

INTERNAL REVENUE BULLETIN



HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

Bulletin No. 2015-35
August 31, 2015

INCOME TAX

REG-132075-14, page 288.

The proposed regulations would remove the automatic extension of time to file certain information returns (Form W-2G, 1042-S, 1094-C, 1095-B, 1095-C, 1097 series, 1098 series, 1099 series, 3921, 3922, 5498 series, and 8027) and remove the opportunity to seek a second 30 day extension of time to file.

Announcement 2015-22, page 288.

Announcement 2015-22 informs that the IRS will not assert that an individual whose personal information may have been compromised in a data breach must include in gross income the value of the identity protection services provided by the organization that experienced the data breach. Additionally, the IRS will not assert that an employer providing identity protection services to employees whose personal information may have been compromised in a data breach of the employer's (or employer's agent or service provider's) recordkeeping system must include the value of the identity protection services in the employees' gross income and wages.

Notice 2015-56, page 235.

Notice 2015-56 informs claimants about the federal income tax treatment of credits under § 6426(c) and (d) that are paid in cash under the one-time claim submission process of section 160(e) of the Tax Increase Prevention Act of 2014 and implemented by Notice 2015-3. Specifically, a claimant must reduce its income tax deduction for (or cost of goods sold deduction attributable to) § 4081 excise taxes (or, if applicable, § 4041 excise taxes) for each calendar quarter during 2014 by the amount of the § 6426(c) credit (or, if applicable, § 6426(d) credit) for fuel mixtures sold or used during that calendar quarter.

T.D. 9729, page 221.

This treasury decision (T.D.) provides rules for determining a taxable beneficiary's basis in a term interest in a charitable

remainder trust upon a sale or other disposition of all interests in the trust to the extent that basis consists of a share of adjusted uniform basis. The T.D. provides that a taxable beneficiary's assignable share of uniform basis upon the sale or exchange of the taxable beneficiary's term interest does not include the charitable remainder trust's undistributed net capital gains or net ordinary income.

T.D. 9730, page 223.

These temporary regulations remove the automatic extension of time to file information returns on forms in the W-2 series (except Form W-2G) and remove the opportunity to seek a second 30-day extension of time to file.

EXCISE TAX

Notice 2015-52, page 227.

Section 4980I was added to the Code by the Affordable Care Act and applies to taxable years beginning after December 31, 2017. Notice 2015-52 is the second notice concerning § 4980I and it is intended to supplement Notice 2015-16 concerning § 4980I, issued on February 23, 2015. Notice 2015-52 addresses additional issues under § 4980I, including the identification of the taxpayer who may be liable for the excise tax, employer aggregation, exclusion from the cost of applicable coverage amounts attributable to the excise tax, the age and gender adjustment to the dollar limit, the allocation of the tax among the applicable taxpayers, and the payment of the applicable tax. In this notice, Treasury and the IRS invite comments on the issues addressed in this notice and on any other issues under § 4980I. After considering the comments on both notices, Treasury and IRS intend to issue proposed regulations under § 4980I.

(Continued on the next page)

ADMINISTRATIVE

Rev. Proc. 2015–40, page 236.

This document updates the procedures for requesting assistance from the U.S. competent authority under the provisions of an income, estate, or gift tax treaty to which the United States is a party. Rev. Proc. 2006–54, 2006–2 C.B. 1035, is modified and superseded. Rev. Proc. 2003–40, 2003–1 C.B. 1044, is modified. Rev. Rul. 92–75, 1999–2 C.B. 197, is clarified. Rev. Proc. 2015–41, 2015–35 I.R.B., is amplified.

Rev. Proc. 2015–41, page 263.

The revenue procedure provides guidance on the process of requesting and obtaining an advance pricing agreement (“APA”) and information on the administration of APAs. The revenue procedure updates and supersedes Rev. Proc. 2006–9, as modified by Rev. Proc. 2008–31, which is also superseded.

The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned

against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.

This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

The contents of this publication are not copyrighted and may be reprinted freely. A citation of the Internal Revenue Bulletin as the source would be appropriate.

Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

26 CFR 1.1014-5 Gain or loss.

26 CFR 1.1001-1 Computation of gain or loss.

T.D. 9729

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

Basis in Interests in Tax-Exempt Trusts

AGENCY: Internal Revenue Service (IRS),
Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide rules for determining a taxable beneficiary's basis in a term interest in a charitable remainder trust (CRT) upon a sale or other disposition of all interests in the trust to the extent that basis consists of a share of adjusted uniform basis. The final regulations affect taxable beneficiaries of CRTs.

DATES: *Effective date:* These final regulations are effective on August 12, 2015.

Applicability date: These final regulations apply to sales and other dispositions of interests in CRTs occurring on or after January 16, 2014, except for sales or dispositions occurring pursuant to a binding commitment entered into before January 16, 2014.

FOR FURTHER INFORMATION

CONTACT: Allison R. Carmody at (202) 317-5279 (not a toll-free number).

Background

This document contains amendments to 26 CFR part 1. On October 31, 2008, the Treasury Department and the IRS published Notice 2008-99 (2008-47 IRB 1194) to designate a transaction and substantially similar transactions as Transactions of Interest under § 1.6011-4(b)(6) of the Income Tax Regulations and to ask for public comments on how the transactions might be addressed in published guidance. After studying the transaction and comments received from the public in

response to Notice 2008-99, the Treasury Department and the IRS filed a notice of proposed rulemaking (REG-154890-03) relating to basis in interests in tax-exempt trusts in the Federal Register on January 16, 2014. No comments were received from the public in response to the notice of proposed rulemaking. No public hearing was requested or held. The proposed regulations are adopted without change by this Treasury decision.

Explanation of Provisions

These final regulations provide a special rule for determining the basis in certain CRT term interests in transactions to which section 1001(e)(3) applies. Such transactions are those in which the sale or other disposition of the CRT term interest is part of a transaction in which all interests in the CRT are transferred. In these cases, these final regulations provide that the basis of a term interest of a taxable beneficiary is the portion of the adjusted uniform basis assignable to that interest reduced by the portion of the sum of the following amounts assignable to that interest: (1) the amount of undistributed net ordinary income described in section 664(b)(1); and (2) the amount of undistributed net capital gain described in section 664(b)(2). These final regulations do not affect the CRT's basis in its assets but rather are for the purpose of determining a taxable beneficiary's gain arising from a transaction described in section 1001(e)(3). The rules in these final regulations are limited in application to charitable remainder annuity trusts and charitable remainder unitrusts as defined in section 664.

Effect on Other Documents

Notice 2008-99 provides that, when the Treasury Department and the IRS have gathered enough information to make an informed decision as to whether this transaction is a tax avoidance type of transaction, the Treasury Department and the IRS may take one or more actions, including removing the transaction from the transactions of interest category in published guidance, designating the trans-

action as a listed transaction, or providing a new category of reportable transaction. Because the Treasury Department and the IRS believe that these final regulations address the proper tax treatment of the transaction described in Notice 2008-99, transactions that are the same as, or substantially similar to, transactions described in Notice 2008-99 are no longer considered "transactions of interest," effective for transactions entered into on or after January 16, 2014. However, the "transaction of interest" identification for transactions that are the same as, or substantially similar to, the transaction described in Notice 2008-99 continues to apply for transactions entered into before January 16, 2014, and to transactions entered into on or after January 16, 2014, pursuant to a binding commitment entered into before January 16, 2014. For example, disclosure and other obligations under sections 6011, 6111, and 6112 continue to apply for these transactions entered into before January 16, 2014, and to transactions entered into on or after January 16, 2014, pursuant to a binding commitment entered into before January 16, 2014.

Effective/Applicability Date

These final regulations apply to sales and other dispositions of interests in CRTs occurring on or after January 16, 2014, except for sales or dispositions occurring pursuant to a binding commitment entered into before January 16, 2014. However, the fact that a sale or disposition occurred, or a binding commitment to complete a sale or disposition was entered into, before January 16, 2014, does not preclude the IRS from applying legal arguments available to the IRS before issuance of these final regulations in order to contest the claimed tax treatment of such a transaction.

Availability of IRS Documents

The IRS notice cited in this preamble is published in the Internal Revenue Bulletin and is available at the IRS website at <http://www.irs.gov> or the Superintendent

of Documents, U.S. Government Printing Office, Washington, D.C., 20402.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these final regulations, and the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply to these final regulations because the final regulations do not impose a collection of information on small entities. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these final regulations is Allison R. Carmody of the Office of Associate Chief Counsel (Pass-throughs and Special Industries). Other personnel from the Treasury Department and the IRS participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.1001-1, paragraph (f)(4), is amended by removing the language “paragraph (c)” and adding “paragraph (d)” in its place.

Par. 3. Section 1.1014-5 is amended by:

1. In paragraph (a)(1), first sentence, removing the language “paragraph (b)” and adding “paragraph (b) or (c)” in its place.

2. Designating paragraph (c) as newly-designated paragraph (d) and adding paragraph (c).

3. In newly-designated paragraph (d), adding *Example 7* and *Example 8*.

The additions read as follows:

§ 1.1014-5 Gain or loss.

* * * * *

(c) *Sale or other disposition of a term interest in a tax-exempt trust*—(1) *In general.* In the case of any sale or other disposition by a taxable beneficiary of a term interest (as defined in § 1.1001-1(f)(2)) in a tax-exempt trust (as defined in paragraph (c)(2) of this section) to which section 1001(e)(3) applies, the taxable beneficiary’s share of adjusted uniform basis, determined as of (and immediately before) the sale or disposition of that interest, is—

(i) That part of the adjusted uniform basis assignable to the term interest of the taxable beneficiary under the rules of paragraph (a) of this section reduced, but not below zero, by

(ii) An amount determined by applying the same actuarial share applied in paragraph (c)(1)(i) of this section to the sum of—

(A) The trust’s undistributed net ordinary income within the meaning of section 664(b)(1) and § 1.664-1(d)(1)(ii)(a)(I) for the current and prior taxable years of the trust, if any; and

(B) The trust’s undistributed net capital gains within the meaning of section 664(b)(2) and § 1.664-1(d)(1)(ii)(a)(2) for the current and prior taxable years of the trust, if any.

(2) *Tax-exempt trust defined.* For purposes of this section, the term *tax-exempt trust* means a charitable remainder annuity trust or a charitable remainder unitrust as defined in section 664.

(3) *Taxable beneficiary defined.* For purposes of this section, the term *taxable beneficiary* means any person other than an organization described in section 170(c) or exempt from taxation under section 501(a).

(4) *Effective/applicability date.* This paragraph (c) and paragraph (d) *Example 7* and *Example 8* of this section apply to sales and other dispositions of interests in tax-exempt trusts occurring on or after

January 16, 2014, except for sales or dispositions occurring pursuant to a binding commitment entered into before January 16, 2014.

(d) * * *

Example 7. (a) Grantor creates a charitable remainder unitrust (CRUT) on Date 1 in which Grantor retains a unitrust interest and irrevocably transfers the remainder interest to Charity. Grantor is an individual taxpayer subject to income tax. CRUT meets the requirements of section 664 and is exempt from income tax.

(b) Grantor’s basis in the shares of X stock used to fund CRUT is \$100x. On Date 2, CRUT sells the X stock for \$100x. The \$90x of gain is exempt from income tax under section 664(c)(1). On Date 3, CRUT uses the \$100x proceeds from its sale of the X stock to purchase Y stock. On Date 4, CRUT sells the Y stock for \$110x. The \$10x of gain on the sale of the Y stock is exempt from income tax under section 664(c)(1). On Date 5, CRUT uses the \$110x proceeds from its sale of Y stock to buy Z stock. On Date 5, CRUT’s basis in its assets is \$110x and CRUT’s total undistributed net capital gains are \$100x.

(c) Later, when the fair market value of CRUT’s assets is \$150x and CRUT has no undistributed net ordinary income, Grantor and Charity sell all of their interests in CRUT to a third person. Grantor receives \$100x for the retained unitrust interest, and Charity receives \$50x for its interest. Because the entire interest in CRUT is transferred to the third person, section 1001(e)(3) prevents section 1001(e)(1) from applying to the transaction. Therefore, Grantor’s gain on the sale of the retained unitrust interest in CRUT is determined under section 1001(a), which provides that Grantor’s gain on the sale of that interest is the excess of the amount realized, \$100x, over Grantor’s adjusted basis in the interest.

(d) Grantor’s adjusted basis in the unitrust interest in CRUT is that portion of CRUT’s adjusted uniform basis that is assignable to Grantor’s interest under § 1.1014-5, which is Grantor’s actuarial share of the adjusted uniform basis. In this case, CRUT’s adjusted uniform basis in its sole asset, the Z stock, is \$110x. However, paragraph (c) of this section applies to the transaction. Therefore, Grantor’s actuarial share of CRUT’s adjusted uniform basis (determined by applying the factors set forth in the tables contained in § 20.2031-7 of this chapter) is reduced by an amount determined by applying the same factors to the sum of CRUT’s \$0 of undistributed net ordinary income and its \$100x of undistributed net capital gains.

(e) In determining Charity’s share of the adjusted uniform basis, Charity applies the factors set forth in the tables contained in § 20.2031-7 of this chapter to the full \$110x of basis.

Example 8. (a) Grantor creates a charitable remainder annuity trust (CRAT) on Date 1 in which Grantor retains an annuity interest and irrevocably transfers the remainder interest to Charity. Grantor is an individual taxpayer subject to income tax. CRAT meets the requirements of section 664 and is exempt from income tax.

(b) Grantor funds CRAT with shares of X stock having a basis of \$50x. On Date 2, CRAT sells the X stock for \$150x. The \$100x of gain is exempt from income tax under section 664(c)(1). On Date 3, CRAT distributes \$10x to Grantor, and uses the remaining \$140x of net proceeds from its sale of the X stock to purchase Y stock. Grantor treats the \$10x distribution as capital gain, so that CRAT's remaining undistributed net capital gains amount described in section 664(b)(2) and § 1.664-1(d) is \$90x.

(c) On Date 4, when the fair market value of CRAT's assets, which consist entirely of the Y stock, is still \$140x, Grantor and Charity sell all of their interests in CRAT to a third person. Grantor receives \$126x for the retained annuity interest, and Charity receives \$14x for its remainder interest. Because the entire interest in CRAT is transferred to the third person, section 1001(e)(3) prevents section 1001(e)(1) from applying to the transaction. Therefore, Grantor's gain on the sale of the retained annuity interest in CRAT is determined under section 1001(a), which provides that Grantor's gain on the sale of that interest is the excess of the amount realized, \$126x, over Grantor's adjusted basis in that interest.

(d) Grantor's adjusted basis in the annuity interest in CRAT is that portion of CRAT's adjusted uniform basis that is assignable to Grantor's interest under § 1.1014-5, which is Grantor's actuarial share of the adjusted uniform basis. In this case, CRAT's adjusted uniform basis in its sole asset, the Y stock, is \$140x. However, paragraph (c) of this section applies to the transaction. Therefore, Grantor's actuarial share of CRAT's adjusted uniform basis (determined by applying the factors set forth in the tables contained in § 20.2031-7 of this chapter) is reduced by an amount determined by applying the same factors to the sum of CRAT's \$0 of undistributed net ordinary income and its \$90x of undistributed net capital gains.

(e) In determining Charity's share of the adjusted uniform basis, Charity applies the factors set forth in the tables contained in § 20.2031-7 of this chapter to determine its actuarial share of the full \$140x of basis.

John Dalrymple
*Deputy Commissioner for
Services and Enforcement.*

Approved: July 13, 2015.

Mark J. Mazur
*Assistant Secretary of the
Treasury (Tax Policy).*

(Filed by the Office of the Federal Register on August 11, 2015, 8:45 a.m., and published in the issue of the Federal Register for August 12, 2015, 80 F.R. 48249)

26 CFR 1.6081-8T:

T.D. 9730

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

Extension of Time to File Certain Information Returns

AGENCY: Internal Revenue Service (IRS),
Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations that remove the automatic extension of time to file information returns on forms in the W-2 series (except Form W-2G). The temporary regulations allow only a single 30-day non-automatic extension of time to file these information returns. These changes are being implemented to accelerate the filing of forms in the W-2 series (except Form W-2G) so they are available earlier in the filing season for use in the IRS's identity theft and refund fraud detection processes. In addition, the temporary regulations update the list of information returns subject to the rules regarding extensions of time to file. The temporary regulations affect taxpayers who are required to file the affected information returns and need an extension of time to file. The substance of the temporary regulations is included in the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Internal Revenue Bulletin**.

DATES: *Effective date:* These regulations are effective on July 1, 2016.

Applicability date: For dates of applicability, see § 1.6081-8T(g) and (h).

FOR FURTHER INFORMATION CONTACT: Jonathan R. Black, (202) 317-6845 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1 under section 6081 of the

Internal Revenue Code (Code) regarding extensions of time to file certain information returns. Effective for filing season 2017, this document removes § 1.6081-8 and adds new § 1.6081-8T. Section 1.6081-8 will remain in effect for filing season 2016. Section 1.6081-8 currently provides an automatic 30-day extension of time to file information returns on forms in the W-2 series (including Forms W-2, W-2AS, W-2G, W-2GU, and W-2VI), 1095 series, 1098 series, 1099 series, and 5498 series, and on Forms 1042-S and 8027, and allows an additional 30-day non-automatic extension of time to file those information returns in certain cases.

The temporary regulations § 1.6081-8T are substantially identical to the regulations § 1.6081-8 that will be removed, except that the temporary regulations: (1) add information returns on forms in the 1097 series and Forms 1094-C, 3921, and 3922 to the list of information returns with procedures prescribed by regulations for the extension of time to file; (2) remove information returns on forms in the W-2 series (except Form W-2G) from the list of information returns eligible for the automatic 30-day extension of time to file, and instead provide a single 30-day non-automatic extension of time to file those information returns; and (3) clarify that the procedures for requesting an extension of time to file in the case of forms in the 1095 series apply to information returns on Forms 1095-B and 1095-C, but not 1095-A.

The due dates imposed by statute, regulation, or form instruction for filing information returns on forms in the W-2 series, 1097 series, 1098 series, and 1099 series, and Forms 1094-C (when filed as a stand-alone information return), 1095-B, 1095-C, 3921, 3922, and 8027 on paper are either February 28 or the last day of February of the calendar year following the calendar year for which the information is being reported. The due date for filing these information returns electronically is March 31 of the calendar year following the calendar year for which the information is being reported. The information returns on forms in the 5498 series and the Form 1042-S, whether filed on paper or electronically, are due March 15 and May 31, respectively, of the calendar year following the calendar year for which the information is being

reported. All of these information returns are filed with the IRS, except for information returns on forms in the W-2 series (other than Form W-2G), which are filed with the Social Security Administration. Filers who fail to timely and accurately file these information returns may be subject to penalties under section 6652 (regarding failure to file certain information returns), section 6693 (regarding failure to report on certain tax-favored accounts or annuities), or section 6721 (regarding failure to timely and accurately file information returns defined by section 6724(d)(1)).

Section 6081(a) generally provides that the Secretary may grant a reasonable extension of time, not to exceed 6 months, for filing any return, declaration, statement, or other document required by Title 26 or by regulation. The regulations under section 6081 generally provide rules for extensions of time to file returns. The regulations under § 1.6081-8 provide specific rules for extensions of time to file certain information returns.

Under § 1.6081-8(a), a person required to file certain information returns (the filer), or the person transmitting the return for the filer (the transmitter), can currently receive an automatic 30-day extension of time to file those information returns. A filer or transmitter obtains an automatic 30-day extension of time to file by submitting a Form 8809, "Application for Extension of Time to File Information Returns," to the IRS on or before the due date of the information return.

Section 1.6081-8(d) also currently provides that a filer or transmitter that obtains an automatic 30-day extension of time to file may request an additional 30-day extension of time to file by submitting a second Form 8809 on or before the date that the automatic 30-day extension of time to file expires. That additional 30-day extension of time to file under § 1.6081-8(d) is not automatically granted by the IRS. Unlike requests to obtain an automatic 30-day extension of time to file under § 1.6081-8(a), a filer or transmitter that requests an additional 30-day extension of time to file under § 1.6081-8(d) is required to sign the Form 8809 under penalties of perjury and include an explanation of why an additional extension of time to file is needed. No further exten-

sions of time to file are permitted under § 1.6081-8.

Employers eligible to file information returns on forms in the W-2 series on an expedited basis under § 31.6071(a)-1(a)(3)(ii) are not eligible to obtain the automatic 30-day extension of time to file those information returns under § 1.6081-8 because they received an automatic extension of time to file information returns on forms in the W-2 series under Rev. Proc. 96-57 (1996-2 CB 389), see § 601.601(d)(2)(ii)(b) of this chapter.

A filer or transmitter seeking an extension of time to furnish statements to recipients is required to separately request an extension of time to furnish the statements under rules applicable to those statements.

Explanation of Provisions

The IRS uses third-party information returns to increase voluntary compliance, verify accuracy of tax returns, improve collection of taxes, and combat fraud, including fraudulent refund claims filed by unscrupulous preparers and individuals using the stolen identities of legitimate taxpayers. Identity theft and refund fraud is a persistent and evolving threat to the nation's tax system. It places an enormous burden on the United States Government, with the most painful and immediate impact being on the victims whose personal information is used to commit the crime and the most pervasive impact being an erosion of public confidence in the tax system.

