpayer personnel should also be identified for each issue.

4.46.3.8.1.2  
(03-14-2016)  
**Establish Audit Steps**

- (1) The issue team will explain to the taxpayer what issues have been selected for examination and the tax concern associated with the issue. In return, the taxpayer is responsible for explaining the facts and circumstances surrounding the issue, why a particular position was taken on the return, and provide the documentation relied upon when reporting the tax issue.
- (2) The issue team will solicit the taxpayer’s input to develop the best methods and the most efficient audit steps to begin examining the issue. A mutual understanding of these audit steps should also make the IDR process more efficient and relevant.

4.46.3.8.1.2.1  
(03-14-2016)  
**Examples of Audit Steps**

- (1) A combination of several methods may be required to begin examining each issue. Whatever method or methods are agreed to, the discussions should be conducted with the taxpayer and documented. Examples are listed below but should not be considered as all-inclusive.
  - a. Issue IDRs following the IDR process to request data.

- b. Schedule a taxpayer presentation describing the transaction and providing associated documentation.
- c. Schedule site visits to the taxpayer's facilities to gain a better understanding of the taxpayer's business activity or operations.
- d. Use statistical or judgment sampling to reduce burden on the taxpayer and LB&I.
- e. Conduct interviews or meetings with taxpayer personnel who are most familiar with the issue.
- f. Establish issue-specific materiality thresholds.
- g. Focus the examination to specific accounts, divisions, cost centers, expenditures, etc.
- h. Consult with Counsel and SMEs.
- i. Identify relevant IRS procedural guidance such as the Industry Issue Resolution (IIR), Revenue Procedures, etc. specific to the issue being examined.

4.46.3.8.1.2.2  
(12-18-2018)

**Document the Audit Steps**

- (1) Initial audit steps for each issue should be documented in the examination plan and modified as facts and circumstances change. The procedures documented should clearly identify the steps to examine each issue. Establishing the framework for examining a tax issue should also help in preparing clear and relevant IDRs.
- (2) The audit steps should be tailored to the taxpayer's industry and the facts and circumstances specific to the issue being examined. Where appropriate, the audit steps should also be divided or arranged in the sequence to be followed.

**Note:** If you are not using Form 13744-I, you will need to include Form 4764-B for every issue selected for examination.

4.46.3.8.1.3  
(12-18-2018)

**Setting the Issue Timeline**

- (1) The issue manager is responsible for setting and monitoring the issue timeline. In addition, the issue manager will inform the case manager and TC of the issue timeline and discuss any modifications needed to the timeline throughout the examination.
- (2) Once the initial audit steps are developed, the issue team should estimate how long it will take to examine the issue. An issue timeline will ensure resources are efficiently planned and the time estimated for the examination of issues is appropriate.
- (3) The issue team should use judgment when deciding if more than one timeline is needed on an examination. For issues that require similar periods of time to examine, it may be appropriate to share the same timeline. Conversely, issues requiring a significantly longer or shorter period of time to examine may require separate issue timelines. The issue requiring the longest examination time will be used to set the ECD and milestone dates such as issuing the Revenue Agent Report (RAR) and other administrative closing procedures.
- (4) Issue teams must keep in mind that in estimating timelines they are dealing with variables and unknowns. Initial timeline estimates should be as accurate as possible; however, teams may need to revise a timeline during the examination due to unforeseen circumstances.

- (5) Issue timelines will be prepared with the taxpayer’s involvement and will include target dates, such as; the last day to issue an IDR, dates for periodic risk analysis of the issue, date for acknowledgment of the facts, the last day to issue a NOPA, etc.

4.46.3.8.1.3.1  
(12-18-2018)

**Factors to Consider in Setting Issue Timelines**

- (1) The issue team will collaborate in developing an issue timeline. Some factors to consider in setting an issue timeline may include, but are not limited to:
  - a. Complexity of the issue
  - b. Audit steps identified
  - c. Location and availability of records
  - d. Availability of taxpayer and LB&I resources
  - e. Use of computer assisted audit techniques
  - f. Obtaining an Advanced Pricing Agreement
  - g. Request for Technical Advice Memorandum or other legal advice
  - h. Necessity of obtaining third-party records or issuing summons

4.46.3.9  
(03-14-2016)

**Examination Plan**

- (1) The examination plan is memorialized at the end of the planning phase; however, it is a living document and may be modified as the examination progresses. In other words, audit steps can be modified, issues can be added or dropped, timelines can be modified as necessary, etc.
- (2) The ultimate goal of the planning phase is to timely complete an efficient and effective examination plan. While there is no benchmark for when to complete the examination plan, the sooner the plan is completed, the sooner the execution phase can begin. To timely complete the examination plan, issue team members must work together and engage the taxpayer as soon as possible. An effective plan will enable LB&I to use its resources in executing and resolving issue(s) in the most efficient manner. The issue team retains the judgment of when it may be more efficient to issue IDRs, attend a taxpayer presentation(s) or conduct a site visit(s) before the examination plan is completed.
- (3) The examination plan can be documented using one of three options as described in:
  - IRM 4.46.3.9.5, Issue-Based Examination Plan
  - IRM 4.46.3.9.6, IC Examination Plan
  - IRM 4.46.3.10.1, LCC and LPC Examination Plan

4.46.3.9.1  
(03-14-2016)

**Elements of an Examination Plan**

- (1) The examination plan at a minimum should include:
  - a. Detailed audit steps for each selected issue
  - b. Case and issue timeline(s) with milestone dates
  - c. Issue team members, including each team member’s estimated days
  - d. Issue manager identified for each issue
  - e. Taxpayer members assigned to work with each issue team
  - f. Taxpayer contact information and each individual’s level of authority with respect to the examination (i.e. authorized to discuss tax matters, authorized to provide and receive information and authorized for all matters including binding taxpayer regarding adjustments)
  - g. Established dates and/or decision points that are used to periodically risk assess issues being examined

- h. Agreements and arrangements made during the opening conference/ meeting

4.46.3.9.1.1  
(03-14-2016)  
**Case Timeline**

- (1) The issues drive the case timeline. The issue requiring the longest period of time to examine will be used to set the ECD. The case timeline will be prepared with the taxpayer's involvement and will include target dates such as, but not limited to:

- a. Date to issue examination plan
- b. Dates for periodic status meetings to monitor the overall progress of the examination
- c. Last date to submit informal claims (30-day window)
- d. Last date to file formal claims (recommended prior to the midpoint of the examination)
- e. Last date for issuing IDRs
- f. Last date for NOPAs to be issued
- g. Date to issue the RAR, etc.

**Note:** If you do not use Form 13744-I then you must use Form 13745, Examination Timeline, or similar workpaper, to document completion of the timeline.

- (2) Factors to consider in setting the case timeline and ECD include:

- a. Statute of limitations
- b. Longest issue timeline
- c. Administrative procedures (Appeals, resolution tools, etc.)
- d. Advanced Pricing Agreement
- e. BBA
- f. TEFRA
- g. Joint Committee
- h. Technical Advice Memorandum or other legal advice
- i. Other external factors when taxpayer availability is limited (holidays, regulatory or business obligations, etc.)

4.46.3.9.1.2  
(12-18-2018)  
**Extending the Case Timeline**

- (1) When extending an issue timeline that requires extending the case ECD, the issue manager should explain to the case manager the reason for extending the issue timeline and should also prepare a revised issue timeline along with a written explanation, if required by the territory manager or DFO.
- (2) If the revised timeline warrants extension of the statute, the issue manager will join the case manager in a meaningful discussion with the taxpayer. Statute extensions must be secured to accommodate the revised ECD. Once the issue manager and the case manager agree that an extension of the ECD is appropriate, they will follow local guidance for requesting approval of a case ECD extension.

4.46.3.9.2  
(03-14-2016)  
**Taxpayer Review of the Examination Plan**

- (1) The examination plan must be shared and discussed with the taxpayer before the plan is final. This discussion should be conducted in an interactive manner to increase the taxpayer's involvement in the planning process, which contributes to their understanding of the examination plan and also affords them the opportunity to propose changes before the plan is final.

- 4.46.3.9.3  
(12-18-2018)  
**Signing the Examination Plan**
- (1) The examination plan must be signed and approved by the case manager, issue manager(s), and in certain circumstances, the territory manager, before providing the plan to the taxpayer. A copy of the completed plan must be discussed with and provided to the taxpayer. The examination team is responsible for documenting this in the activity record. Request that the taxpayer sign a copy to acknowledge their receipt of the examination plan. This concludes the planning phase.
- 4.46.3.9.4  
(12-18-2018)  
**Revising the Examination Plan**
- (1) The examination plan is a flexible document and may be revised during the examination if warranted. Any proposed revisions to the examination plan will be shared and discussed with the taxpayer, issue manager(s), and affected issue team members for their input before being approved by the case manager, and for certain examinations approved by the territory manager.
- 4.46.3.9.5  
(12-18-2018)  
**Issue-Based Examination Plan**
- (1) The issue-based examination plan is prepared using Form 13744-I, Issue-Based Examination Plan and Risk Analysis. Form 13744-I is optional and may be used instead of Forms 4764, 4764-A (optional), 4764-B, 13744, and the examination timeline. Attach the opening conference/meeting minutes, including any pertinent agreements reached during the opening conference/meeting. See IRM Exhibit 4.46.3-3, Sample Agenda for Opening Conference/Meeting.
- (2) A complete issue-based examination plan will include:
- a. Form 13744-I, Issue-Based Examination Plan and Risk Analysis
  - b. Meeting minutes including pertinent agreements reached during the opening conference/meeting
- 4.46.3.9.6  
(03-14-2016)  
**IC Examination Plan**
- (1) If this option is selected, a complete IC Examination Plan will include the following:
- a. Form 4764-IC, LB&I Examination Plan for Industry Case (IC) Audits
  - b. Form 13744, Risk Analysis Worksheet
  - c. Form 4764-A, Summary of Assignments (optional)
  - d. Form 4764-B, Examination Procedures
- Note:** Also document the issue manager and issue team members, including taxpayer personnel assigned to the issue.
- e. Examination timeline using optional Form 13745, Examination Timeline, or similar workpaper.
- (2) The Administrative Summary Sheet Workpaper for an IC examination is available to assist in preparing the examination plan and is not part of the plan given to the taxpayer.
- 4.46.3.10  
(01-23-2023)  
**Large Corporate Compliance (LCC) and Large Partnership Compliance (LPC) Program Information**
- (1) The following subsections are original LCC procedures from previous revisions of this IRM. However, citations were updated, obsolete references were removed and other minor editorial changes were made. See IRM 4.50.3, Compliance Integration - Large Corporate Compliance for information on LCC.
- (2) LB&I implemented LPC as a pilot program in 2021 to address LB&I compliance approach to large partnerships. LPC returns are identified using data analytics similar to those used for the LCC program. LPC exam planning must follow the same procedures as the LCC program with the following exceptions:

- a. LPC returns may not be surveyed because the knowledge learned from these examinations will be used in improving case selection.
- b. MIRA/SIRA is not required for LPC compliance cases as noted in IRM 4.46.3.2.1, LB&I Examination Issue Selection and Collaboration Process (ISCP).
- c. The exam team must consider or develop the issues identified by the classifiers. To improve future return selection, detailed feedback is needed for all issues, those identified by classification and those added by the exam team.

