

## LB&I Process Unit Knowledge Base – International

Library Level	Number	Title
Shelf		Business Inbound
Book	6	Income Shifting (Inbound)
Chapter	9	Pre-Audit and Post Issue Analysis
Section	3	Competent Authority

<b>Unit Name</b>	Competent Authority Revenue Procedure 2015-40 Guidance: Foreign-Initiated Adjustment(s)	
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# Process Overview

## Competent Authority Revenue Procedure 2015-40 Guidance: Foreign-Initiated Adjustment(s)

Multinational companies carrying out cross-border business face potential double taxation. Nearly all bilateral income tax treaties contain a Mutual Agreement Procedure (MAP) article, which, among other things, provides the legal framework for resolving international tax disputes between the treaty partners on a bilateral basis. Taxpayers can request assistance from the U.S. competent authority (U.S. CA), and, in appropriate circumstances (e.g., when an applicable treaty's MAP article allows a taxpayer to submit a competent authority request to either Contracting State), the foreign competent authority (foreign CA), to reduce or eliminate the effects of double taxation under U.S. tax treaties. In addition to double tax cases, taxpayers may also request such assistance when they have incurred taxation that is otherwise not in accordance (i.e., inconsistent) with the provisions of an applicable U.S. tax treaty. The MAP article is generally invoked by taxpayers, but may be invoked by the U.S. or foreign CAs in certain circumstances.

During the course of an examination, a Revenue Agent (examiner) may determine that an adjustment should be made to the taxable income of a U.S. or non-U.S. (i.e., a foreign) person (as defined under IRC 7701(a)). The adjustment may give rise to double taxation, or taxation otherwise not in accordance with the provisions of an applicable U.S. income tax treaty. Similarly, such adjustments and potential tax treaty considerations may occur during the course of examinations conducted by foreign jurisdictions that are U.S. treaty partners. In each of these cases, the affected taxpayer may be eligible to invoke its rights under that U.S. tax treaty to seek the assistance of the CAs to alleviate such taxation.

The U.S. CA is authorized to act on such requests for assistance and to address related issues concerning the application of U.S. tax treaties. Rev. Proc. 2015-40, 2015-35 IRB 236, provides the procedures for taxpayers to follow in order to seek assistance of the U.S. CA. (If the adjustment involves the U.S. territories of American Samoa, Guam, Commonwealth of the Northern Mariana Islands, United States Virgin Islands, and Puerto Rico, the taxpayer should consult Rev. Proc. 2006-23, 2006-1 C.B. 900. Unless otherwise noted, this Unit will address only requests under Rev. Proc. 2015-40.)

# Process Overview (cont'd)

## Competent Authority Revenue Procedure 2015-40 Guidance: Foreign-Initiated Adjustment(s)

The U.S. CA has two different offices that resolves disputes implicating U.S. tax treaties:

- Advance Pricing and Mutual Agreement Program (“APMA”) – This office provides assistance primarily for cases involving transfer pricing adjustments made under IRC 482, or under equivalent transfer pricing provisions of U.S. treaty partners (i.e., treaty countries); this business unit also negotiates unilateral, bilateral, and multilateral Advance Pricing Agreements (“APAs”).
- Treaty Assistance and Interpretation Team (“TAIT”) – This office provides assistance for cases arising under tax treaties other than transfer pricing cases (e.g., treaty residence determinations, cases involving fiscally transparent entities, and discretionary determinations under a limitation on benefits article) and most other interpretative matters that arise under such treaties, such as those arising under the MAP article. TAIT also has primary responsibility for cases arising under U.S. tax treaties with respect to estate and gift taxes.
- APMA and TAIT can each consider cases arising under the permanent establishment and business profits articles of U.S. tax treaties, and both will coordinate and collaborate on such cases, and on any other cases, as appropriate.
- The obligations of the examiner in relation to the CA process are set forth in the Internal Revenue Manual (“IRM”). See e.g., IRM section 4.60.2 and 4.60.3. In general, the examiner's first step after determining an adjustment should be made that potentially results in double tax (or taxation otherwise not in accordance with an applicable U.S. income tax treaty) is to ensure that the affected taxpayer has been informed of its right to seek assistance of the U.S. CA (or, in appropriate circumstances, the foreign CA) on a timely basis. Examiners should direct questions regarding the proper place of filing competent authority requests, and any other MAP-related questions such as the appropriate time for filing, to TAIT or APMA.
- This Unit focuses on procedures for foreign-initiated adjustments (i.e., adjustments made by foreign tax authorities) and taxpayer-initiated adjustments (also referred to as “taxpayer-initiated positions”) concerning the taxable income of U.S. multinationals or their foreign affiliates. See section 3.02 of Rev. Proc. 2015-40 for pre-filing procedures applicable to requests involving taxpayer-initiated positions. For the CA procedures involving U.S.-initiated adjustments, please refer to the Practice Unit, *Competent Authority Revenue Procedure 2015-40 Guidance: U.S.-Initiated Adjustment(s)*.

# Process Overview (cont'd)

## Competent Authority Revenue Procedure 2015-40 Guidance: Foreign-Initiated Adjustment(s)

### Circumstances Under Which This Process Applies

Various foreign-initiated adjustments can give rise to a taxpayer pursuing assistance of the U.S. CA under Rev. Proc. 2015-40. Listed below are examples of adjustments that may require CA consideration (this listing is not all inclusive):

- Transfer pricing adjustments (e.g., increases/decreases to prices of tangible goods; to royalty or other payments for intangible property; to fees or other remuneration for intercompany services transactions).
- Potential existence of a permanent establishment (“PE”) and income attributable to a PE.
- Characterization of accrued income or deductions, and payments received or made (e.g., whether a payment is for a royalty or for a service; whether a royalty payment is for the use of a patent or some other type of intangible property).
- Timing of income and deductions (differences in taxable year in which a certain item of income or deduction is recognized).
- Source of income and deductions (differences in the source country to which a certain item of income or deduction is attributed).

# Process Overview (cont'd)

## Competent Authority Revenue Procedure 2015-40 Guidance: Foreign-Initiated Adjustment(s)

MAP articles are intended to assist taxpayers facing double taxation (or taxation not in accordance with a treaty). The MAP articles provide the mechanism for the U.S. CA and the CA of the U.S. treaty partner (foreign CA) to endeavor to reach a mutual agreement alleviating the double taxation. In many cases, the CAs will reach an agreement (a “mutual agreement,” or a “competent authority resolution,” under Rev. Proc. 2015-40) that alleviates the double taxation in its entirety. However, in some cases, the agreement does not alleviate all double taxation, and, in other cases, no agreement is reached at all. In those situations where an agreement is not reached, some treaties (such as the treaty between the U.S. and Canada) allow a taxpayer to have its case resolved through binding arbitration if the CAs do not reach a mutual agreement within a prescribed time period.

**T TREATY IMPLICATION:** In certain situations, the U.S. and foreign CAs (and the IRS and tax administration of the U.S. treaty partner) may use a CA resolution as a framework for managing similar or recurring CA issues. For example, when the taxpayer has filed a bilateral or multilateral APA request pursuant to Rev. Proc. 2015-41 that proposes to cover one or more issues covered by the CA request and/or if the taxpayer included a rollback request years in its APA request, such APA request will be coordinated between APMA and other offices and personnel within the IRS, such as the assigned exam team.