Identity thieves often electronically file their fraudulent refund claims early in the tax filing season, using fictitious wage and other information of legitimate taxpayers. Unscrupulous preparers also electronically file early in the tax filing season, over-claiming deductions and credits and underreporting income for unwitting, as well as complicit, taxpayers. In many cases, the IRS is unable to verify the wage and other information reported on tax returns filed before April 15th, in part because the IRS does not receive the information returns reporting this information until later in the filing season.

Although paper information returns are generally due to be filed by February 28 or the last day of February of the calendar

year following the calendar year for which the information is reported, an extension of time to file under § 1.6081-8 may currently extend the due date until the end of March or, if a non-automatic extension is also granted, the end of April. Similarly, although electronically-filed information returns are generally due by March 31 of the calendar year following the calendar year for which the information is reported, an extension of time to file under § 1.6081-8 may extend the due date until the end of April or, if a non-automatic extension is also granted, the end of May.

Receipt of information returns earlier in the filing season will improve the IRS's ability to identify fraudulent refund claims and stop the refunds before they are paid. The United States Government Accountability Office (GAO) has cited the IRS's receipt of information returns late in the filing season as a contributing factor in payment of fraudulent refunds due to identity theft and preparer misconduct. See GAO Report GAO-14-633, *Identity Theft, Additional Actions Could Help IRS Combat the Large, Evolving Threat of Refund Fraud*. Removing the automatic 30-day extension of time to file is an affirmative step to accelerate the filing of information returns so they are available earlier in the filing season for use in the IRS's refund fraud detection processes.

Over the next several years, the IRS intends to remove the 30-day automatic extension of time to file certain information returns. Under § 1.6081-8T, which will not be effective until the 2017 filing season, the first information returns subject to these new rules are information returns on forms in the W-2 series (except Form W-2G). These information returns are particularly helpful to the IRS for identifying fraudulent identity theft refund claims and preventing their payout. This is because a significant portion of most taxpayers' income and withholding information is reported on Forms W-2. Forms W-2 are also a major source of the false income and withholding that is reported by identity thieves and unscrupulous preparers. Having access to Forms W-2 earlier in the filing season will improve the IRS's ability to conduct pre-refund matching and identify incidences of identity theft and tax refund fraud.

Accordingly, § 1.6081-8T provides a single 30-day non-automatic extension of time to file information returns on forms in the W-2 series (except Form W-2G) due in 2017 that the IRS may, in its discretion, grant if the IRS determines that an extension of time to file is warranted based on the filer's or transmitter's explanation attached to the Form 8809 signed under the penalties of perjury. The IRS anticipates that it will grant the non-automatic extension of time to file only in limited cases where the filer's or transmitter's explanation demonstrates that an extension of time to file is needed as a result of extraordinary circumstances or catastrophe, such as a natural disaster or fire destroying the books and records a filer needs for filing the information returns. If the IRS does not grant the extension of time to file, information returns filed after their due dates are not timely filed, regardless of whether the application for extension of time to file was filed timely.

The IRS intends to eventually remove the automatic 30-day extension of time to file the other forms listed in § 1.6081-8T and replace it with a single non-automatic 30-day extension of time to file. Therefore, proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Internal Revenue Bulletin** would remove the automatic 30-day extension of time to file these other information returns. As currently drafted, the proposed regulations would affect information returns due January 1 of the calendar year beginning after the date of publication of final regulations in the **Federal Register**, but the preamble to those proposed regulations provides that final regulations will not be effective any earlier than the 2018 filing season.

Treasury and the IRS request comments on the appropriate timing of the removal of the automatic extension of time to file information returns covered by § 1.6081-8T, such as Form 1042-S, including whether special transitional considerations should be given for any category or categories of forms or filers relative to other forms or filers. Please follow the instructions in the "Comments and Requests for Public Hearing" section in the notice of proposed rulemaking accompanying these temporary reg-

ulations in this issue of the **Internal Revenue Bulletin**.

Section 1.6081-8T also updates the list of information returns that are currently covered by § 1.6081-8. Forms 3921 and 3922 are being added to § 1.6081-8T because these forms have been included on Form 8809 since the June 2009 revision, which coincided with the revision of the regulations requiring those forms under section 6039. See TD 9470 (74 FR 59087) November 17, 2009. Forms in the 1097 series are being added because they have similarly been included on Form 8809 since the September 2010 revision, which coincided with the publication of the notice requiring the filing of the only active form in the 1097 series, Notice 2010-28 (2010-15 IRB 541).

In addition, the Form 1094-C is being added to the list of forms in § 1.6081-8T. In most cases the Form 1094-C is filed as a mere transmittal with the Form 1095-C and, therefore, the due date of the Form 1094-C is the same as the Form 1095-C, including extensions. However, in certain cases, the Form 1094-C is filed as a stand-alone information return. See TD 9661, (79 FR 13231) March 10, 2014. When Form 1094-C is filed as a stand-alone information return, it is subject to the same rules regarding extensions of time to file as other information returns. Accordingly, Form 1094-C has been added to the list of forms subject to extension under § 1.6081-8T.

Section 1.6081-8T also replaces the general reference to the forms in the 1095 series that was added to § 1.6081-8 on March 10, 2014, by TD 9660 (79 FR 13220) with specific references to Forms 1095-B and 1095-C. Form 1095-A was not intended to be included in § 1.6081-8, because the timing rules for filing the Form 1095-A are governed by § 1.36B-5. See TD 9663 (79 FR 26113) May 7, 2014.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. As stated in this preamble, these regulations remove the automatic 30-day extension of time to file information returns on Forms in the W-2 series (except for Form W-2G). Starting in filing season 2017, filers and transmitters may request only one 30-day extension of time to file Form W-2 by timely submitting a Form 8809, including an explanation of the reasons for requesting the extension and signed under penalty of perjury. Although the regulation may potentially affect a substantial number of small entities, the economic impact on these entities is not expected to be significant because filers who are unable to timely file as a result of extraordinary circumstances or catastrophe may continue to obtain a 30-day extension through the Form 8809 process. The form takes approximately 20 minutes to prepare and submit to the IRS. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Jonathan R. Black of the Office of the Associate Chief Counsel (Procedure and Administration).

* * * * *

Adoptions of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.6081-8 is revised to read as follows:

§ 1.6081-8 Automatic extension of time to file certain information returns.

[Reserved]. For further guidance, see § 1.6081-8T(a) through (g).

Par. 3. Section 1.6081–8T is added to read as follows:

§ 1.6081–8T Extension of time to file certain information returns (temporary).

(a) *Information returns on Form W–2G, 1042–S, 1094–C, 1095–B, 1095–C, 1097 series, 1098 series, 1099 series, 3921, 3922, 5498 series, or 8027—*(1) *Automatic extension of time to file.* A person required to file an information return (the filer) on Form W–2G, 1042–S, 1094–C, 1095–B, 1095–C, 1097 series, 1098 series, 1099 series, 3921, 3922, 5498 series, or 8027 will be allowed one automatic 30-day extension of time to file the information return beyond the due date for filing it if the filer or the person transmitting the information return for the filer (the transmitter) files an application in accordance with paragraph (c)(1) of this section.

(2) *Non-automatic extension of time to file.* One additional 30-day extension of time to file an information return on a form listed in paragraph (a)(1) of this section may be allowed if the filer or transmitter submits a request for the additional extension of time to file before the expiration of the automatic 30-day extension of time to file. No extension of time to file will be granted under this paragraph (a)(2) unless the filer or transmitter has first obtained an automatic extension of time to file under paragraph (a)(1) of this section. To request the additional 30-day extension of time to file, the filer or transmitter must satisfy the requirements of paragraph (c)(2) of this section. No additional extension of time to file will be allowed for an information return on a form listed in paragraph (a)(1) of this section pursuant to § 1.6081–1 beyond the extensions of time to file provided by paragraph (a)(1) of this section and this paragraph (a)(2).

(b) *Information returns on forms in the W–2 series (except Form W–2G).* Except as provided in paragraph (f) of this section, the filer or transmitter of an information return on forms in the W–2 series (except Form W–2G) may only request one non-automatic 30-day extension of time to file the information return beyond the due date for filing it. To make such a request, the filer or transmitter must submit an application for an extension of time to file in accordance with paragraph (c)(2) of this section. No additional extension of time to file will be allowed for information returns on forms in the W–2 series pursuant to § 1.6081–1 beyond the 30-day extension of time to file provided by this paragraph (b).

(c) *Requirements—*(1) *Automatic extension of time to file.* To satisfy this paragraph (c)(1), an application must—

(i) Be submitted on Form 8809, “Request for Extension of Time to File Information Returns,” or in any other manner as may be prescribed by the Commissioner; and

(ii) Be filed with the Internal Revenue Service office designated in the application’s instructions on or before the due date for filing the information return.

(2) *Non-automatic extension of time to file.* To satisfy this paragraph (c)(2), a filer or transmitter must—

(i) Submit a complete application on Form 8809, or in any other manner prescribed by the Commissioner, including a detailed explanation of why additional time is needed;

(ii) File the application with the Internal Revenue Service in accordance with forms, instructions, or other appropriate guidance on or before the due date for filing the information return (for purposes of paragraph (a)(2) of this section, determined with regard to the extension of time

to file under paragraph (a)(1) of this section); and

(iii) Sign the application under penalties of perjury.

(d) *Penalties.* See sections 6652, 6693, and 6721 through 6724 for failure to comply with information reporting requirements on information returns described in this section.

(e) *No effect on time to furnish statements.* An extension of time to file an information return under this section does not extend the time for furnishing a statement to the person with respect to whom the information is required to be reported.

(f) *Form W–2 filed on expedited basis.* This section does not apply to an information return on a form in the W–2 series if the procedures authorized in Rev. Proc. 96–57 (1996–2 CB 389) (or a successor revenue procedure) allow an automatic extension of time to file the information return. See § 601.601(d)(2)(ii)(b) of this chapter.

(g) *Effective/applicability date.* This section applies to requests for extensions of time to file information returns due after December 31, 2016.

(h) *Expiration date.* The applicability of this section expires on August 10, 2018.

John Dalrymple,
*Deputy Commissioner for
Services and Enforcement.*

Approved: July 31, 2015

Mark J. Mazur,
*Assistant Secretary of the
Treasury (Tax Policy).*

(Filed by the Office of the Federal Register on August 12, 2015, 8:45 a.m., and published in the issue of the Federal Register for August 13, 2015, 80 F.R. 48433)

Part III. Administrative, Procedural, and Miscellaneous

Section 4980I—Excise Tax on High Cost Employer-Sponsored Health Coverage

Notice 2015–52

Section I: PURPOSE AND OVERVIEW

Section II: BACKGROUND

Section III: PERSONS LIABLE FOR THE § 4980I EXCISE TAX

Section IV: EMPLOYER AGGREGATION

Section V: COST OF APPLICABLE COVERAGE

Section VI: AGE AND GENDER ADJUSTMENT TO THE DOLLAR LIMIT

Section VII: NOTICE AND PAYMENT

Section VIII: REQUEST FOR COMMENTS

Section IX: RELIANCE

Section X: DRAFTING INFORMATION

I. PURPOSE AND OVERVIEW

This notice is intended to continue the process of developing regulatory guidance regarding the excise tax on high cost employer-sponsored health coverage under § 4980I of the Internal Revenue Code (Code). Section 4980I, which was added to the Code by the Affordable Care Act,¹ applies to taxable years beginning after December 31, 2017. Under this provision, if the aggregate cost of applicable employer-sponsored coverage (applicable coverage) provided to an employee exceeds a statutory dollar limit (dollar limit), which is adjusted annually, the excess benefit is subject to a 40 percent excise tax.

On February 23, 2015, the Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) issued Notice

2015–16, 2015–10 IRB 732, which describes potential approaches regarding a number of issues under § 4980I that may be incorporated into future regulations. Notice 2015–16 addresses issues primarily relating to (1) the definition of applicable coverage, (2) the determination of the cost of applicable coverage, and (3) the application of the dollar limit to the cost of applicable coverage to determine any excess benefit subject to the excise tax. Treasury and IRS invited comments on the issues addressed in that notice and on any other issues under § 4980I.

This notice is intended to supplement Notice 2015–16 by addressing additional issues under § 4980I, including the identification of the taxpayers who may be liable for the excise tax, employer aggregation, the allocation of the tax among the applicable taxpayers, and the payment of the applicable tax. This notice also addresses further issues regarding the cost of applicable coverage that were not addressed in Notice 2015–16. Treasury and IRS invite comments on these issues and any other issues under § 4980I. After considering the comments on both notices, Treasury and IRS intend to issue proposed regulations under § 4980I. The proposed regulations will provide further opportunity for comment, including an opportunity to comment on the issues addressed in the preceding notices.

This notice includes the following sections:

II. BACKGROUND

Section 4980I(a) imposes a 40 percent excise tax on any “excess benefit” provided to an employee, and § 4980I(b) provides that an excess benefit is the excess, if any, of the aggregate cost of applicable coverage of the employee for the month over the applicable dollar limit for the employee for the month.²

Section 4980I(c)(1) provides that each coverage provider must pay the excise tax on its applicable share of the excess ben-

efit with respect to an employee for any taxable period.

Section 4980I(c)(2) defines the “coverage provider” as (A) the health insurance issuer, in the case of applicable coverage under a group health plan that provides health insurance coverage, (B) the employer, in the case of applicable coverage under an arrangement in which the employer makes contributions described in § 106(b) or (d) (health savings accounts (HSAs) and Archer medical savings accounts (Archer MSAs)), and (C) the person that administers the plan benefits, in the case of any other applicable coverage. Section 4980I(f)(6) provides that the term “person that administers the plan benefits” includes the plan sponsor if the plan sponsor administers benefits under the plan. Section 4980I(f)(7) provides that the term “plan sponsor” has the meaning given such term in § 3(16)(B) of the Employee Retirement Income Security Act of 1974 (ERISA).

Section 4980I(c)(3) defines a coverage provider’s applicable share of an excess benefit for any taxable period as the amount which bears the same ratio to the amount of such excess benefit as (A) the cost of applicable coverage provided by the provider to the employee during that period, bears to (B) the aggregate cost of all applicable coverage provided to the employee by all coverage providers during that period.

Section 4980I(c)(4)(A) provides that each employer must calculate for each taxable period the amount of the excess benefit subject to the excise tax and the applicable share of such excess benefit for each coverage provider. Section 4980I(c)(4)(A) further provides that each employer must notify, at such time and in such manner as the Secretary may prescribe, the Secretary and each coverage provider of the amount so determined for the provider.

Section 4980I(c)(4)(B) provides a special rule for multiemployer plans under which the plan sponsor of the multiemployer plan (as defined in § 414(f)) is

¹The “Affordable Care Act” refers to the Patient Protection and Affordable Care Act (enacted March 23, 2010, Pub. L. No. 111–148), as amended by the Health Care and Education Reconciliation Act of 2010 (enacted March 30, 2010, Pub. L. No. 111–152), and as further amended by the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (enacted April 15, 2011, Pub. L. No. 112–10).

²See sections III and IV of Notice 2015–16 for background on the provisions of § 4980I related to the definition of applicable coverage and the calculation of the excess benefit (including the calculation of the aggregate cost of the applicable coverage and determination of the applicable dollar limit).

responsible for making the calculations and for providing the notice.

Section 4980I(f)(8) provides that the term “taxable period” means the calendar year or such shorter period as the Secretary may prescribe. Section 4980I(f)(8) further provides that the Secretary may prescribe different taxable periods for employers of varying sizes.

Section 4980I(f)(9) provides that all employers treated as a single employer under subsection (b), (c), (m), or (o) of § 414 are treated as a single employer.

Section 4980I(f)(10) provides a cross-reference to § 275(a)(6) for the denial of a deduction for the tax imposed by § 4980I. Section 275(a)(6) provides that no deduction is allowed for the taxes imposed by chapters 41, 42, 43, 44, 45, 46 and 54 of the Code. Section 4980I is located in chapter 43 of the Code, and therefore no deduction is allowed for the payment of tax under § 4980I.

III. PERSONS LIABLE FOR THE § 4980I EXCISE TAX

A. Coverage Provider

Section 4980I(c)(1) provides that the coverage provider is liable for any applicable excise tax. The identity of the coverage provider depends on the type of coverage provided. Under the statute, in the case of applicable coverage provided under an insured group health plan, the coverage provider is the health insurance issuer. With respect to coverage under an HSA or an Archer MSA, the coverage provider is the employer. For all other applicable coverage, the coverage provider is “the person that administers the plan benefits.”

B. Person That Administers the Plan Benefits

Section 4980I does not define the term “person that administers the plan benefits.” Section 4980I(f)(6) provides that the term “person that administers the plan benefits” includes the plan sponsor if the plan sponsor administers benefits under the plan, which indicates that the plan

sponsor of a self-insured arrangement may be, but is not always, the person that administers benefits under the plan. The term, “person that administers the plan benefits,” is not used elsewhere in the Code, nor is it used elsewhere in the Affordable Care Act or in ERISA or the Public Health Service Act, both of which were amended by the Affordable Care Act. Because the term “person that administers the plan benefits” is not used in other statutory contexts, Treasury and IRS are considering two alternative approaches to determining the identity of the person that administers the plan benefits.³ Under either approach, it is anticipated that the person that administers the plan benefits will generally be an entity, rather than an individual, but for purposes of the discussion below, the relevant entity or individual is referred to as a “person.”

Under one approach, the person that administers the plan benefits would be the person responsible for performing the day-to-day functions that constitute the administration of plan benefits, such as receiving and processing claims for benefits, responding to inquiries, or providing a technology platform for benefits information. Treasury and IRS anticipate that this person generally would be a third-party administrator for benefits that are self-insured, except in the rare circumstance in which the employer or plan sponsor performs these functions, or owns the person that performs these functions. Comments are requested on the types of administrative functions that should be considered under this approach when determining the person that administers the plan benefits. Comments are also requested on whether the person that administers the plan benefits could be easily identified in most instances under this approach, or whether the identity of the person that administers the plan benefits would often be unclear because, for example, multiple parties (such as a pharmacy benefit administrator and a medical claims benefit administrator) perform the relevant functions with respect to a benefit package for which a single cost of appli-

cable coverage will be determined as discussed in section IV.C of Notice 2015–16 (concerning potential approaches for determining the cost of applicable coverage). In addition, Treasury and IRS request comments on any other concerns this approach would raise.

Under the second approach that Treasury and IRS are considering, the person that administers the plan benefits would be the person that has the ultimate authority or responsibility under the plan or arrangement with respect to the administration of the plan benefits (including final decisions on administrative matters), regardless of whether that person routinely exercises that authority or responsibility. For purposes of this second approach, the relevant types of administrative matters over which the person that administers plan benefits would have ultimate authority or responsibility could include eligibility determinations, claims administration, and arrangements with service providers (including the authority to terminate service provider contracts). Treasury and IRS anticipate that the person with such ultimate administrative authority or responsibility under the plan or arrangement would be identifiable based on the terms of the plan documents and often would not be the person that performs the day-to-day routine administrative functions under the plan. Comments are requested on whether the person that administers the plan benefits would be easy to identify under this second approach in most circumstances or whether multiple parties have ultimate authority or responsibility for the different relevant administrative matters with respect to the same benefit package, and whether in most instances this approach would identify an appropriate person as the person that administers the plan benefits. Comments are requested on any other issues this approach would raise.

Comments are invited on the application of these approaches to collectively bargained multiemployer health plans.

³The Department of Health and Human Services (HHS) recently issued regulations defining a category of self-administered, self-insured plans for purposes of applicability of the fee, imposed by § 1341 of the Affordable Care Act, which funds the Transitional Reinsurance Program. The definition in these HHS regulations focuses on the party directly responsible for claims administration and plan enrollment. See *Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2015; Final Rule*, 79 Fed. Reg. 13744, 13772–75 (March 11, 2014). Section 4980I of the Code and § 1341 of the Affordable Care Act are provisions with no common statutory language. Accordingly, it is not anticipated that the definition of the person that administers the plan benefits for § 4980I purposes will align with the definition for self-insured self-administered plans in the HHS regulations.

IV. EMPLOYER AGGREGATION

Section 4980I(f)(9) provides generally that, for purposes of § 4980I, all employers treated as a single employer under subsections (b), (c), (m), or (o) of § 414 are treated as a single employer. Treasury and IRS invite comments on the practical challenges presented by the application of those aggregation rules to § 4980I. In particular, Treasury and IRS request comments on the application of these employer aggregation rules to the: (1) identification of the applicable coverage taken into account as made available by an employer (§ 4980I(d)(1)(A)); (2) identification of the employees taken into account for the age and gender adjustment (§ 4980I(b)(3)(C)(iii)), and the adjustment for employees in high risk professions or who repair and install electrical or telecommunications lines (§ 4980I(b)(3)(C)(iv)); (3) identification of the taxpayer responsible for calculating and reporting the excess benefit (§ 4980I(c)(4)(A)); and (4) identification of the employer liable for any penalty for failure to properly calculate the tax imposed under § 4980I (§ 4980I(e)(1)(B)).