4.46.3.10.1  
(01-04-2024)  
**LCC and LPC  
Examination Plans**

- (1) The examination plan will be prepared at the conclusion of the planning phase, it should be issue focused and also contain the following: the issues identified, audit steps, timeline(s), and communication agreements.
- (2) Written document - The examination plan is a written document for all LB&I cases containing agreements with the taxpayer, information for the IRS personnel, work assignments, examination scope, examination procedures, time estimates, and special instructions. The plan is prepared using Form 4764, LB&I Examination Plan, Form 4764A, LB&I Examination Plan - Summary of Assignments and Form 4764B, LB&I Examination Plan – Examination Procedures.

**Note:** Examiners may also use Form 13744-I to prepare their examination plans. See IRM 4.46.3.9.5.

- (3) Organizational tool - The examination plan is the principal tool the case manager uses in collaboration with the examination team. The examination plan should:
  - a. Serve as a document for formalizing agreed upon arrangements with the taxpayer (these arrangements will have been negotiated through various preliminary planning meetings and the opening conference with the taxpayer)
  - b. Provide management with information regarding the type of examination planned and resources required
  - c. Define each issue team member's responsibility and how that responsibility is to be carried out
  - d. Serve as a basis for monitoring and directing the progress of the examination
  - e. Contain the scope of the examination
- (4) Flexible - The examination plan should be only as sophisticated and detailed as needed for the examination to be performed. The plan for a single-location one-product business normally requires less detail than one written for an examination of a conglomerate type taxpayer having diversified products and global operations. An examination employing four or five team members may involve little or no coordination, whereas; a larger case with twenty or more agents will need more detailed written guidelines on how the members are to be used.
- (5) Balanced - The plan should also have a proper balance between rigidity and flexibility. Excessive rigidity may result in a poor examination or a misuse of resources; however, a plan which is too general or flexible will defeat the purpose for which it is intended - a tool for directing, controlling and monitoring

the examination. Proper evaluations of these factors when drafting a plan will not only result in an effective examination but will also save planning time.

- (6) Taxpayer involvement - The examination plan is equally as important to the taxpayer as it is to the IRS. The taxpayer, through involvement during the entire planning process, develops a vested interest (aside from tax consequences) in how the examination is to be conducted. Both the taxpayer and the Service benefit when the taxpayer is able to plan ahead to provide space, equipment and personnel when needed by the team. Therefore, the taxpayer and the Service should have a mutual understanding in sufficient detail as to what, where, and when examination activity will take place.
- (7) Living document - The examination plan is not a static tool. Case/Issue managers should revisit and revise the plan throughout the examination to take advantage of the additional information and feedback obtained. Personnel resources are; thus, more effectively used and the most significant issue areas are covered.
- (8) Responsibility for the examination plan - The examination plan is the responsibility of the case manager, working in collaboration with the issue managers. The LB&I TC is responsible for coordinating the preparation of the examination plan.

4.46.3.10.2  
(12-18-2018)  
**Timing (LCC and LPC cases)**

- (1) Sequence - Parts I and II of the plan should be completed before any substantial amount of examination work is started. The preliminary analysis, planning conferences and the initial survey of the taxpayer's records provide the information for the preparation of these parts of the plan. Part I, Taxpayer Information Section, should be completed first, since decisions reached in completing this section could influence instructions to the team and work assignments. Other portions of the examination plan may be developed simultaneously.
- (2) Review and approval – Parts I and II of the examination plan contain important information such as the type of examination being planned, the time span scheduled and the estimated cost in resources and travel, which are of interest to second and top level LB&I management. This portion of the plan is subject to their review and approval (**which must be documented**) and must be submitted as early as possible so that the case manager can make any requested modifications. This further highlights the fact that Part I and Part II should be submitted before any substantial amount of examination time is expended.
- (3) Taxpayer agreement - The orderly progress of the examination will depend upon the taxpayer's full agreement to and complete understanding of the examination arrangements.
- (4) Review of books and records - The taxpayer's books and records should be reviewed for noncompliance areas before the last part of the Examination Procedures Section is completed.
- (5) Examination procedures - Team members are expected to develop the written examination procedures to be used to accomplish their assignments. Form 4764B, LB&I Examination Plan – Examination Procedures, has been designed for this purpose. Other formats may also be employed reflecting the required written procedures and other pertinent data. The case manager must require

timely submission of the planned procedures to decide if they are compatible with the overall plan. This is a primary device for controlling examination time.

4.46.3.10.3  
(12-18-2018)

**Sections of the LCC and  
LPC Examination Plan**

- (1) Three parts - The plan is the product of the case and issue team manager(s), team members, and the taxpayer. It is comprised of three individual sections, as follows:
  - a. Part I - Taxpayer Information Section (Examination Arrangements). This section is the overall plan of examination. It contains information extremely important to both the taxpayer and the team. The taxpayer is asked to sign this portion of the plan indicating agreement with its content.
  - b. Part II -- Service Management Information Section (Examination Program LCC Cases). This section is the case and/or issue manager(s)' instructions to team members containing information about the taxpayer, as well as information of a general management nature.
  - c. Part III -- Examination Procedures Section. This section contains each issue team member's assignment and the procedures to be used in accomplishing the assignment.
- (2) Sharing the Plan with the Taxpayer - All parts of the plan should be shared with the taxpayer. Information which would impair tax administration such as Official Use Only (OUO) documents and some specialized audit compliance techniques cannot be included in the examination plan.

4.46.3.10.3.1  
(01-04-2024)

**Part I - Taxpayer  
Information Section  
(Examination  
Arrangements LCC/LPC  
cases)**

- (1) Two-fold purpose - The Taxpayer Information Section has a two-fold purpose. One is to formalize the groundwork for an examination consistent with the concepts of LB&I. The other is to prevent misunderstandings of commitments made and agreements reached. It should be sufficiently detailed and complete so that team members and taxpayers will not unknowingly create a sensitive situation by acting contrary to the agreements. Form 4764, LB&I Examination Plan, should be used in preparing this part of the plan.
- (2) Preparation of Part I - Part I should be prepared following the opening conference and should clearly identify, in writing, the agreements reached with the taxpayer. The preparation of this part of the plan is the responsibility of the case and issue manager(s); however, the examination plan is a shared responsibility of the case and issue manager(s) and the TC.
- (3) Signatures on Part I - Acknowledgment regarding the matters covered and agreements reached at the opening conference is best evidenced by signatures of both the case manager and a duly authorized corporate officer of the taxpayer in spaces provided on the last page of Part I.

**Note:** Taxpayers may use digital signatures on documents related to the determination or collection of tax liability, including any statement or form traditionally exchanged between IRS personnel and taxpayers during a compliance interaction and outside of standard filing procedures. There are two types of acceptable signatures: (1) images of the taxpayer's original or handwritten signature (scanned or photographed) in any common file type such as JPEG, TIFF, PDF, etc. and (2) digital signatures that use encryption techniques that provide proof of original and unmodified documentation when transmitted by an approved secure messaging or file transfer system.

- (4) Limited Scope Audits - Part I should be completed for each LB&I examination; however, at the discretion of the case manager, during a limited scope audit, only the pertinent portions of this section may be prepared. Examples of limited scope examinations include:
  - a. Follow up on issues raised in the preceding cycle
  - b. Repeat examinations where unabsorbed claimed credits (e.g., foreign tax credits) are so large as to preclude a productive full scope examination
  - c. Special purpose audits, etc.
- (5) Commitments and Content - Taxpayer and Service commitments regarding examination activities should be realistic regarding examination activities. Every effort should be made to live up to them, particularly in the following areas:
  - a. List of Service personnel including names, badge number, position, and telephone number
  - b. Dates that each team member can be expected to begin working on the case
  - c. Location where examination activities are to be carried out
  - d. Records to be provided
  - e. Space and equipment required
  - f. Requests for information (see IRM 4.46.4.7, Information Document Request Process)
- (6) Authority - Case and issue managers should make certain that the individual they are dealing with is a duly authorized corporate officer or delegates who can provide information and enter into agreements regarding examination procedures when seeking commitments from the taxpayer. Also, the individual will be responsible for notifying primary parties in the taxpayer's organization of the arrangements affecting them.
- (7) Communications - Part I of the plan should contain a Communications Agreement. This agreement should include the following items:
  - a. Identification of individuals in the taxpayer's organization who are authorized to furnish information to team members, who may discuss tax matters and to whom adjustments may be proposed
  - b. Identification of the TC and team members and the roles each will have in the examination
  - c. Identification of persons best qualified to give complete firsthand information. (This may include persons responsible for preparing the documents to be examined, such as voucher clerks.)
- (8) Arrangements - The Taxpayer Information Section should cover the details of all arrangements, including:
  - a. The space set aside for the agent's use
  - b. Work hours and parking arrangements
  - c. Names of individuals who will provide equipment needed by the team
  - d. Telephone and data lines needed
  - e. Agreements regarding status meetings with the taxpayer to discuss problems

- 4.46.3.10.3.2  
(12-18-2018)  
**Part II - Service Management Information Section (Examination Program LCC and LPC cases)**
- (1) Purpose of Part II - This section provides information regarding the taxpayer, its organization and structure, including the relationships of its entities, and business purposes. Part II also contains instructions to the team and various procedures to be followed during the examination.
  - (2) Taxpayer orientation - The taxpayer should be requested to provide an orientation that will provide much of this information needed for this section. This information should include a thorough overview of business activities, operational structure, accounting systems, and a global tax organizational chart.
  - (3) Additional Information– Part II provides information for the team members regarding their specific assignments, the role of the case and issue manager(s) and TC, scope of the examination and when necessary, special examination techniques. Information provided in Part II will allow team members to be able to make the best use of their time. They will know their role in the examination, how to proceed with the assignment and, if called for, what information to develop for other team members.
- 4.46.3.10.3.2.1  
(01-19-2022)  
**Items Included in Part II of the LCC/LPC Examination Plan**
- (1) Information Regarding Taxpayer – This section includes:
    - a. A summary of the organization’s acquisitions, mergers, or liquidations.
    - b. A description of accounting and internal control systems. This should show accounting and record keeping centers where primary and summary records are maintained and establish the location where records are available for examination.
    - c. A brief description of the organizational structure. An organizational chart is considered helpful in keeping team members aware of the structure and interrelationships of taxpayer’s components. This becomes extremely important where assistance or support group are involved since it assists them in coordinating their efforts with other components of the examination.
    - d. The record retention limitation agreement under Rev. Proc. 98-25.
    - e. Titles and frequency of reports to regulatory agencies
    - f. Public or other sources of information
    - g. Information regarding key taxpayer, effectively controlled entities, and divisions or branches, etc. This would include a list of branches, plants, divisions, and entities not to be examined with an explanation why they should not be examined. This listing and analysis should include comments regarding relative size, last year examined and last year an on-site inspection/examination was conducted as well as information regarding the location of business activities and major product lines. It should include a description of any foreign subsidiaries including details of what books and records are overseas along with their locations and the responsible employees.
  - (2) Instructions to Team Members - This section includes instructions related to the following subjects:
    - a. Standard for workpapers (size, IMS accuracy, etc.)
    - b. Use of IMS for paperless case files.
    - c. Indexing of workpapers and final report. This will include the use of the Standard Audit Index Numbering (SAIN) method of indexing workpapers (See IRM Exhibit 4.46.6-1, LB&I Corporate SAIN Codes) and the mandatory workpaper naming convention (see IRM 4.46.6.2 , Workpaper Organization and Considerations).

