

TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION



Processes Are in Place to Identify and Address Potential Conflicts of Interest in Large Corporate Tax Administration

August 24, 2023

Report Number: 2023-40-047

This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.

TIGTACommunications@tigta.treas.gov | www.tigta.gov

HIGHLIGHTS: Processes Are in Place to Identify and Address Potential Conflicts of Interest in Large Corporate Tax Administration

Draft Audit Report issued on August 24, 2023

Report Number 2023-40-047

Why TIGTA Did This Audit

This audit was initiated because TIGTA received a Congressional request to evaluate employees moving between large accounting firms and the IRS, referred to as a “revolving door”. The Congressional request specifically noted interest in large accounting firms.

The overall objective of this audit was to assess the IRS’s processes and procedures to identify and address potential conflicts of interest regarding tax administration matters involving large corporations.

Impact on Tax Administration

An ethical culture is essential to maintaining an environment in which the business of the IRS can be carried out with the utmost impartiality and integrity. IRS employees are prohibited from working on Government matters in which they have a financial interest. Additionally, they should not participate in matters that may cause questions of impartiality. The IRS must balance between recruiting highly talented individuals from the private sector and safeguarding its own public interests.

What TIGTA Found

The IRS’s processes and procedures to address potential conflicts of interest regarding tax administration matters involving large corporations primarily rely on individual self-reporting. This self-reporting includes disclosures of potential conflicts of interest in work assignments either through an employee’s annual reporting or elevating a concern to their manager or the General Legal Services.

Our analysis identified 496 employees (executives and non-executive employees from the Large Business and International Division, Office of Chief Counsel, and Independent Office of Appeals) who received income from a large accounting firm or a large corporation either prior to joining, during their time at, or after leaving the IRS. Of these 496 employees:

- 241 employees had income from a large accounting firm.
- 255 employees had income from a large corporation.

Our review found no direct correlation between the employees’ work assignments and the company or firm from which they came or left for in the private sector. However, our review identified four Office of Chief Counsel non-executive employees who charged time to a private letter ruling in which the taxpayer’s representative was the same large accounting firm that the employee recently worked for before joining the IRS or left the IRS to join. While not a direct correlation, this can raise impartiality concerns.

Finally, the General Legal Services assists IRS managers and employees with advice regarding interpretation or application of ethics rules, related statutes, or other ethical questions. They also maintain the IRS Ethics Hotline. The General Legal Services worked 735 cases from Calendar Years 2017 through 2021 on issues related to financial conflicts of interest, impartiality, outside employment, and post-employment issues. However, the advice given to employees for these issues/questions is not maintained in its case management system. Therefore, the extent that these cases required some type of mitigation or action is not readily available.

What TIGTA Recommended

TIGTA made two recommendations to the IRS to ensure that employees who work on private letter rulings are aware of the disclosure requirements for conflicts of interest, and that the General Legal Services develops a process and procedure to track and aggregate data based on the types of advice given in response to concerns raised.

The IRS agreed with both recommendations. IRS management noted that they have reinforced the impartiality rule, revised the 2023 ethics briefing, and plan to revise the annual ethics training for financial disclosure filers. The IRS will also review current reporting capabilities and case processing procedures to identify a means to track and aggregate data.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

U.S. DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20024

August 24, 2023

MEMORANDUM FOR: COMMISSIONER OF INTERNAL REVENUE

Heather Hill

FROM: Heather M. Hill
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Processes Are in Place to Identify and Address
Potential Conflicts of Interest in Large Corporate Tax Administration
(Audit # 202240019)

This report represents the results of our review to assess the Internal Revenue Service's (IRS) processes and procedures to identify and address potential conflicts of interest regarding tax administration matters involving large corporations. This audit was requested by Senator Elizabeth Warren and Representative Pramila Jayapal. This review is part of our Fiscal Year 2023 Annual Audit Plan and addresses the major management and performance challenge of *Increasing Domestic and International Tax Compliance and Enforcement*.

Management's complete response to the draft audit report is included as Appendix II. If you have any questions, please contact me or Diana M. Tengesdal, Assistant Inspector General for Audit (Returns Processing and Account Services).

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Background

An ethical culture is essential to maintaining an environment in which the business of the Internal Revenue Service (IRS) can be carried out with the utmost impartiality and integrity. All Executive Branch employees,¹ which includes IRS employees, must adhere to the *Standards of Ethical Conduct for Employees of the Executive Branch*.² When hired, each new IRS employee is required to take online ethics training as part of their orientation process. This training provides newly hired employees with an overview of the ethics program and ethics obligations that apply to employees. The IRS *Ethics Handbook* incorporates the *Standards of Ethical Conduct for Employees of the Executive Branch* and provides IRS employees with a guide of several core concepts that are the foundation for all ethical principles, statutes, and regulations. These core ethical concepts include that employees shall:

- Not use public office for private gain.
- Act impartially and not give preferential treatment to any private organization or individual.
- Make every effort to avoid any action that would create even the appearance of violating the law or ethical standards.

Moreover, the ethical standards include restrictions that are imposed on Government employees, including the IRS, to prevent actual or apparent conflicts of interest in an effort to further safeguard public confidence in the integrity of the IRS. A conflict of interest refers to a situation where the actions of an employee are influenced or may appear to be influenced by private interests. Public service demands that employees always act, and appear to act, impartially and place the Nation's interest before their own. The *Standards of Ethical Conduct for Employees of the Executive Branch*, state that employees cannot:

- Hold financial interests that conflict with the conscientious performance of their Government duties.
- Engage in financial transactions using nonpublic Government information or allow the improper use of such information.
- Solicit or accept anything of value from anyone seeking official action from, doing business with, or conducting activities regulated by their agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.