V. COST OF APPLICABLE COVERAGE

A. Taxable Period

Taxable period is defined under § 4980I(f)(8) to mean the calendar year or such shorter period as the Secretary may prescribe. The section provides that the Secretary may have different taxable periods for employers of varying sizes. Treasury and IRS anticipate that the taxable period will be the calendar year for all taxpayers.

B. Determination Period

To calculate the amount of any excise tax that a coverage provider may owe under § 4980I for a taxable period, an employer must determine the extent, if any, to which the cost of applicable coverage provided to an employee during any month of the taxable period exceeds the dollar limit. The employer then must notify both IRS and the coverage provider of the amount of the excess benefit, and the

tax must be paid by the coverage provider. Accordingly, Treasury and IRS anticipate that employers will be required to determine the cost of applicable coverage provided during a taxable year sufficiently soon after the end of that taxable year to enable coverage providers to pay any applicable tax in a reasonably timely manner.

Section 4980I(d)(2)(A) provides that the cost of applicable coverage is to be determined using rules “similar to the rules of section 4980B(f)(4)” regarding the determination of the COBRA applicable premium. Section IV.C of Notice 2015–16 invited comments on potential approaches to determining the cost of applicable coverage. Treasury and IRS now invite further comments on any issues raised by the anticipated need to determine the cost of applicable coverage for a taxable period reasonably soon after the end of that taxable period.

Treasury and IRS anticipate that the potential timing issues are likely to be different for insured plans and self-insured plans, and will also be different for HSAs, Archer MSAs, health flexible spending arrangements (FSAs),⁴ and health reimbursement arrangements (HRAs). In the case of self-insured plans, for example, if the cost of applicable coverage is determined based on a period ending at or before the beginning of the applicable calendar year, then the necessary information should be available to the employer relatively soon after the applicable calendar year ends to permit it to calculate any excess benefit for each employee and allocate any excess benefit among coverage providers. In contrast, if the cost of applicable coverage is determined based on a period ending during or at the end of the applicable calendar year, the cost may be determinable only after the end of both the applicable calendar year and a subsequent run-out period during which employees may submit claims for reimbursement. In that case, an employer will need additional time to compute the cost of applicable coverage before it can calculate any excess benefit for each employee and allocate any excess benefit among coverage providers.

In addition, experience-rated arrangements may provide for payments to be made to or from an insurance company after the end of a coverage period that

relate to the coverage provided during that coverage period. In other instances, the equivalent of those types of payments may be made through a premium discount for the next coverage period. Comments are requested on how those payments or discounts may be reflected in the cost of applicable coverage, including comments on any administrative issues that might arise if, for purposes of determining the cost of applicable coverage, the payments or discounts are attributed back to the original period of coverage (for which the taxable year might have ended) rather than accounted for during the period of coverage in which the amounts are paid or the discount applied. In addition, comments are requested on how employers are addressing these payments or discounts currently for purposes of determining COBRA applicable premiums. Taking into account the potential approaches to the determination of the cost of applicable coverage outlined in Notice 2015–16, as well as other issues with timing implications, Treasury and IRS request comments on the processes expected to be involved in calculating and allocating any excess benefit and the time period necessary to complete these processes.

C. Exclusion from Cost of Applicable Coverage of Amounts Attributable to the Excise Tax

As discussed in section III of this notice, the excise tax will be paid by the health insurance issuer for insured coverage and by the “person that administers the plan benefits” (which may, in some instances, be the employer) in the case of self-insured coverage. It is expected that, if a person other than the employer is the coverage provider liable for the excise tax, that person may pass through all or part of the amount of the excise tax to the employer in some instances. If the coverage provider does pass through the excise tax and receives reimbursement for the tax (the excise tax reimbursement), the excise tax reimbursement will be additional taxable income to the coverage provider. Because § 4980I(f)(10) provides that the excise tax is not deductible, the coverage provider will experience an increase in taxable income

⁴All references in this notice to flexible spending arrangements refer only to health flexible spending arrangements.

(that is not offset by a deduction) by reason of the receipt of the excise tax reimbursement. As a result, it is anticipated that the amount the coverage provider passes through to the employer may include not only the excise tax reimbursement, but also an amount to account for the additional income tax the coverage provider will incur (the income tax reimbursement).

In determining the cost of applicable coverage subject to the excise tax, § 4980I(d)(2)(A) provides that “any portion of the cost of such coverage which is attributable to the tax imposed under this section shall not be taken into account.” This indicates that the excise tax reimbursement should be excluded from the cost of applicable coverage, and it is anticipated that future regulations will reflect this interpretation.

Treasury and IRS are also considering whether some or all of the income tax reimbursement could be excluded from the cost of applicable coverage. However, Treasury and IRS are concerned that a methodology for excluding an income tax reimbursement may not be administrable, given the potential variability of tax rates and other factors among different coverage providers and potential difficulties in determining and excluding the reimbursement amount. Nonetheless, comments are requested on administrable methods for exclusion of the income tax reimbursement.

Because it may not be feasible to exclude amounts that are not separately billed, Treasury and IRS anticipate that coverage providers would be permitted to exclude the amount of any excise tax reimbursement or income tax reimbursement only if it is separately billed and identified as attributable to the cost of the excise tax. Separately billed amounts in excess of the excise tax reimbursement or the income tax reimbursement (as determined in the manner discussed in section V.D below) could not be excluded from the cost of applicable coverage (and, therefore, would be treated as part of the cost of applicable coverage). Comments are requested on any practical issues or legal barriers to passing through any or all of these amounts or to separately identifying these amounts, such as federal rating rules or state insurance law.

Coverage providers generally will not know the amount of any excise tax due with respect to applicable coverage provided for a taxable period (discussed in section V.A above) until after the end of the taxable period. As a result, Treasury and IRS expect that, as a practical matter, the coverage provider generally will be unable to bill for the excise tax reimbursement or the income tax reimbursement until the excise tax is paid by the coverage provider. However, comments are requested on whether there are alternative approaches that might allow for earlier

billing of the amount but that would not give rise to undue administrative complexity or difficulty.

D. Income Tax Reimbursement Formula

If Treasury and IRS conclude that an income tax reimbursement can be excluded from the cost of coverage, it is anticipated that the amount of the income tax reimbursement would be determined using a formula commonly used to calculate “tax gross-ups.” As mentioned previously, a coverage provider that passes the excise tax through to another party will have additional taxable income as a result of receipt of the excise tax reimbursement. If a coverage provider then also passes through the amount of the income tax due on the excise tax reimbursement, the reimbursement of that additional amount will further increase the taxable income of the coverage provider, and the coverage provider will owe additional income tax due to that reimbursement as well. The formula would take these additional taxes into account in determining the amount of the income tax reimbursement. Under the formula, the amount of the income tax reimbursement that would be excludable from the cost of applicable coverage would be:

$$\text{Income Tax Reimbursement} = \frac{\text{[amount of tax]}}{(1 - \text{[marginal tax rate]})} - \text{[amount of tax]}$$

In this formula, the “amount of tax” is the excise tax rate multiplied by the initial excess benefit calculated without regard to any portion of the cost of applicable coverage that the coverage provider identifies as arising from an excise tax reimbursement or an income tax reimbursement. For example, if the cost of applicable coverage without regard to the tax is \$2,500 in excess of the dollar limit, a coverage provider would owe \$1,000 as a § 4980I excise tax (\$2,500 times the 40 percent rate). If the coverage provider’s marginal

tax rate is 20 percent,⁵ the formula would divide \$1,000 (the amount of the excise tax) by .8 (1–0.2), which equals \$1,250; and then subtract \$1,000 (the amount of the excise tax), which equals \$250 (\$1,250 – \$1,000). Accordingly, the income tax reimbursement on an excise tax of \$1,000 paid by a coverage provider with a marginal tax rate of 20 percent would be \$250.

If it is determined that an income tax reimbursement can be excluded from the cost of applicable coverage, Treasury and

IRS are considering two possible approaches for applying the formula described above. The first approach would use the coverage provider’s actual marginal tax rate in the formula. This approach could provide greater flexibility to taxpayers, but also could create administrative difficulties for IRS, coverage providers, and employers due to the extended time needed to determine a taxpayer’s marginal tax rate for any year, changes in a coverage provider’s marginal tax rate from year to year (including potential ret-

⁵If the coverage provider were not subject to income tax on the excise tax reimbursement (for example, because it is a tax-exempt organization described in § 501(c) that is not subject to unrelated business income tax on the reimbursement under § 511), its marginal tax rate on the reimbursement would be zero, producing an income tax reimbursement amount of zero under the formula.

reactive changes due to amended returns, audits, or other circumstances), and the fact that a coverage provider's marginal tax rate is generally determined for its fiscal year, which may not be the same as the calendar year taxable period for which the cost of applicable coverage is determined. This approach could also create an additional administrative burden in cases in which multiple coverage providers are liable for tax for coverage offered by a given employer. Comments are requested on whether there are workable solutions to these administrative challenges that would permit Treasury and IRS to implement such an approach.

The second approach would prescribe, for purposes of applying the income tax reimbursement formula in a manner that is administrable, a standard marginal tax rate⁶ based on typical marginal tax rates applicable to different types of health insurance issuers. It is anticipated that the prescribed rates would reflect an approximately representative marginal rate that would be less than the statutory maximum rate. The prescribed rate for an insurer would be used in the income tax reimbursement formula rather than the coverage provider's actual marginal tax rate. While more administrable, this approach may not permit some taxpayers to exclude from the cost of applicable coverage the total income tax reimbursement, but would permit other taxpayers to exclude from the cost of applicable coverage more than the total income tax reimbursement. Comments are requested on how these standard marginal tax rates might be determined, how many such rates might apply (for example, one for each of two or three categories of insurers) and for what types of insurers, and how this approach would affect particular segments of taxpayers.

E. Allocation of Contributions to HSAs, Archer MSAs, FSAs, HRAs

Applicable coverage under § 4980I(d)(1)(A) is "coverage under any group health plan made available to the employee by an employer which is excludable from the employee's gross income under section 106, or would be so exclud-

able if it were employer-provided coverage (within the meaning of such section 106)." Applicable coverage includes coverage under certain HSAs, Archer MSAs, FSAs, or HRAs.

Section 4980I(a) imposes an excise tax equal to 40 percent of the excess benefit if an employee is covered under any applicable coverage of an employer at any time during a taxable period and there is any excess benefit with respect to the coverage. Under § 4980I(b)(1), an excess benefit means, with respect to any applicable coverage made available by an employer to an employee during any taxable period, the sum of the excess amounts determined for months during the taxable period. Under § 4980I(b)(2), the excess amount determined for any month is the excess (if any) of (A) the aggregate cost of the applicable coverage of the employee for the month over (B) an amount equal to 1/12 of the dollar limit for the calendar year in which the month occurs.

Section 4980I(d)(2)(D) provides that if the cost of applicable coverage is determined on other than a monthly basis, the cost is allocated to months in a taxable period on such basis as the Secretary may prescribe.

Treasury and IRS are considering an approach under which contributions to account-based plans would be allocated on a pro-rata basis over the period to which the contribution relates (generally, the plan year), regardless of the timing of the contributions during the period. Treasury and IRS anticipate that this allocation rule would apply to HSAs, Archer MSAs, FSAs, and HRAs that are applicable coverage. For example, if an employer contributes an amount to an HSA for an employee for a plan year, that contribution would be allocated ratably to each calendar month of the plan year, regardless of when the employer actually contributes the amount to the HSA. Similarly, if an employee elects to contribute to an FSA for a plan year, the employee's total contributions would be allocated ratably to each calendar month of the plan year, even though the entire amount contributed for the plan year would be available to reimburse qualified medical expenses on

the first day of the plan year. Comments are requested on this approach as well as alternative approaches.

F. Cost of Applicable Coverage under FSAs with Employer Flex Credits

Section 4980I(d)(2)(B) provides that in the case of applicable coverage consisting of coverage under an FSA, the cost of applicable coverage is equal to the sum of (i) the amount of any contributions made under a salary reduction election, plus (ii) the cost of applicable coverage under the generally applicable rules for determining the cost of applicable coverage with respect to any reimbursement under the arrangement in excess of the contributions made under the salary reduction agreement. Thus, the cost of applicable coverage of an FSA for any plan year would be the greater of the amount of an employee's salary reduction or the total reimbursements under the FSA.

Under this general rule, in determining the portion of the cost of applicable coverage attributable to non-elective flex credits contributed to an FSA by an employer (either in combination with employee salary reduction contributions or without), the cost of the non-elective flex credit would be the amount that is actually reimbursed in excess of the employee's salary reduction election for that plan year. For example, if an employee elects to make a salary reduction contribution to an FSA in the amount of \$1,000 for a plan year and the employer makes a non-elective flex credit in the amount of \$500 available to the employee under the FSA for that plan year, but the employee only has \$1,200 in medical expenses reimbursed under the FSA for that plan year, the cost of applicable coverage for the FSA for the plan year would be \$1,200 (comprised of the \$1,000 salary reduction plus the additional \$200 in reimbursements attributable to the non-elective flex credit provided by the employer) rather than the full \$1,500 elected or available for the FSA for the plan year.

Under this rule, the cost of applicable coverage of the FSA would not be known until some point in time after the end of the taxable year. With respect to amounts

⁶If an approach using a standard marginal tax rate were adopted, the standard marginal tax rate would not be available to coverage providers that are not subject to income tax on the excise tax reimbursement.

carried over to a subsequent year, this rule would take such amounts into account in a later year if the reimbursements in the subsequent year exceeded the amount of employee salary reduction in the subsequent year.

To avoid the double counting associated with taking salary deferral amounts that are carried over from one year to another year into account in determining the cost of coverage in both the year of contribution and the subsequent year, which would be the result under the general rule outlined above, Treasury and IRS are considering providing a safe harbor. Under this safe harbor, the cost of applicable coverage for the plan year would be the amount of an employee's salary reduction without regard to carry-over amounts. Unused amounts that are carried forward would be taken into account when initially funded by salary reduction but would be disregarded when used to reimburse expenses in a later year. For example, if an employee elected to reduce his salary by \$1,200 to contribute to an FSA in a given year, the FSA's cost of applicable coverage in that year would be \$1,200 even if some or all of the \$1,200 was not used to reimburse expenses in that year. Accordingly, if that same employee carried over \$500 of unused funds that were used to reimburse expenses in the second year, and elected no new salary reduction for the second year, the FSA's cost of applicable coverage in the second year would be \$0.

The possible safe harbor described above would be limited to cases in which non-elective flex credits are not available for use in the FSA. To address situations in which non-elective flex credits are available under a cafeteria plan that includes an FSA, Treasury and IRS are considering a variation on the safe harbor that would allow an FSA with non-elective flex credits to be valued under the safe harbor described in the preceding paragraph in certain situations.

Under some cafeteria plan arrangements, an employee may elect to defer amounts to the cafeteria plan that exceed the § 125(i) limit for FSAs (for 2015, \$2,550), and the employer may offer additional non-elective flex credits. These amounts may be allocated to pay for various benefits available under the cafeteria

plan, such as reimbursements under an FSA, dependent care assistance, and health insurance. The possible variation on the safe harbor would provide that an FSA could be treated as funded solely by salary reduction if the amount elected by the employee for the FSA were less than or equal to the maximum amount permitted by § 125(i). For example, if an employee with a \$1,000 non-elective flex credit available reduces salary by an additional \$5,000 under a cafeteria plan and allocates \$2,550 to the FSA, the FSA would be treated as funded solely by salary reduction. As a result, the cost of applicable coverage would be \$2,550. Under the safe harbor proposal, the salary reduction taken into account would be counted only in the year an amount was elected for the FSA and, therefore, would be disregarded in later years if amounts were carried over. Comments are requested on the allocation of FSA amounts between non-elective flex credits and salary reduction when the total election for the FSA exceeds the maximum salary reduction amount permitted by § 125(i).

Treasury and IRS request comments concerning whether these potential approaches are administrable. In addition, comments are requested generally on the potential safe harbors described above and on any other issues arising from the valuation of FSAs.

G. Inclusion in Applicable Coverage of Self-Insured Coverage Includible in Income under § 105(h)

Section 4980I(d)(1)(A) defines applicable coverage to include coverage under any group health plan made available to the employee by an employer that is excludable from the employee's gross income under § 106 (or would be so excludable if it were employer-sponsored coverage).

Section 106 excludes employer-provided coverage under an accident or health plan from an employee's gross income. For an employee who then receives reimbursement for medical expenses of the employee or his family under an employer-provided accident or health plan, § 105 further excludes those reimbursement amounts from the employee's income. In the case of reimbursements paid to a highly-compensated individual under a

self-insured plan that discriminates in favor of highly compensated individuals, however, § 105(h) provides that the exclusion does not apply to the extent that the amounts constitute an "excess reimbursement." The amount of the excess reimbursement is included in the gross income of the highly compensated individuals.

Section 6051(a)(14) requires employers to report on the Form W-2, Wage and Tax Statement (Form W-2), the aggregate cost of applicable coverage as defined in § 4980I(d)(1). Notice 2012-9, 2012-4 IRB 315, currently permits employers to reduce the amount reported on the Form W-2 by any excess reimbursement included in gross income by application of § 105(h).

Although excess reimbursements currently can be excluded from the cost reported on the Form W-2, Treasury and IRS do not believe such amounts reduce the cost of applicable coverage subject to tax under § 4980I. It is the coverage (excludable from income under § 106), and not the resulting benefit (excludable from income under § 105), that is applicable coverage under § 4980I, and it is the cost of that coverage that is compared to the dollar limit to determine the amount of any excise tax under § 4980I. Inclusion of excess reimbursements in an employee's income does not reduce the cost of applicable coverage subject to tax under § 4980I. Treasury and IRS anticipate that Notice 2012-9 will be modified in the future to make excess reimbursements subject to reporting under § 6051(a)(14) and that the forms and instructions will be modified to reflect this change. Taxpayers should continue to follow Notice 2012-9 until modification of that notice is issued.

VI. AGE AND GENDER ADJUSTMENT TO THE DOLLAR LIMIT

Section 4980I(b)(3) provides two baseline per-employee dollar limits for 2018 (\$10,200 for self-only coverage and \$27,500 for other than self-only coverage) but also provides that various adjustments, discussed in section V.C of Notice 2015-16, will apply to increase these amounts. As stated in Notice 2015-16, Treasury and IRS intend to include rules regarding these adjustments in proposed regu-

lations and have invited comments on the application and adjustment of the dollar limits.

One of these adjustments, set forth at § 4980I(b)(3)(C)(iii), provides for an increase in the dollar limits based on the age and gender characteristics of all employees of an employer. In accordance with the statute, no downward adjustments can occur (that is, the statute does not provide for any decrease in the dollar limits based on age and gender). Specifically, the adjustment increases the dollar limit by an amount equal to the excess of the premium cost of the Blue Cross/Blue Shield standard benefit option under the Federal Employees Health Benefits Plan (FEHBP standard option) if priced for the age and gender characteristics of all employees of an individual's employer (the employer's premium cost), over the premium cost for providing this coverage if priced for the age and gender characteristics of the national workforce (the national premium cost). Section 4980I(b)(3)(C)(iii)(II)(aa) provides that the adjustment is based on "the type of coverage provided such individual in such taxable period." In other words, the age and gender adjustment is determined separately for self-only coverage and other than self-only coverage.

While rating based on age and gender in the individual and small group market is subject to certain restrictions under the Affordable Care Act, the actual cost of applicable coverage generally differs based on age and gender. On average, older individuals have higher health costs than younger individuals, and, on average, younger women have higher health costs than younger men. Consequently, some employers may have higher health costs than other employers under identical benefit plans due to the age and gender characteristics of their workforce. In determining the effect that the age and gender characteristics of a workforce have on premium rates, it is not sufficient to simply compare the average age and gender of an employer's workforce to the average age and gender of the national workforce. Rather, the premium rate depends on the distribution of men and women in different age groups.

A. Determination of Age and Gender Distribution

To compare the employer's premium cost with the national premium cost, it will be necessary to establish the age and gender characteristics of the national workforce. To determine the age and gender distribution of the national workforce, Treasury and IRS are considering using the Current Population Survey as summarized in Table A-8a, Employed Persons and Employment-Population Ratios by Age and Sex, Seasonally Adjusted (Table A-8a), published annually by the Department of Labor Bureau of Labor Statistics. This publication provides the number of individuals participating in the labor force by five-year age-bands (up to age 75 and over) and the ratio of male to female workers in each age-band. Treasury and IRS request comments on whether Table A-8a and the Current Population Survey more generally is an appropriate source of data for the age and gender characteristics of the national workforce for purposes of § 4980I and whether other sources of data for the age and gender characteristics of the national workforce should be considered.

To determine the age and gender characteristics of a particular employer's population, Treasury and IRS are considering a requirement that an employer use the first day of the plan year as a snapshot date for determining the composition of its employee population. In other words, an employer would be required to determine the age and gender of each employee as of the first day of the plan year and that distribution of age and gender characteristics would apply for purposes of the age and gender adjustment. Comments are requested on the administrability of this approach, whether it is likely to result in a representative age and gender distribution, and whether employers should be permitted to choose a different date other than the first day of the plan year to determine the age and gender characteristics of its employees. If employers were permitted to choose a different date, it is anticipated that the employer would not be permitted to vary the date from one taxable year to the next. To the extent that commenters recommend that employers be permitted to use a date other than the

first day of the plan year, Treasury and IRS ask that the commenters address why permitting the use of a different date will result in a more accurate representation of the age and gender characteristics of an employer's workforce, whether flexibility in determining the snapshot date is susceptible to abuse, and any administrability issues associated with requiring a specific date or permitting flexibility in the choice of date.