- d. Routing of requests for information to and from the taxpayer
  - e. Procedures for requesting conferences with the taxpayer
  - f. Maintaining a folder of summary topics (planning file) and related background material to be used in preparation for the post-examination critique
  - g. Procedures for monitoring time
  - h. Development of examination procedures, presentation of issues and preparation of the report
  - i. Procedures for requesting information
  - j. Procedures for requesting accountants' workpapers
  - k. Written communication procedures
  - l. Requirements associated with confidentiality privileges relating to taxpayer communications
  - m. Instructions for documentation of examining officer's activity and interest abatement
  - n. Requirements associated with confidentiality of taxpayer information/ taxpayer privacy
  - o. Awareness of Unauthorized Access (UNAX) requirements
  - p. Procedures related to third party contacts
  - q. Awareness of taxpayer rights
  - r. Examiner verification requirements related to providing the taxpayer with official employee identification information
- (3) Information for Team Members – The following types of information would be beneficial to all team members:
- a. Brief outline of case and issue manager(s)' planned activities
  - b. Brief outline of team coordinator's activities
  - c. Industry practices and issues common to this type of industry
  - d. Special examination features to be used
  - e. Projected travel expenses (optional)
- (4) Outline of compliance and filing checks, procedures, and special techniques to be used:
- a. Examine internal audit reports
  - b. Check for "grass roots" lobbying expenses
  - c. Review travel and entertainment of officers, where applicable
  - d. Verify requirements of Corporate Executive Compliance Program
  - e. Review management letters from CPA firm and responses thereto, where applicable
  - f. Verify required return filing compliance. (See IRM 4.46.3.5 , Compliance Checks Summary.)
- (5) Examination Assignments – A schedule of examination assignments will be prepared showing the planned order of the examination focusing on the priority of the identified issues. Examiners should use this schedule as a guide in preparing examination procedures in order to ensure the highest degree of coordination of the examination.

- 4.46.3.10.3.2.2  
(12-18-2018)  
**Modification of Part II of the LCC/LPC Examination Plan**
- (1) Modifications allowed - Part II should be completed for all LCC examinations. However, there are situations when parts of it may be abbreviated or omitted at the discretion of the case manager (in collaboration with the issue manager(s)) such as subsequent LCC examination cycles involving the same case and issue managers or team coordinator. Much of the data will be the same as in the prior cycle and can be copied over to the new examination plan.
- 4.46.3.10.3.3  
(01-04-2024)  
**Part III, LCC/LPC Examination Procedure Section (Examination Assignments)**
- (1) Purpose of Part III - The purpose of this section is to:
- a. Inform issue team members of their assignments and to convey any special instructions
  - b. Permit issue team members to indicate the specific examination procedures and techniques they propose to use in fulfilling their assignment
  - c. Assist the TC or case/issue manager(s) in facilitating the distribution of individual assignments and provide feedback on the way each team member intends to carry out the assignment
- (2) Forms to be used – Form 4764 in conjunction with Forms 4764-A and 4764-B or 13744-I can be used in preparing this section of the plan and should contain the name of entity, the years involved, a brief description of the examination assignment, and date. These forms should contain the names of team members and a listing of various examination segments (accounts, transactions, etc.) of the assignment to reflect:
- a. Flow and order of the examination process
  - b. Planned start and completion dates
  - c. An estimate of examination time by specific segments, such as line items from a return, SAIN item, potential issue(s), etc.
  - d. A description of testing, sampling, or other specific examination techniques to be used (including compliance checks), when warranted
  - e. Depth to be achieved in the examination of items within the segment
  - f. Special coordination with other team members to achieve the best possible uniformity and consistency in raising and resolving issues
  - g. Prioritization of significant areas/issues.
- (3) Form 4764-B, LB&I Examination Plan, Examination Procedures – This form also should contain procedures developed specifically for significant examination areas, compliance checks and in-depth probes. The standard SAIN procedures can be used for the balance of the examination areas.
- 4.46.3.10.3.4  
(12-18-2018)  
**Distribution of LCC/LPC Examination Plan**
- (1) Distribution - The examination plan is a working tool and once completed, should be distributed to those who have use for it:
- a. The taxpayer will be given a copy of the plan in all cases. Changes made to the plan should be promptly discussed and coordinated with the taxpayer.
  - b. All team members should receive those portions of the plan, and other material and information, which are pertinent to their assignment. Instructions provided should be sufficient to permit full understanding of their assignments and enable team members to place in proper perspective their relative portion of the entire team's effort. A complete copy of the plan should be kept on site for reference.
  - c. Area Counsel will be furnished relevant portions of the plan.

- d. The approving official (i.e. territory manager, case manager) should retain a copy for reference files.

4.46.3.10.3.5  
(12-18-2018)  
**Significant Modifications to the LCC/LPC Plan**

- (1) Periodic review and revision - Time allocations and estimated closing dates should be subject to continual managerial review during the life of an LB&I examination. These projections are to be modified when changes are called for by any case-related developments, particular needs of the examination, or needs of the IRS.
- (2) Plan addendum - Modification of the original plan, if significant, will be explained in an addendum to that plan. The case manager (in collaboration with the issue manager(s)) is responsible for making the judgments necessary to determine whether a particular change has the degree of significance to justify the preparation and submission of an addendum. A change of plus or minus 10 percent in planned time may not, by itself, be indicative of significance but may be material if considered in association with other factors.
- (3) Significant changes - Changes involving the taxpayer's component entities could also be deemed significant. Adding a loss-year to a multiple-year examination already in process would also warrant an addendum to include that year. The taxpayer's input should be considered when making modifications to the plan.
- (4) Approval - Development and documented approval of an addendum will follow the same processing procedures used for the original plan.

4.46.3.10.3.6  
(01-04-2024)  
**Taxpayer Acknowledgement of LCC/LPC Plan**

- (1) Taxpayer's copy of the plan - The Taxpayer Information Section of the plan should be signed by both the taxpayer and the case manager. The case manager should deliver the examination plan personally since it will provide an opportunity to:
  - a. Review the document with the taxpayer
  - b. Obtain the taxpayer's signature as an acknowledgment of receipt and that the agreements and information are correctly stated. (The case manager should document delivery of the plan and the fact that its correctness was orally acknowledged in the event the taxpayer declines to sign.) For more information on the use of digital signatures, see IRM 4.46.3.10.3.1, paragraph (3).
  - c. Remind the taxpayer that the examination plan is subject to change when necessary

4.46.3.10.4  
(01-04-2024)  
**Role of the LCC/LPC Case Manager**

- (1) Responsibility - Case managers are fully responsible for all management aspects of their cases. This requires substantial activity on their part in reviewing and discussing matters with all members of the team. Their activity should be briefly outlined in this section of the examination plan so that team members and the taxpayer will be able to properly coordinate their activities. The outline should cover items such as:
  - a. Planned contacts with specialists and assistance or support team supervisors
  - b. Frequency of manager's meetings with taxpayer and team members
  - c. Coordination with assistance or support groups
  - d. Involvement in creating the examination plan and method for documenting approved changes in the examination plan

- e. Review of work in process
  - f. Input and review of issues selected through the manager's initial and mid-cycle risk analysis process
  - g. Identification of requests which will require the case/issue manager's documented approval (include only those that are relevant) such as requests for accountants' work papers and tax accrual work papers (see IRM 4.10.20), third-party contacts, issuance of summons, summons enforcement, contacts made to Division Counsel and requests for outside services.
  - h. Involvement in the Information Document Request (IDR) process to address delays (see IRM 4.46.4.7)
  - i. Review and approval of significant or sensitive proposed issues (Forms 5701, Notice of Proposed Adjustment)
  - j. Approval of the assertion of penalties in writing prior to issuing any written communication of penalties to a taxpayer that offers the taxpayer an opportunity to sign an agreement or consent to assessment or proposal of the penalty. For LB&I examinations, the case manager is designated as a higher-level official who may approve the initial determination of penalties for purposes of satisfying IRC 6751(b) . Refer to IRM 4.46.4.12.2 , Managerial Involvement and IRM 20.1.1.2.3 , Approval Prerequisite to Penalty Assessments.)
  - k. Protection of all statutes of limitations
  - l. Review the case at the end of the examination
- (2) Meetings and travel – The case manager (in collaboration with the issue manager(s)) should prepare estimates of likely dates for meetings and associated travel costs. Planned travel costs must be approved by the next level of management.

4.46.3.10.5  
(01-04-2024)

**Role of the LCC/LPC  
Team Coordinator**

- (1) List of activities - The TC's activities should be fully explained in Part II of the examination plan so that all team members will be able to conform to the administrative procedures involved in those activities. For example, TCs will:
- a. Prepare the examination plan with the assistance of the case and issue manager(s).
  - b. Update the risk analysis with the assistance of the case and issue manager(s).
  - c. Review all team members' information requests (including specialists) for uniformity, clarity, duplication of other requests.
  - d. Ensure that information requests are discussed with the appropriate taxpayer representative prior to their issuance.
  - e. Ensure that issues to be presented on Forms 5701, Notice of Proposed Adjustment (NOPA), are discussed with the appropriate taxpayer representative prior to issuance.
  - f. Review all team members' (including specialists) proposed adjustments (Forms 5701/NOPAs).
  - g. Specify who will receive requested information from the taxpayer. (For example, will team members get their own information, or will the TC receive it and forward it to team members?)
  - h. Secure the case and/or issue managers' approval of requests where required.
  - i. Maintain an IDR and Form 5701 log to document the date of issuance and receipt of each IDR or Form 5701 and retain copies of the requests.

- j. Function as the liaison with the taxpayer for the day-to-day activities of the team, if designated.
- k. Determine what work papers will be used to document the audit trail (time tracking, preparation of minutes/memos detailing significant meetings, etc. during the examination), including retaining copies of requests for information, NOPAs, IDRs, Forms 5701 and all statistical samples.
- l. Update the planning file.
- m. Prepare the post-examination critique.
- n. Monitor the return for Pass-Through Control System (PCS) linkages using command code TSUMY periodically.
- o. Control the coordination of meetings (e.g., planning meeting/opening conference/mid-cycle review/post-examination critique).
- p. Ensure that ERCS, IDRS, and IMS are correctly updated.
- q. Protect all statutes of limitations.
- r. Perform other duties as determined appropriate by the case/issue manager.

