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(07-24-2023)

PURPOSE

- (1) This transmits new IRM 4.60.11, International Procedures, International Compliance Assurance Program (ICAP).

MATERIAL CHANGES

- (1) This new IRM describes the International Compliance Assurance Program.

EFFECT ON OTHER DOCUMENTS

None

AUDIENCE

Treaty and Transfer Pricing Operations (TTPO), Large Business & International (LB&I) Division

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4.60.11

International Compliance Assurance Program

Table of Contents

4.60.11.1 Program Scope and Objectives

4.60.11.1.1 Background

4.60.11.1.2 Authority

4.60.11.1.3 Roles and Responsibilities

4.60.11.1.3.1 IRS ICAP Personnel

4.60.11.1.4 Program Management and Review

4.60.11.1.5 Program Controls

4.60.11.1.6 Terms and Acronyms

4.60.11.1.7 Related Resources

4.60.11.2 U.S. MNE Consultation (Pre-Application)

4.60.11.3 Selection Stage

4.60.11.3.1 Selection Stage – IRS as Lead Tax Administration

4.60.11.3.2 Selection Stage - IRS as Covered Tax Administration

4.60.11.4 Risk Assessment and Issue Resolution Stage

4.60.11.4.1 Risk Assessment Stage – IRS as Lead Tax Administration

4.60.11.4.2 Risk Assessment Stage – IRS as Covered Tax Administration

4.60.11.4.3 Issue Resolution

4.60.11.5 Outcome Stage

4.60.11.6 ICAP Team Coordination with IRS Examination and U.S. Competent Authority

4.60.11.7 ICAP Documentation Package

4.60.11.7.1 Selection Documentation Package

4.60.11.7.1.1 MNE Group Information Form

4.60.11.7.1.2 Covered Transaction Overview

4.60.11.7.2 Main Documentation Package

4.60.11.7.2.1 Covered Transaction Schedule Details

4.60.11.7.2.2 Permanent Establishment Documentation

4.60.11.7.3 Supplementary Documentation

4.60.11.1
(07-24-2023)
Program Scope and Objectives

- (1) **Purpose:** This IRM describes procedures for IRS participation in the International Compliance Assurance Program (ICAP).
- (2) **Audience:** Treaty and Transfer Pricing Operations (TTPO), Large Business & International (LB&I) Division
- (3) **Policy Owner:** LB&I Policy under the Strategy, Policy and Governance office in the Assistant Deputy Commissioner Compliance Integration organization.
- (4) **Program Owner:** TTPO, LB&I
- (5) **Primary Stakeholders:** TTPO

4.60.11.1.1
(07-24-2023)
Background

- (1) ICAP is a voluntary, multilateral co-operative risk assessment and assurance process. ICAP is designed to provide multinational enterprise (MNE) groups with input on the level of tax compliance risk associated with certain cross-border transactions from the perspective of the participating tax administrations. ICAP is not an examination and does not provide the participating MNE groups the legal certainty that may be achieved through other means such as an Advance Pricing Agreement (APA). It does, however, give assurance where tax administrations participating in an MNE group's risk assessment consider covered transactions to be low risk. In general, assurance for this purpose refers to the likelihood that a tax administration will dedicate examination resources to evaluate a transaction that has been determined to be low risk. ICAP operates through the exchange-of-information provisions of international agreements and is coordinated through the office of the Director of Treaty and Transfer Pricing Operations and the Transfer Pricing Risk Assessment (TPRA) team. These agreements include bilateral and multilateral tax treaties, Tax Information Exchange Agreements, and other international agreements for the exchange of information. Delegation Order 4-12 (as revised) provides for TPRA personnel to disclose information, including returns and return information to which IRC 6103(k)(4) applies to a competent authority of a foreign government in accordance with the terms and conditions of the applicable international exchange agreements. Strict adherence to all applicable disclosure and confidentiality provisions is required of all IRS employees, including those involved in an ICAP risk assessment. For more information, see IRM 4.60.1.1.2.1, Authority – Disclosure, Confidentiality, and Contacts with Foreign Tax Officials, and IRM 1.2.2.5.11 – Delegation Order 4-12 (Rev. 4), Authority to Act as “Competent Authority” or “Taxation Authority” Under Certain International Agreements, Authorize the Disclosure of Tax Information Under Mutual Legal Assistance Treaties, and Disclose Certain Tax Convention Information.
- (2) ICAP has three main stages: selection, risk assessment and issue resolution, and outcomes.
 - a. During the selection stage, MNE groups apply for ICAP by submitting the selection documentation package that enables the tax administrations to efficiently determine whether the MNE group is suitable for ICAP, which tax administrations will opt-in (or out) for the risk assessment, and the scope of the transactions that will be reviewed in ICAP.
 - b. The risk assessment stage begins with the submission of the main documentation package, which includes detailed information about the MNE group's intercompany transactions and enables the tax administrations to

conduct a coordinated risk assessment in collaboration with one another and with the MNE group. For more information on the documentation package requirements, see IRM 4.60.11.7.1, Selection Documentation Package and IRM 4.60.11.7.2, Main Documentation Package. Where one or more tax administrations determine they cannot provide assurance for a transaction, the tax administrations and the MNE group may engage in an optional issue resolution procedure, which may take place concurrently with, or after, the risk assessment stage.

- c. During the outcomes stage, the tax administrations inform the MNE group of the results of the risk assessment.

- (3) In general, the scope of the ICAP risk assessment includes transfer pricing and permanent establishment issues. Issues that are included in the scope of the ICAP risk assessment are referred to as covered transactions. It is anticipated that, in most cases, an ICAP risk assessment will focus on a single or two consecutive tax years, which will be the most recent for which necessary documentation, including the MNE group's country-by-country report (CbC report), is available ("covered period(s)"). In addition, the IRS also aims to extend any assurances provided in ICAP to the two tax filing periods immediately following the covered period(s) ("roll-forward periods"), provided there are no material changes during these periods and the MNE group complies with certain annual filing requirements. See IRM 4.60.11.5, Outcome Stage.

