

LB&I International Practice Service Process Unit – Audit

Shelf		Business Outbound		
Volume	3	FTC Management	UIL Code	9413
Part	3.1	Creditability	Level 2 UIL	9413.01
Chapter	3.1.2	Compulsory Payments/Exhaustion of Remedies	Level 3 UIL	9413.01-02
Sub-Chapter	3.1.2.1	Exhaustion of Remedies (Process)		

Unit Name	Exhaustion of Remedies
------------------	------------------------

Document Control Number (DCN)	FTM/9413.01-02_01(2013)
Date of Last Update	09/03/2014

Volume	Part	Chapter	Sub-Chapter
FTC Management	Creditability	Compulsory Payments/Exhaustion of Remedies	Exhaustion of Remedies (Process)

Table of Contents

(View this PowerPoint in “Presentation View” to click on the links below)

[Process Overview](#)

[Determination of Process Applicability](#)

[Summary of Process Steps](#)

[Process Steps](#)

[Training and Additional Resources](#)

[Glossary of Terms and Acronyms](#)

[Index of Related Issues](#)

Volume	Part	Chapter	Sub-Chapter
FTC Management	Creditability	Compulsory Payments/Exhaustion of Remedies	Exhaustion of Remedies (Process)

Process Overview

Exhaustion of Remedies

Process Description

The United States taxes income on a worldwide basis. To prevent double taxation, under the Internal Revenue Code (IRC) U.S. taxpayers are allowed a credit for foreign income taxes “paid.” However, the ability to credit foreign income taxes paid is limited. The Treasury regulations prevent U.S. companies from obtaining credits for foreign taxes they are not legally compelled to pay. Treas. Reg. § 1.901-2(e)(1). A system under which the U.S. Treasury allows foreign tax credits (FTCs) without requiring that U.S. taxpayers effectively and practically reduce their foreign tax payments as legally imposed would potentially create a hazard. Taxpayers would otherwise have no incentive to challenge any foreign tax whether or not properly imposed, thereby transferring the foreign tax cost to the United States. Taxpayers are required to exhaust all “effective and practical” remedies (including competent authority procedures provided under applicable tax treaties) to reduce, over time, its liability for (foreign) tax.

Example Circumstances Under Which Process Applies

Typically, situations presenting compulsory payment/exhaustion of remedies issues arise from transfer pricing adjustments made by the IRS or made by foreign authorities. Exhaustion of remedies resulting from transfer pricing issues are illustrated in greater depth in IPS unit 3.1.2.2 Exhaustion of Remedies and Transfer Pricing.

In addition, compulsory payment issues arise where inconsistent tax treatment of a transaction or instrument by the U.S. and foreign authorities could be conformed to reduce or eliminate foreign tax through foreign administrative or judicial appeals or resorting to invoking competent authority (e.g., withholding tax rates reduced by treaty; inconsistent characterization of income, such as nontaxable sale gain vs. royalty subject to withholding tax; inconsistent expense allocation rules resulting in different amounts of taxable income attributable to a branch; economic activity that does not rise to the level of a permanent establishment; or different source of income rules leading to conflicting or even multiple claims of primary taxing jurisdiction). Non-transfer pricing exhaustion of remedies issues are illustrated in IPS unit 3.1.2.3 Exhaustion of Remedies in Non Transfer Pricing Situations.

While the process a taxpayer must undertake to exhaust its remedies is similar in a transfer pricing or non-transfer pricing context, the situations that give rise to these issues are different and are illustrated in the two IPS units mentioned above.

Volume	Part	Chapter	Sub-Chapter
FTC Management	Creditability	Compulsory Payments/Exhaustion of Remedies	Exhaustion of Remedies (Process)

Process Overview (cont'd)

Exhaustion of Remedies

Process Description

A foreign tax credit is allowed for the amount of income tax that is paid or accrued to a foreign country by the taxpayer. Section IRC §901(b); Treas. Reg. §§1.901-2(a)(1) and (e)(1).

Foreign taxes are not “paid” under the noncompulsory payment rules to the extent that payments to a foreign taxing authority exceed the amount reasonably owed under foreign law. One element of this requirement is that taxpayers must prove that they exhausted all effective and practical remedies to contest their liability for taxes.

