

Proposed Revision of Procedures for Requesting Competent Authority Assistance Under Tax Treaties

Notice 2013-78

PURPOSE

This notice proposes a revenue procedure that would update and supersede Rev. Proc. 2006-54, 2006-2 C.B. 1035. The proposed revenue procedure would provide guidance on requesting assistance from the U.S. competent authority, acting through the Advance Pricing and Mutual Agreement program and the Treaty Assistance and Interpretation Team, under the provisions of U.S. tax treaties. It would also provide guidance on determinations the U.S. competent authority may make on competent authority issues.

The proposed revenue procedure would substantially restate Rev. Proc. 2006-54 to improve clarity, readability, and organization. The proposed revenue procedure also would reflect structural changes undertaken by the IRS since 2006, including the establishment of the Large Business & International Division, which currently includes the office of the U.S. competent authority, and of

separate offices under the U.S. competent authority to handle taxpayer requests for different types of competent authority assistance.

Additionally, the proposed revenue procedure would effect a limited number of significant substantive changes. These changes may be summarized as follows:

Section of Proposed Update to Rev. Proc. 2006-54	Nature of Addition or Changes
2.02	Clarifies that competent authority issues may arise as a result of taxpayer-initiated positions.
2.05 and 2.06	Makes clear that the offices of the U.S. competent authority are available, whether or not in the course of the mutual agreement process, for informal consultations on competent authority-related issues, including informal consultations regarding the steps necessary to achieve greater certainty that a foreign tax paid, or to be paid, will qualify as a compulsory payment for foreign tax credit purposes.
2.07	Recognizes that a mutual agreement case may arise where the U.S. competent authority notifies a foreign competent authority on a U.S.-initiated case raising competent authority issues. Further recognizes that the U.S. competent authority can expand the scope of a mutual agreement case to include additional treaty countries, competent authority issues, or taxable years.
2.10	Elaborates on potential interactions of requests for competent authority assistance and advance pricing agreements.
3.02	Provides new pre-filing procedures applicable to mutual agreement cases, including mandatory submission of a pre-filing memorandum in cases raising certain issues.
3.04	Clarifies that a request for competent authority assistance generally will not be accepted if barred by tax treaty provisions imposing time limits for seeking assistance.
3.05(1)	Establishes an appendix listing standard specifications for the content of a request for competent authority assistance in various types of cases.
3.07	Specifies that the U.S. competent authority accepts requests for assistance with respect to certain foreign pension plan determinations.

3.08	Provides for e-mail communications between the U.S. competent authority and a taxpayer's representative pursuant to a memorandum of understanding executed by the taxpayer.
4	Provides new streamlined procedures for invoking the accelerated competent authority procedure without consent of an office conducting examinations.
5.01	Generally subjects small case requests to the same requirements as other requests, subject to case-by-case minimization of administrative burdens.
5.02	Increases dollar thresholds for small case qualification to \$5,000,000 for a corporation or partnership and \$1,000,000 for others.
6.01	Clarifies procedures for notification of receipt of a request for competent authority assistance.
6.02(2)	Specifies an example of an unreasonable taxpayer condition to acceptance of a competent authority resolution, resulting in denial of assistance.
6.02(6)(b) - (d) and 6.02(8) - (12)	States additional bases for denying U.S. competent authority assistance.
7	Describes various aspects of U.S. competent authority consultations and other actions once a request for assistance is filed, including consultation requirements in treaty limitation on benefits provisions, the possibility of requiring withdrawal of a U.S.-initiated adjustment, and taxpayer requests to make a joint presentation to the U.S. and foreign competent authorities.
8.01	Specifies that the Simultaneous Appeals Procedure is the primary means for obtaining IRS Appeals and U.S. competent authority review of the same issue.
8.02	Limits the time frame for invoking Simultaneous Appeals Procedure review to within 60 days after notification of acceptance of request for assistance.
9.01	Provides that the U.S. competent authority will not accept a request for assistance if the taxpayer has entered into a prior resolution with the IRS office conducting the taxpayer's examination unless the U.S. competent authority agreed in writing to the prior resolution.
9.02	Provides, subject to a limited exception, that the U.S. competent authority will not accept a request for assistance if the taxpayer seeks IRS Appeals review of a competent authority issue.
9.03(1)	Clarifies the procedures applicable to accepting, or continuing to consider, a request for U.S. competent authority assistance when a matter is pending in litigation.
10.01 and 10.04	Describes conditions for finality of resolutions reached by

	the U.S. competent authority and discusses notification to the taxpayer where no resolution is reached with respect to a foreign-initiated adjustment.
11	Restates and revises U.S. competent authority procedures with respect to repatriation payments made in the mutual agreement context.
12	Describes basic procedures applicable where a tax treaty contains a provision for mandatory arbitration.
14	Provides procedures applicable to required notifications under some treaties that a taxpayer has requested competent authority assistance of the other treaty partner.
16.02	Reflects that the amount of the user fee for requests for discretionary relief with respect to limitation on benefits has been increased to \$27,500. <u>See</u> Rev. Proc. 2013-1, 2013-1 I.R.B. 1.

The IRS and the Treasury Department request comments on this proposed revenue procedure. Comments may be submitted in writing on or before March 10, 2014. Comments should be submitted to Internal Revenue Service, CC:PA:LPD:PR (Notice 2013-78), Room 5205, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044, or electronically to Notice.Comments@irs.counsel.treas.gov. Please include "Notice 2013-78" in the subject line of any electronic communications. Alternatively, comments may be hand delivered between the hours of 8:00 a.m. and 4:00 p.m. Monday to Friday to CC:PA:LPD:PR (Notice 2013-78), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, DC. All comments will be available for public inspection and copying.

Following the issuance of the revenue procedure proposed in this notice, the IRS intends to update Rev. Proc. 2006-23, 2006-1 C.B. 900, which provides similar guidance in obtaining competent authority assistance with respect to the

U.S. territories. The update to Rev. Proc. 2006-23 will be generally consistent with the provisions of such final revenue procedure.

The procedures for requesting competent authority assistance under tax treaties are proposed to be revised as follows:

PROPOSED REVENUE PROCEDURE

Procedures for Requesting Competent Authority Assistance Under Tax Treaties

26 CFR 601.201: Rulings and determination letters.

Rev. Proc. [2014-XX]

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SECTION 1. DEFINITIONS AND RULES OF CONSTRUCTION

.01 *Definitions.* For purposes of this revenue procedure, the following terms have the meanings set forth in this section.

ACAP	Accelerated competent authority procedure (<u>see</u> section 4)
ACAP request	A request to include ACAP years in a MAP case
ACAP years	Taxable years covered by an ACAP request or eligible for ACAP
Ancillary issues	Subsidiary issues eligible for coverage by a MAP resolution, including MAP repatriation (<u>see</u> section 11), interest on refunds and deficiencies, penalties with respect to U.S.-initiated adjustments, and the determination of whether a payment is compulsory for foreign tax credit purposes as provided in Treas. Reg. §1.901-2(e)(5)
APA	An advance pricing agreement within the meaning of Rev. Proc. 2014-YY
APA process	The steps involved in the process of reaching an APA, as described in Rev.

	Proc. 2014-YY
APA request	A request for an APA filed under Rev. Proc. 2014-YY
APMA	The Advance Pricing and Mutual Agreement Program, a representative office of the U.S. competent authority and one of the divisions of TPO
Applicant	A taxpayer making a request for discretionary LOB relief
Arbitration treaty	A U.S. tax treaty in which the mutual agreement procedure article includes a provision for mandatory arbitration of certain MAP cases (<u>see</u> section 12)
Bilateral APA	A bilateral APA as defined in Rev. Proc. 2014-YY
Code	The Internal Revenue Code of 1986 (26 U.S.C.), as amended
Controlled group	The group of controlled taxpayers (as that term is defined in Treas. Reg. §1.482-1(i)) of which the taxpayer filing the MAP request is a member
Discretionary LOB relief	A determination issued by the U.S. competent authority extending treaty benefits to a taxpayer that fails to meet any of the objective tests of an LOB article of a U.S. tax treaty
Examination resolution	A resolution with IRS Examination on a U.S.-initiated adjustment that is memorialized in a Fast Track Settlement Session Report, a Form 870 waiver, a Form 870-AD offer, a closing agreement, or any other similar agreement
Fast Track Settlement	The program set forth in Rev. Proc. 2003-40, 2003-1 C.B. 1044, or successor guidance
Foreign competent authority	The competent authority of a treaty country
Foreign pension fund	A pension fund that is a resident of a treaty country
Foreign-initiated adjustment	A proposed or final adjustment to a filed tax return made by the tax authority of a treaty country
Global trading arrangement	Any arrangement involving multiple associated enterprises or business unit(s) of an enterprise that operate in

	more than one country and that trade or deal in securities and/or other financial products, either on their own behalf or on behalf of clients. Global trading arrangements may encompass functions ancillary to the foregoing activities
Intangible development arrangement	Any arrangement for sharing the costs and risks of developing intangibles, including a cost sharing arrangement as defined in Treas. Reg. §1.482-7, a qualified cost sharing arrangement as defined in Treas. Reg. §1.482-7A (collectively, a “CSA”), and an arrangement (other than a CSA) for sharing the costs and risks of developing intangibles to which the consideration of the principles, methods, comparability, and reliability considerations set forth in Treas. Reg. §1.482-7 are relevant in determining the best method, under Treas. Reg. §1.482-4(g) or Treas. Reg. §1.482-9(m)(3), as appropriately adjusted in light of the differences in facts and circumstances between such an arrangement and a CSA. <u>See also</u> Treas. Reg. §1.482-1(b)(2)(iii)
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
IRS Examination	The function(s) within the IRS responsible for examining federal tax and information returns and ascertaining the correctness of any return for purposes of determining the tax liability of taxpayers
LB&I	Large Business & International Division of the IRS
LOB	Limitation on benefits
MAP	Actions taken by the U.S. competent authority and consultations between the U.S. and foreign competent authorities under U.S. tax treaties, principally under the mutual agreement procedure article
MAP case	A case initiated by a MAP request or by

	the U.S. competent authority involving one or more MAP issues in a given MAP year or set of years
MAP issue	An issue that can be resolved by the U.S. competent authority, principally under the mutual agreement procedure article of a U.S. tax treaty
MAP process	All steps in the process of reaching a MAP resolution, including steps to comply with applicable pre-filing requirements
MAP repatriation	The treatment of repatriation payments pursuant to a MAP resolution (<u>see</u> section 11)
MAP request	A request for assistance of the U.S. competent authority filed under this revenue procedure
MAP resolution	The resolution of MAP issues constituting a MAP case
MAP year	A taxable year for which a tax return has been filed that is not an ACAP year and in which a MAP issue has arisen that is the subject of a MAP case
Multilateral APA	A multilateral APA as defined in Rev. Proc. 2014-YY
Non-U.S.-initiated action	A foreign-initiated adjustment or a taxpayer-initiated position
Pre-filing conference	A conference held with the U.S. competent authority before a MAP request is filed
Pre-filing memorandum	A memorandum or similar paper submitted to the U.S. competent authority before a MAP request is filed
Pre-filing requirements	The requirements regarding pre-filing memoranda and pre-filing conferences
Primary adjustment	An adjustment falling under the associated enterprises article of a U.S. tax treaty or an analogous adjustment made pursuant to a taxpayer-initiated position that is the subject of a MAP case
Protective claim	A notification to the U.S. competent authority described by section 13.02(1)
Regulations	U.S. Treasury regulations promulgated under the Code
Repatriation payment	A payment (within the meaning of