4.46.3.10.6  
(12-18-2018)  
**Scope of LCC/LPC  
Examination**

- (1) Scope – Risk analysis provisions should be followed in determining the scope of the examination.
- (2) List of components – Part II of the plan provides for the listing of all components of the taxpayer. The listing should indicate percentage ownership of components, the principal product or function of each component, filing location if the component files a separate return, and reasons for not examining components. This information will help acquaint team members with the nature of their assignment and alert them not only to the possibility of inter-company transactions but also to those accounts in which those transactions may be found. This list will be used in the risk analysis process to help determine scope.
- (3) Limiting the scope - Reasons for not including various items in the examination plan should be made known to team members, as well as to SMEs and management. Documenting this information allows management to evaluate decisions regarding cycle time and examination scope which may have a bearing on the territory’s resource utilization, examination program, and currency. The individual team members also need to know this information to:
  - a. Avoid developing useless feeder information
  - b. Alert the case manager to significant interrelated issues which, if fully developed, would require that the component be brought under examination
  - c. Recognize information that was not available to the case manager in deciding the scope of the examination

4.46.3.10.7  
(12-18-2018)  
**Special LCC/LPC  
Instructions and  
Summary of Assignment**

- (1) Team assignments - The case and issue manager(s) and TC should give specific assignments to each of the team members after the planning meetings. It should also be made clear to all of the team members that the instructions are a guide and are flexible depending upon the needs of the case. The case and issue manager(s) should always encourage independent thinking by all team members.

- (2) Special instructions – This part of the plan aids the TC or case and issue manager(s) in conveying special instructions to the team members and is used for summarizing the assignments. Variations of this format may be desirable in some cases. It should:
  - a. Contain special instructions on case management activities for particular assignments only. (Instructions of a general nature should be covered in the Service Management Section.)
  - b. Contain instructions as to special accounts, special examination procedures to be applied, and issues or other matters the TC or case/issue manager(s) want to have covered.
  - c. Clearly describe the assignment and the team members' responsibilities and staff day allocation. (This will help to determine the examination procedures to be applied.)
  - d. Point out special features or problems about the assignment that are known from past examinations or other sources. (It will not be necessary to duplicate information already contained in the Service Management Section.)
- (3) Distribution – Form 4764-A, LB&I Examination Plan – Summary of Assignments, should be given to each team member before work begins.

4.46.3.10.8  
(01-04-2024)

**Outline of LCC/LPC  
Examination Procedures**

- (1) Format - Variation of the format for outlining procedures may be desirable in some cases, but should reflect the information contained on Form 4764-B, LB&I Examination Plan, Part III – Examination Procedures Section.
- (2) Preparation - Team members should begin preparing the procedures part of the plan upon receipt of their assignments. It should be prepared to reflect clearly the steps to be taken in the examination of each particular account or item. Changes to procedures should be shown so that there will be a record of what was actually done.
- (3) Preliminary examination work – Some preliminary work will have to be done before examination procedures can be finally determined. This could include a review of accounting procedures, internal controls and a test of their effectiveness, or other limited examination work. The procedures used in any preliminary or initial work should be documented in this section.
- (4) Modifications - The procedures may have to be modified as the examination progresses. The examiner must be alert for any changes that may be necessary and, after discussion with the case/issue manager, incorporate any revisions in the appropriate section of the examination plan. The TC or case manager will coordinate significant changes with the taxpayer.
- (5) Tailored procedures - The procedures to be used should be specific to the issues identified and the particular taxpayer, and not merely a copy of generally suggested audit procedures.
- (6) Sequence – The examination procedures should be divided or arranged in the sequence to be followed.
- (7) Assistance or support team - The case manager will decide if assistance or support group team members will also write the examination procedures for their assignments. It may be necessary for the case/issue manager to recommend procedures in those cases where it will be a first-time examination

for the assistance or support group. It may also be necessary for the case/issue manager or TC to travel to the assistance or support group to help in identifying appropriate procedures.

4.46.3.10.9  
(01-23-2023)  
**LCC and LPC Time Planning**

- (1) Responsibility - The TC or case and issue manager(s) are responsible for planning the time necessary for each examination. Time planning is essential to ensure staff resources are effectively utilized and concentrated in the most productive areas.
- (2) Data available - TCs or case/issue managers have information developed during the preparation of Parts I and II of the examination plan that will assist in time planning. They must evaluate the information obtained, consult with team members, specialists, managers, the taxpayer, and others, including prior examiners who may be able to contribute to or supplement information about the taxpayer. The case/issue manager must then consider this accumulated information in determining the planned depth and scope of the examination to be conducted.
- (3) Prior cycle information available - The best judgment of the team members and the case/issue manager is an important factor in those cases where detailed information about time expended for the prior examination is available. The case/issue manager and examination team must consider any changes to the depth and scope of the current examination, as well as any other known factors which would influence the examination. The case/issue manager must be careful not to simply roll over time estimates from prior examinations.
- (4) No prior cycle - Some audits do not have a prior history of examination time. The detailed projection of time requirements in these audits should reflect the team members' and case/issue manager's best judgment after considering everything learned about the taxpayer.
- (5) Other considerations - The following additional factors should be considered:
  - a. Experience of the case/issue manager and team members
  - b. Extent of computer assisted audit techniques
  - c. Location of records
  - d. Travel time (on-site vs. assistance or support)
  - e. Taxpayer's staffing
  - f. Taxpayer's cooperation
  - g. Effectiveness of taxpayer's retrieval system
  - h. Extent and nature of in-depth probes
  - i. Complexity of examination areas selected
- (6) Modifications - Case/Issue managers must keep in mind that in estimating time they are dealing with many variables and unknowns. Initial estimates of specific time requirements should be as accurate as possible; however, case/issue managers are expected to revise and adjust the time allocations during the examination (on-going risk analysis). This ensures the application of time to those areas having the greatest compliance potential.

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**Exhibit 4.46.3-1 (03-01-2006)****LB&I Planning File**

- a. General
- b. Identification and History of Taxpayer
- c. Organization
- d. Reorganizations, Acquisitions, and Liquidations, etc.
- e. Accounting Records and Procedures
- f. Continuing Year-to-Year Analysis
- g. Contracts, Documents and Agreements
- h. Examination Support
- i. Current Data Affecting Subsequent Years
- j. Risk Analysis
- k. Examination Plan
- l. Reports
- m. ADP & Computer Applications
- n. Post-Examination Critique
- o. Miscellaneous
- p. Record of Examination Team Activity

**Exhibit 4.46.3-2 (12-18-2018)****Sample Agenda Topics for Internal Planning Meeting(s)**

An agenda is useful to set the objectives and scope of the meeting. It is also useful as a reminder of discussion topics. The sample agenda topics below include items that may be relevant to the internal planning of an examination:

**Internal Planning Meeting Agenda Topics**

- a. Introduction of team members:
  1. IRS team members assigned to the case: first name, last name, title and contact information
  2. Discussion of financial and other conflicts of interest in assignments
  3. Reporting requirements for team members
  4. Discuss P-4-5 and P-4-6 and complete Form 6782, if required.
- b. Review of taxpayer information:
  1. Review of information secured from internal sources:
    - a. Background of the taxpayer
    - b. Prior examinations and results
    - c. Status of any cycles in Appeals
    - d. Claims filed by the taxpayer
    - e. Prior taxpayer relationships (i.e., cooperative and transparent)
    - f. Review of tax returns
    - g. Review of Planning File. See Exhibit 4.46.3-1
    - h. Review of prior RARs
    - i. Discussion of carry-over issues
    - j. Review information from Case Built File (CBF)
    - k. Review of resources available to the case/issue manager
  2. Review of information secured from external sources:
    - a. Review of Annual Reports
    - b. Review of SEC Reports
    - c. Review of industry Issues
    - d. Web/news information
- c. Issue identification/risk analysis:
  1. Discussion of Risk Analysis process
  2. List potential issues in this cycle by team members
  3. Presentations of initial issues identified
  4. Materiality thresholds
- d. Determine resource needs:
  1. Tentative identification of issue team members
  2. Tentative identification of issue managers
  3. Roles of the case manager, issue manager and TC
  4. Tentative examination procedures for each issue
  5. Tentative timeline for each potential issue
  6. Discussion of Technical Advice Requests, i.e., TAMs, and possible Chief Counsel Advice requests
  7. Discussion of additional staffing needs such as subject matter experts, counsel, outside experts, etc.
- e. Preparation for meetings with taxpayers:
  1. Review and prepare agenda for the opening conference/ meeting and issue discussion meetings with the taxpayer. See Exhibit 4.46.3-3.
  2. Discussion of how third-party contacts will be handled
  3. Discussion of statutes – notification of taxpayer’s rights

**Exhibit 4.46.3-2 (Cont. 1) (12-18-2018)****Sample Agenda Topics for Internal Planning Meeting(s)**

4. Discussion of privilege and tax accrual workpapers
  5. Discussion of policy and practice regarding responses to requests for examination-related information from external stakeholders/other IRS employees outside the examination. See IRM 4.46.1.3.1.1.
  6. Discussion of adequate documentation for examination reports (IRM 4.46.6.6)
  7. Discussion of taxpayers' agreement or non-agreement to those reports (IRM 4.46.6.8 to 4.46.6.9), and clarification of an agreed issue, that unless the taxpayer signs Form 870, the issue will be treated as unagreed.
  8. Discussion of taxpayer's rights, privacy (disclosure), and unauthorized access to taxpayer's accounts
  9. List of questions and topics to discuss with taxpayer during opening conference (see Exhibit 4.46.3-3, Sample Agenda for Opening Conference/Meeting).
- f. Discuss Communication Methods/Time Schedule Coordination:
1. Internal communication and time schedules and logistics
  2. Instructions to team members for procedures for the preparation of workpapers
  3. Discuss procedures for requesting information from taxpayers
  4. Discuss procedures for requesting conferences/meetings with taxpayer
  5. What to expect during on-site visits by case manager

**Exhibit 4.46.3-3 (01-04-2024)****Sample Agenda for Opening Conference/Meeting**

The opening conference/meeting agenda should be modified based on the entity being examined, the experience with the taxpayer, and the information available. The sample agenda below includes items that may be relevant to the examination and should be considered. The sample agenda below is not all-inclusive but should only be used as a guide to prepare an agenda specific to the examination.

