

## HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

### INCOME TAX

**Rev. Rul. 96-55, page 4.**

**1996 base period T-bill rate.** The "base period T-bill rate" for the period ending September 30, 1996, is published, as required by Code section 995(f)(4).

**IA-42-95, page 21.**

Proposed regulations under Code section 6662 relate to the accuracy-related penalty regulations. A public hearing will be held on February 25, 1997.

### ADMINISTRATIVE

**Rev. Proc. 96-53, page 9.**

This procedure informs taxpayers how to secure an advance pricing agreement covering transfer pricing methodologies for international transactions from the Office of Associate Chief Counsel (International). Rev. Proc. 91-22 superseded.

**Notice 96-58, page 7.**

**Qualified State Tuition Programs.** This notice provides guidance regarding certain reporting requirements and the transition rules applicable to "qualified State tuition programs" described in Code section 529 as added by the Small Business Job Protection Act of 1996 (P.L. 104-188).

**Notice 96-60, page 7.**

The Service intends to issue, before the end of 1996, detailed guidance under Code section 877, as amended by the Health Insurance Portability and Accountability Act

of 1996 ("HIPAA"), Code section 6039F, as added by HIPAA, and Code sections 1494 and 6048, as amended by the Small Business Job Protection Act of 1996. Certain filings under Code sections 877, 6039F, and 6048 will not be required to be submitted, and no penalty will be imposed under Code section 1494(c), before a date that is at least 60 days after the issuance of the forthcoming guidance.

**Notice 96-61, page 8.**

**Information reporting; discharge of indebtedness.** Pending issuance of further guidance, no penalties will be imposed for failure to report under Code section 6050P a discharge of indebtedness of a foreign debtor held by foreign offices or branches of foreign financial institutions that are applicable entities under Code section 6050P(c)(2)(C).

**Notice 96-62, page 8.**

**Information reporting; substitute Forms 1099; logos.** Payors required to report certain payments on Form 1099 are informed that the Service intends to issue regulations permitting the use of certain logos and identifying slogans on substitute Forms 1099, and that the Service is requesting comment on this matter.

**Announcement 96-124, page 22.**

The Service announces the publication of Rev. Proc. 96-53, informing taxpayers how to secure an advance pricing agreement from the Office of Associate Chief Counsel (International).

## Mission of the Service

The purpose of the Internal Revenue Service is to collect the proper amount of tax revenue at the least cost; serve the public by continually improving the

quality of our products and services; and perform in a manner warranting the highest degree of public confidence in our integrity, efficiency and fairness.

## Statement of Principles of Internal Revenue Tax Administration

The function of the Internal Revenue Service is to administer the Internal Revenue Code. Tax policy for raising revenue is determined by Congress.

With this in mind, it is the duty of the Service to carry out that policy by correctly applying the laws enacted by Congress; to determine the reasonable meaning of various Code provisions in light of the Congressional purpose in enacting them; and to perform this work in a fair and impartial manner, with neither a government nor a taxpayer point of view.

At the heart of administration is interpretation of the Code. It is the responsibility of each person in the Service, charged with the duty of interpreting the law, to try to find the true meaning of the statutory provision and not to adopt a strained construction in the belief that he or she is "protecting the revenue." The revenue is properly protected only when we ascertain and apply the true meaning of the statute.

The Service also has the responsibility of applying and administering the law in a reasonable, practical manner. Issues should only be raised by examining officers when they have merit, never arbitrarily or for trading purposes. At the same time, the examining officer should never hesitate to raise a meritorious issue. It is also important that care be exercised not to raise an issue or to ask a court to adopt a position inconsistent with an established Service position.

Administration should be both reasonable and vigorous. It should be conducted with as little delay as possible and with great courtesy and considerateness. It should never try to overreach, and should be reasonable within the bounds of law and sound administration. It should, however, be vigorous in requiring compliance with law and it should be relentless in its attack on unreal tax devices and fraud.

# Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents of a permanent nature are consolidated semi-annually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations,

court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

## **Part I.—1986 Code.**

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

## **Part II.—Treaties and Tax Legislation.**

This part is divided into two subparts as follows: Subpart A, Tax Conventions, and Subpart B, Legislation and Related Committee Reports.

## **Part III.—Administrative, Procedural, and Miscellaneous.**

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

## **Part IV.—Items of General Interest.**

With the exception of the Notice of Proposed Rulemaking and the disbarment and suspension list included in this part, none of these announcements are consolidated in the Cumulative Bulletins.

The first Bulletin for each month includes an index for the matters published during the preceding month. These monthly indexes are cumulated on a quarterly and semiannual basis, and are published in the first Bulletin of the succeeding quarterly and semi-annual period, respectively.

The contents of this publication are not copyrighted and may be reprinted freely. A citation of the Internal Revenue Bulletin as the source would be appropriate.

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# Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

## Section 995.—Taxation of DISC Income to Shareholders

**1996 base period T-bill rate.** The “base period T-bill rate” for the period ending September 30, 1996, is published, as required by section 995(f)(4) of the Code.

### Rev. Rul. 96-55

Section 995(f)(1) of the Internal Revenue Code provides that a shareholder of a DISC shall pay interest each taxable year in an amount equal to the product of the shareholder’s DISC-related deferred tax liability for the year and the “base period T-bill rate.” Under section 995(f)(4), the base period T-bill rate is the annual rate of interest determined by the Secretary to be equivalent to the average investment yield of United States Treasury bills with maturities of 52 weeks which were auctioned during the one-year period ending on September 30 of the calendar year ending with (or of the most recent calendar year ending before) the close of the taxable year of the shareholder. The base period T-bill rate for the period ending September 30, 1996, is 5.51 percent.

Pursuant to section 6622 of the Code, interest must be compounded daily. The table below provides factors for compounding the base period T-bill rate daily for any number of days in the shareholder’s taxable year (including a 52–53 week accounting period) for the 1996 base period T-bill rate. To compute the amount of the interest charge for the shareholder’s taxable year, multiply the amount of the shareholder’s DISC-related deferred tax liability (as defined in section 995(f)(2)) for that year by the base period T-bill rate factor corresponding to the number of days in the shareholder’s taxable year for which the interest charge is being computed. Generally, one would use the factor for 365 days. One would use a different factor only if the shareholder’s taxable year for which the interest charge being determined is a short taxable year, if the shareholder uses the 52–53 week taxable year, or if the shareholder’s taxable year is a leap year.

For the base period T-bill rates for the periods ending in prior years, *see*: Rev. Rul. 86–132, 1986–2 C.B. 137; Rev. Rul. 87–129, 1987–2 C.B. 196; Rev. Rul. 88–94, 1988–2 C.B. 301; Rev. Rul. 89–116, 1989–2 C.B. 197; Rev. Rul.

90–96, 1990–2 C.B. 188; Rev. Rul. 91–59, 1991–2 C.B. 347; Rev. Rul. 92–98, 1992–2 C.B. 201; Rev. Rul. 93–77, 1993–2 C.B. 253; Rev. Rul. 94–68, 1994–2 C.B. 177; and Rev. Rul. 95–77, 1995–2 C.B. 122.

### DRAFTING INFORMATION

The principal author of this revenue ruling is David Bergkuist of the Office of the Associate Chief Counsel (International). For further information about this revenue ruling, contact Mr. Bergkuist on (202) 622–3860 (not a toll-free call

### 1996 ANNUAL RATE, COMPOUNDED DAILY

DAYS	5.51 PERCENT FACTOR
1	.000150546
2	.000301116
3	.000451707
4	.000602322
5	.000752959
6	.000903619
7	.001054301
8	.001205006
9	.001355734
10	.001506485
11	.001657258
12	.001808054
13	.001958873
14	.002109714
15	.002260578
16	.002411465
17	.002562374
18	.002713306
19	.002864261
20	.003015239
21	.003166239
22	.003317263
23	.003468308
24	.003619377
25	.003770468
26	.003921582
27	.004072719
28	.004223879
29	.004375061
30	.004526266
31	.004677494
32	.004828745
33	.004980018
34	.005131314
35	.005282633
36	.005433975
37	.005585340

DAYS	5.51 PERCENT FACTOR
38	.005736727
39	.005888137
40	.006039570
41	.006191025
42	.006342504
43	.006494005
44	.006645529
45	.006797076
46	.006948646
47	.007100239
48	.007251854
49	.007403492
50	.007555153
51	.007706837
52	.007858544
53	.008010273
54	.008162026
55	.008313801
56	.008465599
57	.008617420
58	.008769263
59	.008921130
60	.009073020
61	.009224932
62	.009376867
63	.009528825
64	.009680806
65	.009832810
66	.009984837
67	.010136886
68	.010288959
69	.010441054
70	.010593173
71	.010745314
72	.010897478
73	.011049665
74	.011201875
75	.011354108
76	.011506364
77	.011658642
78	.011810944
79	.011963268
80	.012115616
81	.012267986
82	.012420380
83	.012572796
84	.012725235
85	.012877697
86	.013030183
87	.013182691
88	.013335222
89	.013487776
90	.013640353

DAYS	5.51 PERCENT FACTOR	DAYS	5.51 PERCENT FACTOR	DAYS	5.51 PERCENT FACTOR
91	.013792953	146	.022221425	201	.030719970
92	.013945576	147	.022375317	202	.030875142
93	.014098222	148	.022529232	203	.031030336
94	.014250890	149	.022683170	204	.031185554
95	.014403582	150	.022837132	205	.031340796
96	.014556297	151	.022991116	206	.031496060
97	.014709035	152	.023145124	207	.031651348
98	.014861796	153	.023299155	208	.031806660
99	.015014580	154	.023453209	209	.031961995
100	.015167387	155	.023607286	210	.032117353
101	.015320216	156	.023761386	211	.032272734
102	.015473069	157	.023915510	212	.032428139
103	.015625945	158	.024069657	213	.032583568
104	.015778844	159	.024223827	214	.032739020
105	.015931766	160	.024378020	215	.032894495
106	.016084711	161	.024532237	216	.033049993
107	.016237679	162	.024686476	217	.033205515
108	.016390670	163	.024840739	218	.033361061
109	.016543684	164	.024995025	219	.033516630
110	.016696721	165	.025149335	220	.033672222
111	.016849781	166	.025303667	221	.033827838
112	.017002864	167	.025458023	222	.033983477
113	.017155970	168	.025612402	223	.034139139
114	.017309099	169	.025766804	224	.034294825
115	.017462252	170	.025921230	225	.034450535
116	.017615427	171	.026075679	226	.034606268
117	.017768625	172	.026230151	227	.034762024
118	.017921847	173	.026384646	228	.034917804
119	.018075091	174	.026539165	229	.035073607
120	.018228359	175	.026693707	230	.035229433
121	.018381650	176	.026848272	231	.035385284
122	.018534963	177	.027002860	232	.035541157
123	.018688300	178	.027157472	233	.035697054
124	.018841660	179	.027312107	234	.035852975
125	.018995043	180	.027466765	235	.036008919
126	.019148449	181	.027621446	236	.036164886
127	.019301878	182	.027776151	237	.036320877
128	.019455331	183	.027930879	238	.036476891
129	.019608806	184	.028085630	239	.036632929
130	.019762304	185	.028240405	240	.036788991
131	.019915826	186	.028395203	241	.036945076
132	.020069371	187	.028550024	242	.037101184
133	.020222939	188	.028704869	243	.037257316
134	.020376529	189	.028859737	244	.037413471
135	.020530144	190	.029014628	245	.037569650
136	.020683781	191	.029169542	246	.037725853
137	.020837441	192	.029324480	247	.037882079
138	.020991124	193	.029479441	248	.038038328
139	.021144831	194	.029634426	249	.038194601
140	.021298561	195	.029789433	250	.038350898
141	.021452314	196	.029944465	251	.038507218
142	.021606090	197	.030099519	252	.038663561
143	.021759889	198	.030254597	253	.038819928
144	.021913711	199	.030409698	254	.038976319
145	.022067557	200	.030564823	255	.039132733

DAYS	5.51 PERCENT FACTOR	DAYS	5.51 PERCENT FACTOR	DAYS	5.51 PERCENT FACTOR
256	.039289171	304	.046825944	351	.054258658
257	.039445632	305	.046983540	352	.054417373
258	.039602117			353	.054576112
259	.039758625	306	.047141160	354	.054734874
260	.039915157	307	.047298803	355	.054893661
		308	.047456470		
261	.040071713	309	.047614161	356	.055052471
262	.040228292	310	.047771876	357	.055211306
263	.040384895			358	.055370164
264	.040541521	311	.047929614	359	.055529046
265	.040698171	312	.048087376	360	.055687953
		313	.048245162		
266	.040854844	314	.048402971	361	.055846883
267	.041011541	315	.048560805	362	.056005837
268	.041168262			363	.056164815
269	.041325006	316	.048718662	364	.056323816
270	.041481774	317	.048876543	365	.056482842
		318	.049034447		
271	.041638565	319	.049192376	366	.056641892
272	.041795380	320	.049350328	367	.056800966
273	.041952219			368	.056960063
274	.042109081	321	.049508304	369	.057119185
275	.042265967	322	.049666304	370	.057278330
		323	.049824327		
276	.042422876	324	.049982375	371	.057437500
277	.042579809	325	.050140446		
278	.042736766				
279	.042893746				
280	.043050750	326	.050298541		
		327	.050456659		
281	.043207778	328	.050614802		
282	.043364829	329	.050772968		
283	.043521904	330	.050931158		
284	.043679002				
285	.043836125	331	.051089372		
		332	.051247610		
286	.043993270	333	.051405872		
287	.044150440	334	.051564157		
288	.044307633	335	.051722466		
289	.044464850				
290	.044622090	336	.051880799		
		337	.052039156		
291	.044779354	338	.052197537		
292	.044936642	339	.052355942		
293	.045093954	340	.052514370		
294	.045251289				
295	.045408648	341	.052672822		
		342	.052831299		
296	.045566030	343	.052989799		
297	.045723437	344	.053148322		
298	.045880867	345	.053306870		
299	.046038320				
300	.046195798	346	.053465442		
		347	.053624037		
301	.046353299	348	.053782657		
302	.046510823	349	.053941300		
303	.046668372	350	.054099967		

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**Section 6044.—Returns Regarding Payments of Patronage Dividends**

*26 CFR 1.6044-5: Statements to recipients of patronage dividends.*

Are payors, required to report payments on Form 1099, permitted to use certain logos and identifying slogans on substitute Forms 1099? See Notice 96-62, page 8.