- This Practice Unit primarily addresses foreign-initiated actions (e.g., a foreign-initiated adjustment) resulting from an examination or from a taxpayer-initiated position. In most instances (typically governed by the MAP article in the applicable income tax treaty), a U.S. taxpayer can present a request for assistance relating to a foreign-initiated action to the U.S. CA following the relevant guidance under Rev. Proc. 2015-40. Questions about whether a taxpayer is eligible to present a request for assistance in relation to a foreign-initiated action should be directed to the U.S. CA.
- Taxpayers can consult with the U.S. CA informally on any issues relating to an applicable U.S. tax treaty, whether or not the issue clearly involves a request for assistance under a treaty. The consultation can be anonymous and is non-binding on the IRS. For example, the taxpayer may consult with the U.S. CA regarding the availability of, and potential requirement to invoke, MAP, as relevant to the taxpayer's obligation under Treas. Reg. section 1.901-2(e)(5) to exhaust all available remedies before claiming a U.S. foreign tax credit.

# Process Overview (cont'd)

## Competent Authority Revenue Procedure 2015-40 Guidance: Foreign-Initiated Adjustment(s)

- A taxpayer requests U.S. CA assistance by following the instructions and guidance on submissions found in Rev. Proc. 2015-40 and the relevant provisions in the applicable income tax treaty (e.g., the provisions of the MAP article). The requirements on submissions are addressed in Section 3 of the Revenue Procedure and in its Appendices.
- Depending on the facts and circumstances of the particular issue present in the MAP case, either of the CAs may identify and request information on any interrelated issues in the interest of supporting a principled case resolution and other administrative efficiencies. See section 3.05(3) of Rev. Proc. 2015-40. The request may be amended to include additional facts, and the CAs will consider such additional information in reaching a settlement.
- Most U.S. tax treaties provide that agreements reached by the CAs are to be implemented by the U.S. and its treaty partner notwithstanding any time limits or other procedural limitations under the domestic law of either country. However, certain U.S. tax treaties contain timing restrictions with respect to MAP cases, and some may not allow the CAs to waive such limitations. Further, in any particular case, domestic barriers may be waived only if a CA request is accepted and a CA resolution is reached. For these reasons, and because circumstances not under the control of the taxpayer or the U.S. or foreign CAs may impede the implementation of a CA resolution, Section 11 of Rev. Proc. 2015-40 advises, as a general matter, that the taxpayer and members of its controlled group take protective measures under applicable domestic law to increase the likelihood that a CA resolution can be implemented in both treaty countries and to protect any rights of access to alternative remedies (such as Appeals or litigation) outside of the CA process from being barred by administrative, legal, or procedural barriers.



# Process Overview (cont'd)

## Competent Authority Revenue Procedure 2015-40 Guidance: Foreign-Initiated Adjustment(s)

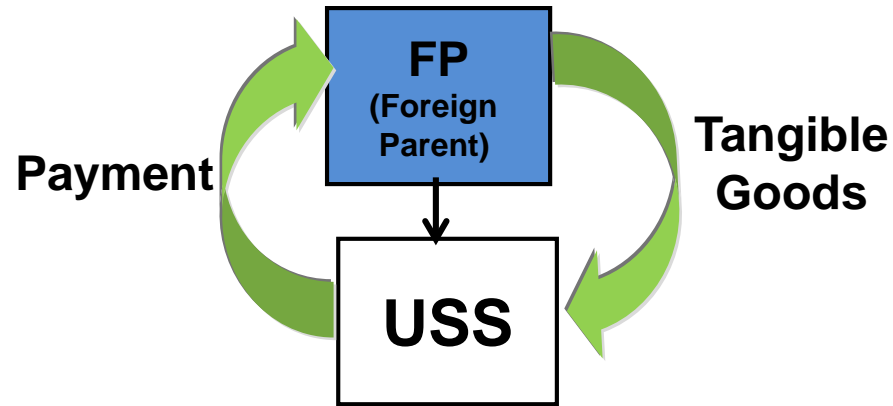
The following general example provides an overview of the actions an examiner would take in a situation where a foreign-initiated adjustment involving a transfer pricing issue (and thus handled by APMA) was present.

- Foreign Parent (“FP”) owns 100% of U.S. Subsidiary (“USS”). FP is located in a country with which the U.S. has a tax treaty.
- FP manufactures tangible goods and sells them to USS, which, in turn, sells them to third-party customers in North America.
- For a given taxable year, the foreign tax authority determines that the prices paid by USS to FP for the tangible personal property were too low and increases (adjusts) the income of FP accordingly.
- Foreign tax authority’s adjustment would result in economic double taxation as follows: the adjustment would result in an addition to FP’s income, but the amount of this additional deduction for cost of goods purchased was not included as a deduction on its U.S. income tax return, resulting in overstatement of income.
- The USS should request U.S. CA assistance under the MAP article to alleviate this double taxation under the U.S. tax treaty. Upon receipt of the request, the U.S. CA will review the request to determine if the adjustment is justified under the treaty and, if so, will determine if it’s appropriate to provide unilateral relief or, alternatively, commence bilateral discussions with the foreign CA. One type of unilateral assistance the U.S. CA can provide is to present the case to the IRS exam to provide a correlative adjustment.
- In situations where the exam identified foreign initiated adjustments, see IRM 4.60.2 for the procedure to coordinate with U.S. CA for granting correlative relief.

# Process Overview (cont'd)

## Competent Authority Revenue Procedure 2015-40 Guidance: Foreign-Initiated Adjustment(s)

Diagram for the example:



# Detailed Explanation of the Process

## Competent Authority Revenue Procedure 2015-40 Guidance: Foreign-Initiated Adjustment(s)

### Analysis

- All IRS examiners should have “global awareness” of the adjustments to a taxpayer’s income that the foreign tax authorities may make or consider. That is, examiners should be aware that foreign adjustments may result in differences in the amount or character of taxable income (or other tax attributes) reported by the multinational group in the U.S. and the foreign country. These differences immediately trigger the possibility of double taxation or taxation not in accordance with a given treaty. If a U.S. treaty applies, taxpayers may have rights under that treaty to pursue CA assistance in respect of the underlying issues.
- While IRM 4.60.2 generally addresses the role of examiners in respect of MAP issues, the initial steps that an examiner should follow when scrutinizing U.S. taxpayer returns for foreign-initiated adjustments are set forth in IRM 4.60.2.5. A taxpayer requesting MAP assistance with regard to foreign-initiated adjustments is not required to file a copy of the request with a IRS exam. However, APMA or TAIT will typically forward a copy of the MAP request and a copy of the acknowledgment letter to the appropriate IRS exam. See IRM 4.60.2.6 for matters involving U.S. territories.
- If the taxpayer decides to seek assistance from the U.S. CA to relieve the double tax (or taxation otherwise inconsistent with the applicable treaty), it must follow certain procedures as set forth in the Rev. Proc. 2015-40 to request such assistance.
- In the event a resolution is reached, the taxpayer may be able to claim additional U.S. foreign tax credits or refunds of U.S. tax, consistent with the MAP settlement. (Additionally, in some cases in which there is no tax settlement, a taxpayer may be able to claim a U.S. foreign tax credit if they have adequately exhausted their administrative and judicial remedies.) In order to protect its rights to claim additional credits or refunds, and to retain its rights to alternative remedies under the Code, the taxpayer is advised to file protective claims with the IRS as set forth in Section 11 of Rev. Proc. 2015-40. See also IRC 6402 and the regulations thereunder. This claim may be filed before, or in conjunction with, a request for CA assistance.
- If the CAs are unable to reach an agreement, or the taxpayer does not accept a tentative solution reached by the CAs (and the CAs are unwilling to negotiate further) then the U.S. CA will formally close the case. The taxpayer may then pursue all the other available domestic remedies to resolve the issue; however, in circumstances where the taxpayer’s conduct has precluded a final CA resolution, it may not be able to claim additional foreign tax credits or refunds of U.S. tax. Any questions regarding whether the taxpayer has exhausted an available U.S. CA remedy should be directed to TAIT or APMA, as appropriate.