B. Development of Age and Gender Adjustment Tables

Treasury and IRS anticipate that IRS will formulate and publish adjustment tables to facilitate and simplify the calculation of the age and gender adjustment. The following approach is being considered for the development of these tables and the calculation of the age and gender adjustment. All adjustments and calculations would be determined separately for self-only coverage and for other than self-only coverage.

1. *Determination of average cost for FEHBP coverage.* The average cost of applicable coverage under the FEHBP (FEHBP average cost) would be determined by aggregating all claims expenses of the FEHBP standard option and dividing the total by the number of coverage units. Each employee policyholder would be a coverage unit.

2. *Determination of average cost for each age and gender group.* Claims expense data would be sorted into groups, separating the population into male and female coverage units and further separating each gender population into multi-year age-bands. For example, the dollar amount of claims for all male individuals between the ages of 30 and 34 would be added together. The dollar amount of claims for each group would then be divided by the number of coverage units in that age and gender group to yield the average cost for that group (group average cost). A group average cost would be calculated in this way for each of the age and gender groups.

3. *Determination of group ratios.* Each group average cost would be divided by the FEHBP average cost to establish the ratio (group ratio) of the group average cost to the FEHBP average cost. The group ratio would be expressed as a frac-

tion or percentage and would be determined periodically, but less frequently than annually.

4. *Determination of group premium cost.* The group ratio would be multiplied by the most recent annual premium cost of the FEHBP standard option to determine the annual premium cost for each age and gender group (group premium cost). The dollar amounts representing each group premium cost would then be used to populate the adjustment tables, to be published annually.

5. *Determination of national premium cost.* To determine the national premium cost, each group premium cost would be multiplied by the fraction of employees in the national workforce who are in that group. The product of each of these calculations would be added together to yield the national premium cost, which would be a single dollar amount that would be published annually.

6. *Determination of the employer's premium cost.* Each employer would determine the fraction of its employees who are in each age and gender group. The employer would then multiply the group premium cost from the relevant adjustment table by the fraction of its employees in each group. The product of each of these calculations would be added together to yield the employer's premium cost, which would be a single dollar amount.

7. *Determination of adjustment.* The employer's premium cost would then be compared to the national premium cost. If the employer's premium cost exceeds the national premium cost, the excess dollar amount would be added to the dollar limit for that employer for purposes of determining the amount of any excess benefit.

With respect to step one, two different approaches are under consideration. One approach would rely on actual claims data from the FEHBP standard option. An alternative approach would rely on national claims data reflecting plans with a design similar to that of the FEHBP standard

option. It is anticipated that only one approach will be adopted and that it will be applied in a uniform manner.

Treasury and IRS seek comments on this approach to the age and gender adjustment, including the alternative approaches to step one and whether the approach to the age and gender adjustment should take into account the age rating scale adopted in regulations for the individual and small group market.

VII. NOTICE AND PAYMENT

A. Notice of Calculation of Applicable Share of Excess Benefit

Section 4980I(c)(4)(A) imposes a notification requirement on the employer. Specifically, that section requires the employer to calculate for each taxable period the amount of the excess benefit subject to the tax imposed by § 4980I(a) and the applicable share of that excess benefit for each coverage provider, and to notify the Secretary and each coverage provider of the amount so determined for each coverage provider at the time and in the manner as the Secretary may prescribe.

Treasury and IRS are considering both the form in which that information must be provided to the various coverage providers and IRS, and the time at which that information must be provided. Comments are requested on the administrative and other issues raised by this notice requirement, taking into account that this process may be affected by the rules governing the period over which the cost of applicable coverage is determined as discussed in section V.B of this notice.

Treasury and IRS anticipate that calculation errors that affect the cost of applicable coverage may, in some instances, affect multiple coverage providers due to the allocation of the tax. Comments are invited on how instances of reallocation might be mitigated or avoided.

B. Payment of the § 4980I Excise Tax

Section 4980I(c)(1) provides that each coverage provider is liable for the excise tax on its applicable share of the excess benefit with respect to an employee for any taxable period, but does not specify the time and manner in which the excise tax is paid. Treasury and IRS are considering designating the filing of Form 720, Quarterly Federal Excise Tax Return, as the appropriate method for the payment of the tax. Although Form 720 generally is filed quarterly, under this approach a particular quarter of the calendar year would be designated for the use of Form 720 to pay the excise tax under § 4980I.⁷

VIII. REQUEST FOR COMMENTS

Treasury and IRS invite comments on the issues addressed in this notice and on any other issues under § 4980I. This includes an invitation to submit further comments on issues addressed in Notice 2015–16. For example, in response to Notice 2015–16, some commenters expressed concern about coordination between the excise tax under § 4980I and the assessable payments under § 4980H.⁸ Comments are invited on the circumstances in which the interaction between the provisions of § 4980H and § 4980I may raise concerns and on whether and how these provisions might be coordinated consistent with the statutory requirements of these provisions and in a manner that is administrable for employers and the IRS.

Although many comments submitted in response to Notice 2015–16 are not reflected in this notice, those comments are under consideration. Those comments and comments responding to this notice will be used to inform proposed regulations that will be issued in the future for further public notice and comment.

Public comments should be submitted no later than October 1, 2015. Comments should include a reference to Notice

⁷This procedure is used for payment of the fee imposed on issuers of specified health insurance policies and plan sponsors of applicable self-insured health plans to help fund the Patient-Centered Outcomes Research Institute. The fee is required to be reported only once a year on the second quarter Form 720 and paid by its due date, July 31. See *Fees on Health Insurance Policies and Self-Insured Plans for the Patient-Centered Outcomes Research Trust Fund*, 77 Fed. Reg. 72721, 72726–27 (December 6, 2012) and the Form 720 and accompanying instructions.

⁸Generally, under § 4980H, an applicable large employer that fails to offer to its full-time employees health coverage that is affordable and provides minimum value (as defined in § 36B(c)(2)(C)(ii)) may be subject to an assessable payment if a full-time employee enrolls in a qualified health plan for which the employee receives a premium tax credit. Commenters have noted that health coverage providing no more than minimum value (or only slightly more than minimum value) may exceed the applicable dollar limit under § 4980I in certain circumstances.

2015–52. Send submissions to CC:PA:LPD:PR (Notice 2015–52), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (Notice 2015–52), Courier’s Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20044, or sent electronically, via the following e-mail address: Notice.comments@irs.counsel.treas.gov. Please include “Notice 2015–52” in the subject line of any electronic communication. All material submitted will be available for public inspection and copying.

IX. RELIANCE

This notice does not provide guidance under § 4980I upon which taxpayers may rely. No inference should be drawn from any provision of this notice concerning any provision of § 4980I other than those addressed in this notice or concerning any other section of the Affordable Care Act.

X. DRAFTING INFORMATION

The principal author of this notice is Karen Levin of the Office of Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this notice contact Ms. Levin at (202) 317-5500 (not a toll-free number).

Income tax treatment of 2014 fuel credits allowable under section 6426(c) and section 6426(d)

Notice 2015–56

PURPOSE

This notice informs claimants about the federal income tax treatment of credits under § 6426(c) and (d) of the Internal Revenue Code that are paid in cash under the one-time claim submission process of section 160(e) of the Tax Increase Prevention Act of 2014 (Act), Pub. L. No. 113–295, 128 Stat. 4023, and implemented by Notice 2015–3, 2015–6 I.R.B. 583. Specifically, a claimant must reduce its income tax deduction for (or cost of goods sold deduction attributable to) § 4081 ex-

cise taxes for each calendar quarter during 2014 by the amount of the § 6426(c) credit for a biodiesel mixture sold or used during that calendar quarter. Similarly, a claimant must reduce its income tax deduction for (or cost of goods sold deduction attributable to) § 4041 excise taxes for each calendar quarter during 2014 by the amount of the § 6426(d) credit for alternative fuel sold or used during that calendar quarter.

BACKGROUND

Section 6426(a) and (c) allows a blender of a biodiesel (including renewable diesel) mixture to claim a credit (biodiesel mixture credit) against its tax liability under § 4081, relating to the tax imposed on taxable fuel. Specifically, § 6426(c)(1) and (c)(2) provides that the biodiesel mixture credit is the product of \$1.00 and the number of gallons of biodiesel used by the claimant in producing any biodiesel mixture for sale or use in a trade or business of the claimant.

Section 6426(a) and (d) allows a claimant that sells or uses alternative fuel as a fuel in a motor vehicle or motorboat, or in aviation, to claim a credit (alternative fuel credit) against the claimant’s excise tax liability under § 4041, relating to the tax imposed on diesel fuel and alternative fuel. Section 6426(d)(1) provides that the alternative fuel credit is the product of 50 cents and the number of gallons of an alternative fuel or gasoline gallon equivalents of a non-liquid alternative fuel sold by the claimant for use as a fuel in a motor vehicle or motorboat, sold by the taxpayer for use in aviation, or so used by the claimant.

Any excess credit under the biodiesel mixture credit or alternative fuel credit may be claimed as a payment under § 6427(e) or as a refundable income tax credit under § 34. Generally, the excise taxes imposed by §§ 4041 and 4081 are reported on Form 720, *Quarterly Federal Excise Tax Return*, and § 6426 credits are claimed on Schedule C (Form 720), *Claims*. A claimant must first apply the biodiesel mixture credit against its § 4081 tax liability and the alternative fuel credit against its § 4041 tax liability by making the claim on Form 720 or Form 720X. To the extent the claim exceeds a claimant’s § 4081 or § 4041 tax liability, the claimant may file a claim for payment of that ex-

cess amount pursuant to § 6427(e) using Form 8849, *Claim for Refund of Excise Taxes*, and attaching Schedule 3 (Form 8849), *Certain Fuel Mixtures and the Alternative Fuel Credit*.

The Code provisions authorizing the biodiesel mixture credit and the alternative fuel credit expired for sales and uses after December 31, 2013 (September 30, 2014, in the case of any sale or use involving liquefied hydrogen). In the Act, which was signed into law on December 19, 2014, Congress retroactively reinstated the biodiesel mixture credit and the alternative fuel credit for sales and uses during 2014. Specifically, section 160(a)(1) of the Act provides that § 6426(c)(6) is amended by striking “December 31, 2013,” and inserting “December 31, 2014.” Similarly, section 160(b)(1) of the Act provides that § 6426(d)(5) is amended by striking “December 31, 2013,” and inserting “December 31, 2014.” Section 160(d)(1) of the Act provides that the amendments to § 6426(c) and (d) apply to fuel sold or used after December 31, 2013.

Section 160(e) of the Act required issuance of guidance providing for a one-time submission of claims under § 6426(c) and (d) (including any payment under § 6427(e)) covering periods during 2014. Pursuant to this statutory mandate, the IRS issued Notice 2015–3, which provides procedures to make a one-time claim for payment of the credits and payments allowable under §§ 6426(c), 6426(d), and 6427(e) for biodiesel (including renewable diesel) mixtures and alternative fuels sold or used during calendar year 2014 (referred to in Notice 2015–3 as the 2014 biodiesel and alternative fuel incentives). These streamlined procedures require that claimants submit all claims for 2014 biodiesel and alternative fuel incentives on a single Form 8849. For example, under Notice 2015–3, a biodiesel mixture claimant whose § 4081 tax liability exceeds its § 6426(c) biodiesel mixture credit (and would therefore not be eligible for a § 6427(e) payment) must still use Form 8849 to make a § 6426(c) claim. That the claimant receives a payment of the § 6426(c) credit as opposed to a credit against its excise tax liability does not change the underlying character of the claim from a § 6426(c) claim for credit to a § 6427(e) claim for payment.

Claimants have requested clarification regarding the proper accounting period(s) for reducing the income tax deduction for or the cost of goods sold deduction attributable to —

(i) the amount of the 2014 calendar year biodiesel mixture credit claimed against § 4081 excise taxes; and

(ii) the amount of the 2014 calendar year alternative fuel credit claimed against § 4041 excise taxes.

INCOME TAX TREATMENT OF 2014 FUEL CREDITS UNDER § 6426(C) AND (D)

The Act retroactively reinstated through December 31, 2014, the biodiesel mixture credit and the alternative fuel credit. *See* § 160(c) and (d) of the Act and § 6426(c)(6) and (d)(5). As a result, these credits are treated as if they never expired. Claimants determine their 2014 calendar year biodiesel mixture credit and alternative fuel credit by reference to the sale or use of a biodiesel mixture or alternative fuel during 2014. *See* § 6426(c)(1) and (d)(1).

Consequently, for federal income tax purposes, a claimant must reduce its—

(i) § 4081 excise tax liability for each calendar quarter during the 2014 calendar year by its biodiesel mixture credit attributable to a biodiesel mixture sold or used during that calendar quarter; and

(ii) § 4041 excise tax liability for each calendar quarter during the 2014 calendar year by its alternative fuel credit attributable to alternative fuels sold or used during the calendar quarter.

The reductions apply whether or not the claimant's taxable year ended before the Act was signed into law on December 19, 2014. This is because Congress restored the credits retroactively; therefore, a claimant must treat the credits as if they never expired. The statute's procedural mandate, under section 160(e) of the Act, of a one-time submission of claims process does not affect the substantive federal income tax treatment of these credits.

The following examples illustrate the application of the income tax treatment in the context of the biodiesel mixture credit, but the principles in the example apply equally to the alternative fuel credit:

Example 1. B is a calendar year taxpayer. During each calendar quarter of 2014, B's § 4081 excise tax liability was \$25, for a total of \$100 for 2014. In

addition, during each calendar quarter of 2014 B produced a biodiesel mixture using 20 gallons of biodiesel. B produced the biodiesel mixture for sale or use in its trade or business. B claims the biodiesel mixture credit on Form 8849 pursuant to Notice 2015-3, and is allowed an \$80 biodiesel mixture credit for 2014 (\$80 = 20 gallons of biodiesel used to produce a mixture x \$1.00/gallon credit x 4 quarters). B must apply the \$80 credit against B's \$100 § 4081 excise tax liability. Thus, for federal income tax purposes, B's § 4081 excise tax liability for 2014 is \$20. Therefore, B's federal income tax deduction (or cost of goods sold, where applicable) attributable to § 4081 excise taxes for 2014 is \$20.

Example 2. C is a taxpayer with a tax year ending March 31. During each calendar quarter of its tax year ending March 31, 2014, C's § 4081 excise tax liability was \$25. In addition, during each calendar quarter of that tax year, C produced a biodiesel mixture using 20 gallons of biodiesel. C produced the biodiesel mixture for sale or use in its trade or business. C claims a \$60 biodiesel mixture credit on Schedule C of the Forms 720 that C files for the last three calendar quarters of 2013 (\$60 = 20 gallons of biodiesel used to produce a mixture x \$1.00/gallon credit x 3 quarters). C also claims the biodiesel mixture credit on Form 8849 pursuant to Notice 2015-3. For the first calendar quarter of 2014 C produces a biodiesel mixture using 20 gallons of biodiesel. Therefore, C is allowed a \$20 biodiesel mixture credit for the first calendar quarter of 2014 (\$20 = 20 gallons of biodiesel used to produce a mixture x \$1.00/gallon credit x 1 quarter). C's biodiesel mixture credit for its taxable year ending March 31, 2014 equals \$80 (\$60 of credit in the last three calendar quarters of 2013 and \$20 in the first calendar quarter of 2014). C must apply the \$80 credit against C's \$100 § 4081 excise tax liability. Thus, for federal income tax purposes, C's § 4081 excise tax liability for its tax year ending March 31, 2014 is \$20. Therefore, C's federal income tax deduction (or cost of goods sold, where applicable) attributable to § 4081 excise taxes for its tax year ending March 31, 2014 is \$20.

EFFECT ON OTHER DOCUMENTS

This notice amplifies Notice 2015-3 by providing that, for federal income tax purposes, a claimant reduces its § 4081 excise tax liability by the amount of 2014 excise tax credit allowable under § 6426(c) and its § 4041 excise tax liability by the amount of 2014 excise tax credit allowable under § 6426(d), in determining its deduction for those excise taxes or its cost of goods sold deduction attributable to those excise taxes.

DRAFTING INFORMATION

The principal author of this notice is Shareen S. Pflanz of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice, contact Shareen S. Pflanz on (202) 317-4718 (not a toll-free number).

Rev. Proc. 2015-40

SECTION 1. PURPOSE, BACKGROUND, RULES OF CONSTRUCTION, AND DEFINITIONS

SECTION 2. SCOPE AND GENERAL APPLICATION

SECTION 3. PROCEDURES FOR FILING COMPETENT AUTHORITY REQUESTS

SECTION 4. ACAP AND ANCILLARY ISSUES

SECTION 5. SMALL CASE COMPETENT AUTHORITY REQUESTS

SECTION 6. COORDINATION OF THE COMPETENT AUTHORITY PROCESS WITH U.S. ADMINISTRATIVE AND JUDICIAL PROCEEDINGS

SECTION 7. ACKNOWLEDGMENT OF RECEIPT AND DENIAL OF ASSISTANCE

SECTION 8. CONSULTATIONS AND RELATED ACTIONS BY THE U.S. COMPETENT AUTHORITY

SECTION 9. RESULTS OF COMPETENT AUTHORITY CASE

SECTION 10. ARBITRATION

SECTION 11. PROTECTIVE CLAIMS

SECTION 12. TREATY NOTIFICATIONS

SECTION 13. REQUESTS FOR RULINGS

SECTION 14. USER FEES

SECTION 15. EFFECT ON OTHER DOCUMENTS

SECTION 16. EFFECTIVE DATE

SECTION 17. PAPERWORK REDUCTION ACT

SECTION 18. DRAFTING INFORMATION

APPENDIX

SECTION 1. PURPOSE,
BACKGROUND, RULES OF
CONSTRUCTION, AND
DEFINITIONS

.01 *Purpose and Background.* This revenue procedure provides guidance on the process of requesting and obtaining assistance under U.S. tax treaties from the U.S. competent authority, acting through the Advance Pricing and Mutual Agreement Program and the Treaty Assistance and Interpretation Team of the Deputy Commissioner (International), Large Business & International Division of the Internal Revenue Service. This revenue procedure updates and supersedes Rev. Proc. 2006-54, 2006-2 C.B. 1035, and is being issued concurrently with Rev. Proc. 2015-41, 2015-35 I.R.B. 263, which provides guidance with respect to advance pricing agreements.

A proposed version of this revenue procedure was released for public comment in Notice 2013-78, 2013-50 I.R.B. 633. This final revenue procedure is issued following consideration of all public comments received by the IRS and the Treasury Department. This revenue procedure also reflects modifications based on continuing internal monitoring of the administrative procedures of the U.S. competent authority to ensure that the administration of U.S. tax treaties is consistently principled, effective, and efficient.

The principal differences between this final revenue procedure and the proposed version in Notice 2013-78 may be summarized as follows:

(1) This revenue procedure limits the scope of requests to which mandatory pre-filing procedures apply to requests involving taxpayer-initiated positions. *See* section 3.02.

(2) To ensure that taxpayers have broad access to the U.S. competent authority to resolve disputes under U.S. tax treaties, taxpayers will not be required under this revenue procedure to expand

the scope of a competent authority request to include interrelated issues as a condition of receiving competent authority assistance. Taxpayers may still be required to provide information that will allow the U.S. competent authority to evaluate the appropriateness of the relief sought under the applicable U.S. tax treaty in light of the taxpayer's positions on interrelated issues. *See* section 2.04.

(3) This revenue procedure clarifies that the U.S. competent authority may consult with taxpayers with respect to certain additional issues that may arise in connection with competent authority requests, such as issues relevant to the determination of foreign tax credits and repatriation payments. *See* sections 2.03 and 4.02(2).

(4) This revenue procedure provides additional guidance on requesting discretionary determinations under the limitation on benefits articles of U.S. tax treaties, including time frames for taxpayers to provide notification of material changes in fact or law and the introduction of a triennial statement procedure to maintain a favorable grant of discretionary benefits. *See* section 3.06(2).

(5) Consistent with the objective of providing taxpayers with broad access to the U.S. competent authority to resolve disputes under U.S. tax treaties, the U.S. competent authority will not condition assistance on the taxpayer's notification of the U.S. competent authority, or on obtaining its concurrence, with respect to signing a standard Form 870 with IRS Examination. Similarly, a taxpayer will not be required to obtain the U.S. competent authority's agreement prior to entering into a closing agreement or similar agreement with IRS Examination, but in these cases the assistance provided by the U.S. competent authority will be limited to seeking correlative relief from the foreign competent authority, thus potentially

not eliminating double taxation. *See* section 6.03.

(6) This revenue procedure provides additional information about the process followed by the U.S. competent authority in conducting its review under the simultaneous appeals procedure. *See* section 6.04(2).

