



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

8.7.3

DECEMBER 1, 2022

## EFFECTIVE DATE

(12-01-2022)

## PURPOSE

- (1) This transmits revised IRM 8.7.3, Technical and Procedural Guidelines, Technical Guidance and International Operations Programs.

## MATERIAL CHANGES

- (1) Changed this IRM section title from “Domestic and International Operations Programs” to “Technical Guidance and International Operations Programs.”
- (2) Made several editorial updates throughout this IRM, including the following:
  - a. Changed Specialty Operations to Specialized Examination Programs and Referrals (SEPR).
  - b. Changed Appeals Officer to Appeals Technical Employee.
- (3) Revised “Technical Specialist” definition to include International Specialists, Technical Guidance Coordinators, Financial Products, Engineers, and Economists.
- (4) Added new IRM 8.7.3.1, Program Scope and Objectives, and its related subsections to comply with the Deputy Commissioners of Services and Enforcement and Operations Support memo dated September 14, 2016, entitled Heightened Awareness, Sensitivity, and Understanding of Internal Controls. As a result of this new section, other IRM sections were renumbered.
- (5) Restated IRM 8.7.3.2 (formerly IRM 8.7.3.1), Overview of Appeals Technical Guidance and International Operations, to clarify roles and responsibilities.
- (6) Revised IRM 8.7.3.3 (formerly IRM 8.7.3.2), Coordinated Issues, and its related subsections. Changes include the following:
  - a. Restated Issue Designations, eliminating Emerging Issues (EM), Appeals Coordinated Issue category of case (ACI cc) and Compliance Coordinated Issue (CCI).
  - b. Revised definition of Appeals Coordinated Issue (ACI).
  - c. Added Appeals Coordinated Issue with Review and Concurrence (ACI RC).
  - d. Removed Category of Case terminology.
- (7) Considered Interim Guidance memorandum #AP-08-0522-0004, Reissuance of Appeals Coordinated Issue Definition Change, dated May 16, 2022. This guidance changed the definition of Appeals Coordinated Issues (ACI), streamlined the issue coordination process, and reduced confusion over terminology. However, some of this information has changed as stated in the above paragraph (6).
- (8) Restated IRM 8.7.3.4 (formerly IRM 8.7.3.3), Appeals Technical Specialists’ Roles and Responsibilities, for clarification.
- (9) Added IRM 8.7.3.4.3, Appeals Technical Position.
- (10) Restated IRM 8.7.3.5.3.3 (formerly IRM 8.7.3.4.3.3), Appeals Technical Positions (ATP) for Delegation Order 4-25, to replace Appeals Settlement Position (ASP) and working draft Appeals Settlement Guidelines (ASG) with ATP for Delegation Order 4-25.

- (11) Revised IRM 8.7.3.5.4 (formerly IRM 8.7.3.4.4), Full Concession of a Coordinated Issue Contrary to Service Position, for clarification, by deleting paragraphs (2) and (3) and adding a reference to IRM 8.6.3.3, Procedures If Appeals Conclusion is Contrary to Service Position.
- (12) Restated IRM 8.7.3.7.1, Appeals Role on (former) Issue Management Teams (Including ATAT), to update Appeals' role with Compliance Issue Specialists.
- (13) Restated IRM 8.7.3.8 (formerly IRM 8.7.3.7), International Issues, to clarify International Issues and referral procedures.
- (14) Restated IRM 8.7.3.8.1 (formerly IRM 8.7.3.7.1), Competent Authority Cases, to clarify competent authority case procedures.
- (15) Removed IRM 8.7.3.7.3, Appeals Review Panels Under the Mutual Agreement Procedure Canada-United States Income Tax Convention, and its related subsections.
- (16) Removed IRM 8.7.3.8, Controlled Issues.
- (17) Changed title of Exhibit 8.7.3-1 from "Sample Outline for Appeals Settlement Guidelines" to "Appeals Settlement Guidelines / Appeals Technical Position."
- (18) Changed title of Exhibit 8.7.3-2 from "Signature Page for the Appeals Settlement Guidelines" to "Signature Page for the Appeals Settlement Guidelines/Appeals Technical Position."
- (19) Added Exhibit 8.7.3-3, Table Comparing Appeals Settlement Guidelines (ASG) to Appeals Technical Position (ATP).
- (20) Added Exhibit 8.7.3-4, Appeals Rules of Engagement.

#### **EFFECT ON OTHER DOCUMENTS**

IRM 8.7.3, Domestic and International Operations Programs, dated September 26, 2012, is superseded. This IRM incorporates Interim Guidance memorandum #AP-08-0522-0004, Reissuance of Appeals Coordinated Issue Definition Change, dated May 16, 2022.

#### **AUDIENCE**

Appeals Employees

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8.7.3

Domestic and International Operations Programs

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8.7.3.1  
(12-01-2022)  
**Program Scope and Objectives**

- (1) Purpose: This IRM provides guidance to ensure nationwide uniform and consistent settlement of issues for technical guidance and international operations within Specialized Examination Programs and Referrals (SEPR).
- (2) Audience: Appeals Technical Employees (ATEs) and Appeals Team Managers (ATMs) who work technical guidance and international issues.
- (3) Policy Owner: Appeals Technical Guidance and International Operations are under the Director, SEPR.
- (4) Program Owner: Appeals Technical Guidance and International Operations are the program offices responsible for providing technical and procedural guidance to Appeals employees for Technical Guidance and International Operations.
- (5) Contact Information: Appeals employees should follow established procedures on *How to Contact an Analyst*. Other employees should contact the Product Content Owner shown on the Product Catalog Information Page for this IRM.

8.7.3.1.1  
(12-01-2022)  
**Background**

- (1) This IRM provides guidance and information to Appeals employees for working
  - a. technical guidance and
  - b. international issues
- (2) The mission of the IRS Independent Office of Appeals (Appeals) is to resolve tax controversies, without litigation, on a basis which is fair and impartial to both the Government and the taxpayer, promotes a consistent application and interpretation of, and voluntary compliance with, the Federal tax laws, and enhances public confidence in the integrity and efficiency of the Internal Revenue Service.

8.7.3.1.2  
(12-01-2022)  
**Authority**

- (1) The Director, SEPR has delegated authority over issue coordination. See IRM 1.2.2.9.6, Delegation Order 8-6 (formerly DO-179, Rev. 2), Coordination of Certain Issues Before Approval of Settlement or Other Disposition in Appeals. The following authorities are delegated to the Director, Technical Guidance, or Director, International Operations (shown on the delegation order as Director, Appeals Technical Specialist):
  - a. Authority to recommend for designation an Appeals Coordinated Issue (ACI)
  - b. Authority to assist, guide, advise, and concur in the disposition of an ACI as proposed by the appeals office having jurisdiction over a case containing such an issue
- (2) The Director, SEPR, is generally authorized to make the final determination as to the disposition of the ACI in any case involving an ACI if the coordinating official has not concurred and the Appeals Team Manager (ATM) cannot resolve the dispute. See IRM 1.2.2.9.8, Delegation Order (DO) 8-8 (Rev-1) (formerly DO-66, Rev. 15), Authority of Appeals in Protested and Tax Court Cases.

8.7.3.1.3  
(12-01-2022)  
**Responsibilities**

- (1) The Director, SEPR is the executive responsible for Appeals technical guidance and international policy and procedural guidance.

- (2) The Directors, Technical Guidance and International Operations are responsible for program oversight.

8.7.3.1.4  
(12-01-2022)

#### Program Reports

- (1) The Director, Policy, Planning, Quality, and Analysis (PPQA) provides trend and data analyses and detailed summary reports for Appeals.

8.7.3.1.5  
(12-01-2022)

#### Terms and Acronyms

- (1) The table below lists common acronyms used in this section.