In addition to these detailed general principles, the *Standards of Ethical Conduct for Employees of the Executive Branch*, also includes specifics on conflicts of financial interests, impartiality, and seeking other employment, which are subsequently described.

¹ See Appendix II for a glossary of terms.

² 5 Code of Federal Regulations Part 2635.

Conflicts of financial interests

Under 18 U.S.C. § 208(a), IRS employees are generally prohibited from participating personally and substantially in a particular Government matter in which they have a financial interest if the particular matter will have a direct and predictable effect on that interest. The financial interests of an employee's spouse and minor children are treated as the employee's own interests. Financial conflicts can be derived from ownership of stock, bonds, mutual funds, and real estate, as well as from receiving a salary, loan, or job offer.

If a regulatory exemption does not apply, employees can resolve a financial conflict of interest by recusing themselves from participation in a matter, selling or divesting their financial interest, or receiving an approved waiver that would allow the employee to participate despite their financial interest. An IRS employee may submit a waiver request to the Office of the IRS Associate Chief Counsel (General Legal Services (GLS)), and a waiver may be granted when the employee's financial interest in a particular matter is not so substantial to be deemed likely to affect the integrity of services to the Government. The factors considered in making this determination include the nature of the interest, the value of the interest (as a percentage of overall investment portfolio), the nature and importance of the employee's role in the matter, and the sensitivity of the matter. The GLS noted, however, that waiver requests are rare.

Impartiality

The *Standards of Ethical Conduct for Employees of the Executive Branch* establishes procedures for IRS employees to use when participation in a matter does not raise a financial conflict of interest under the criminal statute (18 U.S.C. § 208), but it may raise concerns about the appearance of an employee's impartiality because of certain other kinds of interests or relationships. In general, Executive branch employees should not participate in a Government matter if a reasonable person who knew the relevant facts and circumstances of the situation would question the employee's impartiality. The Standards provide that an IRS employee should not participate in a "particular matter involving specific parties" unless authorized by their immediate supervisor. This includes if:

- They know that a person with whom they have a "covered relationship" is or represents a party to the matter, or if the matter will have a direct and predictable effect on a financial interest of a member of their household.
- The circumstances would cause a reasonable person with knowledge of the relevant facts to question their impartiality in the matter.

Rulemaking, legislation, and the formulation of general policy standards or objectives are generally not particular matters involving specific parties. However, impartiality standards apply when the IRS issues private letter rulings to taxpayers that address a specific set of facts for a particular taxpayer.

Private Letter Rulings

The IRS Office of Chief Counsel issues private letter rulings that provide taxpayers with guidance on the proper application of specific Internal Revenue laws. A letter ruling is a written response that interprets and applies the tax law to the taxpayer's specific set of facts. The purpose of the private letter ruling is to advise taxpayers regarding the tax treatment they can expect from the IRS in the circumstances specified by the ruling.

Processes Are in Place to Identify and Address Potential Conflicts of Interest in Large Corporate Tax Administration

A prior Treasury Inspector General for Tax Administration (TIGTA) review identified weaknesses in the IRS Office of Chief Counsel's private letter ruling processes that were intended to prevent outside influence on its case work.³ Specifically, we reported that Chief Counsel did not have written policies and a management information system with complete and accurate information to assess the potential that tax practitioners or taxpayers have influenced the private letter ruling process to obtain more expeditious and favorable letter rulings. Because of these limitations, we could not determine whether Chief Counsel's policy to limit the number of private letter ruling assignments to a preferred attorney is effective to prevent any undue influence on its letter rulings. Subsequent to the prior review, the IRS Office of Chief Counsel updated its policies on assigning private letter rulings to its attorneys.

Seeking other employment

The *Standards of Ethical Conduct for Employees of the Executive Branch* also states that pursuant to 18 U.S.C § 208(a), IRS employees seeking non-Federal employment may not work on particular matters that would affect the prospective employer's financial interest. Once employees are seeking or negotiating for employment, they must refrain from participating both in a specific party matter, *e.g.*, enforcement actions or contracts, and in a general matter that focuses on a discrete and identifiable class of persons, *e.g.*, the review of a regulation affecting a particular industry, if the matter will directly and predictably affect a prospective employer's financial interests.

Employees are advised to notify their supervisors if they need to recuse themselves on a particular matter because they are seeking or negotiating employment with the prospective employer. Employees do not need to disqualify themselves from working on a matter of general applicability (such as a regulation) that would affect a prospective employer only as part of an industry or other discrete class of persons if the employee has done nothing more than submitted a resume for consideration by the prospective employer. However, they would have an obligation to disqualify themselves if the prospective employer responds indicating interest in employment discussions.

Post-employment restrictions

Employees are subject to specific restrictions after leaving Government employment. These restrictions primarily affect the matters that the employee can work on as well as the tasks they can perform. Most of the restrictions are detailed in 18 U.S.C. § 207. For example, this legislation prohibits certain acts by former employees in the Executive Branch (including current employees who formerly served in "senior" or "very senior" employee positions) which involve, or may appear to involve, the unfair use of prior Government employment. The purpose is to prevent an employee from "switching sides" on a matter in which they were involved when employed in a Government agency. However, there are no restrictions that prohibit any former employee, regardless of Government rank or position, from accepting employment with any particular private or public employer.

³ TIGTA, Report No. 2013-10-081, *Chief Counsel Should Take Steps to Minimize the Risk of Outside Influence on Its Letter Rulings* (August 2013).

