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The Tax Section has a tradition of annual “courtesy calls” with senior tax officials in Washington. Just before Christmas 2008, a small group of Section officers and staff held three meetings in one day to continue this tradition, meeting separately with the Treasury Department’s Office of Tax Policy; the Internal Revenue Service; and the Tax Division of the Department of Justice. Attendees included the Assistant Secretary for Tax Policy, the Commissioner of the IRS, the Assistant Attorney General for the Tax Division, and many other key officials. It was gratifying to hear that our Committees’ regulation comments and other policy commentary are appreciated and relied upon by senior policymakers.

One of the more interesting aspects of these meetings was the insight offered by senior officials on issues where they were balancing competing policy demands, including in some cases pressures from the Congress. This insight can help all of us better understand the perspectives of government officials, and better anticipate policy developments that could affect private tax practice and future Tax Section activity.

For example, each group mentioned international tax compliance as an area of increased activity and likely policy change. It is clear that the uncovering of thousands of undisclosed offshore accounts associated with U.S. individuals will lead to changes in audit and enforcement activity. Other changes are in the wind as well. When the Senate Permanent Subcommittee on Investigations grills the Commissioner of the IRS on what the Subcommittee Chairman and staff consider “soft spots” in cross border tax compliance, the executive branch naturally focuses its attention on whether current policies need to be updated and potentially tightened. In each of our three meetings, officials expressed an expectation of increased flows of information to U.S. tax authorities from international sources. Each speaker was probably thinking of a different kind of international information flow—the topic potentially covers a broad range of topics, including withholding and reporting requirements, qualified intermediaries, treaty renegotiations, and

international requests for tax information in enforcement actions.

Each government group was also wrestling with the broad set of issues involved in disputes about IRS access to tax accrual workpapers. Justice Department officials identified ongoing litigation as a priority activity. Treasury and IRS officials face, on one side, Congressional members and staff who cannot believe that the IRS would voluntarily exercise restraint in obtaining information as valuable as workpapers are, and on the other side, bar leaders who fear that clients with audited financial statements will cease to have frank discussions with counsel on how to comply with the tax law. Based on our conversations, we can expect the IRS to explore ways to gain greater transparency into business tax issues on audit, including ways to help agents do a better job of identifying which issues deserve the most development. It appears that the IRS hopes to accomplish this without undermining the valuable public interests that are served by traditional attorney-client and work product privileges. However, the IRS also sees powerful forces that do not care very much for the privileges and the principles they represent, and there are concerns that solutions will be imposed from the outside if the IRS cannot show progress on transparency of tax issues that should be audited.

Treasury Department officials were prescient in warning us that the tax system would be under increasing pressure to serve as the enforcement tool

for new restrictions on executive compensation. Economic stimulus legislation signed in February 2009 may be only the latest wave. Members of our Employee Benefits Committee are sure to have their hands full with both client and Tax Section work in this area.

Finally, we had very productive discussions with both the Treasury Department and IRS about the IRS Appeals process. We offered observations that Appeals officials were well trained on independence issues, but that sometimes IRS officials from outside of Appeals were not so well trained. We expressed particular concerns about experiences where an agent or IRS counsel would make an inappropriate request (or demand) that put an Appeals official in an uncomfortable position. We were very pleased to hear that the IRS was already responding to such issues, beginning by holding full day training sessions on the Appeals process for leaders in the Large and Medium Size Business and Small Business and Self Employed Divisions of the IRS.

It perhaps states the obvious that some of the officials we met with in December 2008 are no longer serving in government. It is probably more important to note that the great majority of the people we met with have not changed jobs despite the change of administrations. The concerns we heard in December will continue and will perhaps be further invigorated by new personnel and policies under President Barack Obama’s administration. ■

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