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**Section 6049.—Returns Regarding Payments of Interest**

*26 CFR 1.6049-6: Statements to recipients of interest payments and holders of obligations as to which there is attributed original issue.*

Are payors, required to report payments on Form 1099, permitted to use certain logos and identifying slogans on substitute Forms 1099? See Notice 96-62, page 8.

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**Section 6050N.—Returns Regarding Payments of Royalties**

*26 CFR 1.6050N-1: Statements to recipients of royalties.*

Are payors, required to report payments on Form 1099, permitted to use certain logos and identifying slogans on substitute Forms 1099? See Notice 96-62, page 8.

## Part III. Administrative, Procedural, and Miscellaneous

### Qualified State Tuition Programs

#### Notice 96-58

This notice provides guidance regarding certain reporting requirements and the transition rules applicable to “qualified State tuition programs” described in § 529 of the Internal Revenue Code, recently enacted by section 1806 of the Small Business Job Protection Act, Pub. L. 104-188 (the “Act”). The notice also solicits comments from the public on section 529.

Section 529 provides tax-exempt status to “qualified State tuition programs,” meaning programs established and maintained by a State (or agency or instrumentality thereof) under which persons may (1) purchase tuition credits or certificates on behalf of a designated beneficiary entitling the beneficiary to a waiver or payment of qualified higher education expenses of the beneficiary, or (2) contribute to an account established for the sole purpose of meeting qualified higher education expenses of the designated beneficiary of the account.

Under § 529, qualified State tuition programs also must meet requirements relating to contributions, refunds, and maintenance of separate accounts for each designated beneficiary of the program. In addition, the program must prohibit investment direction by contributors or beneficiaries, the pledge or assignment of any interest in the program as security for a loan, and excess contributions.

In general, § 529 is effective for taxable years ending after August 20, 1996, the date of enactment. However, the Act includes a transition rule providing that if

(1) a State maintains (on the date of enactment) a program under which persons may purchase tuition credits on behalf of, or make contributions for educational expenses of, a designated beneficiary, and (2) such program meets the requirements of a qualified State tuition program before the later of (a) one year after the date of enactment, or (b) the first day of the first calendar quarter after the close of the first regular session of the State legislature that begins after the date of enactment, then the provisions of the...[Act] will apply to contributions (and earnings allocable thereto) made before the date the program meets the requirements of a

qualified State tuition program, without regard to whether the requirements of a qualified State tuition program are satisfied with respect to such contributions and earnings. . . . H.R. Conf. Rep. No. 737, 104th Cong., 2d Sess. 282 (1996). (Conference Report). The Internal Revenue Service will not assert income tax liability against a State tuition program for any period before the program meets the requirements of § 529 if the program qualifies for the transition rule.

Section 529(c)(3)(A) and (B) provides that any distribution made by or benefit furnished in-kind under a qualified State tuition program shall be includible in the gross income of the distributee in the manner as provided under § 72, to the extent not excluded from gross income under any other provision.

Section 529(d) authorizes the Internal Revenue Service to require qualified State tuition programs to file information reports for education furnished to beneficiaries or distributions made to individuals during any calendar year. Any reporting requirements promulgated under § 529(d) would apply in lieu of any other reporting requirement for a program that may apply with respect to information returns or payee statements on distributions.

The Internal Revenue Service is currently developing reporting requirements under § 529(d). However, because this legislation was enacted late in the year and because States are expected to need time to implement appropriate record-keeping, reporting will not be required for any distribution made by, or benefit furnished in-kind under, a qualified State tuition program prior to 1998. In addition, the Internal Revenue Service will not assess penalties against plan administrators who do not file information returns or provide payee statements on distributions made during 1997 and prior years.

#### *Comments on Future Guidance Invited*

The Internal Revenue Service invites comments on § 529, including the requirements for reporting distributions made by qualified State tuition programs, the requirements for qualification and operation of these programs, and the treatment for federal tax purposes of distributions made by these programs. These comments will be considered in drafting future guidance. Please send

written comments by December 31, 1996, to: CC:DOM:CORP:R (Notice 96-58), Room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (Notice 96-58), Courier’s Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet directly to the IRS internet site at [http://www.irs.ustreas.gov/prod/tax\\_regs/comments.html](http://www.irs.ustreas.gov/prod/tax_regs/comments.html).

For further information concerning this notice contact Monice Rosenbaum of the Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations) at (202) 622-6070 (not a toll free call).

### **Interim Guidance on Sections 877, 1494, 6039F, and 6048**

#### **Notice 96-60**

This notice provides guidance for taxpayers affected by the penalty provision of section 1494 and the filing requirements of section 6048(a) of the Internal Revenue Code (“Code”), as amended by the Small Business Job Protection Act of 1996 (“SBJPA”). This notice also provides guidance for taxpayers affected by the ruling request provision of section 877 of the Code, as amended by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), and the information reporting requirements of section 6039F of the Code, as added by HIPAA.<sup>1</sup>

#### **BACKGROUND**

Section 877, as amended by HIPAA, generally provides that a former U.S. citizen who renounces his citizenship after February 5, 1995, or a former long-term lawful permanent resident who ceases to be taxed as a lawful permanent resident after that date, who had as a principal purpose for such renunciation or cessation the avoidance of U.S. taxes, will be taxed on all of his U.S. source income for the succeeding 10-year period. An individual who meets a tax liability or net worth test is

<sup>1</sup>There are currently two provisions of the Code designated as section 6039F. The Service intends to seek a technical correction to HIPAA to redesignate section 6039F of the Code, as added by HIPAA, as section 6039G.

considered to be tax motivated. A former citizen who satisfies certain criteria will not be subject to these tests if he submits a ruling request within one year of renunciation of U.S. citizenship for a determination by the Secretary as to whether such renunciation had as one of its principal purposes the avoidance of U.S. taxes. However, the statute provides that in no event will this one-year period expire before November 19, 1996 (the date that is 90 days after the enactment of HIPAA).

Section 6039F, as added by HIPAA, requires each individual who relinquishes U.S. citizenship after February 5, 1995, to provide an information statement to the U.S. Department of State, a diplomatic or consular officer of the United States, or a federal court at the time of expatriation. Any individual who ceases to be taxed as a lawful permanent resident after February 5, 1995, must provide a similar information statement with his U.S. tax return for that year. However, the statute provides that in no event will this information statement be required to be filed before November 19, 1996.

Section 1491 generally imposes an excise tax on the transfer of property by a U.S. person to a foreign corporation as paid-in surplus or as a contribution to capital, to a foreign estate or trust, or to a foreign partnership. Current regulations under section 1494 require a U.S. transferor to file a return on the date such a transfer is made. Section 1494(c), as added by SBJPA, imposes a penalty for the failure to file a required return with respect to any transfer described in section 1491 that occurs after August 20, 1996 (the date of enactment of SBJPA).

Section 6048(a), as amended by SBJPA, generally requires any U.S. person who transfers property to a foreign trust after August 20, 1996, to file an information return. The statute provides that this return must be filed no later than 90 days after the transfer (or such later date as the Secretary may prescribe).

#### INTERIM GUIDANCE

The Service intends to issue detailed guidance in these areas before the end of 1996. The forthcoming guidance will not require the submission of a ruling request under section 777, an information statement under section 6039F, or an information return under section 6048(a) before a date that is at least 60

days after the issuance of that guidance. Any such ruling request, information statement, or information return submitted within the time period set forth in the forthcoming guidance will be considered filed in a timely manner. In addition, no penalty will be imposed under section 1494(c) if a return required with respect to a section 1491 transfer is filed no later than 60 days after the issuance of the forthcoming guidance (or such later date specified in that guidance).

The principal author of this notice is Michael Kirsch of the Office of the Associate Chief Counsel (International). For further information regarding sections 777 or 6039F, contact Michael Kirsch or Trina Dang, for information regarding section 1494 contact Wendy Stanley, and for information regarding section 6048 contact Leslie Cracraft. Each of these individuals may be reached at (202) 622-3860 (not a toll-free call).

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### Information Reporting for Discharges of Indebtedness: Waiver of Penalties in Certain Circumstances for Foreign Financial Entities

#### Notice 96-61

This notice extends the scope of the penalty relief granted in the preamble to the final Income Tax Regulations under § 6050P of the Internal Revenue Code relating to the reporting of discharges of indebtedness (61 F.R. 262, January 4, 1996).

Section 6050P requires an information return to be filed by an applicable entity, including an applicable financial entity, which discharges the indebtedness of any person if the amount discharged is \$600 or more. Section 6050P(c)(2) provides that an applicable financial entity includes any financial institution described in § 581 or 591(a), any credit union, and any other corporation which is a direct or indirect subsidiary of such entity but only if, by virtue of being affiliated with the entity, the corporation is subject to supervision and examination by a Federal or State agency which regulates such other entities.

Section 1.6050P-1(d) of the regulations provides certain exceptions from the reporting requirements. Section 1.6050P-1(d)(4) reserves guidance as to the circumstances under which the reporting requirements will not apply to the discharge of indebtedness of foreign

debtors held by foreign branches of U.S. financial institutions. Section 1.6050P-1(d)(4)(ii) identifies the criteria that must be met in order to treat indebtedness held by a foreign branch of a U.S. financial institution as being within the scope of the reserved guidance.

The preamble to the final regulations states, in part, that “the IRS and Treasury are continuing to study the issue of whether reporting is necessary in the case of foreign debtors whose debt is discharged by foreign branches of U.S. financial institutions. Accordingly, pending the issuance of further guidance, no penalties will be imposed if an applicable financial entity fails to report a discharge of indebtedness of a foreign debtor by a foreign branch of the entity.”

After issuance of the final regulations, commentators requested that the penalty relief described in the preamble to the final regulations also apply to indebtedness held by foreign offices or branches of foreign financial institutions that are applicable financial entities under § 6050P(c)(2)(C).

The Internal Revenue Service has determined that, pending the issuance of further guidance, the relief granted in the preamble should be extended, as suggested by commentators. To accomplish this, the regulations will be amended to delete the word “U.S.” from the heading of § 1.6050P-1(d)(4) and the introductory text in § 1.6050P-1(d)(4)(ii). Furthermore, no penalties will be imposed if a foreign office or branch of a foreign applicable financial entity fails to report a discharge of indebtedness of a foreign debtor described in § 1.6050P-1(d)(4)(ii) after giving effect to the preceding sentence.

The principal author of this notice is Sharon Hall of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this notice, contact Ms. Hall on (202)622-4930 (not a toll-free call).

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### Logos and Identifying Slogans on Substitute Forms 1099

#### Notice 96-62

This notice informs payors who are required to report certain payments on Form 1099 that the Service intends to issue regulations permitting these payors to use certain logos and identifying slogans on substitute Forms 1099 required to be furnished to payees after

December 31, 1995, and invites public comment on this matter.