(7) This revenue procedure clarifies and refines the bases on which the U.S. competent authority may decline to accept a competent authority request or may cease providing assistance, consistent with U.S. tax treaty policy that taxpayers should have broad access to the U.S. competent authority to resolve instances of taxation not in accordance with the applicable U.S. tax treaty. *See* section 7.02.

(8) This revenue procedure increases the user fee for requests for discretionary LOB relief from \$27,500 to \$37,000. This increase is implemented in two phases. First, the user fee will increase to \$32,500 for requests filed on or after October 30, 2015 and prior to September 30, 2016. The fee will further increase to \$37,000 for requests filed on or after September 30, 2016. *See* section 14.02.

(9) This revenue procedure substantially restructures the proposed guidance in Notice 2013-78 to improve clarity, readability, and organization.

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

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

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

ACAP	Accelerated competent authority procedure (<i>see</i> section 4.01)
ACAP request	A request to include ACAP years in a competent authority case
ACAP years	Taxable years subsequent to competent authority years for which tax returns have been filed and that are covered by an ACAP request or are eligible for ACAP
Ancillary issue	A competent authority issue, such as repatriation payments (<i>see</i> section 4.02(2)), interest on refunds and deficiencies, and penalties, that arises out of a competent authority resolution of another, underlying competent authority issue
APA	An advance pricing agreement within the meaning of Rev. Proc. 2015-41
APA process	The steps involved in the process of reaching an APA, as described in Rev. Proc. 2015-41
APA request	A request for an APA filed under Rev. Proc. 2015-41
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 discretionary LOB request
Arbitration treaty	A U.S. tax treaty in which the mutual agreement procedure article includes a provision for mandatory arbitration of certain competent authority cases (<i>see</i> section 10)
Bilateral APA	A bilateral APA as defined in Rev. Proc. 2015-41
Code	The Internal Revenue Code of 1986 (26 U.S.C.), as amended
Competent authority case	A case initiated by a competent authority request involving one or more competent authority issues
Competent authority issue	An issue that can be resolved by the U.S. competent authority, typically under the mutual agreement procedure agreement article of a U.S. tax treaty
Competent authority process	All steps in the process of initiating and resolving a competent authority case, including steps in relation to pre-filing procedures
Competent authority request	A request for assistance of the U.S. competent authority filed under this revenue procedure
Competent authority resolution	The resolution of competent authority issues constituting a competent authority case, reached either (i) between the U.S. competent authority and one or more foreign competent authority(ies) (as reflected in a signed mutual agreement and any additional agreements or understandings achieved through the competent authority process) or (ii) through arbitration
Competent authority year	A taxable year for which a tax return has been filed and in which a competent authority issue has arisen that is the subject of a competent authority case
Controlled group	The group of controlled taxpayers (as defined in Treas. Reg. § 1.482-1(i)) of which the taxpayer filing the competent authority request is a member
Discretionary LOB request	A request that the U.S. competent authority grant certain discretionary treaty benefits to an applicant that does not qualify for those benefits under the relevant LOB provisions of a U.S. tax treaty
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 action	A foreign-initiated adjustment, or another action by or on behalf of the tax authority of a treaty country (such as withholding), that gives rise to a competent authority issue or makes it likely that a competent authority issue will arise
Foreign-initiated adjustment	A proposed or final adjustment made by the tax authority of a treaty country to the taxable income of a taxpayer
FTC issue	An issue relating to the determination of foreign tax credits, including the following: (1) whether a credit, deduction, or exclusion may be given under the law of a treaty country regarding income tax due in the treaty country on account of income tax paid in the United States; (2) whether a credit or deduction may be given regarding U.S. income tax due, on account of income tax paid in a treaty country; and (3) the extent to which remedies for reducing tax liability under foreign law (including, in appropriate cases, a request for competent authority assistance, litigation, or both) are “effective and practical” within the meaning of Treas. Reg. § 1.901-2(e)(5) and Rev. Rul. 92-75, 1992-2 C.B. 197 (<i>see</i> section 2.03)

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, including 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 (or arrangement treated as such) as defined in Treas. Reg. § 1.482-7 or a qualified cost sharing arrangement (or arrangement treated as such) as defined in Treas. Reg. § 1.482-7A (collectively, a “CSA”); and an arrangement (other than a CSA) for which 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. <i>See also</i> 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	IRS Large Business & International Division
LOB	Limitation on benefits
Multilateral APA	A multilateral APA as defined in Rev. Proc. 2015-41
Non-U.S.-initiated action	A foreign-initiated action or a taxpayer-initiated position
Pension plan request	A competent authority request in which the taxpayer requests a determination that a foreign pension plan “generally corresponds” to a pension plan recognized for tax purposes in the United States
Pre-filing conference	A conference held with the U.S. competent authority before a competent authority request is filed
Pre-filing memorandum	A memorandum or similar paper submitted to the U.S. competent authority before a competent authority request is filed
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 competent authority case
Protective claim	A contingent claim filed with the U.S. competent authority as described in section 11
Regulations	U.S. Treasury regulations promulgated under the Code
SAP review	The review of a competent authority issue by the U.S. competent authority with the assistance of IRS Appeals under the simultaneous appeals procedure. <i>See</i> section 6.04(2)
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), LB&I
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 competent authority issue that results from inconsistent positions taken by a taxpayer with respect to its tax liability in the United States and in a treaty country that were not adopted in response to a proposed or actual adjustment made by the IRS or a foreign tax authority, such as (i) inconsistent positions with regard to the same transaction taken on an original U.S. return and an equivalent filing with a foreign tax authority and (ii) a revised position taken on an amended U.S. return or equivalent filing with a foreign tax authority that creates inconsistent positions between the U.S. return and an equivalent filing with a foreign tax authority
Tentative competent authority resolution	A proposed competent authority resolution that is reached by the respective staffs of the U.S. competent authority and a foreign competent authority and that is subject to approval by the respective competent authorities before becoming a competent authority resolution

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 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 (<i>see</i> section 12)
U.S. competent authority	The Deputy Commissioner (International), LB&I, the Assistant Deputy Commissioner (International), LB&I, and each other IRS official performing competent authority functions pursuant to applicable delegation orders
U.S.-initiated action	A U.S.-initiated adjustment, or another action by or on behalf of the IRS (such as withholding), that results in a competent authority issue
U.S.-initiated adjustment	A proposed or final adjustment made by the IRS to the taxable income of a taxpayer
U.S. return	A federal tax return filed with the IRS pursuant to the Code
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 protocols, exchanges of diplomatic notes, memoranda of understanding, and competent authority arrangements

SECTION 2. SCOPE AND GENERAL APPLICATION

.01 Administration of U.S. Tax Treaties.

(1) *The U.S. Competent Authority.* U.S. tax treaties designate the Secretary of the Treasury or his delegate as the competent authority with respect to the United States. The Secretary of the Treasury has delegated that authority through the Commissioner of the IRS to the Deputy Commissioner (International), LB&I. The authority to act on behalf of the Deputy Commissioner (International), LB&I as the U.S. competent authority has been delegated to the Assistant Deputy Commissioner (International), LB&I. *See* Treasury Order 150–10 and Delegation Order 4–12 (Rev. 2), IRM 1.2.43 (or successor delegation order). Authority to act as the U.S. competent authority with regard to certain competent authority issues has been delegated to the directors of TPO and APMA. The U.S. competent authority has authority to apply the provisions of U.S. tax treaties. The U.S. competent authority endeavors to do so in a manner that is consistent with U.S. tax treaty obligations and that secures the appropriate tax bases of the United States and its treaty partners, prevents fiscal evasion, and provides taxpayers broad access to competent authority assistance in accordance with considerations of principled, effective, and efficient tax administration. The U.S. competent authority also has authority to interpret the provisions of U.S. tax treaties, but only with the concurrence of

the Associate Chief Counsel (International).

(2) *Mutual Agreement Procedure Articles.* The mutual agreement procedure articles of U.S. tax treaties grant taxpayers the right to request the assistance of the U.S. competent authority when the taxpayer believes that the actions of the United States or a treaty country result or will result in the taxpayer being subject to taxation not in accordance with the applicable U.S. tax treaty. This situation typically arises as a result of U.S.- or foreign-initiated adjustments resulting from an examination, but can arise from other U.S.- or foreign-initiated actions (such as withholding of tax by a withholding agent) or from a taxpayer-initiated position. The U.S. competent authority will endeavor to resolve competent authority issues arising under the mutual agreement procedure articles of U.S. tax treaties through consultations with the applicable foreign competent authority(ies) but in some cases may resolve such issues unilaterally (*see, e.g.,* section 8.02). There is no authority for the U.S. competent authority to provide relief with respect to U.S. tax or to provide other assistance related to taxation arising under the tax laws of a foreign country or the United States unless such authority is granted by a treaty. The grant of such authority by the mutual agreement procedure articles of U.S. tax treaties is separate from and in addition to the authority under such articles for the U.S. competent authority to

consult generally with foreign competent authorities to resolve difficulties or doubts regarding treaty interpretation or application, irrespective of whether the consultation relates to a current matter involving a specific taxpayer.

(3) *Roles of APMA and TAIT.* The U.S. competent authority conducts the competent authority process through two offices, APMA and TAIT. APMA has primary responsibility for cases arising under the business profits and associated enterprises articles of U.S. tax treaties. An example of a competent authority issue handled by APMA is the double tax that could be incurred as a result of an allocation made by the IRS under section 482 of the Code or by a foreign tax authority under an equivalent provision in its domestic law. TAIT has primary responsibility for cases arising under all other articles of U.S. tax treaties. TAIT also has primary responsibility for cases arising under U.S. tax treaties with respect to estate and gift taxes. APMA and TAIT each can consider cases arising under the permanent establishment articles of U.S. tax treaties, and both offices will coordinate and collaborate on such cases and on any other cases as appropriate.

.02 *U.S. Territories.* This revenue procedure pertains only to requests for assistance arising under U.S. tax treaties. For procedures for requesting assistance of the U.S. competent authority in addressing inconsistencies in tax treatment by the IRS

and a U.S. territory, see Rev. Proc. 2006–23, 2006–1 C.B. 900.

.03 Informal Consultations with Taxpayers. The U.S. competent authority is available for informal consultations with taxpayers (including consultations in which the taxpayer chooses to be anonymous) regarding any competent authority issue. Any informal advice provided by the U.S. competent authority through such consultations is advisory only and is not binding on the IRS. The U.S. competent authority also is available for informal consultations on issues that arise in connection with competent authority issues, even where such issues are not themselves competent authority issues. For example, a taxpayer may consult the U.S. competent authority on FTC issues, which may cover, when appropriate, considerations surrounding administrative or other steps that may be available to the taxpayer in the foreign jurisdiction. See Treas. Reg. § 1.901–2(e)(5) and Rev. Rul. 92–75.

.04 Scope of Competent Authority Cases.

(1) *In General.* In every case it accepts, the U.S. competent authority will endeavor to reach a competent authority resolution on the competent authority issue for which the taxpayer seeks assistance. However, depending on the facts and circumstances of the particular case, the U.S. competent authority may determine during the competent authority process that it cannot reach a competent authority resolution consistent with principled, effective, and efficient tax administration unless it evaluates the relief sought by the taxpayer under the U.S. tax treaty in light of whether such relief, together with the taxpayer's position(s) on interrelated issues, would yield consistent and appropriate results. Such circumstances may arise, for example, when the competent authority issues identified in the competent authority request are more reliably evaluated together with other issues identified by the U.S. competent authority. See, e.g., Treas. Reg. §§ 1.482–1(f)(2)(i), 1.482–7(g)(2)(iv). For specific examples of interrelated issues, see section 2.04(2). The U.S. competent authority will endeavor as early as possible in the competent authority process to identify any interrelated issues and require addi-

tional information on (see section 2.04(3)), or request an expansion of the competent authority request to include (see section 2.04(4)), such issue(s).

(2) Examples of Interrelated Issues.

(a) Assume that a competent authority request is made on a competent authority issue concerning a company's ongoing license of intangible property to a second company in the same controlled group, and the intangible property covered by the license had been sold in an earlier year by the second company (the licensee) to the first company (the licensor). In such a case, the U.S. competent authority may consider the assumptions underlying the valuation of the intangible property when it was previously sold in evaluating the ongoing license.

(b) Assume that a competent authority request is made on a competent authority issue concerning the compensation for services provided by one company to a second company in the same controlled group, and the services provided by the first company require using intangible property that the first company had transferred in an earlier year to the second company as part of a business restructuring. In such a case, in evaluating the compensation for the services, the U.S. competent authority may consider the valuation done in connection with the business restructuring and whether any inconsistency in the valuations is explained by particular circumstances.

(c) If a competent authority issue presented by a taxpayer involves the valuation of a platform contribution transaction in a cost-sharing arrangement under Treas. Reg. § 1.482–7, the U.S. competent authority also may consider whether the intangible development costs incurred pursuant to the arrangement were properly shared.

(d) Assume that the taxpayer presents a competent authority issue concerning sales of goods from a manufacturer in a treaty country to a U.S. distributor in the same controlled group, and the U.S. distributor resells most of the goods to another distributor in a second country (which may or may not be a treaty country) that is in the same controlled group. In evaluating the price that the U.S. distributor should have paid to the manufacturer, the U.S. competent authority may exam-

ine the price that the U.S. distributor received for its resale.

(e) Further examples of interrelated issues would include the same competent authority issue in ACAP years, other interrelated competent authority issues in competent authority years and ACAP years, and the competent authority issue or interrelated issues in competent authority or ACAP years concerning a treaty country other than that named in the competent authority request or concerning a non-treaty country.

(3) *Requirement to Provide Information on Interrelated Issues.* During the competent authority process, the U.S. competent authority may require the taxpayer to provide information on the position(s) it has taken on interrelated issues. The U.S. competent authority will endeavor to identify any interrelated issues as early as possible in the competent authority process. Nevertheless, the taxpayer should be prepared throughout the competent authority process to provide information on interrelated issues. See section 3.05(3).

(4) *Request to Expand the Scope of a Competent Authority Request to Include Interrelated Competent Authority Issues.* The U.S. competent authority may request, in writing, that the taxpayer amend its competent authority request to include interrelated competent authority issues that the U.S. competent authority identifies. The U.S. competent authority also may recommend that the taxpayer file a bilateral or multilateral APA request to cover the competent authority issue(s) and the identified interrelated competent authority issues (see section 2.05). If the taxpayer declines to amend its competent authority request, the U.S. competent authority will still endeavor to reach a competent authority resolution, but it will take into account the taxpayer's position(s) on interrelated issues in determining the extent to which it will provide relief for the competent authority issue(s) in the competent authority request.

(5) *Closed Cases.* The U.S. competent authority will not request that the scope of a competent authority case be expanded so as to reopen a case closed after examination unless one or more of the circumstances described in Rev. Proc. 2005–32,

2005–1 C.B. 1206 (*e.g.*, fraud, substantial error, or certain other circumstances) are present. The U.S. competent authority may, however, take into account positions that the taxpayer took on interrelated issues in taxable years that are closed.

.05 Coordination between Competent Authority and APA Processes. Competent authority issues may be similar, or recur, over successive audit cycles. Taxpayers, the IRS, and foreign tax authorities may want to use competent authority resolutions as a framework for managing such similar or recurring competent authority issues. APMA will encourage (but will not formally request or require) taxpayers to extend competent authority resolutions forward into APAs. Also, APMA may request or encourage that taxpayers expand their APA requests to cover competent authority or ACAP years. For further discussion of the relationships between the competent authority and APA processes, see Rev. Proc. 2015–41.

.06 Contact with U.S. Competent Authority during Competent Authority Process. The U.S. competent authority generally holds in-person meetings with most foreign competent authorities. These meetings are typically scheduled several months in advance. In addition, the U.S. competent authority frequently communicates with foreign competent authorities about competent authority cases outside of scheduled in-person meetings. In order to facilitate reaching a competent authority resolution, the taxpayer should remain in contact with its assigned U.S. competent authority representative throughout the competent authority process, particularly when a tentative competent authority resolution has been reached (*see* sections 9.02 and 9.03).

.07 Taxpayer Role in the Competent Authority Process.

(1) *In General.* The taxpayer can facilitate the competent authority process by ensuring that both competent authorities receive complete, accurate, and timely information on the factual and legal issues underlying the competent authority request. The taxpayer also may assist the competent authorities by offering constructive, principled proposals for the terms of a competent authority resolution at appropriate points in the competent au-

thority process. Nevertheless, the taxpayer must recognize the fundamental principle that the competent authority process is conducted between two or more governments. Thus, the taxpayer must recognize that it will not be directly involved in the negotiations between the competent authorities.

(2) *Presentations to Competent Authorities.* Subject to the arbitration provisions of U.S. tax treaties, the U.S. competent authority will allow a taxpayer a reasonable opportunity to present and supplement its views of the relevant facts and arguments, both in writing and orally, before and after discussions with the foreign competent authority have commenced. The competent authorities may invite or request the taxpayer to make a presentation to both competent authorities jointly, particularly where the competent authorities seek clarification of the issues or facts in fact-intensive, unusual, or complex cases. Taxpayers also may request the opportunity to make such a joint presentation during the competent authority process. However, the U.S. competent authority will consult with the foreign competent authority on whether to accept the request, and if so, on appropriate content for the presentation.

.08 Withdrawal of Request. A taxpayer can withdraw its competent authority request at any time, either in full or with respect to particular competent authority issues. If the taxpayer withdraws its competent authority request with respect to particular competent authority issues, the U.S. competent authority, in turn, will decide whether to continue to provide competent authority assistance with regard to any competent authority issues that remain. For any issues no longer under consideration by the U.S. competent authority, the U.S. competent authority will return jurisdiction to the relevant office(s) within the IRS. *See* section 6.02.

SECTION 3. PROCEDURES FOR FILING COMPETENT AUTHORITY REQUESTS

.01 In General. This section sets forth the general procedures and requirements for filing competent authority requests. This section also addresses pre-filing procedures. Unless otherwise indicated, the procedures and requirements of this sec-

tion apply to all types of competent authority requests. Detailed instructions on preparing competent authority requests specific to APMA or TAIT are set forth in the Appendix to this revenue procedure. With regard to any competent authority request, the U.S. competent authority will provide assistance only after the request is complete, either as initially filed or as supplemented (*see* section 3.05(1)). For a discretionary LOB request, the taxpayer also must pay the correct user fee (*see* sections 3.06(2)(f) and 14) after the U.S. competent authority has accepted the request. Taxpayers should note that some U.S. tax treaties contain specific timing requirements for competent authority requests (*e.g.*, requiring taxpayers to submit a treaty notification within a specified time frame; *see* section 12). Any specific requirement set forth in the applicable U.S. tax treaty takes precedence over any conflicting provision in this revenue procedure. Taxpayers also should be aware that making certain agreements with the IRS or a foreign tax authority may preclude or limit access to the competent authority process (*see* sections 6.03, 6.04, and 7.02(3)). Further, taxpayers are advised to take such actions as are necessary to preserve whatever rights they may have available under domestic law in either the United States or the treaty country if the U.S. competent authority ultimately denies competent authority assistance (*see* section 7.02) or a competent authority resolution is not reached.

.02 Pre-filing Procedures.

(1) *In General.* For a competent authority request that involves a taxpayer-initiated position, the taxpayer must follow the mandatory pre-filing procedures described in section 3.02(2). For a competent authority request that does not involve a taxpayer-initiated position, there is no mandatory pre-filing procedure, and taxpayers are not required to contact the U.S. competent authority before filing a competent authority request. However, even when the mandatory pre-filing procedures are not applicable, taxpayers may benefit from attending a pre-filing conference under the optional pre-filing procedure of section 3.02(3). The U.S. competent authority has found that a pre-filing

conference can facilitate the competent authority process when the competent authority issues presented by the taxpayer are complex, large in amount, novel, or likely to involve interrelated issues. Common types of cases for which the U.S. competent authority generally recommends that a pre-filing conference be held are listed in section 3.02(4). Even in such cases, however, the U.S. competent authority may advise the taxpayer that a pre-filing conference is unnecessary.

(2) *Mandatory Pre-filing Procedures for Taxpayer-initiated Positions.* A taxpayer must submit a pre-filing memorandum prior to filing a competent authority request if the proposed competent authority issues will involve a taxpayer-initiated position. The pre-filing memorandum must identify the taxpayer, explain the factual and legal basis of the taxpayer-initiated position, and describe any administrative, legal, or other procedural steps undertaken in the applicable treaty country (including whether the foreign tax authority has accepted an income tax return reflecting the taxpayer-initiated position for which the taxpayer seeks competent authority assistance) and any communications with the foreign competent authority regarding the position. The degree of detail and content of the pre-filing memorandum must be appropriate to the stage, size, and complexity of the competent authority issues underlying the proposed competent authority request. The pre-filing memorandum must propose at least three possible dates for a pre-filing conference, each at least two weeks after the date that the pre-filing memorandum is submitted. The U.S. competent authority will decide whether to hold a pre-filing conference with the taxpayer, taking into account any views expressed by the taxpayer in the pre-filing memorandum as to the advisability of such a conference. The pre-filing memorandum also must list the name and contact information for the taxpayer's point of contact and, if necessary, provide a Form 2848, *Power of Attorney and Declaration of Representative*, authorizing the point of contact to represent the taxpayer, or a Form 8821, *Tax Information Authorization*, authorizing the point of contact to inspect or receive confidential tax information about the taxpayer. Two printed copies and one electronic

copy of the pre-filing memorandum must be submitted to APMA or TAIT, as appropriate. The taxpayer may supplement the pre-filing memorandum with such materials as drawings, slides, and spreadsheets.