	section 4.01 of Rev. Proc. 99-32, 1999-2 C.B. 296) or a prepayment offset (within the meaning of section 4.02 of Rev. Proc. 99-32) made with respect to and not exceeding the amount of a primary adjustment
SAP review	The review of a MAP issue undertaken by IRS Appeals for the purpose of making a recommendation to the U.S. competent authority under the Simultaneous Appeals Procedure (<u>see section 8</u>)
Session report	The Fast Track Settlement Session Report within the meaning of the term set forth in Rev. Proc. 2003-40, 2003-1 C.B. 1044, or successor guidance
Small case MAP request	A MAP request involving a U.S.- or foreign-initiated adjustment that falls below the dollar thresholds set forth in section 5
TAIT	The Treaty Assistance and Interpretation Team, a representative office of the U.S. competent authority, which reports directly to the Assistant Deputy Commissioner (International)
Taxpayer	A U.S. person, as defined in section 7701(a)(30) of the Code, or a non-U.S. person eligible to seek competent authority assistance when permitted by the applicable U.S. tax treaty
Taxpayer-initiated position	A position taken by a taxpayer (not in response to a proposed or actual adjustment by the IRS or a similar action by a foreign tax authority) with respect to a tax liability in the United States or in a treaty country that directly or indirectly results in double taxation
TPO	Transfer Pricing Operations, which reports to the Deputy Commissioner (International), LB&I
Treaty country	A country other than the United States that has a U.S. tax treaty in force
Treaty notification	The notification by a taxpayer to a competent authority, required under certain U.S. tax treaties, that a request

	for competent authority assistance has been made to the other competent authority, in particular such a notification submitted to the U.S. competent authority in the manner and circumstances set forth in section 14
U.S. competent authority	The Deputy Commissioner (International), LB&I, the Assistant Deputy Commissioner (International), and each other IRS official performing competent authority functions pursuant to applicable delegation orders
U.S. tax treaty	A convention governing income, estate, or gift taxes to which the United States is a party and that has entered into force, together with its implementing protocols, exchanges of diplomatic notes, memoranda of understanding, and competent authority arrangements
U.S.-initiated adjustment	A proposed or final adjustment made by the IRS to a tax return filed by a taxpayer

.02 *Section References.* Unless indicated by context or otherwise, section references are to the sections of this revenue procedure (including the appendix).

.03 *Deadline References.* If a deadline under this revenue procedure falls on a Saturday, Sunday, or a legal holiday in the District of Columbia, the deadline is extended to the next succeeding day that is not a Saturday, Sunday, or a legal holiday in the District of Columbia.

SECTION 2. PURPOSE, BACKGROUND, SCOPE, AND GENERAL APPLICATION

.01 *Purpose.* This revenue procedure provides guidance on filing MAP requests and guidance on determinations the U.S. competent authority may make on MAP issues. This revenue procedure updates and supersedes Rev. Proc. 2006-54, 2006-2 C.B. 1035.

.02 *Background and Scope.* U.S. tax treaties, principally through the mutual agreement procedure article, permit taxpayers to request the assistance of the U.S. competent authority in alleviating double taxation or taxation otherwise not in accordance with such treaties. For example, U.S. tax treaties generally permit taxpayers to request assistance in order to relieve economic double taxation arising from an allocation under section 482 of the Code or an equivalent provision under the laws of a treaty country. U.S. tax treaties also authorize the U.S. and foreign competent authorities to consult each other to resolve other MAP issues. MAP issues typically arise as a result of U.S.- or foreign-initiated adjustments. MAP issues can also arise as a consequence of taxpayer-initiated positions. For procedures for requesting assistance of the U.S. competent authority when a taxpayer is or may be subject to inconsistent tax treatment by the IRS and a U.S. possession tax agency, see Rev. Proc. 2006-23, 2006-1 C.B. 900 (or successor guidance).

.03 *The U.S. Competent Authority.* The Deputy Commissioner (International), LB&I, is the U.S. competent authority. As such, the Deputy Commissioner (International) has the authority to apply U.S. tax treaties. The Deputy Commissioner (International) also has the authority to interpret the provisions of U.S. tax treaties, but only with the concurrence of the Associate

Chief Counsel (International). The same authority has been delegated to the Assistant Deputy Commissioner (International), LB&I. See Delegation Order 4-12 (Rev. 2), IRM 1.2.43. Aspects of this authority have been delegated to the directors of the TPO and APMA.

.04 Roles of APMA and TAIT. In general, the U.S. competent authority endeavors to resolve MAP issues in a manner that secures the appropriate tax bases of the United States and its treaty partners, prevents fiscal evasion, and is otherwise consistent with sound tax administration. The U.S. competent authority comprises APMA and TAIT. APMA has primary responsibility for cases arising under the business profits and associated enterprises articles of U.S. income tax treaties. TAIT has primary responsibility for cases arising under all other articles of U.S. income tax treaties, including, but not limited to, articles concerning residence, dividends, interest, royalties, income from employment, social security, annuities, pensions and pension funds, other income, and limitation on benefits. TAIT also handles cases arising under U.S. estate and gift tax treaties. APMA and TAIT each can consider cases arising under the permanent establishment articles of U.S. income tax treaties. Regardless of the specific treaty article or MAP issue that may be presented, APMA and TAIT will coordinate and collaborate as appropriate on any given case.

.05 Informal Advice Generally. As appropriate, APMA and TAIT will provide oral, informal advice to taxpayers, whether or not in the course of the MAP process, on general matters concerning MAP issues, including whether a MAP issue may exist. Any such informal advice is advisory and is not binding on the

IRS.

.06 Informal Consultation on Noncompulsory Payments for Foreign Tax Credit Purposes. In the course of the MAP process or outside the MAP process, the issue of whether the taxpayer has exhausted all effective and practical remedies to reduce its liability under foreign law for tax (including, in appropriate cases, a request for competent authority assistance) within the meaning of Treas. Reg. §1.901-2(e)(5) and Rev. Rul. 92-75, 1992-2 C.B. 197, may be the subject of informal consultation with the U.S. competent authority. Taxpayers and their advisors must ultimately exercise their independent judgment in developing a position on the extent to which effective and practical remedies have been exhausted in light of their particular facts and circumstances. To assist in consideration of this issue, the U.S. competent authority, through the offices of APMA and TAIT, is available to consult on these matters and, when appropriate, may provide oral, informal advice regarding necessary next steps. Any such informal advice is advisory and is not binding on the IRS. Further, when appropriate, APMA and TAIT will communicate with IRS Examination regarding these matters to ensure consistent and coordinated treatment. It is intended that, through such consultation processes, taxpayers and the U.S. competent authority can achieve greater insight into matters pertaining to the application and enforcement of foreign tax laws. Such consultation processes may also inform the U.S. competent authority in addressing these matters as ancillary issues in a MAP resolution.

.07 General Requirements for MAP Requests. The U.S. competent authority

will consider the factors set forth in section 6 in determining whether to provide the assistance sought by the taxpayer in its MAP request. In no event will the U.S. competent authority provide assistance to the taxpayer unless and until: (1) the taxpayer has met the pre-filing requirements set forth in section 3.02, as applicable; (2) the MAP request as initially filed is complete, as described in section 3.05; and (3) the taxpayer has paid the correct user fee, if required. Where they exist, specific requirements regarding MAP requests set forth in U.S. tax treaties take precedence over the provisions of this revenue procedure.

.08 *Scope of MAP Cases.* Except as otherwise provided by this revenue procedure, law or treaty, the U.S. competent authority will provide assistance with respect to MAP issues and treaty countries identified in a taxpayer's MAP request. However, because the U.S. competent authority has a strong interest in resolving all potential MAP issues in a timely manner, APMA or TAIT may seek to initiate a MAP case in the absence of a MAP request or may require that the scope of a MAP case be expanded. Examples of such an expansion include adding treaty countries or MAP issues to the scope of the MAP case and extending the MAP case to include ACAP years (see section 4). Recognizing that foreign competent authorities may have an interest in expediting bilateral or multilateral resolution of MAP issues, the U.S. competent authority under applicable exchange-of-information provisions of U.S. tax treaties may also notify foreign competent authorities of MAP cases that could arise out of anticipated U.S.-initiated adjustments. In such cases, the U.S. competent authority will also notify the affected taxpayers.

.09 *Closed Cases.* A case previously closed after examination will not be reopened in order to make an adjustment unfavorable to the taxpayer except in the presence of one of the circumstances described in Rev. Proc. 2005-32, 2005-1 C.B. 1206 (providing procedures for reopening cases if fraud, substantial error, or certain other circumstances are present).

.10 *Coordination of MAP and APA Processes.* APAs and MAP resolutions are two interconnected means by which taxpayers can manage and address transfer pricing and other cross-border tax issues. In recognition of these connections, the U.S. competent authority seeks MAP resolutions and APAs that achieve substantive and procedural consistency and coordination in their coverage and application. In particular, the U.S. competent authority may seek to roll forward a MAP resolution to ACAP years where it is feasible, practicable, and in the interest of sound tax administration to do so. Further, in appropriate cases, the U.S. competent authority will encourage taxpayers to extend MAP resolutions to future years that could be covered by an APA. For further discussion of the relationship and intersections between the MAP process, the APA process, and ACAP, see Rev. Proc. 2014-YY.

SECTION 3. PROCEDURES FOR REQUESTING ASSISTANCE FROM THE U.S. COMPETENT AUTHORITY

.01 *In General.* This section sets forth procedures, rules, and guidelines relevant to filing a MAP request with the U.S. competent authority. Instructions on preparing and filing a MAP request are also set forth in the appendix to this revenue procedure (generally referred to as the “appendix”).

.02 Pre-filing Procedures.

(1) *In General.* In the interest of making the MAP process effective and efficient, the U.S. competent authority invites, and in some cases requires, the taxpayer to meet with the U.S. competent authority in a pre-filing conference prior to filing the MAP request. For the same reason, the U.S. competent authority invites, and in some cases requires, the taxpayer to submit a pre-filing memorandum prior to filing the MAP request. Pre-filing requirements are set forth in sections 3.02(2) through 3.02(7). Questions about pre-filing requirements may be directed to the U.S. competent authority by one of the means identified in the appendix.

(2) *Requesting Pre-filing Conferences.* A taxpayer that wishes to hold a pre-filing conference with the U.S. competent authority must submit its request as a part of a pre-filing memorandum filed pursuant to section 3.02(3) or 3.02(4).

(3) *Mandatory Pre-filing Memoranda.* A pre-filing memorandum must be submitted if the MAP issues will, or could reasonably be expected to, involve any of the following: (a) a foreign-initiated adjustment in which the total adjustments exceed \$10 million for all MAP years combined; (b) a taxpayer-initiated position; (c) the license or other transfer of intangibles in connection with, or the development of intangibles under, an intangible development arrangement; (d) any arrangement that qualifies as a global trading arrangement; (e) unincorporated branches, pass-through entities, hybrid entities, or entities disregarded for U.S. tax purposes; (f) a request for discretionary LOB relief; or (g) other circumstances in which the taxpayer believes a MAP issue has arisen

outside the context of an examination, such as in cases involving withholding taxes or guidance issued by a foreign tax authority. If a pre-filing memorandum is not submitted in any of the cases described in this section, the U.S. competent authority may, among other possible actions, require that the pre-filing memorandum be submitted before it will take action on the MAP request.