The Internal Revenue Code generally requires that payors of interest (§ 6049), dividends (§ 6042), patronage dividends (§ 6044), and royalties (§ 6050N), make an information return, in the form prescribed by the Secretary, setting forth the amount of such payments and the name and address of the payee. The payor must also furnish the payee with a copy of the information return (the payee statement) in person or in a statement mailing. Payors may furnish either the official Form 1099 or an acceptable substitute payee statement.

The legislative history to the statement mailing requirement provides that only certain limited enclosures in the statement mailing can be made with the payee statement, specifically: (1) a check; (2) a letter explaining why no check is enclosed; and (3) a statement of the payee's specific account with the payor. The legislative history further provides that a mailing is not a statement mailing if it encloses any other material such as advertising, promotional material, or a quarterly or annual report. The legislative history explains that this additional material is not permitted because these enclosures may make it less likely that payees will recognize the importance of the payee statement and may not utilize the payee statement in completing their tax returns. *See* S. Rep. No. 99-318, 99th Cong., 2d Sess. at 191; and H.R. Conf. Rep. No. 99-841, 99th Cong., 2d Sess. at II-791.

The Service recently issued final regulations that apply to payee statements due after December 31, 1995. §§ 1.6042-4; 1.6044-5; 1.6049-6(e); and 1.6050N-1 of the Income Tax Regulations. These regulations provide that the mailing of payee statements must qualify as a statement mailing. To qualify, the mailing is permitted to contain only certain specified nontax enclosures, limited to: (1) a check; (2) a letter explaining why no check is enclosed; (3) a statement of the payee's account; and (4) a letter explaining the tax consequences of the information in the payee statement. *See, e.g.*, § 1.6042-4(d)(2)(i). The regulations prohibit other nontax enclosures and promotional or advertising materials and provide that even a *de minimis* amount of such material violates the statement mailing requirement. Although the regulations specifically permit logos on the envelope and on the permitted nontax enclosures identified

above, they do not permit logos on the substitute Form 1099 itself. *See, e.g.*, § 1.6042-4(d)(2)(i).

The Service intends to amend the regulations to allow the use of certain logos and identifying slogans on substitute Forms 1099 required to be furnished to payees. The amended regulations generally will permit logos (including the name of the payor in any typeface, font, or stylized fashion and/or a symbolic icon) and identifying slogans, provided the logo or identifying slogan is used by the payor in the ordinary course of its trade or business. However, consistent with Congressional intent, the amended regulations will provide that use of a logo or identifying slogan must not make it less likely that a reasonable payee will recognize the importance of the payee statement for tax reporting purposes. Pending issuance of the amended regulations, the Service will not impose penalties in connection with a payor's use on a payee statement of a logo or an identifying slogan that satisfies these requirements.

*Public comment invited.* The Service invites public comment on this matter. Written comments may be submitted by mail to:

Internal Revenue Service  
P.O. Box 7604  
Ben Franklin Station  
Attn: CC:CORP:T:R (IA-Branch 1),  
Room 5228  
Washington, D.C. 20044;

or, alternatively, via the internet at: [http://www.irs.ustreas.gov/prod/tax\\_regs/comments.html](http://www.irs.ustreas.gov/prod/tax_regs/comments.html).

## DRAFTING INFORMATION

The principal author of this notice is Donna Welch of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this notice, contact Ms. Welch on (202) 622-4910 (not a toll-free call).

## Section 482 — Allocations Between Related Parties

Rev. Proc. 96-53

### SECTION 1. PURPOSE

This revenue procedure updates and supersedes Revenue Procedure 91-22, 1991-1 C.B. 526, and informs taxpayers how to secure an advance pricing agreement ("APA") from the Office of the Associate Chief Counsel (International) covering the prospective determination

and application of transfer pricing methodologies ("TPMs") for international transactions. An APA is an agreement between the Service and the taxpayer on the TPM to be applied to any apportionment or allocation of income, deductions, credits, or allowances between or among two or more organizations, trades, or businesses owned or controlled, directly or indirectly, by the same interests. The TPM thus represents the application to the taxpayer's specific facts and circumstances of the best method within the meaning of the income tax regulations under § 482 of the Internal Revenue Code ("the regulations"), as agreed pursuant to negotiations between the Service and the taxpayer.

### SEC. 2. OVERVIEW

Under the APA request procedure, the taxpayer proposes a TPM and provides data intended to show that the TPM is the appropriate application of the best method within the meaning of the regulations for determining arm's length results between the taxpayer and specified affiliates with respect to specified inter-company transactions. The Service evaluates the APA request by analyzing the data submitted and any other relevant information. After discussion, if the taxpayer's proposal is acceptable, the parties execute an APA covering the proposed TPM. APAs often involve agreements with foreign competent authorities under income tax conventions.

### SEC. 3. PRINCIPLES OF THE APA PROCESS

.01 The APA process is designed to be a flexible problem-solving process, based on cooperative and principled negotiations between taxpayers and the Service.

.02 APAs are intended to reflect agreement between the taxpayer and the Service on the best method, within the meaning of the regulations, for determining arm's length prices, and the proper application of the best method to the taxpayer's specific facts and circumstances (that is, the TPM). In negotiations for APAs involving one or more foreign competent authorities ("bilateral" and "multilateral" APAs), the initial negotiating position of the U.S. competent authority will reflect the Service's opinion, based on consultation with the taxpayer, of the best method within the meaning of the regulations and the appropriate TPM.

.03 The taxpayer must, to the extent feasible, secure relevant pricing data from closely comparable uncontrolled transactions. If this information cannot be obtained, the taxpayer must identify any transactions it believes may be comparable, but for which reliable data is unavailable. Where such transactions cannot be identified, the taxpayer must, to the extent possible, secure relevant pricing data from uncontrolled transactions that are similar, even though not closely comparable, and propose adjustments to account for differences between such uncontrolled transactions and its own operations. The APA process may apply notwithstanding that no comparable uncontrolled transactions can be identified. In such cases, a taxpayer must demonstrate that the proposed TPM otherwise satisfies the requirements of § 482 and this revenue procedure.

.04 The APA Policy Board (the "Policy Board") consists of the Associate Chief Counsel (International), the Assistant Commissioner (International), and the Assistant Commissioner (Examination). The Policy Board establishes Service policy on matters of substantial general importance pertaining to the APA Program.

.05 The APA Program is under the immediate supervision of a Director (the "APA Director") within the Office of the Associate Chief Counsel (International). The APA Director shall, directly or by delegation, take any actions necessary for carrying out the provisions of this revenue procedure.

.06 Application of the TPM to tax years prior to those covered by the APA ("rollback" of the TPM) is an effective means of enhancing voluntary compliance and an effective use of resources in addressing unresolved transfer pricing issues. It is Service policy that, whenever feasible (based, for example, on consistency of facts, law, and available records in the prior years), the TPM should be used for resolving such issues for prior taxable years. As provided in section 8 of this revenue procedure, the taxpayer may request that the Service consider a rollback in connection with a particular request. Taxpayers should recognize that, even absent a request for a rollback, the Service may, under regularly applicable procedures, determine that the TPM agreed to in an APA should be applied to prior years. When applying the TPM to prior years, whether or not at the request of the taxpayer, adjustments may be made to

reflect differences in facts, economic conditions, and applicable legal rules.

.07 The filing of an APA request does not put into abeyance any examination or other enforcement proceeding. Service personnel responsible for APAs and for enforcement proceedings involving the taxpayer shall, to the extent feasible, coordinate their activities so as to avoid duplicative information requests to the taxpayer, to enhance the efficiency of Service operations and to reduce overall taxpayer compliance burdens.

.08 Prompt and fair resolution of APA requests and renewals, in keeping with the demands of the multinational economic environment, are central goals of the APA process.

.09 The Service intends that the APA process will retain the flexibility to address the needs of particular taxpayers. To this end, the Service and the taxpayer may, by agreement, adopt special procedures, including simplified procedures, that depart from those set forth in this revenue procedure. Such special procedures might be warranted, for example, in order to meet the needs of small business taxpayers, or in order to facilitate simultaneous negotiation of APAs by the taxpayer, the Service, and foreign competent authorities.

#### **SEC. 4. PREFILING CONFERENCES**

.01 Some cases are not suitable for APAs. Even in suitable cases, the extent of information needed and scope of the necessary written request will vary from case to case. Therefore, the taxpayer may request one or more prefilings conferences to explore informally the suitability of an APA and to clarify what data, documentation, and analyses are likely to be necessary in order for the Service to be able to consider a request; the need for an independent expert; potentially applicable TPMs; the possibility of an agreement among competent authorities; and the Service's schedule and method for coordinating and evaluating the request.

.02 To schedule a prefilings conference, the taxpayer or its representative should contact the APA Office with three alternative dates for the prefilings conference. The taxpayer may request a prefilings conference either on the basis that its identity will be made known in connection with the conference, or that it will participate in the conference on an anonymous basis. If the taxpayer chooses to make its identity known in the conference, representatives of the

District and of any Appeals or District Counsel Office with responsibility for the taxpayer's returns normally will participate in the prefilings conference. If the taxpayer initially requests a prefilings conference on an anonymous basis, then chooses to identify itself, the conference may be rescheduled to permit necessary personnel to participate. When requesting a prefilings conference on an identified basis, the taxpayer must inform the APA Office whether transactions similar or related to those to be covered by the proposed APA are currently under consideration by Examination, Appeals or Counsel. Taxpayers should, at least one week prior to a prefilings conference, send a brief prefilings submission to the APA Office that confirms the date, time and place of the prefilings conference; lists the persons attending the prefilings conference for the taxpayer; and outlines the issues to be discussed at the prefilings conference. If the prefilings submission is ten pages or less, it may be sent by facsimile; if the prefilings submission exceeds ten pages, seven copies and one original should be delivered pursuant to the instructions contained in section 5.13 of this revenue procedure.

#### **SEC. 5. CONTENT OF APA REQUESTS**

.01 *General.*

(1) All materials submitted with the request become part of the Service's file and will not be returned. Therefore, original documents should not be submitted.

(2) The taxpayer must submit copies of any documents relating to the proposed TPM and must ensure that all submitted information is properly labeled, indexed, and referenced in the request. Any previously-submitted documents that the taxpayer wishes to associate with the request must be referenced in the request. If the records or documents to be submitted are too voluminous for transmittal with the request, the taxpayer must describe the contents of such items in the request, certify that the items exist at the time the request is submitted, state where the items are located, state whom the Service can contact to secure the items, and confirm that the items will promptly be made available upon request.

(3) All documents submitted in a foreign language must be accompanied by an English translation.

(4) The user fee should be submitted with the request, unless previously submitted.

#### *.02 Explanation of the Proposed TPM.*

The taxpayer must provide a detailed explanation and analysis of each proposed TPM based on the principles discussed in sections 3.02 and 3.03 of this revenue procedure. The request should illustrate each proposed TPM by applying it, in a consistent format, to the prior three taxable years' financial and tax data of the parties. When historical data cannot be used to illustrate a TPM (for example, when the TPM applies to a new product or business), the request should include an illustration based on projected or hypothetical data. If coverage of three taxable years is inappropriate for any reason, the taxpayer should provide data for an appropriate date range and explain why this range was chosen.

#### *.03 General Factual and Legal Items for All Proposed TPMs.*

Unless otherwise agreed in a prefiling conference, each request must include, in addition to any other items specified in this revenue procedure, the following items:

(1) The organizations, trades, businesses, and transactions that will be subject to the APA.

(2) The names, addresses, telephone numbers, and taxpayer identification numbers of the controlled taxpayers that are parties to the requested APA (the parties).

(3) A properly completed Form 2848 for any persons authorized to represent the parties in connection with the request. If the taxpayer or the taxpayer's authorized representative has retained any other person or persons (including, but not limited to, a law firm, accounting firm, or economic consulting firm) to assist the taxpayer in pursuing the APA request, the taxpayer must also provide a separate written authorization for disclosures to such person or persons and their employees during the Service's consideration of the request, pursuant to the instructions in § 301.6103(c)-1 of the Income Tax Regulations.

(4) A brief description of the general history of business operations, worldwide organizational structure, ownership, capitalization, financial arrangements, principal businesses, and the place or places where such businesses are conducted, and major transaction flows of the parties.

(5) Representative financial and tax data of the parties for the last three taxable years, together with other relevant data and documents in support of the proposed TPM. This item includes, but need not be limited to, data contained in Form 5471 (Information Report of a Foreign Corporation); Form 5472 (Information Report of a Foreign Owned Corporation); income tax returns; financial statements; annual reports; other pertinent U.S. and foreign government filings (for example, customs reports or SEC filings); existing pricing, distribution, or licensing agreements; marketing and financial studies; and company-wide accounting procedures, business segment reports, budgets, projections, business plans, and worldwide product line or business segment profitability reports.

