

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.201: Rulings and determination letters.

Rev. Proc. 2006-23

SECTION 1. PURPOSE AND BACKGROUND

.01 *Purpose.* This revenue procedure sets forth the procedures by which taxpayers may obtain assistance from the U.S. competent authority under the provisions of tax coordination agreements entered into between the Internal Revenue Service (IRS) and the tax agencies of American Samoa, Guam, the Commonwealth of the Northern Mariana Islands (NMI), the United States Virgin Islands (USVI), and Puerto Rico (collectively, the possessions), as described in section 1.02 of this revenue procedure. The tax coordination agreements described in section 1.02 of this revenue procedure each contain provisions allowing the competent authorities of the United States and the possession to resolve by mutual agreement inconsistent tax treatment by the two jurisdictions. This revenue procedure updates Rev. Proc. 89-8, 1989-1 C.B. 778, to conform more closely with the current competent authority procedures. See, e.g., Rev. Proc. 2002-52, 2002-2 C.B. 242, for tax treaty competent authority procedures. In addition, this revenue procedure reflects the tax coordination agreement entered into between the United States and the NMI, effective January 30, 2003. Finally, conforming

changes to terminology are made to reflect administrative and organizational changes in the IRS.

.02. *Background.* The IRS has entered into agreements, as described in paragraphs (1) through (5) of this section 1.02 (coordination agreements) for coordinating tax administration between the IRS and the tax agencies in American Samoa, Guam, the NMI, Puerto Rico, and the USVI (possession tax agencies). The coordination agreements authorize the exchange of information and mutual assistance with regard to taxes. In accordance with the coordination agreements, the IRS has established cooperative programs (or so-called “mutual agreement procedures”) to resolve tax disputes arising from inconsistent positions taken by the IRS and a possession tax agency. The mutual agreement procedures generally permit taxpayers to request competent authority assistance when they consider that actions of the United States, possessions, or both, result or will result in taxation that is contrary to the provisions of a coordination agreement. The Director, International (LMSB) acts as the U.S. competent authority under the coordination agreements with the responsibility for coordination and liaison of tax administration issues involving the possessions of the United States, including reaching mutual agreements in specific cases. See Delegation Order 4-36 (formerly D.O. 269) (effective 11/22/02).

(1) *American Samoa.* The “Tax Implementation Agreement Between the United States of America and American Samoa” was signed by the Government of American Samoa on December 10, 1987, and by the Government of the United States on January 7, 1988; it generally became effective on January 1, 1988 (American Samoa

implementation agreement). Article 6 of the American Samoa implementation agreement deals with the mutual agreement procedure on potential double taxation.

(2) *Guam*. The 1977 “Agreement on Coordination of Tax Administration” entered into between the United States and Guam was amended to add section 10. The amendment was signed by the Government of Guam on January 10, 1985, and by the Government of the United States on July 12, 1985, and became effective on that date (Guam coordination agreement). Section 10 of the Guam coordination agreement deals with the mutual agreement procedure on potential double taxation.

(3) *Commonwealth of the Northern Mariana Islands*. The “Tax Coordination Agreement Between the United States of America and the Commonwealth of the Northern Mariana Islands” was signed by the Government of the NMI on December 5, 2002, and by the Government of the United States on January 30, 2003, and became effective on that date (NMI coordination agreement). Section 10 of the NMI coordination agreement deals with the mutual agreement procedure on potential double taxation.

(4) *Puerto Rico*. The “Tax Coordination Agreement Between the United States of America and the Commonwealth of Puerto Rico” was signed by the Government of Puerto Rico on December 31, 1988, and the Government of the United States on May 26, 1989; and became effective on that date (Puerto Rico coordination agreement). Article 6 of the Puerto Rico coordination agreement deals with the mutual agreement procedure on potential double taxation.

(5) *United States Virgin Islands*. The “Tax Implementation Agreement Between the

United States of America and the Virgin Islands” was signed on February 24, 1987, and took effect on that date (USVI implementation agreement). Article 6 of the USVI implementation agreement deals with the mutual agreement procedure on potential double taxation.

SECTION 2. SCOPE

.01 *In general.* This revenue procedure sets forth the procedures by which taxpayers may obtain assistance from the U.S. competent authority under the coordination agreements. Taxpayers are urged to examine the mutual agreement procedure provisions or other specific provisions of the coordination agreement under which they seek relief, in order to determine whether relief may be available in their particular case. This revenue procedure is not intended to limit or expand any specific coordination agreement provisions relating to competent authority matters.

.02 *Requests for Assistance.* In general, requests by taxpayers for competent authority assistance must be submitted in accordance with this revenue procedure. However, where an agreement between the governments or other published administrative guidance provides specific procedures for requests for competent authority assistance, those procedures shall apply, and the provisions of this revenue procedure shall not apply to the extent inconsistent with such procedures. Taxpayers may consult the "Tax Information for International Businesses" page at www.irs.gov (<http://www.irs.gov/businesses/international/index.html>) for links to a variety of agreements and other documents that may modify the procedures set forth in this revenue procedure.

.03 *General Process.* If a taxpayer's request for competent authority assistance is accepted, the U.S. competent authority generally will consult with the competent authority of the appropriate possession tax agency and attempt to reach a mutual agreement that is acceptable to all parties. If the taxpayer raises such a request with the possession tax agency, that agency generally will consult with the U.S. competent authority in accordance with the applicable coordination agreement. However, this revenue procedure does not provide procedures to be used by any possession tax agency. The U.S. competent authority also may initiate competent authority negotiations, as provided in each of the coordination agreements, in any situation deemed necessary to protect U.S. interests.

.04 *Failure to Request Assistance.* Failure to request competent authority assistance or to take appropriate steps as necessary to maintain availability of the remedy may cause a denial of part or all of credits claimed under the Code (for example, under section 901, 902, or 932). See, e.g., Treas. Reg. §1.901-2(e)(5)(i). See also section 9 of this revenue procedure concerning protective measures and section 11 of this revenue procedure concerning the determination of creditable taxes.

.05 *Issues Regarding Cover Over.* Requests for competent authority assistance under this revenue procedure are not proper in cases involving the cover over of funds, for example under section 7654 of the Code. The taxpayer lacks standing in such cases because matters concerning cover over are resolved on a government-to-government basis.