4.60.11.1.2
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Authority

- (1) Tax Treaties and Tax Information Exchange Agreements (TIEAs): The Exchange of Information (EOI) article under the relevant international exchange agreement (as described in IRM 4.60.1.1, Program Scope) with a foreign government provides the legal framework for exchanging information with foreign partners participating in an ICAP risk assessment. The Mutual Agreement Procedure (MAP) article of the relevant income tax treaty provides the legal basis for the IRS to negotiate and implement a resolution that is agreed to between the competent authorities in ICAP.
- (2) Delegation Order Authorizing Disclosure of Tax Convention Information: All exchanges of information in ICAP must comply with EOI procedures set forth in IRM 4.60.1, International Procedures, Exchange of Information. Under Delegation Order 4-12 (as revised), IRS officials and personnel within the TPRA program, and senior international advisors and senior economic advisors within TTPO, are delegated authority to disclose information, including returns and return information, to a foreign competent authority in accordance with the exchange of information provisions of international exchange agreements, to the extent necessary to perform their official duties. Accordingly, a TPRA team member, a TTPO senior international advisor, or a TTPO senior economic advisor must be present during all ICAP discussions with the tax administration of a foreign partner, and such personnel will be responsible for sending and receiving all written communications pertaining to ICAP.

4.60.11.1.3
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Roles and Responsibilities

- (1) The **lead tax administration** is responsible for coordinating all aspects of the selection, risk assessment (and issue resolution), and outcomes stages of the ICAP process. In general, the lead tax administration is the tax administration located in the same jurisdiction as the ultimate parent entity (UPE) of the MNE group. In exceptional circumstances, the tax administration in a different jurisdiction may serve as the lead tax administration (referred to as a "surrogate lead tax administration"). This may arise in circumstances where the tax ad-

ministration in the UPE's jurisdiction is not participating in ICAP or such jurisdiction is otherwise unable to serve as the lead tax administration.

- (2) A **covered tax administration** is a tax administration that has agreed to participate in the ICAP risk assessment of an MNE group. A covered tax administration is expected to actively participate in all stages of the ICAP process. A lead tax administration is also a covered tax administration for purposes of the ICAP risk assessment.
- (3) The **MNE group** is responsible for preparing the required documentation packages, working closely with the lead tax administration to ensure that the target timeframes for the ICAP stages are met, and responding to requests from covered tax administrations in a timely manner. In addition, the MNE group is also responsible for maintaining a data room where ICAP documentation will be made available to the lead tax administration and the covered tax administrations.

4.60.11.1.3.1
(07-24-2023)
IRS ICAP Personnel

- (1) **IRS ICAP Team:** The IRS ICAP risk assessments are led by TPRA, which is a dedicated group of transfer pricing practitioners that focus exclusively on transfer pricing risk assessment for taxpayers under the jurisdiction of the Large Business & International (LB&I) Division. In general, ICAP risk assessments will be staffed with: a lead risk assessor; an MNE coordinator (for risk assessments in which the IRS is the lead tax administration); and a delegated competent authority contact. Additional LB&I personnel such as a TTPO senior international advisor or a TTPO senior economic advisor will be assigned on a case-by-case basis to assist TPRA in performing the risk assessment.
 - a. The **lead risk assessor** is responsible for performing the risk assessment and coordinating with other LB&I personnel on technical issues. For foreign MNE groups, the lead risk assessor will also serve as the IRS' central point of contact for the other covered tax administrations, the MNE group, and other IRS personnel. In general, the lead risk assessor will be a TPRA tax law specialist or a TPRA economist.
 - b. For U.S. MNE groups, the **MNE coordinator** is responsible for all coordination and communications with the MNE group, the covered tax administrations (with assistance from the delegated competent authority contact), and other IRS personnel (for example, LB&I examination) to ensure that the ICAP process operates efficiently and in accordance with the target timeframes set forth in the ICAP Handbook. Generally, the MNE coordinator will be a management official within the Transfer Pricing Practice (TPP).
 - c. The **delegated competent authority** contact is responsible for all exchanges of information with the covered tax administrations in ICAP. In general, it is anticipated that the lead risk assessor will also be the delegated competent authority contact, though this may depend on the circumstances of each risk assessment.

4.60.11.1.4
(07-24-2023)
Program Management and Review

- (1) **Program Reports:** TPRA will prepare an annual ICAP report for the TTPO Director's review. The annual ICAP report will include the number of ICAP cases in which the IRS is participating, the status of each case, and for completed ICAP cases, copies of the outcome letters and the status of each MNE's ICAP Annual Update filing obligations.

- (2) **Program Effectiveness:** The effectiveness of IRS participation in ICAP will be assessed based on a variety of factors including the number of ICAP risk assessments in which the IRS is participating, the outcome of such cases, the estimated impact of such participation on IRS examination and Advanced Pricing and Mutual Agreement resources (when compared with the resources committed by TTPO to ICAP), and feedback from stakeholders, including LB&I personnel and taxpayers who have participated in ICAP.

4.60.11.1.5
(07-24-2023)

Program Controls

- (1) The TPRA manager (and other TTPO management officials, where applicable) are responsible for ensuring compliance with the procedures set forth in this IRM.

4.60.11.1.6
(07-24-2023)

Terms and Acronyms

- (1) Commonly used terms for this program are shown in the following table:

Defined Terms

Term	Definition
Covered tax administration	A tax administration that has agreed to participate in the ICAP risk assessment of an MNE group.
Covered transaction	A transaction (generally pursuant to a written contractual agreement) that is explicitly included in the scope of the ICAP risk assessment for one or more taxable years, such as a license of intellectual property, a sale of goods, or the provision of a service.
Covered period	A tax year that is included in the scope of the ICAP risk assessment.
ICAP Handbook	An OECD document that describes the ICAP procedures, documentation requirements, and the responsibilities of the MNE group, the lead tax administration, and the covered tax administrations at each stage of the ICAP process.
Lead tax administration	Generally the tax administration located in the same jurisdiction as the ultimate parent entity (UPE) of the MNE group. The lead tax administration is responsible for coordinating all aspects of the risk assessment with the MNE and the covered tax administrations.
Low risk	The term “low risk” when used in reference to a covered transaction means the IRS has determined that the transaction does not present a material risk of noncompliance related to the administration of sections 482 or 864(c) and/or the associated enterprises or permanent establishment and business profits articles of an applicable treaty. The determination that a covered transaction is “low risk” means the IRS does not anticipate dedicating examination resources to review low risk transactions for the covered periods.