**TAXPAYER NAME, EIN, AND TAX YEARS****INTRODUCTIONS**

## IRS Attendees

First and Last Name, Title and post of duty

## Taxpayer Attendees

First, Last Name, Title and location

**LB&I EXAMINATION PROCESS**

**Review the LB&I Examination Process** - Provide a copy of Publication 5125, LB&I Examination Process, to the taxpayer and discuss the major sections below:

- LB&I Examination Team Roles and Responsibilities
- Taxpayer or Their Representatives Roles and Responsibilities
- Expectations with Respect to Claims
- Communication
- Issue Team Concept
- Examination Plan
- Issue Development Process
- Penalties
- Written Acknowledgment of the Facts for Unagreed Issues
- Issue Resolution
- Exit Strategy

**Letter 2205-L** - The letter references Publication 1, Your Rights as a Taxpayer, Publication 5125, The LB&I Examination Process, and Notice 609, Privacy Act Notice. .

**Letter 2205-D** - Letter 2205-D is used by LB&I and SB/SE examiners to request that taxpayer call-back to schedule an initial appointment for examination of partnership income tax returns. This letter references Publication 1, Your Rights as a Taxpayer and Notice 609, Privacy Act Notice.

**Rev. Proc. 2022-39 and Form 15307, Post-Filing Disclosure for Specified Large Business Taxpayers-**

Replaces Revenue Procedure 94-69 and applies to Large Corporate Compliance (LCC) and Large Partnership Compliance (LPC) programs. The new procedures allow eligible taxpayers under exam to make post-filing disclosures to the IRS of errors or omissions on returns without certain penalties within 30 days of receiving a request to provide a completed Form 15307. In general, an eligible taxpayer under Rev. Proc. 2022-39 is one that meets the following criteria:

- Must be a corporation subject to the Large Corporate Compliance (LCC) program or a partnership subject to the Large Partnership Compliance (LPC) program.
- Must have been examined under LCC (or predecessor) or LPC programs for four of the past five tax years.
- Earliest tax year return eligible for this procedure is 2021 or later.

For returns of tax year 2020 and prior, the transition rules apply, which are:

## Exhibit 4.46.3-3 (Cont. 1) (01-04-2024)

### Sample Agenda for Opening Conference/Meeting

- The tax return for the 2017 tax year and later that is selected for IRS examination is under LCC, and
- That corporate taxpayer had, as of May 2019, an open CIC examination for tax years prior to 2017.

**Issue Resolution Tools** - Explain the various issue resolution tools with the taxpayer.

- Settlement Offers and Closing Agreements in LB&I Cases Where Appeals Has Effected a Settlement (D.O. 4-24)
- Settlement Authority for Coordinated Issues (D.O. 4-25)
- Advance Pricing Agreements (Rev. Proc. 2015-41,)
- U.S. Competent Authority Assistance (Rev. Proc. 2015-40)
- Early Referral to Appeals (Rev. Proc. 99-28)
- LB&I Fast-Track Process (Pub 4539 and Rev. Proc. 2003-40, modified by Rev. Proc. 2015-40)
- Accelerated Issue Resolution (Rev. Proc. 94-67)
- Pre-filing Agreements (Rev. Proc. 2016-30)
- Rapid Appeals Process (see IRM 8.26.11, Rapid Appeals Process (RAP) and the RAP page in the Exam Procedures Knowledge Base at <https://irs.gov.sharepoint.com/sites/ETD-KMT-KB051/SitePages/LBIExamProcedures/IssueResolutionTools/Rapid-Appeals-Process.aspx>)

**Information Document Requests** - Form 4564, Information Document Request, will be used to request information. The current IDR process should be discussed with the taxpayer to ensure their understanding and commitment to the process. Refer to IRM 4.46.4.7, Information Document Request Process.

**Acknowledgment of the Facts for Unagreed Issues** - A written acknowledgment of the facts for unagreed issues should be obtained prior to issuing a NOPA. See IRM 4.46.4.11, Written Acknowledgement of Facts (AOF). The case manager or examiner must inform the taxpayer that if a case is closed to Appeals and new information is provided by the taxpayer, the case will be returned to exam's jurisdiction for consideration. See IRM 4.46.5.13. If the taxpayer raises a new theory or alternative legal argument, the case will remain in Appeals' jurisdiction, but the issue team will be given the opportunity to respond in writing to the new argument. See IRM 4.46.5.14.

**Notice of Proposed Adjustment (NOPA)** - A Form 5701, Notice of Proposed Adjustment, along with Form 886-A, Explanation of Items, will be used for all issues adjusted. Before issuing a NOPA, the issue team must discuss it with the taxpayer and both parties should agree to a reasonable timeframe for response unless a standard response date for all NOPAs is determined at the opening conference/meeting.

**Claims** - Identify the date that the 30-day window ends, determined as 30 calendar days from the opening conference/meeting. If the last day of the 30-day window falls on a weekend or holiday, the last day to accept informal claims is the next business day. After the 30-day window, all claims for refund must be filed with the campus and a copy provided to the issue team with all supporting documentation. See IRM 4.46.3.7, LB&I Claims Process.

**Notification to Taxpayers of Potential Double Taxation** – Discuss and document in the minutes of the Opening Conference that the taxpayer was notified of the procedures if a potential double taxation is proposed during the examination. The following language should be included in the agenda for the opening conference: “During the examination, adjustments may be recommended to your income tax liability causing an economic double taxation as a result of your various affiliates operating in foreign countries. Therefore, we suggest you advise your foreign affiliates in those countries to notify the appropriate taxing authorities about postponing the expiration of the statutory period of limitations on refunds or other tax adjustments. This procedure should not be limited to those foreign affiliates listed in the examination plan. In the event these adjustments affect the tax

**Exhibit 4.46.3-3 (Cont. 2) (01-04-2024)****Sample Agenda for Opening Conference/Meeting**

liability of an affiliate operating in a treaty country, you have the right to request competent authority consideration for relief from economic double taxation under Rev. Proc. 2015-40.” See IRM 4.60.2, Mutual Agreement Procedures and Report Guidelines.

**Computer Records**– Discuss with the taxpayer the intention is to conduct the examination as quickly and efficiently as possible. Consider requesting electronic book to tax reconciliation records and data from the tax software used in preparation of the tax return and electronic records supporting items on the tax return. Discuss the pertinence and scope of the requests with the taxpayer before providing corresponding Information Document Requests.

**Electronic Recordkeeping Requirements** – If a CAS is assigned to the examination, discuss and provide copies of pertinent revenue rulings and revenue procedures regarding electronic or machine-sensible records and recordkeeping to the taxpayer. After review of systems, records, policies and documentation, discuss observations regarding the taxpayer’s compliance with those rulings and procedures and answer any questions or concerns. The CAS should consider issuing a Feedback Letter for items that should be corrected or adjusted in a subsequent examination.

**Other Periods Impacting Current Examination** - Discuss the impact of any prior examination adjustments on the current examination. Discuss the impact of unagreed issues from prior examinations and their status in Appeals. Discuss the impact of any (1) change in accounting methods (Form 3115) filed or anticipated and (2) carry back claims (Form 1139) filed or anticipated.

**Compliance Checks** - Discuss the relevant compliance checks. Refer to IRM Exhibit 4.46.3-5.

**Key Officer’s Returns** - Explain the requirement to inspect the tax returns for officers, key corporate executives, and controlling shareholders as required by IRM Exhibit 4.46.3-6.

**Statute Extension Policy** - An effective examination plan will ensure that statutes are covered for the entire plan timeline through status 80 or 90. See IRM 25.6.22.2, Guidelines for Soliciting Extensions.

**AGREEMENTS**

**Communication Agreement** - The communication agreement must identify individuals in the taxpayer’s organization who are authorized to provide and receive information, who may discuss tax matters and those with whom adjustments may be proposed. A written authorization must be secured and signed by the responsible officer. A Form 2848, Power of Attorney, should be secured as appropriate.

**Flow of Communications** - Identify who will serve as the contact point between the taxpayer and the issue team on administrative items and/or items related to tax issue(s), such as issuing and responding to IDRs and NOPAs, etc. Administrative items may include coordinating meetings, receiving claims, one-stop service, etc. If circumstances change during the examination, it may be necessary to modify the flow of communication and document the examination plan.

**Leveraging Technology** - Discuss using secure e-mail messaging, Taxpayer Digital Communication (TDC), e-fax and/or other approved electronic methods. For more information, refer to IRM 4.46.3.4.8.9 and check out the LB&I Secure Email Messaging Systems website at [https://irs.gov.sharepoint.com/sites/ETD-KMT-KB051/SitePages/LBIExamProcedures/ITResources/SecureEmailMessagingSystems\(SEMS\)ProgramOverview.aspx](https://irs.gov/sharepoint.com/sites/ETD-KMT-KB051/SitePages/LBIExamProcedures/ITResources/SecureEmailMessagingSystems(SEMS)ProgramOverview.aspx) and the Taxpayer Digital Communication (TDC) website at [https://irs.gov.sharepoint.com/sites/ETD-KMT-KB051/SitePages/LBIExamProcedures/ITResources/TaxpayerDigitalCommunication\(TDC\).aspx](https://irs.gov.sharepoint.com/sites/ETD-KMT-KB051/SitePages/LBIExamProcedures/ITResources/TaxpayerDigitalCommunication(TDC).aspx)

**Materiality Threshold Agreement** - Setting a materiality threshold involves both quantitative and qualitative factors. Materiality is relative and not an absolute, concept. During the opening conference initial discussions regarding materiality should occur. Materiality threshold agreements should apply to both the examined issues and taxpayer claims.

**Exhibit 4.46.3-3 (Cont. 3) (01-04-2024)****Sample Agenda for Opening Conference/Meeting**

**Monitoring the Progress of the Examination** - Depending on the size and complexity of the return, consider establishing agreed upon status meetings with the taxpayer to monitor the overall progress of the examination. Additionally, separate status meetings may be appropriate to monitor the progress of specific complex issue(s). The taxpayer should disclose periods when their availability is limited due to other regulatory or business obligations such as quarterly or year-end reporting. The examination team should also disclose periods when their availability may be limited.

**Safety and Security** - The taxpayer should provide their evacuation plan and on-site safety policies and procedures. The taxpayer should advise the team of their security procedures, such as badges, check-in and check-out procedures and data protection.

**Facilities (if applicable)** - Items required for day to day operations such as; adequate workspace, locks/security of workspace, hours of operation, work space requirements, phone and internet access, contact points and procedures, etc.

**Customer Service (One Stop Shop Concept)** - If the taxpayer has a problem with any area of compliance and/or dealing with the IRS, suggest that the taxpayer discuss the situation with the TC first. The TC will try to find an expedient solution or contact person.

**Other Agreements** - Arrange for the review of necessary workpapers, reports, corporate minutes or other pertinent records.

**PRELIMINARY RISK ANALYSIS REVIEW**

If completed before opening conference, the preliminary risk analysis should be shared and discussed with the taxpayer with the intent of obtaining information that will help the team to narrow or focus the scope of the audit on the most significant issues. See IRM 4.46.3.2.1.

**Subject Matter Experts (SMEs)** - SMEs are available for consultation to the issue team. If issue discussions will occur during the opening conference, SMEs may be invited to attend if their participation adds value; for example, the SMEs can assist with developing examination procedures or can attend the presentation of a complex transaction.