SECTION 3. GENERAL CONDITIONS UNDER WHICH THIS PROCEDURE APPLIES

.01 *General.* The coordination agreements provide generally that when, by reason of inconsistent positions taken by the IRS and a possession tax agency, a taxpayer is or would be subject to inconsistent tax treatment by the two jurisdictions, the Director, International (LMSB) and the designated possession tax official shall seek to avoid double taxation. In particular, but not by way of limitation, the parties may exchange views to reach agreement on: (a) the same allocation of income, deductions, credits, or allowances between related persons; (b) the same determination of residency of a particular taxpayer, and (c) the same determination of the source of particular items of income and allocation and apportionment of expense. See section 9 of this revenue procedure, which prescribes protective measures to be taken by the taxpayer and any concerned related person with respect to U.S. and possession tax agencies. See also section 12.02 of this revenue procedure for circumstances in which competent authority assistance may be denied.

.02 *Requirements of a Coordination Agreement.* There is no authority for the U.S. competent authority to provide relief from U.S. tax or to provide other assistance due to taxation arising under the tax laws of the possession or the United States, unless such authority is granted by the Code or a coordination agreement.

.03 *Applicable Standards in Allocation Cases.* With respect to requests for competent authority assistance involving the allocation of income and deductions between a U.S. taxpayer and a related person, the U.S. competent authority and its counterpart in the possession will be guided by the arm's length standard consistent

with the regulations under section 482 of the Code. When negotiating mutual agreements on the allocation of income and deductions, the U.S. competent authority will take into account all of the facts and circumstances of the particular case and the purpose of the coordination agreement to avoid double taxation.

.04 Who Can File Requests for Assistance. The U.S. competent authority will consider requests for assistance from U.S. persons, as defined in section 7701(a)(30) of the Code. For purposes of this revenue procedure, a U.S. person is referred to as “the taxpayer.” Non-U.S. persons generally must present their initial request for assistance to the relevant possession tax agency. As noted in section 12.02 of this revenue procedure, there are circumstances in which the U.S. competent authority will not pursue assistance.

.05 Closed Cases. A case previously closed after examination shall not be reopened in order to make an adjustment unfavorable to the taxpayer unless the exceptional circumstances described in Rev. Proc. 2005-32, 2005-23 I.R.B. 1206 (providing procedures for reopening cases if fraud, substantial error, or certain other circumstances are present), are present. The U.S. competent authority may, but is not required to, accept a taxpayer’s request for competent authority consideration that will require the reopening of a case closed after examination.

.06 Possession Initiated Competent Authority Request. When the competent authority of a possession refers a request from a possession taxpayer to the U.S. competent authority for consultation under the mutual agreement procedure, the U.S. competent authority generally will require the U.S. related taxpayer (in the case of an

allocation of income or deductions between related persons) or may require the possession taxpayer (in other cases) to file a request for competent authority assistance under this revenue procedure.

.07 Requests Relating to Residence Issues. U.S. competent authority assistance may be available to taxpayers seeking to clarify their residency status in the United States. Generally, competent authority assistance is limited to situations where resolution of a residency issue is necessary in order to avoid double taxation. A request for assistance regarding a residency issue will be accepted only if it is established that the issue requires consultation with the possession tax agency in order to ensure consistent treatment by the United States and the applicable possession. The U.S. competent authority does not issue unilateral determinations with respect to whether an individual is a resident of the United States or of a possession.

SECTION 4. PROCEDURES FOR REQUESTING COMPETENT AUTHORITY ASSISTANCE

.01 Time for Filing. A request for competent authority assistance generally should be filed as soon as it appears that the taxpayer or a related person is or would be subject to inconsistent tax treatment by the IRS and a possession tax agency. In a case involving a U.S. initiated adjustment of tax or income resulting from a tax examination, a request for competent authority assistance may be submitted as soon as practicable after the amount of the proposed adjustment is communicated in writing to the taxpayer. Where a U.S. initiated adjustment has not yet been communicated in writing (e.g., a notice of proposed adjustment) to the taxpayer, the U.S. competent authority generally

will deny the request as premature. In the case of a possession examination, a request may be submitted as soon as the taxpayer believes such filing is warranted based on the actions of the possession proposing the adjustment. In a case involving the re-allocation of income or deductions between related entities, the request should not be filed until such time that the taxpayer can establish that there is the probability of double taxation. In cases not involving an examination, a request can be made when the taxpayer believes that an action or potential action warrants the assistance of the U.S. competent authority. Examples of such action include a ruling or promulgation by a possession tax agency concerning a taxation matter, or the withholding of a tax by a withholding agent. Except as otherwise provided in a coordination agreement, taxpayers have discretion over the time for filing a request; however, delays in filing may preclude effective relief. See section 9 of this revenue procedure, which explains protective measures to be taken by the taxpayer and any concerned related person with respect to U.S. and possession tax agencies. See *also* section 7.06 of this revenue procedure for rules relating to accelerated issue resolution and competent authority assistance.

.02 Place for Filing. The taxpayer must send all written requests for, or any inquiries regarding, competent authority assistance to the Director, International (LMSB), Attn: Office of Tax Treaty, Internal Revenue Service, 1111 Constitution Avenue, NW, Routing: MA3-322A, Washington, DC 20224.

.03 Additional Filing. In the case of U.S. initiated adjustments, the taxpayer also must file a copy of the request with the office of the IRS where the taxpayer's case is

pending. If the request is filed after the matter has been designated for litigation or while a suit contesting the relevant tax liability of the taxpayer is pending in a U.S. court, a copy of the request also must be filed with the Associate Chief Counsel (International), Internal Revenue Service, 1111 Constitution Avenue, NW, Rm. 4554 Washington, DC 20224, with a separate statement attached identifying the court where the suit is pending and the docket number of the action.

.04 Form of Request. A request for competent authority assistance must be in the form of a letter addressed to the Director, International. It must be dated and signed by a person having the authority to sign the taxpayer's federal tax returns. The request must contain a statement that assistance is requested under the mutual agreement procedure with the possession and must include the information described in section 4.05 of this revenue procedure. See section 5 of this revenue procedure for requests involving small cases.