Congressional request

On February 18, 2022, TIGTA received a Congressional request from Senator Elizabeth Warren and Representative Pramila Jayapal, to “*open an inquiry into the revolving door between the country’s top accounting firms and the Federal Government and to inform Congress and the public about [TIGTA’s] findings.*” The request noted that the review should include “*the extent to which large accounting firms and their employees are taking advantage of the revolving door [i.e., employees moving] between their firms and Government service at the IRS.*” We considered this request when developing the scope of our review.

The Congressional request provides information that shows that similar to the IRS, the large accounting firms also have Codes of Conduct and Ethical standards. Specifically, in their response to a Congressional inquiry, the firms noted that they review and adhere to post-Government restrictions. Additionally, each of the firms have resources available to their employees, such as ethics officers and Hotlines, for individuals to contact if they have ethical questions and/or concerns.

Results of Review

Our review found that the IRS’s processes and procedures to address potential conflicts of interest regarding tax administration matters involving large corporations primarily rely on individual self-reporting. This self-reporting includes disclosures of potential conflicts of interest in work assignments either through an employee’s annual financial disclosure reporting requirements or elevating a concern to their manager.

The IRS, in its *Ethics Handbook*, notes that its ethics program is designed to promote the highest ethical standards for all IRS employees. The IRS further notes that the handbook summarizes the Department of the Treasury’s and IRS’s ethics rules and serves as a valuable tool to address common ethics questions. The handbook also includes the principles of ethical conduct and ethics regulations, as well as examples of ethical dilemmas. The handbook also informs employees that it is critically important that they know what the ethics and conduct regulations are and of their responsibility to abide by them. The GLS also provides and maintains an *EthicsLink* webpage, where employees can find Frequently Asked Questions, copies of the IRS *Ethics Handbook*, post-employment restriction rules, disclosure rules and time frames, and contact points for the IRS Ethics Hotline.

The GLS serves as the IRS’s Deputy Ethics Official and assists IRS managers and employees with advice regarding interpretation or application of ethics rules, related statutes, or other ethical questions. The GLS also maintains the IRS Ethics Hotline. The Ethics Hotline provides employees with an avenue to ask questions relating to their personal interests in ethics rules, statutes, or other ethical type questions. While the GLS handles matters relating to self-reporting or personal ethical questions, employees may also report information to TIGTA’s Office of Investigations if they have concerns relating to another employee engaging in potential criminal conduct or violating any of the ethical standards or rules of conduct. Both the GLS and TIGTA’s Office of Investigations provide multiple means by which concerns can be raised, *e.g.*, telephone, e-mail.

Processes Are in Place to Identify and Address Potential Conflicts of Interest in Large Corporate Tax Administration

In addition, the IRS requires, for some positions, the initial, *i.e.*, when starting a job with the IRS, and annual reporting thereafter to comply with Federal financial and seeking employment disclosure requirements. In addition to the Federal reporting requirements, the IRS has also developed its own form for reporting potential conflicts of interest relating to their work assignments.

Analysis to Address Congressional Request

In response to the Congressional request, we reviewed hiring and employee separations in functional areas within the IRS (the Large Business and International Division (LB&I), Office of Chief Counsel, and the Independent Office of Appeals) that have a direct impact on tax administration matters involving large corporations. We included all executives/senior level employees, herein referred to as executives, regardless of their functional area. We reviewed IRS employees who started with or separated from the IRS during Calendar Years 2017 through 2021. We identified 496 (15 percent) of 3,244 current and former IRS employees (37 executives and 459 non-executives) as of January 2, 2022, who received income from a large accounting firm or a large corporation either prior to joining the IRS, during their time at the IRS, or after leaving the IRS.

Large Accounting Firms

Our analysis identified that 241 of the 496 employees received income from a large accounting firm either prior to joining the IRS, during their time at the IRS, or after leaving the IRS.

Specifically, we identified:

- 184 current IRS employees, including [REDACTED] employees who held an executive position and the remaining [REDACTED] a non-executive position.
- 57 separated IRS employees, including [REDACTED] employees who were executives with the IRS and the remaining [REDACTED] who were non-executives. Of these 57 separated IRS employees, 20 had income from a large accounting firm prior to joining the IRS and subsequently separated from the IRS.

[REDACTED] of the executives previously mentioned received retirement income from a large accounting firm during their time at the IRS, and they disclosed this retirement income on their financial disclosures. [REDACTED]

[REDACTED]. Figure 1 provides a list of the current and former executive-level positions and examples of the types of non-executive positions within the IRS.

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**Figure 1: Current and Separated IRS Employees
With Income From a Large Accounting Firm and Associated Roles**



Source: TIGTA analysis of Treasury Integrated Management Information System as of January 2, 2022.

Large Corporations

Our analysis identified that 255 of the 496 employees received income from a large corporation either prior to joining the IRS, during their time at the IRS, or after leaving the IRS. Specifically, we identified:

- 177 current IRS employees, including seven employees who held an executive position and the remaining 170 a non-executive position.
- 78 separated IRS employees, including 21 employees who were executives with the IRS and the remaining 57 who were non-executives. Of these 78 separated IRS employees, 13 had income from a large corporation prior to joining the IRS and subsequently separated from the IRS.⁴

Six of the executives previously mentioned received income during their employment with the IRS from partnerships, wages, and other compensation sources. All of these executives reported the sources of income on their annual financial disclosures. Figure 2 provides a list of the current and former executive-level positions and examples of the types of non-executive positions within the IRS.

⁴ There were three employees that had income from both a top accounting firm and large corporation. These employees were included in the "Large Accounting Firm" section of the report.