(6) The functional currency of each party and the currency in which payment between parties is made for the transactions that will be covered by the APA.

(7) The taxable year of each party.

(8) A description of significant financial accounting methods employed by the parties that have a direct bearing on the proposed TPM.

(9) An explanation of significant financial and tax accounting differences, if any, between the U.S. and the foreign countries involved that have a bearing on the proposed TPM.

(10) A discussion of any relevant statutory provisions, tax treaties, court decisions, regulations, revenue rulings, or revenue procedures that relate to the proposed TPM.

(11) A statement describing all previous and current issues at the examination, appeals, judicial, or competent authority levels that relate to the proposed TPM, including an explanation of the taxpayer's and the government's positions and any resolution of any such issues. The same information may also be required for similar issues involving foreign tax authorities.

#### *.04 Specific Factual Items for a Proposed TPM other than a Cost Sharing Arrangement.*

The following information may be appropriate to establish the arm's length basis of the proposed TPM under § 482:

(1) Pertinent measurements of profitability and return on investment (for example, gross profit margin or markup,

gross income/total operating expenses, net operating profit margin, or return on assets).

(2) A functional analysis of each party setting forth the economic activities performed, the assets employed, the economic costs incurred, and the risks assumed.

(3) An economic analysis or study of the general industry pricing practices and economic functions performed within the markets and geographical areas to be covered by the APA.

(4) A list of the taxpayer's competitors and a discussion of any uncontrolled transactions, lines of business or types of businesses that may be comparable or similar to those addressed in the request.

(5) A detailed presentation of the research efforts and criteria used to identify and select possible independent comparables and of the application of the criteria to the potential comparables. This presentation should include a list of potential comparables and an explanation of why each was either accepted or rejected.

(6) A detailed explanation of the selection and application of the factors used to adjust the activities of selected independent comparables for purposes of devising the proposed TPM. Examples of possible adjustments include adjustments to accord with product line segregations; for functional differences relating to activities performed, assets employed, risks and costs incurred; for volume or scale differences; and for differing economic and market conditions.

#### *.05 Specific Factual Items for a Cost Sharing Arrangement.*

The taxpayer must apply the cost sharing regulations under § 482 in developing the cost sharing arrangement proposed in the request. The following illustrates information that may be appropriate to establish that the proposed arrangement is a qualified cost sharing arrangement:

(1) The history of the business operations, the geographic locations, and principal business activities (for example, manufacturing or marketing) of each of the participants.

(2) Documentation of the arrangement and any changes made to it, along with an explanation and the dates thereof.

(3) The participants, their dates of entry, each participant's contribution to the arrangement, each participant's inter-

est in any covered intangibles, and how each participant reasonably anticipates that it will derive benefits from the use of covered intangibles; a statement whether there has been or will be any transfer by any participant of covered intangibles to another taxpayer under common control and, if so, how benefits will be reflected under those circumstances; and evidence of participants' compliance with the reporting requirements under the cost sharing regulations.

(4) The method for calculating each participant's share of intangible development costs and the reason why such method can reasonably be expected to reflect that participant's share of anticipated benefits; and a statement whether and how the participants' shares of intangible development costs will be adjusted to account for changes in economic conditions, the business operations and practices of the participants, and the ongoing development of intangibles under the arrangement.

(5) The scope of the research and development to be undertaken, including the intangible or class of intangibles intended to be developed.

(6) The duration of the arrangement; the conditions under which the arrangement may be modified or terminated; and the consequences of such modification or termination, such as the interest that each participant will receive in any covered intangibles.

(7) The scope of intangible development costs, and which costs are included and which are excluded (for example, costs of technology acquired from third parties; non-product specific development costs; costs associated with abandoned projects; costs associated with specific stages of product development; and relevant labor, material, and overhead costs); a description of any services performed for participants to be included in intangible development costs (for example, contract research) and how those services would be taken into account; and, for a representative period, a breakdown of total costs incurred, and the costs borne by each participant, pursuant to the arrangement.

(8) The basis used for measuring benefits, the projections used to estimate benefits, and why such basis and projections yield the most reliable estimate of reasonably anticipated benefits; a description of any amounts to be received from nonparticipants for the use of covered intangibles (for example, as a royalty pursuant to a license agreement) and how such amounts would be taken

into account; and, for a representative period, a comparison of projected and actual benefit shares.

(9) The accounting method used to determine the cost and benefits of the intangible development (including the method used to translate foreign currencies), and to the extent that the accounting method differs materially from U.S. generally accepted accounting principles, an explanation of any material differences.

(10) Prior research, if any, undertaken in the intangible development area; any tangible or intangible property made available for use in the arrangement and any compensation paid for that property (specifying the amount, payor and payee, and how such compensation is determined); and any other information used to establish the value of pre-existing and covered intangibles.

(11) Whether and how participants may join or leave the arrangement (or otherwise change their interests in covered intangibles); any adjustments that will be made to the participants' interests in covered intangibles in such cases; any payments that must be made in such cases, and how such payments will be calculated and made; and whether any changes in the participants' interests in covered intangibles have already occurred, any compensation paid for those interests, and any information used to establish the value of such interests.

(12) How cost sharing payments and buy-in or buy-out payments (i.e., payments made when a participant contributes intangibles, or acquires or relinquishes an interest in covered intangibles) made or received have been treated for U.S. income tax purposes.

(13) Representative internal manuals, directives, guidelines, and similar documents prepared for purposes of implementing or operating the cost sharing arrangement (for example, research and development committee meeting minutes, market studies, economic impact analyses, capital expenditure budgets, engineering studies, reports and studies of trends and profitability in the industry, and financial analyses for financing and cash flow purposes).

(14) Each participant's gross and net profitability (historical for five taxable years and projected for two taxable years) with regard to the product area covered by the arrangement.

#### *.06 Discussion of Collateral Income Tax Issues.*

The taxpayer must discuss any relevant collateral income tax issues (for example, issues relating to foreign tax credits) raised by the proposed TPM under United States law.

#### *.07 Critical Assumptions.*

The taxpayer must propose and describe a set of critical assumptions. A critical assumption is any fact (whether or not within control of the taxpayer) related to the taxpayer, a third party, an industry, or business and economic conditions, the continued existence of which is material to the taxpayer's proposed TPM. Critical assumptions might include, for example, a particular mode of conducting business operations, a particular corporate or business structure or a range of expected business volume.

#### *.08 Contents of Annual Report.*

Section 11.01 of this revenue procedure provides that the taxpayer must file an annual report for each taxable year covered by the APA. The taxpayer should propose in the request a list of items to be included in each report. For example, the report should generally include the following items: (a) the application of the TPM to the actual operations for the year; (b) a description of any material lack of conformity with critical assumptions and the reasons therefor (or, if there has been no material lack of conformity with critical assumptions, a statement to that effect); and (c) an analysis of any compensating adjustments to be paid by one entity to the other, and the manner in which the payments are to be made. Other items may be appropriate to the taxpayer's particular circumstances.

#### *.09 Term.*

(1) The taxpayer must propose an initial term for the APA. For example, the APA could take effect at the beginning of the taxable year during which it was requested or signed, and last for three taxable years. The term should be appropriate to the industry, product, or transaction involved.

(2) The APA request must be filed no later than the time prescribed by law (including extensions) for filing the taxpayer's Federal income tax return for the first taxable year to be covered by the APA. For purposes of the preceding sentence, an APA request will be considered filed on the date payment of the required user fee is made (within the meaning of § 7502(a)), provided that a

substantially complete APA request is filed with the Service within 120 days thereafter, subject to extension by the Service based on a showing of substantial unforeseen circumstances.

*.10 Request for Competent Authority Consideration.*

The taxpayer must state whether any of the parties to a request are residents of or conduct activities in a foreign country that has a tax treaty with the United States or in a possession of the United States, and whether the taxpayer proposes an agreement among competent authorities or an agreement described in Rev. Proc. 89-8, 1989-1 C.B. 778 (see section 7 of this revenue procedure for guidelines). For purposes of this revenue procedure, "competent authority" includes the U.S. and foreign competent authorities under income tax treaties to which the U.S. is a party, and also includes the Assistant Commissioner (International) acting with respect to a possession tax agency described in Rev. Proc. 89-8, as well as a designated possession tax official within the meaning of that revenue procedure. If the taxpayer proposes an agreement among competent authorities for the initial term of the APA, the taxpayer's request must include the information described in sections 4.05(a) and (b) and, in a separate document, section 4.05(m), of Rev. Proc. 96-13, 1996-3 I.R.B. 31, or similar information pursuant to a request for relief under Rev. Proc. 89-8.

*.11 Perjury Statement.*

The taxpayer must include in any request for an APA, and any supplemental submission, a declaration in the following form:

Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and, to the best of my knowledge and belief, the request contains all the relevant facts relating to the request, and such facts are true, correct, and complete.

The declaration must be signed by the person or persons on whose behalf the request is being made and not by the taxpayer's representative. The person signing for a corporate taxpayer must be an authorized officer of the taxpayer who has personal knowledge of the facts and whose duties are not limited to obtaining letter rulings or determination letters from the Service, or negotiating APAs. The person signing for a trust or

a partnership must be a trustee or a partner who has personal knowledge of the facts.

*.12 Signatures.*

The taxpayer or the taxpayer's authorized representative must sign the request. If an authorized representative is to sign, the taxpayer and representative must conform to the rules of Rev. Proc. 96-1, 1996-1 I.R.B. 8 (or its successor).

*.13 Copies and Mailing.*

(1) Requests or other documents containing user fees must be mailed or delivered to

**Internal Revenue Service  
Attn: CC:DOM:CORP:T  
P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044,**

or may also be hand delivered to the drop box at the 12th Street entrance of 1111 Constitution Avenue, N.W., Washington, DC.

(2) All other communications may either be mailed to

**Advance Pricing Agreement Program  
Internal Revenue Service  
Attn: CC:INTL  
Room 3501, 1111 Constitution Ave.,  
N.W.  
Washington, DC 20224**

or may be delivered to

**Advance Pricing Agreement Program  
Internal Revenue Service  
Attn: CC:INTL  
5th Floor, 950 L'Enfant Plaza, S.W.  
Washington, DC 20024**

The taxpayer should provide the original and seven copies of its APA request and of all supplemental materials submitted while the request is pending.

*.14 User Fees.*

(1) The user fee for each separate request for an advance pricing agreement is \$25,000 except as provided below in this section 5.14 of this revenue procedure.

(2) The user fee for each separate request for an advance pricing agreement from a taxpayer with gross income (as determined in section 5.14(7) of this revenue procedure) of at least \$100,000,000 and less than \$1,000,000,000 is \$15,000.

(3) The user fee for each separate request for an advance pricing agreement or renewal from a taxpayer with gross income (as determined in section 5.14(7) of this revenue procedure) of less than \$100,000,000 is \$5,000.

(4) Notwithstanding sections 5.14(1) and (2) of this revenue procedure, if it is

apparent on the face of the APA request that the transaction or transactions subject to the request involve tangible property and/or services the total annual value of which is not in excess of \$50,000,000, or payments for intangible property (such as royalties) not in excess of \$10,000,000 annually, the user fee for each separate request shall not be more than \$7,500.

(5) As explained in section 5.14(8) of this revenue procedure, an APA request that involves pricing issues in more than one foreign jurisdiction will normally be considered to constitute multiple bilateral requests. The user fee for the first such request shall be determined under sections 5.14(1), (2), (3), (4), or (6) of this revenue procedure as applicable. The user fee for each subsequent bilateral request, however, shall be not more than \$7,500, if such subsequent bilateral request (a) involves the same product line, goods, services, or intangibles, and the same issues, as involved in the first request; (b) covers the same taxable years as covered by the first request; and (c) proposes the same TPM as the first request.

(6) Notwithstanding sections 5.14(1) and (2) of this revenue procedure, the user fee for a request for renewal of an APA, when the material facts, critical assumptions and proposed TPM have not substantially changed, shall not be more than \$7,500.

(7) For purposes of sections 5.14(2) and 5.14(3) of this revenue procedure, gross income of a U.S. person (or non-U.S. person filing a federal income tax return with respect to all such person's income) is equal to "total income" as reported on the last federal income tax return for such person (as amended) filed for a full (12 month) taxable year ending before the date the request was filed, plus "cost of goods sold" as reported on that federal income tax return, plus any income not subject to tax under section 103 for that period; and gross income of all other persons shall be computed on an equivalent basis (that is, gross receipts or economic income plus cost of goods sold) for such person's most recently completed 12-month year. For purposes of sections 5.14(2) and (3) of this revenue procedure, gross income of a taxpayer shall include the gross income (determined pursuant to the preceding sentence) of all organizations, trades or businesses (whether or not incorporated, whether or not resident or organized in the U.S., and whether or not affiliated for tax

purposes) owned or controlled directly or indirectly by the same interests controlling the taxpayer.