Acronym	Definitions
ACDS	Appeals Centralized Database System
ACI	Appeals Coordinated Issue
ACI RC	Appeals Coordinated Issue with Review and Concurrence
ACM	Appeals Case Memorandum
APS	Account and Processing Support
ARC	Aging Reason Code
ASG	Appeals Settlement Guideline
ASP	Appeals Settlement Position
ATAT	Abusive Tax Avoidance Transactions (ATAT)
ATCL	Appeals Team Case Leader
ATE	Appeals Technical Employee (See Exhibit 8.1.1-1)
ATM	Appeals Team Manager
ATP	Appeals Technical Position
CIP	Coordinated Issue Paper
CRA	Canada Revenue Agency
DO	Delegation Order
FTS	Fast Track Settlement
FOIA	Freedom of Information Act
IIR	Industry Issue Resolution
INTL	International Operations
MAP	Mutual Agreement Procedure
NOPA	Notice of Proposed Adjustment
PPQA	Policy, Planning, Quality, and Analysis
SEPR	Specialized Examination Programs and Referrals
TG	Technical Guidance

TLS	Tax Law Specialist
TS	Technical Specialist includes International Specialists, Technical Guidance Coordinators, Financial Products, Engineers, and Economists

8.7.3.1.6  
(12-01-2022)  
**Related Resources**

- (1) *Appeals Technical Guidance webpage.*
- (2) *Appeals International Operations webpage*
- (3) The Taxpayer Bill of Rights (TBOR) lists rights that already existed in the tax code, putting them in simple language and grouping them into 10 fundamental rights. Employees are responsible for being familiar with and acting in accord with taxpayer rights. See IRC 7803(a)(3), Execution of Duties in Accord with Taxpayer Rights. For additional information about the TBOR, see <https://www.irs.gov/taxpayer-bill-of-rights>.

8.7.3.2  
(12-01-2022)  
**Overview of Appeals  
Technical Guidance and  
International Operations**

- (1) The Appeals Technical Guidance and International Operations enhance the identification and timely resolution of issues and provide coordination for technical issues.
- (2) Upon initial review of a case, Appeals Technical Employees (ATEs) should review the Appeals Issue Locator for a list of coordinated issues requiring a referral. Before scheduling the initial conference on a coordinated issue, ATEs must make a referral to Technical Guidance/International Operations following the procedures contained in IRM 1.4.28.10, Referrals to Appeals Technical Guidance, International Operations and TE/GE, and IRM 8.2.1.6, Preliminary Review of a Case - ATE. Some coordinated issues require the review and concurrence of the Technical Specialist before a proposed settlement is offered to the taxpayer.
- (3) The following issues are referred to Technical Guidance and/or International Operations. The "Feature Code" input on the Appeals Centralized Database System (ACDS) is indicated after each issue. Technical Guidance and International Operations programs have parallel roles and responsibilities except in a few areas as noted throughout this IRM. If the Feature Code is not in the ACDS case record, the ATE will input the Feature Code when the referral is made.
  - a. International Issues (IC)
  - b. Appeals Coordinated Issues (AI)
  - c. Appeals Coordinated Issues with Review and Concurrence (AI)
- (4) The Appeals International Operations program provides coordination and expertise to Appeals management and ATEs for international issues.
  - a. All cases with international issues need the Feature Code "IC" (International Case) input on ACDS.
  - b. The definition of international issues and descriptions to identify coordinated and non-coordinated issues can be found on the Appeals International Operations website.
  - c. Generally, a transfer should be made to an International Specialist for any case with predominantly international tax or penalty issues.

- d. International Specialists also receive international issue referrals on both coordinated issues and/or subject matter expert (SME) topics.
- (5) Technical Guidance will also receive referrals on SME issues and areas of law pertaining to engineers, economists, passthrough entities, and financial products.
- (6) Unless otherwise specified, any reference to Director within this IRM includes the Director, Technical Guidance and Director, International Operations.
- (7) References to Technical Specialists include International Specialists, Technical Guidance Coordinators, Financial Products, Engineers, and Economists. See IRM 8.1.3.9, Technical Specialist.
- (8) A Technical Specialists may be assigned as a consultant or team member depending on the level of assistance needed. Consultants provide information packages and discuss issues, whereas team members are expected to negotiate, work, or otherwise be responsible for an issue. Team members take ownership of assigned issues and provide continuous service throughout the Appeals process, as opposed to the lesser ad hoc service level that consultants provide. See IRM 1.4.28.10(8).

8.7.3.3  
(10-01-2012)  
**Coordinated Issues**

- (1) The two types of program issues are:
  - Appeals Coordinated Issues (ACI)
  - Appeals Coordinated Issues with review and concurrence (ACI RC)
- (2) The Appeals Technical Guidance and International Operations programs coordinate domestic and international issues. An Appeals Technical Guidance Coordinator is selected for each domestic specialty area. Coordination of international issues falls under the expertise of the International Operations program and an International Specialist is designated as the Technical Specialist for an international issue.

8.7.3.3.1  
(10-01-2012)  
**Appeals Coordinated Issues**

- (1) An ACI is an issue with Service-wide impact or importance, requiring coordination to ensure uniformity and consistency nationwide.
- (2) The primary Technical Specialist prepares a memo to designate the issue as an ACI and then forwards it for approval through their ATM. The Director, Technical Guidance or Director, International Operations, recommends an issue for coordination to the Director, SEPR who is the approving official.
- (3) A particular issue is designated ACI because it generally involves persons or entities distributed over a wide geographic area and/or is common to:
  - An entire industry or occupational group, or
  - A large number of partners, shareholders, or creditors, or
  - A nationwide tax avoidance scheme or non-compliance transaction.
- (4) The ACI program encompasses any of the following:
  - a. Legal Issues – issues where the primary dispute pertains to a determination of the legal standard to be applied.
  - b. Factual Issues – issues where the primary dispute is the determination of the underlying facts or the application of the underlying facts to the legal standard.



- (5) The procedures outlined in IRM 1.4.28.10 ,and IRM 8.2.1.6 require the ATE to refer all cases containing coordinated issues to Technical Guidance or International Operations.
- (6) Based on the Technical Specialist's workload and scheduling, the Technical Specialist may be assigned as a team member or a consultant on the case.
- (7) At a minimum the Technical Specialist for the ACI should provide to the ATE an information package preferably before the Appeals conference, so the ATE can get insight into the issue, industry, or specialty area.
- (8) Issues are de-coordinated with the approval of the Director, SEPR. Factors considered include, but are not limited to:
  - The issue is no longer raised by Compliance because of case or statutory law change,
  - Cases with the issue are no longer coming to Appeals as taxpayers are conceding in Compliance,
  - There are a few cases remaining in Appeals that are controlled by the Technical Specialist and a settlement has been worked out, or;
  - There is a prolonged period of inactivity in Appeals.
- (9) ACIs along with the assigned Technical Specialist are listed on the Appeals website in the Appeals Issue Locator. For the public, the issues are also listed on [www.irs.gov](http://www.irs.gov).

8.7.3.3.2  
(12-01-2022)  
**Appeals Coordinated  
Issues with Review and  
Concurrence**

- (1) An ACI with Review and Concurrence (ACI RC) is an issue with Service-wide impact or importance, requiring Technical Specialist evaluation to ensure uniformity and consistency nationwide. In addition to the requirements in IRM 8.7.3.3.1, the ATE must obtain the Technical Specialist's tentative approval of the settlement proposal and/or settlement range before any settlement options are discussed with the taxpayer.

8.7.3.3.3  
(10-01-2012)  
**Factors for Designating  
Issues as Appeals  
Coordinated Issues  
(ACI) or Appeals  
Coordinated Issues with  
Review and  
Concurrence (ACI RC)**

- (1) Factors to consider in designating an issue as an Appeals Coordinated Issue (ACI) or Appeals Coordinated Issue with Review and Concurrence (ACI RC):
  - a. What is the level of coordination and commitment by Compliance;
  - b. Is there a commitment to issue binding guidance to the Field in Compliance (CIP or similar document);
  - c. Is there a Compliance Subject Matter Expert or similar key person assigned;
  - d. What is the volume of cases in Compliance;
  - e. What is the number of industries affected;
  - f. Is the issue addressed at the Commissioner's level;
  - g. What is the geographic dispersal of cases; and/or
  - h. What is the impact on voluntary compliance;
- (2) Factors considered in timing the coordination of an ACI or ACI RC issue:
  - a. Has Compliance begun to issue Notice of Proposed Adjustments (NOPAs) to taxpayers?
  - b. Are there cases currently in Appeals?