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**Figure 2: Current and Separated IRS Employees
With Income From a Large Corporation and Associated Roles**



Source: TIGTA analysis of Treasury Integrated Management Information System as of January 2, 2022.

There is nothing inherently wrong with or prohibitions on individuals moving in and out of the private sector to public service, as the movement between sectors can contribute to the career development of personnel and improved organizational competencies.

However, this practice increases the risk for conflicts of interest. For example, the movement of employees in and out of the private sector to public service can increase the risk of conflicts of interest for incoming and outgoing employees and the possibility of undue influence by former or prospective employers that might lead to preferential treatment or create an unfair advantage for specific entities or individuals. Processes to address this risk should include restrictions to protect Governmental processes from abuse, but should not be so onerous that the Government can no longer attract the highly talented individuals it needs for positions in public service. This requires a balance of competing public interests. To address this risk, the IRS relies on its employees, including executives, to self-report potential conflicts of interest for

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themselves as well concerns relating to other employees potentially violating ethical standards or rules of conduct.

When we discussed our observations with the IRS, management stated that to successfully conduct audits of large corporations, the IRS must rely on experienced agents with strong tax and accounting skills. Outside of the IRS, prospective employees with tax expertise generally come from accounting firms, law firms, or in-house tax departments of all sizes. As such, to recruit experienced tax professionals, the IRS must draw from these sources of outside tax expertise.

Self-Reported Disclosures Are the Primary Means by Which the IRS Identifies Conflicts of Interest

Government business shall be conducted in a manner above reproach, with complete impartiality, and with preferential treatment for none. The mandatory disclosure of potential conflicts of interest and the implementation of policies and procedures is essential to ensuring conflicts of interest do not lead to improper or corrupt conduct by public officials. The IRS's primary focus as it relates to addressing conflicts of interest is executive and non-executive requirements to self-report potential conflicts of interest.

To facilitate transparency regarding IRS executive financial interests, Congress enacted the following financial disclosure provisions for executives and senior level employees:

- Ethics in Government Act of 1978 – which requires executive and senior level employees to report detailed financial information using the Office of Government Ethics (OGE) Form 278, *Executive Branch Personnel Public Financial Disclosure Report*, within 30 days of entering an executive position, annually thereafter, and upon departing their Government position.
- Stop Trading on Congressional Knowledge Act of 2012 (STOCK Act) – which requires executive and senior level employees to notify agency ethics officials of any negotiation for or agreement regarding future employment or compensation with a non-Federal entity within three business days after commencement of the negotiation or agreement. Employees are required to recuse themselves, *i.e.*, not participate in a particular matter, when they are negotiating or seeking employment.

The GLS reviews and maintains the OGE Forms 278 and STOCK Act forms to ensure that the information provided demonstrates compliance with applicable laws and regulations, *e.g.*, employees have recused themselves from matters that create a potential conflict of interest.

The IRS uses tools to help identify potential conflicts of interest and to facilitate transparency in IRS non-executives' financial interests. These tools include:

- Form 6782, Certification of an Interest in a Work Assignment. The Form 6782 is used to document any potential financial conflict of interest with an employee's work assignments. This form is also used to note a non-financial/personal interest in a work assignment that could cause a reasonable person to question the individual's impartiality. The use of this form is not mandatory.

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- OGE Form 450, Confidential Financial Disclosure Report. The OGE Form 450 is required to be prepared by employees entering into a covered position and then annually thereafter, while still in a covered position. Specifically, employees are required to report assets and types of income, *e.g.*, salaries, commissions, stocks, bonds, that are valued at more than \$1,000 along with other information. The IRS maintains these confidential filings and they are not available for public inspection.

These non-executive employee disclosures are reviewed by the employee's immediate supervisor who can reassign an employee or contact the GLS to review and provide advice if there is a conflict of interest in a reported work assignment. In addition to reported disclosures, employees or their managers may contact the IRS Ethics Hotline or send an e-mail to GLS.Ethics@irs.counsel.treas.gov seeking advice from the GLS regarding questions relating to the ethics rules. The GLS provides legal services and advice to minimize legal risks, reduce litigation exposure, and promote compliance for a broad spectrum of matters including labor and employment and ethics. Finally, if an employee would like to report a potential criminal conduct or ethics violation of another employee, they can contact TIGTA's Office of Investigations.

Mandatory employee reporting of potential financial and non-financial conflicts of interest

Our review of OGE Forms 278 and STOCK Act forms for each of the 37 IRS executives [REDACTED] [REDACTED] who entered or separated from the IRS during Calendar Years 2017 through 2021 and who received income from a large accounting firm or large corporation, found that:

- [REDACTED] separated IRS executives did not complete the required STOCK Act disclosure forms. The individuals did however report the new private sector employment on their termination OGE Form 278.
- Seven separated IRS executives did not list on their termination disclosure that they were going to a large accounting firm or large corporation. The non-reporting may have occurred, in some instances, due to the timing of the completion of the termination disclosure form and their post-employment.⁵
- All [REDACTED] current IRS executives listed their prior employment associations with a large accounting firm or large corporation as required on OGE Form 278.

In addition, we found that three of the [REDACTED] separated IRS executives left for an accounting or law firm and received partnership income after leaving the IRS. Under 18 U.S.C. § 203, the former employee and their new firm must make suitable arrangements to ensure that the former employee does not share in any prohibited fees. However, an employee who leaves the Government for a salaried position is not subject to 18 U.S.C. § 203. We asked the GLS what efforts it took to determine whether separating employees do not share in any prohibited fees after departure from the IRS. The GLS noted that it provided all three executives with post-employment rules and restrictions, which includes general 18 U.S.C. § 203 advice, but none requested or received advice specific to the compensation arrangements at their new law or accounting firms.