Term	Definition
Not low risk	The term “not low risk” when used in reference to a covered transaction means the IRS has determined that the transaction may present a material risk of noncompliance related to the administration of sections 482 or 864(c) and/or the associated enterprises or permanent establishment and business profits articles of an applicable treaty. The IRS will not provide any assurances regarding the potential examination activities for transactions that are determined to be not low risk in ICAP.
Outcome letter	A document containing the results of the ICAP risk assessment from the perspective of a covered tax administration. Each covered tax administration will issue their own outcome letter, the format and content of which will vary based on their administrative practices and limitations under domestic law.
Roll-forward period	Generally refers to the two tax years that immediately follow the covered period(s).
Surrogate lead tax administration	A tax administration that, while not located in the same jurisdiction as the UPE, performs the same function as the lead tax administration when the tax administration in the UPE jurisdiction does not take the role.

Acronyms

Acronym	Definition
APA	Advance Pricing Agreement
APMA	Advance Pricing and Mutual Agreement Program
CbC Report	Country-by-Country Report
ICAP	International Compliance Assurance Program
IRR	International Referral Recipient
LB&I	Large Business and International
MAP	Mutual Agreement Procedure
MNE	Multinational Enterprise
MOU	Memorandum of Understanding
OECD	Organization for Economic Cooperation and Development

Acronym	Definition
TPRA	Transfer Pricing Risk Assessment Team
TPP	Transfer Pricing Practice
TTPO	Treaty and Transfer Pricing Operations
UPE	Ultimate Parent Entity

4.60.11.1.7
(07-24-2023)

Related Resources

- (1) For additional information on ICAP, see the Organization for Economic Cooperation and Development's (OECD) Forum for Tax Administration website at <https://www.oecd.org/tax/forum-on-tax-administration/international-compliance-assurance-programme.htm>. This website includes information about the jurisdictions participating in ICAP, application deadlines, and includes links to the ICAP Handbook and the OECD's frequently asked questions (FAQs). In addition, the IRS has published a set of ICAP FAQs specific to U.S. MNE groups: <https://www.irs.gov/businesses/international-businesses/international-compliance-assurance-program-icap-frequently-asked-questions>.

4.60.11.2
(07-24-2023)

U.S. MNE Consultation (Pre-Application)

- (1) U.S. MNE groups are encouraged to contact the IRS for an initial consultation prior to submitting the selection documentation package described in IRM 4.60.11.7.1, ICAP Documentation Package – Selection Documentation Package. See the IRS ICAP FAQ webpage for the most updated ICAP contact information. The objectives of the initial consultation include:
 - a. Understanding the U.S. MNE group's objectives for ICAP participation and its initial preferences for covered tax administrations.
 - b. Explaining the suitability evaluation that the IRS will perform to evaluate the U.S. MNE group's candidacy for ICAP, see IRM 4.60.11.3.1 (3).
 - c. Describing the expectations for ICAP participation including documentation requirements and expectations regarding transparency and cooperation.
 - d. Answering the U.S. MNE group's substantive and procedural questions about ICAP.
 - e. Reaching agreement with the U.S. MNE group on the timing and manner in which the selection documentation package will be filed with the IRS should the U.S. MNE group decide to move forward in ICAP.
- (2) The IRS may, at its discretion, identify prospective U.S. MNE group candidates for ICAP based on the suitability criteria described in IRM 4.60.11.3.1(3), Selection Stage – IRS as Lead Tax Administration. The IRS will contact such U.S. MNE group directly to discuss their interest in participating in ICAP.

4.60.11.3
(07-24-2023)

Selection Stage

- (1) An MNE group applies to participate in ICAP by submitting the selection documentation package to the lead tax administration by one of the periodic application deadlines published on the OECD website at <https://www.oecd.org/tax/forum-on-tax-administration/international-compliance-assurance-programme.htm>. These dates will be followed by all tax administrations participating in ICAP. A description of the materials required in the selection documentation package is included in IRM 4.60.11.7.1, ICAP Documentation

Package – Selection Documentation Package. The purpose of the selection documentation package is to enable the tax administrations to efficiently determine whether they are willing to participate in the ICAP risk assessment of an MNE group and to determine the scope of the risk assessment. Additionally, the selection documentation package allows MNE groups to indicate their preferences as to which tax administrations it would like to participate in the risk assessment. Such preferences will be considered by the lead tax administration and the other tax administrations but are not determinative. The target timeframe for the selection stage is four to eight weeks from receipt of the selection documentation package.

4.60.11.3.1
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**Selection Stage – IRS as
Lead Tax Administration**

- (1) The IRS determines an MNE group's suitability for ICAP on a case-by-case basis. Factors the IRS may consider include but are not limited to:
 - a. The scope, materiality, and complexity of the MNE group's covered transactions in the United States and the jurisdictions participating in ICAP (and the extent to which such transactions are subject to pending or completed bilateral APAs).
 - b. The MNE group's history of transparent and cooperative engagement with the IRS.
 - c. The MNE group's examination history with respect to transfer pricing and permanent establishment issues with the IRS.
 - d. The anticipated availability of IRS resources necessary to perform the risk assessment.
- (2) The IRS will evaluate the MNE group's suitability for ICAP in coordination with other LB&I stakeholders, including personnel familiar with the MNE group through LB&I examinations and requests for competent authority assistance. This process will include a detailed review of the MNE group's selection documentation package, tax returns, current examination status, examination history, and its engagement with the U.S. competent authority (for example, pending or completed APAs and MAP requests) in light of the suitability criteria in IRM 4.60.11.3.1(3). Taking into account this information and feedback from LB&I stakeholders, TPRA will prepare a recommendation as to the MNE group's suitability for ICAP for the review and approval of the applicable TPP territory manager and the TPP practice network program manager in consultation with a TTPO senior international advisor and/or a TTPO senior economic advisor. If such personnel are unable to agree on the MNE's suitability for ICAP, a determination will be made by the TTPO Director. The MNE coordinator will contact the MNE group to discuss next steps in the ICAP process as outlined below if the IRS concludes that it is willing to serve as the lead tax administration. If the IRS determines that it is unable to serve as the lead tax administration, the MNE coordinator will inform the MNE group of the basis for its decision and whether the MNE group should consider re-applying for ICAP at a later date.
- (3) The IRS will coordinate with the MNE group to make the selection documentation package available to all tax administrations participating in ICAP where the MNE group has a constituent entity based on the most recent CbC report. This may include the MNE group posting the selection documentation package to a data room, or alternatively, the IRS may exchange the information with the relevant tax administrations. In cases where the IRS agrees to exchange the information with the relevant tax administrations, the delegated competent authority contact is responsible for coordinating this process.