The amount paid is a compulsory tax (and creditable, assuming other relevant requirements in the IRC and Treasury regulations are met) if (1) it is determined in a manner that is consistent with a reasonable interpretation and application of the substantive and procedural provisions of foreign law (including treaties) to reduce, over time, the taxpayer's reasonably expected liability under foreign law for tax; and (2) the taxpayer exhausts all “effective and practical” remedies (including competent authority procedures provided under applicable tax treaties) to reduce, over time, its liability for tax. Treas. Reg. §1.901-2(e)(5)(i).

Volume	Part	Chapter	Sub-Chapter
FTC Management	Creditability	Compulsory Payments/Exhaustion of Remedies	Exhaustion of Remedies (Process)

Determination of Process Applicability

Exhaustion of Remedies

Exhaustion of remedies issues generally arise when U.S. and foreign law treatment of a transaction differs. If the taxpayer's foreign tax treatment was not correct, a taxpayer or its controlled foreign corporation (CFC) may have paid more foreign tax (and thereby claimed more FTC) than required under foreign law. If the foreign tax treatment was correct under local law but differed from the U.S. tax treatment or that required under a treaty, the taxpayer or CFC may have paid tax that could have been abated by the competent authority process.

Not every difference in treatment between foreign and U.S. tax law will cause or create a situation whereby the tax may not be creditable. Timing differences between U.S. and foreign tax treatment could give rise to such circumstances. Some examples may include differences in foreign and U.S. tax treatment resulting from amortization, depreciation, inventory valuation, capitalization or research and development expenditures may not require exhaustion of remedies (but see section 901(m) in the case of a taxable transaction where a section 338 election is made). In addition, not every treaty would provide relief from such differences in treatment. In performing the initial risk analysis, keep in mind that an exhaustion of remedies challenge may not result in a current U.S. tax adjustment (though 904(c) carryovers could be affected) if the taxpayer is in an excess credit position or cannot currently use foreign tax credits due to overall net operating losses.

Criteria	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ Different treatment of a transaction under U.S. and foreign law. ▪ Review Form 5471 Sch H book to tax adjustments and request an explanation of material adjustments. ▪ Examine foreign books and records, foreign tax returns, and other sections of Form 5471 (schedules C, E, G and I) along with Form 1118 to identify high effective rates of foreign tax that may not have been properly computed or could have been abated. 	<ul style="list-style-type: none"> ▪ Form 1118 Foreign Tax Credit – Corporations ▪ Taxpayers FTC (IRC 901/902) Workpapers ▪ Form 5471 Information Return of U.S. Persons With Respect to Certain Foreign Corporations and Instructions ▪ IRC § 905(c) adjustments based on foreign tax audits ▪ Transfer pricing study documentation 	

Volume	Part	Chapter	Sub-Chapter
FTC Management	Creditability	Compulsory Payments/Exhaustion of Remedies	Exhaustion of Remedies (Process)

Determination of Process Applicability (cont'd)

Exhaustion of Remedies		
Criteria	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ Does the different treatment of the transaction under U.S. and foreign law result in the payment of more foreign tax (and thereby permit taxpayer to potentially claim more FTC) than required under foreign law? <ul style="list-style-type: none"> – Ask the taxpayer about the existence of foreign audits and transfer pricing adjustments. – Review U.S. initiated transfer pricing adjustments. 	<ul style="list-style-type: none"> ▪ Applicable treaty ▪ Pattern Letter 1853: advising taxpayer to extend foreign statutes in light of potential IRS adjustment (applies to both §482 and non-§482 adjustments) ▪ Mutual Agreement Procedure (MAP) letter or MAP report ▪ <u>Rev. Proc. 99-32</u>: statements filed with the return 	
<ul style="list-style-type: none"> ▪ If the different transaction treatment between U.S. and foreign law is not proper, has taxpayer initiated steps to exhaust its remedies in the foreign jurisdiction? 		

Volume	Part	Chapter	Sub-Chapter
FTC Management	Creditability	Compulsory Payments/Exhaustion of Remedies	Exhaustion of Remedies (Process)

Summary of Process Steps

Exhaustion of Remedies	
<u>Step 1</u>	How does a taxpayer prove exhaustion of local law remedies?
<u>Step 2</u>	How is the exhaustion of remedies analysis affected where a tax treaty applies?
<u>Step 3</u>	Can there be an exhaustion of remedies in a treaty country if taxpayer does not invoke its right to Competent Authority assistance?