# Detailed Explanation of the Process (cont'd)

## Competent Authority Revenue Procedure 2015-40 Guidance: Foreign-Initiated Adjustment(s)

### Analysis

- For cases in which a U.S. taxpayer has not submitted a CA request under a U.S. tax treaty, IRM 4.60.2.5 generally provides that the examiner has the following obligations after initially identifying a foreign-initiated adjustment:
  - During the examination, the examiner should request that the taxpayer provide a written response about the foreign-initiated adjustment.
  - When non-treaty country adjustments are encountered, the examiner must follow the IRC to determine the appropriate U.S. tax consequences and any U.S. tax liability.
  - If the adjustment was raised by a U.S. treaty partner and is contrary to a U.S. tax treaty (e.g., an inappropriate “arm’s length” income and expense allocation under an Associated Enterprises treaty article), the examiner must gather certain information, as provided by paragraph 7 of IRM 4.60.2.5, and provide to APMA or TAIT, as appropriate.
  - Based on such information, APMA or TAIT will advise the examiner (and other appropriate personnel) if the U.S. CA will release jurisdiction for the adjustment to the IRS exam to make a correlative adjustment (or other relief, such as a U.S. foreign tax credit). If the U.S. CA doesn’t release jurisdiction, then the IRS exam will issue a MAP letter, Letter 1853(P) (U.S. tax treaties) or Letter 1915(P) (U.S. possessions), with relevant schedule 1815(P) or 1915(P) – to the taxpayer.
  - MAP negotiations will be initiated only after the taxpayer files a MAP request with the U.S. CA and such request is accepted.

# Detailed Explanation of the Process (cont'd)

## Competent Authority Revenue Procedure 2015-40 Guidance: Foreign-Initiated Adjustment(s)

### Analysis

#### Legal Guidance

Rev. Proc. 2015-40 provides procedures and guidance on the process of requesting assistance from the U.S. CA under the provisions of U.S. tax treaties. The revenue procedure was published on August 31, 2015 and updates and supersedes Rev. Proc. 2006-54. A proposed version of Rev. Proc. 2015-40 was released for public comment in Notice 2013-78. Rev. Proc. 2015-40 substantially restructured the proposed guidance in Notice 2013-78 to improve clarity, readability, and organization. Rev. Proc. 2015-40 affirms that the U.S. CA is committed to providing broad access to MAP (and other types of CA assistance) under U.S. tax treaties. The effective date of Rev. Proc. 2015-40 is generally for CA requests filed on or after October 30, 2015. Special effective date rules apply with respect to discretionary limitation on benefits (“LOB”) determinations and also with respect to the new triennial statement required by Section 3.06(2)(h) of Rev. Proc. 2015-40, which generally applies to discretionary LOB determinations issued after October 30, 2015.

Rev. Proc. 2015-40 was issued concurrently with Rev. Proc. 2015-41 (2015-35 IRB 263), which provides guidance on the process of requesting and obtaining APAs, as well as guidance on the administration of executed APAs. Rev. Proc. 2015-41 is the successor to and supersedes Rev. Proc. 2006-9, as modified by Rev. Proc. 2008-31 (which is also superseded).

Both Rev. Proc. 2015-41 and Rev. Proc. 2015-40 are consistent on many substantive points with respect to coordination and collaboration with examination on prominent procedural decisions. The two revenue procedures are intended to integrate the CA and APA processes and serve as complementary programs of tax and treaty administration.

# Detailed Explanation of the Process (cont'd)

## Competent Authority Revenue Procedure 2015-40 Guidance: Foreign-Initiated Adjustment(s)

### Analysis

#### General Outline of Rev. Proc. 2015-40

Section 1: Purpose, background, rules of construction and definitions

Section 2: Scope and general principles

Section 3: Procedures for filing CA requests

Section 4: ACAP and Ancillary Issues

Section 5: Small case CA requests

Section 6: Coordination of CA process U.S. administrative and judicial proceedings

Section 7: Acknowledgement of receipt and denial of assistance

Section 8: Consultations and related actions by the U.S. CA

Section 9: Results of CA case

Section 10: Arbitration

Section 11: Protective claims

Section 12: Treaty notifications

Section 13: Requests for rulings

Section 14: User fees

Section 15: Effect on other documents

Section 16: Effective date

Sections 17, 18: Paperwork Reduction Act; drafting information

Appendix: Filing instructions and requirements

Section 1: General instructions

Section 2: Requests for APMA

Section 3: Requests for TAIT

# Process Applicability

## Competent Authority Revenue Procedure 2015-40 Guidance: Foreign-Initiated Adjustment(s)

Taxpayers engaging in cross-border transactions may seek assistance from the U.S. CA under U.S. tax treaties to address actions, such as a foreign-initiated adjustment, that have given rise to double taxation or taxation otherwise not in accordance with the treaty. The procedures that an examiner should follow in these circumstances are set forth in IRM 4.60.2, while the procedures applicable to taxpayers are discussed in Rev. Proc. 2015-40.

Criteria	Resources
<ul style="list-style-type: none"> <li>▪ When an examiner has identified an issue and raised an adjustment that may result in double taxation or taxation not in accordance with a U.S. tax treaty (e.g., an issue affecting material controlled transactions involving a reallocation of income or expenses among members of the controlled group), the examiner should question the taxpayer about any relevant foreign-initiated adjustments.</li> <li>▪ When an examiner has identified adjustments made by taxpayers to their U.S. income tax returns that derive either from foreign-initiated adjustments or by taxpayer-initiated foreign adjustments, the examiner should follow the provisions of IRM 4.60.2.5 (e.g., question the taxpayer regarding the facts and circumstances surrounding the foreign adjustment, and determine whether MAP should have been invoked).</li> </ul>	<ul style="list-style-type: none"> <li>▪ Form 1118 - <i>Foreign Tax Credit - Corporations</i></li> <li>▪ Intercompany accounts</li> <li>▪ Changes to the transfer prices, management fees, license fees or any other intercompany charges.</li> <li>▪ Financial statements disclosures</li> <li>▪ Applicable income tax treaties and explanatory documents (e.g., Treasury technical explanations).</li> </ul>

# Summary of Process Steps

## Competent Authority Revenue Procedure 2015-40 Guidance: Foreign-Initiated Adjustment(s)

### Process Steps

Seeking U.S. CA assistance under a U.S. tax treaty is an effective way for taxpayers to resolve the resulting potential for double taxation or taxation not in accordance with the treaty. The procedures for seeking assistance is set forth in Rev. Proc. 2015-40.

