

LB&I Concept Unit Knowledge Base – International

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Shelf		Cross-Over
Book	16	Treaties
Chapter	12	Procedural Treaty Issues (MAP)
Section		

Unit Name	Competent Authority Process Under a MAP Article of a U.S. Income Tax Treaty	
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General Overview

Competent Authority Process Under a MAP Article of a U.S. Income Tax Treaty

One purpose of U.S. income tax treaties is to reduce or eliminate double taxation on income from sources within one Contracting State (either the United States or the other country party to the particular treaty) paid to a resident of the other Contracting State. The competent authority process provides broad access to a mechanism under the Mutual Agreement Procedure (MAP) article of a U.S. income tax treaty to alleviate double taxation (and other taxation not in accordance with the treaty). See Section 2.01(2) of Revenue Procedure (Rev. Proc.) 2015-40. This remedy is separate from, and in addition to, remedies otherwise available under domestic law. The term “competent authority process” refers to all steps in the process of initiating and resolving a competent authority case, including steps in relation to pre-filing procedures. See Section 1.04 of Rev. Proc. 2015-40. The competent authority process is represented by paragraphs 1 and 2 of the MAP article in most U.S. income tax treaties.

This Practice Unit is intended to be an overview or general explanation of the process for competent authority requests made to the U.S. competent authority under a MAP article representative of most U.S. income tax treaties.



CONSULTATION: The process of requesting and obtaining assistance under paragraphs (1) and (2) of a MAP article from the U.S. competent authority is conducted through two offices, Advance Pricing and Mutual Agreement Program (APMA) and Treaty Assistance and Interpretation Team (TAIT). See [slide 46](#) for the definitions of APMA and TAIT. Generally, references in this Practice Unit to the “U.S. competent authority” refer to APMA or TAIT (as appropriate) unless the context indicates otherwise.



CAUTION: Each country prescribes under its domestic law how a taxpayer can make a competent authority request to such country’s competent authority. Accordingly, treaty partners’ competent authority processes may be different than the competent authority process of the U.S. competent authority described in this Practice Unit. See Organization for Economic Cooperation and Development (OECD) MAP Profiles.



CAUTION : Every U.S. income tax treaty is different. Almost all U.S. income tax treaties have a MAP article, but the specific provisions of individual MAP articles will vary with each treaty. See Annex A of the OECD Making Dispute Resolution More Effective - MAP Peer Review Report, United States (Stage 1). Although this Practice Unit highlights some common variations, you always must consult the applicable U.S. income tax treaty for each case.

Detailed Explanation of the Concept

Competent Authority Process Under a MAP Article of a U.S. Income Tax Treaty

The competent authority process provides broad access to a mechanism under the MAP article of a U.S. income tax treaty to alleviate double taxation (and other taxation not in accordance with the treaty).

Analysis	Resources
<p>Conceptually, the competent authority process can be separated into two phases, which roughly correspond to paragraphs 1 and 2 of the MAP article in most U.S. income tax treaties. Paragraph 1 covers the process of requesting competent authority assistance, while paragraph 2 covers the process to reach a competent authority resolution of such request. The process to reach a resolution under paragraph 2 may itself have two phases, the unilateral and bilateral phases.</p> <p>This Practice Unit refers to the MAP article of the U.S. Model Treaty (2006) to lay the foundation for discussing this framework. Note, however, that unlike a bilateral income tax treaty, the U.S. Model Treaty is not a legally binding document. Actual treaties may vary from the U.S. Model Treaty. Some of these variances are described in this Practice Unit.</p> <p><u>Requesting Competent Authority Assistance</u></p> <p>Paragraph 1 of the MAP article in the U.S. Model Treaty (2006) states that where a person thinks that the actions of the United States or its treaty partner result or will result in taxation that is contrary to the treaty, that person can request assistance from the competent authority of either the United States or the treaty partner. The person may make its request irrespective of the available domestic law remedies and irrespective of any domestic law time limits for presenting a refund claim.</p>	<ul style="list-style-type: none">▪ U.S. Model Treaty (2006), Art. 25(1),(2) ▪ U.S. Model Treaty (2006), Art. 25 ▪ U.S. Model Treaty (2006), Art. 25(1)

Detailed Explanation of the Concept (cont'd)

Competent Authority Process Under a MAP Article of a U.S. Income Tax Treaty	
Analysis	Resources
<p><u>Requesting Competent Authority Assistance (cont'd)</u></p> <p><u>Overview of Process of Requesting Competent Authority Assistance</u></p> <p>A complete and otherwise properly made competent authority request is a prerequisite for competent authority resolution of such request. “Competent authority request” refers to a request for assistance of the competent authority under paragraph 1 of the MAP article in most U.S. income tax treaties. The following generally describes what a complete and otherwise properly made competent authority request is.</p> <p><u>Who Can Request Competent Authority Assistance?</u></p> <p>Under most U.S. income tax treaties, a taxpayer must be a resident for treaty purposes (“treaty resident”), a national (as defined in the treaty), or a citizen of one of the Contracting States to the treaty to request competent authority assistance under that treaty. E.g., see U.S.- Canada Income Tax Treaty, Art. XXVI(1).</p> <p> CAUTION: A person’s status as a “treaty resident” is separate from that person’s status as a resident under domestic tax law principles. A resident of a country for treaty purposes is a person who satisfies the requirements of the relevant treaty’s Resident article. E.g., see U.S. Model Treaty (2006), Art. 4.</p>	<ul style="list-style-type: none">▪ Rev. Proc. 2015-40, Sec. 3.01 ▪ U.S.- Canada Income Tax Treaty, Art. XXVI(1) ▪ U.S. Model Treaty (2006), Art. 4

Detailed Explanation of the Concept (cont'd)

Competent Authority Process Under a MAP Article of a U.S. Income Tax Treaty	
Analysis	Resources
<p><u>Requesting Competent Authority Assistance (cont'd)</u></p> <p><u>Overview of Process of Requesting Competent Authority Assistance (cont'd)</u></p> <p><u>From Whom Can a Taxpayer Request Competent Authority Assistance?</u></p> <p>Under most U.S. income tax treaties, a taxpayer may request assistance from the competent authority of the country of which it is a treaty resident, national, or citizen. E.g., see U.S.-Canada Income Tax Treaty, Art. XXVI(1). The U.S. Model Treaty (2006) and some U.S. income tax treaties allow for a taxpayer to request assistance from the competent authority of either Contracting State.</p> <p><u>For What Can a Taxpayer Request Competent Authority Assistance?</u></p> <p>A taxpayer can request competent authority assistance for any action of either Contracting State (i.e., U.S.-initiated action or foreign-initiated action) that results or will likely result in taxation not in accordance with the treaty. "Foreign-initiated action" and "U.S.-initiated action" refer to a foreign- or U.S.-initiated adjustment, or another action by or on behalf of the tax authority of a treaty country or IRS (such as withholding), that gives rise to a competent authority issue or makes it likely that a competent authority issue will arise.</p>	<ul style="list-style-type: none"> ▪ U.S.- Canada Income Tax Treaty, Art. XXVI(1) ▪ U.S. Model Treaty (2006), Art. 25(1) ▪ Rev. Proc. 2015-40, Sec. 2.01(2) ▪ Rev. Proc. 2015-40, Sec. 1.04

Detailed Explanation of the Concept (cont'd)