Volume	Part	Chapter	Sub-Chapter
FTC Management	Creditability	Compulsory Payments/Exhaustion of Remedies	Exhaustion of Remedies (Process)

Step 1

Exhaustion of Remedies

Step 1: How does a taxpayer prove exhaustion of local law remedies?

Whether or not a treaty provides an avenue for Competent Authority relief, a taxpayer must exhaust all effective and practical local law remedies to reduce its tax.

Considerations	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ A remedy is effective and practical only if its cost is reasonable in light of the amount at issue and its likelihood of success. ▪ A taxpayer is not required to pursue ineffective remedies. ▪ A settlement of two or more issues is evaluated on an overall basis, not an issue-by-issue basis. ▪ Administrative appeals and court challenges should be pursued if foreign tax authority's position is unreasonable under local law and the cost of the contest is reasonable in light of the amount at issue and likelihood of success. ▪ Foreign statute of limitations: if taxpayer knew or should have known that it could have pursued effective and practical remedies to reduce its taxes under foreign substantive law, then its failure to preserve its remedies prior to the expiration of the foreign statute will result in a non-compulsory payment. Conversely, if a taxpayer was not under actual or constructive notice that it overpaid its foreign taxes prior to the expiration of the statute, and no treaty applies to permit the Competent Authority to waive the procedural bar to relief, then it may have exhausted its remedies. 	<ul style="list-style-type: none"> ▪ Treas. Reg. § 1.901-2(e)(5)(i) ▪ Relevant portions of foreign substantive and procedural law, including statutes, administrative rulings, and court cases ▪ Foreign law legal opinions 	

Volume	Part	Chapter	Sub-Chapter
FTC Management	Creditability	Compulsory Payments/Exhaustion of Remedies	Exhaustion of Remedies (Process)

Step 1 (cont'd)

Exhaustion of Remedies

Step 1: How does a taxpayer prove exhaustion of local law remedies?

Whether or not a treaty provides an avenue for Competent Authority relief, a taxpayer must exhaust all effective and practical local law remedies to reduce its tax.

Considerations	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ Increasingly , foreign government audits of U.S.-based taxpayers have become more frequent and, at times, more aggressive. A taxpayer should not simply pay the additional tax due as a result of a foreign audit and then attempt to recoup the tax as part of the §905(c) foreign tax redetermination process. A taxpayer has a duty to evaluate the foreign government’s position and take appropriate steps to minimize its foreign tax burden. ▪ Ask the taxpayer about the nature of foreign tax audit adjustments and, where applicable, what steps the taxpayer has taken to ameliorate any additional foreign taxes that may be due as a result of the foreign tax audit. ▪ If a foreign country offers a general or partial tax amnesty, a taxpayer should ascertain whether it may be eligible for such amnesty and document its findings. Accepting a foreign tax amnesty may be the best option, but it may also deprive Competent Authority of the chance to negotiate a better settlement. Relevant issues to consider include the tax issue in question and the foreign countries involved. Review taxpayer’s tax amnesty documentation to verify whether taxpayer made a good faith effort to inquire into and, if applicable, reduce its tax burden in that country. 	<ul style="list-style-type: none"> ▪ IRC § 905(c) workpapers ▪ Request translated documents related to the foreign tax audit adjustment ▪ Documentation related to a foreign country tax amnesty program 	

Volume	Part	Chapter	Sub-Chapter
FTC Management	Creditability	Compulsory Payments/Exhaustion of Remedies	Exhaustion of Remedies (Process)

Step 1 (cont'd)

Exhaustion of Remedies

Step 1: How does a taxpayer prove exhaustion of local law remedies?

Whether or not a treaty provides an avenue for Competent Authority relief, a taxpayer must exhaust all effective and practical local law remedies to reduce its tax.

Considerations	Resources	6103 Protected Resources
<p>What if a CFC pays but disputes a foreign tax?</p> <ul style="list-style-type: none"> If the taxpayer has paid a contested tax, the credit may be claimed while the contest is ongoing, notwithstanding that the tax cannot accrue until the contest is resolved. If the contest is successful and the foreign tax is refunded, a redetermination of U.S. tax may be required under IRC 905(c). However, the IE should try to secure a statute extension from the taxpayer in case the taxpayer decides to drop the contest prematurely if credit is allowed. 	<ul style="list-style-type: none"> International Business Machines v. U.S., 38 Fed. Cl. 661 (1997) Rev. Rul. 84-125 IRC § 905(c) Documentation related to foreign tax audit or foreign court proceedings 	


Volume	Part	Chapter	Sub-Chapter
FTC Management	Creditability	Compulsory Payments/Exhaustion of Remedies	Exhaustion of Remedies (Process)

Step 1 (cont'd)

Exhaustion of Remedies

Step 1: How does a taxpayer prove exhaustion of local law remedies?