- (4) As the lead tax administration, the IRS will host one or more multilateral selection stage meetings with the potential relevant tax administrations. During such meeting(s), the tax administrations are expected to exchange their views on the MNE group's suitability for ICAP including:
- a. The MNE group's compliance history in their respective jurisdictions (including current examination status).
 - b. Transfer pricing, permanent establishment, or other relevant tax compliance risks related to the administration of sections 482 or 864(c) and/or the associated enterprises or permanent establishment and business profits articles of an applicable treaty.
 - c. Feedback on the selection documentation package (and whether the tax administration needs additional information from the MNE group to make its decision on whether to participate in the ICAP risk assessment).
 - d. Any other information that would facilitate a discussion of the MNE group's suitability for ICAP.

In addition, the tax administrations will discuss the proposed scope of the risk assessment, including the covered period(s), the roll-forward period(s), and whether a tax administration proposes to exclude a transaction from the scope of the risk assessment. If known at this stage, one or more tax administrations may also identify supplementary documentation (i.e., documentation that is not listed in the main documentation package) that it has determined will be necessary to perform the risk assessment. In addition, the tax administrations will agree to a final deadline by which all potential covered tax administrations must communicate their decision as to whether they will act as a covered tax administration and the scope of the risk assessment.

- (5) In general, the IRS intends to include within the scope of its ICAP risk assessments all specifically identified and reported transactions subject to section 482 adjustments in which the United States is the jurisdiction of a counterparty. This means that the IRS will include in the scope of the risk assessment both intercompany transactions for which the counterparty jurisdiction is participating in ICAP, and intercompany transactions where the counterparty is not participating in ICAP. All transactions that are subject to pending or completed bilateral APAs are out of scope. With respect to PEs, the IRS intends to include within the scope of the ICAP risk assessment whether the business profits of a PE that have been reported by a MNE group for tax purposes are consistent with the applicable business profits article of an applicable income tax treaty. This includes both the business profits of a PE located in the United States and the business profits of a PE reported in a foreign jurisdiction by a U.S. person. At the MNE group's request, the IRS may also agree to include within the scope of the ICAP risk assessment the risk that an MNE group is conducting business operations through a PE that has not been recognized as such for tax purposes. In such cases, the MNE group will be required to identify the specific PE risk for which it is seeking assurance and provide detailed information that would facilitate IRS's review of the PE issue. All other scoping decisions will be made on a case-by-case basis. In addition, the IRS prefers that the risk assessment include two covered tax years and two roll-forward periods. The IRS will, however, entertain requests for different covered tax years and roll forward periods in certain cases. IRS determinations regarding the proposed scope of an ICAP risk assessment will be made in coordination with all LB&I stakeholders, including TPRA, TTPO senior

international advisors and/or TTPO senior economic advisors, and personnel familiar with the MNE group through LB&I examinations and/or requests for competent authority assistance.

- (6) The IRS will request that each prospective covered tax administration confirm in writing whether it will participate in the risk assessment by an agreed deadline. Tax administrations that have confirmed their participation will also be asked to provide the following information:
- Whether the tax administration proposes to exclude any transactions from the scope of the risk assessment.
 - Whether the tax administration agrees to the covered period(s) and roll-forward periods.
 - Whether the tax administration will require authorizations in order to move forward in ICAP (for example, requirements under domestic law that authorize a tax administration to discuss a local entity's tax information with other members of the MNE group).

Tax administrations that decline to participate in the risk assessment, or that have determined to exclude a transaction from the scope of the risk assessment, will be asked to provide the basis for their decisions and whether the tax administration would be interested in exploring other dispute resolution options outside of ICAP where relevant (for example, an APA). The IRS will inform the MNE group of the proposed covered tax administrations and the proposed scope of the risk assessment for the MNE group's consideration. If the MNE group decides to proceed to the risk assessment stage, the IRS will work with the MNE group to set a target date for the delivery of the main documentation package. If, however, the MNE group declines to proceed to the risk assessment stage, the ICAP process will conclude.

- (7) U.S. MNE groups must enter into an ICAP Memorandum of Understanding (MOU) with the IRS before proceeding to the risk assessment stage. The ICAP MOU describes the ICAP program and its limitations, the information sharing that will occur between the tax administrations in ICAP, and the potential outcomes of the risk assessment process. In addition, other tax administrations may have local law requirements that the MNE group must comply with before moving to the risk assessment stage (or before the MNE group can have direct engagement with the covered tax administrations). The IRS will coordinate with the covered tax administrations and the MNE group to ensure that all such requirements are addressed in a timely manner.
- (8) To ensure that ICAP and LB&I examination activities are properly coordinated, the MNE coordinator will provide written notification of the U.S. MNE group's ICAP participation to relevant LB&I examination personnel within seven days of the MNE group's confirmation that it will proceed to the risk assessment stage.

4.60.11.3.2
(07-24-2023)
**Selection Stage - IRS as
Covered Tax
Administration**

- (1) The decision of whether the IRS will act as a covered tax administration for a foreign MNE group will be made by applying the suitability criteria and procedures as outlined in IRM 4.60.11.3.1 (2), Selection Stage – IRS as Lead Tax Administration.
- (2) Refer to IRM 4.60.11.3.1 (5), Selection Stage – IRS as Lead Tax Administration, for information on IRS preferences regarding the scope of the ICAP risk assessment.

- (3) The UPE and the U.S. parent entity must sign a “Consent to Disclose and Authorization of Third Party Contacts,” which authorizes the IRS to discuss matters impacting the MNE group’s U.S. taxpayers with other members of the MNE group (and vice versa). This form must be signed before the IRS has direct contact with the MNE group.
- (4) For foreign MNE groups, the lead risk assessor is responsible for complying with the notification requirement described in IRM 4.60.11.3.1 (8), Selection Stage – IRS as Lead Tax Administration.

4.60.11.4
(07-24-2023)

**Risk Assessment and
Issue Resolution Stage**

- (1) The risk assessment and issue resolution stage begins with the submission of the main documentation package by the MNE group. The lead tax administration will coordinate meetings with the covered tax administrations throughout the risk assessment and issue resolution stage to exchange views on covered transactions and present their respective findings. In addition, it is anticipated that there will be at least one multilateral risk assessment meeting (in-person, virtual, or by phone) between the covered tax administrations and the MNE group. During this stage, the covered tax administrations will discuss their respective views on the covered transactions until each is able to gain comfort that the covered transactions are low risk or else determines that such a finding is not possible. If a low risk finding is not possible, the relevant tax administrations and MNE group may engage in an optional issue resolution process as described in IRM 4.60.11.4.3, Issue Resolution. The target timeframe for the risk assessment and issue resolution stage will vary but typically will be less than 20 weeks. Where the covered tax administrations and the MNE group engage in issue resolution, this timeframe will vary based on the materiality and complexity of the covered transaction(s) at issue and may extend beyond the 20-week target timeframe.