<a href="#">Step 1</a>	Double Tax Determination
<a href="#">Step 2</a>	Mutual Agreement Procedure Process
<a href="#">Step 3</a>	Accelerated CA Procedure and Ancillary Issues
<a href="#">Step 4</a>	Foreign Tax Authority Adjustment



# Summary of Process Steps (cont'd)

## Competent Authority Revenue Procedure 2015-40 Guidance: Foreign-Initiated Adjustment(s)

### Process Steps

Seeking U.S. CA assistance under a U.S. tax treaty is an effective way for taxpayers to resolve the resulting potential for double taxation or taxation not in accordance with the treaty. The procedure for seeking assistance is set forth in Rev. Proc. 2015-40.

<a href="#">Step 5</a>	Taxpayer Initiated Position
<a href="#">Step 6</a>	Role of the Taxpayer
<a href="#">Step 7</a>	Roles of the APMA and TAIT
<a href="#">Step 8</a>	Role of an Examiner

# Step 1: Double Tax Determination

## Competent Authority Revenue Procedure 2015-40 Guidance: Foreign-Initiated Adjustment(s)

### Step 1

Will the foreign country proposed adjustment give rise to double tax or taxation otherwise not in accordance with an applicable U.S. tax treaty?

Considerations	Resources
<ul style="list-style-type: none"> <li>▪ When a transfer pricing adjustment is made, it may result in double taxation or taxation not in accordance with a U.S. tax treaty. In the earlier example (slide 9), the foreign tax authority adjustment to FP increases its income, which would result in economic double taxation if there is no corresponding reduction in the taxable income of USS.</li> <li>▪ The following resources can help the examiner in identifying the effect of the adjustment:               <ul style="list-style-type: none"> <li>- Organization chart</li> <li>- Intercompany transactions as reported on from Form 5472</li> <li>- U.S. transfer pricing documentation</li> <li>- Applicable U.S. tax treaty and technical explanation</li> <li>- Tax attributes, for example, foreign tax credits (including indirect credits, in the case of adjustments affecting a U.S. parent company or its foreign subsidiary) claimed on the U.S. Form 1120, as well as foreign tax credits claimed on the foreign country tax return by the foreign affiliate</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ Form 5472 - <i>Information Return of a Foreign Owned Corporation</i>, Parts III through VII</li> <li>▪ Form 1118 - <i>Foreign Tax Credit - Corporations</i> (and supporting schedules) and analogous forms of foreign tax returns relating to foreign tax credits</li> </ul>

# Step 1: Double Tax Determination (cont'd)

## Competent Authority Revenue Procedure 2015-40 Guidance: Foreign-Initiated Adjustment(s)

### [Step 1](#)

Considerations	Resources
<ul style="list-style-type: none"><li>▪ The examiner should review the foreign tax returns and/or financial statements for the original return position taken by the affiliate with respect to the controlled transactions and the effect of the foreign proposed adjustment on such return positions. The examiner should review the effect of the foreign proposed adjustment and its interrelationship with other entities in the multinational organization to determine if the foreign proposed adjustment may give rise to possible double taxation.</li> <li>▪ Also review prior year audit work papers for adjustments made to similar issues.</li></ul>	

# Step 2: Mutual Agreement Procedure Process

## Competent Authority Revenue Procedure 2015-40 Guidance: Foreign-Initiated Adjustment(s)

### Step 2

#### Mutual Agreement Procedure Process

Considerations	Resources
<ul style="list-style-type: none"> <li>▪ When two jurisdictions impose tax on the same item of income, the following circumstances are examples of when double taxation may arise:               <ul style="list-style-type: none"> <li>- If U.S. and a foreign country's views on the character of the transaction differ.</li> <li>- If U.S. and a foreign country follow different sets of criteria to allocate income or expenses between related entities located in different jurisdictions.</li> <li>- If there is dispute between a foreign country and U.S. with respect to the appropriate transfer pricing on a transaction between U.S. and foreign affiliate.</li> <li>- If the direct or indirect tax paid in one country is not creditable in another country.</li> <li>- A foreign-initiated adjustment resulting from an examination.</li> <li>- A taxpayer-initiated position with respect to transfer pricing.</li> </ul> </li> <li>▪ When faced with potential double taxation, the next step for an examiner is to determine if there is a U.S. income tax treaty in effect that potentially applies to their situation.</li> <li>▪ Nearly all U.S. tax treaties contain a MAP article. This article allows designated representatives (the U.S. CA and the CA of the U.S. treaty partner) to address cases in which a taxpayer might be subject to double taxation or taxation not in accordance with the treaty.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Applicable U.S. tax treaty and technical explanation</li> <li>▪ Rev. Proc. 2015-40, Sec. 2.01(2) - <i>Mutual Agreement Procedure articles</i></li> </ul>

# Step 2: Mutual Agreement Procedure Process (cont'd)

## Competent Authority Revenue Procedure 2015-40 Guidance: Foreign-Initiated Adjustment(s)

### [Step 2](#)

Considerations	Resources
<ul style="list-style-type: none"> <li>▪ Many cases that implicate the MAP process relate to income allocation (e.g., transfer pricing adjustments). However, MAP cases may also arise from adjustments relating to, for example, imputed interest, royalties, characterization of items of income, and application of sourcing rules.</li> <li>▪ As a practical matter, in respect of foreign-initiation actions, the taxpayer may request CA assistance as soon as they believe such request is warranted based on the actions of the foreign country proposing the adjustment. For example, in the case of a foreign adjustment involving reallocation of income or deductions among affiliates, the request can be made as soon as the taxpayer receives a notification from the foreign country indicating that an assessment will occur that is likely to result in economic double tax. In many circumstances (but not always) that notification would be the foreign equivalent of an IRS notice of proposed adjustment (or “NOPA”).</li> <li>▪ This Unit focuses on procedures for foreign-initiated adjustments concerning the taxable income of U.S. multinationals or their foreign affiliates. For the CA procedures involving U.S.-initiated adjustments, please refer to the Practice Unit, <i>Competent Authority Revenue Procedure 2015-40 Guidance: U.S.-Initiated Adjustment(s)</i>.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Rev. Proc. 2015-40, Sec. 2.01(2) - <i>Mutual Agreement Procedure articles</i></li> <li>▪ Rev. Proc. 2015-40, Sec. 3 - <i>Procedures for Filing Competent Authority Requests</i></li> <li>▪ Rev. Proc. 2015-40, Sec. 11 - <i>Protective Claims</i></li> </ul>

# Step 2: Mutual Agreement Procedure Process (cont'd)

## Competent Authority Revenue Procedure 2015-40 Guidance: Foreign-Initiated Adjustment(s)

### [Step 2](#)

Considerations	Resources
<p>The taxpayer should take all protective measures to preserve its rights under the domestic laws of the U.S. and foreign jurisdictions. For example, if there is a foreign levy that might be contrary to the treaty, it is the taxpayer's responsibility to request CA assistance and file the necessary protective claims to protect the applicable statutes of limitation.</p> <ul style="list-style-type: none"> <li>▪ Section 3 of Rev. Proc. 2015-40 generally sets out all procedures a taxpayer must follow to file a U.S. CA request, as supplemented by the various appendices.</li> <li>▪ Except in instances where a pre-filing is required, such as in the circumstance of a "taxpayer-initiated position," a taxpayer does not need to meet with the U.S. CA before filing a CA request.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Rev. Proc. 2015-40, Sec. 11 - <i>Protective Claims</i></li> <li>▪ Rev. Proc. 2015-40, Sec.3.02(1) - <i>Pre-filing Procedures, In General</i></li> <li>▪ Rev. Proc. 2015-40, Sec. 3.04 (3) - <i>Timing of Competent Authority Request Concerning U.S.-initiated Actions</i></li> </ul>