(4) *Optional Pre-filing Memoranda.* An optional pre-filing memorandum may be submitted in cases other than those set forth in section 3.02(3). An optional pre-filing memorandum may be advisable in cases that are expected to present novel or complex MAP issues.

(5) *Contents of Pre-filing Memorandum.* Whether submitted pursuant to section 3.02(3) or 3.02(4), a pre-filing memorandum must have a length and content appropriate to the stage, size, and complexity of the MAP issues underlying the proposed MAP request. The memorandum must also do the following:

(a) Include a “penalties of perjury” statement modeled on the statement set forth in the appendix;

(b) State whether the taxpayer requests a pre-filing conference and, if so, the particular issues the taxpayer wishes to discuss;

(c) Propose at least three possible dates for a pre-filing conference, whether or not the taxpayer seeks a pre-filing conference, in case the U.S. competent authority requires a pre-filing conference;

(d) List the name and contact information for the taxpayer’s point of contact and provide a Form 2848, Power of Attorney and Declaration of Representative,

authorizing the point of contact to represent the taxpayer in connection with the MAP request, or a Form 8821, Tax Information Authorization, authorizing the point of contact to inspect or receive confidential tax information about the taxpayer in connection with the MAP request; and

(e) In the case of a non-U.S.-initiated action, explain the factual and legal basis of the action and describe any administrative, legal, or other procedural steps undertaken in the applicable treaty country and any communications with the foreign competent authority regarding the action.

(6) *Place for Submission of Pre-filing Memorandum.* Two printed copies and one electronic copy of the pre-filing memorandum must be submitted to APMA or TAIT at the address provided in section 5 of the appendix.

(7) *Actions Taken with Respect to Pre-filing Conferences and Memoranda.* The U.S. competent authority will notify the taxpayer whether it will accept or decline the taxpayer's request to hold a pre-filing conference. The taxpayer will also be notified if a pre-filing conference is required, even if the taxpayer did not request a conference. If a pre-filing conference is held, it will address procedural and substantive issues pertinent to the MAP request. During the conference, the taxpayer should be prepared to discuss the relevant facts and circumstances surrounding the MAP issues. If the U.S. competent authority declines the taxpayer's request for a pre-filing conference or decides no pre-filing conference is required, it will instruct the taxpayer to proceed to file its MAP request.

(8) *Informal Advice in Pre-filing Conference.* Statements or representations made by the U.S. competent authority in a pre-filing conference constitute

informal advice and are, therefore, advisory only (see section 2.05).

.03 *Persons Eligible or Required to File MAP Requests.* The U.S. competent authority will consider MAP requests from taxpayers eligible to file MAP requests under U.S. tax treaties. If a case is presented by a foreign competent authority and no corresponding MAP request has been filed, the U.S. competent authority may require the relevant U.S. taxpayer, if any (or if none, the foreign person), to file a corresponding MAP request in accordance with this section, preceded, if required, by a pre-filing memorandum and a pre-filing conference.

.04 *Time for Filing.*

(1) *In General.* Subject to the requirements regarding pre-filing memoranda and pre-filing conferences under section 3.02, a taxpayer may file a MAP request at the times specified in this section.

(2) *U.S.-initiated Adjustments.* In general, the U.S. competent authority will not accept a MAP request with regard to a U.S.-initiated adjustment before the IRS has communicated the amount of the proposed adjustment in writing to the taxpayer, e.g., a Form 5701 (“Notice of Proposed Adjustment”) or a Form 4549 (“Income Tax Examination Changes”). A MAP request will not be accepted if the resulting MAP case would be barred by the time limit set forth in the U.S. tax treaty or, if not tolled by the treaty or protective measures, limitations prescribed by domestic law in the United States or treaty country.

(3) *Non-U.S.-initiated Actions.* In the case of a non-U.S.-initiated action, the taxpayer may submit its mandatory or optional pre-filing memorandum or may file its MAP request as soon as it reasonably believes that a MAP issue exists or is

likely to arise. A MAP request will not be accepted if the resulting MAP case would be barred by the time limit set forth in the U.S. tax treaty or, if not tolled by the treaty or by a protective claim or treaty notification (as applicable), limitations prescribed by domestic law in the United States or treaty country (see sections 13 and 14).

.05 Content and Form of MAP Request.

(1) *In General.* The appendix sets forth the required contents of a MAP request, identifies the order in which such contents should be presented, and provides information and instructions on other administrative matters relevant to filing the request, including requirements on translations of documents not in English. The MAP request must comply with the requirements set forth in the appendix before it will be considered complete. Any questions about filing a MAP request not addressed in this section or in the appendix should be directed to APMA or TAIT by one of the means identified in the appendix.

(2) *MAP Requests Submitted to Foreign Competent Authority.* A MAP request filed with the U.S. competent authority must include a copy of any request filed by the taxpayer or a member of the controlled group with a foreign competent authority seeking assistance for the same MAP issue. The MAP request must also include a written explanation of the nature of any such related request, including any material differences between the MAP request filed under this revenue procedure and the request filed with the foreign competent authority. See generally the appendix.

(3) *Requested and Submitted Items.* The taxpayer must provide both the

U.S. and the foreign competent authority any information or documents requested by or submitted to either competent authority.

(4) *Corrected and Updated Information.* After the MAP request is filed, any material errors or any material omissions in the initial submission or subsequent submissions must be promptly corrected or remedied. Unless instructed otherwise, the taxpayer must update information and documents submitted in connection with the MAP request on a schedule acceptable to the U.S. competent authority. The taxpayer must also submit any other information or documents discovered or created during the MAP process that are, or reasonably may be, material to the MAP case.

.06 Additional Requirements and Procedures Applicable to Residency and Discretionary LOB Relief Cases.

(1) *Residency Cases.* U.S. competent authority assistance may be available to dual resident taxpayers (taxpayers resident in both the United States and the treaty country) seeking to determine their sole residence under the treaty. In such circumstances, the U.S. competent authority will only accept MAP requests concerning questions of residency under U.S. tax treaties if both: (a) the resolution of the residency issue is necessary to avoid double taxation or to determine the applicability of a benefit under the treaty; and (b) the issue requires consultation with the foreign competent authority to ensure consistent treatment under the applicable treaty. The U.S. competent authority will not unilaterally resolve a question of residency.

(2) *Discretionary LOB Relief Cases.*

(a) *No Relief Where Applicant Meets Objective Test.* Most U.S. tax treaties contain an LOB article that enumerates objective tests to determine whether a foreign resident is a qualified resident of a treaty country eligible for benefits under the applicable U.S. tax treaty. The U.S. competent authority will not issue a determination regarding whether an applicant satisfies these objective LOB tests. In addition, it will not accept a request for discretionary LOB relief if the applicant cannot represent, and explain, as a part of its MAP request, why it does not meet the relevant objective tests. See section 2.01 of the appendix for the additional information applicants are required provide for requests for discretionary LOB relief.

(b) *Factors Considered.* In general, if the applicant's case is accepted, all facts and circumstances may be considered, including whether the applicant previously qualified for treaty benefits and the reason for its current disqualification. The required pre-filing memorandum will be useful to determine what additional facts should be included with the actual MAP request. To obtain a favorable determination, the applicant must present facts that demonstrate that it has a sufficient relationship or nexus to the treaty country.

(c) *User Fee.* Applicants requesting discretionary LOB relief must remit the user fee as provided in section 16 of this revenue procedure as well as comply with the instructions set forth in the appendix.

.07 *Determinations Regarding Foreign Pensions.*

(1) *In General.* Several U.S. tax treaties contain provisions relating to contributions to foreign pension funds. Under these provisions, if certain

requirements are satisfied, individuals who perform services in the United States as employees (and in some cases as independent contractors) are allowed to deduct or exclude contributions to a foreign pension fund in computing U.S. taxable income. Some of these tax treaties also allow U.S. citizens who live and work in the treaty country to claim deductions or exclusions for U.S. tax purposes for contributions to a foreign pension fund. Many of these treaties allow U.S. employers a deduction on their U.S. income tax returns for contributions to a foreign pension fund on behalf of employees who perform services in the United States.

(2) *“Generally Corresponds” Determinations.* The U.S. tax treaties described in section 3.07(1) provide that benefits are not available unless the U.S. competent authority has determined that the foreign pension plan “generally corresponds” to a pension plan recognized for tax purposes in the United States. In some cases, the treaty negotiators or the competent authorities have agreed on lists of types of plans in each country that are understood to generally correspond to a plan recognized for tax purposes in the other country. In other cases, however, it will be necessary for an employer, a plan trustee, or an individual plan participant to request a competent authority determination on whether a particular plan “generally corresponds.” An employer, plan trustee, or individual plan participant seeking such a determination must file a MAP request according to the instructions set forth in the appendix.

.08 *E-mail Communications.* A complete MAP request must include either an executed memorandum of understanding permitting the U.S. competent authority

to communicate with its authorized representatives through encrypted e-mail or a statement that the taxpayer does not permit such e-mail communications and an explanation for its declining to do so. See the appendix. An electronic copy of the standard form memorandum of understanding is available on the APMA or TAIT website [link to be included when available]. This paragraph does not apply to individuals or to taxpayers eligible to file small case MAP requests under section 5.

SECTION 4. ACCELERATED COMPETENT AUTHORITY PROCEDURE

.01 In General. Under ACAP, a taxpayer may request that the terms of a MAP resolution for a given taxable period be extended to cover subsequent taxable periods for which it has filed tax returns. Alternatively, the U.S. competent authority may act of its own accord to expand the scope of a taxpayer's MAP case to include ACAP years. See sections 2.08 and 2.10.

.02 ACAP Requests. An ACAP request may be included in the MAP request or made subsequently in writing to the U.S. competent authority. An ACAP request must include the information and documents required by section 3.05 for the ACAP years. Whether set forth in the MAP request or in a separate written request, an ACAP request must include the taxpayer's waiver of its right to written notification from the Secretary under section 7605(b) of the Code of the need for more than one inspection of its books of account and records for taxable years covered by the ACAP request (see the appendix).

.03 Rejection of ACAP Requests. The U.S. competent authority may reject an ACAP request: (1) if it is not filed before a MAP resolution is reached between

the U.S. and foreign competent authority; (2) if the request does not comply with the requirements of this revenue procedure; or (3) if acting on the request would be inconsistent with sound tax administration, such as when the facts and circumstances of the ACAP years materially differ from those of the MAP years.

SECTION 5. SMALL CASE MAP REQUESTS

.01 *In General.* In general, the provisions and requirements of this revenue procedure apply no differently to small case MAP requests than to other MAP requests. Nevertheless, as appropriate, the U.S. competent authority will endeavor to minimize undue administrative burdens on taxpayers eligible to file small case MAP requests. For taxpayers filing MAP requests with TAIT, requests to be exempted from certain of the MAP request content requirements of section 3.05 should be made in advance of filing the MAP request by filing an optional pre-filing memorandum (see section 3.02) or by contacting TAIT by one of the means identified in section 5 of the appendix. For taxpayers filing MAP requests with APMA, exemptions from certain of the MAP request content requirements are explained in section 1.04 of the appendix. Even if it agrees to exempt the taxpayer from including certain content in the MAP request, the U.S. competent authority may, subsequent to the filing of the MAP request, require the taxpayer to submit any or all of the information required under section 3, as well as any other information or documentation the U.S. competent authority determines is needed for its evaluation of the request.