4.60.11.4.1
(07-24-2023)

**Risk Assessment Stage
– IRS as Lead Tax
Administration**

- (1) The IRS will review the main documentation package for completeness and to ensure that the MNE group has addressed concerns raised by the covered tax administrations during the selection stage before it is posted to the MNE group’s data room. The IRS will timely contact the taxpayer to advise of a determination of an incomplete or complete documentation package.
- (2) After the MNE group has posted the main documentation package to the data room, the IRS will confirm that all covered tax administrations are able to access the materials. If a covered tax administration is unable to access the files posted to the data room, the IRS may need to coordinate with the MNE group and the covered tax administrations to provide an alternative method for delivering the documentation package materials.
- (3) After the covered tax administrations have confirmed access to the main documentation package, the IRS will coordinate a series of meetings with the covered tax administrations and/or the MNE group during the risk assessment and issue resolution stage. A brief description of such meetings including the timing, objectives, and expectations are included below. However, each ICAP risk assessment is unique and the timing and necessity for these meetings will be evaluated on a case-by-case basis. The MNE coordinator will facilitate the meetings with assistance from other ICAP team personnel, as needed.

- (4) An initial risk assessment meeting between the covered tax administrations will generally take place approximately four weeks after the delivery of the documentation package to the covered tax administrations. In general, the objectives for this meeting are to:
 - a. Exchange preliminary views on the level of risk presented by the covered transactions.
 - b. Identify items in the documentation package that need to be clarified or supplemented with additional documentation.
 - c. Determine whether a multilateral meeting between the covered tax administrations and the MNE group will be necessary to perform the risk assessment. If the covered tax administrations conclude that such a meeting is necessary, the tax administrations will be asked to provide input on the suggested timing, duration, format (for example, face-to-face or remote), agenda items, and whether specific non-tax business personnel should participate in the meeting.
- (5) If the covered tax administrations conclude that a meeting with the MNE group is required, the IRS will coordinate with the MNE group on meeting preparation. Although the objectives of this meeting will vary depending on the circumstances of the risk assessment, the IRS should ensure that the MNE group meeting with the covered tax administrations is focused on the issues raised by the covered tax administrations (rather than a high-level overview of the MNE group's business and its transfer pricing policies, as the tax administrations should be familiar with this information by reviewing the main documentation package). Additionally, the IRS will consult with the MNE group to identify personnel (tax or business) who can address the issues raised by the covered tax administrations.
- (6) Shortly after the MNE group meeting, the lead tax administration will coordinate a meeting with the covered tax administrations to address the following items:
 - a. Exchange views on the covered transactions considering the information provided by the MNE group during the MNE group meeting.
 - b. Identify issues or transactions that may require additional information from the MNE group.
 - c. Set a deadline by which requests for additional information must be received by the lead tax administration.
 - d. Provide input on whether an additional meeting between the covered tax administrations and MNE group on specific topics or covered transactions would be beneficial.
- (7) Additional risk assessment meetings will take place on an ad-hoc basis and focus on the covered transactions that one or more covered tax administrations have been unable to conclude are low risk. Prior to such meetings, the IRS may request that each covered tax administration provide to all participating tax administrations a list of transactions that it has determined are not low risk and the basis for such conclusions to ensure that additional risk assessment meetings are productive and to facilitate an informed discussion among the covered tax administrations.
- (8) The MNE coordinator will be in regular communication with the MNE group throughout the risk assessment stage to keep the MNE group apprised of the progress of the risk assessment and communicate any covered tax administration questions or requests for additional information.

- (9) Requests for additional information (for example, clarification of materials provided in the documentation package, requests for supplementary documentation, etc.) must be submitted by a covered tax administration to the IRS in writing. The MNE coordinator should set clear deadlines with the covered tax administrations to ensure that this process is organized and efficient. To provide appropriate context for the information requests, the covered tax administration should identify the covered transaction to which the request relates, the specific concern that prompted the covered tax administration's request, and, where necessary, an explanation of how the information would facilitate their evaluation of the covered transaction(s). In general, MNE groups should respond to all supplemental documentation requests within four weeks. In general, the MNE group should make the questions and responses available to all covered tax administrations by posting such information to the MNE group's data room.
- (10) After the covered tax administrations have informed the lead tax administration that their risk assessment is complete, the lead tax administration may host a final risk assessment meeting focusing on any remaining covered transactions that were determined to be not low risk, whether the covered tax administrations have an interest in pursuing issue resolution in ICAP (and if not, potential next steps that may take place outside of ICAP), and setting a date for the exchange of draft outcome letters.

4.60.11.4.2
(07-24-2023)
**Risk Assessment Stage
– IRS as Covered Tax
Administration**

- (1) The IRS will generally follow the standard LB&I risk assessment procedures for evaluating the covered transactions in ICAP cases. For example, in the case of transfer pricing issues, refer to IRM 4.61.3.3.8, Initial Transfer Pricing Risk Assessment, for a general description of the transfer pricing risk assessment procedures employed by the IRS. If the IRS concludes that a covered transaction is not low risk, the IRS will not provide any assurances regarding the likelihood of future compliance activities with respect to such transactions. Such transactions, however, may be addressed through the optional issue resolution process (see IRM 4.60.11.4.3, Issue Resolution, below) or through other means (for example, MNE groups may be encouraged to seek an APA).
- (2) Covered transactions are assigned a low risk rating or a not low risk rating based on whether the transaction presents a potential risk of noncompliance for U.S. federal income tax purposes from the perspective of the IRS.

4.60.11.4.3
(07-24-2023)
Issue Resolution

- (1) The risk assessment stage includes an optional issue resolution process, which affords the MNE and covered tax administrations the opportunity to reach an agreement in ICAP on the tax treatment of a covered transaction, including whether any tax adjustments are necessary.
- (2) The IRS will consider engaging in issue resolution on a case-by-case basis under the MAP article of an applicable income tax treaty. Relevant factors the IRS may consider in determining whether issue resolution in ICAP is suitable for a covered transaction include, but are not limited to, the materiality of the potential adjustment, the complexity of the transaction, and the extent to which there is agreement on the underlying facts of the transaction. Additionally, the IRS will need to consider whether the domestic law of the relevant covered tax administrations would limit or prevent issue resolution in ICAP.