Whether or not a treaty provides an avenue for Competent Authority relief, a taxpayer must exhaust all effective and practical local law remedies to reduce its tax.

Considerations	Resources	6103 Protected Resources
<p>What if taxpayer's position is that available remedies are not effective and practical under the circumstances and has obtained an opinion letter from their foreign counsel or CPA firm?</p> <p>An opinion letter may or may not be sufficient to demonstrate that the taxpayer has exhausted its remedies. The opinion letter should include:</p> <ul style="list-style-type: none"> ▪ A detailed discussion of the relevant legal authorities, ▪ A conclusion that the tax in question was properly assessed or a reasoned explanation why a challenge to the assessment was unlikely to be successful. <p>If the taxpayer does not have an opinion letter, taxpayer must demonstrate that they have requisite foreign tax expertise and that they made a reasonable decision not to pursue the contest given the applicable law .</p>	<ul style="list-style-type: none"> ▪ Treas. Reg. § 1.901-2(e)(5)(i) ▪ Procter & Gamble Co. v. U.S., Not Reported in F.Supp.2d, 2010 WL 2925099 (S.D. Ohio, 2010) ▪ Taxpayer's Opinion Letter 	
 CONSULTATION: Counsel should be consulted when reviewing an opinion letter.		

Volume	Part	Chapter	Sub-Chapter
FTC Management	Creditability	Compulsory Payments/Exhaustion of Remedies	Exhaustion of Remedies (Process)

Step 1 (cont'd)

Exhaustion of Remedies		
Step 1: How does a taxpayer prove exhaustion of local law remedies?		
Whether or not a treaty provides an avenue for Competent Authority relief, a taxpayer must exhaust all effective and practical local law remedies to reduce its tax.		
Considerations	Resources	6103 Protected Resources
<p>Are there bright-line tests that may be used to conclude a taxpayer has exhausted its remedies?</p> <ul style="list-style-type: none"> ▪ The determination of whether an amount of tax paid is a noncompulsory amount and thus, is not eligible for U.S. foreign tax credit is a factual determination to be made on a case-by-case basis. Before actually examining the facts of a specific case, one cannot say that all remedies have been exhausted. ▪ The IE must consider all the facts and circumstances of their issue. ▪ Consider the taxpayer-provided documentation (appropriately translated, that verifies taxpayer's actions), relevant foreign law, and foreign tax authority outcome. 	<ul style="list-style-type: none"> ▪ Treas. Reg. § 1.901-2(e)(5)(i) ▪ Procter & Gamble Co. v. U.S., Not Reported in F.Supp.2d, 2010 WL 2925099 (S.D. Ohio, 2010) ▪ Field Service Advisory (FSA) (July 15, 1993) 1993 WL 1468222 	

Volume	Part	Chapter	Sub-Chapter
FTC Management	Creditability	Compulsory Payments/Exhaustion of Remedies	Exhaustion of Remedies (Process)

Step 2

Exhaustion of Remedies		
Step 2: How is the exhaustion of remedies analysis affected where a tax treaty applies?		
Taxpayers that operate in treaty countries in most cases must utilize favorable treaty provisions or invoke Competent Authority.		
Considerations	Resources	6103 Protected Resources
<p>Local foreign officials may collect foreign tax, but taxpayer must claim the reduced treaty rate via an appropriate remedy. For example, this may occur by:</p> <ul style="list-style-type: none"> ▪ claiming a reduced treaty rate on the taxpayer's foreign return; ▪ via a refund claim; ▪ via an objection to a foreign assessment; or ▪ requesting Competent Authority assistance (even if the local statute of limitations has passed or other administrative remedies fail, the taxpayer should invoke competent authority proceedings). 	<ul style="list-style-type: none"> ▪ Rev. Proc. 2006-54 	
<p>T TREATY IMPLICATION: If the taxpayer is subject to double taxation or taxation inconsistent with the treaty, the taxpayer must pursue reasonable remedies, including competent authority assistance, if the cost is reasonable in light of the amount in dispute and likelihood of success. Revenue Procedure 2006-54 provides the steps a taxpayer must take to pursue Competent Authority relief.</p>		