(3) *Optional Pre-filing Procedures.* For a competent authority request that does not involve a taxpayer-initiated position, the taxpayer may request a pre-filing conference on either a named or anonymous basis. The U.S. competent authority prefers that pre-filing conferences be held on a named basis to facilitate a more informed understanding of the procedural and substantive issues that could arise during the competent authority process. The U.S. competent authority may determine that a pre-filing conference is not necessary. If the U.S. competent authority agrees to a request for a pre-filing conference made on a named basis, the taxpayer will be required to provide a point of contact and, if necessary, a Form 2848 authorizing the point of contact to represent the taxpayer or a Form 8821 authorizing the point of contact to inspect or receive confidential tax information about the taxpayer. The U.S. competent authority may require the taxpayer to submit pre-filing written materials as a prerequisite to holding a conference or to considering the taxpayer's request for a conference. Any such materials should describe such issues in a degree of detail appropriate to their size, stage of resolution, and procedural and substantive complexity.

(4) *Competent Authority Issues for which Optional Pre-filing Conference Is Recommended.* The following are examples of circumstances for which a pre-filing conference is generally recommended to better facilitate the competent authority process:

- (a) a foreign-initiated adjustment that exceeds \$50 million for all competent authority years combined;
- (b) a competent authority issue that is likely to involve interrelated issues (see section 2.04(2));
- (c) an intangible development arrangement;
- (d) a business restructuring;
- (e) a global trading arrangement;
- (f) an unincorporated branch, pass-through entity, hybrid entity, or entity disregarded for U.S. tax purposes;

(g) a discretionary LOB request; or

(h) a competent authority issue that has arisen outside the context of an examination, for example through the withholding of tax by a withholding agent or a ruling or promulgation issued by a foreign tax authority.

(5) *Statements during Pre-filing Conference.* Statements or representations, whether oral or written, made by the U.S. competent authority in connection with a mandatory or optional pre-filing conference are informal only and are not binding on the IRS (see section 2.03).

.03 *Persons Eligible to File Competent Authority Requests.* Whether a taxpayer is eligible to file a competent authority request is determined by reference to the U.S. tax treaty under which competent authority assistance is sought. Taxpayers who are eligible to file a request for assistance from the U.S. competent authority may do so only in accordance with this revenue procedure.

.04 *Time for Filing a Competent Authority Request.*

(1) *In General.* Subject to the provisions of section 3.04(3), taxpayers are encouraged to file a competent authority request promptly after a competent authority issue arises or is likely to arise. Certain U.S. tax treaties may require that a competent authority request or a treaty notification be filed within a certain time limit (see generally sections 11 and 12).

(2) *Effect of Expiration of Domestic Time Limits.* The prior expiration of time limits prescribed by domestic law in the United States or the treaty country will not by itself prevent the consideration of a competent authority request by the U.S. competent authority, provided that (a) the applicable treaty permits waiver of domestic procedural barriers to implementation of a competent authority resolution (see section 11.01) and (b) the procedural requirements under the applicable treaty (including time limits for notification) are satisfied (see section 12.01).

(3) *Timing of Competent Authority Request Concerning U.S.-Initiated Actions.* For a competent authority issue that arises from an examination by the IRS, the U.S. competent authority will not accept a competent authority request before the IRS has communicated the amount of the

proposed adjustment in writing to the taxpayer, e.g., with a Form 5701, *Notice of Proposed Adjustment*, or a Form 4549, *Income Tax Examination Changes*. For a competent authority issue that arises from other actions undertaken by or on behalf of the IRS (such as the withholding of tax by a withholding agent), the U.S. competent authority will not accept a competent authority request before such other action occurs.

.05 Content and Form of Competent Authority Request.

(1) *In General.* The U.S. competent authority will provide assistance only after the taxpayer has filed a complete competent authority request. The Appendix sets forth the required contents of a complete competent authority request, prescribes the order in which the contents must be presented, and provides information and instructions on other administrative matters relevant to filing the request. With regard to requests for assistance from APMA, see section 2 of the Appendix. With regard to requests for assistance from TAIT, see section 3 of the Appendix.

(2) *Related Requests Submitted to Foreign Competent Authority.* A competent authority request filed with the U.S. competent authority must include a description or discussion of any related requests for assistance submitted to the foreign competent authority, together with a thorough, informative explanation of any material differences between the competent authority request filed under this revenue procedure and the request filed with the foreign competent authority. The U.S. competent authority may request that the taxpayer provide a full or partial copy of the corresponding request submitted to the foreign competent authority. See generally the Appendix.

(3) *Additional Requested and Submitted Items.* The required information, documents, and analyses identified in the Appendix may not be exhaustive of the items the U.S. competent authority needs to evaluate the competent authority request, including possible interrelated issues (see section 2.04(3)). Similarly, the foreign competent authority may request additional information during the competent authority process. In general, the taxpayer should be prepared throughout the com-

petent authority process to provide each competent authority with the same information, documents, and analyses at approximately the same time, regardless of whether such information, documents, or analyses are provided in response to a request from a competent authority or are submitted voluntarily by the taxpayer in support of its competent authority request. The U.S. competent authority will work with the taxpayer and the foreign competent authority to establish procedures for efficient distribution of information, documents, and analyses submitted during the competent authority process.

(4) *Corrected and Updated Information.* After filing the competent authority request, the taxpayer must promptly correct or remedy any material errors or any material omissions in the competent authority request or in supplemental submissions. The taxpayer also must submit any information or documents discovered or created during the competent authority process that would be material to the competent authority process. The taxpayer must timely notify the U.S. competent authority of all material changes and updates to information previously submitted in connection with the competent authority request.

.06 Requirements and Procedures Applicable to Specific Types of Competent Authority Requests.

(1) *Competent Authority Requests Involving Residency.* 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. The U.S. competent authority will accept a competent authority request concerning a question of residency under a U.S. tax treaty only 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 U.S. tax treaty. The U.S. competent authority will not unilaterally resolve a question of residency.

(2) Discretionary LOB Requests.

(a) *No Determination If Applicant Meets Objective Test.* Most U.S. tax treaties contain an LOB article that enumerates objective tests to determine whether a resident of a treaty country is entitled to benefits under the applicable U.S. tax treaty. Most LOB articles provide that a resident may be granted treaty benefits at the discretion of the U.S. competent authority if the resident does not qualify for those benefits under the relevant objective tests. The U.S. competent authority will not issue a determination regarding whether an applicant satisfies an objective LOB test. In addition, the U.S. competent authority will not accept a discretionary LOB request if the applicant as a part of its request does not represent that, and explain why, it does not qualify for the requested benefits under the relevant LOB provisions. See the Appendix for the additional information applicants are required to provide in discretionary LOB requests. The U.S. competent authority typically will not exercise its discretion in circumstances described in section 3.06(2)(e).

(b) *Sole Authority to Grant Discretionary Benefits.* The U.S. competent authority in its sole discretion may grant benefits under the discretionary provision of an LOB article in an applicable U.S. tax treaty. A decision by the U.S. competent authority not to grant discretionary benefits is final and not subject to administrative review. An applicant that does not qualify for the requested benefits under the relevant LOB provisions of the applicable U.S. tax treaty may not claim those treaty benefits, either at source or through a refund claim, unless it has received a favorable determination from the U.S. competent authority exercising its discretion to grant benefits.

(c) *Scope.* The applicant must specifically identify the benefits of the treaty for which it is requesting a discretionary determination. The requested benefits must be specifically supported by the facts presented in the applicant's request, and the request must not present a hypothetical transaction. The U.S. competent authority may grant all the requested benefits or may grant only certain benefits. For instance, it may grant benefits only with respect to a particular

item of income. Further, the U.S. competent authority may establish conditions on the benefits, such as setting time limits on the duration of any relief granted.

(d) *Exercise of Discretion.* In general, if the applicant's case is accepted, all facts and circumstances may be considered in evaluating whether discretionary LOB relief should be granted. To obtain a favorable determination, the applicant must demonstrate to the satisfaction of the U.S. competent authority that it does not qualify for the requested benefits under the relevant LOB provisions of the applicable U.S. tax treaty, that the applicant has a substantial nontax nexus to the treaty country, and that, if benefits are granted, neither the applicant nor its direct or indirect owners will use the treaty in a manner inconsistent with its purposes. By way of example, but not limitation, the U.S. competent authority may take into account the countries of residence of the applicant's owners, changes in the ownership structure of the applicant and its U.S. operations, and the history of the applicant's trade or business activities in its country of residence and in the United States, including its customer base, capital assets, employees, income, and sources of supply. A substantial nontax nexus to the treaty country cannot be established by an intent to take advantage of favorable domestic laws of the treaty country, including the existence of a network of tax treaties.

(e) *Areas in Which Discretion Will Not Typically be Exercised.* By way of example, but not limitation, the U.S. competent authority typically will not exercise its discretion to grant benefits where:

(i) the applicant or any of its affiliates is subject to a special tax regime in its country of residence with respect to the class of income for which benefits are sought. An example of such a regime for interest income is one that allows a notional interest deduction with respect to equity in the residence country;

(ii) no or minimal tax would be imposed on the item of income in both the country of residence of the applicant and the country of source, taking into account both domestic law and the treaty provision ("double non-taxation"). For example, double non-taxation would occur if a payment under a hybrid instrument was ex-

empt from withholding and generated a deduction in the country of source, while being treated as income exempt from tax in the country of residence of the applicant; or

(iii) the applicant bases its request solely on the fact that it is a direct or indirect subsidiary of a publicly traded company resident in a third country and the relevant withholding rate provided in the tax treaty between the United States and the country of residence of the applicant is not lower than the corresponding withholding rate in the tax treaty between the United States and the country of residence of the parent company or any intermediate owner.

(f) *User Fee.* Applicants filing a discretionary LOB request for an initial determination, a renewal of a favorable determination issued prior to the effective date of this revenue procedure, or a supplemental determination must remit the user fee as provided in section 14 as well as comply with the instructions set forth in the Appendix.

(g) *Material Change and Supplemental Determination.* An applicant that obtains a favorable determination with respect to a discretionary LOB request must notify TAIT within 90 days after becoming aware of any material change in fact or law with respect to such request. Examples of material changes in fact may include changes in the ownership structure, assets, or activities of the applicant or relevant related entities. Examples of material changes in law may include the enactment of a special tax regime that materially affects the applicant's tax liability. Unless TAIT indicates otherwise, a grant of discretionary LOB benefits terminates upon the occurrence of a material change in law or fact. After notification of a material change, TAIT either will advise the applicant that the original determination is still in effect or will instruct the applicant to seek a supplemental determination. If a supplemental determination is required, no benefits will be allowed until TAIT has issued such supplemental determination. If a supplemental determination is issued, benefits may, to the extent consistent with the applicable U.S. tax treaty, be granted retroactively to the date of material change in law or fact as determined in the sole discretion of the

U.S. competent authority. The fact that an applicant previously received a favorable determination will not, by itself, preclude the U.S. competent authority from considering all relevant facts and circumstances, including facts and circumstances that were not previously considered, in determining whether to grant the requested benefits.

(h) *Triennial Statement.* An applicant that receives a favorable discretionary LOB determination must file a triennial statement to keep that determination in force. The statement must declare that (i) there has not been a material change with respect to any relevant facts as set forth in the discretionary LOB request (or in any supplemental requests, submissions (including past triennial statements), or oral representations made with respect to that request), (ii) there has not been a material change in law relevant to the benefits being sought, and (iii) the applicant is not claiming any benefits different from those granted. The triennial statement must contain the following declaration: "Under penalties of perjury, I declare that I have examined this statement and accompanying documents, if any, and that, to the best of my knowledge and belief, this statement contains all relevant information relating to the triennial reporting requirement, and that the representations in this statement are true, correct, and complete." The statement also must include any other representations or items that the U.S. competent authority may instruct the applicant to include. The applicant must file the first triennial statement with TAIT no later than three years from the date of the letter notifying the applicant of the U.S. competent authority's determination to grant discretionary benefits, or by such other date to which the U.S. competent authority and the applicant may agree. The applicant must file each additional triennial statement with TAIT no later than three years after the most recent triennial statement, or by such other date to which the U.S. competent authority and the applicant may agree. The U.S. competent authority will review each triennial statement and notify the applicant if any information must be clarified or supplemented. Any request the applicant receives to clarify or sup-

plement information in a triennial statement does not constitute an examination or the commencement of an examination for purposes of section 7605(b) or any other provision of the Code. Failure to timely file a triennial statement will result in a termination of the grant of discretionary benefits from the due date of the triennial statement.

(3) Pension Plan Requests

(a) *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 their U.S. taxable income. Some of these U.S. 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 U.S. tax treaties allow U.S. employers a deduction on their U.S. returns for contributions to a foreign pension fund on behalf of employees who perform services in the United States.

(b) *Contents of Request.* The U.S. tax treaties described in section 3.06(3)(a) 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 that certain plans 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 pension plan request according to the instructions set forth in the Appendix.

SECTION 4. ACAP AND ANCILLARY ISSUES

.01 Accelerated Competent Authority Procedure.

(1) *In General.* Under ACAP, a taxpayer may request that the terms of a competent authority resolution for a given taxable period be extended to cover subsequent taxable periods for which it has filed tax returns. In appropriate cases, the U.S. competent authority may request that the taxpayer expand the scope of its competent authority request to include ACAP years, even if the taxpayer has not filed an ACAP request (*see generally* section 2.04).

(2) *Format and Timing of ACAP Requests.* A taxpayer may include an ACAP request in its competent authority request (*see* the Appendix) or in a separate written submission provided to the U.S. competent authority after the taxpayer has filed its competent authority request but before a tentative competent authority resolution is reached between the U.S. and foreign competent authorities. *See* section 8.02. A taxpayer that seeks to file an ACAP request after it has filed the competent authority request may obtain instructions on the format, content, and timing of the ACAP request by contacting the taxpayer’s assigned U.S. competent authority representative. Among the items that will be required in the ACAP request is 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* section 2.02, Tab 2, of the Appendix). The taxpayer is responsible for timely filing an ACAP request and should not rely on the U.S. competent authority to notify the taxpayer of the expected timing of a tentative competent authority resolution.

.02 Ancillary Issues.

(1) *In General.* The mutual agreement procedure article in most U.S. tax treaties provides that the U.S. competent authority may consult with the foreign competent authority to reach agreement on ancillary issues, such as the application of the provisions of domestic law regarding penal-

ties, fines, and interest. In cases where the applicable U.S. tax treaty authorizes the U.S. competent authority to do so, the taxpayer may request, either in its competent authority request or in a supplemental submission, that the competent authorities discuss certain ancillary issues and that any competent authority resolution include agreement on such ancillary issues. If the U.S. competent authority either declines to consult with the foreign competent authority about, or fails to reach an agreement on, an ancillary issue, then the controlling provisions of domestic law will apply to that issue.

(2) *Competent Authority Repatriation.* Competent authority repatriation may be addressed as an ancillary issue in a competent authority resolution. When a competent authority resolution makes a primary adjustment to income, deductions, credits, allowances, basis or any other item or element affecting taxable income between two members of a controlled group, the competent authority resolution might also include competent authority repatriation as a means to conform their accounts to reflect the primary adjustment. Repatriation payments are described generally in Rev. Proc. 99–32, 1999–2 C.B. 296, as comprising certain types of payments and prepayment offsets made with respect to the amount of a primary adjustment. Competent authority repatriation allows for specific treatment of repatriation payments between the two members. Consistent with the principles of section 4.02(1), only repatriation payments addressed in the competent authority resolution will be covered by competent authority repatriation.

(a) *Requirements for Competent Authority Repatriation.* The U.S. competent authority will consider competent authority repatriation in a competent authority case only if:

(i) 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;

(ii) the request for competent authority repatriation is explicitly set forth in the competent authority request or in a supplemental written submission filed with

the U.S. competent authority prior to a tentative competent authority resolution being reached;

(iii) the primary adjustment giving rise to the application for competent authority resolution is included in the competent authority resolution; and

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

(b) *Decision on Competent Authority Repatriation.* The U.S. competent authority has sole discretion to agree to or decline a request for competent authority repatriation or a request as to the specific terms of such treatment. In no event will the U.S. competent authority grant competent authority repatriation if (i) the U.S. competent authority terminates assistance with respect to the competent authority request pursuant to section 7.02, (ii) the competent authority request involves issues that previously were decided in litigation (*see* section 6.05(2)) or covered by a closing agreement or other similar agreement (*see* section 6.03(2)), or (iii) the taxpayer rejects the competent authority resolution.

(c) *Terms and Effect of Competent Authority Repatriation.* When a competent authority resolution includes competent authority repatriation for a particular taxable year, that treatment of repatriation payment(s) replaces the treatment of the repatriation payments that otherwise would be available for that taxable year under Rev. Proc. 99-32. To the extent the

taxpayer does not make repatriation payments of the primary adjustment for the taxable year under the terms specified, there will be consequences as provided in the competent authority resolution or, if not specified in the competent authority resolution, as provided by the Code and the relevant domestic law of the treaty country. The terms of the competent authority repatriation reached in the competent authority resolution may reflect a prevailing practice with a treaty partner as well as circumstances specific to a particular case, and may include, among other things, a waiver of inter-company interest on repatriation payments made within a certain time period.

(d) *Treatment of Repatriation Payments in Absence of Competent Authority Repatriation.* In the absence of competent authority repatriation, the provisions of the Code and the regulations will govern the availability and tax consequences of repatriation payments. In such cases, the provisions of Rev. Proc. 99-32 or successor guidance governing the election available to qualifying taxpayers regarding the treatment of repatriation payments are not changed by this revenue procedure. *See also* Rev. Proc. 2015-41, section 7.01(2).

SECTION 5. SMALL CASE COMPETENT AUTHORITY REQUESTS

.01 *In General.* The U.S. competent authority will endeavor to minimize administrative burdens on taxpayers filing

small case competent authority requests (as described in section 5.02). A taxpayer that seeks an exemption from the usual competent authority request content requirements of section 3 with respect to a small case competent authority request should contact TAIT or APMA, as appropriate. Even if the U.S. competent authority initially agrees to abbreviate the usual competent authority request requirements, the U.S. competent authority may subsequently require the taxpayer to supplement its competent authority request with any or all of the information required under section 3, as well as any other information or documents the U.S. competent authority determines is needed to evaluate the request.

.02 Eligibility.

(1) *Excluded Requests.* A competent authority request does not qualify as a small case competent authority request if it (a) arises from a taxpayer-initiated position, (b) is a discretionary LOB request, or (c) is a pension plan request filed by a person other than an individual plan participant.

(2) *Dollar Thresholds.* Except as provided in section 5.02(1), a competent authority request will qualify as a small case competent authority request if the sum of the U.S.- and foreign-initiated adjustments does not exceed the following dollar thresholds for all of the competent authority years combined:

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

SECTION 6. COORDINATION OF THE COMPETENT AUTHORITY PROCESS WITH U.S. ADMINISTRATIVE AND JUDICIAL PROCEEDINGS

.01 *In General.* This section discusses coordination of the competent authority process with administrative and judicial proceedings associated with U.S.-initiated actions. Specific guidance is also provided on when the scope of assistance of the

U.S. competent authority may be limited and the circumstances under which access to the U.S. competent authority may be denied with respect to U.S.-initiated actions.

.02 *Exclusive Jurisdiction within the IRS.* The U.S. competent authority will assume exclusive jurisdiction within the IRS over all competent authority issues in a competent authority request that it has accepted. Any further administrative ac-

tion by the IRS (*e.g.*, assessment and collection procedures) with respect to the competent authority issues in the competent authority case will be suspended unless the U.S. competent authority instructs otherwise. Standard administrative procedures will continue to apply to issues over which the U.S. competent authority has not assumed jurisdiction. If the U.S. competent authority decides to cease providing assistance regarding a competent au-

thority issue (*see* section 7.02), the U.S. competent authority will return jurisdiction over the issue to the relevant office(s) within the IRS. *See also* sections 2.08 and 9.03.

.03 Coordination with IRS Examination.

(1) *Form 870 Waivers.* The U.S. competent authority will not reject a taxpayer's competent authority request solely because the taxpayer previously signed a Form 870, *Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment*, with IRS Examination that covers competent authority issues for which the taxpayer is requesting assistance. If the U.S. competent authority accepts the competent authority request, it will endeavor to reach a competent authority resolution with the foreign competent authority. This paragraph is intended to apply only to standard Form 870 waivers. Taxpayers are advised to contact the U.S. competent authority to determine the effect of signing a non-standard Form 870 waiver.

(2) *Closing Agreements and Similar Agreements.* The U.S. competent authority will not reject a taxpayer's competent authority request solely because the taxpayer previously executed a closing agreement, a Form 870-AD, *Offer to Waive Restrictions on Assessment and Collection of Tax Deficiency and to Accept Overassessment*, or other similar agreement with IRS Examination that covers competent authority issues for which the taxpayer is requesting assistance. However, if the U.S. competent authority accepts the competent authority request, the U.S. competent authority will endeavor only to obtain a correlative adjustment from the applicable treaty country and will not undertake any actions that would change the determination of taxable income set forth in the agreement. Taxpayers therefore should be aware that in these situations, as well as in situations where a treaty country takes a similar position with respect to issues resolved under its domestic laws, relief from double taxation may be jeopardized.