(8) For purposes of this section 5.14 of this revenue procedure, a separate request constitutes a request for agreement on a transfer pricing methodology or methodologies comprising a closely related set of facts, such that review of the single set of facts will suffice to determine the suitability of all the methodologies involved in the separate request. For example, an APA submission involving the pricing of tangible products and the manufacturing services provided by a parent to a subsidiary with respect to those products usually would constitute one separate request. Similarly, a submission involving separate product lines manufactured in the same location by substantially similar processes usually would constitute one separate request. However, a submission involving product lines manufactured at

different locations, or by manufacturing processes that are not substantially similar, usually would constitute more than one request. The fact that an APA submission involves pricing issues related to more than one foreign jurisdiction, and thus requires analyses of separate factual or economic issues, as well as negotiations between the U.S. and more than one foreign competent authority, will normally result in treatment of the submission as more than one request. However, such separate requests may be eligible for reduced user fees under paragraph (5) of this section 5.14 of this revenue procedure.

(9) If an APA request is submitted or processed under paragraphs (2), (3), (4), (5), or (6) of this section 5.14 of this revenue procedure, and it later becomes apparent that the request does not meet the criteria for application of such paragraphs, the Service will request an additional user fee to conform the request to

the proper amount under this revenue procedure, as appropriate. The taxpayer may either pay such additional fee and continue the APA process or may withdraw the request. If the taxpayer withdraws the request, the Service may return the user fee to the taxpayer if the Service determines that such action would be appropriate under the circumstances. Except to the extent inconsistent with this revenue procedure, the principles of Rev. Proc. 96-1 (or its successor), including but not limited to section 14 thereof, shall apply to all questions related to user fees in connection with APAs. The APA Team Leader described in section 6.04 of this revenue procedure, prior to the initial meeting with the taxpayer on a filed APA, will make a determination regarding the correctness of the taxpayer's initial payment of user fees and request any necessary corrections.

(10) The chart below summarizes the foregoing user fee provisions:

<i>Taxpayer Gross Income</i>	<i>Original Request</i>	<i>Each Additional Multilateral Request<sup>1</sup></i>	<i>Routine Renewal<sup>2</sup></i>	<i>Small Transactions<sup>3</sup></i>
\$1 billion or more	\$25,000	\$7,500	\$7,500	\$7,500
Less than \$1 billion and greater than or equal to \$100 million	\$15,000	\$7,500	\$7,500	\$7,500
Less than \$100 million	\$5,000	\$5,000	\$5,000	\$5,000

<sup>1</sup>Only if such additional request involves the same issues, covers the same years, and proposes the same TPM as the first request; see section 5.14(5).

<sup>2</sup>Only if the material facts, critical assumptions, and proposed TPM have not substantially changed; see section 5.14(6).

<sup>3</sup>Regardless of taxpayer size, applies to transactions that involve (i) tangible property or services valued at no more than \$50 million annually, or (ii) payments for intangible property not in excess of \$10 million annually; see section 5.14(4).

## SEC. 6. PROCESSING OF APA REQUESTS

### .01 Initial Contact.

After receiving a request for an APA, a representative of the APA Program will contact the taxpayer to discuss any questions that the Service may have, or to ask for any additional information or documents believed necessary in order to initiate processing of the request. Additional information and documents must be supplied by the date specified by the Service, as extended for good cause.

### .02 Coordination with Other IRS Offices.

Upon receipt of a request, the APA Director will coordinate the evaluation of the request with other Service officials, such as the District Director, Regional Director of Appeals and District Counsel. In appropriate cases, such as where a request proposes an agreement between competent authorities, the APA

Director will coordinate with the U.S. competent authority.

### .03 Evaluation Process.

The Office of Associate Chief Counsel (International), in coordination with the appropriate District Director and other appropriate Service officials, will evaluate the taxpayer's APA request by discussing it with the taxpayer, verifying the data supplied, and requesting additional supporting data if necessary. The evaluation of the request will not constitute an examination or inspection of the taxpayer's books and records under § 7605(b) or any other provision of the Code.

### .04 Formation of the APA Team and Designation of Team Leader.

Within 45 days of receiving the taxpayer's APA request and any required user fees, the APA Director will appoint an APA Team to review the request. The APA Team normally will consist of at least one representative of the Office of

Associate Chief Counsel (International), as well as representatives of the appropriate District and District Counsel and, when appropriate, Appeals and the U.S. competent authority. The APA Director will appoint a Team Leader to oversee the APA Team's activities. Whenever reasonably feasible, if a prefiling conference has been held with the taxpayer, the Team Leader will be appointed from among the IRS representatives at the prefiling conference.

### .05 Negotiation and Drafting.

(1) The APA Team shall arrange with the taxpayer for an initial meeting to take place within 60 days of receiving the taxpayer's APA request and required user fee. In connection with the initial meeting, the APA Team and the taxpayer shall agree on a Case Plan and Schedule, to which everyone involved in the APA—both government and taxpayer personnel—will be expected to adhere. The Case Plan and Schedule should list each question raised by the initial Ser-

vice review of the APA request and should include a schedule for seeking to resolve each. The Case Plan and Schedule generally should reflect agreement between the APA Team and the taxpayer on the scope and nature of any additional information that will be required to resolve these questions in order to negotiate an APA. Firm dates should be agreed upon for case milestones, including: (a) submission of any necessary additional information by the taxpayer; (b) evaluation of the information by the government; (c) negotiation of a recommended agreement or competent authority negotiating position; and (d) presentation of the recommended agreement or competent authority negotiating position in writing to the Associate Chief Counsel (International).

(2) The time scheduled for completion of the case milestones will depend to some extent on the scope and complexity of the particular case. In the case of bilateral or multilateral requests, the Service will seek to work with the competent authority of the treaty partner or U.S. possession involved to minimize the time needed for competent authority resolution.

(3) To minimize delays caused by the need to coordinate different parties' schedules on short notice, the time and place of meetings required for any steps in the case should be determined in the Case Plan and Schedule.

(4) Failures by either the taxpayer or the APA Team to meet case milestones will be addressed promptly, normally in a meeting or telephone conference involving the APA Director, members of the Service APA Team, and the taxpayer. If a taxpayer has failed to meet one of the case milestones, the APA Director will assist the taxpayer in remedying any difficulties and will propose a course of action to ensure that milestones can be met. Substantial and consistent failure by the taxpayer to comply with the Case Plan and Schedule will be treated by the Service as a withdrawal of the APA request. In this event, if the taxpayer wishes to continue to pursue the APA, the taxpayer will be required to refile the request and pay a new user fee. If the Service fails to meet a case milestone, the APA Director, the Service APA Team, and supervisors in the District and Region, as appropriate, shall work together promptly to remedy the situation.

(5) In some circumstances, development of the case after agreement on the Case Plan and Schedule will suggest, to

both the APA Team and the taxpayer, that some milestone dates should be adjusted. To preserve flexibility, the APA Team and the taxpayer may amend the Case Plan and Schedule by mutual agreement, consistent with the need to maintain progress toward completion of the case as expeditiously as feasible.

(6) The function of the APA Team is to negotiate and recommend an agreement, and if applicable to recommend in consultation with the taxpayer a competent authority negotiating position, to the Associate Chief Counsel (International). Negotiations between taxpayers and the APA Team should be documented by means agreed between the parties. The District Director with responsibility for the taxpayer's returns shall be provided an opportunity to review and comment on the draft APA in the case of a unilateral APA, and the proposed initial US competent authority negotiating position in the case of a bilateral or multilateral APA. Signature of an APA by the Associate Chief Counsel (International) and the taxpayer will constitute agreement to the APA.

#### *.06 Withdrawing the Request.*

The taxpayer may withdraw the request at any time before the execution of the APA. Pursuant to the principles of Rev. Proc. 96-1 (or its successors), including but not limited to section 14.09 thereof, the user fee generally will not be refunded if the taxpayer withdraws its request for an APA.

#### *.07 Rejecting the Request.*

The Service may decline either to accept any APA request or to execute any APA, as requested, after a request has been accepted. If the Service declines to execute an APA after the request has been initiated, the Service normally will retain the user fee, although the fee may be returned if the Service determines that such action would be appropriate under the circumstances. If the Service proposes to reject an APA request, the taxpayer will be granted one conference of right. Other conferences may be granted at the Service's discretion.

## **SEC. 7. COMPETENT AUTHORITY CONSIDERATION**

.01 When any of the parties to a request are entitled to seek relief under the mutual agreement provision of a tax treaty between a foreign country and the United States, or under Rev. Proc. 89-8, the competent authorities may enter into

agreements concerning the APA. Requests similar to APA requests that are initiated through treaty partners or possession tax agencies and submitted to the U.S. competent authority will be processed under this revenue procedure and Rev. Proc. 96-13, as appropriate. In order to provide timely clarification of factual issues, minimize the potential for miscommunication, and assist in development of a multiple party agreement on a timely basis, the Service will generally initiate coordination among the taxpayer, the Service, and the competent authorities of treaty partners at the earliest possible stage of consideration of an APA request including, where possible, the prefiling stage. In this manner, the U.S. and foreign competent authorities can develop a joint understanding of the case which should facilitate negotiation and resolution of competent authority issues. The taxpayer should remain available throughout consideration of the request to assist the Service in reaching agreement with the foreign competent authority. Final agreement to the negotiated APA will be sought among the taxpayer, the Service, and the foreign competent authority. As a general matter, the taxpayer is encouraged to submit APA requests and related correspondence simultaneously to the Service and to foreign competent authorities involved in the requests.

.02 The purpose of the competent authority agreement is to avoid double taxation. If such an agreement is not acceptable to the taxpayer, the taxpayer may withdraw the APA request (see section 6.06 of this revenue procedure). If the competent authorities are unable to reach an agreement or the taxpayer does not accept the competent authority agreement, the Service will attempt to negotiate a unilateral APA with the taxpayer (see section 7.07 of this revenue procedure).

.03 The taxpayer must cooperate with the Service and the U.S. competent authority, pursuant to the standards set forth in Rev. Proc. 96-13 and any other applicable revenue procedures. Any information received or prepared by the Service, including information furnished by the taxpayer or the related foreign entity, will be subject to the restrictions on disclosure of tax related information provided by U.S. law and the applicable income tax convention.

.04 It may be necessary to request sensitive confidential data (such as trade secrets) which, if disclosed, could harm the taxpayer's competitive position. In

such cases, the parties will attempt to negotiate a mechanism to permit verification by a foreign competent authority without disclosing such information.

.05 When the competent authorities enter into an agreement covering an APA, the Service will, to the extent practicable, agree to a mutual exchange of information with the foreign competent authority concerning any subsequent modifications, cancellation, revocation, requests to renew, evaluation of annual reports, or examination of the taxpayer's compliance with the terms and conditions of the APA. Bilateral APAs may provide for simultaneous filing of the annual report with the Service and with the foreign tax administration.

.06 The U.S. competent authority will seek to persuade the foreign competent authority to use APA data only on terms similar to those described in sections 10.04 and 10.05 of this revenue procedure.

.07 To minimize taxpayer and governmental uncertainty and administrative cost, bilateral or multilateral APAs generally are preferable to unilateral APAs when competent authority procedures are available with respect to the foreign country or countries involved. In appropriate circumstances, however, the Service may execute an APA with a taxpayer without reaching a competent authority agreement. The taxpayer must show sufficient justification for a unilateral APA. When a unilateral APA request involves taxpayers operating in a country that is a treaty partner, the Service may notify the treaty partner of the filing of the request and provide the treaty partner with other information related to the request, under normal rules governing the exchange of information under income tax treaties. In some circumstances, procedures agreed upon with particular foreign competent authorities, or the requirements of proper relations with treaty partners, may preclude unilateral APAs.

.08 Section 7.05 of Rev. Proc. 96-13 provides in part that, if a taxpayer reaches a settlement on an issue with Counsel pursuant to a written agreement, the U.S. competent authority will endeavor only to obtain a correlative adjustment from a treaty country and will not undertake any actions that would otherwise change such agreement. The restrictions imposed under section 7.05 of Rev. Proc. 96-13 with respect to the discretion of the U.S. competent authority to negotiate correlative relief will not apply to a unilateral APA.