Competent Authority Process Under a MAP Article of a U.S. Income Tax Treaty	
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<p><u>Requesting Competent Authority Assistance (cont'd)</u></p> <p><u>Overview of Process of Requesting Competent Authority Assistance (cont'd)</u></p> <p><u>For What Can a Taxpayer Request Competent Authority Assistance? (cont'd)</u></p> <p>The issue(s) covered in a taxpayer's competent authority request is referred to in this Practice Unit as "competent authority issue(s)." A "competent authority issue" is an issue that can be resolved by the U.S. competent authority, typically under the MAP article of a U.S. income tax treaty. Typically (and for purposes of this Practice Unit), a competent authority issue will be an action of a Contracting State which results or is likely to result in taxation not in accordance with an income tax treaty.</p> <p><u>How Does a Taxpayer Request Competent Authority Assistance?</u></p> <p>Taxpayers who are eligible to request assistance from the U.S. competent authority must do so in accordance with the governing U.S. income tax treaty, Rev. Proc. 2015-40 (or any successor), and any other applicable U.S. guidance. Requests for some types of competent authority assistance may have special filing requirements. E.g., see Section 3.06 of Rev. Proc. 2015-40.</p>	<ul style="list-style-type: none"> ▪ Rev. Proc. 2015-40, Sec. 1.04 ▪ Rev. Proc. 2015-40, Sec. 3.03 ▪ Rev. Proc. 2015-40, Sec. 3.06

Detailed Explanation of the Concept (cont'd)

Competent Authority Process Under a MAP Article of a U.S. Income Tax Treaty	
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<p><u>Requesting Competent Authority Assistance (cont'd)</u></p> <p><u>Overview of Process of Requesting Competent Authority Assistance (cont'd)</u></p> <p><u>How Does a Taxpayer Request Competent Authority Assistance? (cont'd)</u></p> <p> CAUTION: A taxpayer's eligibility to request assistance from the U.S. competent authority is determined by reference to the U.S. tax treaty under which competent authority assistance is sought. If the treaty requires the taxpayer to request competent authority assistance from the foreign competent authority, many foreign competent authority processes are summarized in the OECD MAP Profiles.</p> <p> CAUTION: Rev. Proc. 2015-40 is generally effective only for competent authority requests filed on or after October 30, 2015; Rev. Proc. 2006-54 would likely apply for competent authority requests filed before that date.</p> <p> CAUTION: Distinguish U.S. income tax treaties (U.S. agreements with foreign countries) from U.S. tax coordination agreements (U.S. agreements with U.S. Territories - i.e., American Samoa, Guam, the Commonwealth of the Northern Marianas Islands, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands). For guidance on the competent authority process under U.S. tax coordination agreements, refer to Rev. Proc. 2006-23.</p>	<ul style="list-style-type: none"> ▪ OECD MAP Profiles at http://www.oecd.org/tax/dispute/country-map-profiles.htm ▪ Rev. Proc. 2015-40, Sec. 16 ▪ Rev. Proc. 2006-54 ▪ Rev. Proc. 2015-40, Sec. 2.02 ▪ Rev. Proc. 2006-23

Detailed Explanation of the Concept (cont'd)

Competent Authority Process Under a MAP Article of a U.S. Income Tax Treaty	
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<p><u>Requesting Competent Authority Assistance (cont'd)</u></p> <p><u>Overview of Process of Requesting Competent Authority Assistance (cont'd)</u></p> <p><u>When Can a Taxpayer Request Competent Authority Assistance?</u></p> <p>A taxpayer can request competent authority assistance when it considers that the actions of one or both of the Contracting States to a U.S. income tax treaty result or will likely result for the taxpayer in double taxation or other taxation not in accordance with the governing treaty. E.g., see U.S. Model Treaty (2006), Art. 25(1).</p> <p>Rev. Proc. 2015-40 and IRM 4.60.2 provide further guidance on when a competent authority request can or must be made, including the following examples:</p> <ul style="list-style-type: none"> ▪ Where the competent authority request arises from an IRS examination, the U.S. competent authority will generally not accept the request before Exam has communicated the amount of the proposed adjustment in writing to the taxpayer (generally, by a Form 5701 - <i>Notice of Proposed Adjustment</i> or Form 4549 - <i>Income Tax Examination Changes</i>); and ▪ Where the competent authority request arises from an Appeals proceeding, the taxpayer must make such request within 60 days of its opening conference with Appeals (note, the competent authority issue(s) must be properly severed from Appeals prior to making the request). 	<ul style="list-style-type: none"> ▪ Rev. Proc. 2015-40, Sec. 3.04(1) ▪ U.S. Model Treaty (2006), Art. 25(1) ▪ IRM 4.60.2 – <i>Mutual Agreement Procedures and Report Guidelines</i> ▪ Rev. Proc. 2015-40, Sec. 3.04(3) ▪ Rev. Proc. 2015-40, Sec. 6.04(3)(a)

Detailed Explanation of the Concept (cont'd)

Competent Authority Process Under a MAP Article of a U.S. Income Tax Treaty	
Analysis	Resources
<p><u>Requesting Competent Authority Assistance (cont'd)</u></p> <p><u>Overview of Process of Requesting Competent Authority Assistance (cont'd)</u></p> <p><u>When Can a Taxpayer Request Competent Authority Assistance? (cont'd)</u></p> <p><u>Treaty Notification Period</u></p> <p>Taxpayers should request competent authority assistance promptly after a competent authority issue(s) arises or is likely to arise, as many U.S. income tax treaties require that a competent authority request be filed, or require notification to the competent authority that such request will be filed, within a certain time limit (referred to as a treaty notification period).</p> <p>Treaty notification to the U.S. competent authority may be made:</p> <ul style="list-style-type: none"> ▪ As part of the competent authority request; or ▪ By letter to the U.S. competent authority that satisfies the requirements of Sections 12.02 through 12.05 and the Appendix (as applicable) of Rev. Proc. 2015-40. 	<ul style="list-style-type: none"> ▪ Rev. Proc. 2015-40, Sec. 3.04(1) ▪ Rev. Proc. 2015-40, Sec. 12.02

Detailed Explanation of the Concept (cont'd)

Competent Authority Process Under a MAP Article of a U.S. Income Tax Treaty

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[Requesting Competent Authority Assistance \(cont'd\)](#)

[Overview of Process of Requesting Competent Authority Assistance \(cont'd\)](#)

[When Can a Taxpayer Request Competent Authority Assistance? \(cont'd\)](#)

[Effect of Closed U.S. Statute of Limitation](#)

Under most U.S. income tax treaties, the taxpayer may request, and the U.S. competent authority may accept a request for, competent authority assistance even if the U.S. statute of limitations for claiming a refund (or other applicable time limit under U.S. law or the law of the other Contracting State) is closed. E.g., see U.S. Model Treaty (2006), Art. 25(1)). These domestic law procedural limitations may only be waived if a competent authority request is accepted and a competent authority resolution is reached. As a result, the taxpayer is strongly encouraged to take protective measures to ensure treaty notification is timely met (see discussion on protective measures on [slide 12](#)).

 **CAUTION:** A U.S. income tax treaty may not increase the tax burden beyond the burden determined under domestic law. As a result, competent authority resolutions cannot be used to override U.S. statutes of limitation to impose additional tax, unless the taxpayer expressly agrees to this. See, e.g., Technical Explanation (TE) to U.S. Model Treaty (2006), Art. 1(2). Also see, e.g., TE to the U.S. Model Treaty (2006), Art. 25(2).