Volume	Part	Chapter	Sub-Chapter
FTC Management	Creditability	Compulsory Payments/Exhaustion of Remedies	Exhaustion of Remedies (Process)

Step 2 (cont'd)

Exhaustion of Remedies		
Step 2: How is the exhaustion of remedies analysis affected where a tax treaty applies?		
Taxpayers that operate in treaty countries in most cases must utilize favorable treaty provisions or invoke Competent Authority.		
Considerations	Resources	6103 Protected Resources
<p>Credit may be disallowed if remedy not properly pursued.</p> <ul style="list-style-type: none"> ▪ Taxpayer does not seek Competent Authority relief nor file for refund regarding recoverable taxes in connection with a U.S. initiated Section 482 adjustment. 	<ul style="list-style-type: none"> ▪ Treas. Reg. § 1.901-2(e)(5)(ii), see Examples (2), (4) and (6) 	
<ul style="list-style-type: none"> ▪ In the <i>Procter & Gamble</i> case, the taxpayer claimed credit for Korean withholding tax imposed on royalties with respect to which withholding tax had already been paid to Japan and allowed as a credit. The court held that the taxpayer established that the Korean tax was compulsory, but failed to meet its burden to show that it exhausted available remedies under Japanese law and the U.S.-Japan treaty to recover the tax previously paid to Japan. Because the cost of pursuing competent authority relief is generally low, taxpayers that fail to seek competent authority assistance where available must produce evidence to show why it would not have been an effective and practical remedy. 	<ul style="list-style-type: none"> ▪ <i>Procter & Gamble Co. v. U.S.</i>, Not Reported in F.Supp.2d, 2010 WL 2925099 (S.D. Ohio, 2010) 	


Volume	Part	Chapter	Sub-Chapter
FTC Management	Creditability	Compulsory Payments/Exhaustion of Remedies	Exhaustion of Remedies (Process)

Step 2 (cont'd)

Exhaustion of Remedies		
Step 2: How is the exhaustion of remedies analysis affected where a tax treaty applies?		
Taxpayers that operate in treaty countries in most cases must utilize favorable treaty provisions or invoke Competent Authority.		
Considerations	Resources	6103 Protected Resources
<p>Credit may be disallowed if remedy not properly pursued.</p> <ul style="list-style-type: none"> Any acts or omissions by the taxpayer that preclude effective Competent Authority assistance may constitute failure to exhaust all effective and practical remedies. 	<ul style="list-style-type: none"> Rev. Proc. 2006-54, § 2.04, 12.02(7) 	
<ul style="list-style-type: none"> The fact that the taxpayer has sought Competent Authority assistance but obtained no relief generally will not, in and of itself, demonstrate that the taxpayer has exhausted all effective and practical remedies to reduce the taxpayer's liability for foreign tax. The potential effectiveness of administrative and judicial remedies in the foreign country must also be considered. 	<ul style="list-style-type: none"> Rev. Proc. 2006-54, § 11 Rev. Rul. 92-75 	


Volume	Part	Chapter	Sub-Chapter
FTC Management	Creditability	Compulsory Payments/Exhaustion of Remedies	Exhaustion of Remedies (Process)

Step 2 (cont'd)

Exhaustion of Remedies		
Step 2: How is the exhaustion of remedies analysis affected where a tax treaty applies?		
Taxpayers that operate in treaty countries in most cases must utilize favorable treaty provisions or invoke Competent Authority.		
Considerations	Resources	6103 Protected Resources
<p>Did the taxpayer settle the dispute with the foreign tax authority on its own accord?</p> <ul style="list-style-type: none"> Such settlement (eg. a closing agreement) may preclude negotiation of the issue by the foreign tax authority and thereby prevent the U.S. Competent Authority from obtaining relief under the treaty. As a result, any foreign taxes paid may be considered non-compulsory. 	<ul style="list-style-type: none"> Rev. Proc. 2006-54, §§ 7.05, 11, and 12.02(6) 	
<ul style="list-style-type: none"> If taxpayer settled with foreign tax authority, ask for copies of the settlement agreement. 	<ul style="list-style-type: none"> Copies of settlement agreement 	
 CONSULTATION: Competent Authority should be consulted as to whether the settlement was reasonable based on prior experience and thus exhausted remedies. For example, Country X has not agreed to settle a particular issue in MAP (Mutual Agreement Procedure) and the settlement was not better than the result expected in MAP.		