- (3) If the IRS determines that a covered transaction is not low risk and satisfies the criteria for issue resolution, the lead risk assessor is responsible for preparing an issue resolution memorandum that addresses the following items:
- A summary of the covered transaction(s).
 - An explanation of the IRS ICAP team's conclusion that the transaction is not low risk.
 - A description of why issue resolution in ICAP is suitable based on the eligibility criteria noted above (when compared to other available alternatives, including an APA or examination).
 - The proposed change(s) to the transfer pricing methodology with applicable caveats highlighting areas of uncertainty that will need to be confirmed during the issue resolution process.
 - An estimate of the amount of the adjustment (or estimated range of the adjustment) if the proposed change(s) were implemented by the MNE group.
 - Whether additional information from the MNE group would be required to facilitate the issue resolution process (and a list of such questions for the MNE group and/or requests for supplementary documentation).
- (4) The lead risk assessor must consult with the Advance Pricing and Mutual Agreement (APMA) program during the issue resolution process. The lead risk assessor should initiate the mandatory APMA consultation once the IRS ICAP team has identified a transaction as a potential candidate for issue resolution
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- should provide APMA a copy of the issue resolution memorandum (or draft thereof) for APMA's input (supplemented by additional documentation where necessary). Depending on APMA's feedback, the lead risk assessor may decide to move forward with the tax administration and MNE issue resolution consultations (described below), revise the issue resolution memorandum to reflect APMA's input, or conclude that procedures outside of ICAP are more appropriate to resolve the compliance risks with the covered transaction(s) (for example, an APA request or a referral to LB&I examination). If the issue resolution process moves forward in ICAP, the lead risk assessor is required to keep APMA informed of material developments throughout the process.
- (5) The IRS will share the issue resolution memorandum with the covered tax administrations to solicit preliminary feedback on the IRS proposal, including whether the tax administrations have any issues if the lead tax administration were to share the document with the MNE group (or, alternatively, whether relevant tax administrations would like to provide a written response to the issue resolution memorandum before it is shared with the MNE group). Afterward, the lead tax administration will consult with the MNE group on whether it is interested in pursuing issue resolution in ICAP. If so, then the process continues with a tax administration consultation as described below. If not, the issue resolution process concludes, and IRS will assign a not low risk rating to the covered transaction(s) in question.
- (6) The IRS will consult with the relevant tax administrations to determine whether a tentative resolution can be reached in ICAP. This may involve one or more discussions between the IRS and the tax administrations, requests for additional information from the MNE group, and exchanging written positions on the covered transaction(s). If the tax administrations reach a tentative resolution, the lead risk assessor will update the issue resolution memorandum to reflect the results of the consultations with the relevant tax administrations.

- (7) If the tax administrations reach a tentative agreement in the resolution process, a proposal to resolve the issue will be presented to the MNE group for its consideration. The MNE group must indicate its acceptance or rejection of the proposal in writing. If the MNE group confirms in writing that it has agreed to the terms and conditions of the proposed resolution, the IRS and the relevant covered tax administrations will take steps to implement the resolution. If the MNE group rejects the proposed resolution, the issue resolution process concludes, and the IRS will categorize the covered transaction as not low risk.
- (8) For a resolution that requires an adjustment to an amount reported on a U.S. federal income tax return, the competent authorities of the respective tax administrations will exchange letters setting forth the terms and conditions of the mutual agreement, e.g., the amount of the adjustment and correlative relief to be provided and the amount to be withdrawn. In addition, the IRS will attach to the outcome letter described in IRM 4.60.11.5(5) a document that describes the terms and conditions of the mutual agreement and the steps the MNE must take to implement the resolution for U.S. federal income tax purposes, e.g., filing amended income tax returns reflecting the agreed adjustment. In addition, a disposition memorandum will be sent to the International Referral Recipient (IRR) and the IRS ICAP team. For additional information, see IRM 4.60.3.2.6(4) , U.S. Competent Authority's Documentation of a MAP Case.
- (9) In general, the issue resolution process for foreign-initiated adjustments is expected to follow the same procedures as above, except that the IRS will request a detailed written analysis of the proposed adjustment from the initiating jurisdiction as a precondition to entering into issue resolution discussions with a covered tax administration. In addition, the lead risk assessor will prepare an Issue Resolution Memorandum (as described above) from the perspective of whether correlative relief would be appropriate and must consult with APMA before the MNE is presented with a formal issue resolution proposal.

4.60.11.5
(07-24-2023)
Outcome Stage

- (1) The outcome stage begins once all covered tax administrations have completed their respective risk assessments and, where applicable, the issue resolution process has concluded. During the outcome stage, the lead tax administration will issue a completion letter on behalf of the covered tax administrations confirming that the risk assessment is complete. Additionally, each covered tax administration will issue an outcome letter to the MNE containing the results of its risk assessment. The format and content of such letters will vary based on the practices of each covered tax administration and limitations under domestic law.
- (2) The target timeframe to complete the outcome stage is four to eight weeks.
- (3) The lead risk assessor is responsible for drafting the IRS outcome letter, documenting the basis for the IRS risk assessment conclusions reflected in the outcome letter, and obtaining approvals from requisite TTPO management officials, including the TPRA manager and TTPO Director.
- (4) In cases where the IRS is the lead tax administration, the MNE coordinator will request that the covered tax administrations submit the outcome letter in draft form within two weeks after the start of the outcome stage. The draft outcome letters will be shared with the MNE group and the other covered tax administrations for a review and comment period, which typically will not exceed 10 days. During this period, the IRS ICAP Team will meet with the MNE group to

discuss the results of the risk assessment and request feedback from the MNE group on the ICAP process. Although the comment period is intended to give the MNE group and the covered tax administrations an opportunity to provide feedback on the outcome letters before they are finalized, each covered tax administration has the discretion of whether to incorporate the feedback. After the review and comment period has concluded, the MNE coordinator will share the MNE feedback with the respective tax administrations and request that the covered tax administrations send final versions of the outcome letters to the IRS so that the materials can be forwarded to the MNE group along with the final version of the completion letter in a single package.