**Note:** Issues will be coordinated only when cases are expected to be coming to Appeals within the next six months.

## 8.7.3.4

(12-01-2022)

**Appeals Technical Specialists' Roles and Responsibilities**

## (1) The Technical Specialist:

- a. Serves as the focal point for activities involving issues in the industry or specialty area by providing continual advice, guidance, and assistance to ATEs;
- b. Develops and maintains expertise on both ACI and ACI RC issues;
- c. Brings matters of nationwide importance to the attention of their ATM for elevation to the Director;
- d. Works with Appeals, Counsel, Compliance and taxpayers on alternative dispute resolution (ADR) initiatives including but not limited to: Industry Issue Resolution (IIR), Fast Track Settlement (FTS), Early Referral (ER), Post Appeals Mediation (PAM), Rapid Appeals Process (RAP), and DO 4-25;
- e. Works cases in the industry or specialty area, as time permits, either as a team member, consultant, or key ATE. When possible they serve as a team member on the initial cases worked by Appeals in their area of expertise, especially Fast Track Settlement cases;
- f. Attends both internal and external training seminars and other courses;
- g. Expresses views/concerns informally to Compliance and Counsel, as appropriate about ACI and ACI RC issues.
- h. Assists with issues in general, but does not consult on specific cases in Compliance unless Delegation Order (DO) 4-25 (Rev.2) found in IRM 1.2.2.5.21, or DO 4-24 (formerly DO-236, Rev. 3) found at IRM 1.2.2.5.20 applies;
- i. Trains others in their field of expertise;
- j. Prepares Appeals Settlement Guidelines (ASG) or Appeals Technical Positions (ATP) on ACI RC issues, when appropriate;
- k. Reviews the proposed settlement on ACI RC issues and conveys concurrence or disagreement (all disagreements are in writing);

**Note:** Remind ATE to obtain review and concurrence from the Technical Specialist prior to discussion or settlement with a taxpayer on ACI RC. See IRM 8.7.3.5.2. In furtherance of the Appeals Mission, it is expected that Appeals personnel provide a unified Appeals position to taxpayers and/or practitioners in the settlement of an issue. This extends to all members of Appeals involved in the case. While there may be differing positions and/or opinions during the discussion of an issue, the ultimate resolution of the issue should be based upon the conclusions reached by the Appeals team.

- l. Provides guidance on issues in their industries or specialty areas;
- m. Prepares information package on issues identified on Appeals Issue Locator as appropriate;
- n. Reviews and updates settlement guidelines and information packages on a timely basis;
- o. interact with taxpayers or representatives as appropriate, to discuss the application of law to their facts and circumstances and the recommended settlement of their coordinated issue on cases under Appeals consideration. Generally other members of the team negotiating the settlement of the issue also participate in these discussions;
- p. Maintains an activity record in ACDS by case when a referral is assigned. Include: name of taxpayer; ATE assigned to the case; date of contact; and nature of discussion;
- q. Prepares memos recommending the coordination or de-coordination of issues; and

- r. Enters all time spent on technical matters in ADCS, Line 6 - Specialty Direct Time.

8.7.3.4.1  
(10-01-2012)  
**Appeals Settlement  
Guidelines**

- (1) The Technical Specialist develops Appeals Settlement Guidelines (ASG) for ACI and ACI RC Issues, when appropriate. The settlement guidelines are structured as outlined in Exhibit 8.7.3-1, Sample Outline for Appeals Settlement Guidelines/Appeals Technical Position. A signature page is also included as shown in Exhibit 8.7.3-2, Signature Page for the Appeals Settlement Guidelines/Appeals Technical Position. The Technical Specialist completes a draft ASG after obtaining an understanding of both the government's and taxpayer's position. Typically, this requires an analysis of actual cases, which includes consideration of both parties' written and/or oral presentations.
- (2) Technical Specialists submit draft ASG through their ATM to the Director (or their designee, e.g., Technical Advisor/Tax Law Specialist) for comment. Following the review, the ASG is concurrently forwarded for review and comment to:
  - Examination Appeals, Collection Appeals, Technical Guidance, and/or International Operations ATMs for a 30 calendar day comment period;
  - Counsel for review and comment within 90 calendar days.
- (3) The Technical Specialist, working in collaboration with their ATM and the Director (or designee), considers any comments received from Appeals and Chief Counsel's office, and if necessary revises the draft ASG and submits it through their ATM to the Director for review. If there are significant and material differences between Counsel's recommendations and Appeals' revision, the ASG is sent to Counsel for a second 90-day review period. This is the final review by Counsel.
- (4) The Technical Specialist, working in collaboration with their ATM and the Director (or designee), finalizes the ASG.
- (5) The Director recommends the Appeals Settlement Guidelines for approval to the Director, SEPR, who is the approving official.
- (6) Revised ASG are generally required to be written within three months of any new court decision, ruling, or other occurrence significant enough to change the appropriate settlement range or position for that issue, regardless of whether the decision is favorable or unfavorable to the government. With respect to new court decisions, the start of the three months may be postponed to see if the decision is appealed, an Action on Decision is issued, or some other event occurs that might affect the weight the decision is given when reconsidering the appropriate settlement range.
- (7) The Director, SEPR may waive the ASG requirement for reasons such as, but not limited to, the limited number of cases or the establishment of a settlement position involving a full sustention or full concession of the issue.

8.7.3.4.2  
(10-01-2012)  
**Distribution of Appeals  
Settlement Guidelines**

- (1) ASGs are available only to IRS personnel who have a need to know, such as:
  - a. An ATE who has the coordinated issue in a specific case;
  - b. A Compliance case manager who seeks to resolve an issue in a specific case pursuant to DO 4-25; or

- c. The Compliance Subject Matter Expert who has to concur with the settlement at the Compliance level in order for the settlement to become final. See IRM 8.7.3.4.3, Appeals Technical Position, for a discussion of Delegation Order 4-25 (Rev. 2) found in IRM 1.2.2.5.21.

- (2) Unredacted copies are distributed only to authorized persons (on a need to know basis.) This document must be marked for official use only.
- (3) Guidelines (drafts or finals) are not given to taxpayers or their representatives. Taxpayers may make a request for the final ASG under the Freedom of Information Act (FOIA) (See IRM 11.3.13, Freedom of Information Act) since portions of the guidelines are exempt from disclosure. Also redacted copies are now available as part of the FOIA reading room and can be found under the Appeals section of Technical Guidance International Operations programs section of the *www.irs.gov/appeals* web site.