⁵ Termination Public Financial Disclosure Reports must be filed within 30 days after leaving a covered position.

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As stated previously, when IRS executives seek or negotiate employment, they are required to recuse themselves from particular matters, as applicable. In addition, the IRS provides departing employees with Document 7106, *Post-Government Employment Restrictions for Internal Revenue Service and Chief Counsel Employees*. Document 7106 includes specific restrictions under 18 U.S.C. § 203 for former Government employees who join a law or accounting firm and share in the fees of such firm. These restrictions are in place to safeguard public confidence in the integrity of the Government by preventing actual and apparent conflicts of interest.

Conflicts of interest in a work assignment

Our review of the work assignments for the 459 non-executives who received income, as previously discussed, found no direct correlation between the employees' work assignments and the company or firm from which they came or left for in the private sector.⁶ However, we note the following limitations to our analysis:

- **Inability to identify the specific large corporations' employees represented while at accounting firms.**

As we previously detailed, 232 of the 459 non-executive employees we identified came from or went to a large accounting firm. Although these firms represent large corporations, the IRS does not receive any information that details the specific large corporations the employees were involved with while employed by a large accounting firm.⁷ As such, we are unable to identify if any potential conflicts existed in their work assignments while with the IRS or subsequent to leaving the IRS. This is similar to the concern that was noted in the Congressional request we received which stated that little to no information is known about former clients and whether or not current work assignments may present a potential conflict of interest or the appearance thereof for employees who come from the large accounting firms. Further, it noted that without this information, it is impossible to fully understand or address any potential conflicts of interest or ethics violations.

- **Some Office of Chief Counsel work assignments are not tracked by a specific taxpayer.**

There were 144 Counsel non-executives who worked on assignments that were not attributable to a specific taxpayer, such as rulemaking, legislation, and the formulation of general policy standards because these are not particular matters involving specific parties for the purposes of conflicts of interest. As such, we are unable to identify if any potential conflicts existed in their work assignments while with the IRS or subsequent to leaving the IRS. The GLS clarified that if the projects are focused on a discrete and identifiable class of taxpayers (such as a particular industry), the assignment could create a conflict with an employee's financial interests in that industry.

Impartiality concerns as it relates to Chief Counsel providing private letter rulings

Our review identified 18 instances in which Office of Chief Counsel non-executive employees were listed as having charged time on a private letter ruling for which the taxpayer's

⁶ A direct correlation indicates that an employee was assigned to or left to go work for the same company for which their work assignment involved.

⁷ We did not contact accounting firms to obtain this information directly from them due to privacy concerns.

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representative was the same large accounting firm that they recently worked for before joining the IRS or left the IRS to join.

As noted in the *IRS Ethics Handbook*, "unless an employee receives prior authorization, they should not participate in a particular matter involving specific parties which they know is likely to affect the financial interests of a member of their household, or in which they know a person with whom they have a covered relationship is or represents a party, if they determine that a reasonable person with knowledge of the relevant facts would question their impartiality in the matter." A "covered relationship" can include a person, other than a prospective employer, with whom a business or other financial relationship is held or sought and a person or organization for which they have served as an employee within the last year. The GLS stated that in scenarios like this, further factual development would be necessary to determine if there was a conflict.

In response to our concerns, the IRS Office of Chief Counsel reviewed the 18 employees identified and noted that 14 of these employees either recused themselves from the assignment, the assignment was more than one year since the employee joined Counsel, the employee did not work on that client while at the large accounting firm, or the employee was not actively assigned to the case.

For the remaining four, the IRS stated that these employees participated in a matter in which a covered relationship existed. The IRS does not have indications in their files whether the employees self-reported these covered relationships to their management.

The Chief Counsel, Office of Chief Counsel, should:

Recommendation 1: Ensure that employees who work on private letter rulings are aware of the requirements to disclose any potential conflicts of interest as it relates to prior or prospective employers.

Management's Response: IRS management agreed with the recommendation and stated that the Office of Chief Counsel has reinforced the impartiality rules involving former employers and clients, and that the GLS revised the 2023 ethics briefing to specifically address and clarify the impartiality rules. Finally, the IRS plans to address conflict issues involving prior or prospective employers in the annual ethics training for financial disclosures.

The General Legal Services Maintains a Hotline and Case Management System for Employees Who Seek Ethical Advice