- (5) The IRS outcome letter categorizes the covered transactions as either low risk or not low risk. In general, the IRS does not anticipate dedicating compliance resources to the covered transactions that are deemed low risk for the covered period(s) or the two subsequent tax years (roll-forward periods) unless there is a change in facts or circumstances considered in the risk assessment. For example, such a change may be indicated by new information that comes to the attention of the IRS or by the MNE group's notifying the IRS (whether to limit the risk of penalties or otherwise). In order for the risk assessment determinations to apply to the roll-forward periods, the MNE group must provide certain information to the IRS in the time period and manner described below. The IRS outcome letter does not limit the authority of the IRS to conduct examinations, and the categorization of the risks specified therein may be limited as appropriate based on the facts and circumstances.
- (6) The IRS requires MNE groups to submit an annual update that includes certain key information concerning the covered transactions that were determined to be low risk (and any new intercompany transactions) to the IRS within the later of 90 days of filing its U.S. federal income tax return for each roll-forward period ("ICAP Annual Update") or the date the IRS outcome letter is issued. The ICAP Annual Update assists the IRS in determining whether the assurances provided in the IRS outcome letter with respect to low risk transactions should be extended to the roll-forward periods. In addition to disclosing new intercompany transactions, MNE groups are required to disclose material changes that could impact the low risk ratings assigned to the covered transactions for the covered periods, including changes to the MNE group's transfer pricing policy, transfer pricing method, and where applicable, the tested party and/or profit level indicator (PLI), and the interquartile range of results for comparable transactions. In addition, where relevant, the MNE group is also required to disclose any material change to its methodology for attributing business profits to a permanent establishment, and changes to its structure or operations that could impact the risk that an MNE group's non-U.S. affiliate maintains a U.S. permanent establishment (which has not been recognized for U.S. tax purposes).
- (7) Following the MNE group's submission of the ICAP Annual Update, if the IRS concludes that it will not extend a low risk rating to a covered transaction for a roll-forward period, the IRS will notify the MNE group in writing and may, at its discretion, notify the lead tax administration and covered tax administrations that may be impacted by this determination. The MNE coordinator or lead risk assessor will also notify the relevant LB&I examination personnel of the change in risk assessment status of the covered transactions.
- (8) The lead risk assessor is responsible for monitoring MNE compliance with the ICAP Annual Update filing obligations. In general, the IRS will not extend as-

surances regarding low risk transactions to a roll-forward period for which the MNE fails to timely comply with the ICAP Annual Update filing obligation. The IRS may, at its discretion, extend the due date for the ICAP Annual Update upon the MNE group's request. Such requests must explain the circumstances resulting in the MNE group's inability to comply with the filing deadline described in paragraph (6) above. Where relevant, the lead risk assessor is required to inform relevant LB&I examination personnel and the lead tax administration (for foreign MNE groups) of an MNE group's failure to comply with the ICAP Annual Update filing obligation.

4.60.11.6
(07-24-2023)
**ICAP Team Coordination
with IRS Examination
and U.S. Competent
Authority**

- (1) There may be exceptional circumstances where concerns regarding the statute of limitations on assessment may arise in ICAP (for example, depending on the covered periods, anticipated timeline to complete the risk assessment, and potential risk assessment outcomes including issue resolution in ICAP). Where necessary, the MNE coordinator (for U.S. MNEs) or the lead risk assessor (for foreign MNEs) will coordinate with LB&I examination personnel on extending the statute of limitations with the MNE. An MNE group's failure to extend the statute of limitations may adversely impact the IRS's ability to continue its participation in a risk assessment.
- (2) Transactions excluded from the ICAP risk assessment scope during the selection stage, or transactions that have been assigned a not low risk rating during the risk assessment stage (and for which issue resolution was not explored or was unsuccessful), may be addressed through other means including an IRS examination, a joint audit (see IRM 4.60.1.11, Joint Audit Program), a simultaneous examination (see IRM 4.60.1.4, Simultaneous Examination Program), or a recommendation for the taxpayer to request an APA. In such cases, the lead risk assessor will prepare a written referral to LB&I Examination or APMA that describes the relevant transaction(s) and the basis for the referral. LB&I examination and APMA personnel will leverage information and analysis undertaken in ICAP to facilitate more efficient dispute resolution processes to the extent that such issues are addressed outside of ICAP.
- (3) The MNE coordinator (for U.S. MNEs) or the lead risk assessor (for foreign MNEs) will provide a copy of the IRS outcome letter to relevant LB&I examination personnel. In addition, the lead risk assessor will ensure that a copy of the IRS outcome letter is uploaded to the taxpayer's case-built file (CBF).
- (4) At the request of LB&I examination personnel, the MNE coordinator (for U.S. MNEs) or lead risk assessor (for foreign MNEs) will schedule a briefing between the IRS ICAP team and LB&I examination personnel to ensure the outcomes in ICAP are coordinated with LB&I examination activities.
- (5) LB&I examination personnel must comply with the notification, consultation, and approval procedures in this section before initiating an examination of a covered transaction that was determined to be low risk by the IRS ICAP team for the covered period(s) (or the roll-forward periods). LB&I examination

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the covered transaction, and the rationale for considering an examination of the covered transaction at issue. The TPRA team will then coordinate a consultation between the IRS ICAP team that participated in the risk assessment and the LB&I examination team. The consultation will provide the IRS ICAP team and the LB&I examination team an opportunity to exchange their perspectives on the level of compliance risk associated with the covered transaction and the information that was relied upon to reach such conclusions. If the consultation

does not resolve the examination team's concerns with the covered transaction (for example, material information has been identified that was not provided to TPRA during the ICAP risk assessment), the examination team must obtain the approval of the Director, Treaty and Transfer Pricing Operations Practice Area, before initiating an examination of a covered transaction that was determined to be low risk by the IRS ICAP team for the covered period(s) or the roll-forward period(s).