- U.S. Model Treaty (2006), Art. 25(1)
- Technical Explanation (TE) to U.S. Model Treaty (2006), Art. 1(2)
- TE to the U.S. Model Treaty (2006), Art. 25(2)

Detailed Explanation of the Concept (cont'd)

Competent Authority Process Under a MAP Article of a U.S. Income Tax Treaty	
Analysis	Resources
<p><u>Requesting Competent Authority Assistance (cont'd)</u></p> <p><u>Result of Process of Requesting Competent Authority Assistance</u></p> <p>After a taxpayer submits a complete competent authority request and such request is accepted by the U.S. competent authority, the U.S. competent authority (and the competent authority of the other Contracting State, as applicable) will endeavor to resolve the competent authority issue(s) for which assistance was requested, as described in the “Competent Authority Resolution” section on slide 26.</p> <p><u>Roles and Responsibilities - Taxpayer</u></p> <p><u>Request Competent Authority Assistance</u></p> <p>The taxpayer is responsible for properly making a complete and timely competent authority request to the proper competent authority(ies).</p> <p><u>Take Protective Measures</u></p> <p>The taxpayer is responsible for taking appropriate protective measures under applicable domestic law to increase the likelihood that a competent authority resolution, resulting from its competent authority request, can be implemented in both Contracting States, and to protect any rights of access to alternative remedies outside of the competent authority process from being barred by administrative, legal, or procedural barriers.</p>	<ul style="list-style-type: none"> ▪ Rev. Proc. 2015-40, Sec 3.05(1) ▪ Rev. Proc. 2015-40, Appendix Sec. 1.02 ▪ Rev. Proc. 2015-40, Sec. 11.01

Detailed Explanation of the Concept (cont'd)

Competent Authority Process Under a MAP Article of a U.S. Income Tax Treaty	
Analysis	Resources
<p><u>Requesting Competent Authority Assistance (cont'd)</u></p> <p><u>Roles and Responsibilities - Taxpayer (cont'd)</u></p> <p><u>Take Protective Measures (cont'd)</u></p> <p>“Protective measures” refer to actions a taxpayer takes under applicable domestic law to increase the likelihood that a competent authority resolution that arises from its competent authority request can be implemented in both Contracting States, and to protect any rights of access to alternative remedies outside of the competent authority process from being barred by administrative, legal, or procedural barriers.</p> <p>Protective measures include, but are not limited to:</p> <ul style="list-style-type: none">▪ Filing protective claims for refund or credit;▪ Extending any period of limitations on assessment or refund;▪ Avoiding the lapse or termination of the taxpayer's right to appeal any tax determination;▪ Complying with all applicable procedures for invoking the competent authority process, including applicable treaty provisions dealing with time limits within which to invoke such remedy; and▪ Contesting an adjustment or seeking an appropriate correlative adjustment with respect to the U.S. or treaty country tax.	

Detailed Explanation of the Concept (cont'd)

Competent Authority Process Under a MAP Article of a U.S. Income Tax Treaty	
Analysis	Resources
<p><u>Requesting Competent Authority Assistance (cont'd)</u></p> <p><u>Roles and Responsibilities -Taxpayer (cont'd)</u></p> <p><u>Take Protective Measures (cont'd)</u></p> <p>Protective claims can be made by any of the following ways:</p> <ul style="list-style-type: none"> ▪ By following IRC 6402 and corresponding Treasury regulations; ▪ By filing a request for competent authority assistance that contains a specific statement to that effect and supporting documentation (see Tab 3, Section 2.02 of the Appendix to Rev. Proc. 2015-40); or ▪ By filing a letter with the U.S. competent authority (other than a competent authority request) stating that a protective claim is being made pursuant to Section 11.03(1) of Rev. Proc. 2015-40. <p>The taxpayer may consolidate an initial protective claim and an initial treaty notification into a single letter or in a competent authority request.</p>	<ul style="list-style-type: none"> ▪ Rev. Proc. 2015-40, Sec. 11.02(3) ▪ Rev. Proc. 2015-40, Sec. 11.03(1) ▪ Rev. Proc. 2015-40, Appendix Sec. 2.02 ▪ Rev. Proc. 2015-40, Sec. 11.03(1) ▪ Rev. Proc. 2015-40, Sec. 12.05

Detailed Explanation of the Concept (cont'd)

Competent Authority Process Under a MAP Article of a U.S. Income Tax Treaty	
Analysis	Resources
<p><u>Requesting Competent Authority Assistance (cont'd)</u></p> <p><u>Roles and Responsibilities -Taxpayer (cont'd)</u></p> <p><u>Awareness of Effect of Entering Into Closing Agreements and Settlements Before Making Competent Authority Request</u></p> <p>Where a taxpayer has executed a closing agreement with Exam that covers the competent authority issue(s) for which the taxpayer subsequently makes a competent authority request, the U.S. competent authority will generally pursue only a correlative adjustment from the other Contracting State and will typically not take any actions that would change the determination of taxable income set forth in the agreement.</p> <p> CAUTION: Where a taxpayer has executed a closing agreement with Appeals that covers a competent authority issue(s) for which the taxpayer subsequently makes a competent authority request, the U.S. competent authority will not accept such request. This is a change in the competent authority process introduced by Rev. Proc. 2015-40.</p>	<ul style="list-style-type: none"> ▪ Rev. Proc. 2015-40, Sec. 6.03(2) ▪ Rev. Proc. 2015-40, Sec. 6.04(3)(a) ▪ See Rev. Proc. 2006-54, Sec. 7.05

Detailed Explanation of the Concept (cont'd)

Competent Authority Process Under a MAP Article of a U.S. Income Tax Treaty	
Analysis	Resources
<p><u>Requesting Competent Authority Assistance (cont'd)</u></p> <p><u>Roles and Responsibilities -Taxpayer (cont'd)</u></p> <p><u>Awareness of Effect of Judicial Determinations Before Making Competent Authority Request</u></p> <p>Where a Federal court has made a final determination of a taxpayer's tax liability, or the taxpayer has agreed to a litigation settlement with Office of Chief Counsel or the U.S. Department of Justice, the taxpayer may still make a competent authority request for such issue. Upon accepting such a request, the U.S. competent authority will pursue only correlative relief from the applicable country for the amount of such final determination (or the amount specified in the closing agreement, if applicable) and will not authorize competent authority repatriation. "Competent authority repatriation" refers to certain types of payments and prepayment offsets made with respect to the amount of a primary adjustment addressed in the competent authority resolution. See Rev. Proc. 2015-40, Sec. 4.02(2) and Rev. Proc. 99-32 for additional information.</p> <p><u>Awareness of Effect of Cases Designated For or Pending in Litigation On Making a Competent Authority Request</u></p> <p>Special considerations apply to competent authority requests when the competent authority issue(s) are the subject of a case designated for, or pending in, litigation. These considerations may limit or altogether prevent the U.S. competent authority assistance.</p>	<ul style="list-style-type: none"> ▪ Rev. Proc. 2015-40, Sec. 6.05(2) ▪ Rev. Proc. 2015-40, Sec. 4.02(2) ▪ Rev. Proc. 99-32 ▪ Rev. Proc. 2015-40, Sec. 6.05(1)