8.7.3.4.3  
(12-01-2022)  
**Appeals Technical  
Position**

- (1) An Appeals Technical Position (ATP) is an unpublished settlement position. The Technical Specialist utilizes the ATP for purposes of providing settlement guidance to ATEs on an expedited basis until an ASG, if needed, is finalized.
- (2) An ATP may be prepared once Appeals obtains sufficient information from Compliance, Counsel, and taxpayers regarding (a) the facts of the issue, (b) positions to be argued in the event of litigation, and (c) taxpayer arguments. The Technical Specialist gives adequate consideration to the hazards of litigation to support the settlement position.
- (3) A Technical Specialist develops an ATP for ACI RC when appropriate. The settlement guidelines are structured as outlined in Exhibit 8.7.3-1 and includes a signature page as shown in Exhibit 8.7.3-2. The Technical Specialist completes a draft ATP after obtaining an understanding of both the government's and taxpayer's positions. Typically, this requires an analysis of an actual case, which includes consideration of both parties' written and/or oral presentations.
- (4) The ATP is also a starting point for processing the ATP for DO 4-25 prescribed under IRM 8.7.3.4.3.3 or ASG under IRM 8.7.3.3.1. There is no difference between the processes prescribed in IRM 8.7.3.4.3.3 for an ATP for DO 4-25 and the ATP described in this section, as the ATP for the DO is a subset of the ATP. If the Director, Technical Guidance or International Operations determines that there is a need, the Technical Specialist will continue to develop the ATP into an ASG.
- (5) The ATP process may include forming a Screening Panel, if the issue is complex. The Screening Panel is comprised of one or more Technical Specialists, the respective ATMs, and the Director Technical Guidance or International Operations, to determine whether the issue should be worked individually by the Technical Specialist or assigned to a Working Panel.
- (6) The Screening Panel will consider the following factors:
  - a. Complexity (primary criteria)
    - Does the issue involve undecided legal precedents (i.e., complex factual patterns)?
    - Are there cross-functional issues (e.g., income tax, TE/GE, and/or international)?

- b. Precedent setting nature
    - Is there a conflict among the courts?
    - Is this the first case on the issue?
  - c. Significance of issue in terms of dollars at issue
    - Low volume of cases - large dollars per case
    - Low dollars per case - large volume of cases
  - d. Effect on many taxpayers in future tax years
  - e. Other reasons: e.g., emerging procedures or requires approval of other IRS/government organizations
- (7) The Working Panel is comprised of the Technical Specialist, the respective ATM, and the Tax Law Specialist. If an ATE has worked the issue on several cases, consideration should be given to inviting such ATE to assist the Technical Specialist as part of the panel. This panel will determine the settlement range and recommend whether the ATP should be developed into an ASG with the approval of the Director, Technical Guidance or International Operations (or their designee). If approved, the Technical Specialist will follow IRM 8.7.3.3.1 to process the ASG.
  - (8) The Screening Panel may determine that an issue is not suitable for an ATP due to many differences in fact patterns, which make an all-inclusive ATP impractical. If this is the case, the Technical Specialist may only be able to provide an information package, which could include briefing memos, a listing of court cases, etc.
  - (9) The Working Panel will have periodic conference calls to discuss the issue. The Technical Specialist should prepare an outline/agenda for the calls and follow up with meeting minutes to be shared with panel members.
  - (10) In the event that there are different fact patterns, it may be necessary to draft several ATP: one for each fact pattern.
  - (11) If an ATE can demonstrate that the facts fall within the range of an ATP that has a settlement range, the ATE would have the authority to propose a settlement within that given range upon concurrence with their ATM. The ATE would not have to obtain a written review and concurrence from the Technical Specialist.
  - (12) Revised ATP are generally required to be written within 30 days of any new court decision, ruling, or other occurrence significant enough to change the appropriate settlement range or position for that issue regardless of whether the decision is favorable to the government. With respect to new court decisions, the start of the 30-day period may be postponed based on whether (a) the decision is appealed, (b) an Action on Decision is issued, or (c) some other event occurs. If the new court decision does not change hazards, it may be beneficial to revise or update to indicate the ATP is still current. There is no deadline for this update. If a new issue or fact pattern arises from the new court case, consider issuing an additional ATP.
  - (13) See Exhibit 8.7.3-3, Table Comparing Appeals Settlement Guidelines (ASG) to Appeals Technical Position (ATP).

8.7.3.5  
(10-01-2012)

**Review and  
Concurrence Procedures**

- (1) The review and concurrence requirement is effective at the time an issue is designated an ACI RC. The ATM provides oversight regarding the review and concurrence determinations of the Technical Specialist.

8.7.3.5.1  
(10-01-2012)

**Review and  
Concurrence - Appeals  
Technical Specialist  
Responsibility**

- (2) Material involvement of the Technical Specialist, including review and concurrence, is also required for settlements by ATEs on FTS and other ADR cases.
- (1) When contacted by an ATE either through the referral process or other contact, the Technical Specialist:
    - a. Discusses the legal authority, pertinent facts, and nationwide impact of the issue;
    - b. Gives the ATE a copy of the ASG or ATP, if approved;
    - c. Becomes involved in the settlement negotiations on an as-needed basis;
    - d. Avoids the "trade-off" settlement of a coordinated issue. If circumstances compel the trading of a coordinated issue with another issue in a multi-issue case for settlement purposes, the Technical Specialist's review and concurrence extends to the consideration of non-coordinated issues traded or settled as part of the settlement of the coordinated issue.

**Note:** Appeals does not trade penalty issues. Penalties will be settled on the merits and the hazards of litigation surrounding the penalty issue only.

    - e. Reviews the rough draft Appeals Case Memo (ACM) and gives oral approval if the settlement is acceptable;
    - f. Provides a written response (rebuttal) to the ATE if the settlement is not acceptable. If agreement is not reached, the respective ATMs attempt to resolve the dispute. If the ATMs cannot resolve the dispute, the ATMs will refer it to the Appeals Area Director and the Director, Technical Guidance or International Operations. If not resolved at the Area Director level, the issue is referred to the Director, SEPR for a decision.

8.7.3.5.2  
(12-01-2022)

**Review and  
Concurrence - ATE's  
Responsibility**

- (1) Upon initial review of a case, the ATE checks the list of ACI RC located on the Appeals Issue Locator or [www.irs.gov](http://www.irs.gov) web site.
- (2) Before scheduling the initial conference on the coordinated issue, the ATE makes a referral to Technical Guidance or International Operations following the procedures contained in IRM 1.4.28.10, and IRM 8.2.1.6
- (3) The ATE obtains review and concurrence on issues designated as ACI RC before the proposed settlement is offered to the taxpayer.
- (4) The ATE forwards a rough draft of the ACM (and any related documents requested by the Technical Specialist such as copies of documents, RAR, protest, closing agreements, etc.) to the Technical Specialist, whether the Technical Specialist is a team member. The Technical Specialist may waive this requirement after discussing the issue with the ATE.
- (5) The ATE obtains the Technical Specialist's tentative approval of the settlement proposal and/or settlement range before any settlement options are discussed with the taxpayer.
- (6) The ATE sends the Technical Specialist a copy of the portion of the final ACM and Closing Agreement, if any, which discusses the coordinated issue.
- (7) When closing the case, the ATE notes on the Form 5402, Appeals Transmittal and Case Memo, that the Technical Specialist concurs with the proposed disposition of the coordinated issue.



- (8) If the Technical Specialist does not concur with the proposed disposition of the coordinated issue, the ATE attaches a copy of the Technical Specialist's memorandum (rebuttal) to the ACM. See IRM 8.7.3.5.1, for procedures on how to resolve the dispute.

8.7.3.5.3  
(10-01-2012)  
**Review and  
Concurrence of  
Coordinated Issues  
under Delegation Order  
4-25 (Rev. 2)**

- (1) Delegation Order 4-25 (Rev. 2) allows designated Compliance managers to settle coordinated issues at the Compliance level when ASG or Appeals Settlement Positions (ASP) (or settlement ranges) are approved by the Director, SEPR. See IRM 1.2.2.5.21 for Delegation Order 4-25 (Rev. 2).