.05 Information Required. The following information shall be included in the request for competent authority assistance:

(1) a reference to the specific coordination agreement and the provisions therein pursuant to which the request is made;

(2) the name, address, U.S. taxpayer identification number, and possession tax identification number (if any) of the taxpayer and, if applicable, all related persons involved in the matter;

(3) if applicable, a description of the control and business relationships among the taxpayer and all relevant related persons for the years in issue, including any changes

in such relationships to the date of filing the request;

(4) a brief description of the issues for which competent authority assistance is requested, including a brief description of the relevant transactions, activities or other circumstances involved in the issues raised and the basis for the adjustment, if any;

(5) the years and amounts involved with respect to the issue;

(6) the IRS office which has made or is proposing to make the adjustment or, if known, the IRS office with examination jurisdiction over the taxpayer;

(7) an explanation of the nature of the relief sought or the action requested in the United States or in the possession with respect to the issues raised, including a statement as to whether the taxpayer wishes to avail itself of the relief provided under Rev. Proc. 99-32, 1999-2 C.B. 296, as indicated in section 10 of this revenue procedure;

(8) a statement whether the period of limitations for the years for which relief is sought has expired in the United States or in the possession;

(9) a statement of relevant U.S. and possession judicial or administrative proceedings which involve the taxpayer and all relevant related persons;

(10) to the extent known by the taxpayer, a statement of relevant possession judicial or public administrative proceedings which do not involve the taxpayer or related persons, but involve the same issue for which competent authority assistance is requested;

(11) a statement whether the request for competent authority assistance involves issues that are currently, or were previously, considered part of an Advance Pricing

Agreement (APA) proceeding or other proceeding relevant to the issue under consideration in the United States or part of a similar proceeding in the possession;

(12) a statement whether the taxpayer or related person is entitled to any possession tax incentive or subsidy program benefits for the year or years in question;

(13) if bona fide residence in a possession is at issue, a statement of all facts and circumstances supporting such residence (see Treas. Reg. § 1.937-1);

(14) a copy of any relevant correspondence received from the possession tax agency and copies of any briefs, protests, and other relevant material submitted to the possession tax agency;

(15) a copy of the possession tax returns for the year or years in question;

(16) a statement whether the federal tax return of the taxpayer and, when applicable, the tax return of a relevant related person, for the year or years in question were examined, or are being examined;

(17) a statement whether a credit for a possession tax paid was claimed on the taxpayer's federal tax return for the tax year or years in question and, if a credit was claimed, whether the credit was claimed for all or part of the possession tax paid or accrued with respect to the particular item that is the subject of the request for assistance;

(18) if applicable, powers of attorney with respect to the taxpayer;

(19) if the jurisdiction of an issue is with an Appeals office, a summary of prior discussions of the issue with that office and contact information regarding the Appeals officer handling the issue; also, if appropriate, a statement whether the taxpayer is

requesting the Simultaneous Appeals procedure as provided in section 8 of this revenue procedure;

(20) in a separate section, include the statement and information required by section 9.02 of this revenue procedure if the request is to serve as a protective claim;

(21) on a separate document, a statement that the taxpayer consents to the disclosure to the possession tax agency (with the name of the possession specifically stated) and that possession tax agency's staff, of any or all of the items of information set forth or enclosed in the request for U.S. competent authority assistance within the limits contained in the coordination agreement under which the taxpayer is seeking relief. The taxpayer may request, as part of this statement, that its trade secrets not be disclosed to a possession tax agency. This statement must be dated and signed by a person having authority to sign the taxpayer's federal tax returns and is required to facilitate the administrative handling of the request by the U.S. competent authority for purposes of the record-keeping requirements of section 6103(p) of the Code. Failure to provide such a statement will not prevent the U.S. competent authority from disclosing information under the terms of a coordination agreement. See section 6103(k)(4) of the Code. Taxpayers are encouraged to provide duplicates to the U.S. and possession competent authorities of all information otherwise disclosable under the coordination agreement;

(22) a penalties of perjury statement in the following form:

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 request for competent authority assistance are true, correct and complete.

The declaration must be signed by the person or persons 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 who has personal knowledge of the facts. The person signing for a trust, an estate or a partnership must be respectively, a trustee, an executor or a partner who has personal knowledge of the facts; and

(23) any other information required or requested under this revenue procedure, as applicable. See, e.g., section 7.06 of this revenue procedure, which requires the provision of certain information in the case of a request for the accelerated competent authority procedure, and section 10 of this revenue procedure, which requires the provision of certain information in the case of a request for Rev. Proc. 99-32 treatment. Requests for supplemental information may include items such as detailed financial information, comparability analysis, or other material relevant to a transfer pricing analysis.

.06 Other Dispute Resolution Programs. Requests for competent authority assistance that involve an APA or Pre-Filing Agreement request must include any other information required under the relevant revenue procedure.

.07 Other Documentation. In addition, the taxpayer shall, on request, submit any other information or documentation deemed necessary by the U.S. or possession competent authority for purposes of reaching an agreement. This includes English

translations of any documentation required in connection with the competent authority request.

.08 *Updates.* The taxpayer must keep the U.S. competent authority informed of all material changes in the information or documentation previously submitted as part of, or in connection with, the request for competent authority assistance. The taxpayer also must provide any updated information or new documentation that becomes known or is created after the request is filed and that is relevant to the resolution of the issues under consideration.

.09 *Conferences.* To the extent possible, the U.S. competent authority will consult with the taxpayer regarding the status and progress of the mutual agreement proceedings. The taxpayer may request a pre-filing conference with the U.S. competent authority to discuss the mutual agreement process with respect to matters covered under a coordination agreement, including discussion of the proper time for filing, the practical aspects of obtaining relief and actions necessary to facilitate the proceedings. Similarly, after a matter is resolved by the competent authorities, a taxpayer may also request a conference with the U.S. competent authority to discuss the resolution.

.10 *Copy to the Possessions.* The taxpayer shall provide a copy of any request for competent authority assistance under this revenue procedure to the possession tax agency.

SECTION 5. SMALL CASE PROCEDURE FOR REQUESTING COMPETENT AUTHORITY ASSISTANCE

.01 *General.* To facilitate requests for assistance involving small cases, this section

provides a special procedure simplifying the form of a request for assistance and, in particular, the amount of information that initially must be submitted. All other requirements of this revenue procedure continue to apply to requests for assistance made pursuant to this section.