Detailed Explanation of the Concept (cont'd)

Competent Authority Process Under a MAP Article of a U.S. Income Tax Treaty	
Analysis	Resources
<p><u>Requesting Competent Authority Assistance (cont'd)</u></p> <p><u>Roles and Responsibilities -Taxpayer (cont'd)</u></p> <p><u>Awareness of Effect of Alternative Dispute Resolution Before Making Competent Authority Request</u></p> <p>Competent authority assistance may be limited where the taxpayer has previously pursued resolution of the competent authority issue(s) through an alternative dispute resolution program under the jurisdiction of Exam. The U.S. competent authority will not accept a competent authority request where the taxpayer has pursued resolution of a competent authority issue(s) through an alternative dispute resolution program that is under the jurisdiction of Appeals.</p> <p><u>Awareness of Effect of Closing Agreements With the Other Contracting State Before Making a Competent Authority Request</u></p> <p>Where a taxpayer, prior to requesting competent authority assistance, has executed an agreement similar to a closing agreement with the other Contracting State that covers the competent authority issue(s) and that limits the ability of such other country's competent authority to negotiate a competent authority resolution with the U.S. competent authority, the U.S. competent authority may deny the request for assistance. U.S. competent authority is available to consult with taxpayers prior to their acceptance of any foreign adjustments raised by treaty partners.</p>	<ul style="list-style-type: none"> ▪ Rev. Proc. 2015-40, Sec. 6.03(3) ▪ Rev. Proc. 2015-40, Sec. 7.02(3)(a) ▪ Rev. Proc. 2015-40, Sec. 2.03

Detailed Explanation of the Concept (cont'd)

Competent Authority Process Under a MAP Article of a U.S. Income Tax Treaty	
Analysis	Resources
<p><u>Requesting Competent Authority Assistance (cont'd)</u></p> <p><u>Roles and Responsibilities - Exam and Appeals</u></p> <p>Exam and/or Appeals generally have a role in the competent authority process only if the competent authority issue(s) arises out of (or is otherwise related to a year in which there is) an open Exam or Appeals proceeding.</p> <p><u>Protect U.S. Statute of Limitations</u></p> <p>The Exam or Appeals office to which a return is charged—not the U.S. competent authority—is responsible for protecting the U.S. statute of limitations relevant to such return, including on any competent authority issue(s). The U.S. competent authority should be notified immediately if a taxpayer will not extend the statute of limitations.</p> <p><u>Exercise Caution and Awareness</u></p> <p>The Exam or Appeals office to which a return is charged should have a general awareness of the requirements related to and the effect of the competent authority process. For example, a competent authority request covering an issue can affect potential options normally otherwise available on that issue in Appeals or Exam.</p>	<ul style="list-style-type: none"> ▪ IRM 4.60.2.2 – <i>Role of Examination</i> ▪ IRM 4.60.2 – <i>Mutual Agreement Procedures and Report Guidelines</i>

Detailed Explanation of the Concept (cont'd)

Competent Authority Process Under a MAP Article of a U.S. Income Tax Treaty

Analysis

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Requesting Competent Authority Assistance (cont'd)

Roles and Responsibilities - Exam Only

Identify Foreign-Initiated Adjustments That May Reduce U.S. Tax Liability

Exam should consider during the initial stages of a U.S. examination whether taxpayers have paid or incurred foreign-initiated adjustments that may have been used to reduce their U.S. tax liability. If Exam identifies such foreign-initiated adjustments, it should ask the taxpayer to provide a written explanation of the adjustments and consult with the U.S. competent authority as appropriate.

 **CAUTION:** Exam should not allow any U.S. correlative relief (whether as a credit, or a downward income adjustment) related to these foreign-initiated adjustments until it is satisfied that the taxpayer has properly exhausted its remedies to minimize foreign taxes paid (see “Creditability of Foreign Tax Paid for Purposes of U.S. Foreign Tax Credits” in “Relationship to Other Issues” section at [slide 40](#)), and in all cases must wait until the U.S. competent authority completes its consideration of the matter, or otherwise releases jurisdiction to Exam (see “Result of Process of Competent Authority Resolution” section at [slide 32](#)).

- IRM 4.60.2.5 – *Foreign Initiated Adjustments Affecting a U.S. Tax Return or Claimed on Examination*

Detailed Explanation of the Concept (cont'd)

Competent Authority Process Under a MAP Article of a U.S. Income Tax Treaty	
Analysis	Resources
<p><u>Requesting Competent Authority Assistance (cont'd)</u></p> <p><u>Roles and Responsibilities - Exam Only (cont'd)</u></p> <p><u>Notify Taxpayer of Potential Double Taxation or Taxation Otherwise Not In Accordance With a U.S. Income Tax Treaty As Soon As Possible</u></p> <p>Exam should make every effort to notify the taxpayer as soon as possible of potential double taxation or taxation otherwise not in accordance with an applicable U.S. income tax treaty, but must do so no later than when it makes a proposed adjustment that potentially leads to double taxation or taxation otherwise not in accordance with a U.S. income tax treaty. For U.S. income tax treaties with treaty notification periods, depending on the facts and circumstances, if the taxpayer does not receive timely notice of a proposed adjustment, Exam may have to recede from a proposed adjustment to the extent the adjustment would give rise to double taxation or taxation otherwise not in accordance with the applicable treaty.</p> <p>Notification to the taxpayer of potential double taxation or taxation otherwise not in accordance with a U.S. income tax treaty may be made through Pattern Letter 1853(P) (or similar correspondence) and Schedule 1853(P). A separate schedule should be prepared for each entity that is affected by the adjustment and that is a resident in a Contracting State under a U.S. income tax treaty.</p>	<ul style="list-style-type: none"> ▪ IRM 4.60.2.1 – <i>Notification to Taxpayers of Potential Double Taxation</i> ▪ IRM 4.60.2-1 – <i>Right to Request Competent Authority Consideration Letter 1853(P)</i>

Detailed Explanation of the Concept (cont'd)

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<p><u>Requesting Competent Authority Assistance (cont'd)</u></p> <p><u>Roles and Responsibilities - Exam Only (cont'd)</u></p> <p><u>Notify Taxpayer of Potential Double Taxation or Taxation Otherwise Not In Accordance With a U.S. Income Tax Treaty As Soon As Possible (cont'd)</u></p> <p>The following is an example of when multiple Schedule 1853(P)s should be issued:</p> <ul style="list-style-type: none"> ▪ The IRS makes a tax adjustment on income received by a U.S. company for services the U.S. company provided to its foreign affiliates. ▪ All of the foreign affiliates are treaty residents of countries with which the United States has income tax treaties. ▪ A U.S. tax adjustment on this income to the U.S. company could affect each of these foreign affiliates. <p>Therefore, a separate Schedule 1853(P) should be issued for each foreign affiliate because each is a treaty resident of a country with which the United States has an income tax treaty.</p>	<ul style="list-style-type: none"> ▪ IRM 4.60.2.1 – <i>Notification to Taxpayers of Potential Double Taxation</i>

Detailed Explanation of the Concept (cont'd)