(3) *Alternative Dispute Resolution.* The U.S. competent authority will not reject a taxpayer's competent authority request solely because the taxpayer has previously

pursued resolution of its competent authority issue through an alternative dispute resolution program that is under the jurisdiction of IRS Examination (*e.g.*, the Fast Track Settlement Program as set forth in Rev. Proc. 2003-40, 2003-1 C.B. 1044). If a resolution is reached through such a program, the taxpayer's access to U.S. competent authority assistance will be determined in accordance with sections 6.03(1) and 6.03(2). If, however, the taxpayer has pursued resolution of its competent authority issue through an alternative dispute resolution program that is under the jurisdiction of IRS Appeals, the U.S. competent authority will decline to accept the taxpayer's competent authority request. *See* section 6.04. Taxpayers that are uncertain as to whether an issue would be considered under the jurisdiction of IRS Appeals in an alternative dispute resolution program are advised to contact the U.S. competent authority to determine the application of this paragraph before pursuing a resolution of the issue through the program.

.04 Coordination with IRS Appeals.

(1) *In General.* There are two offices within the IRS to which a taxpayer may present a U.S.-initiated action for administrative review of competent authority issues: IRS Appeals and the U.S. competent authority. Competent authority issues accepted for consideration by the U.S. competent authority are not subject to the concurrent jurisdiction of IRS Appeals (*see* section 6.02). However, a taxpayer may request SAP review as described in section 6.04(2), which is a review of a competent authority issue under the jurisdiction of the U.S. competent authority with the assistance of IRS Appeals. For a competent authority issue that is initially under the jurisdiction of IRS Appeals, the U.S. competent authority will decline to provide assistance unless the taxpayer, in accordance with the requirements of section 6.04(3), effectively severs the issue from its protest and then timely files a U.S. competent authority request with respect to the issue. This revenue procedure does not limit the ability of a taxpayer to obtain IRS Appeals review of a competent authority issue that remains after the competent authority process has concluded. *See* section 6.04(4).

(2) SAP Review.

(a) *In General.* The simultaneous appeals procedure is an optional aspect of the competent authority process whereby IRS Appeals works jointly with the U.S. competent authority and the taxpayer toward the development of the U.S. competent authority's position on an underlying U.S.-initiated adjustment prior to the U.S. competent authority's consultations with the foreign competent authority. The procedure is intended to facilitate the U.S. competent authority's unilateral consideration of a resolution of the competent authority issue before it presents a position on the issue to the foreign competent authority. SAP review will be initiated only upon a request by a taxpayer in accordance with section 6.04(2)(b).

(b) *Requesting SAP Review.* A taxpayer may request SAP review as part of its competent authority request or in a separate written submission filed no later than 60 days after the taxpayer receives notification that the U.S. competent authority has accepted its competent authority request (*see* section 2, Part 3.1 of the Appendix; *see also* section 1.03 for the rule applicable to deadlines). Before filing its competent authority request, a taxpayer may request a pre-filing conference with the U.S. competent authority to discuss SAP review by following the procedures set forth in section 3.02. SAP review may be requested for one or more competent authority issues in the competent authority request. Any competent authority issues for which the taxpayer has not sought SAP review will be handled by the U.S. competent authority under the standard competent authority process.

(c) *Actions with Respect to SAP Review Request.* The U.S. competent authority in its sole discretion will decide whether to accept the taxpayer's request for SAP review after consulting with IRS Appeals and after considering whether SAP review would unduly burden tax administration, including the competent authority process. The U.S. competent authority may choose to accept SAP review with respect to only certain competent authority issues.

(d) *Conduct of SAP Review.*

(i) *In General.* If the U.S. competent authority accepts a request for SAP review, it will notify the taxpayer and coordinate with both the taxpayer and IRS Appeals on process and time frame. The manner in which SAP review is conducted will be determined by the U.S. competent authority on a case-by-case basis after consulting with IRS Appeals. In general, IRS Appeals will begin SAP review by reviewing the positions previously taken on the competent authority issues by IRS Examination and the taxpayer and consulting with the taxpayer and the U.S. competent authority. IRS Appeals will conduct its review and consultations in accordance with standard IRS Appeals practices except that the U.S. competent authority will participate in meetings held between IRS Appeals and the taxpayer. IRS Appeals and the U.S. competent authority will consult on whether other exceptions to standard IRS Appeals practices may be appropriate in a given case.

(ii) *Positions in SAP Review not Binding.* The U.S. competent authority will consider the points raised in SAP review before deciding upon the position it will present to the foreign competent authority. Any discussions with respect to positions taken in SAP review, whether written or oral, are not binding on the taxpayer, the U.S. competent authority, or IRS Appeals. The IRS will not ask a taxpayer to enter into a written agreement based on a position developed through SAP review as a prerequisite to pursuing any competent authority resolution.

(iii) *Termination of SAP Review by IRS.* At any point during SAP review, the U.S. competent authority in its sole discretion may terminate SAP review with regard to one or more competent authority issues after consulting with IRS Appeals. The standard competent authority process will then apply to any issues removed from SAP review. The U.S. competent authority will inform the taxpayer of next steps in the competent authority process (and in SAP review for any issues that remain in SAP review). Upon termination of SAP review, a taxpayer may withdraw its competent authority request for any of the competent authority issues for which it

initially sought assistance (*see* section 2.08).

(iv) *Withdrawal from SAP Review by Taxpayer.* At any point during SAP review, the taxpayer may withdraw its request for SAP review with regard to one or more competent authority issues. The U.S. competent authority, in turn, will decide whether to continue SAP review for any competent authority issues the taxpayer chooses to retain in SAP review. The standard competent authority process will then apply to any competent authority issues removed from SAP review.

(3) *Severing Issues from Protest Filed with IRS Appeals.*

(a) *In General.* A taxpayer that initially presents a competent authority issue to IRS Appeals may still request U.S. competent authority assistance if, and only if, it satisfies the following conditions: (a) the taxpayer files its competent authority request no later than 60 days after its opening conference with IRS Appeals (*see* section 1.03 for the rule applicable to deadlines); (b) the competent authority request shows that the taxpayer has properly severed the competent authority issue from the issues in its protest that will remain under the jurisdiction of IRS Appeals; (c) the taxpayer has not invoked an alternative dispute resolution program under the jurisdiction of IRS Appeals with respect to the competent authority issue; and (d) the taxpayer has not executed with IRS Appeals a Form 870-AD, a closing agreement, or any other similar agreement concerning such competent authority issue. If the U.S. competent authority accepts the request, it will assume exclusive jurisdiction over the competent authority issues that it has accepted. Standard IRS Appeals procedures will continue to apply to any other issues over which IRS Appeals retains jurisdiction. The U.S. competent authority will not accept a competent authority request concerning a competent authority issue that the taxpayer has not properly severed from the issues within the jurisdiction of IRS Appeals in accordance with this section (*see* section 7.02(3)(d)). In deciding whether to sever issues pursuant to this section, taxpayers should bear in mind that forgoing U.S. competent authority assistance may adversely affect the availability of the for-

ign tax credit. *See* Treas. Reg. § 1.901-2(e)(5) and Rev. Rul. 92-75, 1992-2 C.B. 197.

(b) *Deadline for Competent Authority Issues Identified During IRS Appeals Consideration.* If, during the course of reviewing the taxpayer's issues and after the 60-day period provided in section 6.04(3)(a) has commenced, the IRS Appeals representative determines that a potential competent authority issue exists that had not been identified by IRS Examination, the deadline for filing the competent authority request under the provisions of section 6.04(3)(a) will be 60 days after the date the taxpayer is first notified that a potential competent authority issue exists.

(c) *Consideration of Competent Authority Request.* The U.S. competent authority will consider, in accordance with this revenue procedure, a competent authority request that includes one or more issues severed from an Appeals protest. The U.S. competent authority may accept the competent authority request as to some or all of the severed issues. If the U.S. competent authority accepts the competent authority request with respect to only particular severed issues, the U.S. competent authority will assume jurisdiction over only those severed issues, and IRS Appeals procedures will continue to apply to the other severed issues. The taxpayer may request SAP review pursuant to section 6.04(2)(b) with respect to competent authority issues severed from the IRS Appeals protest, and the U.S. competent authority will consider whether to accept the request for SAP review consistent with the general principles set forth in section 6.04(2)(c).

(4) *Subsequent Review by IRS Appeals.* Nothing in this revenue procedure limits the ability of a taxpayer to obtain IRS Appeals review of a competent authority issue set forth in its competent authority request if, with respect to that competent authority issue, (a) the U.S. competent authority rejects the request or terminates the competent authority process, (b) the taxpayer withdraws its request for competent authority assistance, (c) the competent authorities do not reach a competent authority resolution, or (d) the taxpayer does not accept the terms of the competent authority resolution.

(5) *Transition Rule for Cases Under the Jurisdiction of IRS Appeals.* If, prior to the effective date of this revenue procedure, either (a) the IRS has issued a 30-day letter notifying a taxpayer of the right to request IRS Appeals consideration of a competent authority issue or (b) the competent authority issue is before IRS Appeals, the procedures and time frames set forth in section 7.02 of Rev. Proc. 2006-54 will apply to such competent authority issue.

.05 *Coordination with Litigation.*

(1) *In General.* The U.S. competent authority will not accept or continue to consider a taxpayer's competent authority request regarding (a) any competent authority issue and taxable period designated for litigation with respect to the same taxpayer, or (b) any competent authority issue and taxable period that are pending in a U.S. federal court and that were under IRS Appeals jurisdiction with respect to the same taxpayer before the commencement of the litigation (*see generally* sections 6.04 and 7.02(3)(d)). In other cases where a taxpayer has made a competent authority request with respect to a taxable period involved in pending litigation concerning the federal tax liability of the taxpayer, the U.S. competent authority may accept, or continue to consider, the competent authority request after consulting with the Associate Chief Counsel (International). During the competent authority process, a taxpayer may be asked to join the IRS in a motion to sever any competent authority issues, delay trial, or stay proceedings pending the outcome of the taxpayer's competent authority case. The Associate Chief Counsel (International) will coordinate the filing of any such motion on behalf of the IRS with, as appropriate, Division Counsel, the Department of Justice, and the taxpayer. Final decision on severing issues, delaying trial, or staying proceedings rests with the court. If the court denies a motion to sever competent authority issues, delay trial, or stay proceedings, the U.S. competent authority will terminate any ongoing consideration of the competent authority request (*see generally* section 7.02(3)(d)).

(2) *Effect of Judicial Determinations and Litigation Settlements.* A taxpayer may file a competent authority request with respect to a U.S. federal court's final determination of its tax liability, but only for the purpose of seeking correlative relief from a foreign competent authority. Such final determinations include 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 such final determination and will not authorize competent authority repatriation.

SECTION 7. ACKNOWLEDGMENT OF RECEIPT AND DENIAL OF ASSISTANCE

.01 *In General.* The U.S. competent authority will acknowledge to the taxpayer in writing that it has received the taxpayer's competent authority request. The acknowledgment will indicate whether the competent authority request is complete and whether the U.S. competent authority accepts the competent authority request. The acknowledgment also will provide the name and contact information of the assigned U.S. competent authority representative(s) and any supplemental instructions (*e.g.*, payment of the user fee in the case of a discretionary LOB request that has been accepted (*see* section 14.02)). The U.S. competent authority will notify the foreign competent authority when a competent authority request has been accepted.

.02 *Denial and Termination of Assistance.* The U.S. competent authority may decline to accept a competent authority request or may cease providing assistance at any point after the competent authority process has commenced. The U.S. competent authority will notify and, as appropriate, consult with the relevant foreign competent authority before taking such action. Circumstances in which the U.S. competent authority may decline to accept a competent authority request or may cease providing assistance include, but are not limited to, the following:

(1) The taxpayer has failed to comply with the procedural requirements set forth in this revenue procedure, such as those listed in section 2.04, section 3, and the Appendix, after having been provided rea-

sonable opportunity to correct (if possible) or remedy any deficiencies in its competent authority request or in its other submissions during the competent authority process.

(2) The taxpayer is not eligible for the treaty benefit or for the assistance requested according to a plain reading of the U.S. tax treaty (such as by failing to be a resident of either contracting state).

(3) The taxpayer's conduct before or after filing its competent authority request has undermined or has been prejudicial to the competent authority process, including but not limited to conduct that has significantly impeded the ability of (a) IRS Examination, the U.S. competent authority, or any other part of the IRS, or the foreign tax authority, to adequately examine the competent authority issues for which assistance has been requested or (b) the U.S. or foreign competent authority to undertake substantive consideration of and resolve the competent authority case. Examples of such conduct include:

(a) The taxpayer agreed to or acquiesced in a foreign-initiated adjustment, or entered into a unilateral APA with a foreign tax authority, involving significant legal or factual issues in a manner that impeded the U.S. competent authority from engaging in full and fair consultations with the foreign competent authority on the competent authority issues.

(b) The taxpayer entered into a unilateral APA with the IRS when the competent authority issue could reasonably and practically have been covered if the taxpayer had instead pursued a bilateral APA (*see* Rev. Proc. 2015-41, section 2.02(4)(d)).

(c) The taxpayer rejected a request to extend the period of limitations for assessment of tax for taxable periods (including ACAP years) covered by the competent authority request.

(d) The taxpayer has failed to comply with the provisions of sections 6.03, 6.04, and 6.05 governing coordination between the competent authority process and administrative and judicial proceedings or has pursued its rights within such proceedings and within the competent authority process in a way that has undermined or is prejudicial to the competent authority process.

(e) The taxpayer has presented new material information or evidence during

the competent authority process that reasonably could have been presented to IRS Examination during the examination of the taxable years covered by the competent authority request.

(f) In competent authority requests or competent authority cases involving taxpayer-initiated positions, the taxpayer failed to request the assistance of the foreign competent authority and the U.S. competent authority in a timely manner in relation to the taxable year for which relief is sought, or the taxpayer otherwise has pursued competent authority assistance in a way that has undermined or prejudiced the competent authority process or has impeded the U.S. or foreign competent authority from engaging in full and fair consultations on the competent authority issue(s).

.03 *No Review of Denial of Competent Authority Request for Assistance.* The U.S. competent authority's decision as to whether a competent authority request is complete, or to deny, suspend, or terminate assistance, is final and not subject to administrative review. *See also* section 3.06(2)(b) regarding denial of discretionary LOB relief.

SECTION 8. CONSULTATIONS AND RELATED ACTIONS BY THE U.S. COMPETENT AUTHORITY

.01 *Non-U.S.-Initiated Actions.* In general, the U.S. competent authority will evaluate a competent authority request involving a non-U.S.-initiated action on the basis of the justifications for the action prepared by the foreign tax authority or foreign competent authority (or, in the case of a taxpayer-initiated position, on the basis of the justifications for the position given by the taxpayer) and the analyses of such justifications prepared by the taxpayer or other IRS offices. The U.S. competent authority typically will engage in consultations with the foreign competent authority on the justification for, and appropriate extent of, correlative relief that it may provide. In cases involving foreign-initiated actions, the U.S. competent authority may grant correlative relief without such consultations if it is satisfied on the basis of its own review and assessment that the foreign-initiated action is justified under the U.S. tax treaty (*e.g.*, the action represents a reasonable application

of the arm's length standard in a transfer pricing case).

.02 *U.S.-Initiated Actions.* In general, the U.S. competent authority will evaluate a competent authority request involving a U.S.-initiated action in light of justifications for the action developed by IRS Examination, views received through SAP review, if any, and any analyses of the action prepared by the taxpayer or other IRS offices. If the action appears to be justified and the U.S. competent authority determines that it is not itself able to arrive at a satisfactory resolution of the competent authority issues (*e.g.*, by withdrawing an adjustment in part or in full), then the U.S. competent authority will begin consultations with the foreign competent authority.

SECTION 9. RESULTS OF COMPETENT AUTHORITY CASE

.01 *In General.* This section discusses possible outcomes of the competent authority process and the steps to close a competent authority case. The outcome of most competent authority cases will be a competent authority resolution that provides the taxpayer with complete or partial relief from taxation not in accordance with the U.S. tax treaty. If the U.S. and foreign competent authorities are unable to reach a competent authority resolution, the competent authority case may be eligible for resolution through arbitration under the terms of the applicable U.S. tax treaty (*see generally* section 10).

.02 *Presentation of Tentative Competent Authority Resolution to Taxpayer.* If the U.S. and foreign competent authorities reach a tentative competent authority resolution, it will be presented to the taxpayer for consideration. Whether the tentative competent authority resolution is conveyed to the taxpayer in writing or by other means will depend upon the stage, size, and complexity of the competent authority case. The taxpayer will be given adequate opportunity to respond affirmatively as to whether the taxpayer accepts or rejects the terms. However, the competent authorities may deem the taxpayer to have rejected the tentative competent authority resolution if the taxpayer does not timely accept it. Subject to any applicable disclosure constraints, the competent authorities may respond to questions that the

taxpayer asks about the positions and views of the competent authorities underlying the tentative competent authority resolution, including specific questions about computations and similar aspects of implementing its terms. Resolution of such questions may require further consultations between the competent authorities. The purpose of such consultations is to address the implementation of the tentative competent authority resolution, not to renegotiate the underlying agreement.

.03 *Rejection of Tentative Competent Authority Resolution.* If the taxpayer rejects the tentative competent authority resolution (either by notifying the U.S. or foreign competent authority or by failing to timely accept it) and either the U.S. or foreign competent authority is unwilling to consult further, then the U.S. competent authority will formally close the case. The taxpayer may then pursue all domestic remedies otherwise available to it with respect to the competent authority issue(s) in the United States or the treaty country. If there are multiple competent authority issues covered by the tentative competent authority resolution, the taxpayer, subject to the consent of the competent authorities, may accept the agreement reached on one or more competent authority issues while rejecting an agreement on other issues covered by the tentative competent authority resolution. Generally, if the taxpayer accepts a tentative resolution of a competent authority issue, it must accept the resolution of that issue for all of the covered years (including ACAP years if applicable). Where appropriate, the competent authorities may permit the taxpayer to accept the resolution only for particular years (*e.g.*, for competent authority years but not ACAP years). To the extent that the taxpayer rejects the competent authority resolution, the U.S. competent authority will return jurisdiction over the competent authority issue(s) to the relevant offices within the IRS.

.04 *Implementation of Competent Authority Resolution.* If the taxpayer accepts the terms of the tentative competent authority resolution, the U.S. competent authority will proceed to formally close the case. The U.S. competent authority will not recognize a competent authority resolution as being final and binding on the IRS until the tentative competent author-

ity resolution has been reviewed and approved within the office of the U.S. competent authority and the competent authority case has been formally closed by both competent authorities. Once the competent authority resolution has been finalized, the U.S. competent authority will direct the relevant offices within the IRS to begin implementing its terms. To the extent authorized under the applicable U.S. tax treaty, the competent authority resolution will be implemented notwithstanding any time limits or other procedural limitations under the Code and regulations. When appropriate, the IRS may request that the taxpayer execute a closing agreement reflecting the terms of the competent authority resolution. *See* Rev. Proc. 68-16, 1968-1 C.B. 770 (as modified by Rev. Proc. 94-67, 1994-2 C.B. 800).

SECTION 10. ARBITRATION

.01 *In General.* In arbitration treaties, the mutual agreement procedure article requires that the competent authorities refer certain competent authority cases to mandatory arbitration in the event direct consultation does not lead to a competent authority resolution within a prescribed time period. The mutual agreement procedure article in arbitration treaties sets forth detailed rules 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 competent authority process. Taxpayers should consult the mutual agreement procedure article under the applicable U.S. tax treaty 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 proceedings begin after a specified time period, typically two years, following the commencement date unless both competent authorities agree to a different date. In general, the commencement date for a case is the earliest date on which the information necessary to undertake substantive consideration for a competent authority resolution has been received by both competent authorities.

The U.S. competent authority generally takes the position that it has received all information necessary to undertake substantive consideration for a competent authority resolution only when it has received a complete competent authority request as described in this revenue procedure. The U.S. competent authority will notify the taxpayer as to the commencement date once it has been established by the U.S. and foreign competent authorities.

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

.04 *Notification of Unsuitability for Arbitration.* Arbitration treaties allow both competent authorities to agree, at any time prior to the start of an arbitration proceeding, 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 view of the case to the arbitration panel through the U.S. competent authority to the extent permitted under the applicable arbitration 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 competent authority resolution.

.07 *Other Taxpayer Rights.* If a taxpayer rejects the determination of an arbitration panel, does not accept the determination within the deadline mandated under the applicable arbitration treaty, or has been notified that a case has been determined not to be suitable for arbitration, then upon closure of the competent authority case, the taxpayer may pursue any rights that remain available under domestic law in either the United States or the treaty country.