# Step 2: Mutual Agreement Procedure Process (cont'd)

## Competent Authority Revenue Procedure 2015-40 Guidance: Foreign-Initiated Adjustment(s)

### [Step 2](#)

Considerations	Resources
<ul style="list-style-type: none"> <li>▪ With regard to any CA request, generally, the U.S. CA will provide assistance only after the request is complete, either as initially filed or as supplemented. Any specific requirement set forth in the applicable U.S. tax treaty takes precedence over any conflicting provision in Rev. Proc. 2015-40. Any questions regarding of the interaction of Rev. Proc. 2015-40 and a specific income tax treaty should be submitted to TAIT or APMA, as appropriate.</li> <li>▪ Certain U.S. tax treaties may require that a CA request or a treaty notification be filed within a certain time limit. For example, under the U.S.-Japan treaty, the case must be brought to the applicable CA within three years from the first notification of the action resulting in tax not in accordance with the treaty.</li> <li>▪ If the taxpayer disagrees with the examiner's proposed U.S.-initiated adjustment, it may choose to pursue its administrative rights through Appeals, or litigation, or it may request CA assistance under Rev. Proc. 2015-40 if a U.S. tax treaty applies.</li> <li>▪ Taxpayers also should be aware that making certain agreements, such as a closing agreement, with the IRS or a foreign tax authority may preclude or limit access to the CA process.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Rev. Proc. 2015-40, Sec. 12.01 - <i>Treaty Notifications, In General</i></li> <li>▪ Rev. Proc. 2015-40, Sec. 3.05 - <i>Content and Form of Competent Authority Request</i></li> <li>▪ Rev. Proc. 2015-40, Sec. 12 - <i>Treaty Notifications</i></li> <li>▪ U.S. Japan Treaty, Art. 25(1)</li>   <li>▪ Rev. Proc. 2015-40, Sec. 6 - <i>Coordination of the Competent Authority Process with U.S. Administrative and Judicial Proceedings</i></li> <li>▪ Rev. Proc. 2015-40, Sec. 7.02 - <i>Denial and Termination of Assistance</i></li> </ul>

# Step 3: Accelerated CA Procedure and Ancillary Issues

## Competent Authority Revenue Procedure 2015-40 Guidance: Foreign-Initiated Adjustment(s)

### Step 3

#### Accelerated CA Procedure and Ancillary Issues

Considerations	Resources
<ul style="list-style-type: none"> <li>▪ As part of its CA request, a taxpayer may request the U.S. CA to consult on certain ancillary issues, such as penalties, repatriation of funds, etc., provided certain conditions set forth under the revenue procedure are met. If the tax consequences of repatriation are not addressed in the MAP settlement for U.S. federal tax purposes, the provisions of the Code and regulations (and revenue procedures, especially, Rev. Proc. 99-32 (or its successor)) will apply, but the foreign affiliate will be subject to the domestic tax laws of the treaty partner.</li> <li>▪ Under Rev. Proc. 2015-40, a taxpayer may request, as part of its CA submission, a process known as Accelerated Competent Authority Procedure (“ACAP”). Under that process, a taxpayer may request that the terms of a CA resolution for the year at issue be extended to cover subsequent taxable years in which U.S. tax returns have been filed. However, many foreign countries do not have an ACAP-like provision in their MAP procedures. In certain circumstances, the U.S. CA may request that the taxpayer invoke ACAP, even if it has not yet been formally requested as part of the CA request.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Rev. Proc. 2015-40, Sec. 4.02 - <i>Ancillary Issues</i></li> <li>▪ Practice Unit - <i>Revenue Procedure 99-32 Inbound Guidance</i></li> <li>▪ Rev. Proc. 2015-40, Sec. 4.01(1) - <i>ACAP and Ancillary Issues</i></li> </ul>



# Step 4: Foreign Tax Authority Adjustment

## Competent Authority Revenue Procedure 2015-40 Guidance: Foreign-Initiated Adjustment(s)

### Step 4

CA Assistance in Foreign Tax Authority-Initiated Transfer Pricing Adjustments

Considerations	Resources
<ul style="list-style-type: none"> <li>▪ In general, taxpayer-initiated positions or foreign-initiated transfer pricing adjustments to income or deductions from the application of rules under the respective tax laws in the foreign country may often result in double taxation.</li> <li>▪ Although an apparently obvious way to reduce double taxation after a foreign-initiated adjustment would be to file an amended U.S. tax return, Treas. Reg. 1.482-1(a)(3) does not permit taxpayer-initiated adjustments that reduce U.S. taxable income on either untimely or amended U.S. income tax returns.</li> <li>▪ However, where there is a U.S. tax treaty with the foreign country, a taxpayer may seek relief for double taxation under the MAP article of the applicable treaty.</li> <li>▪ There is no authority for the U.S. CA to provide relief with respect to U.S. tax or to provide other assistance related to taxation arising under the tax laws of a foreign country or the U.S. unless such authority is granted by a treaty.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Treas. Reg. 1.482-1(a)(3) - <i>Taxpayer's Use of 482</i></li> <li>▪ U.S. Model Income Tax Treaty (2016), Art. 25(1)</li> <li>▪ U.S. Model Income Tax Treaty (2006), Art. 25(1)</li> <li>▪ Rev. Proc. 2015-40, Sec.2.01(2) - <i>Mutual Agreement Procedure Articles</i></li> </ul>

# Step 4: Foreign Tax Authority Adjustment (cont'd)

## Competent Authority Revenue Procedure 2015-40 Guidance: Foreign-Initiated Adjustment(s)

### [Step 4](#)

Considerations	Resources
<ul style="list-style-type: none"><li>▪ In certain situations, the U.S. may not consider double taxation caused by a transfer pricing adjustment to be covered by a MAP article in a U.S. income tax treaty. For example, if there is a foreign-initiated transfer pricing adjustment with respect to a payment between two foreign corporations controlled by the same U.S. shareholder, the U.S. may treat the adjustment as a taxable dividend by one corporation to the common U.S. shareholder and a nondeductible capital contribution to the other corporation, resulting in the adjustment being subject to tax in the U.S. as well as one of the foreign countries. Please consult with APMA (or TAIT) in these situation.</li></ul>	<ul style="list-style-type: none"><li>▪ <i>BNA Tax Management Int'l Portfolio</i> 892-1st Sec. V</li></ul>

# Step 4: Foreign Tax Authority Adjustment (cont'd)

## Competent Authority Revenue Procedure 2015-40 Guidance: Foreign-Initiated Adjustment(s)

### [Step 4](#)

Considerations	Resources
<ul style="list-style-type: none"><li>▪ Another situation where the U.S. and a foreign country could potentially characterize a payment differently involves a payment that is treated as a dividend for U.S. tax purposes and interest under tax laws of the foreign country. In that case, absent a MAP case and CA resolution, any foreign transfer pricing adjustment to the interest rate to reflect the arms-length price would likely be subject to higher amount of tax in the foreign country, without a corresponding deduction in the U.S.</li><li>▪ The U.S. treaty partner adhering to its domestic rules may preclude them from negotiating a different result under the treaty. The effect of foreign legal restrictions under the treaty partner's domestic rules will be taken into account to the extent provided under the Treas. Reg. 1.482-1(h)(2).</li></ul>	<ul style="list-style-type: none"><li>▪ <i>BNA Tax Management Int'l Portfolio</i> 892-1st Sec. V</li><li>▪ Treas. Reg. 1.482-1(h)(2) - <i>Effect of Foreign Legal Restrictions</i></li></ul>