8.7.3.5.3.1  
(10-01-2012)  
**Review and  
Concurrence of  
Coordinated Issues  
under Delegation Order  
4-25 (Rev. 2)  
(paragraphs 1-13) as  
effective October 18,  
2008**

- (1) For settlements under paragraphs 1- 13 of DO 4-25 (Rev.2), Compliance managers must get the review and concurrence of both the Appeals Technical Specialist and the Compliance Subject Matter Expert for the issue prior to discussing a settlement with the taxpayer. (See IRM 4.46.5, Resolving the Examination, for a discussion of LB&I's procedures.) Paragraphs 1-13 of DO 4-25 apply to all operating divisions, including LB&I, SB/SE, TEGE, and W&I.
- (2) When the Compliance manager contacts the Appeals Technical Specialist, the Technical Specialist,
  - a. Gives them the ASG, ATP, and/or any additional information which is helpful in formulating a settlement;
  - b. Becomes involved in settlement negotiations with Compliance and the taxpayer, as needed;
  - c. Keeps in contact with the Compliance manager and the Compliance Subject Matter Expert;
  - d. Reviews the proposed settlement submitted by the Compliance manager (with Form 5701,) and any related Form 906, Closing Agreement on Final Determination Covering Specific Matters, and/or Form 870-AD, Offer to Waive Restrictions on Assessment and Collection of Tax Deficiency and to Accept Overassessment, Form 890-AD, Estate Tax Offer of Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and to Accept Overassessment, Form 2504-AD, Offer of Agreement to Assessment and Collection of Additional Tax and Offer of Acceptance of Overassessment (Excise or Employment Tax,) and supporting documentation before the Compliance manager discusses settlement ranges with the taxpayer. The Compliance manager submits a settlement memorandum which is similar to the ACM;
  - e. Either concurs with the proposed settlement and conveys that concurrence or explains the reasons for non-concurrence with the proposed settlement. After providing the explanation, continues to work with the Compliance Manager in an attempt to reach a proposed settlement that is acceptable to both parties; and
  - f. Maintains activity records.
- (3) When Compliance utilizes paragraphs 1-13 of Delegation Order 4-25 to settle an issue, in order to facilitate the capture and tracking of taxpayer and case information, Form 13970, Delegation Order 4-25: Appeals Review and Concurrence, is forwarded in electronic format to the Technical Specialist by the Compliance manager. The Compliance manager completes sections I, II and III of the form and the Technical Specialist completes the remainder.

8.7.3.5.3.2  
(10-01-2012)  
**Review and  
Concurrence of  
Coordinated Issues  
under Delegation Order  
4-25, paragraphs 14-26  
as effective October 18,  
2008**

- (1) For certain issues designated by the Chief of Appeals, Delegation Order 4-25 (Rev. 2) delegates authority to settle cases based on an ATP or ASG without a case-by-case review and concurrence by Appeals. Paragraphs 14–26 of Delegation Order 4-25 apply to all operating divisions, including LB&I, SB/SE, TEGE, and W&I.
- (2) For cases under the jurisdiction of Compliance the following procedures apply:
  - a. Appeals and the Business Operating Divisions (BODs) work together to identify issues or categories of cases where the delegation of authority pursuant to DO 4-25 referenced above is in the best interest of the Service.
  - b. The Chief of Appeals issues a memorandum to the appropriate BOD responsible for designating a specific issue or category of case which may be resolved using the previously cited provisions of DO 4-25. The Director, Technical Guidance or International Operations ensures the issues or categories of cases designated for resolution under DO 4-25 have a champion for implementation and are listed on the Appeals website in the Technical Guidance or International Operations Issue Locator.
  - c. The appropriate Compliance Director appoints a management official to champion the implementation of DO 4-25. The champion assures information concerning the issue is listed on the appropriate BOD's web site. (Example: See SBSE's Abusive Transactions website at <https://www.irs.gov/businesses/corporations/abusive-tax-shelters-and-transactions>) See IRM 1.2.2.5.21 for DO 4-25 (Rev. 2).
  - d. The following Aging Reason Codes (ARC) are designated for use in identifying and tracking Compliance cases where DO 4-25 (paragraphs 14-26) is used:

Reason Code	Description
80	An agreed case where the settlement is based on Appeals Settlement Guidance.
81	An unagreed case where a settlement based on Appeals Settlement Guidance is proposed by the examiner but not settled.
82	Either an agreed or unagreed case where a settlement based on Appeals Settlement Guidance is not offered to the taxpayer by the examiner.
83	A case where settlement based on Appeals Settlement Guidance is offered and pending.

- e. The Compliance Subject Matter Expert (or comparable position) and the Appeals Technical Specialist develop draft implementation procedures specific to the designated issue. These procedures are flexible and open to revision as needed.



**Guidance typically included in designated issue procedures includes:**

- Who exercised the delegated authority.
- Form and availability of Appeals settlement guidance that is most useful for the examiners and managers. Appeals settlement guidance is only available to IRS personnel who have a need to know. See IRM 8.7.3.4.2. This document is not given to the taxpayer or their representatives.
- Closing procedures including the use (as appropriate) of Form 870-AD, Form 890-AD, Form 2504-AD, and/or closing agreements Form 866 or Form 906, standardized language explaining a settlement based on Appeals guidance, etc.
- Responsibilities for tracking and reporting cases closed using DO 4-25.
- Roles of Appeals Technical Specialist, Technical Advisor(s) and managerial officials.
- Wording, flow, and retention of Form 5701.
- Materials and instructions to post to issue websites.
- Plans to familiarize those Compliance employees who are examining, approving, or processing DO 4-25 cases with the procedures.
- Once approved by the designated BOD and Appeals champions, procedures specific to an identified issue are disseminated to BOD management officials and examiners, and made readily accessible through audit guides, web sites, or other information sources normally maintained by the Compliance Subject Matter Expert. A key location for such dissemination of information is the BOD's web site. For SB/SE Abusive Transactions, the web site is <https://www.irs.gov/businesses/corporations/abusive-tax-shelters-and-transactions>.
- Director, Appeals Technical Guidance or International Operations and the designated BOD champion design oversight procedures to assure (1) settlements are offered in accordance with the terms of the ASP, ASG or other Guidance; (2) agreement forms (including Form 870-AD, Form 890-AD, Form 2504-AD, and Form 906) are properly prepared and executed (if standard language was developed for closing agreements, that it is, in fact, being used; and (3) taxpayers understand they are giving up rights to further appeals or file refund claims because settlements are based on litigating hazards and are final.
- Oversight may take the form of open or closed case reviews. The specific procedures are determined in each issue and may vary based on the specific facts of each issue. Factors which impact the specific procedure include the terms of the settlement, complexity of the cases, number of cases, and the geographical location of cases and examiners.
- Results of any reviews conducted are discussed and used to determine if any changes are warranted to the procedures or their application.
- If it is determined the designation of an issue is no longer appropriate, the Chief of Appeals notifies the BOD in writing of the decision to discontinue the delegation of authority.

8.7.3.5.3.3  
(12-01-2022)  
**Appeals Technical  
Positions (ATP) for  
Delegation Order 4-25**

- (1) As determined by the Director, Technical Guidance or International Operations, the Technical Specialist utilizes the working draft of the ATP for purposes of providing settlement guidance to appropriate IRS officials on an expedited basis until an ASG is finalized.
- (2) An ATP may be prepared once Appeals obtains sufficient information from Compliance, Counsel and taxpayers regarding (1) the facts of the issue, (2) positions to be argued in the event of litigation, and (3) taxpayer arguments; and, an adequate consideration is given to the hazards of litigation to support the settlement position.
- (3) The Technical Specialist and their ATM make a recommendation for using the ATP as a basis for settling cases under DO 4-25.
- (4) Technical Specialists submit draft ATP through their ATM to the Director (or their designee, e.g., Technical Advisor/Tax Law Specialist).
- (5) The Director recommends the settlement for approval to the Director, SEPR who is the approving official.
- (6) All ASP drafts require the watermark "for official use only."
- (7) ATP are available only to IRS personnel who have a need to know, such as:
  - a. An ATE who has the coordinated issue in a specific case;
  - b. A Compliance Case Manager who has the coordinated issue in a specific case; or
  - c. The Compliance Subject Matter Expert who has to concur with the settlement at the Compliance level in order for the settlement to become final.

Distribute unredacted copies only to authorized persons (on a need to know basis). This document must be marked for official use only. Do not give the guidelines (drafts or final) to taxpayers or their representatives. Taxpayers may make a request for a final ASG under the FOIA (see IRM 11.3.13, because portions of the guidelines are exempt from disclosure).