Volume	Part	Chapter	Sub-Chapter
FTC Management	Creditability	Compulsory Payments/Exhaustion of Remedies	Exhaustion of Remedies (Process)

Step 2 (cont'd)

Exhaustion of Remedies		
Step 2: How is the exhaustion of remedies analysis affected where a tax treaty applies?		
Taxpayers that operate in treaty countries in most cases must utilize favorable treaty provisions or invoke Competent Authority.		
Considerations	Resources	6103 Protected Resources
<p>What if the taxpayer claims it has already gone through the Competent Authority process?</p> <ul style="list-style-type: none"> ▪ If taxpayer claims that it has obtained Competent Authority relief, request a “disposition letter” from the taxpayer. ▪ A taxpayer may also be ineligible for Competent Authority proceedings. There are instances where taxpayers make MAP submissions but the Competent Authority does not undertake the request (e.g., taxpayer missed the period of limitations in the treaty, the request is not suitable, or the taxpayer is not subject to taxation inconsistent with a treaty article). 	<ul style="list-style-type: none"> ▪ Competent Authority Disposition Letter ▪ Competent Authority Disposition Memorandum 	
<ul style="list-style-type: none"> ▪ Exam should request from Taxpayer all other correspondence it may have had with Competent Authority. 	<ul style="list-style-type: none"> ▪ Competent Authority correspondence 	
 <p>CONSULTATION: Exam should consider checking independently with Competent Authority to verify taxpayer’s position and supporting documentation. If the MAP addressed the foreign tax issues on the merits and was successful, then the taxpayer has properly exhausted its remedies. A successful MAP negotiation occurs when an agreement is reached between the two contracting states on the issues presented in the taxpayer's Competent Authority submission.</p>		

Volume	Part	Chapter	Sub-Chapter
FTC Management	Creditability	Compulsory Payments/Exhaustion of Remedies	Exhaustion of Remedies (Process)

Step 2 (cont'd)

Exhaustion of Remedies		
Step 2: How is the exhaustion of remedies analysis affected where a tax treaty applies?		
Taxpayers that operate in treaty countries in most cases must utilize favorable treaty provisions or invoke Competent Authority.		
Considerations	Resources	6103 Protected Resources
<p>What happens when the US and foreign authorities do not agree on a case and the U.S. Competent Authority refuses a corresponding adjustment (and mandatory arbitration is not available) or when a taxpayer refuses to accept the deal negotiated by the Competent Authorities?</p> <ul style="list-style-type: none"> ▪ Taxpayer must still exhaust “all effective and practical remedies” and may need to undertake domestic proceedings in the treaty country in order for the IRS to allow a foreign tax credit for the questionable treaty country tax. If a taxpayer claims that such effort would be futile, a taxpayer should support its claim, which may include reliance on an opinion letter, to the effect that domestic proceedings in the foreign country are not likely to be effective and practical to determine such proceedings unnecessary. 		

Volume	Part	Chapter	Sub-Chapter
FTC Management	Creditability	Compulsory Payments/Exhaustion of Remedies	Exhaustion of Remedies (Process)

Step 3

Exhaustion of Remedies

Step 3: Can there be an exhaustion of remedies in a treaty country if taxpayer does not invoke its right to Competent Authority assistance?

Taxpayer is generally required to request competent authority assistance.

Considerations	Resources	6103 Protected Resources
<ul style="list-style-type: none"> There are a few exceptions to this rule, but they are narrowly drawn. The burden to prove an exhaustion of remedies without Competent Authority relief is on the taxpayer. 	<ul style="list-style-type: none"> FSA April 30, 1992 (1992 WL 1354818), citing Rev. Rul. 76-508 	
<ul style="list-style-type: none"> There are circumstances where competent authority assistance may not be necessary, such as <i>de minimis</i> cases, cases where other administrative remedies or litigation are successful, cases where the taxpayer has received an opinion of local counsel or otherwise has complied with foreign laws to minimize its taxes. 	<ul style="list-style-type: none"> Rev. Proc. 2006-54, § 6 Opinion letter from foreign local counsel 	
<ul style="list-style-type: none"> Section 8 of Rev. Proc. 2006-54 involves U.S. initiated adjustments under the Simultaneous Appeals Procedure. Under this scenario, it is clear that a U.S. taxpayer cannot claim a corresponding adjustment without the involvement of the U.S. Competent Authority. 	<ul style="list-style-type: none"> Rev. Proc. 2006-54, § 8 	
<ul style="list-style-type: none"> Section 12 of the revenue procedure lists eight scenarios where Competent Authority will not accept a request for competent authority assistance or will cease providing assistance to the taxpayer. Such decision by Competent Authority is final and not subject to administrative review. 	<ul style="list-style-type: none"> Rev. Proc. 2006-54, § 12 Documentation of Competent Authority denial 	