.02 Small Case Standards. Eligible taxpayers may file an abbreviated request for competent authority assistance in accordance with this section if the total proposed adjustment involved in the matter is not greater than the following:

Taxpayer	Proposed Adjustment
Individual	\$200,000
Corporation/Partnership.....	\$1,000,000
Other	\$200,000

.03 Small Case Filing Procedure. The abbreviated request for competent authority assistance under the small case procedure must be dated and signed by a person having the authority to sign the taxpayer’s federal tax returns. Although other information and documentation may be requested at a later date, the initial request for assistance should include the following information and materials:

- (1) a statement indicating that this is a matter subject to the small case procedure;
- (2) the name, address, U.S. taxpayer identification number, and possession taxpayer identification number (if any) of the taxpayer and, if applicable, all related persons involved in the matter;
- (3) a description of the issue and the nature of the relief sought;
- (4) the taxable years and amounts involved with respect to the issues;

(5) the name of the possession;

(6) a statement whether the taxpayer or related person is entitled to any possession tax incentive or subsidy program benefits for the year or years in question;

(7) if bona fide residence in a possession is at issue, a statement of all facts and circumstances supporting such residence (see Treas. Reg. § 1.937-1);

(8) if applicable, powers of attorney with respect to the taxpayer;

(9) on a separate document, a statement that the taxpayer consents to the disclosure to the possession tax agency (with the name of the possession specifically stated) and that possession tax agency's staff, of any or all of the items of information set forth or enclosed in the request for U.S. competent authority assistance within the limits contained in the coordination agreement under which the taxpayer is seeking relief. The taxpayer may request, as part of this statement, that its trade secrets not be disclosed to a possession tax agency. This statement must be dated and signed by a person having authority to sign the taxpayer's federal tax returns and is required to facilitate the administrative handling of the request by the U.S. competent authority for purposes of the record-keeping requirements of section 6103(p) of the Code. Failure to provide such a statement will not prevent the U.S. competent authority from disclosing information under the terms of a coordination agreement. See section 6103(k)(4) of the Code; and

(10) a penalties of perjury statement in the following form:

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 request for competent authority assistance are true, correct and complete.

The declaration must be signed by the person or persons 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 who has personal knowledge of the facts. The person signing for a trust, an estate or a partnership must be respectively, a trustee, an executor or a partner who has personal knowledge of the facts.

SECTION 6. RELIEF REQUESTED FOR POSSESSIONS INITIATED ADJUSTMENT WITHOUT COMPETENT AUTHORITY INVOLVEMENT

Taxpayers seeking correlative relief with respect to a possession initiated adjustment should present their request to the U.S. competent authority. However, when the adjustment involves years under the jurisdiction of the Industry or Area Director or IRS Appeals, taxpayers sometimes try to obtain relief from these offices. This may occur, for example, if the adjustment involves a re-allocation of income or deductions involving a related person. In these cases, taxpayers will be advised to contact the U.S. competent authority office. In appropriate cases, the U.S. competent authority will advise the Industry or Area Director or IRS Appeals office on appropriate action. The U.S. competent authority may request the taxpayer to provide the information described under sections 4.05 and 4.07 of this revenue procedure. Failure to request competent authority assistance may result in denial of correlative relief with respect to the issue, including applicable tax credits.

SECTION 7. COORDINATION WITH OTHER ADMINISTRATIVE OR JUDICIAL PROCEEDINGS

.01 Suspension of Administrative Action with Respect to U.S. Adjustments. When a request for competent authority assistance is accepted with respect to a U.S. initiated adjustment, the IRS will postpone further administrative action with respect to the issues under competent authority consideration (such as assessment or collection procedures), except (a) in situations in which the IRS may be requested otherwise by the U.S. competent authority, or (b) in situations involving cases pending in court and in other instances in which action must be taken to avoid prejudicing the U.S. Government's interest. The normal administrative procedures continue to apply, however, to all other issues not under U.S. competent authority consideration. For example, if there are other issues raised during the examination and the taxpayer is not in agreement with these issues, the usual procedures for completing the examination with respect to these issues apply. If the taxpayer is issued a 30-day letter with respect to these issues and prepares a protest of the unagreed issues, the taxpayer need not include any unagreed issue under consideration by the competent authority. Following the receipt of a taxpayer's protest, normal IRS Appeals procedures shall be initiated with respect to those issues not subject to competent authority consideration.

.02 Coordination with IRS Appeals. Taxpayers that disagree with a proposed U.S. adjustment either may pursue their right of administrative review with IRS Appeals before requesting competent authority assistance or may request competent authority assistance immediately. However, the U.S. competent authority will not unilaterally

withdraw an adjustment that should more properly be within the jurisdiction of Appeals. IRS Appeals' consideration, if any, of potential competent authority matters will be made without regard to other issues or considerations that do not involve potential competent authority matters. Taxpayers who are pursuing their rights with IRS Appeals may contact the competent authority if they believe they have a potential competent authority issue. If a taxpayer decides to make a competent authority request, the taxpayer may choose to make a request pursuant to the Simultaneous Appeals procedures in section 8 of this revenue procedure or otherwise. Prior actions taken with respect to an issue after settlement discussions with Appeals have commenced on that issue, but before a competent authority request is made, will be carefully scrutinized, as such discussions may jeopardize the competent authority's ability to do more than seek correlative relief (*cf.* section 7.05). If a taxpayer makes a competent authority request, the taxpayer is deemed to consent to the U.S. competent authority contacting IRS Appeals. See Rev. Proc. 2000-43, 2000-2 C.B. 404.

.03 Coordination with Litigation. The U.S. competent authority will not, without the consent of the Associate Chief Counsel (International), accept (or continue to consider) a taxpayer's request for assistance if the request involves a taxable period pending in a U.S. court or involves a matter pending in a U.S. court or designated for litigation for any taxable period. If the case is pending in the United States Tax Court, the taxpayer may, in appropriate cases, be asked to join the IRS in a motion to sever issues or delay trial pending completion of the competent authority proceedings. If the case is pending in any other court, the Associate Chief Counsel (International) will consult with the

Department of Justice about appropriate action, and the taxpayer may, in appropriate cases, be asked to join the U.S. Government in a motion to sever issues or delay trial pending completion of the competent authority proceedings. Final decision on severing issues or delaying trial rests with the court. The filing of a competent authority request does not, however, relieve the taxpayer from taking any action that may be necessary or required with respect to litigation.