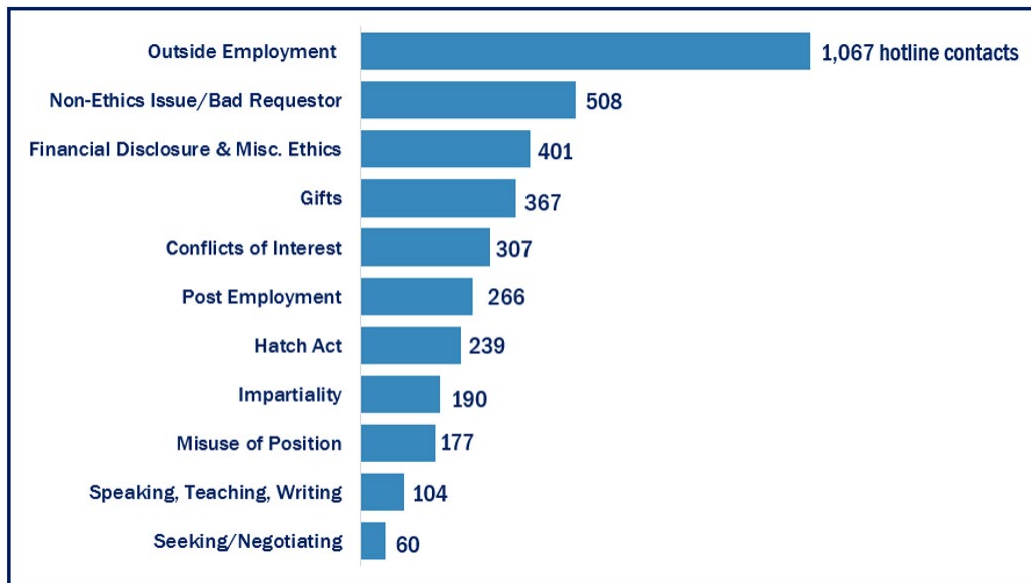
As previously mentioned, the IRS's Deputy Ethics Official is the Associate Chief Counsel, GLS, and serves as the in-house counsel to the IRS and Office of Chief Counsel. The Deputy Ethics Official's role is to provide legal services and advice to minimize legal risks, reduce litigation exposure, and promote compliance for a broad spectrum of matters including labor and employment and ethics. As such, the GLS maintains the ethics hotline and an e-mail account where IRS employees can ask questions and seek advice regarding ethics rules.

For Fiscal Years (FY) 2017 through 2021, the GLS received, on average, 737 hotline contacts (calls or e-mails) each fiscal year ranging in a wide variety of topics such as conflicts of interest,

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financial disclosures, post-employment, and impartiality. Figure 3 shows the hotline activity, by issue, for this time frame.

Figure 3: FY 2017 through FY 2021 GLS Hotline Activity by Issue



Source: GLS hotline contacts data for FYs 2017 through 2021.

For those cases/inquiries that require a more substantial review, the GLS will open a case in the Counsel Automated Systems Environment Management Information System, which is a case management system for attorneys to track and assign case workloads. From Calendar Years 2017 through 2021, the GLS worked on 735 cases that required a more substantial review relating to financial conflicts, impartiality, outside employment, and post-employment issues for IRS employees. The GLS noted that cases tracked in its management system can come from hotline inquiries, direct inquiries from management, or former employees, *etc.* Figure 4 shows the breakdown of cases tracked by the GLS within its management system.

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Figure 4: GLS Case Types
Calendar Years 2017 through 2021



Source: GLS Counsel Automated Systems Environment
Management Information Systems metrics for
Calendar Years 2017 through 2021.

[REDACTED]

[REDACTED] that can develop or influence policies that could provide an unfair advantage to large corporations. The IRS noted that in a large organization, such as the IRS, [REDACTED] sets policies. Policies are developed and reviewed through the management chain and require coordination and consensus across the organization.

Our review found that the [REDACTED] sought GLS guidance on several occasions. We contacted [REDACTED] and found that in knowing that these potential hazards exist, [REDACTED] precautions to avoid potential conflicts of interest or the appearance thereof by regularly seeking GLS advice to refresh or clarify understanding of the ethics rules.

Case management system does not capture how reported conflicts of interest concerns were resolved

The GLS resolves cases either by oral discussion, e-mail to the employee, or in a more formal written response. However, the resolution or advice issued to the employee is not documented within the case management system of record. The GLS stated that the system does not contain a data field for it to track case resolutions or aggregate data based on the types of advice given. Therefore, the extent that concerns for the 735 cases from Calendar Years 2017 through 2021 discussed above required some type of mitigation or action is not readily available.

The GLS stated that it maintains records of written advice and counseling, and they noted that they can search records of advice given by keywords. Further, the GLS stated that the ultimate resolution of the conflict, *e.g.*, reassignment or authorized participation, is within the authority of the employee's management chain.

Processes Are in Place to Identify and Address Potential Conflicts of Interest in Large Corporate Tax Administration

The Chief Counsel, Office of Chief Counsel, should:

Recommendation 2: Ensure that the GLS develops a process and procedure to track and aggregate data based on the types of advice given in response to concerns raised.

Management's Response: IRS management agreed with the recommendation and the GLS will review current reporting capabilities and case processing procedures to identify an effective means to track and aggregate the data. Once a process has been developed, the GLS plans to issue instructions to the affected staff and training on the new procedures.

TIGTA Office of Investigations metrics

The *IRS Ethics Handbook* notes that allegations of conduct violations for other employees can be reported to their manager or TIGTA. From FYs 2017 through 2021, the TIGTA Office of Investigations received 114 complaints relating to potential conflicts of interest or preferential treatment.⁸ During this same period, they initiated and closed 87 investigations from complaints containing these issues.

TIGTA's Office of Investigations can receive a complaint through various avenues, *e.g.*, telephone calls, e-mails, personal contacts. Once a complaint is received, it is entered into TIGTA's Office of Investigations case management database and reviewed. Complaints can either be converted into an investigation if the allegation relates to a criminal violation or administrative misconduct or closed and referred to IRS management. When investigating a criminal statute of conflicts of interest, TIGTA's Office of Investigations role is to present the facts of a case for potential prosecution. If prosecution is declined, the report of investigation is referred to the IRS Labor and Employee Relations Office for administrative action.

⁸ Complaints were logged in TIGTA's Office of Investigations Criminal Results Management System.