# Step 5: Taxpayer Initiated Position

## Competent Authority Revenue Procedure 2015-40 Guidance: Foreign-Initiated Adjustment(s)

### Step 5

CA Assistance in Taxpayer-initiated Position

Considerations	Resources
<ul style="list-style-type: none"> <li>▪ There are situations when a foreign adjustment can be made by a “controlled taxpayer” (e.g., a U.S. corporation that engages in transactions with its foreign affiliate), without intervention from the foreign tax authority, to the price at which goods and services are provided to a controlled party. This may occur when the taxpayer wants to comply with the transfer pricing obligations and self assess their taxable income and transfer pricing exposures. Such taxpayer-initiated adjustments often result in double taxation.</li> <li>▪ In general, with respect to transfer pricing adjustments, U.S. taxpayers are not permitted to file untimely or amended returns to decrease U.S. taxable income based on allocations or other adjustments with respect to controlled transactions. In general the U.S. CA is not in a position to review the accuracy of these types of adjustments. Accordingly, the adjustments create the potential for double taxation of the U.S. taxpayer's income (or, in certain circumstances, a foreign taxpayer’s income) absent some agreement by the CAs in MAP.</li> </ul>	<ul style="list-style-type: none"> <li>▪ <i>Treas. Reg.1.482-1(a)(3) - Taxpayer’s Use of Section 482.</i></li> </ul>

# Step 5: Taxpayer Initiated Position (cont'd)

## Competent Authority Revenue Procedure 2015-40 Guidance: Foreign-Initiated Adjustment(s)

### [Step 5](#)

Considerations	Resources
<ul style="list-style-type: none"> <li>▪ The MAP article of U.S. tax treaties generally permits taxpayers to request CA assistance when they consider that the actions of the U.S., the treaty country, or both, will result in taxation that is contrary to the provisions of the treaty. However, taxpayer-initiated position can present difficulties in determining whether MAP is available, due to the interaction of relevant facts in such cases with the provisions of the applicable MAP article (e.g., whether a “government action” has occurred, which is typically a precondition to MAP). Please direct questions on these matters to APMA or TAIT, as appropriate.</li>   <li>▪ Some foreign governments have a formal procedure for taxpayer disclosures in respect of certain taxpayer-initiated positions. Other countries allow them when a taxpayer raises the issue during a foreign audit. In such circumstances, the requisite government "action" that is necessary to initiate a MAP would ordinarily occur; however, in other circumstances involving taxpayer-initiated positions, it may be unclear whether a government action has occurred, and, accordingly, whether MAP is available. In these latter cases, taxpayers are required to attend a pre-file conference with APMA or TAIT, as appropriate, to discuss the prospect of any CA proceeding.</li> </ul>	<ul style="list-style-type: none"> <li>▪ 2016 US Model Art 25(1)</li>   <li>▪ Rev. Proc. 2015-40, Sec.3.02(2) - <i>Mandatory Pre-filing Procedures for Taxpayer-initiated Positions.</i></li> </ul>

# Step 6: Role of the Taxpayer

## Competent Authority Revenue Procedure 2015-40 Guidance: Foreign-Initiated Adjustment(s)

### Step 6

#### Role of the Taxpayer in CA Assistance Request Process

Considerations	Resources
<ul style="list-style-type: none"> <li>▪ In the case of a foreign-initiated adjustment, at the request of the taxpayer, the U.S. CA may enter into government-to-government negotiations with the U.S. treaty partner. A MAP request for such assistance must be filed with the appropriate CA, as specified by the relevant treaty.</li> <li>▪ A taxpayer making a MAP submission must be aware of the provisions concerning the circumstances under which the U.S. CA may deny assistance or cease providing assistance. Among other things, the taxpayer must timely provide, either at the onset of or during the MAP case, as necessary, all of the information that is required for both CAs to consider the case and reach a resolution.</li> <li>▪ Any request for CA assistance must be submitted in a timely manner in respect of the taxable year for which relief is sought. Additionally, the taxpayer is required to take certain actions that are necessary for the U.S. or foreign CAs to engage in full and fair consultations on the CA issues, such as keeping the applicable country's periods of limitation open so that any CA resolution can be properly implemented.</li> </ul>	<ul style="list-style-type: none"> <li>▪ IRM 4.60.2 - <i>Mutual Agreement Procedures and Report Guidelines</i></li> <li>▪ Rev. Proc. 2015-40, Sec.7.02(3)(a) - <i>Denial of assistance in foreign - initiated adjustment</i></li> <li>▪ Rev. Proc. 2015-40, Sec.7.02(3)(f) - <i>Denial of assistance in taxpayer - initiated positions</i></li> <li>▪ IRM 4.60.3.1.10 - <i>MAP Request/Denial</i></li> </ul>

# Step 6: Role of the Taxpayer (cont'd)

## Competent Authority Revenue Procedure 2015-40 Guidance: Foreign-Initiated Adjustment(s)

### Step 6

Considerations	Resources
<ul style="list-style-type: none"> <li>▪ Under most U.S. tax treaties, if the taxpayer files a CA request, U.S. refunds (and refunds in many foreign jurisdictions) due pursuant to a CA resolution will be implemented notwithstanding any procedural limitations under the laws of the Contracting States, provided the MAP submission has satisfied any applicable requirements under the treaty, such as being filed within the time period prescribed by the MAP article (i.e., the treaty notification period).</li> <li>▪ Satisfying Rev. Proc. 2015-40 may not protect taxpayers against legal or procedural restrictions in the other Contracting State. For example, if the applicable U.S. treaty doesn't have a provision waiving domestic procedural limitations in the event of a CA resolution, the taxpayer would need to ensure that the foreign country's period of limitations remains open so that the resolution can be implemented. Accordingly, taxpayers should take appropriate actions to protect their remedies in the foreign country.</li> <li>▪ In connection with the CA resolution of a transfer pricing case, to conform the controlled group members' accounts to the CA adjustment(s), funds may need to be repatriated to settle accounts intercompany payable/receivable. Rev. Proc. 99-32, 1999-2 C.B. 296 generally governs such repatriation payments and allows for specific treatment of repatriation payments between the affected related parties. In a case where the U.S. CA determines the terms of repatriation in its agreement, then those terms govern and take precedence over Rev. Proc. 99-32.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Rev. Proc. 2015-40, Sec.12 - <i>Treaty Notifications</i></li> <li>▪ Rev. Proc. 2015-40, Sec.12.04 - <i>Annual Notification Requirement</i></li> <li>▪ Rev. Proc. 2015-40, Sec.4.02(2) - <i>Competent Authority Repatriation</i></li> <li>▪ Rev. Proc. 99-32, Sec.1 - <i>Purpose</i></li> </ul>