Competent Authority Process Under a MAP Article of a U.S. Income Tax Treaty	
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<p><u>Requesting Competent Authority Assistance (cont'd)</u></p> <p><u>Roles and Responsibilities - Exam Only (cont'd)</u></p> <p><u>Prepare MAP Report</u></p> <p>Exam must prepare a MAP report for all IRS examinations that contain potential issues of double taxation or other taxation not in accordance with an applicable U.S. income tax treaty, regardless of whether a competent authority request has been initiated. A well-developed MAP report is important because the U.S. competent authority will consider that report in developing its position during MAP proceedings.</p> <p><u>Roles and Responsibilities - U.S. Competent Authority</u></p> <p>Under certain circumstances, the U.S. competent authority will have a limited role or may otherwise need to communicate with a taxpayer, Exam, or Appeals before the taxpayer requests competent authority assistance under the MAP article of an applicable income tax treaty.</p>	<ul style="list-style-type: none"> ▪ IRM 4.60.2.4 – <i>MAP Report</i>

Detailed Explanation of the Concept (cont'd)

Competent Authority Process Under a MAP Article of a U.S. Income Tax Treaty	
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<p><u>Requesting Competent Authority Assistance (cont'd)</u></p> <p><u>Roles and Responsibilities - U.S. Competent Authority (cont'd)</u></p> <p><u>Informal Consultation</u></p> <p>The U.S. competent authority is available for informal consultations with taxpayers regarding any competent authority issue and collateral issues that arise in connection with competent authority issues (e.g., potential limitations on the U.S. foreign tax credit).</p> <p><u>Pre-Filing Procedures</u></p> <p>Taxpayers are encouraged to consider whether their competent authority request raises issues that may benefit from a pre-filing conference with the U.S. competent authority before submitting the competent authority request.</p>	<ul style="list-style-type: none">▪ Rev. Proc. 2015-40, Sec. 2.03 ▪ Rev. Proc. 2015-40, Sec. 3.02(1)

Detailed Explanation of the Concept (cont'd)

Competent Authority Process Under a MAP Article of a U.S. Income Tax Treaty

Analysis

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Requesting Competent Authority Assistance (cont'd)

Roles and Responsibilities - U.S. Competent Authority (cont'd)

Pre-Filing Procedures (cont'd)



CAUTION: Pre-filing procedures are mandatory for competent authority requests arising from taxpayer-initiated positions. This is a change in the competent authority process introduced by Rev. Proc. 2015-40. A “taxpayer-initiated position” is a competent authority issue that results from inconsistent positions taken by a taxpayer with respect to its tax liability in the United States and in a treaty country that were not adopted in response to a proposed or actual adjustment made by the IRS or a foreign tax authority, such as:

- Inconsistent positions with regard to the same transaction taken on an original U.S. return and an equivalent filing with a foreign tax authority; and
- A revised position taken on an amended U.S. return or equivalent filing with a foreign tax authority that creates inconsistent positions between the U.S. return and an equivalent filing with a foreign tax authority.

- Rev. Proc. 2015-40, Sec. 3.02(2)
- Rev. Proc. 2015-40, Sec. 1.04

Detailed Explanation of the Concept (cont'd)

Competent Authority Process Under a MAP Article of a U.S. Income Tax Treaty	
Analysis	Resources
<p><u>Requesting Competent Authority Assistance (cont'd)</u></p> <p><u>Roles and Responsibilities - U.S. Competent Authority (cont'd)</u></p> <p><u>Small Case Taxpayers</u></p> <p>To increase access and simplify the process for “small case” taxpayers, taxpayers meeting certain dollar thresholds and particular request types may qualify for reduced filing requirements. See Section 5 of Rev. Proc. 2015-40. Taxpayers potentially eligible for these abbreviated requirements and procedures may contact the U.S. competent authority before requesting competent authority assistance.</p>	<ul style="list-style-type: none">▪ Rev. Proc. 2015-40, Sec. 5

Detailed Explanation of the Concept (cont'd)

Competent Authority Process Under a MAP Article of a U.S. Income Tax Treaty

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Competent Authority Resolution

As explained above, the competent authority process can be separated into two phases. The first phase is the request process. The second phase, usually represented by paragraph 2 of the MAP article, covers the process to reach a competent authority resolution of such request. This process may itself have two phases—the unilateral and bilateral phases.

Paragraph 2 of the MAP article of the U.S. Model Treaty (2006) states that, in the unilateral stage, the Contracting State that receives the request first must evaluate whether the taxpayer's objection appears justified and, if so, whether that Contracting State can provide relief, on its own, to the taxpayer. If the Contracting State that receives the request cannot provide unilateral relief, then the case moves to the bilateral phase. In this phase both competent authorities endeavor to resolve the case by mutual agreement, with a view to avoiding taxation that is contrary to the treaty. Assessment and collection procedures are suspended during the period that any mutual agreement proceeding is pending. Once agreement is reached, paragraph 2 of the MAP article of the U.S. Model Treaty (2006) states that the agreement will be implemented notwithstanding any time limits or other procedural limitations in the domestic law of the Contracting States.

- U.S. Model Treaty (2006), Art. 25(2)

Detailed Explanation of the Concept (cont'd)

Competent Authority Process Under a MAP Article of a U.S. Income Tax Treaty	
Analysis	Resources
<p><u>Competent Authority Resolution (cont'd)</u></p> <p><u>Overview of Process for Competent Authority Resolution</u></p> <p>The second phase of the competent authority process is concerned with the process of competent authority resolution of the request. “Competent authority resolution” refers to the resolution of competent authority issues constituting a competent authority case, reached either (i) between the U.S. competent authority and one or more foreign competent authority(ies) (as reflected in a signed mutual agreement and any additional agreements or understandings achieved through the competent authority process) or (ii) through arbitration. Competent authority resolutions require not only agreement by the competent authority or competent authorities (as applicable), but the taxpayer who made the competent authority request as well. The process for competent authority resolution is generally represented by paragraph 2 of the MAP article in most U.S. income tax treaties.</p> <p>Generally, the process of competent authority resolution includes three sequential steps.</p>	<ul style="list-style-type: none">▪ Rev. Proc. 2015-40, Sec. 1.04

Detailed Explanation of the Concept (cont'd)

Competent Authority Process Under a MAP Article of a U.S. Income Tax Treaty

Analysis

Resources

Competent Authority Resolution (cont'd)

Overview of Process for Competent Authority Resolution (cont'd)

Step One: Determination Whether the Request May Be Accepted

Upon receipt of a competent authority request, the U.S. competent authority will issue an acknowledgement letter to the taxpayer, which is not an acceptance. The U.S. competent authority's acceptance of a competent authority request depends on whether the request is "justified," as contemplated by the applicable MAP article and U.S. administrative guidance. E.g. see, U.S. Model Treaty (2006), Art. 25(2).