4.60.11.7
(07-24-2023)
**ICAP Documentation
Package**

- (1) This section is based on the version of the ICAP Handbook available as of the date of the publication of the IRM.
- (2) The ICAP documentation package has three main components:
 - a. Selection documentation package
 - b. Main documentation package
 - c. Supplementary documentation

4.60.11.7.1
(07-24-2023)
**Selection
Documentation Package**

- (1) The selection documentation package is composed of:
 - a. An MNE group information form, see IRM 4.60.11.7.1.1, MNE Group Information Form.
 - b. A covered transaction overview, see IRM 4.60.11.7.1.2, Covered Transaction Overview.
 - c. The MNE group's most recent CbC report and master file (as defined in the OECD Transfer Pricing Guidelines or equivalent information and documentation if the MNE group is not required to file a master file in any jurisdiction).
 - d. A summary of the MNE group's current global group structure (unless provided in the master file), clearly identifying entities and activities in the jurisdictions of all proposed covered tax administrations and other key jurisdictions, by reference to Table 2 of the CbC reporting template, together with entity classification for tax purposes.
 - e. A list of all unilateral, bilateral, and multilateral APAs in place or in process, and other tax rulings relevant to the proposed covered transactions.

4.60.11.7.1.1
(07-24-2023)
**MNE Group Information
Form**

- (1) The MNE group information form includes:
 - a. A list of proposed covered tax administrations.
 - b. The proposed covered periods.
 - c. The identity of the main MNE group entity in the jurisdiction of each proposed covered tax administration.
 - d. Whether the MNE group has experienced a material change in the prior 12 months (for example, restructuring, merger, acquisition, disposition) that may render information currently held by a proposed covered tax administration to be outdated.

4.60.11.7.1.2
(07-24-2023)
**Covered Transaction
Overview**

- (1) A covered transaction overview includes:
 - a. A list of the categories of transactions the MNE proposes to include in the scope of the ICAP risk assessment.
 - b. The jurisdiction of residence of each constituent entity that is a party to each category of transaction.
 - c. The estimated value of each category of transaction.

4.60.11.7.2
(07-24-2023)

**Main Documentation
Package**

- (1) Items within the main documentation package must be provided for all covered periods. Core items in the main documentation package are:
 - a. Updates to any documents in the selection documentation package, as required, considering any changes to the scope of the ICAP risk assessment agreed during the selection stage.
 - b. A schedule containing details of the covered transactions, see IRM 4.60.11.7.2.1, Covered Transaction Schedule Details.
 - c. The MNE group's CbC report, prepared in accordance with the laws of the MNE group's UPE jurisdiction. If the MNE group's CbC report for a covered period was provided as part of the selection documentation package, it does not need to be provided again as part of the main documentation package.
 - d. A completed CbC report self-assessment with respect to the CbC report provided for the covered period(s) using a template provided by the lead tax administration.
 - e. Local files, to the extent these are required to be prepared in the jurisdictions of covered tax administrations (or information and documentation equivalent to the transfer pricing local file documentation described in Annex II to Chapter V of the OECD Transfer Pricing Guidelines, where there is no requirement to prepare a local file in the jurisdiction of a covered tax administration).
 - f. Audited consolidated financial statements if prepared, unless publicly and readily available (unaudited consolidated financial statements or trial balances should be provided if audited consolidated financial statements are not produced).
 - g. To the extent that this is documented, details of the MNE group's tax strategy, including for managing the covered transactions, and tax control frameworks (or equivalent information). In particular, this could include a description of the MNE group's tax control framework, how the effectiveness of this framework is managed and monitored in general and how it is managed and monitored specifically with respect to the covered transactions.
 - h. To the extent that it is not already covered in the master file, a value chain analysis for the MNE group consisting of an explanation, in written or diagrammatical format, of the external and internal profit drivers for the MNE group, which the MNE group considers important for showing how profits are aligned to its economic activities. This explanation should separately address at least the five largest product and service offerings, to the extent the value drivers differ.
 - i. Where applicable, permanent establishment documentation (for all permanent establishments in covered jurisdictions and all permanent establishments of entities resident in covered jurisdictions), to the extent not already provided as part of the MNE group's CbC report (see IRM 4.60.11.7.2.2, Permanent Establishment Documentation).
 - j. Additional information relevant to any agreed covered transactions beyond transfer pricing risk and permanent establishment risk, as agreed.

Note: The lead tax administration and the covered tax administrations may also require further items to be added.

4.60.11.7.2.1
(07-24-2023)

**Covered Transaction
Schedule Details**

- (1) Covered transaction schedule details include:
 - a. A description of each transaction (or group of similar transactions).
 - b. The legal entities that are party to each transaction, with their jurisdictions of residence (or the jurisdiction where activity is undertaken in the case of a transaction entered into by a permanent establishment).
 - c. Whether the transaction is covered by an APA (or was previously covered).
 - d. The value of the transaction.
 - e. The transfer pricing policy of the MNE group.
 - f. Details of the transfer pricing method used to evaluate the arm's-length nature of the transaction.

4.60.11.7.2.2
(07-24-2023)

**Permanent
Establishment
Documentation**

- (1) Permanent establishment documentation includes:
 - a. A schedule showing all reported permanent establishments.
 - b. A list of all protective filings in the jurisdictions of covered tax administrations, concerning potential permanent establishments, accompanied by a brief description of the relevant entity's activities in the jurisdiction that resulted in the protective filing, and the basis for claiming treaty benefits under the business profit and permanent establishment articles.
 - c. Financial data for reported permanent establishments, including revenue, income, expenditure, assets and liabilities.
 - d. Supporting transfer pricing documentation (for example, functional analysis) with respect to the attribution of profits to a permanent establishment (if the taxpayer has filed on the basis of there being a permanent establishment).

4.60.11.7.3
(07-24-2023)

**Supplementary
Documentation**

- (1) Supplementary documentation means any other documents that covered tax administrations require for the risk assessment of a particular covered transaction or a particular MNE group that are not provided within the selection documentation package or the main documentation package. Supplementary documentation may include, but is not limited to, the following items:
 - a. Entity financial statements or trial balances, as specified (for example, for counterparties to covered transactions).
 - b. Copies of intercompany agreements relevant to covered transactions, if not already provided in local files.
 - c. Local files for jurisdictions other than those of covered tax administrations, as specified.
 - d. Information concerning uncertain tax positions for financial reporting purposes, relating to the covered transactions.
 - e. Description of material differences between financial statements and income tax returns, as specified.
 - f. Additional information on unilateral, bilateral and multilateral APAs, as specified, including copies of APAs (if not otherwise available in accordance with BEPS Action 5 or from a covered tax administration, and where the MNE group is not restricted from providing a copy).
 - g. A further breakdown or analysis of an MNE group's CbC report for the jurisdictions of covered tax administrations, as required.
- (2) Refer to IRM 4.60.11.4.1(12), Risk Assessment Stage – IRS as Lead Tax Administration, for additional information on procedures related to supplementary documentation requests.