.04 Coordination with Other Alternative Dispute Resolution and Pre-Filing

Procedures. Competent authority assistance is available to taxpayers in conjunction with other alternative dispute resolution and pre-filing procedures in order to ensure taxation in accordance with the coordination agreement. Other revenue procedures and IRS publications should be consulted as necessary with regard to specific matters. See, e.g., Rev. Proc. 2006-9, 2006-2 I.R.B. 278 (concerning APAs); Rev. Proc. 2005-12, 2005-2 I.R.B. 311 (concerning Pre-Filing Agreements). Taxpayers that have applications under any other dispute resolution procedures should seek competent authority assistance as early as possible if they believe they have potential competent authority issues.

.05 Effects of Agreements or Judicial Determinations on Competent Authority

Proceedings. If a taxpayer either executes a closing agreement with the IRS (whether or not contingent upon competent authority relief) with respect to a potential competent authority issue or reaches a settlement on the issue with IRS Appeals or with Chief Counsel pursuant to a closing agreement or other written agreement, the U.S. competent authority will endeavor only to obtain a correlative adjustment from the

possession tax agency and will not undertake any actions that will otherwise change such agreements. However, the U.S. competent authority will, in appropriate cases, consider actions necessary for the purpose of providing treatment similar to that provided in Rev. Proc. 99-32. Once a taxpayer's tax liability for the taxable periods in issue has been determined by a U.S. court (including settlement of the proceedings before or during trial), the U.S. competent authority similarly will endeavor only to obtain correlative relief from the possession tax agency and will not undertake any action that would otherwise reduce the taxpayer's federal tax liability for the taxable periods in issue as determined by a U.S. court. Taxpayers therefore should be aware that in these situations, as well as in situations where a possession tax agency takes a similar position with respect to issues resolved under the possession's domestic laws, relief from double taxation may be jeopardized.

.06 Accelerated Competent Authority Procedure. A taxpayer requesting competent authority assistance with respect to an issue raised by the IRS also may request that the competent authorities attempt to resolve the issue for subsequent taxable periods for which returns have been filed if the same issue continues in those periods. See *also* Rev. Proc. 94-67, 1994-2 C.B. 800, concerning the Accelerated Issue Resolution (AIR) process. The U.S. competent authority will consider the request and will contact the appropriate IRS field office to consult on whether the issue should be resolved for subsequent taxable periods. If the IRS field office consents to this procedure, the U.S. competent authority will address with the possession competent authority the request for such taxable periods. For purposes of resolving the issue, the taxpayer must furnish

all relevant information and statements that may be requested by the U.S. competent authority pursuant to this revenue procedure. In addition, if the case involves a Coordinated Industry Case (CIC) taxpayer, the taxpayer must furnish all relevant information and statements requested by the IRS, as described in Rev. Proc. 94-67, 1994-2 C.B. 800. If the case involves a non-CIC taxpayer, the taxpayer must furnish all relevant information and statements that may be requested by the IRS field office. A request for the accelerated competent authority procedure may be made at the time of filing a request for competent authority assistance or at any time thereafter, but generally before conclusion of the mutual agreement in the case; however, taxpayers are encouraged to request the procedure as early as practicable. The application of the accelerated procedure may require the prior consent of the Associate Chief Counsel (International). See section 7.03 of this revenue procedure. A request for the accelerated competent authority procedure must contain a statement that the taxpayer agrees that: (1) the inspection of books of account or records under the accelerated competent authority procedure will not preclude or impede (under section 7605(b) 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 accelerated competent authority assistance request, and (2) the IRS need not comply with any applicable procedural restrictions (for example, providing notice under section 7605(b)) before beginning such examination or inspection. The accelerated competent authority procedure is not subject to the AIR process limitations.

SECTION 8. SIMULTANEOUS APPEALS PROCEDURE

.01 *General.* A taxpayer filing a request for competent authority assistance under this revenue procedure may, at the same time or at a later date, request IRS Appeals' consideration of the competent authority issue under the procedures and conditions provided in this section. The U.S. competent authority also may request IRS Appeals' involvement if it is determined that such involvement would facilitate the negotiation of a mutual agreement in the case or otherwise would serve the interest of the IRS. The taxpayer may, at any time, request a pre-filing conference with the offices of the Chief of IRS Appeals and the U.S. competent authority to discuss the Simultaneous Appeals procedure. See section 7.02 of this revenue procedure for coordination with the competent authority of cases already in IRS Appeals. However, arbitration or mediation procedures that otherwise would be available through the IRS Appeals process are not available for cases in the simultaneous appeals procedure. See Announcement 2000-4, 2000-1 C.B. 317, as extended by Announcement 2002-60, 2002-2 C.B. 28, or any subsequent announcement; and Rev. Proc. 2002-44, 2002-2 C.B. 10.

.02 Time for Requesting the Simultaneous Appeals Procedure.

(1) *When Filing For Competent Authority Assistance.* The Simultaneous Appeals procedure may be invoked at any of the following times:

(a) When the taxpayer applies for competent authority assistance with respect to an issue for which the examining IRS office has proposed an adjustment and before the protest is filed;

(b) When the taxpayer files a protest and decides to sever the competent authority issue and seek competent authority assistance while other issues are referred to IRS

Appeals; and

(c) When the case is in IRS Appeals and the taxpayer later decides to request competent authority assistance with respect to the competent authority issue. The taxpayer may sever the competent authority issue for referral to the U.S. competent authority and invoke the Simultaneous Appeals procedure at any time when the case is in IRS Appeals but before settlement of the issue. Taxpayers, however, are encouraged to invoke the Simultaneous Appeals procedure as soon as possible, preferably as soon as practicable after the first IRS Appeals conference.

(2) *After Filing For Competent Authority Assistance.* The taxpayer may request the Simultaneous Appeals procedure at any time after requesting competent authority assistance. However, a taxpayer's request for the Simultaneous Appeals procedure generally will be denied if made after the date the U.S. position paper is communicated to the possession competent authority, unless the U.S. competent authority determines that the procedure would facilitate an early resolution of the competent authority issue or otherwise is in the best interest of the IRS.