Generally, a request for competent authority assistance will be accepted when the U.S. competent authority determines the person seeking assistance:

- Is eligible to file a competent authority request (see "Who Can Request Competent Authority Assistance?" on [slide 5](#));
- Has satisfied all applicable procedural requirements for assistance set out in the U.S. income tax treaty (e.g., filed a timely request) and applicable administrative guidance (see, e.g., Section 7.02 of Rev. Proc. 2015-40);
- Has demonstrated that there is, or will be, taxation (or a risk thereof) that is not in accordance with the treaty; and

- Rev. Proc. 2015-40, Sec. 7.01
- U.S. Model Treaty (2006), Art. 25(2)

Detailed Explanation of the Concept (cont'd)

Competent Authority Process Under a MAP Article of a U.S. Income Tax Treaty	
Analysis	Resources
<p><u>Competent Authority Resolution (cont'd)</u></p> <p><u>Overview of Process for Competent Authority Resolution (cont'd)</u></p> <p><u>Step One: Determination Whether the Request May Be Accepted (cont'd)</u></p> <ul style="list-style-type: none"> ▪ Is eligible for the assistance requested (e.g., satisfies the prescribed requirement for a reduced rate on dividends, such as a minimum holding period and amount of equity ownership) and the competent authority issue(s) for which assistance requested can be remedied via unilateral resolutions or through a bilateral agreement with the other Contracting State. See “Qualification for Treaty Benefits” section on slide 38 for further explanation. <p><u>Step Two: Unilateral Resolution</u></p> <p>After the U.S. competent authority determines that it may accept a request for assistance under the MAP article, it will seek to determine whether it can resolve the competent authority issue(s) through a unilateral solution before seeking bilateral resolution with the competent authority of the other Contracting State. E.g., see TE to U.S. Model Treaty (2006), Art. 25(2). However, competent authority requests typically require bilateral communication and negotiation. Additionally, the U.S. competent authority will not unilaterally resolve certain issues (e.g., a question of treaty residency).</p>	<ul style="list-style-type: none"> ▪ TE to U.S. Model Treaty (2006), Art. 25(2) ▪ Rev. Proc. 2015-40, Sec. 3.06(1)

Detailed Explanation of the Concept (cont'd)

Competent Authority Process Under a MAP Article of a U.S. Income Tax Treaty

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Competent Authority Resolution (cont'd)

Overview of Process for Competent Authority Resolution (cont'd)

Step Three: Bilateral Resolution

If the U.S. competent authority accepts a request for competent authority assistance under the MAP article, and a unilateral solution is not available or appropriate, the U.S. competent authority will generally seek agreement with the competent authority of the other Contracting State. E.g., see TE to U.S. Model Treaty (2006), Art. 25(2). In most situations, the competent authorities are not required to reach an agreement (or otherwise resolve the underlying issues) once a case is accepted; rather, paragraph 2 of the MAP article requires the competent authorities only to endeavor to resolve such cases.



CAUTION: Currently, U.S. income tax treaties with Belgium, Canada, France, and Germany contain provisions that provide for mandatory arbitration proceedings in respect of certain competent authority issues that remain unresolved after bilateral negotiations. Such arbitration may resolve the unsettled issues if the taxpayer consents to the outcome.

- TE to U.S. Model Treaty (2006), Art. 25(2)

Detailed Explanation of the Concept (cont'd)

Competent Authority Process Under a MAP Article of a U.S. Income Tax Treaty	
Analysis	Resources
<p><u>Competent Authority Resolution (cont'd)</u></p> <p><u>Overview of Process for Competent Authority Resolution (cont'd)</u></p> <p><u>Step Three: Bilateral Resolution (cont'd)</u></p> <p>In general, the competent authority for the Contracting State that took the action resulting in the competent authority issue(s) will prepare a position paper and provide it to the competent authority of the other Contracting State. For example, in the case of a U.S.–initiated adjustment, the U.S. competent authority will typically prepare a position paper and provide it to the competent authority of the other Contracting State. Following this, the competent authorities may exchange other correspondence or conduct additional fact-finding in respect of the case. The competent authorities will then negotiate the case. Such negotiations often occur contemporaneously with other competent authority cases between the two countries. The frequency of such meetings varies greatly depending on the country, the competent authority issue(s) for which assistance was requested, and other circumstances.</p>	

Detailed Explanation of the Concept (cont'd)

Competent Authority Process Under a MAP Article of a U.S. Income Tax Treaty	
Analysis	Resources
<p><u>Competent Authority Resolution (cont'd)</u></p> <p><u>Result of Process of Competent Authority Resolution</u></p> <p><u>Competent Authority Resolution Reached</u></p> <p>Where competent authority resolution is reached and is accepted by the taxpayer, the terms of the agreement will be memorialized in a disposition memorandum, which the U.S. competent authority will provide to the IRS office responsible for implementing the agreed-upon resolution. The U.S. competent authority will then direct the relevant IRS office(s) to carry out administrative implementation of the terms of the disposition memorandum. The U.S. competent authority is available as necessary to assist in implementation of the disposition memorandum and corresponding returns that are affected by the terms of the competent authority agreement.</p> <p><u>No Competent Authority Resolution Reached</u></p> <p>Where no competent authority resolution is reached, the U.S. competent authority will release jurisdiction over the competent authority issue(s) back to Exam or Appeals (as appropriate) for continued administrative processing.</p>	

Detailed Explanation of the Concept (cont'd)

Competent Authority Process Under a MAP Article of a U.S. Income Tax Treaty	
Analysis	Resources
<p><u>Competent Authority Resolution (cont'd)</u></p> <p><u>Roles and Responsibilities - U.S. Competent Authority</u></p> <p><u>Exclusive Jurisdiction Over Competent Authority Issue(s)</u></p> <p>Once the U.S. competent authority accepts a competent authority request, the U.S. competent authority has exclusive jurisdiction over the competent authority issue(s) covered in the request. The U.S. competent authority can cease providing assistance at any time. A determination to cease providing competent authority assistance, as well as any decisions regarding the completeness of a request for competent authority assistance (e.g., the need for supplemental information) and other decisions to deny, suspend, or terminate assistance, are final and not subject to administrative review. In practice, the U.S. competent authority rarely outright rejects a request for competent authority assistance.</p> <p><u>Coordination With Exam or Appeals</u></p> <p>When a competent authority issue(s) arises out of Exam or Appeals, the U.S. competent authority will coordinate with Exam or Appeals, as appropriate, in relation to the request and status of the competent authority process. Coordination includes notification of acceptance of a competent authority request and notification of the result of the competent authority process. For example, the U.S. competent authority will notify the appropriate Exam or Appeals office when a competent authority request is accepted, and inform it of any final settlement upon conclusion of the case process.</p>	<ul style="list-style-type: none"> ▪ Rev. Proc. 2015-40, Sec. 6.02 ▪ Rev. Proc. 2015-40, Sec. 7.02 ▪ Rev. Proc. 2015-40, Sec. 7.03

Detailed Explanation of the Concept (cont'd)

Competent Authority Process Under a MAP Article of a U.S. Income Tax Treaty	
Analysis	Resources
<p><u>Competent Authority Resolution (cont'd)</u></p> <p><u>Roles and Responsibilities - U.S. Competent Authority (cont'd)</u></p> <p><u>Communication With Taxpayer</u></p> <p>The U.S. competent authority will regularly communicate with the requesting taxpayer (or the taxpayer's duly authorized representative) throughout the competent authority process. Such communication is conducted through the TAIT competent authority analyst or APMA team leader assigned to the case. The U.S. competent authority acknowledgement letter provides the name and contact information of the assigned competent authority analyst or team leader.</p> <p><u>Roles and Responsibilities - Exam and Appeals</u></p> <p>As mentioned, Exam and/or Appeals generally have a role in the competent authority process only if the competent authority issue(s) arises out of (or is otherwise related to a year in which there is) an open Exam or Appeals proceeding.</p>	

Detailed Explanation of the Concept (cont'd)