- (8) The Technical Specialist continues to work on the ASG, if needed, in accordance with IRM 8.7.3.4.1.

8.7.3.5.3.4  
(10-01-2012)  
**Settlement Not Reached  
Under Delegation Order  
4-25 (Rev. 2)**

- (1) If the Compliance manager, Subject Matter Expert and the Appeals Technical Specialist and their ATM cannot agree on an acceptable settlement, the matter is elevated to a higher level of management. The following are examples:
  - Appeals Technical Specialist, through their ATM, to the Director over the respective issue,
  - Compliance Manager to Territory Manager
  - SBSE Territory Manager to Director over issue
  - Compliance Subject Matter Experts, through their manager, to the appropriate Compliance Director
- (2) If agreement is not reached at the higher level of management, the case manager ceases settlement negotiations. Disagreements are not elevated further.
- (3) If the taxpayer does not agree with the proposed settlement, the issue is unagreed and the full adjustment (unsettled position) is closed to Appeals if

protested or included in the statutory notice of deficiency. Compliance must ensure the Form 5701 is in the case file when it is submitted to Appeals.

8.7.3.5.3.5  
(10-01-2012)

**Tracking of Information  
for Issues Settled under  
Delegation Order 4-25**

- (1) The Technical Specialist records time devoted to review and concurrence activities as well as a count of the number of cases settled by Compliance under these provisions.
- (2) Form 13970 is used to capture taxpayer and case information to facilitate tracking.
- (3) When a Technical Specialist is notified of a proposed DO 4-25 settlement requiring review and concurrence, the Technical Specialist forwards the form electronically to Compliance for completion of sections I, II, and III. Compliance returns the form electronically to the Technical Specialist.
- (4) Once all documents necessary for the review and concurrence process are received from Compliance, the Technical Specialist reviews sections I - III of the form and reconciles them to the other case documents received; completes section IV, and electronically forwards the form to the Appeals Processing Team Manager (PTM) of his or her local/Area APS unit.
  - a. ACDS feature code D5 applies to all cases received for review and concurrence. (See IRM 8.20.5.15, Delegation Order (DO) 4-25 Case Carding.) Feature code TS also applies if the issue or case is coordinated as part of the tax shelter program.
  - b. Type of case for ACDS purposes is one of the following: EP, EO, EMPL, ES, EX, G, I, TEFRA, TEFRAI, TEFRAP. See Exhibit 8.20.3-1 , ACDS Type Codes, or seek guidance from the local/Area PTM if the type of case is unclear.
- (5) APS establishes the case on ACDS and assigns the WUNO to the Technical Specialist whose name appears in section IV of the form.
- (6) Jurisdiction of the case and responsibility for protecting statutes of limitations remain with Compliance during the review and concurrence process.
- (7) The Technical Specialist charges review and concurrence time to the case, and makes appropriate notes on the case activity record.
- (8) The Technical Specialist notifies Compliance whether the settlement is approved, following the provisions in IRM 8.7.3.5.3 .
- (9) If the Technical Specialist concurs with the Compliance proposed settlement:
  - a. Use closing code 14.
  - b. Revised dollar amounts for tax and penalty reflect the adjustments shown on the RAR. If the coordinated issue is the only issue in dispute, use the amounts of tax and penalty shown on the RAR. Otherwise, estimate the tax and penalty attributable to this issue using a marginal tax rate of 35% for corporate taxpayers and 39% for individual taxpayers, and the agreed upon penalty percentage.
  - c. Proposed dollars for tax and penalty is the Technical Specialist's estimate of the tax and penalty amounts had the Appeals settlement not been offered to the taxpayer. The estimates are based on the marginal tax rates shown above and full penalty assertion if Compliance proposed any penalty.

- d. Use estimates in order to avoid the need for multiple computations.
- (10) If the Technical Specialist does not concur with the Compliance proposed settlement:
  - a. Use closing code 15, but only after the procedures described in IRM 8.7.3.5, are completed.
  - b. Revised dollar amounts for tax and penalty reflect the adjustments shown on the RAR. To determine the Revised tax dollars, use the same instructions shown above (when the Technical Specialist concurs with the Compliance proposed settlement). The Revised dollar amount of the penalty is computed using the Compliance proposed penalty percentage.
  - c. Proposed dollars for tax and penalty are the same as the Revised dollar amounts.
- (11) At the completion of the review and concurrence process, the Technical Specialist completes section V of the form and sends it to the PTM of his or her local/Area APS unit for closing. No managerial approval is required. The date the form is completed constitutes the closing date.
- (12) Send copies of the case activity record and Form 5701 to APS for closing. All documents are electronically sent to the local/Area Processing Team Manager.
- (13) APS closes the case off ACDS using the information in section V of the form.
- (14) Compliance (and not Appeals) makes the appropriate adjustments to Master File and/or non-Master File accounts for the taxpayer or related entities.

8.7.3.5.4  
(10-01-2012)  
**Full Concession of a Coordinated Issue Contrary to Service Position**

- (1) In the case of an approved settlement of a coordinated Appeals issue where the result is "Contrary to Service Position" and the settlement is a full concession without offsetting consideration, the procedures described in IRM 8.6.3.3, Procedures if Appeals Conclusion is Contrary to Service Position, apply.

8.7.3.5.5  
(10-01-2012)  
**Review and Concurrence of Coordinated Issues in Fast Track Settlement Cases**

- (1) To meet the two-pronged requirement that all decision-makers are available for the FTS Session and that ACI RC are subject to the review and concurrence of the Appeals Technical Specialist, the Appeals Technical Specialist normally participates in the FTS Session with the taxpayer and Compliance. Where the Appeals Technical Specialist is unable to attend the FTS Session meeting, the Appeals Technical Specialist is available by phone to discuss review and concurrence.
- (2) If the Appeals Technical Specialist is not part of the Appeals FTS Team, settlement of the ACI RC issue remains subject to the review and concurrence of the Appeals Technical Specialist. Before executing a FTS Session Report that includes ACI RC issues, the ATE obtains the concurrence of the Appeals Technical Specialist.
- (3) If there is a disagreement between the Appeals Technical Specialists and the ATE on how to settle the issue, follow resolution procedures IRM 8.7.3.5.

- 8.7.3.6  
(12-01-2022)  
**Designation of Coordinated Issue for Litigation**
- (1) In some instances, Counsel may want to designate for litigation a coordinated issue in a case under Appeals jurisdiction. See IRM 1.2.2.9.8 for Delegation Order 8-8 (Rev. 1) (formerly DO-66, Rev. 15), Authority of Appeals in Protested and Tax Court Cases. See also IRM 1.2.2.15.7 for Delegation Order 30-9 (Rev. 1), Authority to Withhold Cases from Appeals and to Deny Requests for Appeals Review in Cases Designated for Litigation.
  - (2) The Director notifies the appropriate Appeals Area Director of a coordinated issue designated for litigation in a specific case.
  - (3) Generally, the designation for litigation does not preclude the settlement of other cases involving the issue or the non-designated issues in the designated case. However, the ATE will not settle the coordinated issue designated for litigation in a specific case.
- 8.7.3.7  
(10-01-2012)  
**Coordinated Issue Settlement Philosophy**
- (1) This subsection provides additional direction for Technical Specialists participating in cross-functional issue workgroups and devising settlements for issues coordinated by Appeals and other functions.
- 8.7.3.7.1  
(12-01-2022)  
**Appeals Role Governing Interaction with Compliance Issue Specialists (Including Abusive Tax Avoidance Transactions (ATAT))**
- (1) To ensure Appeals' independence, Appeals will follow the Appeals Rules of Engagement in all interactions with Compliance Issue Specialists and teams. See Exhibit 8.7.3-4, Appeals Rules of Engagement.
- 8.7.3.7.2  
(10-01-2012)  
**Settlement of Coordinated Issues**
- (1) The Technical Specialists and ATEs follow the procedures listed above for Appeals Coordinated Issues with or without review and concurrence, including the referral procedures in IRM 8.2.1.6(2).
  - (2) Any settlement devised by Appeals must have a basis in the law and be based upon the hazards of litigation. Settlement offers not considered to be based on hazards or have a basis in the law include:
    - Administrative offers based solely on conservation of resources.
    - Offers based on economic equivalency concepts involving moving adjustments from one year to another with no basis in the law for doing so.
    - Offers based on the taxpayer's internal rates of return (IRR), or internal capital rates.
  - (3) If deductions for transaction fees and other out-of-pocket expenditures are a component of a settlement, the overall settlement is based upon the hazards of litigation inherent in the issue.
  - (4) Appeals is not precluded from offering the terms of settlement initiatives authorized by the Commissioner that fall outside these guidelines.