However, a unilateral APA may hinder the ability of the U.S. competent authority to reach a mutual agreement which will provide relief from double taxation, particularly when a contemporaneous bilateral or multilateral APA request would have been both effective and practical (within the meaning of § 1.901-2(e)(5)(i)) to obtain consistent treatment of the APA matters in a treaty country. (If there is a settlement with respect to taxable years prior to the first year subject to a unilateral APA based on rollback of such APA's TPM (as discussed in sections 3.06 and 8 of this revenue procedure), section 7.05 of Rev. Proc. 96-13 will apply to such rollback years in the regular manner.)

## **SEC. 8. ROLLBACKS**

.01 The taxpayer may indicate in its APA request, or at any time prior to the completion of APA negotiations, that it desires for the Service to consider using the TPM of the APA to resolve transfer pricing issues for years prior to the earliest year covered by the APA. In general, the principles set forth in section 3.06 of this revenue procedure will govern the Service's consideration of this request (the "rollback request"). When a rollback request is made after submission of the APA request, the taxpayer must provide the request to the APA Director at the address indicated in section 5.13(2) of this revenue procedure.

.02 If a rollback request is submitted in connection with a bilateral or multilateral APA, the rollback request will be deemed to constitute an application for accelerated competent authority consideration as described in section 7.06 of Rev. Proc. 96-13. The Office of Associate Chief Counsel (International), the District Director, and the U.S. competent authority will coordinate consideration of the request. The taxpayer's request must include all information required for accelerated competent authority consideration under Rev. Proc. 96-13, subject to the rules set forth therein. The taxpayer's request can pertain to any years prior to the first year to be covered under the requested APA, except that, in order to facilitate effective competent authority negotiations, the Service may require that, if accelerated competent authority consideration is to be granted, it will apply to one or more specified years. In exercising their regular discretion over the conduct of accelerated competent authority consid-

eration, Service officials shall seek to implement the policy concerning APA rollbacks stated in section 3.06 of this revenue procedure.

.03 If a rollback request is submitted in connection with a bilateral or multilateral APA and involves a taxable year that is under the jurisdiction of Appeals, the rollback request will be deemed to constitute an application for simultaneous Appeals and competent authority consideration as described in section 8 of Rev. Proc. 96-13 and will be subject to the rules set forth therein. The Office of Associate Chief Counsel (International), the Regional Director of Appeals, and the U.S. competent authority will coordinate consideration of the request. In exercising their regular discretion over the conduct of simultaneous Appeals and competent authority consideration, Service officials shall seek to implement the policy concerning APA rollbacks stated in section 3.06 of this revenue procedure.

.04 Subject to the policy set forth in section 3.06 of this revenue procedure, the determination whether a rollback shall be granted with respect to a taxable year is within the discretion of the Service official with jurisdiction over the taxable year subject to the rollback — typically, either the District Director, the Regional Director of Appeals, the Assistant Commissioner (International) (for matters subject to competent authority negotiations), or the District Counsel (for matters under litigation). Except to the extent inconsistent with this revenue procedure, normal procedures for resolving tax issues, including but not limited to closing agreements and other settlement documents and Forms 870 and 870AD, shall be used to implement APA rollbacks.

## **SEC. 9. INDEPENDENT EXPERT OPINION**

.01 The taxpayer may be required to provide at its own expense an independent expert, acceptable to both the taxpayer and the Service (and, in a bilateral or multilateral proceeding, the foreign competent authority or authorities) to review and opine on the proposed TPM. The taxpayer may suggest in its APA request whether an independent expert is needed, or the Service (or, if applicable, the foreign competent authority) may determine that an independent expert is needed for the evaluation of the taxpayer's request.

.02 For purposes of this revenue procedure, an expert is any person who, by agreement between the taxpayer and the Service (and, if involved, the foreign competent authority), possesses expert education or experience in a field of study, industry or geographic area that is relevant to the subject matter of the taxpayer's APA request.

.03 For purposes of this revenue procedure, an expert is independent if the expert has not participated to any material extent in the development of the request and has not in the past assisted either the Service or the taxpayer in matters substantially related to the request.

.04 If an expert is necessary, the expert will critically analyze the taxpayer's proposed TPM and render a written opinion. The opinion will address any questions and concerns raised by the Service or the taxpayer (and, if involved, the foreign competent authority); conclude whether the proposed TPM or a revised version fairly supports and produces an arm's length approach; and provide the basis for this opinion. However, the expert's opinion will not be binding on any of the parties. The taxpayer and the Service (and, if involved, the foreign competent authority) will have access to the expert's report and supporting documentation. The Service and the taxpayer shall both be kept fully informed of any communications between the other party and the independent expert, and receive copies of all information provided by such other party to the expert.

.05 If an independent expert is necessary, the taxpayer must provide a waiver under § 6103(c) to the Service for purposes of discussing returns or return information with the expert. The taxpayer must also ensure that the expert is familiar with the provisions of this revenue procedure and that any opinion rendered by the expert complies with those provisions.

## **SEC. 10. LEGAL EFFECT**

.01 An APA is a binding agreement between the taxpayer and the Service.

.02 If the taxpayer complies with the terms and conditions of the APA, the Service will regard the results of applying the TPM as satisfying the arm's length standard, and, except as provided in this revenue procedure, will not contest the application of the TPM to the subject matter of the APA. The taxpayer remains otherwise subject to U.S. in-

come tax laws and is entitled to any benefits otherwise available under U.S. income tax laws.

.03 Except to the extent provided by regulations, an APA shall have no legal effect except with respect to the taxpayer, taxable years and transactions to which the APA specifically relates.

.04 Except as otherwise provided by written agreement, regulations, or this revenue procedure, neither the APA nor any non-factual oral or written representations or submissions made in conjunction therewith may be introduced by the taxpayer or the Service as evidence in any judicial or administrative proceeding in relation to any tax year, transaction, or person not covered by the APA. However, taxpayers should recognize that the preceding sentence does not preclude rollback of the APA TPM, nor the discovery, use, or admissibility of non-factual material otherwise discoverable or obtained other than in the APA process merely because the same or similar material was also included in the APA or representations or submissions made in connection with the APA or presented during the APA process.

.05 Except as otherwise provided by written agreement or regulations, if an APA is not executed or if an executed APA is later revoked or canceled, neither the APA or the proposal to use a particular TPM, nor any non-factual oral or written representations or submissions made during the APA process, may be introduced by the taxpayer or the Service as an admission by the other party in any administrative or judicial proceeding for the taxable years for which the APA was requested or executed. However, taxpayers should recognize that the preceding sentence does not preclude the discovery, use, or admissibility of non-factual material otherwise discoverable or obtained other than in the APA process merely because the same or similar material was also included in the APA or representations or submissions made in connection with the APA or presented during the APA process.

## **SEC. 11. ADMINISTERING THE APA**

.01 Annual Reports.

(1) For each taxable year covered by the APA, the taxpayer must file a timely and complete annual report describing the taxpayer's actual operations for the year and demonstrating good faith compliance with the terms and conditions of the APA. The report must include all

items called for by the APA, must describe any pending or contemplated requests to renew, modify or cancel the APA, and must describe any compensating adjustments made pursuant to section 11.02 of this revenue procedure.

(2) The taxpayer shall file an original and four copies of each report, no later than 90 days after the time prescribed by law (including extensions) for filing the taxpayer's Federal income tax return for the year covered by the report, or by such other date as is specified in the APA, with the APA Director at the address indicated in section 5.13(2) of this revenue procedure. The taxpayer may also be required to file a copy of the annual report with the treaty partner or partners with respect to a bilateral or multilateral APA. The report must comply with sections 5.11 and 5.12 of this revenue procedure.

(3) The Service will contact the taxpayer regarding an annual report only if it is necessary to clarify or complete the information contained in the annual report. Additional information must be supplied by the date specified by the Service, as extended for good cause. Any contact between the taxpayer and the Service for the purpose of clarifying the information contained in the annual report will not constitute an examination, or the commencement of any examination, of the taxpayer for purposes of § 7605(b) or any other provision of the Code.

### *.02 Compensating Adjustments.*

(1) If the results of applying the TPM differ from those contemplated by the APA, the APA may permit the taxpayer and its related foreign entity to make a compensating adjustment. For example, if the APA provides for a range of expected operating results, and the actual operating results are outside that range (but within any limits specified in the APA), the APA may permit the parties to make a compensating adjustment to bring the results to an agreed upon point within the described range. Such compensating adjustment should be reflected on the taxpayer's timely filed (with extensions) federal income tax return; if the taxpayer is not able to make such adjustments in its original return, the required compensating adjustment must in any event be made and paid within 90 days of the date prescribed for filing such return (with extensions), and reflected on an amended return filed within such period and the timely filed annual report required by

section 11.01 of this revenue procedure. To the extent the APA covers years for which federal income tax returns were filed before the APA was executed, the taxpayer must make any required compensating adjustments in an amended return or returns filed within, and pay such compensating adjustments within, 90 days of entering into such APA.

(2) The taxable income and earnings and profits of both the taxpayer and its related foreign entity for a taxable year covered by an APA will include all income generated as a result of the TPM as increased or decreased by any compensating adjustment for that year. A compensating adjustment will be deemed to have been made as of the last day of the taxable year to which it applies. For all U.S. income tax purposes, after taking into consideration any compensating adjustment, the adjusted figures will be used. Provided that the taxpayer has made a good faith effort to comply with the TPM in such manner as to avoid the need for compensating adjustments, and payments of compensating adjustments are made within the time specified in section 11.02(1) of this revenue procedure, (i) the compensating adjustment will not be taken into account in the computation of any required estimated tax installments for such year, (ii) the taxpayer will not be subject to the failure to pay penalties under § § 6651 and 6655 by reason of the compensating adjustment, and (iii) no interest will accrue on any receivable or payable established to settle such compensating adjustment. A compensating adjustment may, however, be taken into account for purposes of redetermining any foreign tax credits in accordance with § 901. Subject, where applicable, to agreement between competent authorities, the taxpayer or the related foreign entity may employ any method that accords with section 4 of Rev. Proc. 65-17, 1965-1 C.B. 833 (as modified), or any successor, for paying compensating adjustments, including checks, wire transfers, offsets through intercompany accounts, or recharacterized dividends. All actions taken with respect to such compensating adjustments must be documented and disclosed in the annual report.

(3) A “subsequent compensating adjustment” arises when the taxpayer or the Service makes normal and routine adjustments (for example, correction of computational errors) to the determination and computation of the taxpayer’s TPM during the taxable year or years

under the APA, as determined in accordance with the TPM. The generally applicable Code rules relating to assessment, collection and refund of tax and the principles of Rev. Proc. 65-17 (as modified), or any successor, apply to any resulting change in Federal income tax liability because of a subsequent compensating adjustment.

(4) When an agreement between competent authorities is sought as part of the APA request, the principles stated in this section will be discussed with the appropriate foreign competent authority to seek to ensure substantially identical treatment of the taxpayer’s related foreign entity.

(5) The Service and the taxpayer may agree in an APA to modify the foregoing provisions relating to compensating adjustments.

#### *.03 Examination.*

(1) If the District Director examines a tax year covered by an APA, the examination of matters covered by the APA will be limited to the factors in section 11.03(2) of this revenue procedure. The District Director will not re-evaluate the TPM itself.

(2) The District Director may require the taxpayer to establish that (a) the taxpayer has complied in good faith with the terms and conditions of the APA; (b) the material representations in the APA and the annual reports remain valid and accurately describe the taxpayer’s operations; (c) the supporting data and computations used in applying the TPM were correct in all material respects; (d) the critical assumptions underlying the APA remain valid; and (e) the taxpayer has consistently applied the TPM and met the critical assumptions.

(3) If the District Director determines that any requirement in section 11.03(2) of this revenue procedure has not been satisfied, the issue will be submitted to the Associate Chief Counsel (International) for resolution. The Associate Chief Counsel (International) will decide either to continue to apply the APA; revoke the APA (see section 11.05 of this revenue procedure); cancel the APA (see section 11.06); or revise the APA (see section 11.07).

(4) The District Director may, without securing the consent of the Associate Chief Counsel (International), propose normal and routine audit adjustments, which are not related to interpretation of the TPM, to the determination and computation of the operating results of the taxpayer’s TPM during

the taxable year or years under examination (as determined in accordance with the TPM) without affecting the continued validity or applicability of the APA. If the taxpayer agrees with the proposed adjustments, they will be given effect through payment of additional compensating adjustments. If the taxpayer does not agree, the taxpayer may contest the proposed adjustments through normal administrative and judicial proceedings. Any changes to compensating adjustments previously made by the taxpayer, in respect of the taxable year or years under examination, that arise as a result of the audit adjustments made by the District Director will be made within ninety days of a final determination of the audit adjustments. Any compensating adjustments and changes to compensating adjustments described in this section 11.03(4) will be treated as subsequent compensating adjustments for purposes of section 11.02 of this revenue procedure.