# Step 7: Roles of the APMA and TAIT

## Competent Authority Revenue Procedure 2015-40 Guidance: Foreign-Initiated Adjustment(s)

### Step 7

Roles of the APMA Program and TAIT in CA Assistance Request Process

Considerations	Resources
<ul style="list-style-type: none"> <li>▪ The U.S. CA has authority to interpret and apply the provisions of U.S. tax treaties. The U.S. CA endeavors to do so in a manner that is consistent with U.S. tax treaty obligations and that secures the appropriate tax bases of the U. S. and its treaty partners, prevents fiscal evasion, and provides taxpayers broad access to CA assistance in accordance with considerations of principled, effective, and efficient tax administration.</li> <li>▪ The U.S. CA will endeavor to resolve CA issues arising under the MAP articles of U.S. tax treaties through consultations and negotiations with the applicable foreign CAs, but in some cases may resolve such issues unilaterally.</li> <li>▪ APMA has primary responsibility for cases arising under the business profits and associated enterprises articles of U.S. tax treaties. Subject to a special rule for PE articles, TAIT has primary responsibility for cases arising under all other articles of U.S. tax treaties. TAIT also has primary responsibility for cases arising under U.S. tax treaties with respect to estate and gift taxes.</li> <li>▪ APMA and TAIT each can consider cases arising under the PE and Business Profits articles of U.S. tax treaties, and both offices will coordinate and collaborate on such cases and on any other cases as appropriate.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Rev. Proc. 2015-40, Sec. 2 - <i>Scope and General Application</i></li> <li>▪ IRM 4.60.2.3(1) - <i>U.S. Initiated Cases</i></li> <li>▪ IRM 4.60.2.3(2) - <i>Foreign Initiated Cases</i></li> </ul>



# Step 7: Roles of the APMA and TAIT (cont'd)

## Competent Authority Revenue Procedure 2015-40 Guidance: Foreign-Initiated Adjustment(s)

### [Step 7](#)

Considerations	Resources
<ul style="list-style-type: none"> <li>▪ In general, the U.S. CA will evaluate a CA request involving a foreign-initiated action on the basis of the justifications for the action prepared by the foreign tax authority or foreign CA (or, in the case of a taxpayer-initiated position, on the basis of the justifications for the position given by the taxpayer) and the analyses of such justifications prepared by the taxpayer or other IRS offices. However, the U.S. CA retains the ultimate discretion to determine which negotiating positions are presented to the foreign CA and which potential CA resolutions are presented to the foreign CA and/or the taxpayer.</li> <li>▪ To grant correlative relief in the U.S. with respect to a foreign-initiated action, the U.S. CA may consult with the foreign CA, as needed, to determine the reasonable application of the arm's length standard in a transfer pricing issue.</li> <li>▪ When there is a unilateral APA in place, a foreign-initiated adjustment may result in double taxation. The taxpayer may seek CA assistance to resolve such current, as well as future double taxation, as a result of such adjustment. However, the U.S. CA may be unable to reach full double tax relief for such adjustment for years when a U.S. unilateral APA is in force.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Rev. Proc. 2015-40, Sec.8 - <i>Consultations and related actions by the U.S. CA</i></li> <li>▪ Rev. Proc. 2015-40, Sec.8.01 - <i>Non-U.S. Initiated Actions</i></li> <li>▪ Rev. Proc. 2015-41, Sec. 2.02(4)(d) - <i>Preference for Bilateral and Multilateral APAs</i></li> <li>▪ Rev. Proc. 2015-40, Sec. 7.02(3)(b) - <i>Denial and Termination of Assistance</i></li> </ul>

# Step 7: Roles of the APMA and TAIT (cont'd)

## Competent Authority Revenue Procedure 2015-40 Guidance: Foreign-Initiated Adjustment(s)

### [Step 7](#)

Considerations	Resources
<ul style="list-style-type: none"><li>▪ When negotiating an allocation case with the foreign CA, the U.S. CA will rely on U.S. domestic law, the applicable U.S. treaty provisions, and the OECD Guidelines with respect to transfer pricing.</li><li>▪ In many circumstances, the CA issue that is present in a MAP case (e.g., economic double taxation relating to an arm's length adjustment) will be resolved by the CAs with complete or partial relief from double taxation under the applicable U.S. tax treaty. However, with respect to U.S. treaties that provide for mandatory arbitration, if the case qualifies for arbitration and the CAs are unable to reach a resolution within a prescribed time period, then the treaty provisions setting forth the procedures for such mandatory arbitration (e.g., those within in the MAP article), and other relevant guidance, will apply to the CA case.</li></ul>	<ul style="list-style-type: none"><li>▪ Rev. Proc. 2015-40 Sec.10 – <i>Arbitration</i></li></ul>

# Step 8: Role of an Examiner

## Competent Authority Revenue Procedure 2015-40 Guidance: Foreign-Initiated Adjustment(s)

### Step 8

Role of the Examiner in Reviewing U.S. Tax Returns for Foreign-Initiated Adjustment

Considerations	Resources
<ul style="list-style-type: none"><li>▪ During the audit, the examiner should review books and records of U.S. taxpayers for any foreign-initiated adjustments. The examiner also should request a written response from the taxpayer about any foreign-initiated adjustment regardless of whether the adjustment was reported to the IRS.</li><li>▪ The examiner should attempt to identify any foreign-initiated adjustments early in the examination cycle. If the examiner discovers a foreign taxpayer-initiated adjustment during an audit that did not involve any action or coordination with the U.S. treaty partner tax administration, the examiner should seek assistance from their manager and possibly the U.S. CA office. If the adjustment was initiated by a non-treaty partner then the examiner must follow the IRC (and other relevant guidance) to determine any U.S. tax liability.</li></ul>	<ul style="list-style-type: none"><li>▪ IRM 4.60.2.5 - <i>Foreign Initiated Adjustments Affecting a U.S. Tax Return or Claimed on Examination</i></li><li>▪ IRM 4.60.2.3(2) - <i>Processing Examination Cases - Foreign Initiated Cases</i></li></ul>

# Step 8: Role of an Examiner (cont'd)

## Competent Authority Revenue Procedure 2015-40 Guidance: Foreign-Initiated Adjustment(s)

### Step 8

Role of the Examiner in Reviewing U.S. Tax Returns for Foreign-Initiated Adjustment

Considerations	Resources
<ul style="list-style-type: none"> <li>▪ When a taxpayer requests MAP assistance with regard to a foreign-initiated adjustment, APMA or TAIT will generally forward a copy of the MAP request to the appropriate IRS exam. In such cases, if the taxpayer return is under IRS examination, the examiner will be made aware of the MAP request. If the taxpayer is not under examination, the U.S. CA will notify the IRS exam when the MAP request is received and when the settlement is reached. The taxpayer and the IRS exam work together to implement the settlement.</li> <li>▪ Once the U.S CA accepts the MAP request for a foreign-initiated adjustment, the U.S. CA may request an examiner's assistance in facilitating the MAP process.</li> </ul>	<ul style="list-style-type: none"> <li>▪ IRM 4.60.2.5 - <i>Foreign Initiated Adjustments Affecting a U.S. Tax Return or Claimed on Examination</i></li> <li>▪ IRM 4.60.2.3(2) - <i>Processing Examination Cases - Foreign Initiated Cases</i></li> </ul>

# Definitions

## Competent Authority Revenue Procedure 2015-40 Guidance: Foreign-Initiated Adjustment(s)

### Description

- **Best Method:** The method that, under the facts and circumstances, provides the most reliable measure of an arm's length result.
- **Controlled Parties:** Two or more organizations, trades, or businesses (whether or not incorporated, whether or not organized in the United States, and whether or not affiliated) owned or controlled directly or indirectly by the same interests. Controlled entities are often referred to as "related" parties.
- **Controlled Transaction:** Transaction between two or more Controlled Parties.
- **Transfer Pricing Methodology:** Organisation for Economic Co-operation and Development ("OECD"), transfer pricing guidelines, as well as the regulations under IRC 482 prescribe specific methods to evaluate the pricing of related party transactions. The methods prescribed are specific to each type of transactions.