.02 *Dollar Thresholds.* A MAP request qualifies as a small case MAP request if the sum of the U.S.- and foreign-initiated adjustments does not exceed the following dollar thresholds for all of the MAP years combined:

Type of Taxpayer	Threshold of Proposed Adjustment(s)
Corporation/Partnership	\$5,000,000
Other	\$1,000,000

.03 *Ineligible Requests.* If a MAP request will involve: (1) a taxpayer-initiated position; (2) discretionary LOB relief; or (3) a foreign pension plan determination filed by a person other than an individual plan participant, then such a request will not be exempt under section 5.01 from the generally applicable filing procedures.

SECTION 6. NOTIFICATION OF RECEIPT AND DENIAL OF ASSISTANCE

.01 *Notification of Receipt.* The U.S. competent authority will notify the taxpayer in writing that it has received the MAP request and that the correct user fee has been paid (if applicable). The letter will also provide the name and contact information of the APMA team leader, TAIT analyst, or the members of the combined APMA-TAIT team to which the request has been assigned. In addition, the letter will also state either: (1) that the request is complete and that the MAP process will proceed, together with any administrative or procedural steps the taxpayer must take pertaining to the MAP request; (2) that the request is provisionally accepted but that the MAP process will not proceed until specified deficiencies in the request have been addressed; or (3) that the request is rejected and the circumstances, if any, in which the request might be accepted.

The U.S. competent authority will also instruct the taxpayer as to other offices within the IRS to which full or partial copies of the MAP request must be provided.

.02 *Denial of Assistance.* The U.S. competent authority may deny assistance, in whole or in part, at any point in the MAP process, either at the outset by rejecting the MAP request or by terminating or suspending the MAP process after it has accepted the MAP request. The U.S. competent authority will generally take such action if any of the following circumstances are present:

(1) Based on all of the facts and circumstances known to the U.S. competent authority, providing assistance to the taxpayer would be inconsistent with the U.S. tax treaty under which such assistance is sought;

(2) The taxpayer has expressed that it is willing to accept a MAP resolution only under conditions that are unreasonable or prejudicial to the interests of the U.S. government, including its refusal to accept a MAP resolution that would encompass ACAP years when the U.S. competent authority has determined that including such years is in the interest of sound tax administration;

(3) The issue on which competent authority assistance is sought is the same as or similar to an issue considered in evaluating a prior MAP or bilateral or multilateral APA request, where the taxpayer rejected the resulting resolution of the issue by the U.S. competent authority and has not changed its position;

(4) The taxpayer agreed to or acquiesced in a foreign-initiated adjustment involving significant legal or factual issues without previously having consulted the U.S. competent authority;

(5) The taxpayer's conduct before filing its MAP request or after the MAP process has been initiated has significantly impeded the ability of the IRS to adequately examine and address the MAP issues for which assistance has been requested or the ability of the U.S. competent authority to resolve the MAP case;

(6) The subject matter of the MAP request: (a) includes an issue pending in litigation where a court has declined to sever MAP issues, delay trial, or stay proceedings (see section 9.03(1)); (b) is pending in a foreign court and such proceeding is likely to impede the conclusion or implementation of a MAP resolution; (c) includes an issue and taxable period designated for litigation (see section 9.03(1)); (d) includes an issue and taxable period pending in a U.S. federal court that was previously considered by IRS Appeals (see section 9.03(1)); (e) is a listed transaction under Treas. Reg. §§1.6011-4(b)(2) and 301.6111-2(b)(2); (f) is a transaction of interest under Treas. Reg. §1.6011-4(b)(6); or (g) involves fraudulent activity by the taxpayer or a member of the controlled group;

(7) The taxpayer rejected a request to extend the period of limitations for assessment of tax for the taxable periods covered by the MAP request and any ACAP years;

(8) The MAP issue was included in a protest to IRS Appeals and was not properly severed from such protest and transitioned into a MAP request within 30 days after the opening conference with IRS Appeals (see section 9.02);

(9) The MAP issue has been settled pursuant to an examination resolution without prior concurrence of the U.S. competent authority (see section 9.01);

(10) The MAP issues covered by the MAP request cannot be adequately resolved without the involvement of one or more additional foreign competent authorities and either the taxpayer fails to cooperate in seeking the involvement of such additional foreign competent authorities or such competent authorities refuse to participate in multilateral consultations on the MAP case;

(11) An adequate resolution of the MAP case would require consideration of issues directly or indirectly involving the taxpayer and members of the controlled group located in non-treaty jurisdictions and the taxpayer fails to disclose such issues in the MAP process (such as in diagrams required of MAP requests filed with APMA; see the appendix); or

(12) In MAP cases involving taxpayer-initiated positions, the request evinces after-the-fact tax planning or fiscal evasion or is otherwise inconsistent with sound tax administration.

.03 No Review of Denial of MAP Request for Assistance. The U.S. competent authority's decision as to whether a MAP request is complete or to deny, suspend, or terminate assistance is not subject to administrative review.

SECTION 7. CONSULTATIONS AND OTHER ACTIONS BY THE U.S.

COMPETENT AUTHORITY

.01 Non-U.S.-initiated Actions. The U.S. competent authority will evaluate a MAP request involving a non-U.S.-initiated action on the basis of the justification for the action prepared by the foreign competent authority and on the analyses of such justification prepared by the taxpayer and by other IRS offices. After making its evaluation, the U.S. competent authority will proceed in any of several ways. In typical cases involving foreign-initiated adjustments, it will begin

consultations with the foreign competent authority on the justification for correlative relief and the extent to which such correlative relief is warranted. In other cases involving foreign-initiated adjustments, the U.S. competent authority may grant correlative relief without consultations.

.02 *U.S.-initiated Adjustments.* The U.S. competent authority will address a U.S.-initiated adjustment after evaluating the justification for the adjustment developed by IRS Examination, recommendations (if any) it has received through SAP review, the taxpayer's views on the adjustment it sets forth in the MAP request or otherwise provides in the MAP process, and the views of other IRS offices on the adjustment. Once it has made its evaluation, the U.S. competent authority will proceed in any of several ways. In most cases, it will begin consultations with the foreign competent authority on the justification for correlative relief and the extent to which such correlative relief is warranted. In other cases, the U.S. competent authority may recommend or require that IRS Examination revise or withdraw the U.S.-initiated adjustment. If an adjustment remains after taking into account the U.S. competent authority's recommendations or requirements, then the U.S. competent authority will continue to work with IRS Examination or the foreign competent authority as applicable.

.03 *Requests for Discretionary LOB Relief.* The LOB articles of some U.S. tax treaties require the U.S. or foreign competent authority to consult the other before denying a request for discretionary LOB relief. The U.S. competent authority will comply with such consultation requirements.

.04 *Taxpayer Presentations.* The U.S. competent authority will consider requests from, and may invite or require, the taxpayer to make presentations jointly to the U.S. and foreign competent authorities during the MAP process. The U.S. competent authority will consult with the foreign competent authority as to its interest in joint presentations and notify the taxpayer accordingly.

SECTION 8. SIMULTANEOUS APPEALS PROCEDURE

.01 *In General.* SAP review provides taxpayers with a direct, efficient procedure for involving IRS Appeals in the U.S. competent authority's evaluation of a U.S.-initiated adjustment. It is the only procedure by which a taxpayer may present a U.S.-initiated adjustment to IRS Appeals for its review and retain the possibility of obtaining correlative relief for the adjustment with assistance from the U.S. competent authority. SAP review may be requested by the taxpayer. Alternatively, the U.S. competent authority may, in its discretion, initiate SAP review to obtain the views of IRS Appeals on the MAP issues presented in the MAP request.

.02 *Requesting SAP Review.* Unless the U.S. competent authority permits otherwise in writing, the request for SAP review must be presented in the MAP request or in a separate written submission filed no later than 60 days after the date of the determination letter notifying the taxpayer that the U.S. competent authority has accepted the MAP request (see section 1.03 for the rule applicable to deadlines). Before filing its submission, a taxpayer may request a pre-filing conference with IRS Appeals and the U.S. competent authority to discuss SAP review. Neither arbitration nor mediation procedures that otherwise would be

available as part of the IRS Appeals process are available in SAP review. See Rev. Proc. 2006-44, 2006-2 C.B. 800, and Rev. Proc. 2009-44, 2009-2 C.B. 462.

.03 Actions with Respect to SAP Review. The U.S. competent authority will decide whether to accept or deny the taxpayer's request for SAP review after consulting with IRS Appeals. If the U.S. competent authority accepts the request, it will coordinate with IRS Appeals on process and timeframe. In general, IRS Appeals will conduct its review of the MAP issues presented in the MAP request in accordance with standard IRS Appeals practice, with the exception that the U.S. competent authority will have the option of participating in meetings held between IRS Appeals and the taxpayer. Upon completing its review, IRS Appeals will recommend a U.S. position to the U.S. competent authority. If the U.S. competent authority denies the request for SAP review, the taxpayer may request a conference to hear the basis for the decision.

.04 Termination of SAP Review. The taxpayer, the U.S. competent authority, or the Chief of IRS Appeals may terminate SAP review at any time. Termination of SAP review by the taxpayer will not preclude the U.S. competent authority from obtaining the recommendation of IRS Appeals on the MAP issues set forth in the MAP request. If SAP review is terminated by the U.S. competent authority or by the Chief of IRS Appeals, the taxpayer may request a conference with either or both parties to hear the basis for such determination.

SECTION 9. INTERACTION AND COORDINATION WITH OTHER ADMINISTRATIVE AND JUDICIAL PROCEEDINGS

.01 Cases under the Jurisdiction of IRS Examination.

(1) *Examination Resolutions Generally.* The U.S. competent authority will accept a MAP request with respect to a U.S.-initiated adjustment memorialized in an examination resolution only if the U.S. competent authority agreed, in writing, to the terms of the examination resolution prior to its execution. A taxpayer may seek such agreement by filing an examination resolution notification with the U.S. competent authority.

(2) *Fast Track Settlement.* In the case of a Fast Track Settlement, the U.S. competent authority will accept a MAP request with respect to a U.S.-initiated adjustment memorialized in a Session report only if: (a) the Fast Track agreement named a representative of the U.S. competent authority as a “participant” in the proceeding; and (b) the U.S. competent authority was given a reasonable opportunity to participate in all Fast Track Settlement meetings with LB&I personnel.

(3) *Action by U.S. Competent Authority.* After receiving the examination resolution notification and consulting with the taxpayer and IRS Examination as appropriate, the U.S. competent authority will determine whether it accepts the proposed terms. If it disagrees with the terms, it will request that IRS Examination and the taxpayer amend them accordingly. If the terms are initially acceptable or are amended to its satisfaction, the U.S. competent authority will authorize the taxpayer and IRS Examination to execute the examination resolution and will authorize the taxpayer to file a MAP request. The U.S. competent authority will then seek a MAP resolution with the applicable foreign competent authority, starting from the position in the examination resolution.