Competent Authority Process Under a MAP Article of a U.S. Income Tax Treaty	
Analysis	Resources
<p><u>Competent Authority Resolution (cont'd)</u></p> <p><u>Roles and Responsibilities - Exam and Appeals (cont'd)</u></p> <p><u>Suspend Administrative Action on Competent Authority Issue(s)</u></p> <p>Once the U.S. competent authority accepts a competent authority request, Exam or Appeals (as appropriate) must suspend any further U.S. administrative action (e.g., assessments and collection procedures) with respect to the competent authority issue(s) covered in such request, unless the U.S. competent authority instructs otherwise. Exam or Appeals can continue to apply standard administrative procedures to issues not included in the competent authority request (i.e., issues over which the U.S. competent authority has not assumed jurisdiction).</p> <p><u>Protect U.S. Statute of Limitations</u></p> <p>The Exam or Appeals office to which a return is charged is responsible for protecting the U.S. statute of limitations relevant to such return, including on any competent authority issue(s). The U.S. competent authority should be notified immediately if a taxpayer will not extend the statute of limitations.</p>	<ul style="list-style-type: none"> ▪ Rev. Proc. 2015-40, Sec. 6.02 ▪ IRM 4.60.2.2 – <i>Role of Examination</i>

Detailed Explanation of the Concept (cont'd)

Competent Authority Process Under a MAP Article of a U.S. Income Tax Treaty	
Analysis	Resources
<p><u>Competent Authority Resolution (cont'd)</u></p> <p><u>Roles and Responsibilities - Exam and Appeals (cont'd)</u></p> <p><u>Contact the U.S. Competent Authority Regarding Questions or Issues That Arise In a Case</u></p> <p>Once the U.S. competent authority accepts a competent authority request, any questions regarding a competent authority issue(s) covered in such request should be directed to the TAIT competent authority analyst or APMA team leader assigned to the case. The U.S. competent authority will provide Exam with the name and contact information of the assigned competent authority analyst or team leader. Questions or other issues for the U.S. competent authority of a general nature can be directed to the Treaties Practice Network, TAIT, and APMA.</p> <p><u>Roles and Responsibilities - Taxpayer</u></p> <p><u>Communication With Competent Authorities</u></p> <p>The bilateral negotiation process is conducted strictly between competent authorities and the taxpayer will not be directly involved in the negotiations. However, the taxpayer can facilitate the competent authority process by providing competent authorities complete, accurate, and timely information on the factual and legal issues underlying competent authority issues. The taxpayer also may be invited to offer constructive, principled proposals for the terms of a competent authority resolution.</p>	<ul style="list-style-type: none"> ▪ For APMA and TAIT, see https://www.irs.gov/individuals/international-taxpayers/competent-authority-assistance ▪ Rev. Proc. 2015-40, Sec. 2.07(1)

Detailed Explanation of the Concept (cont'd)

Competent Authority Process Under a MAP Article of a U.S. Income Tax Treaty	
Analysis	Resources
<p><u>Competent Authority Resolution (cont'd)</u></p> <p><u>Roles and Responsibilities – Taxpayer (cont'd)</u></p> <p><u>Acceptance or Rejection of Proposed Competent Authority Resolution</u></p> <p>The taxpayer who made the competent authority request may accept or reject a proposed competent authority resolution. Additionally, the taxpayer can withdraw its competent authority request at any time. Competent authorities may deem the taxpayer to have rejected the tentative competent authority resolution if the taxpayer does not timely accept it. Generally, acceptance within 30 days is considered timely; but the competent authority may determine that a longer period is appropriate depending on the facts and circumstances of the case.</p>	<ul style="list-style-type: none">▪ Rev. Proc. 2015-40, Sec. 9.02▪ Rev. Proc. 2015-40, Sec. 2.08

Detailed Explanation of the Concept (cont'd)

Competent Authority Process Under a MAP Article of a U.S. Income Tax Treaty

Analysis

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Relationship to Other Issues

Qualification for Treaty Benefits

Generally, certain threshold requirements must be met for the application of the provisions of a U.S. income tax treaty (such as, but not limited to, the Resident and Limitation on Benefits articles of such treaty). As discussed in the “Who Can Request Competent Authority Assistance?” section on [slide 5](#), however, under many U.S. income tax treaties a taxpayer need only be a national or citizen of a Contracting State to make a competent authority request, and does not necessarily need to meet the requirements of the Resident article therein. Likewise, a taxpayer may generally make a competent authority request regardless whether it meets the requirements under the Limitation on Benefits article.



CAUTION: Remember the distinction between a taxpayer’s qualification to request competent authority assistance under the MAP article and the taxpayer’s qualification for treaty benefits.

Detailed Explanation of the Concept (cont'd)

Competent Authority Process Under a MAP Article of a U.S. Income Tax Treaty	
Analysis	Resources
<p><u>Relationship to Other Issues (cont'd)</u></p> <p><u>Qualification for Treaty Benefits (cont'd)</u></p> <p>A person requesting competent authority assistance on the basis of a claim of entitlement to benefits provided by a U.S. income tax treaty will generally need to satisfy one or both competent authorities that the requested benefits should be granted (see the “Determination Whether the Request May Be Accepted” section on slide 28).</p> <p>For example, in most U.S. income tax treaties, a taxpayer that makes a competent authority request to obtain a reduced source-country withholding tax rate on income under the Dividends article of a treaty must:</p> <ul style="list-style-type: none">▪ Satisfy the Resident and Limitation on Benefits articles of that treaty (as applicable);▪ Be the “beneficial owner” of such income; and▪ Meet other applicable requirements set forth in the Dividends article to obtain the requested reduced withholding tax rate.	

Detailed Explanation of the Concept (cont'd)

Competent Authority Process Under a MAP Article of a U.S. Income Tax Treaty

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Relationship to Other Issues (cont'd)

Creditability of Foreign Tax Paid for Purposes of U.S. Foreign Tax Credits

U.S. tax law places various limitations on the amount of taxes paid to a foreign jurisdiction(s) that are eligible to offset a taxpayer's U.S. income tax liability as a foreign tax credit. One limitation in determining the amount of creditable foreign taxes is commonly referred to as the "compulsory payment rule." Generally speaking, the rule requires taxpayers to minimize their foreign tax liabilities, over time, by reasonably interpreting and applying relevant foreign laws (including applicable income tax treaties) and exhausting all effective and practical remedies. Such remedies often arise in the context of a foreign-initiated adjustment, and will typically include (but not be limited to) requesting competent authority assistance if there is an applicable income tax treaty.

In these situations, competent authority assistance cases may either develop between the United States and one of its treaty partners (if the applicable tax treaty is a U.S. income tax treaty) or between two other countries, where the United States may have little or no involvement (if the applicable tax treaty is between two foreign jurisdictions). Acts or omissions by the taxpayer that preclude effective competent authority assistance, including failure to take protective measures or failure to request competent authority assistance, may constitute a failure to exhaust all effective and practical remedies that are required to claim a U.S. foreign tax credit. Any U.S. determination as to whether a taxpayer has exhausted the competent authority remedy must be made in consultation with the U.S. competent authority. The compulsory payment rule applies both to direct foreign tax credits and to indirect foreign tax credits.

