

Tax Community Pushes to Keep DOJ Tax Division Intact

by Mary Katherine Browne

More than 60 attorneys urged the Justice Department against dismantling its Tax Division, stating that doing so would increase fraud and inconsistency and would end up costing Treasury more than it saves.

In an April 2 letter to Deputy Attorney General Todd W. Blanche, the group of attorneys, including several former high-ranking Justice Department and IRS officials, expressed concern over the reassignment of Tax Division attorneys to U.S. attorney's offices.

"Dismantling the Tax Division would do a grave disservice to tax administration by destroying consistent and competent application of our tax laws. Our tax system touches every citizen and resident of the United States," the letter says. "It is fundamental that the tax system be enforced consistently nationwide, so that no matter where a business is organized or an individual lives, they can expect that everyone is subject to the same rules."

The letter comes after multiple media outlets reported that an internal Justice Department memo from Blanche suggested several organizational changes in the name of streamlining the government's workforce, including reassigning Tax Division lawyers to U.S. attorney's offices across the nation. Reports of the memo drew commendations and criticism from the tax community.

Competence

The coalition of attorneys asserted that the Tax Division has developed a "deep bench of talented attorneys" who have a wealth of subject matter knowledge and skill thanks to the mentoring and focus of the Tax Division offices.

"Tax Division attorneys would not be nearly as effective or consistent in their application of complex tax laws nationwide without the organization that trains and supports them," the letter says. "Most Assistant U.S. Attorneys, even with exceptional credentials, lack the experience and knowledge to litigate tax cases."

J. Peter Haukebo of Frost Law expressed similar concerns, tying the issue to the cuts the

Trump administration is making to the IRS, and especially to the Taxpayer Advocate Service. He said that because taxpayers will likely have a harder time resolving tax issues administratively, they'll have to turn to the courts more.

"Reassigning Tax Division attorneys to U.S. attorney's offices, where they may prioritize other legal issues over tax controversies, could hurt taxpayers rather than help them. I hope that the courts are prepared for this unfortunate but likely inevitability," Haukebo told *Tax Notes*.

Good Nucleus

The letter's authors emphasized the importance of the centralized leadership the Tax Division provides in determining the government's litigation positions, reminding Blanche that the IRS doesn't dictate how the Tax Division litigates despite working closely with its attorneys.

"Tax Division leadership helps to ensure that the tax laws are applied reasonably and productively. Further, in supervising cases throughout the country, leadership ensures that taxpayers are treated equally," the letter says.

Larry A. Campagna of Chamberlain, Hrdlicka, White, Williams & Aughtry, one of the signers of the letter, told *Tax Notes* that centralized administration and review of tax litigation are essential to ensuring that tax laws are administered uniformly throughout the nation.

"General enforcement will suffer, and cheating on taxes will increase without the deterrent effect of the Tax Division's concentration on enforcement," Campagna said.

Effective Collaboration

The attorneys further argued that the collaboration among Tax Division attorneys is one of the greatest tools in addressing tax enforcement and diminishing the ever-growing tax gap. The letter uses the Swiss bank program, which addresses offshore tax evasion, as a prime example of the Tax Division's collaboration success.

"Working closely together, civil and criminal components of the Tax Division and the IRS pursued investigations of certain foreign banks, created the voluntary disclosure program that

allowed qualifying banks to sign a non-prosecution agreement, and established a clearance process for banks that may not have committed tax or monetary offenses,” the letter says.

The letter notes that 80 Swiss banks signed agreements with the government and paid more than \$1.36 billion in penalties.

“Systemic failures in our tax system require coordinated and forceful responses, and the Tax Division has repeatedly proven to be up to the task,” the letter says. ■

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Idea to Disperse DOJ Tax Lawyers Draws Mixed Initial Reaction

by Nathan J. Richman

Reports of a Justice Department memo suggesting sending Tax Division lawyers to the various U.S. attorney’s offices drew commendations and criticisms from the tax community.

Several media outlets reported on March 27 and 28 that an internal Justice Department memo from Deputy Attorney General Todd Blanche suggested several changes to the department in the name of streamlining the government’s workforce, including reassigning Tax Division lawyers to U.S. attorneys’ offices across the nation.

The New York Times said the memo asked for feedback from within the Justice Department by April 2.

The internal memo follows the dismissal of a class of honors program attorney hires and the departure of three top officials in the Tax Division in recent months. Those changes are already provoking anxiety within the tax community.

On March 28 Scott D. Michel of Caplin & Drysdale Chtd. told *Tax Notes* that breaking up the Tax Division could undermine tax compliance and enforcement policy. “The Tax Division has held a historic place in our voluntary compliance system, and the attorneys who work there constitute the equivalent of one of the most qualified, expert law firms in the world, focused on criminal and civil tax enforcement and collection,” he said.

“It seems pretty clear that an antitax enforcement mood has overtaken D.C., notwithstanding our huge compliance gap and massive deficit,” Michel said. “But there are other, more efficient ways to promote tax compliance and deter tax evasion than breaking up the practitioners in the Tax Division and sending them far afield, particularly if they will now report, even in part, to 93 different bosses with 93 different sets of resource issues and priorities.”

“Centralized tax enforcement run out of a fully staffed Tax Division in D.C., particularly with a presidentially nominated [assistant attorney general], helps promote uniformity in developing and pursuing the government’s civil