Most U.S. tax treaties will allow the U.S. competent authority to implement a MAP resolution reached with the foreign competent authority in such cases, even if the terms of the MAP resolution are different from the terms of the prior examination resolution. A minority of U.S. tax treaties, however, may not allow the U.S. competent authority to implement a MAP resolution that varies from the terms of the prior examination resolution.

(4) *Exclusive Jurisdiction.* The U.S. competent authority will assume sole jurisdiction over all MAP issues set forth in a MAP request it has accepted, whether the request is filed pursuant to the procedures set forth in this section or otherwise. Any further administrative action by the IRS (e.g., assessment and collection procedures) with respect to any issues under the jurisdiction of the U.S. competent authority will be postponed unless the U.S. competent authority instructs otherwise. Normal administrative procedures will continue to apply to issues over which the U.S. competent authority has not assumed jurisdiction.

.02 *Cases Under the Jurisdiction of IRS Appeals.*

(1) *In General.* In light of the IRS's policy governing the availability and use of SAP review, the U.S. competent authority will not accept a MAP request regarding MAP issues that have been included in a protest filed with IRS Appeals unless the following conditions are met: (a) the taxpayer files its MAP request no later than 30 days after its opening conference with IRS Appeals (see section 1.03 for the rule applicable to deadlines); (b) the taxpayer properly severs the MAP issues in its MAP request from the other issues in its protest that will remain under the jurisdiction of IRS Appeals; (c) the taxpayer has not invoked the

Appeals Arbitration Program or the Appeals Mediation Program with respect to the MAP issues; and (d) the taxpayer has not executed a Form 870 waiver, a Form 870-AD offer, a closing agreement, or any other similar agreement concerning such MAP issues. The U.S. competent authority will assume sole jurisdiction over the MAP issues set forth in the MAP request if these conditions are met and if it accepts the request. Standard IRS Appeals procedures will continue to apply to any other issues not set forth in the MAP request.

(2) Right of Review by IRS Appeals if MAP Resolution Not Reached or Not Accepted by Taxpayer. Nothing in this revenue procedure will abridge a taxpayer's rights to seek or continue review by IRS Appeals of the MAP issues set forth in its MAP request if: (a) the U.S. competent authority rejects the request or terminates assistance in the MAP case; (b) a MAP resolution is not reached; or (c) the taxpayer does not accept the terms of the MAP resolution.

.03 Cases in, or Designated for, Litigation.

(1) In General. The U.S. competent authority will not accept, and will terminate any ongoing consideration of, a taxpayer's MAP request regarding any MAP issue and taxable period designated for litigation (see section 6.02(6)(c)), or any MAP issue and taxable period pending in a U.S. federal court that was previously considered by IRS Appeals (see section 6.02(6)(d)). In other cases where litigation is pending with respect to a taxable period involved in a MAP request, the U.S. competent authority, after consultation with the Associate Chief Counsel (International), may accept, or continue to consider, the MAP request. During the MAP process, a taxpayer may be asked to join the IRS in a motion to

sever any MAP issues, delay trial, or stay proceedings pending the outcome of the taxpayer's MAP case. The Associate Chief Counsel (International) will coordinate the filing of any such motion on behalf of the IRS with, as appropriate, Area Counsel, the Department of Justice, and the taxpayer. Final decision on severing issues, delaying trial, or staying proceedings rests with the court.

Notwithstanding the foregoing, if the court denies a motion to sever MAP issues, delay trial, or stay proceedings, the U.S. competent authority will terminate any ongoing consideration of the MAP request (see section 6.02(6)(a)).

(2) *Effect of Judicial Determinations and Litigation Settlements.* A taxpayer may file a MAP request with respect to a U.S. federal court's final determination of its tax liability. Such final determinations include instances when taxpayers enter into litigation settlements with the Office of Chief Counsel or the Department of Justice. If it accepts such a request, the U.S. competent authority will seek correlative relief from the foreign competent authority only for the amount of, and without departing from, such final determination. In such a case, the U.S. competent authority will not authorize MAP repatriation.

SECTION 10. RESULTS OF MAP CASE

.01 *Notification.* The outcome of most MAP cases will be a MAP resolution, which may be reached either through direct consultations with the foreign competent authority, through arbitration, or otherwise. When a tentative MAP resolution is reached during the course of the MAP process, the U.S. competent authority will notify the taxpayer and outline its general terms. Generally, a MAP resolution is not final until it has been reviewed and approved within the office of

the U.S. competent authority and until the MAP case has been formally closed by both competent authorities. For cases resolved through arbitration, see section 12. The taxpayer will also be notified if the competent authorities have determined that a MAP resolution will not be reached. In that event, the taxpayer may withdraw its MAP request and pursue all rights otherwise available to it (see section 10.04).

.02 Implementation. If the taxpayer accepts the terms of the MAP resolution, the U.S. competent authority will direct the relevant offices within the IRS to implement it accordingly. To the extent authorized under the applicable U.S. tax treaty, the MAP resolution will be implemented notwithstanding any time limits or other procedural limitations under the Code and regulations. If the taxpayer does not accept the MAP resolution, it may withdraw its MAP request and pursue all rights otherwise available to it (see section 10.04).

.03 Closing Agreement. When appropriate, the IRS may request that the taxpayer execute a closing agreement reflecting the terms of the MAP resolution. (See Rev. Proc. 68-16, 1968-1 C.B. 770 (as modified by Rev Proc. 94-67, 1994-2 C.B. 800)).

.04 Special Issues Where No MAP Resolution with Respect to Foreign-initiated Adjustment. In any given MAP case, it is possible that the U.S. and foreign competent authorities will not reach a MAP resolution despite their jointly endeavoring in good faith to do so. If such a MAP case involves a foreign-initiated adjustment and arbitration is not available, the taxpayer will be notified in accordance with section 10.01. Such notification may identify the protective

measures or other steps the taxpayer must take to establish that amounts paid to the treaty country in connection with the foreign-initiated adjustment constitute compulsory payments of tax within the meaning of Treas. Reg. §1.901-2(e)(5) and to maintain its eligibility for competent authority assistance. Such steps may include the taxpayer's pursuit of administrative and judicial remedies in the treaty country and, if credits are claimed for amounts paid before the contest is resolved, the taxpayer's agreement to extend the U.S. statute of limitations on assessment while contesting the foreign-initiated adjustment.

SECTION 11. MAP REPATRIATION

.01 *In General.* Outside the MAP context, Rev. Proc. 99-32 prescribes specific procedures permitting eligible U.S. taxpayers to make repatriation payments. By following these procedures, U.S. taxpayers are able to mitigate adverse collateral tax consequences that may otherwise result from a primary adjustment. In the MAP context, the U.S. competent authority may determine whether to grant MAP repatriation under the mutual agreement procedure provision of the governing treaty. MAP repatriation will not apply to any repatriation payments other than those addressed in the MAP resolution.

.02 *Requirements for MAP Repatriation.* MAP repatriation will be available only if the following conditions are satisfied:

(1) no person (whether or not a "United States taxpayer" within the meaning of Rev. Proc. 99-32) that will make or receive repatriation payments would be barred from making or receiving repatriation payments under the principles of section 3.01 or 3.03 of Rev. Proc. 99-32;

(2) the request for MAP repatriation is explicitly set forth in the MAP request or in a supplemental written submission filed with the U.S. competent authority prior to a MAP resolution being reached;

(3) the primary adjustment giving rise to the application for MAP repatriation is a MAP issue included in a MAP request accepted by the U.S. competent authority; and

(4) there has been no closing action (within the meaning of section 5.01(1) of Rev. Proc. 99-32) taken on the primary adjustment.

.03 Decision on MAP Repatriation. The U.S. competent authority has sole jurisdiction to accept or deny a request for MAP repatriation and the terms of such treatment. In no event will the U.S. competent authority grant MAP repatriation if: (1) the U.S. competent authority terminates assistance with respect to the MAP request pursuant to section 6.02; (2) the MAP request involves issues previously decided in litigation (see section 9.03(2)); or (3) the taxpayer rejects the MAP resolution.

.04 Terms of MAP Repatriation. The U.S. competent authority will determine the terms of MAP repatriation on a case-by-case basis, taking into account both the principles set forth in Rev. Proc. 99-32 and its authority under the mutual agreement procedure provision of the governing treaty. Thus, for example, in a particular MAP repatriation case, the U.S. competent authority may determine it is appropriate to eliminate or modify the requirement for interest set forth in section 4.01(2) of Rev. Proc. 99-32.

.05 Rights Retained in Absence of Mutual Agreement. The rights that a U.S.

taxpayer may have to apply Rev. Proc. 99-32 in the absence of MAP repatriation are neither abridged nor enhanced by this section or other provisions of this revenue procedure.

SECTION 12. ARBITRATION

.01 *In General.* The mutual agreement procedure article in arbitration treaties requires that the competent authorities refer certain MAP cases to mandatory arbitration in the event direct consultation does not lead to a mutual agreement within a prescribed time period. The mutual agreement procedure article in arbitration treaties sets forth detailed rules to be followed regarding the resolution of cases that are eligible for arbitration as prescribed by the relevant treaty. This section addresses general procedural issues associated with mandatory arbitration that is undertaken as part of the MAP process. Taxpayers should consult the mutual agreement procedure article under the applicable U.S. tax treaty and any ancillary agreements to determine whether it is an arbitration treaty and the extent to which mandatory arbitration applies under such treaty.

.02 *Commencement Date and the Beginning of Arbitration Proceedings.* Determining the “commencement date” under an arbitration treaty is important because arbitration begins within a specified time period, typically two years, following the commencement date. In general, the commencement date for a case is the earliest date on which the information necessary to undertake substantive consideration for a mutual agreement has been received by both competent authorities. The U.S. competent authority generally takes the position that it has received information necessary to undertake substantive consideration

for a mutual agreement only when it has received a complete MAP request as described in this revenue procedure. The U.S. competent authority will notify the U.S. taxpayer when the commencement date is established.

.03 Non-disclosure Agreement. The arbitration proceedings do not begin before the date by which both competent authorities have received properly executed non-disclosure agreements from all concerned persons, their authorized representatives, and their agents. The U.S. competent authority will provide the taxpayer with a form for the non-disclosure agreement.

.04 Notification of Unsuitability for Arbitration. U.S. arbitration treaties allow both competent authorities to agree, at any time prior to the arbitration start date, that a particular case is not suitable for arbitration. The U.S. competent authority will notify the taxpayer of any such determination.

.05 Taxpayer Participation. The taxpayer may submit its analysis and views of the case to the U.S. competent authority to the extent permitted under the applicable U.S. tax treaty.

.06 Notification of Arbitration Panel's Determination. The U.S. competent authority will notify the taxpayer of the arbitration panel's determination. If the taxpayer accepts the arbitration panel's determination, its terms will constitute a MAP resolution.

.07 Other Taxpayer Rights. If a taxpayer rejects the determination of an arbitration panel, does not accept the determination within the deadline mandated by the applicable arbitration guidance, or has been notified that a case

has been determined not to be suitable for arbitration, it may pursue any rights that remain available under domestic law.