.03 *Cases Pending in Court.* If the matter is pending before a U.S. court or has been designated for litigation and jurisdiction has been released to the U.S. competent authority, a request for the Simultaneous Appeals procedure may be granted only with the consent of the U.S. competent authority and the Associate Chief Counsel (International).

.04 *Request for Simultaneous Appeals Procedure.* The taxpayer's request for the Simultaneous Appeals procedure should be addressed to the U.S. competent authority

either as part of the initial competent authority assistance request or, if made later, as a separate letter to the U.S. competent authority. The request should state whether the issue was previously protested to IRS Appeals for the periods in competent authority or for prior periods (in which case a copy of the relevant portions of the protest and an explanation of the outcome, if any, should be provided). The U.S. competent authority will send a copy of the request to the Chief of IRS Appeals, who, in turn, will forward a copy to the appropriate Area Director. When the U.S. competent authority invokes the Simultaneous Appeals procedure, the taxpayer will be notified. The U.S. competent authority has jurisdiction of the issue when the Simultaneous Appeals procedure is invoked.

.05 Role of IRS Appeals in the Simultaneous Appeals Procedure.

(1) *IRS Appeals Process.* The IRS Appeals representative assigned to the case will consult with the taxpayer and the U.S. competent authority for the purpose of reaching a resolution of the unagreed issue under competent authority jurisdiction before the issue is presented to the possession competent authority. For this purpose, established IRS Appeals procedures generally apply. The IRS Appeals representative will consult with the U.S. competent authority during this process to ensure appropriate coordination of the IRS Appeals process with the competent authority procedure, so that the terms of a tentative resolution and the principles and facts upon which it is based are compatible with the position that the U.S. competent authority intends to present to the possession competent authority with respect to the issue. Any resolution reached with the IRS under this procedure is subject to the competent authority process and, therefore, is

tentative and not binding on the IRS or the taxpayer. The IRS will not request the taxpayer to conclude the IRS Appeals process with a written agreement. The conclusions of the tentative resolution, however, generally will be reflected in the U.S. position paper used for negotiating a mutual agreement with the possession competent authority. The procedures under this section do not give taxpayers the right to receive reconsideration of the issue by IRS Appeals where the taxpayer applied for competent authority assistance after having received substantial IRS Appeals consideration. Rather, the IRS may rely upon, but necessarily will not be bound by, such previous consideration by IRS Appeals when considering the case under the Simultaneous Appeals procedure.

(2) *Assistance to U.S. Competent Authority.* The U.S. competent authority is responsible for developing a U.S. position paper with respect to the issue and for conducting the mutual agreement procedure. Generally, requesting IRS Appeals' consideration of an issue under competent authority jurisdiction will not affect the manner in which taxpayers normally are involved in the competent authority process.

.06 Denial or Termination of Simultaneous Appeals Procedure.

(1) *Taxpayer's Termination.* The taxpayer may, at any time, withdraw its request for the Simultaneous Appeals procedure.

(2) *IRS's Denial or Termination.* The U.S. competent authority, the Chief of IRS Appeals or the appropriate Area Director may decide to deny or terminate the Simultaneous Appeals procedure if the procedure is determined to be prejudicial to the mutual agreement procedure or to the administrative appeals process. For example, a

taxpayer that received IRS Appeals consideration before requesting competent authority assistance, but was unable to reach a settlement in IRS Appeals, may be denied the Simultaneous Appeals procedure. A taxpayer may request a conference with the offices of the U.S. competent authority and the Chief of IRS Appeals to discuss the denial or termination of the procedure.

.07 Returning to IRS Appeals. If the competent authorities fail to agree or if the taxpayer does not accept the mutual agreement reached by the competent authorities, the taxpayer will be permitted to refer the issue to IRS Appeals for further consideration.

.08 IRS Appeals' Consideration of Non-Competent Authority Issues. The Simultaneous Appeals procedure does not affect the taxpayer's rights to IRS Appeals' consideration of other unresolved issues. The taxpayer may pursue settlement discussions with respect to the other issues without waiting for resolution of the issues under competent authority jurisdiction.

SECTION 9. PROTECTIVE MEASURES

.01 General. The taxpayer or related persons should take protective measures with the U.S. and possession tax agencies so that the implementation of any agreement reached by the competent authorities or alternative remedies outside of the competent authority process are not barred by administrative, legal or procedural barriers. Such barriers may arise either before or after a competent authority request is filed.

Protective measures include, but are not limited to: (a) filing protective claims for refund or credit; (b) staying the expiration of any period of limitations on the making of a refund or other tax adjustment; (c) avoiding the lapse or termination of the taxpayer's right to

appeal any tax determination; (d) complying with all applicable procedures for invoking competent authority consideration; and (e) contesting an adjustment or seeking an appropriate correlative adjustment with respect to the U.S. or possession tax. A taxpayer should take protective measures in a timely manner, that is, in a manner that allows sufficient time for appropriate procedures to be completed and effective before barriers arise. Generally, a taxpayer should consider, at the time an adjustment is first proposed, which protective measures may be necessary and when such measures should be taken. However, earlier consideration of appropriate actions may be desirable, for example, in the case of a recurring adjustment or where the taxpayer otherwise is on notice that an adjustment is likely to be proposed. Taxpayers may consult with the U.S. competent authority to determine the need for and timing of protective measures in their particular case.

.02 Filing Protective Claim for Credit or Refund with a Competent Authority Request.

(1) *In General.* A valid protective claim for credit or refund must meet the requirements of section 6402 of the Code and the regulations thereunder. Accordingly, a protective claim must (a) fully advise the IRS of the grounds on which credit or refund is claimed; (b) contain sufficient facts to apprise the IRS of the exact basis of the claim; (c) state the year for which the claim is being made; (d) be on the proper form; and (e) be verified by a written declaration made under penalties of perjury.