Volume	Part	Chapter	Sub-Chapter
FTC Management	Creditability	Compulsory Payments/Exhaustion of Remedies	Exhaustion of Remedies (Process)

Step 3 (cont'd)

Exhaustion of Remedies

Step 3: Can there be an exhaustion of remedies in a treaty country if taxpayer does not invoke its right to Competent Authority assistance?

Taxpayer is generally required to request competent authority assistance.

Considerations	Resources	6103 Protected Resources
<p>In summary:</p> <ul style="list-style-type: none"> ▪ If Competent Authority proceedings were initiated and MAP was successful then taxpayer has properly exhausted remedies. ▪ If taxpayer fails to pursue Competent Authority proceedings the issue should be pursued. ▪ If Competent Authority assistance is denied or if Competent Authority proceedings were initiated but unsuccessful, then the issue may be pursued. <p> CAUTION: In the event the foreign taxes are not creditable under exhaustion of remedies principles, a taxpayer would still generally be able to take a deduction (rather than a FTC) for the non-creditable portion of the foreign taxes in question. IRC Section 275(a)(4) does not preclude a deduction for the non-creditable portion of the tax. However, since the tax is no longer compulsory a taxpayer would need to establish it was an “ordinary and necessary” expense under IRC Section 162(a).</p>	<ul style="list-style-type: none"> ▪ Competent Authority Disposition Letter ▪ Competent Authority Disposition Memorandum 	

Volume	Part	Chapter	Sub-Chapter
FTC Management	Creditability	Compulsory Payments/Exhaustion of Remedies	Exhaustion of Remedies (Process)

Training and Additional Resources

Chapter 3.1.2 Compulsory Payments / Exhaustion of Remedies		
Type of Resource	Description(s) and/or Instructions for Accessing	References
White Papers / Guidance		<ul style="list-style-type: none"> ▪ IRM 4.60.2.2 Mutual Agreement Procedures
Podcasts / Videos	<ul style="list-style-type: none"> ▪ FY2011 Continuing Professional Education (CPE) 	<ul style="list-style-type: none"> ▪ Training FTC Management July 2011 CPE
Other Training Materials	<ul style="list-style-type: none"> ▪ IE Phase Training materials and non-IRS textbook, articles, and treatise information 	<ul style="list-style-type: none"> ▪ Kuntz & Peroni US International Taxation B4.03[3][c] ▪ Bittker & Lokken Fundamentals of International Taxation 72.4.6.4 ▪ BNA Foreign Income Series No. 901 IV F 3 ▪ Avoiding Double Taxation Without Competent Authority Relief, 41 TMINTLJ 71 (Feb. 2012) ▪ Implications of Disallowed Foreign Deductions Related to Headquarters Cost Allocations for Multinational Enterprises

Volume	Part	Chapter	Sub-Chapter
FTC Management	Creditability	Compulsory Payments/Exhaustion of Remedies	Exhaustion of Remedies (Process)

Glossary of Terms and Acronyms

Acronym	Definition
CFC	Controlled Foreign Corporation
FSA	Field Service Advisory
FTC	Foreign Tax Credit
IE	International Examiner
IRM	Internal Revenue Manual
MAP	Mutual Agreement Procedure
Rev. Proc.	Revenue Procedure
Rev. Rul.	Revenue Ruling

Volume	Part	Chapter	Sub-Chapter
FTC Management	Creditability	Compulsory Payments/Exhaustion of Remedies	Exhaustion of Remedies (Process)

Index of Related Issues

Issue	Associated UIL(s)	References
Outbound Income Shifting IPN		9411
Foreign tax redeterminations §905(c)		9413.01-01
Treaties IPN		9450
MAP procedural issues		9450.12