SECTION 13. PROTECTIVE CLAIMS

.01 *In General.* Most U.S. tax treaties provide that MAP resolutions are to be implemented by the United States and the treaty country notwithstanding any time limits or other procedural limitations under domestic law. A minority of U.S. tax treaties may not allow the U.S. competent authority to waive such limitations. In particular cases, domestic barriers may be waived only if a MAP request is accepted and a MAP resolution is reached. In addition, because there are circumstances that may not be under the control of the taxpayer or of the U.S. or foreign competent authority, it is advisable as a general matter for the taxpayer or a related person to take protective measures under applicable domestic law to increase the likelihood that a MAP resolution in its MAP case can be implemented in both treaty countries and to protect any rights of access to alternative remedies outside of the MAP process from being barred by administrative, legal, or procedural barriers. This section sets forth procedures and guidelines for taking such protective measures.

.02 *Protective Claims Generally.*

(1) *In General.* A protective claim is made to ensure that time limits or administrative, legal, or procedural barriers under the Code or regulations are satisfied to protect the taxpayer's right to a potential credit or refund in the event that a MAP resolution is reached and to retain the taxpayer's rights of access to any alternative remedies available to it outside of the MAP process under the

Code or regulations. A protective claim is distinct from a treaty notification (see section 14) and does not affect the notification deadline under a given treaty, even though a protective claim and treaty notification may initially be made in the same submission and may be updated annually in the same notification (see section 14.05).

(2) *Timing of Protective Claims.* Generally, a taxpayer should consider making a protective claim when it has reason to believe that any action of a tax authority has resulted or is likely to result in a MAP issue. However, it may be advisable to make a protective claim at earlier times, for example, when the claim concerns a recurring MAP issue or when the taxpayer is otherwise aware that an adjustment is likely for a given taxable year. A taxpayer may consult with the U.S. competent authority to determine when and in what manner it is advisable to make a protective claim.

(3) *IRC § 6402 Requirements.* To be a valid protective claim for credit or refund for purposes of this revenue procedure, the claim must be in writing and meet the requirements of section 6402 of the Code and the regulations thereunder other than the requirement in Treas. Reg. §301.6402-3 to file the claim on the appropriate form. Accordingly, a protective claim must, at a minimum: (a) fully advise the IRS of the grounds on which the credit or refund is claimed; (b) contain sufficient facts to apprise the IRS of the exact basis of the claim; (c) describe and identify the contingencies affecting the claim; (d) state the year for which the claim is being made; (e) be verified by written declaration made under penalties of perjury; and (f) be filed before the expiration of the

applicable period of limitation to which the claim relates.

(4) *Methods for Making Protective Claims.* For purposes of this revenue procedure only, a protective claim for credit or refund may be made in any of the following ways: (a) including the claim in a pre-filing memorandum; (b) including the claim in a MAP request; or (c) filing a letter specifically stating that a protective claim is being made. In conjunction with any of these methods, the taxpayer may, but is not required to, file the form specified in Treas. Reg. §301.6402-3.

.03 Making Protective Claim in Pre-Filing Memorandum or MAP Request.

For the placement of a protective claim within a MAP request, see the appendix. If the protective claim is made in a pre-filing memorandum, the memorandum must contain a separate section captioned "Protective Claim Pursuant to Section 13 of Rev. Proc. 2014-XX". In that section, the taxpayer must declare that it is making a protective claim prior to filing a potential MAP request regarding the MAP issues set forth in the memorandum. The section must also contain the information described in section 13.02(3). Any pre-filing memorandum or MAP request submitted after a protective claim is made in the form of a letter (see section 13.04) should refer to such letter. The U.S. competent authority will notify the taxpayer it has received the protective claim or that the claim made by the taxpayer does not constitute a valid protective claim and give instructions as to whether, and how, the claim can be remedied to be valid.

.04 Making Protective Claim by Letter.

(1) *In General.* There may be situations in which a taxpayer will be unable

to submit a pre-filing memorandum or file a MAP request before the applicable period of limitations expires. In such situations, a separate protective claim in the form of a letter should be filed. For example, a letter would be appropriate when a foreign tax authority is considering, but has not yet proposed, an adjustment; a foreign tax authority has proposed an adjustment and administrative or judicial remedies are expected to be pursued in the treaty country before a MAP request is filed; or the terms of the applicable treaty require that notification of a claim be made within a certain time, independent of any action by a tax authority.

(2) *Filing of Letter.* The protective claim letter must be filed in the same place and manner as a pre-filing memorandum or MAP request. If a taxpayer filing a protective claim letter is under examination by the IRS, or if an examination begins after the letter is filed, the taxpayer must send a copy of the letter to the IRS office conducting the examination. A template of a letter suitable for making a protective claim is provided on the APMA website [link to be included when available].

.05 *Effect of Protective Claim.* A protective claim made in the form of a letter, a pre-filing memorandum, or a MAP request that complies with the provisions of this revenue procedure will meet the filing requirements for a valid claim for credit or refund under section 6402 of the Code and the regulations thereunder with respect to the MAP issues set forth in the claim, so long as it is filed before the expiration of the applicable statutory period of limitations for filing claims for credit or refund under the Code.

.06 *Annual Notification Requirement.* After initially filing a protective claim

letter or after making a protective claim in a pre-filing memorandum and before filing its MAP request, the taxpayer must annually notify the U.S. competent authority as to whether it may still file a MAP request. The annual notification must be filed no later than the date on which the taxpayer timely files its tax return for each taxable year ending after the taxable year in which it filed the protective claim (see section 1.03 for the rule applicable to deadlines). The annual notification must: (1) be titled “Annual Notification of Protective Claim”; (2) reference the initial protective claim; (3) contain a declaration that the taxpayer is providing its annual notice of protective claim pursuant to this section 13 and that it is requesting that its protective claim remain active; and (4) where appropriate, update or otherwise correct the information set forth in the protective claim or any subsequent annual notifications. The annual notification must be filed in the same place and manner as a pre-filing memorandum or MAP request. The U.S. competent authority may deny assistance to a taxpayer that fails to provide the annual notification.

SECTION 14. TREATY NOTIFICATIONS

.01 *In General.* Some U.S. tax treaties require that the competent authority of the country that has not received a formal request for competent authority assistance be notified that such a request has been submitted to the competent authority of the other country. If such notice is not provided within the number of years specified in the treaty, domestic barriers to the implementation of a MAP resolution will not be removed (see, e.g., United States-Canada Income Tax Convention (1980), Article XXVI(2)). Therefore, a taxpayer seeking assistance of

the U.S. competent authority under such a treaty with regard to a foreign-initiated adjustment must submit a treaty notification to the U.S. competent authority within the time set forth in the treaty.

.02 Manner of Notification. For purposes of this revenue procedure, a treaty notification to the U.S. competent authority may be made as a part of a taxpayer's MAP request (see the appendix) or may take the form of a letter to the U.S. competent authority. A template of a letter suitable for making a treaty notification is provided on the APMA website [link to be included when available].

.03 Taxpayer Responsible for Notifying Foreign Competent Authority. With regard to a U.S.-initiated adjustment under such a treaty, the taxpayer must notify the foreign competent authority of its having filed a MAP request with the U.S. competent authority. In making such notification, the taxpayer should follow any applicable procedures prescribed by the treaty country. The U.S. competent authority is not responsible for notifying a foreign competent authority that it has received a MAP request.

.04 Annual Notification Requirement. Treaty notification in the form of a letter must be updated on an annual basis until a formal MAP request has been filed. The annual notification must be submitted no later than the date on which the taxpayer timely files its tax return for each taxable year ending after the taxable year in which it submitted the treaty notification (see section 1.03 for the rule applicable to deadlines). The annual update must contain the following subject line: "Treaty Notification Annual Update under Rev. Proc. 2014-XX". The annual update must refer to prior treaty notifications.

.05 Consolidation of Protective Claim and Treaty Notification. The taxpayer may consolidate an initial protective claim and a treaty notification into a single letter, pre-filing memorandum, or MAP request. A template of a letter suitable for consolidating an initial protective claim and treaty notification is provided on the APMA website [link to be included when available]. The taxpayer may also consolidate an annual protective claim notification and annual treaty notification in a single letter. In whatever manner such initial or annual notifications are consolidated, the taxpayer should ensure that the submission clearly states that it is to serve as both a protective claim and as a treaty notification.

SECTION 15. REQUESTS FOR RULINGS

.01 In General. Requests for advance rulings regarding the interpretation of a tax treaty, as distinguished from MAP requests under this revenue procedure, must be submitted to the Associate Chief Counsel (International) according to the provisions of the applicable revenue procedure governing such submissions.

See Rev. Proc. 2013-1, 2013-1 I.R.B. 1 (or successor guidance), and Rev. Proc. 2013-7, 2013-1 I.R.B. 233.

.02 Foreign Tax Rulings. Neither the U.S. competent authority nor any other office within the IRS will issue an advance ruling on the effect of the provisions of a U.S. tax treaty on the application of the domestic tax laws of a treaty country.

SECTION 16. USER FEES

.01 In General. Except as otherwise provided in this section 16, no user fee is required for a MAP request.

.02 Requests for Discretionary LOB Relief. A \$27,500 user fee is required for

all requests for discretionary LOB relief as described in section 3.06(2). See Rev. Proc. 2013-1 (or successor guidance). The fee must be paid according to instructions set forth in the letter from the U.S. competent authority to the applicant formally informing the applicant it is accepting the request. The fee will apply regardless of whether the request is for an initial determination, a renewal of a previously issued determination, or a supplemental determination. If a MAP request requires discretionary LOB relief for two or more entities, a separate user fee will be charged for each entity.

.03 Timing of User Fee Charge. Within 30 days of receipt of a complete submission for a request for discretionary LOB relief, the U.S. competent authority will notify the taxpayer whether it accepts or rejects the request for assistance. No user fee will be charged unless and until the U.S. competent authority notifies the taxpayer that it formally accepts the request. If the U.S. competent authority accepts the request, the taxpayer must pay the applicable user fee or fees electronically using the Pay.gov website within 60 days of the notification of the acceptance (see section 1.03 for the rule applicable to deadlines). Upon receipt of the user fee, the U.S. competent authority will commence analysis of the case.

.04 Refund of User Fee. The U.S. competent authority has sole discretion over whether it will, and the circumstances under which it may, refund a user fee. Generally, the U.S. competent authority will not refund a user fee: (1) once it accepts the MAP request and the taxpayer has remitted the user fee, even if the taxpayer subsequently withdraws the request; (2) if the taxpayer fails to submit

additional information that has been requested by the U.S. competent authority; or (3) the U.S. competent authority ultimately declines to grant discretionary LOB relief. If the U.S. competent authority ultimately declines to grant discretionary LOB relief, after taking into account all the facts and circumstances, including the resources devoted to the request, the U.S. competent authority may in its sole discretion determine that a refund is appropriate.

SECTION 17. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2006-54, 2006-2 C.B. 1035, is modified and superseded by this revenue procedure. Rev. Proc. 2003-40, 2003-1 C.B. 1044, is modified. Rev. Proc. 2014-YY, is amplified. References in this revenue procedure to Rev. Proc. 99-32 will be treated as references to Rev. Proc. 65-17, 1965-1 C.B. 833, as modified, amplified, and clarified from time to time, for taxable years beginning before August 24, 1999.