**Counsel** - Counsel is available for consultation to the examination team. They may be invited to the opening conference if their participation adds value to the discussion of a potential issue planned to be examined. Technical Advice Memorandum (TAM) and Chief Counsel Advice (CCA) should be coordinated as early as possible when advice is needed from the Office of Chief Counsel.

**Contracting Officer's Technical Representative (COTR)** - If an outside expert is anticipated, the COTR process should be discussed. See the Outside Expert Knowledge Management page at <https://irs.gov.sharepoint.com/sites/ETD-KMT-KB051/SitePages/LBIExamProcedures/PlanningTheExam/OutsideExpert.aspx> and IRM 4.46.10, Outside Expert Program.

**OTHER ITEMS**

**Frozen Refunds** - Discussion of large frozen refunds (credit balance of \$10,000,000 or more). These refunds must be manually processed because they are frozen with an X- Freeze Code. The following actions are recommended to identify and process these refunds: Discuss with the taxpayer at opening conference how the large frozen refund should be resolved. If it is determined that the refund is improperly frozen during the examination, review BMFOLI for X- Freeze Code. If an X- Freeze Code exists, fax a completed Form 3870 requesting release of X- freeze along with proper documentation to the Centralized Case Processing unit.

**CONCLUDING THE OPENING CONFERENCE**

**Exhibit 4.46.3-3 (Cont. 4) (01-04-2024)****Sample Agenda for Opening Conference/Meeting**

**Review Agreements** - The case manager should conclude the conference by reviewing all agreements and understandings reached with the taxpayer. Agreements reached during the opening conference will be documented in the examination plan.

**Preliminary Risk Analysis** - Any modifications to the preliminary risk analysis should be reviewed. Also, arrangements made for future issue discussion meetings, presentations, site visits, etc. should be scheduled and confirmed.

**Minutes** - A draft of the meeting minutes, including agreements reached during the opening conference (meeting), may be provided to the taxpayer for review. Final meeting minutes, including agreements, may be attached to the examination plan.

**Exhibit 4.46.3-4 (12-18-2018)**  
**Collaboration Assessment Matrix (CAM)**

1. The CAM is a decision tool designed to facilitate ongoing discussions between the team coordinator, specialist agent(s) and/or engineer to consider the issue(s) and its technical aspects, complexity, and skills needed to work it, and to determine the level of specialist involvement needed. A CAM will be developed for each issue
2. The CAM is required for IC cases, mandatory cases (claims, JCC, etc.), and campaign cases without MIRA/SIRA. Although not required the CAM can also be used with CAP, LCC (or the LCC replacement program) and LPC (or the LPC replacement program).
3. Below is a sample of the CAM, the chart is divided into three issue consideration columns:
  - a. Technical Aspects – this column helps agents determine the level of technical knowledge required to work the issue
  - b. Complexity – this column allows agents to determine how complex the facts and circumstances of the issue are.
  - c. Revenue agent’s experience – in the third column the revenue agent’s level of knowledge and experience with the issue is determined.
4. To complete the form agents should select one option in each row. There also are three rows of specialist involvement, the rows allow agents to pick from low, medium, and high.
5. Comments – Agents will add comments explaining final determinations made.

Issue: \_\_\_\_\_

Team Members: \_\_\_\_\_

This grid is designed to facilitate revenue agent and specialist discussion of the initial level of specialist involvement in an examination. The technical aspects and complexity of each specialty issue should be assessed along with the revenue agent’s experience with the issue. Use a check mark to indicate the applicable box in each category (Technical Aspects, Complexity and Skills). The revenue agent and specialist should use their professional judgment to determine the appropriate level of overall specialist involvement. Use the comment box below to summarize the joint discussion. Conclusions on the level of specialist involvement should be shared with both the revenue agent and specialist team managers. This document also be should be retained in the examination workpapers.

**Collaboration Assessment**

SPECIALIZED TRAINING OR KNOWLEDGE REQUIRED  <input type="checkbox"/>	ISSUE HAS COMPLEX FACTS AND CIRCUMSTANCES  <input type="checkbox"/>	RA HAS NO EXPERIENCE WORKING SIMILAR ISSUES  <input type="checkbox"/>	SPECIALIST INVOLVEMENT ↑ HIGH MEDIUM LOW
SPECIALIZED TECHNICAL ELEMENTS CAN BE EXPLAINED  <input type="checkbox"/>	ISSUE HAS MODERATE FACTS AND CIRCUMSTANCES  <input type="checkbox"/>	RA HAS BACKGROUND TO WORK ON ISSUE WITH SPECIALIST ASSISTANCE  <input type="checkbox"/>	
NO OR FEW SPECIALISTS TECHNICAL ELEMENTS EXIST W/ISSUE  <input type="checkbox"/>	ISSUE DOES NOT INVOLVE SIGNIFICANT FACTS AND CIRCUMSTANCES  <input type="checkbox"/>	RA HAS EXPERIENCE WORKING SIMILAR ISSUES  <input type="checkbox"/>	
ISSUE CONSIDERATIONS →			
TECHNICAL ASPECTS	COMPLEXITY	SKILLS	

Comments:

**Exhibit 4.46.3-5 (01-04-2024)**  
**Compliance Checks Tool**

When conducting compliance checks, examiners are expected to:

1. Determine if taxpayers are in compliance with federal tax return filing requirements.
2. Ensure returns within the taxpayer's sphere of influence have been filed.
3. Assess their audit potential.

**Note:** If the examiner completed the compliance checks early in the examination, the examiner can use their own discretion to determine if additional compliance checks are needed later in the examination (i.e., subsequent year officer return was filed after the initial compliance checks were completed).

**Required** – Compliance check must be completed in accordance with IRM guidelines and conclusions documented in the workpapers.

**Waiver** – Examiners may waive the compliance check. Compliance checks can be waived when it is determined that substantial compliance exists. When an examiner waives a specific compliance check, the workpapers should document the reasoning and analysis used to support the conclusion reached.

**Not Required** – Compliance check is not required. But if information developed during the examination indicates the potential for noncompliance, examiners should evaluate whether to perform the compliance check and document actions taken.

For additional guidance on a specific compliance check, see the IRM link in each subsection.

<b>Compliance Check</b>	<b>Primary Return Examinations</b>	<b>Related/Prior/ Subsequent Year Return (a)</b>	<b>LB&amp;I Filing Compliance Check Scope</b>
Prior and Subsequent Year Returns IRM 4.10.5.3	Required	Required	Filing checks must be completed for all years that are filed or due before the audit is closed from the group
Related and Spin-Off Returns IRM 4.10.5.4	Required	Required	This compliance check will be completed once during the planning phase. If non-compliance is identified, perform the filing check again before case closing
Officer/Executive Returns Exhibit 4.46.3-6	Required	Required	This compliance check will be completed once during the planning phase. If non-compliance is identified, perform the filing check again before case closing

**Exhibit 4.46.3-5 (Cont. 1) (01-04-2024)**  
**Compliance Checks Tool**

Compliance Check	Primary Return Examinations	Related/Prior/ Subsequent Year Return (a)	LB&I Filing Compliance Check Scope
Information Returns Involving Foreign Entities (Forms 926, 3520, 3520-A, 5471, 5472, 8621, 8858, 8865 & 8938) IRM 4.10.5.7	Required	Required	The CBA representative is responsible for this compliance check. If a CBA representative is not assigned, no further action is required.
Employment Tax Returns IRM 4.10.5.5.2	Required	Required	This compliance check will be completed once during the planning phase. If non-compliance is identified, perform the filing check again before case closing
Information Returns IRM 4.10.5.6.1	Waiver (b)	Waiver (b)	Unless waived, this compliance check will be completed once during the planning phase. If non-compliance is identified, perform the filing check again before case closing
Form 8300 and Currency Transaction Reports (CTRs) IRM 4.10.5.8	Waiver (b)	Waiver (b)	Unless waived, this compliance check will be completed once during the planning phase. If non-compliance is identified, perform the filing check again before case closing
Excise Tax Returns IRM 4.10.5.10	Waiver (b)	Waiver (b)	Unless waived, this compliance check will be completed once during the planning phase. If non-compliance is identified, perform the filing check again before case closing
Form 5500 Pension Plan Returns IRM 4.10.5.11	Waiver (b)	Waiver (b)	Unless waived, this compliance check will be completed once during the planning phase. If non-compliance is identified, perform the filing check again before case closing

**Exhibit 4.46.3-5 (Cont. 2) (01-04-2024)**  
**Compliance Checks Tool**

<b>Compliance Check</b>	<b>Primary Return Examinations</b>	<b>Related/Prior/Subsequent Year Return (a)</b>	<b>LB&amp;I Filing Compliance Check Scope</b>
Minimum Income Probes IRM 4.10.4.3.3 (Individual Business Returns) IRM 4.10.4.3.4 (Corporations and Other Business Returns)	Waiver (b)	Waiver (b)	
Inventory Checks IRM 4.10.2.7.2 IRM 4.10.3.9.4.3	Not Required	Not Required	Not Required
Withholding Compliance Program (Questionable W-4s) IRM 5.19.11	Not Required	Not Required	Not Required

**Related/Prior/Subsequent Year Returns:** Related, prior, and subsequent year returns are the returns where the scope of the examination is expanded beyond the primary return. For example, when an examination begins with Form 1120, this is the primary return.

- a. Examiners should use the “Primary Return Examinations” column to determine compliance checks needed. If the examination is expanded to include additional tax years or related returns, use the “Related/Prior/Subsequent Year Returns” column to determine the compliance checks needed for these additional tax years or related returns.
- b. Examiners can access LIN links for prior and subsequent year returns so long as the primary return is in AIMS status 10 or higher. The LIN link page will include all returns that are LIN imaged for the taxpayer. Returns not meeting the LIN scanning requirements are not available in the LIN system. Other sources may be used to access those returns, i.e., EUP, requesting a copy from the taxpayer, etc.
- c. **For IIC (International Individual Compliance) only:** Information Returns, Forms 8300, and CTRs compliance checks cannot be waived. These compliance checks are required in IIC.

**Exhibit 4.46.3-6 (01-19-2022)**

**Inspection of Key Officer and Executive Returns**

IRM Exhibit 4.46.3-6 sets forth procedures for LB&I managers and examiners on the inspection of, and when warranted, the examination of key corporate officers and executives concurrent with the examinations of Large Corporate Compliance (LCC), Large Partnership Compliance (LPC) and Industry Case (IC) taxpayer returns.

The key officer and executive returns compliance check requirements have been updated to allow agents to use their professional judgment, knowledge of the taxpayer's operations, and other available information to determine whether inspection of executive returns is warranted.

Examiners must still verify that executives or corporate officers have filed the appropriate tax returns. For return inspection purposes, examiners are allowed to use automated information systems such as IDRS (Integrated Data Retrieval System), CFOL (Corporate File Online), and EUP (Employee User Portal) to complete their compliance checks. If, after analysis of internal data, it is determined that additional return information is needed, the return should be requested from the taxpayer or the campus for inspection.