8.7.3.7.3  
(11-06-2008)

**Settlement of Penalties  
Related to Coordinated  
Issues**

- (1) Penalties related to ATAT issues are coordinated along with the related issue. See IRM 5.20, Abusive Tax Avoidance Transactions (ATAT).
- (2) Settlements must be based on the merits of the penalty issue standing alone. Legal hazards inherent in the penalty as well as facts specific to the taxpayer, including reasonable cause and good faith factors, are considered in the settlement of penalties. Exercise care to fully explain the settlement in the supporting statement.

8.7.3.7.4  
(10-01-2012)

**Agreement Forms**

- (1) The Technical Specialist determines which agreement forms are appropriate for any coordinated issue.
- (2) Because finality is encouraged in the settlement of coordinated issues, it is recommended Form 870-AD, or similar waiver form be used.
- (3) Closing Agreements are especially encouraged in cases in which the settlement provides taxpayers with material tax advantages in years not before Appeals. Form 866 , Agreement as to Final Determination of Tax Liability, or Form 906, Closing Agreement on Final Determination Covering Specific Matters, can be used.

8.7.3.7.5  
(10-01-2012)

**Statutory Notices on  
Unagreed Listed  
Transactions and  
Related Penalties**

- (1) Announcement 2006-100 states that effective 12/04/2006, the Operating Divisions issue all statutory notices of deficiency or other determination notices (including statutory notices of claim disallowance or FPAA/FSAA, but not including notices of determination on Collection Due Process cases) triggering litigation rights on non-docketed cases involving an unagreed listed transaction. Listed transactions are defined under Treas. Reg.1.6011-4.
- (2) The "LT" feature code is input on all cases in Appeals inventory containing at least one listed transaction. A list of listed transactions is posted to the Appeals Technical Guidance or International Operations web sites.
- (3) ATEs conduct settlement negotiations in accordance with established procedures, inclusive of applicable ACI and ACI RC procedures set forth in IRM 8.7.3. Generally, the majority of cases are settled in Appeals jurisdiction but when a listed transaction cannot be settled, special procedures apply.
- (4) Once Appeals determines settlement is not possible, the ATE informs the taxpayer the case is being closed in Appeals and returned to the Operating Division in accordance with Announcement 2006-100. Returning the case to the Operating Division is done after efforts to resolve the case, including Post-Appeals mediation, if appropriate, are completed.
- (5) Appeals continues to prepare statutory notice language, the ACM, and also shares any computational work that is complete with Compliance (such as RAR computational review of Coordinated Industry Cases or computations prepared in processing partial agreements). See IRM 8.17.4.2, Information to Know Before Preparing Notices of Deficiency.
- (6) Related issues (employment tax, plan qualifications, tax exempt status determinations and penalties) are considered by the ATE and handled according to Appeals' existing procedures. If agreement is not possible, the issue is returned along with the listed transaction issue to Compliance for processing and issuance of appropriate notices or letters.



- (7) In cases where the listed transaction is settled, but the related penalty is unagreed, (after Post Appeals Mediation is offered), Appeals closes the settled transaction agreed, with a Form 906, and prepares the ACM and the notice language for the related penalty. The case is closed to APS so it can be returned to Compliance for issuance of the appropriate notice.
- (8) If the LT Feature Code has been properly added, Form 5402, automatically populates the following identification on Form 5402: "Unsettled Listed Transaction Case – Transfer to Originating Function for issuance of statutory notice."

**Note:** On Form 5402, instruct APS to use ACDS "closing code 13" when closing these cases to Compliance for issuance of the statutory notice of deficiency.

8.7.3.8  
(12-01-2022)  
**International Issues**

- (1) IRM 1.4.28.10 and IRM 8.2.1.6 require referral of all cases containing international issues (as presented in the International Examiner's report) to the ATMs of the International Technical Specialist groups found on the Appeals International web page. If the international issue to be referred involves a section 482 issue or the valuation of intangibles then the issue should also be referred to the manager of the Technical Guidance Economist Group.
- (2) If the issues on the case are strictly international issues, the case should generally be transferred to International Operations unless it meets the ATCL Operation's case criteria. See IRM 8.1.3.5, Appeals Team Case Leader (ATCL).
- (3) Generally, persons entitled to benefits under a U. S. income tax treaty, can request assistance from the U.S. competent authority if the actions of the United States, a treaty country, or both, cause or will cause double taxation or taxation otherwise inconsistent with the treaty.

8.7.3.8.1  
(12-01-2022)  
**Competent Authority Cases**

- (1) A discussion of the role of the U.S. competent authority and the mutual agreement procedure (MAP) process are found in Rev. Proc. 2015-40 Section 2. The procedures for taxpayers seeking competent authority assistance when the case is in Appeals are found in Section 6 of Rev. Proc. 2015-40.
- (2) In general, competent authority issues accepted for consideration by the U.S. competent authority are not subject to the concurrent jurisdiction of Appeals. However, a taxpayer may request simultaneous appeals procedure (SAP), which is a review of a competent authority issue under the jurisdiction of the U.S. competent authority with the assistance of Appeals. For a competent authority issue that is initially under the jurisdiction of Appeals, the U.S. competent authority will decline to provide assistance unless the taxpayer, in accordance with the requirements of Rev. Proc. 2015-40, effectively severs the issue from its protest and then timely files a competent authority request with respect to the issue. This revenue procedure does not limit the ability of a taxpayer to obtain Appeals review of a competent authority issue that remains after the U.S. competent authority process has concluded.
- (3) See IRM 8.7.3.8.2 for information concerning Appeals procedures, responsibilities and authority when the taxpayer is seeking a resolution of the issue in Appeals prior to requesting competent authority consideration.
- (4) If the competent authority request is filed while the case is still under examination, Compliance continues to work on all issues not covered by the request.

When issues are raised in an examination which are not under competent authority consideration and the taxpayer is not in agreement with the examination, Compliance proceeds with the case and issues a 30-day letter. In protesting the unagreed issues, the taxpayer does not need to address any unagreed issue under consideration by the U.S. competent authority. Following the receipt of the taxpayer's protest, Appeals procedures are initiated with respect to all unagreed issues not under competent authority consideration.

- (5) The ATE will issue Form 15229, Appeals/Competent Authority Coordination Memo, to the Competent Authority Director to identify the U.S. competent authority analyst to ensure timely coordination and final resolution.