SECTION 18. EFFECTIVE DATE

This revenue procedure is effective for MAP requests received on or after [DATE].

SECTION 19. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545-2044.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collection of information in this revenue procedure is in sections 3.02(2) – (6), 3.05, 3.08, 4.02, 5.01, 8.02, 9.01(1), 11.02(2), 13.04, 13.06, and 14.03 – 14.05 and in the appendix. This information is required, and will be used, to evaluate and process the request for competent authority assistance. The likely respondents are individuals or business or other for-profit institutions.

The estimated total annual reporting and/or recordkeeping burden is 9,000 hours.

The estimated annual burden per respondent/recordkeeper is 30 hours. The estimated number of respondents and/or recordkeepers is 300.

The estimated annual frequency of responses is on occasion.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by section 6103 of the Code.

SECTION 20. DRAFTING INFORMATION

The principal authors of this revenue procedure are John Hughes, Robert Cole, Rebecca Kalmus, and Anthony Ferrise of the Office of the Deputy Commissioner (International), LB&I; and Michael Skutley of the Office of the Associate Chief Counsel (International). For further information regarding this

revenue procedure, contact either Mr. Ferrise at (202) 515-4349 or Mr. Skutley at (202) 317-5440 (not toll-free calls).

APPENDIX

This appendix sets forth instructions on preparing and filing a MAP request. Unless the U.S. competent authority has explicitly instructed the taxpayer otherwise in writing, the MAP request must be prepared and submitted according to the instructions provided in this appendix. The U.S. competent authority may reject a MAP request that does not comply with these instructions. Certain MAP request requirements apply only to MAP requests filed with APMA. Other MAP request requirements apply only to MAP requests filed with TAIT. Unless otherwise stated, the MAP request requirements listed in this appendix apply to MAP requests filed with either APMA or TAIT.

A complete MAP request must include the general MAP request items as set forth in section 1 of this appendix and, when applicable, the specific MAP request items for discretionary LOB relief and foreign pension plan determinations as set forth in sections 2 and 3, respectively. Instructions on filing printed and electronic copies of MAP requests are set forth in section 4. Section 5 provides addresses and contact information.

SECTION 1. GENERAL MAP REQUEST ITEMS

.01 *Overview.* General MAP request items must be presented in a cover letter followed by the attachments, presented in the order listed in section 1.03 of this appendix. The cover letter and the attachments must contain or respond to the required statements, descriptions, explanations, and other requested information. If the requested information is not applicable to the MAP request, this must be indicated by “N/A.”

.02 MAP Request Cover Letter.

(1) *Process.* The cover letter must be addressed to the Deputy Commissioner (International) at the address provided in section 5 of this appendix. An original of the cover letter, signed and dated by a person having authority to sign the taxpayer's federal tax returns, must be included in one of the three required printed copies of the MAP request (see section 4 of this appendix). In a case involving a request for either discretionary LOB relief or a foreign pension plan determination where the person requesting relief does not file federal tax returns, the cover letter may be signed and dated by any authorized representative or officer of such person.

(2) *Content.* The cover letter must contain an introductory statement that the taxpayer seeks assistance of the U.S. competent authority. The letter then must contain or respond to each of the statements, descriptions, explanations, and other requested information listed under this section 1.02, according to the instructions and structure set forth in this section.

Part 1. Identifying Information and Summary of Issues and Proceedings

1.1	<u>U.S. competent authority office:</u> State the office of the U.S. competent authority – APMA (transfer pricing) or TAIT (non-transfer pricing) – to which the MAP request is directed
1.2	<u>Identifying information:</u> List the names, addresses, country of residence for purposes of the treaty, U.S. taxpayer identification number(s), and foreign taxpayer identification number(s) (if any) of the members of the controlled group whose taxable incomes would be affected by a MAP resolution being reached in the taxpayer's MAP case
1.3	<u>Authorization:</u> List the names and contact information for the taxpayer's point of contact for the U.S. competent authority, together with an indication as to which point of contact (if any) has been empowered by a Form 2848, Power of Attorney and Declaration of Representative, or Form 8821, Tax Information Authorization (<u>see</u>

	Attachments, Tab 1)
1.4	<u>IRS Office</u> : Provide the following information: a. For U.S.-initiated adjustments, the IRS office that has made the adjustment, together with the name of and contact information for the taxpayer's IRS Examination team manager; or b. For non-U.S.-initiated actions, the contact information for the IRS office having examination jurisdiction over the taxpayer or U.S. members of the controlled group, together with the name of and contact information for the taxpayer's IRS Examination team manager if the taxpayer is under examination when the MAP request is filed
1.5	<u>Treaty(ies)</u> : Identify the U.S. tax treaty(ies) and articles under which the request is being filed
1.6	<u>Summary of MAP issue(s)</u> : Provide a summary of the discussion in Part 2.1, setting forth the MAP issue(s) for which assistance is being requested
1.7	<u>Years and amounts</u> : Provide the taxable years and amounts at issue, presented in both U.S. dollars and foreign currency, together with the exchange rate(s) that was (were) used for currency conversion during the applicable taxable years
1.8	<u>Taxpayer proceedings</u> : Provide a summary of relevant U.S. and foreign judicial or administrative proceedings involving the taxpayer or other members of the controlled group, including all information related to notifications provided to the treaty country(ies)
1.9	<u>Other proceedings</u> : To the extent known, provide a summary of relevant foreign judicial or public administrative proceedings not involving the taxpayer or members of the controlled group but concerning a similar MAP issue for which the MAP request is being filed
1.10	<u>Statutes of limitations</u> : Provide the expiration dates of applicable statutes of limitations in both the United States and the treaty country(ies) for the taxable years covered by the MAP request

Part 2. MAP Issue(s)

2.1	<u>MAP issue(s)</u> : Provide a thorough, informative explanation of the MAP issue(s) for which assistance is requested, including, but not limited to, descriptions or discussions of the: a. Relevant transactions, activities, or other circumstances surrounding the MAP issues for which the request is made; b. The taxpayer's understanding of the legal basis for the adjustment; c. The taxpayer's view on the justification for assistance under the applicable U.S. tax treaty(ies); and d. Content of any related requests for assistance submitted to the foreign competent authority, together with an explanation of any material differences between the MAP request filed under this
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	revenue procedure and the request filed with the foreign competent authority
2.2	<u>Prior U.S. competent authority assistance:</u> State whether or not the MAP issue(s) set forth in the MAP request is (are) the same or similar to an issue(s) considered in a prior MAP or APA request covering the same or prior taxable years, and, if so, summarize the terms of the resolution of the issue by the U.S. competent authority
2.3	<u>Pre-filing information:</u> Provide the following information: a. Whether a mandatory or optional pre-filing memorandum was filed; and b. Whether a pre-filing conference was held and, if so, the date of and attendees at the conference

Part 3. Assistance Requested and Required Statements

3.1	<u>Coordination with other proceedings:</u> Provide the following information: a. Whether the taxpayer seeks SAP review; b. Whether and when the taxpayer filed an examination resolution notification pursuant to section 9.01(1) of the revenue procedure and, if so, the date upon which the U.S. competent authority notified the taxpayer of its agreement to the terms of such resolution; and c. The date of any opening conference with IRS Appeals in which the MAP issue(s) in the MAP request was (were) discussed; and the issues, if any, set forth in the taxpayer's protest that remained within the jurisdiction of IRS Appeals and from which the MAP issue(s) covered by the MAP request has (have) been severed
3.2	<u>ACAP years:</u> For MAP requests filed with APMA, provide the following information: a. Whether the taxpayer requests ACAP and, if so, the ACAP years proposed to be covered; b. Whether the taxpayer does not seek to apply the MAP resolution to one or more ACAP years and its reasons for not requesting ACAP (such as the transactions at issue not having occurred in subsequent taxable years); and c. Whether the taxpayer has filed a bilateral or multilateral APA request pursuant to Rev. Proc. 2014-YY that proposes to cover the same issues covered by the MAP request and whether it includes a rollback request for ACAP years
3.3	<u>Ancillary issues:</u> List the ancillary issues (if any) the taxpayer requests be addressed in the MAP resolution
3.4	<u>Attachments:</u> List any required MAP request attachments that the taxpayer has not included in its MAP request, together with explanations as to why such items are not included (e.g., "N/A")

.03 *MAP Request Attachments.* The MAP request must also include the following attachments after the cover letter, separated and ordered as indicated in this section 1.03. If an attachment in the list below is not applicable to the MAP request, the attachment should indicate this by “N/A.”

Tab 1	<u>Authorization form:</u> Include a properly executed Form 2848 (Power(s) of Attorney and Declaration of Representative) or Form 8821 (Tax Information Authorization)
Tab 2	<u>ACAP requests:</u> If the taxpayer is requesting ACAP, provide a statement that the taxpayer agrees to the following: a. The inspection of books of account or records under ACAP will not preclude or impede (under section 7605(b) of the Code or any administrative provision adopted by the IRS) a later examination of a return or inspection of books of account or records for any taxable period covered in the ACAP request; and b. The IRS need not comply with any applicable procedural restrictions (e.g., providing notice under section 7605(b) of the Code) before beginning such examination or inspection
Tab 3	<u>Protective claim and treaty notification:</u> If applicable, provide the following information: a. A statement that the MAP request is to serve as a protective claim pursuant to section 13 of the revenue procedure, together with the information required by section 13.02(3); and b. A statement that the MAP request is to provide treaty notification pursuant to section 14 of the revenue procedure
Tab 4	<u>Consent to disclosure:</u> Include a declaration, dated and signed by a person having authority to sign the taxpayer’s federal tax returns, that the taxpayer consents to the disclosure of the contents of the MAP request – other than trade secrets, if the taxpayer so requests – to the applicable foreign competent authority(ies) within the limits contained in the U.S. tax treaty(ies) governing the MAP request
Tab 5	<u>“Penalties of perjury” declaration:</u> Include the following “penalties of perjury” declaration: Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and, to the best of my knowledge and belief, the facts presented in support of the MAP request are true, correct, and complete. The declaration must be dated and signed by the person(s) on whose behalf the request is being made and not by the taxpayer’s representative. The person signing for a corporate taxpayer must be an authorized officer of the taxpayer having personal knowledge of

	the facts. The person signing for a trust, an estate, or a partnership must be a trustee, an executor, or a partner, respectively, who has personal knowledge of the facts
Tab 6	<u>Written notice of adjustment</u> : Provide the following information: a. For U.S.-initiated adjustments, a copy of the written notice of the adjustment, e.g., the Form 5701 or Form 4549, and any related attachments received from IRS Examination; or b. For non-U.S.-initiated actions: (1) an English translation of any official notice(s) of the adjustment to taxable income reported in the treaty country(ies) upon which the MAP request is based; and (2) a copy of the official notice(s) of such adjustment(s) in the original language
Tab 7	<u>E-mail authorization</u> : Except for individuals or for taxpayers eligible to file small case MAP requests under section 5 of the revenue procedure, include a signed original of the memorandum of understanding authorizing communications with the U.S. competent authority via e-mail, or a statement that the taxpayer does not authorize e-mail communications, together with a brief explanation for declining to do so (<u>see section 3.08 of the revenue procedure</u>)
Tab 8	<u>Information or documents in a foreign language</u> : List any information or documents in a foreign language that are submitted to a foreign tax authority or foreign competent authority in connection with, or that are otherwise relevant to, the MAP request and for which a full translation in English is not provided
Tab 9	<u>MAP requests filed with APMA</u> : For MAP requests filed with APMA, provide the following information: a. A copy of documentation prepared pursuant to section 6662 of the Code or other documentation analyzing the MAP issues for the taxable years covered by the MAP request; b. Financial data prepared for official statutory, regulatory, or other reporting purposes for the taxpayer’s controlled group (whether corporate parent is a U.S. person or not) for all taxable years covered by the MAP request; c. Income statements and balance sheets, segmented as necessary to demonstrate the effect of the MAP issue(s) on taxable income for the taxpayer and the members of the controlled group for all taxable years covered by the MAP request and, as applicable, for the three taxable years ending before and the three taxable years ending after the years covered by the MAP request; and d. Diagrams similar to “covered issue diagrams” required for APA requests, as described in the appendix to Rev. Proc. 2014-YY
Tab 10	<u>Pre-filing submissions</u> : Include any pre-filing memoranda or other materials submitted in connection with the MAP request

.04 *Small Case MAP Requests Filed with APMA.* Taxpayers filing small case MAP requests with APMA may exclude the information requested in Tabs 8, 9(a), and 9(d) from their MAP requests. This section does not apply to a MAP request involving a taxpayer-initiated position.