- Treas. Reg. 1.901-2(e)(5)

Detailed Explanation of the Concept (cont'd)

Competent Authority Process Under a MAP Article of a U.S. Income Tax Treaty

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Relationship to Other Issues (cont'd)

Simultaneous Appeals Procedure (SAP)

SAP is an optional aspect of the competent authority process whereby Appeals works jointly with the U.S. competent authority and the taxpayer toward the development of the U.S. competent authority's position on an underlying U.S.-initiated adjustment prior to the U.S. competent authority's consultations with the foreign competent authority. SAP is initiated by taxpayer request, subject to acceptance by the U.S. competent authority.



CAUTION: SAP must be invoked within 60 days after notification of acceptance of request for competent authority assistance. This is a change in the competent authority process introduced by Rev. Proc. 2015-40.

- Rev. Proc. 2015-40, Sec. 6.04(2)
- Rev. Proc. 2015-40, Sec. 6.04(2)(b);
See Rev. Proc. 2006-54, Sec. 8.02

Detailed Explanation of the Concept (cont'd)

Competent Authority Process Under a MAP Article of a U.S. Income Tax Treaty	
Analysis	Resources
<p><u>Relationship to Other Issues (cont'd)</u></p> <p><u>MAP Article, Paragraph 3</u></p> <p>Paragraph 3 of the MAP article in the U.S. Model Treaty (2006) and most U.S. income tax treaties authorizes the competent authorities of the Contracting States to resolve issues of application and interpretation under the treaty (either of a general nature or on a taxpayer-specific basis), and to consult for eliminating double tax in cases not provided for under the treaty. E.g. see, U.S. Model Treaty (2006), Art. 25(3).</p> <p>Issues that arise under paragraph 3 of the MAP article can arise out of competent authority requests under paragraphs 1 and 2 of the MAP article or may arise independently under paragraph 3. For example, the competent authorities may enter into a general agreement about how the treaty will apply to income received by a fiscally transparent entity or how a specific term used in a treaty article will be applied by the Contracting States.</p>	<ul style="list-style-type: none">▪ U.S. Model Treaty (2006), Art. 25(3)

Index of Referenced Resources

Competent Authority Process Under a MAP Article of a U.S. Income Tax Treaty

APMA and TAIT contact information. See <https://www.irs.gov/individuals/international-taxpayers/competent-authority-assistance>

IRM 4.60.2 – *Mutual Agreement Procedures and Report Guidelines*

IRM 4.60.2.1 – *Notification to Taxpayers of Potential Double Taxation*

IRM 4.60.2.2 – *Role of Examination*

IRM 4.60.2.4 – *MAP Report*

IRM 4.60.2.5 – *Foreign Initiated Adjustments Affecting a U.S. Tax Return or Claimed on Examination*

OECD MAP Profiles at <http://www.oecd.org/tax/dispute/country-map-profiles.htm>

Rev. Proc. 2015-40

Rev. Proc. 2015-41

TE to U.S. Model Treaty (2006)

Treas. Reg. 1.901-2(e)(5)

U.S.-Canada Income Tax Treaty, Art. XXVI(1)

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

U.S. Model Income Tax Treaty (2006), Art. 25(2)

U.S. Model Income Tax Treaty (2006), Art. 25(3)

Training and Additional Resources

Competent Authority Process Under a MAP Article of a U.S. Income Tax Treaty	
Type of Resource	Description(s)
Saba Meeting Sessions	<ul style="list-style-type: none"> ▪ <i>Competent Authority Revenue Procedure 2015-40</i> – 2017 Centra
White Papers / Guidance	<ul style="list-style-type: none"> ▪ TE to U.S. Model Treaty (2006), Art. 25(1),(2) ▪ Commentary on Art. 25(1) and (2) of the OECD Model Treaty (2014) ▪ IRM 4.60.3 – <i>Tax Treaty Related Matters</i> ▪ Rev. Proc. 2015-40 ▪ IRS Pub. 901 – <i>U.S. Tax Treaties</i>
Articles	<ul style="list-style-type: none"> ▪ <i>BNA Tax Management Int'l Portfolio 940-2nd Sec. 3</i> (Mutual Agreement Procedure (MAP) – Taxpayer Cases) ▪ <i>Anderson – Analysis of United States Treaties</i> Chapter 23.02 (Specific Case Mutual Agreement Procedure) ▪ <i>Kuntz & Peroni - U.S. Int'l Tax</i> Para C4.21[1] (Mutual Agreement (Competent Authority) Procedures)
Databases / Research Tools	<ul style="list-style-type: none"> ▪ OECD MAP Profiles at http://www.oecd.org/ctp/dispute/country-map-profiles.htm ▪ Annex A of the OECD Making Dispute Resolution More Effective - MAP Peer Review Report, United States (Stage 1) at http://www.oecd.org/ctp/beps/making-dispute-resolution-more-effective-map-peer-review-report-united-states-stage-1-9789264282698-en.htm
Other Training Materials	<ul style="list-style-type: none"> ▪ OECD Manual for Effective Mutual Agreement Procedures at http://www.oecd.org/tax/dispute/manualoneffectivemutualagreementproceduresmemap.htm

Glossary of Terms and Acronyms

Term/Acronym	Definition
ACAP	Accelerated Competent Authority Procedure
APA	Advanced Pricing Agreement
APMA	<p>The Advance Pricing and Mutual Agreement Program (APMA) is a representative office of the U.S. competent authority within the Treaty and Transfer Pricing Operations practice area of the Large Business & International division. APMA has primary responsibility for cases arising under the Business Profits and Associated Enterprises articles of U.S. income tax treaties. However, APMA and TAIT each can consider cases arising under the Permanent Establishment and Business Profits articles of U.S. income tax treaties, and both offices will coordinate and collaborate on such cases and on any other cases or issues as appropriate. See Rev. Proc. 2015-40, Sec. 2.01(3).</p>
MAP	Mutual Agreement Procedure
OECD	Organization for Economic Cooperation and Development
Rev. Proc.	Revenue Procedure
SAP	Simultaneous Appeals Procedure
TAIT	<p>The Treaty Assistance and Interpretation Team (TAIT) is a representative office of the U.S. competent authority that reports to the Director, Treaty Administration, within the Treaty and Transfer Pricing Operations practice area of the Large Business & International division. TAIT has primary responsibility for cases arising under all other articles of U.S. income tax treaties, including questions regarding the potential existence of a permanent establishment. However, APMA and TAIT each can consider cases arising under the Permanent Establishment and Business Profits articles of U.S. income tax treaties, and both offices will coordinate and collaborate on such cases and on any other cases or issues as appropriate. See Rev. Proc. 2015-40, Sec. 2.01(3). Within TAIT, the Treaties Practice Network provides guidance and assistance to IRS on issues that fall within the scope of TAIT's primary responsibility, as referenced above.</p>
TE	Technical Explanation (TE) to a U.S. Income Tax Treaty or U.S. Model Treaty

Index of Related Practice Units

Associated UIL(s)	Related Practice Unit	DCN
9411.07	<i>Competent Authority Revenue Procedure 2015-40 Guidance: U.S.-Initiated Adjustment(s)</i>	ISO/P/001_07_03-01
9422.09	<i>Competent Authority Revenue Procedure 2015-40 Guidance: Foreign-Initiated Adjustment(s)</i>	ISI/P/006_09_03-01
9450.05	<i>Determining an Individual's Residency for Treaty Purposes</i>	TRE/P/016_02_01-06