Examiners can use secure payee information statements using IDRS command IRPTR "L" to verify that income was correctly reported by the key officer or shareholder.

For purposes of this compliance check, examiners should consider the top officers of the corporation and other key executives or highly compensated employees. If the taxpayer filed a consolidated return, examiners should include the top or key officers of the largest subsidiaries. Key corporate officers are those officers who have control or authority over corporate activities, or whose relationship with any segment of the entity is close enough to significantly influence corporate governance or tax results. This would include, for example, board chairman, chief executive officer, chief financial officer, officers in charge of foreign operations, officers in charge of governmental activities, or any other officer with significant decision-making responsibility. For IC taxpayers, key officers are generally those who are also shareholders.

Examiners must:

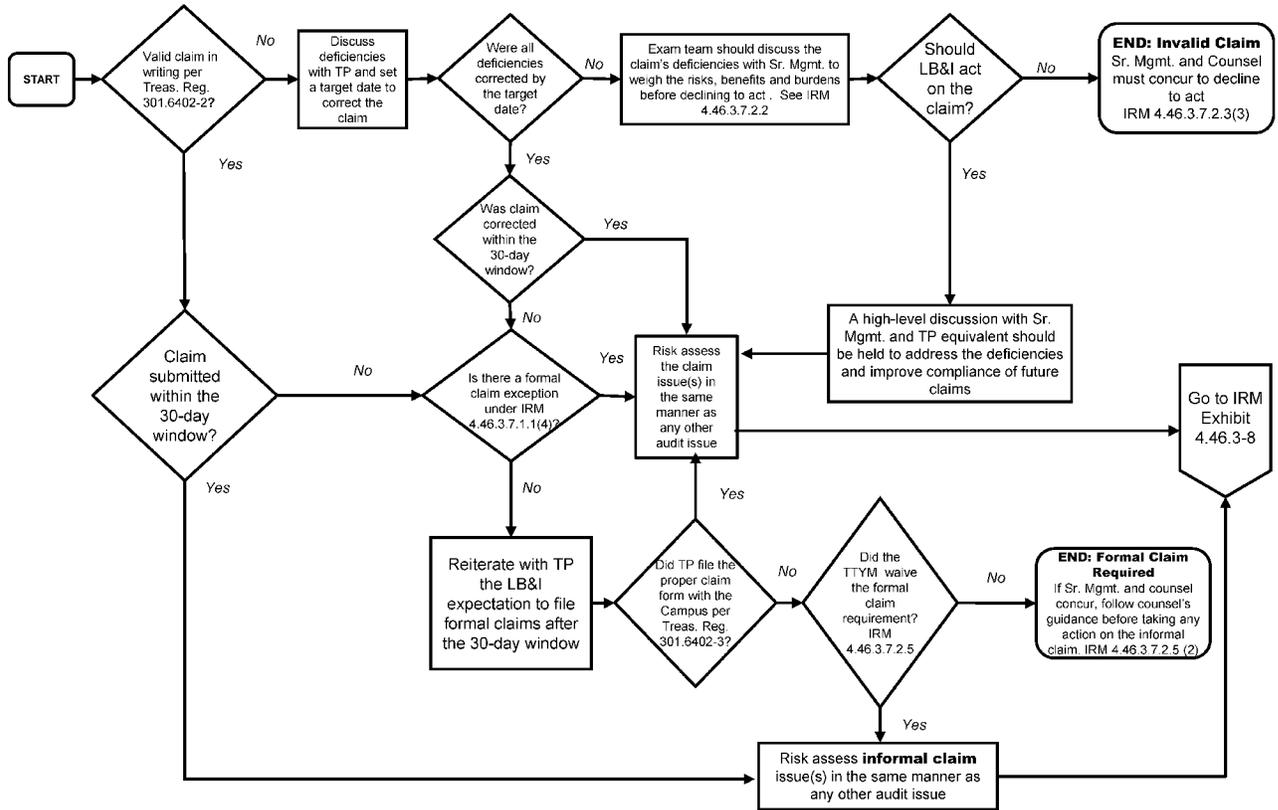
1. Discuss the compliance check requirements at opening conference.
2. Verify individual return filing through the most recent filing season for key officers and executives.
  - If a failure to file is discovered, the examiner must establish AIMS controls. Detailed instructions on the establishment of AIMS controls and applicable IDRS research techniques are found in IRM 4.12.1, Nonfiled Returns.
3. Use your judgment to determine if key officer and executive returns should be inspected and warrant examination.
  - Examiners will leverage their knowledge and other available resources to determine both the appropriate scope and depth for inspection of key officer and executive returns. IMFOL-I identifies electronically filed individual returns and these returns can be inspected using TRPRT, TRDBV or EUP. Paper returns can be inspected using a RTVUE or by issuing Letter 3996 to request a copy from the officer or executive. Form 5345-D can be used to requisition the return from the campus using Source Code 45 by checking the box to request the tax return. See IRM 4.10.5.4.1 for additional tools and techniques.
  - Scope of Individual Examinations – It is the responsibility of the team, with participation by employment tax specialists as necessary, to conduct any examinations if potential issues are identified. In addition to possible issues identified because of the corporate relationship (executive compensation issues for example), examiners should be alert to Schedule D losses, Schedule E losses, losses generated by related and flow-through entities, and tax shelters.
  - Statute Concerns – Every effort should be made to conduct needed examinations of key officer and executive returns and the corporate tax return concurrently. If this is not possible, it may be necessary for the examiner to solicit a consent to extend the statute from the corporate officer or key executive.

**Exhibit 4.46.3-6 (Cont. 1) (01-19-2022)****Inspection of Key Officer and Executive Returns**

- Referrals to Other Operating Divisions – Referrals to SB/SE to conduct individual examinations identified during an LCC, LPC or IC examination should be limited and must be approved by the appropriate territory managers. Referrals will be considered only when the issue is substantial and affects a number of executives which can be worked separately from the corporate examination. The examiner is responsible for preparing a position paper describing the issue and providing a listing of the individual taxpayers, with social security numbers, to the accepting operating division.
- LB&I examiners will use Form 6229 when making any referrals to SB/SE. The LB&I case manager will contact the local SB/SE group manager to determine which SB/SE territory manager is responsible for the POD and individual taxpayers. The LB&I territory manager will forward the request to the responsible SB/SE territory manager. If SB/SE declines the referral, the LB&I case manager should consider conducting the individual examinations.
- “Whipsawing” of Issues – Some executive compensation issues have extremely high whipsaw potential. A government whipsaw position exists where two parties involved in a transaction take inconsistent positions. A case involving restricted stock illustrates a \$20 million whipsaw situation. See *Robinson v. United States*, 335 F.3d 1365, 1370 (Fed. Cir. 2003). Agents examining executive compensation issues should be careful to protect against a whipsaw position and contact the Compensation and Benefits Practice Network for more information.

Exhibit 4.46.3-7 (01-04-2024)

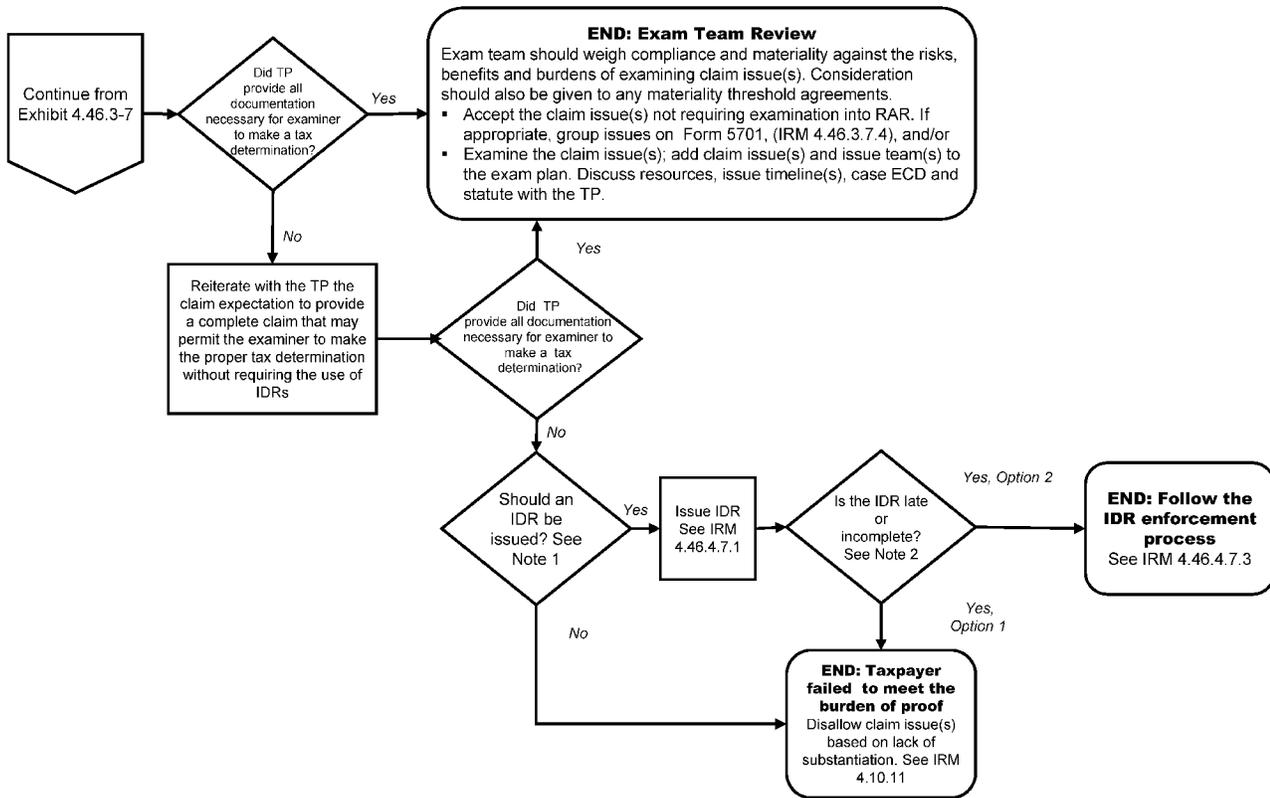
LB&I Guidelines for Reviewing Non-Research Credit Claims



**Note 1:** Treas. Reg. 301.6402-2 provides that a valid claim must: set forth in detail each ground upon which credit or refund is claimed; present facts sufficient to apprise the IRS of the exact basis for the claim; and contain a written declaration that it is made under penalties of perjury.

**Note 2:** Treas. Reg. 301.6402-3 gives the Commissioner the authority to require that a claim for credit or refund be filed on Form 1120-X, Form 1040-X or Form 843 if applicable.