SECTION 2. REQUESTS FOR DISCRETIONARY LOB RELIEF

.01 *In General.* In addition to the requirements of section 1 of this appendix, a request for discretionary LOB relief must also include the following information.

Part 4. Additional Information for Requests for Discretionary LOB Relief

4.1	<p>Information necessary for identification and request review:</p> <ul style="list-style-type: none"> a. Statement about the type(s) of benefits requested (e.g., dividends, interest, royalties, branch profits, etc.) and the relevant treaty provision(s) and amount of income at issue; b. Date on which the applicant requests that the determination become effective; and c. Statement as to whether the applicant made a previous request and the ultimate disposition of that request
4.2	<p>Applicant organization information:</p> <ul style="list-style-type: none"> a. Narrative description of the business activities of the applicant's U.S., foreign, and group holdings that describes the ownership structure and any recent restructurings in ownership and the purposes therefor relevant to the applicant and its ultimate owner(s), including the tax reasons for the use of any hybrid entities in the structure; b. In the case of a country that applies a territorial or exemption system for relieving double taxation on income or gain attributable to an office or branch in a third country, whether the applicant conducts business in the United States through such an office or permanent establishment, and if so, the name of the country in which the office or branch is located, the type of income or gain derived by the office or branch, and the applicable rate of tax applied to that income in that third jurisdiction; c. Name, address, and U.S. taxpayer identification number of U.S. entities related to the applicant from whom income covered by the request was or will be received; d. A chart with the name and country of tax residence or organization of every entity, along with its ownership interest in any intermediate entity, including its entity classification under U.S. and foreign law, between the applicant and ultimate owners of the applicant, (e.g.,

	<p>publicly traded corporations, pensions or other tax-exempt entities, governments, or individuals);</p> <p>e. Description of the control and business relationships between the applicant and relevant persons for the years in issue, including any changes in such relationships prior to the date of the request; and</p> <p>f. Description of the relevant transactions, activities, or other circumstances involved in the matter covered by the request</p>
4.3	<p>Applicant financial statement information:</p> <p>a. Financial statements, if available, for the years in issue of the applicant and any U.S. branch or related entity that paid or will pay income to the applicant during the period covered by the request; and</p> <p>b. Annual reports of any publicly traded shareholder that directly or indirectly owns stock in the applicant for the years in issue, and an English translation of any similar filings with securities regulators reflecting the structure or transaction that is the subject of the request for the years in issue, if applicable</p>
4.4	<p>Additional applicant information:</p> <p>a. Analysis of why the applicant does not meet each of the objective tests listed in the treaty LOB article (e.g., if the company fails the base erosion test because it pays more than half of its gross income in the form of deductible expenses to persons not authorized by the treaty, including an explanation as to the reasons for making payments to such persons, or if a company is engaged in the active conduct of a trade or business in its country of residence, an explanation of what specifically prevents the company from meeting the active trade or business test in the treaty, or if the applicant's parent was recently delisted from a recognized stock exchange and why, or if the applicant's parent is publicly traded on a stock exchange not recognized under the treaty);</p> <p>b. Explanation of the non-tax business reasons why the applicant was formed or maintained in the particular treaty country (e.g., that the country is the source of raw materials, the customer base is located in the country, substantial functions of the company's business are located in the country, a substantial amount of services are performed in the country, or rents or royalties are derived from such country), and an explanation for any recent changes in these activities;</p> <p>c. Detailed description of the facts and circumstances that demonstrate that the applicant has a sufficient relationship or nexus to the treaty country;</p> <p>d. Analysis of any relevant factor for determining whether to grant a request for discretionary LOB relief, as indicated, for example, by the applicable U.S. tax treaty and Treasury Department Technical Explanation to the U.S. tax treaty;</p>

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| | <p>e. Statement from the applicant as to whether any entity in the ownership chain between the applicant and the publicly held entity (including the publicly held entity) is a nominee, agent, or otherwise a conduit, and if so, why it is arranged in that manner;</p> <p>f. English translations of all tax rulings or tax concessions issued to the applicant by the country in which it is organized, or a statement of whether the applicant otherwise benefits from a special tax regime in that country, and a description of the benefits;</p> <p>g. If the applicant has requested a certification from its country of residence regarding entitlement to the benefits of the treaty, where applicable, a copy of all correspondence from the treaty country;</p> <p>h. Statement from the applicant whether an examination by any tax authority has been or is currently in process that is related to the relief request;</p> <p>i. Whether a request for an APA has been or is anticipated to be made with respect to the income that is covered by the request;</p> <p>j. Statement whether each entity between the applicant and the ultimate shareholders meets the base erosion test of the treaty;</p> <p>k. If the requested treaty benefits relate to dividends, a description of the capital structure of the applicant and of the U.S. entity paying the dividends, including details about each class of shares and associated rights (e.g., voting, conversion, dividend rate, etc.), the period during which the structure was in effect, and any reorganizations in the United States or of the applicant abroad, including change of residence;</p> <p>l. If the requested treaty benefits relate to interest, a general description of the terms of indebtedness, the method used to calculate interest, and the existence of embedded options or other derivative structures; whether the debt is registered or in bearer form; whether it is publicly traded and, if so, on which exchange; whether it is held by a hedge fund or other type of investment vehicle; and whether the ultimate owners are known to the applicant;</p> <p>m. If the requested treaty benefits relate to royalties, a description of the intangible property generating the royalty payments, when the applicant gained the rights to this property, and the terms of the royalty agreement;</p> <p>n. In the case of an applicant that is a hybrid entity, or that owns an interest in a hybrid entity through which it derives income, profit, or gain with respect to which it seeks treaty benefits, a detailed explanation of why the applicant derives the income in accordance with the relevant treaty provisions; and</p> <p>o. Statement of understanding that if the request for discretionary LOB relief is accepted by the U.S. competent authority the applicant is required to remit the user fee as provided by section 16 of the revenue procedure</p> |
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.02 *Pre-filing Memorandum.* The applicant must submit a pre-filing memorandum indicating whether a pre-filing conference is requested in accordance with section 3.02(3)(f) of the revenue procedure.

SECTION 3. “GENERALLY CORRESPONDS” PENSION DETERMINATIONS

In addition to the requirements of section 1 of this appendix, a request seeking a determination that a foreign pension plan generally corresponds to a pension plan recognized for tax purposes in the United States must also include the following information:

Part 5. Additional Information for Requests for “Generally Corresponds” Pension Determinations

5.1	Copies of the Plan Documents (translated into English). For this purpose, the Plan Documents include the plan itself, the trust agreement, the summary plan description or similar document provided to participants, and any other document that will assist the U.S. competent authority in making its determination.
5.2	If the plan at issue relates to another plan of the employer, copies of the Plan Documents (as defined above) for that other plan (translated into English)
5.3	Copies of all applicable statutory provisions that govern the foreign pension plan (translated into English)
5.4	An explanation of why the foreign pension plan should be deemed to “generally correspond” to a pension plan recognized for tax purposes in the United States.

SECTION 4. MANNER OF FILING MAP REQUESTS

.01 *In General.* The taxpayer must provide four copies of its MAP request as follows: one (1) original, bound printed submission containing signed originals of the cover letter, “penalties of perjury” declaration, consent to disclosure, and, as applicable, authorization forms, including e-mail authorization, along with printed

copies of all other required information; two (2) bound photocopies of the contents of the original printed submission; and one (1) electronic copy of the contents of the original printed submission on CD or flash drive or similar acceptable electronic storage medium. All four (4) copies of the MAP request must be filed with the U.S. competent authority at the address set forth in section 5 of this appendix.

.02 Exemptions for Small Case Filings with TAIT. Unless otherwise instructed by the U.S. competent authority, taxpayers filing small case MAP requests with TAIT are only required to file a single printed copy of the request. Also, such taxpayers may, but are not required to, file an electronic copy of the MAP request.

.03 Format of Printed Copies. Each printed copy may be filed in one or more bound volumes. The attachments must be tabbed or separated and identified and ordered as presented in section 1 of this appendix. If an attachment is not applicable to the MAP request, a statement to this effect must be included in the relevant tabbed section.

.04 Content and Format of Electronic Copy.

(1) *Content.* The electronic copy of the MAP request must contain: (1) the cover letter to the MAP request, with all required statements, declarations, explanations, documents, information, data, and all other requested materials; and (2) all required attachments. The attachments should consist of separate electronic files named in a manner that corresponds to the tab numbers

presented in section 1 of this appendix. If an attachment is not applicable to the MAP request, a statement to this effect must be included in the electronic file.

(2) *Format.* Suitable formats for the documents in the electronic copy include Microsoft Word, Excel, PowerPoint, and Adobe Portable Document Format. Any document that is readily available in Microsoft Word, Excel, or PowerPoint format should be provided in that format rather than, or in addition to, Adobe Portable Document format.

SECTION 5. ADDRESSES AND CONTACT INFORMATION

.01 APMA Contact Information.

Telephone number: TBD

Mailing address: Deputy Commissioner (International)
Large Business and International Division
Internal Revenue Service
1111 Constitution Avenue, N.W.
Routing: M3-370
Washington, D.C. 20224
(Attention: APMA)

All mail should be sent to this mailing address, including regular mail, express mail, overnight mail, and mail sent by USPS, FedEx, UPS, or any other carrier.

Website: [link to be included when available]

Office location: 801 Ninth Street, N.W., Washington, D.C. 20001.
Mail should not be sent to this address.

.02 TAIT Contact Information.

Telephone number: TBD

Mailing address: Deputy Commissioner (International)
Large Business and International Division
Internal Revenue Service
1111 Constitution Avenue, N.W.
Routing: M4-365

Washington, D.C. 20224
(Attention: TAIT)

All mail should be sent to this mailing address, including regular mail, express mail, overnight mail, and mail sent by USPS, FedEx, UPS, or any other carrier.

Website: [link to be included when available]

Office location: 801 Ninth Street, N.W., Washington, D.C. 20001.
Mail should not be sent to this address.