Appendix I

Detailed Objective, Scope, and Methodology

The overall objective of this audit was to assess the IRS's processes and procedures to identify and address potential conflicts of interest regarding tax administration matters involving large corporations. To accomplish our objective, we:

- Evaluated the adequacy of the rules, regulations, and policies to protect the integrity of large corporate tax administration from potential conflicts of interest involving individuals who hold positions that can influence policies, procedures, or actions involving tax compliance matters. This included identifying the rules, regulations, and criteria in place governing conflicts of interest in Federal tax administration and determining the controls the IRS has in place to ensure employees comply with and enforce compliance of such rules.
- Assessed the adequacy of IRS's processes and procedures for employees to report potential conflicts of interest involving large corporations' tax compliance matters and determined whether the IRS took sufficient actions to address these reported concerns.
- Identified IRS personnel in the LB&I Division and Offices of Chief Counsel and Appeals who have moved between the private and public sectors during Calendar Years 2017 through 2021 to assess actions taken on the part of the IRS to identify and address potential conflicts of interest.¹

Performance of This Review

This review was performed with information obtained from the IRS's General Legal Services, the LB&I Division, Office of Chief Counsel, and Office of Appeals during the period February 2022 through April 2023. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Major contributors to the report were Russell P. Martin, Deputy Inspector General for Inspections and Evaluations; Diana M. Tengesdal, Acting Assistant Inspector General for Audit (Returns Processing and Account Services); Darryl J. Roth, Director; Nina A. Hill, Audit Manager; Jennifer Bailey, Lead Auditor; and Gwendolyn S. Gilboy, Senior Auditor.

Validity and Reliability of Data from Computer-Based Systems

We performed tests to assess the reliability of data from the Treasury Integrated Management Information System, Information Returns Master File, Business Master File, Audit Information Management System, and Counsel Automated Systems Environment Management Information System. We evaluated the data by (1) performing electronic testing of required data elements,

¹ This includes five specific accounting firms identified in the February 18, 2022, Congressional request from Senator Elizabeth Warren and Representative Pramila Jayapal.

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(2) reviewing existing information about the data and the system that produced them, and (3) tracing the data to source information. We determined that the data were sufficiently reliable for purposes of this report.

Internal Controls Methodology

Internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined that the following internal controls were relevant to our audit objective: the rules, regulations, and policies surrounding identifying, reporting, and documenting conflicts of interest in Federal tax administration. We evaluated these controls by reviewing the rules, regulations, and policies relating to conflicts of interest for IRS employees, determining if any conflicts of interest were present in work assignments or reported to TIGTA, and determining if employees reported or completed certain disclosure forms.

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Appendix II

Management's Response to the Draft Report



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

07/13/2023

MEMORANDUM FOR HEATHER M. HILL

DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Holly O. Paz Digitally signed by Holly
O. Paz
Date: 2023.07.13
13:19:19 -04'00'
Acting Commissioner, Large Business and International Division

SUBJECT: Draft Audit Report – Processes Are in Place to Identify and
Address Potential Conflicts of Interest in Large Corporate Tax
Administration (Audit # 202240019)

Thank you for the opportunity to respond to the above-referenced report. As reflected in your report, the IRS has robust processes in place to identify and address potential conflicts of interest. Protecting the integrity of tax administration from conflicts of interest is of paramount importance to all of us. To that end, the IRS, through its Deputy Ethics Official (DEO), provides many resources to assist employees and managers in identifying and resolving conflict of interest issues. All employees receive ethics training within 90 days of entering on duty and every year thereafter as part of the IRS Mandatory Briefing program. Financial disclosure report filers receive additional annual ethics training. The DEO has also created a repository of training and other ethics resources that is available to employees on a dedicated Ethics intranet site known as "EthicsLink." As an additional resource, the DEO operates an ethics hotline for current and former employees seeking assistance with ethics issues. Review and certification of public and confidential financial disclosure reports provide an additional opportunity to identify and address potential conflicts of interest. The available resources and the processes in place are effective in identifying and addressing conflicts of interest and maintaining the integrity of the IRS's programs and operations.

Given the report's focus on large corporate taxpayers, we note that effective tax administration for this segment of the population necessitates having a highly skilled and experienced workforce that can successfully conduct complex audits of large corporations. Outside of the IRS, that federal tax expertise lies in accounting firms, law firms, or in-house tax departments; and those are the sources we must draw from when looking to expand our enforcement workforce. Talent acquisition from these sources enriches tax administration by bringing in an infusion of outside expertise and providing a line of sight into the latest tax planning and modeling strategies. Not only does this hiring of external talent support our enforcement efforts, but it also informs opportunities

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to improve how we work with taxpayers to provide effective service. In addition to the knowledge and talent that these tax professionals bring to the IRS, they come to the IRS sensitized to potential conflicts of interest because they are subject to professional codes of conduct issued by state bars and state boards of accountancy, as well as Treasury Circular 230.

The report also evaluated the potential for individuals hired externally into positions that can influence policies or procedures to benefit large corporate taxpayers. As noted above, the IRS has several internal control processes around identifying, addressing, and mitigating conflicts of interest. And, as reflected in one of the examples in your report, executives who are hired externally into the IRS go to great lengths to avoid even the appearance of a conflict. Moreover, the reality of working in a large organization such as the IRS means that no one person unilaterally sets policies. IRS policies and procedures are developed and reviewed through the management chain and require coordination and consensus across the organization. They are also published in the Internal Revenue Manual ensuring transparency and further supporting the integrity of the process.

Attached is our response to your recommendations. If you have any questions, please contact me, or members of your staff may contact Donnell Lewis, Team Manager, Audit and Legislative Liaison, at 601-292-4740 or Donnell.Lewis@irs.gov.