**Exhibit 4.46.3-8 (01-04-2024)**  
**Risk Assessing Non-Research Credit Claim Issue(s)**



**Note 1:** Based on the facts and circumstances of the return, the examination team must decide whether it is appropriate to issue an IDR or disallow the claim.

**Note 2:** The taxpayer bears the burden of proof regarding its tax position taken on a claim and should provide the facts supporting its tax liability at the time the claim is filed. For taxpayers who fail to meet the documentation standard, LB&I can exercise the IDR enforcement process as an alternative to disallowing the claim issue(s). Each situation has unique facts and circumstances; therefore, the examination team must determine which option is appropriate. If necessary, territory manager and counsel may be consulted.

**Exhibit 4.46.3-9 (01-19-2022)****LB&I Transition Rules for Implementation of Revisions to Policy Statement 4-5**

The purpose of this exhibit is to provide LB&I employees with guidance for the implementation of revisions to the existing Policy Statement -4-5 (existing P-4-5). Since the last revision date (February 9, 2006), the IRS has seen many changes. Accordingly, the policy statement was updated to reflect who is subject to the rules of existing P-4-5 and how long examiners and managers should remain assigned to a particular taxpayer. The revised Policy Statement is effective June 17, 2019.

**Major Changes:**

The major changes that will apply as of the effective date of the revised Policy Statement 4-5 (P-4-5) are as follows:

- The P-4-5 rules apply to all managers who serve in the capacity of the case and/or issue manager.
- The previous 25-day rule was updated to a 200-hour exclusion. Employees who spend 200 hours or less per examination cycle are not subject to P-4-5 including: Issue Team Members, Tax Law Specialists, Subject Matter Experts, Senior Revenue Agents or other advisors. Therefore, employees who spend 200 hours or less on an open examination will not have that time considered in determining the (60) months limitation for the purposes of the rotation requirements under P-4-5.

**Transition Rules:**

For managers not previously subject to P-4-5 rules, a 36-month transition period from the effective date (transition period) is provided as follows:

- For in process open examinations, specialty managers who are currently serving as the issue manager must plan a transition that will bring them into compliance with the new policy within the transition period.

For all new examinations or cycles started as of the effective date, the revised Policy Statement will be applicable for all relevant LB&I employees. If you have questions related to the P-4-5 program, contact your manager or practice area analyst assigned to administering the P-4-5 program from your area or search for “P-4-5 Overview” on IRS Source.

**Exhibit 4.46.3-10 (01-04-2024)**  
**Policy Statement 4-5 Guidance**

This exhibit addresses issues and defines scope and applicability for LB&I of updated Policy Statement 4-5 (P-4-5), Restrictions on Examiners' and Specialists' Consecutive Survey or Examination Responsibilities (see IRM 1.2.1.5.3 for Policy Statement 4-5 (Rev.1)).

**Lack of Technology to Support Time Tracking:** IMS doesn't track manager start dates or time for P-4-5. There is no Issue Based Management Information System (IBMIS) automated report that shows manager P-4-5 time on a case or a start date. This is not a new issue. LB&I has never been able to track manager P-4-5 exception time or length of time on cases. Case managers have used manual templates. With new practice areas now subject to P-4-5, this limitation has received new attention.

**Resolution - IMS Change Request:** LB&I is working to secure programming changes within IMS to track manager P-4-5 start dates. LB&I chose not to pursue having managers charge time to cases in IMS because of the increase to administrative burden. While waiting for a technical, simplified solution in IMS, managers should continue to use manual templates or their own means of documenting their case start dates and time applied. This will ensure LB&I is compliant with P-4-5 rules.

**Interpretation of the Transition Statement:** Exhibit 4.46.3-9, LB&I Transition Rules For Implementation of Revisions to Policy Statement 4-5, is the transition statement posted to LB&I's IRS Source in June, 2019. Different interpretations have emerged regarding the intent of the transition statement. Particularly, "prospective" versus "retrospective" time tracking when applying the 36-month transition period. Depending on the particular perspective, good supporting points on "intent" can be made on this topic on either side of this matter.

For the bulk of employees who were previously subject to P-4-5 (case managers, revenue agents and specialists on LCC cases), this was not an issue and the transition period was to allow for moving from the 25-day to the 200-hour exception.

For those not previously subject to P-4-5 (primarily specialist managers and SMEs), there was no requirement for these employees to retrospectively compute time spent on cases prior to June, 2019.

**Resolution:** The new P-4-5 policy is effective on and after June 17, 2019. The policy is generally prospective in application, meaning managers or employees not previously subject to the P-4-5 requirements are not required to retrospectively compute whether they would have been subject to P-4-5 as of the June, 2019 effective date. However, if a manager or other employee can reasonably estimate they have been on a case cycle or consecutive cycles for more than five years as of the June, 2022 transition date, the manager or employee should transition off the case by June, 2022 (extending the transition period from 2 years to 3 years) and follow the P-4-5 guidelines to determine eligibility to return to the case.

Every effort should be made to determine a good faith estimate, including consulting with other managers on the case and gaining agreement on the managers' and/or employees' start date. It is not expected that anyone would retrospectively compute hours before June, 2019. **If a retrospective application was already enacted, the employee or manager should continue with this approach.** If determining a start date before June, 2019 is not feasible (due to lack of documentation for example), the policy should be followed prospectively with the start date being July 1, 2019.

**Mechanics of the 200-hour Exception FAQs:**

**Q1:** Does the 200-hour exception apply to managers?

**A1:** Yes. All employees and managers are subject to P-4-5 when assigned to a case, and the 200-hour exception applies to them.

**Q2:** Does the policy apply to the manager only after an employee charges more than 200-hours to a case?

**Exhibit 4.46.3-10 (Cont. 1) (01-04-2024)**  
**Policy Statement 4-5 Guidance**

**A2:** No. The manager’s “date of assignment” starts when the employee applies time to the case or the manager is assigned as the case or issue manager. The manager’s computation of exception time is not tied to the employee’s time charges. If a manager does not meet the 200-hour exception, P-4-5 applies even if the employee did meet the 200-hour exception on the same case. A manager who may be eligible for the 200-hour exception must keep a log of case activity that reflects they fall under the 200-hour threshold on any case or directly related issue. The presumption is that P-4-5 applies; that may be refuted by documentation supporting the 200-hour exception.

**Q3:** If a case or issue manager assigns two agents to the same issue but neither charges 200 hours during the cycle, are the employees’ hours combined to determine if the manager is subject to the policy? For example, if two specialists begin charging time to the same case on July 1, 2019, and each employee charges 150 hours, does the manager’s P-4-5 clock begin on July 1, as the total hours exceed 200 hours?

**A3:** No. As noted above, the manager’s time is not tied to the employees’ time. The employee time is not aggregated and attributed to the manager. The manager uses their own time on case when applying the policy. Since both employees in the example above charged 150-hours to the case they both qualify for the exception. The manager’s own activity time must not exceed 200- hours for the P-4-5 exception to apply. See Q2 above for an explanation of how the 200-hour exception applies to managers.

**Q4:** Isn’t it likely that Practice Network technical employees or other Subject Matter Experts (SMEs) and their managers will never have to remove themselves from exam activity with respect to a taxpayer because these employees don’t track case specific time when dealing with technical questions?

**A4:** Yes. SMEs and their managers who address technical issues that could arise in any number of examinations not as team members on a specific case addressing a specific issue would not have to factor in this time when complying with P-4-5. However, SMEs and their managers who are involved in the application of unique facts to a highly specialized issue should consider the time spent on the effort as part of their exam activity calculation. If the SME can reasonably estimate they will be actively involved in case issues on an ongoing basis, they should be added to the issue team and charge case time in IMS to the assigned issue(s). If the SME or SME manager believe they could be eligible for the 200- hour exception, they should maintain an activity log as noted above.

**Team Manager Involvement in Case Issues FAQs:**

**Q1:** A manager who participates in a case, but is neither the case manager nor issue manager, does not have to consider P-4-5 because the manager is not making exam decisions, correct?

**A1:** No. This is not correct. An issue team member or manager who participates on a case issue in any manner, (a “low threshold”) is considered a team member and subject to P-4-5. Even managers who are not case or issue managers but function as issue team members are subject to P-4-5. This manager should track time for purposes of applying the 200-hour exception.

P-4-5 determination is based on case issues controls, not the reporting chain. Therefore, a team manager, who is not the case manager, need not track time if their employee is working on the case solely under the direction of the case manager.

Due to the unique scenarios around issue specialty or practice networks, incidents have arisen since June 2019 where team managers, who are not the case or issue manager (see IRM 4.46.1.1.3.3, Managers of Team Members Who are Not Designated as the Case Manager or Issue Manager), are actively participating on case-related issues, essentially functioning as team members (see IRM 4.46.1.1.3.5, Issue Team Member Roles and Responsibilities). For example, an Engineering manager may have an employee assigned to an international issue where the CBA Manager is the issue manager. However, the Engineering manager is actively participating on case related calls and directing the engineer on issue approaches. That Engineering Manager would be

**Exhibit 4.46.3-10 (Cont. 2) (01-04-2024)****Policy Statement 4-5 Guidance**

subject to P-4-5 if there were more than 200-hours of such participation. In some cases, as many as three or four specialty managers may be participating in case issues regularly.

**Q2:** Specialist managers whose employees have non-issue specific roles such as a CAS manager are not case or issue managers and therefore P-4-5 does not apply to them, correct?

**A2:** In general, these managers are NOT subject to P-4-5 if their employee is not involved with issue development or resolution.

For example, a CAS is doing their normal work of converting data provided by the Taxpayer into a LB&I preferred format. Their entire role revolves around this process and they have no role in a specific issue. The CAS employee and manager would not be considered part of an issue team and would not be subject to P-4-5. In contrast, if the CAS were, for example, involved in deriving statistical samples to develop a specific issue, then the CAS would be deemed an Issue Team Member for P-4-5 purposes. The CAS manager would then also be subject to team member aspects if they became involved with the case as well. However, if the statistical sampling work was done consistent with and analogous to converting data in the manner noted above, without involving a specific issue(s), then P-4-5 would not apply.

**Restarting the P-4-5 Clock:**

**Q1:** When can an employee (issue team member, SME or manager) return to a case after being rotated off for P-4-5? In other words, when does the P-4-5 period or clock restart?

**A1:** The P-4-5 period restarts after the employee (issue team member, subject matter expert or manager) has rotated off the case for at least one intervening examination or two surveyed or unexamined years. The employee must not be involved in any of the following types of cycles: R (Regular), C (Claim), or CAP (Compliance Assurance Process).

If the required intervening examinations have not closed, and or they overlap with the prior cycle from which an employee left due to P-4-5, and there has been a significant period of inactivity since the P-4-5 cycle, of at least 24-months, then the manager can consider requesting approval for P-4-5 deviation to restart that employee's P-4-5 start date for the next cycle.

**Note:** The decision to survey must be made by another examiner and/or manager. Refer to IRM 4.46.3.2.2(4) , Decisions to Survey a Return, regarding surveys for LPC returns.