#### *.04 Record Retention.*

(1) The taxpayer must maintain books and records sufficient to enable the Service to examine the taxpayer’s compliance with the APA. The APA may specify the books and records that are necessary to fulfill this objective and may specify that compliance with the applicable provisions of the APA will constitute compliance with the provisions of § § 6038A and 6038C with respect to transactions covered by the APA.

(2) Upon examination, information requested by the Service must be made available to the Service upon written request within 30 days, and translations must be provided within 30 days of a request for translation of specific documents, both as extended for good cause. The fact that a foreign jurisdiction may impose a penalty upon the taxpayer or other person for disclosing the material will not constitute reasonable cause for noncompliance with the Service’s request.

#### *.05 Revoking the APA.*

(1) The Associate Chief Counsel (International) may revoke the APA if there has been fraud or malfeasance (as defined in § 7121) or disregard (as defined in § 6662(b)(1) and (c)) by the taxpayer in connection with the APA, including but not limited to fraud, malfeasance or disregard involving any of the following: the material facts set forth in the request or subsequent submissions (including the annual report),

or lack of good faith compliance with the terms and conditions of the APA. Material facts are those that, if known by the Service, could reasonably have resulted in a significantly different APA (or no APA at all). The Associate Chief Counsel (International) is not required to revoke the APA and may require the taxpayer to continue to abide by it.

(2) If the APA is revoked for any reason, the revocation may be retroactive to the first day of the first taxable year for which the APA was effective.

(3) If the APA is revoked for any reason, the Service may determine deficiencies in income taxes and additions thereto in accordance with applicable provisions of the Code. In addition, (a) relief under Rev. Proc. 65-17 may be denied; (b) if the Service determines that the taxpayer may avail itself of the relief under Rev. Proc. 65-17, interest on any account receivable established under section 4.03 of that revenue procedure may be determined not to be subject to mutual agreement or correlative relief; (c) the revocation of the APA may be treated as an "egregious case" under Rev. Rul. 80-231, 1980-2 C.B. 219, with the result that the taxpayer may be denied a foreign tax credit in accordance with that ruling; and (d) the unilateral relief provisions of Rev. Proc. 96-14, 1996-3 I.R.B. 41, may not be available. When an APA has been the subject of negotiation with a foreign competent authority, the Service will seek to coordinate any action concerning revocation of the APA with the foreign competent authority.

#### *.06 Cancelling the APA.*

(1) The Associate Chief Counsel (International) may cancel the APA if the District Director, with the concurrence of the Associate Chief Counsel (International), determines that there was a misrepresentation, mistake as to a material fact, failure to state a material fact, or lack of good faith compliance with the terms and conditions of the APA (but not fraud, malfeasance or disregard) in connection with the request for the APA, or in any subsequent submissions (including the annual report). Material facts are those that, if known by the Service, would have resulted in a significantly different APA (or no APA at all).

(2) The Associate Chief Counsel (International) may waive cancellation if the taxpayer can show good faith and reasonable cause to the satisfaction of the Associate Chief Counsel (International),

and if the taxpayer agrees to make any adjustment proposed by the Associate Chief Counsel (International) to correct for the misrepresentation, mistake as to a material fact, failure to state a material fact, or noncompliance. The Associate Chief Counsel (International) is not required to cancel the APA and may require the taxpayer to continue to abide by it.

(3) If the APA is cancelled under section 11.06(1) of this revenue procedure, the cancellation will be effective as of the beginning of the year in respect of which the misrepresentation, mistake as to a material fact, failure to state a material fact, or noncompliance occurs. If, however, the cancellation results from a change in law or treaty, as provided in section 11.07(1) of this revenue procedure, the cancellation normally will be effective as of the effective date of the change in law or treaty.

(4) If the APA is cancelled for any reason, then as of the effective date of the cancellation the APA will cease to be of any further force and effect with respect to the taxpayer and the Service for U.S. income tax purposes. After the effective date of the cancellation, the tax treatment of the transactions covered by the APA will be subject to all U.S. tax rules (including treaty rules) that otherwise apply. When an APA has been the subject of negotiation with a foreign competent authority, the Service will seek to coordinate any action concerning cancellation of the APA with the foreign competent authority.

#### *.07 Revising the APA.*

(1) If a critical assumption has not been met, or there has been a change in law or treaty as described in section 11.09 of this revenue procedure, the APA may be revised by agreement of the parties. If such agreement cannot be achieved, the APA will be cancelled.

(2) If a critical assumption has not been met, the taxpayer must notify the APA Director, including with the notification supporting documentation and a statement whether a revision appears appropriate. The taxpayer shall file the notification at any time prior to the last date permitted for filing the annual report for the year in which the failure to meet a critical assumption occurred. In providing the notification, the taxpayer must follow the procedures contained in sections 5.11 through 5.13 of this revenue procedure.

(3) If a critical assumption has not been met, the taxpayer and the Service

will discuss how to revise the APA. If the taxpayer and the Service cannot execute a revised agreement, the APA will be cancelled as of the beginning of the taxable year in which the failure to meet a critical assumption occurred. If the Service and the taxpayer can agree on a revised APA, the effective date of the revised APA will be stated in the new APA.

(4) If the Service and the taxpayer agree to revise an APA that has been subject to competent authority agreement, the revised APA will be submitted to the U.S. competent authority in order to seek the consent of the foreign competent authority to the revised APA. If the foreign competent authority refuses to accept the revised APA, or if the competent authorities cannot agree on a revised APA agreeable to all parties, the taxpayer and the Service may: (a) agree to continue to apply the existing APA, (b) agree to apply the revised APA or agree to further revision thereof, or (c) agree to cancel the APA as of an agreed date. If such agreement cannot be achieved, the APA will be cancelled pursuant to section 11.07(1) of this revenue procedure.

#### *.08 Renewing the APA.*

A taxpayer may request renewal by following the form and procedures that apply to initial APA requests. The taxpayer must submit the user fee as required under section 5.14 of this revenue procedure, and must provide appropriate supporting documentation with the request. Unless otherwise agreed by the Service, the taxpayer should file the request to renew no later than nine months before the expiration of the initial term or any renewal term.

#### *.09 Change in Law or Treaty.*

If there is a change in any applicable U.S. law or treaty that changes the Federal income tax treatment of any matter covered by the APA, the new law or treaty provision supersedes the APA to the extent the APA is inconsistent therewith. The parties may revise the APA under section 11.07 of this revenue procedure to reconcile it with the new law or treaty provision.

## **SEC. 12. DISCLOSURE**

The information received or generated by the Service during the APA process relates directly to the existence and amount of tax liability of the taxpayer under the Internal Revenue Code. Therefore, the APA and such information are

subject to the confidentiality requirements of § 6103. In addition, the APA and such information may be confidential pursuant to the provisions of income tax conventions, or other rules applicable to communications with foreign governments.

### **SEC. 13. EFFECT ON OTHER DOCUMENTS**

Rev. Proc. 91-22, 1991-1 C.B. 526, is superseded. Rev. Proc. 96-13 is modified. Rev. Proc. 96-1 is modified.

### **SEC. 14. EFFECTIVE DATE**

This revenue procedure will apply to all APA requests, including requests for renewal, received on or after December 31, 1996, except that (i) section 7.08 shall apply to all such APA requests and APA requests that have been filed on or after the effective date of Rev. Proc. 96-13, (ii) section 8.02 and/or section 8.03 may at the taxpayer's request apply to an APA request filed prior to such date and with respect to which an APA has not been concluded, and (iii) any provision of section 5.14 may apply to a request filed prior to such date and with respect to which an APA has not been concluded, if the taxpayer demonstrates that such application is necessary to avoid unfairness to the taxpayer.

### **SEC. 15. PAPERWORK REDUCTION ACT**

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1503.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collections of information in this revenue procedure are in sections 4.02, 5, 8.02, 9, 11.01, 11.02(1), 11.04, 11.07, and 11.08. This information is required to provide the Service sufficient information to evaluate and process the APA request or request for renewal of an existing APA, or to determine whether the taxpayer is in compliance with the terms and conditions of an APA. This information will be used to evaluate the proposed TPM, and the taxpayer's compliance with the terms and conditions of any APA to which it is a party. The collections of information are required to obtain an APA. The likely respondents are business or other for-profit institutions.

The estimated total annual reporting and/or recordkeeping burden is 5,250 hours.

The estimated average burden for an APA prefilling conference is 10 hours; the estimated average burden for an APA request is 50 hours; and the estimated average burden for preparation of an annual report by a party to an APA is 15 hours. The estimated number of respondents and/or recordkeepers is 160.

The estimated annual frequency of responses is one request or report per year per applicant or party to an APA, except that a taxpayer requesting an APA may also request a prefilling conference.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally tax returns and tax return information are confidential, as required by § 6103.

### **DRAFTING INFORMATION**

The principal authors of this document are various members of the Advance Pricing Agreement Program Office of the Office of the Associate Chief Counsel (International). For further information regarding this revenue procedure contact Ms. Carolyn Fanaroff or Ms. Sherri New at (202) 874-4360 (not a toll-free number).

## Part IV. Items of General Interest

### Notice of Proposed Rulemaking and Notice of Public Hearing

#### Definition of Reasonable Basis

##### IA-42-95

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the accuracy-related penalty regulations under chapter 1 of the Internal Revenue Code. These amendments are necessary to define reasonable basis and provide corrections to final regulations relating to the accuracy-related penalty under chapter 1 of the Internal Revenue Code. The proposed regulations would affect all taxpayers who file tax returns. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronically generated comments must be received by February 10, 1997. Outlines of topics to be discussed at the public hearing scheduled for February 25, 1997, must be received by February 4, 1997.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (IA-42-95), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (IA-42-95), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC., or electronically, via the IRS Internet site at: [http://www.irs.ustreas.gov/prod/tax\\_regs/comments.html](http://www.irs.ustreas.gov/prod/tax_regs/comments.html). The public hearing will be held in room 3313, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Nancy Romano, 202-622-6232 (not a toll-free number). Concerning submissions and the public hearing, Michael L. Slaughter, 202-622-7190 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

On September 1, 1995, the IRS issued Treasury Decision 8617 (60 FR 45663),

setting forth final regulations relating to the accuracy-related penalty under chapter 1 of the Internal Revenue Code. These regulations provided guidance concerning the reasonable basis standard for purposes of the negligence penalty (section 6662(b)(1)) and for purposes of the disclosure exception to the penalties for disregarding rules or regulations (section 6662(b)(1)) and substantial understatement of income tax (section 6662(b)(2)). In the preamble to the final regulations, Treasury requested comments and suggestions on providing further guidance on the reasonable basis standard. Treasury has not received any additional comment letters in response to this request for comments. Previous comments that were addressed in the preamble to the final regulations published on September 1, 1995 have been considered in drafting these proposed regulations.

#### Explanation of Provision

Under the final regulations currently in place, the reasonable basis standard is "significantly higher than the not frivolous standard applicable to preparers under 6694." These proposed regulations provide that the reasonable basis standard is not satisfied by a return position that is merely arguable or that is merely a colorable claim. A return position will generally satisfy the reasonable basis standard if it is reasonably based on one or more of the authorities set forth in § 1.6662-4(d)(3)(iii) (taking into account the relevance and persuasiveness of the authorities, and subsequent developments). Additionally, the proposed regulations clarify that if a return position does not satisfy the reasonable basis standard, the reasonable cause and good faith exception as set forth in § 1.6664-4 may still provide relief from the penalty.

#### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not

required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely (in the manner described under the ADDRESSES caption) to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for February 25, 1997, at 10 a.m., in room 3313, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written or electronically generated comments (in the manner described under the ADDRESSES caption) by February 10, 1997, and submit an outline of the topics to be discussed and the time devoted to each topic by February 4, 1997.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

#### Drafting Information

The principal author of these regulations is Robert J. Fitzpatrick, formerly of the Office of the Assistant Chief Counsel (Income Tax & Accounting), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

\* \* \* \* \*

#### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 2. Section 1.6662-0 is amended by:

- 1. Revising the entry for § 1.6662-2.
2. Removing the entries for §§ 1.6662-3(b)(3)(i) and (ii).
3. Revising the entry for § 1.6662-7(d). 4
. Removing the entries for §§ 1.6662-7(d)(1) and (2).

The amendments and revisions read as follows:

§ 1.6662-0 Table of contents.

\* \* \* \* \*

§ 1.6662-2 Accuracy-related penalty.

\* \* \* \* \*

§ 1.6662-7 Omnibus Budget Reconciliation Act of 1993 changes to the accuracy-related penalty.

\* \* \* \* \*

(d) Reasonable basis.