Attachment

Processes Are in Place to Identify and Address Potential Conflicts of Interest in Large Corporate Tax Administration

Attachment

RECOMMENDATION 1: The Chief Counsel, Office of Chief Counsel, should ensure that employees who work on private letter rulings are aware of the requirements to disclose any potential conflicts of interest as it relates to prior or prospective employers.

CORRECTIVE ACTION: On June 1, 2023, during Counsel's annual Ethics IVT program, the Office of Chief Counsel reinforced directly with employees the impartiality rules applicable to specific party matters involving former employers and clients. General Legal Services (GLS) also revised the 2023 Mandatory Briefing Ethics Overview Module to specifically address and clarify the impartiality rules. Finally, the annual ethics training for financial disclosure filers will directly address "revolving door" issues including conflict issues involving prior or prospective employers.

RESPONSIBLE OFFICIAL: Mark S. Kaizen, Associate Chief Counsel (General Legal Services)

IMPLEMENTATION DATE: The Mandatory Briefing Module is expected to be distributed before September; the annual ethics training is expected to be distributed in October 2023.

CORRECTIVE ACTION MONITORING PLAN: GLS will monitor completion of the annual ethics training for financial disclosure filers through regular reports and will follow up with filers who have not completed the training with the goal of having all filers complete the training within 30 days and in any event, no later than December 31, 2023.

RECOMMENDATION 2: The Chief Counsel, Office of Chief Counsel, should ensure that the GLS develops a process and procedure to track and aggregate data based on the types of advice given in response to concerns raised.

CORRECTIVE ACTION: GLS will review current reporting capabilities and case processing procedures to identify an effective means to track and aggregate the identified data. Once a process has been developed, GLS will issue instructions to the affected staff and training on the new procedures.

RESPONSIBLE OFFICIALS: Mark S. Kaizen, Associate Chief Counsel (General Legal Services)

IMPLEMENTATION DATE: September 30, 2023

CORRECTIVE ACTION MONITORING PLAN: GLS will conduct periodic reviews to ensure compliance with the identified process.

Glossary of Terms

Term	Definition
Covered Relationship	<p>A "covered relationship" includes a(n):</p> <ul style="list-style-type: none"> • Person, other than a prospective employer, with whom you have or seek a business, contractual, or other financial relationship, other than a routine consumer transaction. • Member of your household or a relative with whom you have a close personal relationship ("member of your household" includes all those persons who live with you, <i>e.g.</i>, adult children, significant others, housemates). • Person or organization who your spouse, parent, or dependent child serves or seeks to serve as officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee, whether or not for compensation. • Person or organization you have, in the past year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee, whether or not for compensation. • Organization (other than a "political party," as defined by statute) in which you are an active participant. "Active participation" includes, for example, serving as an organization's committee or subcommittee spokesperson or chairperson. Mere membership in an organization does not, in itself, constitute active participation.
Direct and Predictable Effect	<p>A particular matter will have a "direct" effect on a financial interest if there is a close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest. A particular matter will have a "predictable" effect if there is a real, as opposed to a speculative, possibility that the matter will affect the financial interest.</p>
Executive Branch	<p>The Executive Branch of the Government, under the direction of the President of the United States of America, is responsible for the implementation, enforcement, and administration of Federal laws written by Congress. The Executive Branch includes the President, Vice President, the Cabinet and independent Federal agencies which are the Departments of: Agriculture; Commerce; Defense; Education; Energy; Health and Human Services; Homeland Security; Housing and Urban Development; Interior; Justice; Labor; State; Transportation; Treasury; and Veteran Affairs.</p>
Large Corporation	<p>A corporation with activities for domestic and foreign businesses with a U.S. tax reporting requirement and assets equal to or exceeding \$10 million.</p>

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Term	Definition
Particular Matter	The term “particular matter” includes matters that involve deliberation, decision, or action that is focused upon the interests of either specific persons or a discrete and identifiable class of persons. Particular matters include judicial or other proceedings, applications or requests for rulings, contracts, claims, controversies, charges, accusations, or arrests, but do not necessarily require formal parties. The term also may include a matter of general applicability, including legislation or rulemaking, that is narrowly focused on the interests of a discrete and identifiable class of persons, such as a particular industry or geographic sector. The consideration or adoption of broad policy options affecting the interests of a large and diverse group of persons is not a particular matter.
Personal and Substantial Participation	Personal and substantial participation means involvement in a particular matter through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other such action. “Personal” means direct participation, and it includes active supervision of a subordinate who is personally participating. “Substantial” means that an employee’s involvement is or appears to be of significance to the matter. It requires more than official responsibility, mere knowledge, perfunctory involvement, or involvement in an administrative or peripheral issue. However, participation often is substantial even if it does not determine the matter’s outcome.
Senior and Very Senior Positions	Senior level positions include positions that are not Senior Executive Service (SES) positions and are classified above the GS-15 level based on other factors. Very senior positions are the Vice President, Level 1 Executive Schedule (<i>i.e.</i> , Cabinet officials), and Level 2 Executive Schedule (<i>i.e.</i> , employees of the Executive Office of the President and certain White House employees).

Abbreviations

FY	Fiscal Year
GLS	General Legal Services
IRS	Internal Revenue Service
LB&I	Large Business and International
OGE	Office of Government Ethics
STOCK Act	Stop Trading on Congressional Knowledge Act
TIGTA	Treasury Inspector General for Tax Administration



**To report fraud, waste, or abuse,
contact our hotline on the web at www.tigta.gov or via e-mail at
oi.govreports@tigta.treas.gov.**

**To make suggestions to improve IRS policies, processes, or systems
affecting taxpayers, contact us at www.tigta.gov/form/suggestions.**

Information you provide is confidential, and you may remain anonymous.