# Examples of the Process

## Competent Authority Revenue Procedure 2015-40 Guidance: Foreign-Initiated Adjustment(s)

### Description

#### Example of a Circumstance Where the U.S. CA May Deny Assistance

The U.S. CA may discontinue providing assistance to a taxpayer when the taxpayer's conduct undermines the CA process. An example of this circumstance is when a taxpayer enters a unilateral agreement with a foreign tax authority (such as a closing agreement) that precludes the U.S. CA from engaging in full and fair consultations with foreign CA on the CA issue.

#### Example of Relief from Foreign-Initiated Transfer Pricing Adjustments

Under U.S. domestic law, a taxpayer generally may not file an amended return to reduce its taxable income on its previously-filed U.S. tax return for adjustments relating to IRC 482. Consider the following example: U.S. Parent (USP) sells products to its Controlled Foreign Corporation (CFC) located in the U.K. for \$100 a unit. The U.K. tax authority determined the transfer price paid by CFC should be \$90 per unit based on the arms-length price and disallowed \$10 per unit of cost of goods expenses. Since USP already filed its income tax return in the United States, USP is precluded from filing an amended U.S. tax return to reduce its sales price to CFC as result of the adjustment initiated by the U.K. tax authority. Therefore, to alleviate double tax, the company would either need to seek competent authority assistance under the MAP article of the U.S.-U.K. income tax treaty or contest the adjustment through available administrative or judicial channels in the U.K.

# Examples of the Process (cont'd)

## Competent Authority Revenue Procedure 2015-40 Guidance: Foreign-Initiated Adjustment(s)

### Description

#### Example of the Time Limit for Seeking CA Assistance Under the U.S.-Japan Income Tax Treaty

Paragraph 1, Article 25 (MAP) of the U.S.-Japan Treaty (as amended through 2013 Protocol) provides as follows: Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those Contracting States, present his case to the CA of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

Therefore, under the U.S.-Japan Treaty, the case must be brought to the CAs within three years from the first notification of the action resulting in tax not in accordance with the treaty rules. For example, if a U.S. taxpayer was notified by Japanese Tax Authorities on June 15, Year 7 of a transfer pricing adjustment that affected the taxpayer's U.S. tax year ended Dec. 31, Year 2, the taxpayer could present the case to the U.S. CA at any time before June 15, Year 10, since it is within the three-year period.

# Other Considerations / Impact to Audit

## Competent Authority Revenue Procedure 2015-40 Guidance: Foreign-Initiated Adjustment(s)

Considerations	Resources
<ul style="list-style-type: none"><li>▪ An examiner assigned to a MAP case is required to manage and control statutes of assessment and statute extensions while the case is under the jurisdiction of APMA or TAIT.</li></ul>	<ul style="list-style-type: none"><li>▪ IRM 4.60.2.3 - <i>Processing Examination Cases</i></li></ul>
<ul style="list-style-type: none"><li>▪ Nearly all U.S. income tax treaties contain a provision allowing for CA assistance. The operation of each treaty varies based on the terms of the treaty and type of issue involved. When examining issues involving the potential need for CA assistance, the examiner needs to refer to the terms of the respective treaties.</li></ul>	



# Index of Referenced Resources

## Competent Authority Revenue Procedure 2015-40 Guidance: Foreign-Initiated Adjustment(s)

Rev. Proc. 99-32, Sec.1 - *Purpose*

Rev. Proc. 2015-40 - Procedures for Requesting Competent Authority Assistance under Tax Treaties

Rev. Proc. 2006-23 - Procedure to obtain assistance from the U.S. Competent Authority

Rev. Proc. 2015-41 - Procedures for Advance Pricing Agreements

IRM 4.60.2 - *Mutual Agreement Procedures and Report Guidelines.*

IRM 4.60.3 - *Tax Treaty Related Matters*

IRM 4.60.8 - *International Procedures, International Examination and Processing Procedures*

Form 1118 - *Foreign Tax Credit - Corporations*

Form 5472 - *Information Return of a Foreign Owned Corporation*

Letter 1853(P)/1915(P) - *Pattern Letter*

Treas. Reg. 1.482-1 - *Allocation of income and deductions among taxpayers*

Treas. Reg. 1.901-2(e) - *Amount of Income Tax that is Creditable*

U.S. Japan Treaty, Art. 25(1)

U.S. Model Income Tax Treaty (2006), Art. 25(1)

U.S. Model Income Tax Treaty (2016), Art. 25(1)

*BNA Tax Management Int'l Portfolio 892-1st Sec. V*

# Training and Additional Resources

Competent Authority Revenue Procedure 2015-40 Guidance: Foreign-Initiated Adjustment(s)	
Type of Resource	Description(s)
Saba Meeting Sessions	▪ <i>Competent Authority &amp; MAP</i> - 2015 Saba Meeting
Issue Toolkits	▪ Audit Tool - Transfer Pricing Examination Process

# Glossary of Terms and Acronyms

Term/Acronym	Definition
ACAP	Accelerated Competent Authority Procedures
APA	Advanced Pricing Agreement
APMA	Advance Pricing and Mutual Agreement Program
BNA TMP	Bureau National Affairs, Tax Management Portfolio
CA	Competent Authority
CFC	Controlled Foreign Corporation
FP	Foreign Parent
IRM	Internal Revenue Manual
ISI	Income Shifting Inbound
ISO	Income Shifting Outbound
LOB	Limitation on benefits
MAP	Mutual Agreement Procedures
NOPA	Notice of Proposed Adjustment
OECD	Organisation for Economic Co-operation and Development
PE	Permanent Establishment
TAIT	Treaty Assistance and Interpretation Team
TPM	Transfer Pricing Methodology

# Glossary of Terms and Acronyms (cont'd)

Term/Acronym	Definition
U.S. CA	U.S. Competent Authority
USP	U.S. Parent
USS	U.S. Subsidiary

# Index of Related Practice Units

Associated UIL(s)	Related Practice Unit	DCN
9411	<i>Overview of IRC Section 482</i>	ISO/T/01-01 (formerly ISO/9411.07_01(2013))
9411.05	<i>Sales of Tangible Goods from a CFC to a USP – CUP Method</i>	ISO/T/01_05-02 (formerly ISO/9411.05_01(2013))
9411.07	<i>Competent Authority Revenue Procedure 2015-40 Guidance: U.S.-Initiated Adjustment(s)</i>	ISO/P/01_07_03-01
9413.01	<i>Exhaustion of Remedies</i>	FTM/P/03_01_02-01 (formerly FTM/9413.01-02_01(2013))
9422	<i>Review of Transfer Pricing Documentation for Inbound Taxpayers</i>	ISI/P/06_09_01-01 (formerly ISI/PUO/V_6_10(2014))
9422	<i>Advance Pricing Agreement for Tangible Goods Transactions Inbound</i>	ISI/P/06_07-07
9422	<i>Comparability Analysis for Tangible Goods Transactions - Inbound</i>	ISI/P/06_07-01 (formerly ISI/PUO/V_6_01(2014))
9422	<i>Revenue Procedure 99-32 Inbound Guidance</i>	ISI/P/06_09_02-01 (formerly ISI/9422.09_08(2013))