(2) *Treatment of Competent Authority Request as Protective Claim.* The IRS will treat a request for competent authority assistance itself as one or more protective claims for credit or refund with respect to issues raised in the request and within the

jurisdiction of the competent authority and will not require a taxpayer to file the form described in Treas. Reg. §301.6402-3 with respect to those issues, provided that the request meets the other requirements of section 6402 of the Code and the regulations thereunder, as described in section 9.02(1) of this revenue procedure. The information constituting the protective claim should be set forth in a separate section of the request for assistance and captioned "Protective claim pursuant to section 9.02 of Rev. Proc. 2006-23." The penalties of perjury statement described in sections 4.05(22) and 5.03(10) of this revenue procedure satisfies the requirement for the written declaration and a separate declaration is not required.

.03 Protective Filing Before Competent Authority Request.

(1) *In general.* There may be situations in which a taxpayer would be unable to file a formal competent authority assistance request before the period of limitations would expire with respect to the affected U.S. return. In these situations, before the period of limitations expires, the taxpayer should file a protective claim for credit or refund of the taxes attributable to the potential competent authority issue to ensure that alternative remedies outside of the competent authority process will not be barred. Situations for which a protective filing may be appropriate include: (i) the possession is considering but has not yet proposed an adjustment; or (ii) the possession has proposed an adjustment but the taxpayer or related person decides to pursue administrative or judicial remedies in the possession.

(2) *Letter to Competent Authority Treated as Protective Claim.* In situations in which a protective claim is filed prior to submitting a request for competent authority

assistance, the taxpayer may make a protective claim in the form of a letter to the competent authority. The letter must indicate that the taxpayer is filing a protective claim and set forth, to the extent available, the information required under paragraphs (1) through (10) of section 4.05 or under paragraphs (1) through (5) of section 5.03 of this revenue procedure. The letter must include a penalties of perjury statement as described in sections 4.05(22) and 5.03(10) of this revenue procedure. The letter must be filed in the same place and manner as a request for competent authority assistance. The IRS will treat the letter as a protective claim(s) with respect to issues raised in the letter to and within the jurisdiction of the competent authority and will not require a taxpayer to file the form described in Treas. Reg. §301.6402-3 with respect to those issues, provided that the request meets the other requirements described in section 9.02(1) of this revenue procedure. The letter must include the caption "Protective claim pursuant to section 9.03 of Rev. Proc. 2006-23."

(3) *Notification Requirement.* After filing a protective claim, the taxpayer periodically must notify the U.S. competent authority whether the taxpayer still is considering filing for competent authority assistance. The notification must be filed every twelve months until the formal request for competent authority assistance is filed. The U.S. competent authority may deny competent authority assistance if the taxpayer fails to file this annual notification.

(4) *No Consultation between Competent Authorities until Formal Request is Filed.* The U.S. competent authority generally will not undertake any consultation with the possession competent authority with respect to a protective claim filed under section

9.03 of this revenue procedure. The U.S. competent authority will place the protective claim in suspense until either a formal request for competent authority assistance is filed or the taxpayer notifies the U.S. competent authority that competent authority consideration is no longer needed. In appropriate cases, the U.S. competent authority will send the taxpayer a formal notice of claim disallowance.

.04 Effect of a Protective Claim.

(1) *Credits and refunds.* Protective claims filed under either section 9.02 or 9.03 of this revenue procedure will only allow a credit or a refund to the extent of the grounds set forth in the protective claim and only to the extent agreed to by the U.S. and possession competent authorities or to the extent unilaterally allowed by the U.S. competent authority. This revenue procedure does not grant a taxpayer the right to invoke section 482 of the Code in the taxpayer's favor or compel the IRS to allocate income or deductions or grant a tax credit or refund.

(2) *Protective Filing with the Possessions.* Protective claims filed under either section 9.02 or 9.03 of this revenue procedure will not constitute filing with the possession tax agencies. Consequently, the taxpayer should take the pertinent protective measures with the possession tax agencies, as necessary.

SECTION 10. APPLICATION OF REV. PROC. 99-32

Rev. Proc. 99-32 generally provides a means to conform a taxpayer's accounts and allow repatriation of certain amounts following an allocation of income between related U.S. and possession corporations under section 482 of the Code without the federal income tax consequences of the adjustments that would otherwise have been

necessary to conform the taxpayer's accounts in light of the allocation of income. In situations where a section 482 allocation is the subject of a request for competent authority assistance, any new or pending requests for Rev. Proc. 99-32 treatment relating to such allocation must be disposed of by the competent authority. Accordingly, if a taxpayer intends to seek Rev. Proc. 99-32 treatment in connection with competent authority assistance relating to a section 482 allocation, the taxpayer must request Rev. Proc. 99-32 treatment in conjunction with its request for competent authority assistance. If a taxpayer has already requested Rev. Proc. 99-32 treatment at the time it submits a request for competent authority assistance relating to a section 482 allocation, consideration of Rev. Proc. 99-32 treatment must be transferred to competent authority and a copy of the pending Rev. Proc. 99-32 request forwarded along with the request for competent authority assistance.

SECTION 11. DETERMINATION OF CREDITABLE TAXES

For purposes of determining the amount of tax creditable under sections 901, 902 and 932 of the Code, any amounts paid to possession tax authorities that would not have been due if the possession had made a correlative adjustment may not constitute a creditable tax. See Treas. Reg. §1.901-2(e)(5)(i) and Rev. Rul. 92-75, 1992-2 C.B. 197. Acts or omissions by the taxpayer that preclude effective competent authority assistance, including failure to take protective measures as described in section 9 of this revenue procedure or failure to seek competent authority assistance, may constitute failure to exhaust all effective and practical remedies as may be required to claim a credit. See, e.g., Treas. Reg. §1.901-2(e)(5)(i). Further, the fact that the taxpayer has

sought competent authority assistance but obtained no relief, either because the competent authorities failed to reach an agreement or because the taxpayer rejected an agreement reached by the competent authorities, generally will not, in and of itself, demonstrate that the taxpayer has exhausted all effective and practical remedies to reduce the taxpayer's liability for possession tax (including liability pursuant to a possession tax audit adjustment). Any determination within the IRS of whether a taxpayer has exhausted the competent authority remedy must be made in consultation with the U.S. competent authority.

SECTION 12. ACTION BY U.S. COMPETENT AUTHORITY

.01 Notification of Taxpayer. Upon receiving a request for assistance pursuant to this revenue procedure, the U.S. competent authority will notify the taxpayer whether the facts provide a basis for assistance.