8.7.3.8.2  
(12-01-2022)

**Potential Competent  
Authority Cases**

- (1) The following guidelines are utilized for handling Appeals cases with potential competent authority issues.
  - a. Appeals does not attempt to hinder or prohibit taxpayers as part of a settlement from seeking competent authority consideration, nor does Appeals make settlement concessions based upon taxpayers' offers to waive their rights to competent authority consideration.
  - b. The ATE, upon receipt of a case, analyzes the issues to determine whether the proposed adjustments may result in double taxation or taxation not in accordance with a treaty.
  - c. If double taxation or other tax treaty issues are identified, the ATE should issue Letter 6261 , Notification of 60-Day Deadline for Competent Authority under Rev. Proc. 2015-40, no later than the opening conference date. The ATE will not conduct settlement negotiations until the taxpayer responds to the letter.
  - d. If the taxpayer elects competent authority assistance, the ATE will request a copy of the request and issue Form 15229 to identify the U.S. Competent Authority Analyst to ensure timely coordination and final resolution.
  - e. Appeals does not settle a potential competent authority issue, except on its merits.
- (2) A taxpayer that initially presents a competent authority issue to Appeals may still request competent authority assistance to seek potential full benefits only if it satisfies the following conditions:
  - a. Taxpayer files its competent authority request no later than 60 days after its opening conference with Appeals, see Letter 6261;
  - b. The competent authority request shows that the taxpayer has properly severed the competent authority issue from the issues in its protest that will remain under the jurisdiction of Appeals;
  - c. Taxpayer has not invoked an alternative dispute resolution program under the jurisdiction of Appeals with respect to the competent authority issue; and
  - d. Taxpayer has not executed with Appeals a Form 870-AD waiver, or any other similar agreement concerning such competent authority issue.
- (3) If the U.S. Competent Authority accepts the request, it will assume exclusive jurisdiction over the competent authority issues that it has accepted. When a request for competent authority assistance is filed while a case is in Appeals, the taxpayer will prepare the request in accordance with the guidelines in Rev. Proc. 2015-40. The taxpayer will provide a copy of the request to the ATE. The



ATE should contact the U.S. Competent Authority to ensure the receipt of the taxpayer's request and issue Form 15229 to the Competent Authority Director.

- (4) Once the competent authority resolution has been finalized, the competent authority will direct Appeals to implement the resolution terms.
- (5) An appeal hearing may be provided for an issue that was in competent authority jurisdiction after being severed from Appeals, if, with respect to that competent authority issue, (a) the U.S. Competent Authority rejects the assistance request or terminates the competent authority process, (b) the taxpayer withdraws its request for competent authority assistance, (c) the competent authorities do not reach a competent authority resolution, or (d) the taxpayer does not accept the terms of the competent authority resolution. See Rev. Proc. 2015-40 (or successor guidance applicable to the U.S. Competent Authority process) for additional information.

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Exhibit 8.7.3-1 (10-01-2012)

Sample Outline for Appeals Settlement Guidelines / Appeals Technical Position

**APPEALS SETTLEMENT GUIDELINES / APPEALS TECHNICAL POSITION**

**TITLE OF ISSUE**

STATEMENT OF ISSUE

COMPLIANCE POSITION

INDUSTRY/TAXPAYER POSITION

DISCUSSION

(Use subtitles as needed. For example:

- **Background**
- **Facts**
- **Legal Analysis, etc.)**

SETTLEMENT GUIDELINES

**Signature Page for the Appeals Settlement Guidelines / Appeals Technical Position**

ISSUE:	
TECHNICAL SPECIALIST(S):	
TELEPHONE:	
UIL NUMBER:	
FACTUAL/LEGAL ISSUE:	
APPROVED:	
Director, Technical Guidance or International Operations	DATE
Director, Specialized Examination Programs and Referrals	DATE
EFFECTIVE DATE:	date when signed

“Do **NOT** Give This Document to the Taxpayer Under Any Circumstance. The attached document contains settlement information. The dissemination is limited to Service employees with a need to know. This document should be removed from the case file and destroyed upon case closure.”

**Exhibit 8.7.3-3 (12-01-2022)****Table Comparing Appeals Settlement Guidelines (ASG) to Appeals Technical Position (ATP)**

	<b>ASG</b>	<b>ATP</b>
Purpose	<ul style="list-style-type: none"> <li>Formal guidance</li> <li>Ensures consistent settlements on coordinated issues</li> </ul>	<ul style="list-style-type: none"> <li>Ensures consistent settlements can be reached quickly on coordinated issues (ACM format - less formal than ASG)</li> </ul>
Format	<ul style="list-style-type: none"> <li>Very formal Blue Book citations</li> <li>Final product published on irs.gov</li> </ul>	<ul style="list-style-type: none"> <li>Similar to ACM</li> <li>More concise</li> <li>More user-friendly for Field</li> <li>Not published</li> </ul>
Review	<ul style="list-style-type: none"> <li>Counsel review (60 days)</li> <li>Appeals Field Operations review</li> <li>Expedited review process within Specialized Examination Programs and Referrals</li> </ul>	<ul style="list-style-type: none"> <li>No Counsel review</li> <li>No formal Appeals Field Operations review, but may involve Field as members of Working Panel</li> <li>Expedited review process within Specialized Examination Programs and Referrals</li> </ul>
When to use	<ul style="list-style-type: none"> <li>Rare circumstances - Issues with long time horizon</li> <li>Full concession by taxpayer</li> <li>Decision of working panel</li> <li>Reserved for most complex issues</li> </ul>	<ul style="list-style-type: none"> <li>To be used in most instances</li> <li>May be used in Compliance for D.O. 4-25 issues</li> <li>May be followed by formal ASG</li> <li>To provide timely guidance to Field and/or Compliance</li> </ul>
Estimated time to complete	<ul style="list-style-type: none"> <li>305 days</li> </ul>	<ul style="list-style-type: none"> <li>175 days</li> </ul>
Collaboration	<ul style="list-style-type: none"> <li>Screening Panel</li> <li>Working Panel</li> <li>Executive Briefing</li> </ul>	<ul style="list-style-type: none"> <li>Screening Panel and/or Working Panel, as applicable</li> <li>Executive Briefing</li> </ul>
Establishes mechanism for early identification and prioritization of issues	<ul style="list-style-type: none"> <li>Implemented Screening Panel</li> <li>Contact Technical Advisors in Operating Divisions</li> </ul>	<ul style="list-style-type: none"> <li>Screening Panel, as applicable</li> <li>Contact Technical Advisors in Operating Divisions</li> </ul>

**Exhibit 8.7.3-4 (12-01-2022)**  
**Appeals Rules of Engagement**

Appeals Rules of Engagement with regard to Cross-Functional Issue Management
<p>Appeals Rules of Engagement are consistent with IRS Commissioner Douglas Shulman's announcement that Appeals will no longer participate on Issue Management Teams (IMTs), but will have alternate venues to stay current on taxpayer issues and hear issue management team briefings. The following Rules of Engagement set Appeals' roles and responsibilities in cross-functional issue management settings:</p>
<p>Appeals will not participate in:</p> <ul style="list-style-type: none"> <li>• IRS meetings or forums discussing specific taxpayer cases</li> <li>• Development or review of audit techniques</li> <li>• Development or review of Coordinated Issue Paper (CIP)</li> <li>• Development or review of legal or technical interim or other administrative guidance for Compliance or Counsel in cross-functional settings</li> <li>• Identification or development of specific issues or specific cases in cross-functional settings</li> <li>• Identification of cases for litigation</li> </ul>
<p>Appeals can:</p> <ul style="list-style-type: none"> <li>• Access discussion boards and forums that are open to IRS employees</li> <li>• Receive presentations regarding Compliance's view of the factual and legal aspects of an issue, but not with respect to any specific taxpayer case</li> <li>• Request Compliance to clarify facts relevant to the issue, but not with respect to any specific taxpayer case</li> <li>• Request Compliance to clarify legal arguments or merits of the issue but only with respect to their written position (e.g., redacted Form 5701, generic Form 5701, pro-forma Revenue Agent Report, Coordinated Issue Paper or Chief Counsel opinion to Appeals)</li> <li>• Attend meetings of external stakeholder groups (e.g., American Bar Association, American Institute of Certified Public Accountants, etc.) to obtain information on factual and legal aspects of issues</li> <li>• Gather inventory information from Compliance for future staffing and training needs</li> </ul>
<p>Appeals may continue to engage in the following:</p> <ul style="list-style-type: none"> <li>• Host meetings with external stakeholder groups</li> <li>• Solicit information directly from external stakeholders</li> <li>• Use other approaches as deemed necessary</li> </ul>