\* \* \* \* \*

Par. 3. Section § 1.6662-3 is amended by:

- 1. Revising the third sentence in paragraph (b)(1) introductory text.
2. Revising paragraph (b)(3).

The revisions read as follows:

§ 1.6662-3 Negligence or disregard of rules or regulations.

\* \* \* \* \*

(b)\* \* \*(1) \* \* \* A return position that has a reasonable basis as defined in paragraph (b)(3) of this section is not attributable to negligence. \* \* \*

\* \* \* \* \*

(3) Reasonable basis. Reasonable basis is a relatively high standard of tax reporting, that is, significantly higher than not frivolous or not patently improper. The reasonable basis standard is not satisfied by a return position that is merely arguable or that is merely a colorable claim. If a return position is reasonably based on one or more of the authorities set forth in § 1.6662-4(d)(3)(iii) (taking into account the relevance and persuasiveness of the authorities, and subsequent developments), the return position will generally satisfy the reasonable basis standard even though it may not satisfy the substantial

authority standard as defined in § 1.6662-4(d)(2). In addition, the reasonable cause and good faith exception, as set forth in § 1.6664-4, may provide relief from the penalty, even if a return position does not satisfy the reasonable basis standard.

\* \* \* \* \*

Par. 4. In § 1.6662-4, the second sentence in paragraph (d)(2) is revised to read as follows:

§ 1.6662-4 Substantial understatement of income tax.

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \* The substantial authority standard is less stringent than the more likely than not standard (the standard that is met when there is a greater than 50-percent likelihood of the position being upheld), but more stringent than the reasonable basis standard as defined in § 1.6662-3(b)(3). \* \* \*

\* \* \* \* \*

Par. 5. In 1.6662-7, paragraph (d) is revised to read as follows:

§ 1.6662-7 Omnibus Budget Reconciliation Act of 1993 changes to the accuracy-related penalty.

\* \* \* \* \*

(d) Reasonable basis. For purposes of §§ 1.6662-3(c) and 1.6662-4(e) and (f) (relating to methods of making adequate disclosure), the provisions of § 1.6662-3(b)(3) apply in determining whether a return position has a reasonable basis.

Par. 6. Section 1.6664-0 is amended by:

- 1. Revising the entry for paragraph (c)(2) of § 1.6664-4.
2. Removing the entries for paragraphs (c)(1)(iii), (c)(2)(i), and (c)(2)(ii) of § 1.6664-4.

The revision reads as follows:

§ 1.6664-0 Table of contents.

\* \* \* \* \*

§ 1.6664-4 Reasonable cause and good faith exception to section 6662 penalties.

\* \* \* \* \*

(c) \* \* \*

(2) Advice defined.

\* \* \* \* \*

Margaret Milner Richardson,
Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on November 8, 1996, 8:45 a.m., and published in the issue of the Federal Register for November 12, 1996, 61 F.R. 58020)

Section 482 — Allocations Between Related Parties

Announcement 96-124

In Announcement 95-49, 1995-24 I.R.B. 13, the Service provided, for public comment, a draft revision of Rev. Proc. 91-22, 1991-1 C.B. 526, which sets forth procedural rules for the Advance Pricing Agreement ("APA") Program. The Service received several comments on Announcement 95-49 and is issuing revised procedural rules in Rev. Proc. 96-53 at page 9, this Bulletin.

The most significant changes to the draft revenue procedure in Announcement 95-49 are as follows (with section references to Rev. Proc. 96-53):

Sec. 3.06

Often, APA negotiations are used to find a basis for resolving transfer pricing issues in years prior to the initial year of the APA's term ("rollback" of the APA). In response to comments, the new revenue procedure indicates that the taxpayer has the option whether or not to request a rollback of the APA methodology. Taxpayers should, of course, recognize that, even absent formal negotiations for a rollback, the Service may determine under regularly applicable procedures that the methodology used to resolve an APA request also is appropriate for prior taxable years.

Sec. 3.07

In response to questions that sometimes arise in APA negotiations, section 3.07 clarifies that the initiation of an APA request does not put into abeyance pending examinations or other proceedings. Section 3.07 also instructs Service personnel, wherever feasible, to coordinate the consideration of APA requests with pending related proceedings, so as to enhance the efficiency of Service operations and reduce overall taxpayer compliance burdens.

### **Sec. 3.09**

Section 3.09 emphasizes the Service's willingness to adapt APA procedures to the needs of particular taxpayers and situations, and especially to the special needs of small business taxpayers.

### **Sec. 5.09**

The draft revenue procedure in Announcement 95-49 provided that an APA request would be considered filed on the date the user fee was paid, provided that a substantially complete request is filed within 120 days thereafter. In response to comments, section 5.09 provides that the Service may extend the 120-day period based on a showing of substantial unforeseen circumstances.

### **Sec. 5.13**

New mailing and delivery instructions are provided to reflect current addresses and Service procedures for handling user fees.

### **Sec. 5.14**

Section 5.14 makes technical corrections to the user fee rules for APAs contained in Rev. Proc. 96-1, 1996-1 I.R.B. 8. In addition, section 5.14 provides guidelines for determining whether an APA submission consists of a single or multiple requests for purposes of the user fee rules. The revenue procedure also provides special lower fees for certain specified categories of requests, including certain smaller transactions, routine renewals where material facts and issues have not changed, and multilateral requests where the facts and issues are essentially similar with respect to each foreign jurisdiction. As a matter of clarification, the provision of the reduced fee for certain multilateral APA requests should not be read to imply that user fees are charged with respect to a taxpayer's request for competent authority relief; rather, the fees are charged with respect to the Service's analysis and consideration of the APA requests.

### **Sec. 6.04**

In response to comments, section 6.04 provides that, wherever reasonably feasible, if a prefiling conference has been held with the taxpayer, the Service's Team Leader for considering the request will be appointed from among the IRS representatives at the prefiling conference.

### **Sec. 6.05(4)**

In response to comments, the revenue procedure modifies and clarifies procedures to be followed when the Service or taxpayer fail to conform to a Case Plan and Schedule.

### **Sec. 6.05(5)**

In response to comments, section 6.05(5) enables the Service and taxpayer APA Teams to modify the Case Plan and Schedule by mutual agreement, without prior approval of the APA Director, provided that progress is maintained toward completion of the case as expeditiously as is feasible.

### **Sec. 6.05(6)**

In response to comments, section 6.05(6) gives the Service and taxpayer APA Teams additional flexibility concerning how to document the progress of pending negotiations.

### **Secs. 6.06 & 6.07**

These portions of the revenue procedure discuss the circumstances under which user fees will be returned if the taxpayer withdraws, or the Service rejects, an APA request. In general, user fees will not be returned if a request is withdrawn or rejected; however, the user fee may be returned in the case of a rejection if the Service determines return of the fee to be appropriate.

### **Sec. 7.01**

Section 7.01 contains changes designed to reflect the increasing coordination between treaty partners in the evaluation of bilateral and multilateral APA requests, including consultation at the earliest stages of APA proceedings.

### **Sec. 7.08**

Section 7.05 of Rev. Proc. 96-13, 1996-3 I.R.B. 31, provides in part that, if a taxpayer reaches a settlement on an issue with Counsel pursuant to a written agreement, the U.S. competent authority will endeavor only to obtain a correlative adjustment from a treaty country and will not undertake any actions that would otherwise change such agreements. This provision has caused taxpayers to ask whether the position of Rev. Proc. 91-22, to the effect that by obtaining a unilateral APA a taxpayer does not limit its access to treaty relief,

remains in effect. Section 7.08 of the new revenue procedure clarifies the interaction between a unilateral APA and the taxpayer's attempts to obtain treaty relief through the competent authority process. In general, the U.S. competent authority will endeavor to reach agreement with a treaty partner to provide relief from double taxation. However, a unilateral APA may hinder the ability of the U.S. competent authority to reach a mutual agreement which will provide relief from double taxation, particularly when a contemporaneous bilateral or multilateral APA request would have been both effective and practical (within the meaning of § 1.901-2(e)(5)(i)) to obtain consistent treatment of the APA matters in a treaty country.

### **Sec. 8**

Section 8 of Rev. Proc. 96-53 provides new rules clarifying the treatment of APA rollback requests, and coordinating APA rollback procedures with procedures for accelerated competent authority resolution and simultaneous Appeals and competent authority consideration. Such coordination would be necessary in the case of "gap years," i.e., tax years for which returns have been filed that are not covered by the APA request but that are not yet under audit.

### **Sec. 11.02**

Rev. Proc. 96-53, like Rev. Proc. 91-22, provides that in certain circumstances taxpayers may make compensating adjustments, after the end of a taxable year, in order to achieve compliance with an APA. In general, the obligation to make such compensating adjustments does not affect the taxpayer's estimated tax liability, and does not result in other specified consequences, for the taxable year. Section 11.02 of the revenue procedure clarifies that this favorable treatment is available only when the taxpayer has made a good-faith effort to comply with the terms of the APA. In addition, the revenue procedure provides that the special treatment of compensating adjustments applies to compensating adjustments directly related to the taxpayer's application of the TPM, but not to "subsequent compensating adjustments," which are subject to normal procedures for assessment, collection and refund.

**Sec. 11.08**

Commentators have asked for clarification concerning the type of review the Service will apply to requests for renewal of APAs. In general, the Service will seek to minimize the amount of new information and analysis that taxpayers need to supply in connection

with renewal requests, and to the extent consistent with applicable law and policies, will seek to maintain continuity between original APAs and renewals.

The Service desires to receive comments at any time concerning how APA procedures might be revised in the future to enhance the value of the APA

Program to taxpayers and to the Service. Such comments should be sent to:  
Advance Pricing Agreement Program  
Internal Revenue Service  
Attn: CC:INTL  
Room 3501, 1111 Constitution Ave.,  
N.W.  
Washington, DC 20024  

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## Definition of Terms

*Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:*

*Amplified* describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

*Clarified* is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

*Distinguished* describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

*Modified* is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior ruling

is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

*Obsoleted* describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in law or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

*Revoked* describes situations where the position in the previously published ruling is not correct and the correct position is being stated in the new ruling.

*Superseded* describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does

more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case the previously published ruling is first modified and then, as modified, is superseded.

*Supplemented* is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

*Suspended* is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

## Abbreviations

*The following abbreviations in current use and formerly used will appear in material published in the Bulletin.*

A—Individual.

Acq.—Acquiescence.

B—Individual.

BE—Beneficiary.

BK—Bank.

B.T.A.—Board of Tax Appeals.

C.—Individual.

C.B.—Cumulative Bulletin.

CFR—Code of Federal Regulations.

CI—City.

COOP—Cooperative.

Ct.D.—Court Decision.

CY—County.

D—Decedent.

DC—Dummy Corporation.

DE—Donee.

Del. Order—Delegation Order.

DISC—Domestic International Sales Corporation.

DR—Donor.

E—Estate.

EE—Employee.

E.O.—Executive Order.

ER—Employer.

ERISA—Employee Retirement Income Security Act.

EX—Executor.

F—Fiduciary.

FC—Foreign Country.

FICA—Federal Insurance Contribution Act.

FISC—Foreign International Sales Company.

FPH—Foreign Personal Holding Company.

FR—Federal Register.

FUTA—Federal Unemployment Tax Act.

FX—Foreign Corporation.

G.C.M.—Chief Counsel's Memorandum.

GE—Grantee.

GP—General Partner.

GR—Grantor.

IC—Insurance Company.

I.R.B.—Internal Revenue Bulletin.

LE—Lessee.

LP—Limited Partner.

LR—Lessor.

M—Minor.

Nonacq.—Nonacquiescence.

O—Organization.

P—Parent Corporation.

PHC—Personal Holding Company.

PO—Possession of the U.S.

PR—Partner.

PRS—Partnership.

PTE—Prohibited Transaction Exemption.

Pub. L.—Public Law.

REIT—Real Estate Investment Trust.

Rev. Proc.—Revenue Procedure.

Rev. Rul.—Revenue Ruling.

S—Subsidiary.

S.P.R.—Statements of Procedural Rules.

Stat.—Statutes at Large.

T—Target Corporation.

T.C.—Tax Court.

T.D.—Treasury Decision.

TFE—Transferee.

TFR—Transferor.

T.I.R.—Technical Information Release.

TP—Taxpayer.

TR—Trust.

TT—Trustee.

U.S.C.—United States Code.

X—Corporation.

Y—Corporation.

Z—Corporation.

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#### Key to Abbreviations:

RR	Revenue Ruling
RP	Revenue Procedure
TD	Treasury Decision
CD	Court Decision
PL	Public Law
EO	Executive Order
DO	Delegation Order
TDO	Treasury Department Order
TC	Tax Convention
SPR	Statement of Procedural Rules
PTE	Prohibited Transaction Exemption

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