.02 Denial of Assistance. The U.S. competent authority generally will not accept a request for competent authority assistance or will cease providing assistance to the taxpayer if:

(1) the taxpayer is not entitled to such assistance (for example, the facts do not indicate that inconsistent positions have been taken by the IRS and the possession tax agency, or the taxpayer lacks standing to challenge an issue (see, e.g., section 2.05 of this revenue procedure) on which competent authority assistance was requested;

(2) the taxpayer is willing only to accept a competent authority agreement under conditions that are unreasonable or prejudicial to the interests of the U.S. Government;

(3) the taxpayer rejected the competent authority resolution of the same or similar

issue in a prior case;

(4) the taxpayer does not agree that competent authority negotiations are a government-to-government activity that does not include the taxpayer's participation in the negotiation proceedings;

(5) the taxpayer does not furnish upon request sufficient information to determine whether the applicable coordination agreement applies to the taxpayer's facts and circumstances;

(6) the taxpayer was found to have acquiesced in a possession initiated adjustment that involved significant legal or factual issues that otherwise would be properly handled through the competent authority process and then unilaterally made a corresponding correlative adjustment or claimed an increased credit for a possession tax paid, without initially seeking U.S. competent authority assistance;

(7) the taxpayer: (i) fails to comply with this revenue procedure; (ii) failed to cooperate with the IRS during the examination of the periods in issue and such failure significantly impedes the ability of the U.S. competent authority to negotiate and conclude an agreement (e.g., significant factual development is required that cannot effectively be completed outside the examination process); or (iii) fails to cooperate with the U.S. competent authority (including failing to provide sufficient facts and documentation to support its claim of double taxation or taxation contrary to the coordination agreement) or otherwise significantly impedes the ability of the U.S. competent authority to negotiate and conclude an agreement; or

(8) the transaction giving rise to the request for competent authority assistance: (i) is

more properly within the jurisdiction of Appeals; (ii) includes an issue pending in a U.S. Court, or designated for litigation, unless competent authority consideration is concurred in by the U.S. competent authority and the Associate Chief Counsel (International); or (iii) involves fraudulent activity by the taxpayer.

.03 Extending Period of Limitations for Assessment. If the U.S. competent authority accepts a request for assistance, the taxpayer may be requested to execute a consent extending the period of limitations for assessment of tax for the taxable periods in issue. Failure to comply with the provisions of this subsection can result in denial of assistance by the U.S. competent authority with respect to the request.

.04 No Review of Denial of Request for Assistance. The U.S. competent authority's denial of a taxpayer's request for assistance or dismissal of a matter previously accepted for consideration pursuant to this revenue procedure is final and not subject to administrative review.

.05 Notification. The U.S. competent authority will notify a taxpayer requesting assistance under this revenue procedure of any agreement that the U.S. and the possession competent authorities reach with respect to the request. If the taxpayer accepts the resolution reached by the competent authorities, the agreement shall provide that it is final and is not subject to further administrative or judicial review. If the competent authorities fail to agree, or if the agreement reached is not acceptable to the taxpayer, the taxpayer may withdraw the request for competent authority assistance and may then pursue all rights to review otherwise available under the laws of the United States and the possession.

.06 Closing Agreement. When appropriate, the taxpayer will be requested to reflect the terms of the mutual agreement and of the competent authority assistance provided in a closing agreement, in accordance with sections 6.07 and 6.17 of Rev. Proc. 68-16, 1968-1 C.B. 770 (modified by Rev. Proc. 94-67, 1994-2 C.B. 800).

.07 Disposition of Funds. When competent authority assistance is requested with regard to determination of an issue, or issues, that results in the disposition of funds, then when appropriate, and as part of the competent authority agreement, the taxpayer may be asked to waive any procedural rights that he may have with regard to the funds at issue if it is determined that either the United States or the possession is ultimately entitled to such funds by statute. In that case, the taxpayer may be asked to assign his right to the funds directly to the proper jurisdiction.

.08 Unilateral Withdrawal or Reduction of U.S. Initiated Adjustments. With respect to U.S. initiated adjustments under section 482 of the Code, the primary goal of the mutual agreement procedure is to obtain a correlative adjustment from the possession involved. For other types of U.S. initiated adjustments, the primary goal of the U.S. competent authority is the avoidance of taxation in contravention of the relevant coordination agreement. Unilateral withdrawal or reduction of U.S. initiated adjustments, therefore, generally will not be considered. For example, the U.S. competent authority will not withdraw or reduce an adjustment to income, deductions, credits or other items solely because the period of limitations has expired in the possession and the possession competent authority has declined to grant any relief. If the period provided by the possession statute of limitations has expired, the U.S.

competent authority may take into account other relevant facts to determine whether such withdrawal or reduction is appropriate and may, in extraordinary circumstances and as a matter of discretion, provide such relief with respect to the adjustment to avoid actual or economic double taxation. In no event, however, will relief be granted where there is fraud or negligence with respect to the relevant transactions.

SECTION 13. REQUESTS FOR RULINGS

.01 *General*. Requests for advance rulings regarding the interpretation or application of a provision of the Code, as distinguished from requests for assistance from the U.S. competent authority pursuant to this revenue procedure, must be submitted to the Associate Chief Counsel (International). See Rev. Proc. 2006-1, 2006-1 I.R.B. 1, and Rev. Proc. 2006-7, 2006-1 I.R.B. 242.

.02 *Possession Tax Rulings*. The Service does not issue advance rulings on the effect of a coordination agreement on the tax laws of a possession for purposes of determining the tax of the possession.

SECTION 14. FEES

Rev. Proc. 2006-1, 2006-1 I.R.B. 1, sec. 15, requires the payment of user fees for requests to the Service for rulings, opinion letters, determination letters and similar requests. No user fees are required for requests for competent authority assistance pursuant to this revenue procedure.

SECTION 15. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 89-8, 1989-1 C.B. 778, is superseded.

SECTION 16. EFFECTIVE DATE

This revenue procedure is effective for requests for competent authority assistance filed after May 15, 2006.

SECTION 17. DRAFTING INFORMATION

The principal authors of this revenue procedure are Mae J. Lew and Javier G. Salinas of the Office of Associate Chief Counsel (International). For further information regarding this revenue procedure contact Mr. Salinas at (202) 435-5262 (not a toll-free call).