SECTION 11. PROTECTIVE CLAIMS

.01 *In General.* Most U.S. tax treaties provide that competent authority resolutions are to be implemented by the United States and the treaty country notwithstanding any time limits or other procedural limitations under the domestic law of either country. A minority of U.S. tax treaties may not allow the U.S. competent authority to waive such limitations. Further, in any particular case, domestic barriers may be waived only if a competent authority request is accepted and a competent authority resolution is reached. For these reasons, and because circumstances not under the control of the taxpayer or the U.S. or foreign competent authority may impede the implementation of a competent authority resolution, it is advisable as a general matter for the taxpayer or a member of the taxpayer’s controlled group to take protective measures under applicable domestic law to increase the likelihood that a competent authority resolution in its competent authority case can be implemented in both treaty countries and to protect any rights of access to alternative remedies outside of the competent authority 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 Procedures Generally.*

(1) *In General.* A taxpayer may make a protective claim to protect its right to a potential credit or refund in the event that a competent authority resolution is reached and to retain its rights of access to any alternative remedies available outside of the competent authority process under the Code or regulations. A protective claim is distinct from a treaty notification (*see* section 12) 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 12.05).

(2) *Timing of Protective Claims.* Generally, a taxpayer should consider making a protective claim when it has reason to believe that an action of a tax authority

has resulted or is likely to result in a competent authority issue. However, it may be advisable to make a protective claim at earlier times, for example, when the claim concerns a recurring competent authority issue or when the taxpayer is otherwise aware that an adjustment is likely for a given taxable year. The U.S. competent authority is not responsible for ensuring that the taxpayer has filed a valid protective claim timely.

(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.

.03 Making Protective Claim in Competent Authority Request or Separate Letter.

(1) *In General.* A protective claim for credit or refund filed under this revenue procedure may be made in either of the following ways: (a) including the claim in a competent authority request; or (b) filing a letter specifically stating that a protective claim is being made pursuant to this revenue procedure in relation to an issue on which the taxpayer may eventually request competent authority assistance. In conjunction with either of these methods, the taxpayer may, but is not required to, use the form specified in Treas. Reg. § 301.6402-3. To make a protective claim within a competent authority request, *see* section 2.02, Tab 3 of the Appendix. There may be situations in which a taxpayer will be unable to submit a competent authority 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) a foreign tax authority is considering, but has not yet proposed, an adjustment, (b) a foreign tax authority has proposed an adjustment but administrative or judicial remedies are expected to be pursued in the treaty country before a competent authority request is filed, or (c) 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) *Manner of Filing Separate Letter.* If the protective claim is made in a separate letter, the subject of the letter should state, “Protective Claim Pursuant to Section 11 of Rev. Proc. 2015-40.” In the letter, the taxpayer must declare that it is making a protective claim prior to filing a potential competent authority request regarding the anticipated competent authority issue(s) set forth in the letter. The letter also must contain the information described in section 11.02(3). A subsequent competent authority request that relates to a protective claim made in the form of a letter must refer to such letter (*see* section 11.04). The taxpayer may combine multiple years and issues into a single protective claim (or annual notification) as long as all of the required claim information is provided with respect to each year and issue (*see* section 11.05). One printed copy and one electronic copy of the protective claim letter must be submitted to APMA or TAIT, as appropriate. The taxpayer may include a second printed copy of the letter, together with a self-addressed stamped envelope. Upon receipt of the protective claim letter, the U.S. competent authority will date stamp the second printed copy and return it to the taxpayer for its records. The electronic copy of the protective claim letter must follow the rules for media and format of electronic submissions described in section 2.03(3) of the Appendix. 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 may be obtained by contacting APMA or TAIT, as appropriate.

.04 Effect of Protective Claim. A protective claim made in the form of a letter or a competent authority 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 competent authority issues set forth in the claim, so long as the letter or request is filed before the expiration of the applicable statutory period of limitations for filing claims for credit or refund under the Code.

.05 Annual Notification Requirement and Additional Protective Claims.

(1) *Annual Notification.* After initially filing a protective claim letter with respect to a given taxable year and before filing its competent authority request, the taxpayer must annually notify the U.S. competent authority as to whether it may still file a competent authority request with regard to the taxable year for which the protective claim was filed. The annual notification must be filed following the close of each taxable year ending after the taxable year in which the taxpayer filed the protective claim but no later than the date on which the taxpayer timely files a tax return for such taxable year (*see* section 1.03 for the rule applicable to deadlines). The annual notification, which must be filed in the form of a letter, must (a) be titled “Annual Notification of Protective Claim,” (b) reference the initial protective claim and restate the taxable year for which that claim was made, (c) contain a declaration that the taxpayer is providing its annual notice of protective claim pursuant to this section and that it is requesting that its protective claim for that taxable year remain active, and (d) 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 an initial protective claim letter. The taxpayer may include a second printed copy of the annual notification letter, together with a self-addressed stamped envelope, which the U.S. competent authority will date stamp and return to the taxpayer for its records. The U.S. competent authority may deny assistance to a taxpayer that fails to provide the annual notification with regard to the

taxable year for which the annual notification was required.

(2) *Additional Protective Claims.* A taxpayer that is filing an annual notification for a given taxable year pursuant to section 11.05(1) may include in its letter an additional protective claim(s) for a subsequent taxable year(s) and an additional annual notification(s) for a subsequent taxable year(s). In addition to including the information required by section 11.05(1) for the annual notification for a prior claim, the taxpayer's letter must include all of the information required by section 11.03(2) for any new protective claim in order to constitute a valid protective claim. In whatever manner such initial protective claims or annual notifications are consolidated pursuant to this section, the submission must clearly state in its title the purposes for which it is to serve. In accordance with section 11.03(2), the taxpayer may include a second printed copy of the letter, which the U.S. competent authority will date stamp and return to the taxpayer for its records.

SECTION 12. TREATY NOTIFICATIONS

.01 *In General.* A number of U.S. tax treaties provide that a mutual agreement under the mutual agreement procedure article of the treaty shall be implemented notwithstanding any time or other procedural limitations in the domestic law of the parties to the treaties, provided that certain notification requirements are satisfied. For example, if a formal request for competent authority assistance has been submitted to the competent authority of one country, but not the other, then notice generally must be provided to the competent authority of the other country within the number of years specified in the treaty. *See, e.g.,* United States-Canada Income Tax Convention (1980), Article XXVI(2). A taxpayer seeking assistance of the foreign competent authority under such a treaty with regard to a foreign-initiated adjustment must ensure that a treaty notification is received by the U.S. competent authority within the time set forth in the treaty.

.02 *Manner of Notification to U.S. Competent Authority.* For purposes of this revenue procedure, a treaty notification to the U.S. competent authority may be

made either as a part of a taxpayer's competent authority request (*see* section 2.02, Tab 3 of the Appendix) or by letter to the U.S. competent authority. If a letter is used, one printed copy and one electronic copy of the letter must be submitted to APMA or TAIT, as appropriate. The taxpayer may include a second printed copy of the letter, together with a self-addressed stamped envelope. Upon receipt of the treaty notification letter, the U.S. competent authority will date stamp the second printed copy and return it to the taxpayer for its records. The electronic copy of the treaty notification letter must follow the rules for media and format of electronic submissions described in section 2.03 of the Appendix. A template of a letter suitable for making a treaty notification may be obtained by contacting the U.S. competent authority.

.03 *Notification of Foreign Competent Authority.* With regard to a U.S.-initiated adjustment under a U.S. tax treaty with a notification requirement, the taxpayer must ensure that a notification is received by the foreign competent authority within the time set forth in the treaty. The notification should be made in accordance with 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 competent authority request.

.04 *Annual Notification Requirement.* After initially filing a treaty notification in the form of a letter and before filing its competent authority request, the taxpayer must annually notify the U.S. competent authority until a complete competent authority request has been filed. The annual notification must be submitted to APMA or TAIT as appropriate following the close of each taxable year ending after the taxable year in which the taxpayer submitted the treaty notification but no later than the date on which the taxpayer timely files a tax return for such taxable year (*see* section 1.03 for the rule applicable to deadlines). The annual update must be titled "Treaty Notification Annual Update under Section 12 of Rev. Proc. 2015-40." 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 an initial treaty notification into a single letter or in a competent authority request. A template of a letter suitable for consolidating an initial protective claim and treaty notification may be obtained by contacting APMA or TAIT, as appropriate. The taxpayer also may 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 title of the submission must clearly indicate the dual function of the submission as a protective claim and treaty notification (*see* section 11.05).

SECTION 13. REQUESTS FOR RULINGS

.01 *In General.* Requests for advance rulings regarding the interpretation of a U.S. tax treaty, as distinguished from competent authority 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. 2015-1, 2015-1 I.R.B. 1, and Rev. Proc. 2015-7, 2015-1 I.R.B. 231.

.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 14. USER FEES

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

.02 *Requests for Discretionary LOB Relief.* A \$32,500 user fee is required for all requests for discretionary LOB relief as described in section 3.06(2) filed on or after October 30, 2015 and prior to September 30, 2016. A \$37,000 user fee is required for all requests for discretionary LOB relief as described in section 3.06(2) filed on or after September 30, 2016. *See* Rev. Proc. 2015-1 (and successor guidance). The fee must be paid as specified in section 14.03, as supplemented by instructions set forth in the acknowledgment provided to the applicant as described in sec-

tion 7.01. The fee will apply regardless of whether the request is for an initial determination, a renewal of a favorable determination issued prior to the effective date of this revenue procedure, or a supplemental determination. If a competent authority 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 applicant 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 applicant 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.* In general, a user fee will not be refunded once the U.S. competent authority accepts a request for consideration and the user fee is paid. For example, the IRS will not refund the user fee if the request for a discretionary determination is withdrawn by the applicant or if the applicant fails to submit additional information as requested by the U.S. competent authority. A user fee may be refunded, however, if (a) a higher user fee is paid than is required, or (b) taking into account all the facts and circumstances, including the IRS's resources devoted to the request, the U.S. competent authority declines to rule and, in its sole discretion, decides a refund is appropriate.

SECTION 15. 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. Rul. 92–75, 1999–2 C.B. 197, is clarified. Rev. Proc. 2015–41, 2015–35 I.R.B. 263, is amplified. References in this revenue procedure to Rev. Proc. 99–32 will be treated as references to the corresponding provisions of 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 16. EFFECTIVE DATE

Except as otherwise provided in this section, this revenue procedure is effective for competent authority requests filed on or after October 30, 2015. The triennial statement requirement set forth in section 3.06(2)(h) is effective for discretionary LOB determinations issued on or after August 31, 2015.

SECTION 17. 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), 3.05, 3.06(2), 4.01, 4.02(2), 5.01, 6.04(2), 9.03, 11.03, 11.05, 12.04, and 12.05 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 18. DRAFTING INFORMATION

The principal author of this revenue procedure is John Hughes of the Office of the Deputy Commissioner (International), LB&I. However, other personnel from the Treasury Department and the IRS (including the Office of the Associate Chief Counsel (International)) participated in its development. For further information regarding this revenue procedure, contact either Mr. Hughes at (202) 515-4307 or Alan S. Williams at (202) 317-6941 (not toll-free calls). For further information on competent authority issues or on filing competent authority requests or other aspects of the competent authority process, contact APMA or TAIT; see the contact information provided in sections 2.04 and 3.05(2) of the Appendix.

APPENDIX

This Appendix sets forth instructions on preparing and filing a competent authority request. Unless the U.S. competent authority has explicitly instructed the taxpayer otherwise, the competent authority request must be prepared and filed according to the instructions provided in this Appendix. The U.S. competent authority may reject a competent authority request that does not comply with these instructions. *See* section 7.02(1) of the revenue procedure.

Competent authority requests must be filed with the office (APMA or TAIT) that has primary responsibility for the subject of the request (*see* section 2.01(3) of the revenue procedure). In cases of doubt, the taxpayer should consult APMA or TAIT. Section 1 of this Appendix provides instructions and requirements applicable to all competent authority requests, while the other sections of this Appendix provide instructions for filing specific types of competent authority requests.

SECTION 1. INSTRUCTIONS AND REQUIREMENTS APPLICABLE TO ALL COMPETENT AUTHORITY REQUESTS

.01 *In General.* A competent authority request consists of a request letter and attachments. The contents of the request letter vary by the type of competent au-

thority request, but generally consist of information about the taxpayer and about the competent authority issues involved in the request. The contents of the attachments vary by type of competent authority request, but generally consist of required authorizations, disclosures, consents, and notifications.

.02 Complete Request Requirement. The taxpayer must provide a complete competent authority request. In order to be complete, the competent authority request must follow the instructions set forth in this Appendix. If the taxpayer believes a required item is not applicable to its competent authority request, this must be shown as “N/A” or “Not Applicable” (as opposed to being left blank). If the taxpayer maintains that it is unable to provide

the required item or seeks an exception to the filing requirement, it must provide a statement of its reasons for not providing the item or its basis for the exception it seeks (as opposed to leaving the entry blank). The U.S. competent authority may permit exceptions to the filing requirements in this Appendix on a case-by-case basis. *See also* the rules in section 5.01 governing small case competent authority requests.

SECTION 2. INSTRUCTIONS AND REQUIREMENTS APPLICABLE TO COMPETENT AUTHORITY REQUESTS FILED WITH APMA

.01 Request Letter.

(1) *Process.* The request letter for APMA must be addressed to the Deputy

Commissioner (International), LB&I at the address provided in section 2.04 of this Appendix. An original of the request letter, signed and dated by a person having authority to sign the taxpayer’s U.S. returns, must be included in one of the three required printed copies of the competent authority request (*see* section 2.04 of this Appendix).

(2) *Content.* The request letter must contain an introductory statement that the taxpayer seeks assistance of the U.S. competent authority. The letter then must follow the structure shown below and must contain or respond to each of the required statements, descriptions, explanations, and other information listed.

Contents of Request Letter for APMA	
Part 1: Identifying Information and Summary of Issues and Proceedings	
1.1	<i>Identifying information:</i> Provide the following information for the taxpayer filing the competent authority request: <ul style="list-style-type: none"> a. Name; b. Address and phone number; c. Countries of residence for purposes of the treaty; d. U.S. taxpayer identification number or foreign taxpayer identification number; and e. Names and countries of incorporation or residence of all members of the controlled group whose taxable incomes would be affected by a competent authority resolution being reached in the competent authority case
1.2	<i>Authorizations and contacts:</i> Provide names and contact information for the following: <ul style="list-style-type: none"> a. All individuals authorized by a Form 2848, <i>Power of Attorney and Declaration of Representative</i>, to represent the taxpayer in connection with the competent authority request; b. All individuals authorized by a Form 8821, <i>Tax Information Authorization</i>, to inspect or receive confidential tax information about the taxpayer in connection with the competent authority request; and c. The individual(s) who will serve as the taxpayer’s point(s) of contact for the U.S. competent authority
1.3	<i>IRS office:</i> Provide the following information: <ul style="list-style-type: none"> a. For competent authority issues arising from U.S.-initiated adjustments, identify the IRS office that made the adjustment and provide the name of and contact information for the taxpayer’s IRS Examination team manager; and b. For competent authority issues not arising from U.S.-initiated adjustments, identify the IRS office having examination jurisdiction over the taxpayer or U.S. members of the controlled group and provide the name of and contact information for the taxpayer’s IRS Examination team manager if the taxpayer is under examination when the competent authority request is filed
1.4	<i>Treaty(ies):</i> Identify the U.S. tax treaty(ies) and articles under which the request is being filed
1.5	<i>Summary of competent authority issues:</i> Provide a summary of the competent authority issues for which assistance is being requested
1.6	<i>Years and amounts:</i> 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 used for currency conversion during the applicable taxable years

Contents of Request Letter for APMA

1.7	<p><i>Taxpayer proceedings:</i> Provide:</p> <p>a. a summary of relevant U.S. and foreign judicial and administrative proceedings involving the taxpayer or other members of the controlled group, that are relevant to the competent authority issues for which assistance is being requested (including all information related to notifications provided to the treaty country(ies)); and</p> <p>b. a summary of all other U.S. judicial proceedings that concern the taxpayer’s federal tax liability for any taxable period involved in the competent authority request</p>
1.8	<p><i>Other proceedings:</i> To the extent known, provide a summary of any relevant foreign judicial and public administrative proceedings not involving the taxpayer or members of the controlled group but concerning an issue similar to the competent authority issue for which the competent authority request is being filed</p>
1.9	<p><i>Statutes of limitations:</i> 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 competent authority request</p>
Part 2. Competent Authority Issues	
2.1	<p><i>Competent authority issues:</i> Provide a thorough, informative explanation of the competent authority issues for which assistance is requested, including but not limited to descriptions or discussions of:</p> <p>a. The relevant transactions, activities, or other circumstances surrounding the competent authority issues for which assistance is requested;</p> <p>b. The taxpayer’s understanding of the legal basis for each U.S.-initiated action, foreign-initiated action, or taxpayer-initiated position giving rise to the competent authority issues;</p> <p>c. The taxpayer’s view on the justification for assistance under the applicable U.S. tax treaty(ies); and</p> <p>d. The content of any related requests for assistance submitted to the foreign competent authority, together with an explanation of any material differences between the competent authority request filed under the revenue procedure and the request filed with the foreign competent authority</p>
2.2	<p><i>Prior or current U.S. competent authority assistance:</i> State whether or not each competent authority issue set forth in the competent authority request is the same or similar to an issue considered in a prior or current competent authority or APA request covering the same or other taxable years, and, if so, summarize the terms of any resolution of the issue by the U.S. competent authority</p>
2.3	<p><i>Pre-filing information:</i> Provide the following information:</p> <p>a. Whether a pre-filing memorandum was filed; and</p> <p>b. Whether a pre-filing conference was held and, if so, the date of and attendees at the conference</p>
Part 3. Assistance Requested and Required Statements	
3.1	<p><i>Coordination with other proceedings:</i> Provide the following information:</p> <p>a. Whether the taxpayer entered into a previous agreement with IRS Examination as described in section 6.03 of the revenue procedure;</p> <p>b. For any competent authority issue for which assistance is being requested that has been under the jurisdiction of IRS Appeals pursuant to a protest, the date of any opening conference with IRS Appeals and evidence showing that the taxpayer has properly severed the competent authority issue from the issues in its protest that will remain under the jurisdiction of IRS Appeals (<i>see</i> section 6.04(3)(a) of the revenue procedure); and</p> <p>c. Whether the taxpayer seeks SAP review, and if so, for which issues</p>
3.2	<p><i>ACAP years:</i> Provide the following information:</p> <p>a. Whether the taxpayer requests ACAP and, if so, the ACAP years proposed to be covered;</p> <p>b. Whether the taxpayer does not seek to apply the competent authority 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</p> <p>c. Whether the taxpayer has filed a bilateral or multilateral APA request pursuant to Rev. Proc. 2015–41 that proposes to cover one or more issues covered by the competent authority request and, if so, whether it included a rollback request for ACAP years in its APA request</p>
3.3	<p><i>Ancillary issues:</i> List the ancillary issues (if any) the taxpayer requests be addressed in the competent authority resolution, <i>e.g.</i>, competent authority repatriation</p>

Contents of Request Letter for APMA

3.4	<i>Attachments not included:</i> List any required competent authority request attachments that the taxpayer has not included in its competent authority request, together with explanations as to why such items are not included (e.g., “N/A”)
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.02 *Attachments.* A competent authority request filed with APMA also must include the following attachments after the request letter, separated and ordered as indicated in this section.

Attachments to Competent Authority Requests for APMA	
Tab 1	<i>Authorization form:</i> Include a properly executed Form 2848, <i>Power of Attorney and Declaration of Representative</i> , or Form 8821, <i>Tax Information Authorization</i>
Tab 2	<i>ACAP requests:</i> If the taxpayer is requesting ACAP, provide a statement that the taxpayer agrees to the following: <ol style="list-style-type: none"> 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 later examination or inspection
Tab 3	<i>Protective claim and treaty notification:</i> If applicable, provide the following information: <ol style="list-style-type: none"> a. A statement that the competent authority request is to serve as a protective claim pursuant to section 11 of the revenue procedure, together with the information described in section 11.02(3); and b. A statement that the competent authority request is to provide treaty notification pursuant to section 12 of the revenue procedure
Tab 4	<i>Consent to disclosure:</i> 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 competent authority 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 competent authority request
Tab 5	<p><i>“Penalties of perjury” declaration:</i> Include the following “penalties of perjury” declaration:</p> <p style="padding-left: 40px;">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 competent authority request are true, correct, and complete.</p> <p>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</p>
Tab 6	<i>Written notice of adjustment:</i> Provide the following information: <ol style="list-style-type: none"> 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 foreign-initiated adjustments: (1) an English translation of any official notice(s) of the adjustment to taxable income reported in the treaty country(ies) upon which the competent authority request is based; and (2) a copy of the official notice(s) of such adjustment(s) in the original language
Tab 7	<i>Information or documents in a foreign language:</i> 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 competent authority request and for which a full translation in English is not provided
Tab 8	<i>Transfer pricing documentation and related information:</i> Provide the following information: <ol style="list-style-type: none"> a. A copy of documentation prepared pursuant to section 6662 of the Code or other documentation analyzing the competent authority issues for the taxable years covered by the competent authority request; b. Financial data prepared for official statutory, regulatory, or other reporting purposes for the taxpayer’s controlled group (whether a corporate parent is a U.S. person or not) for all taxable years covered by the competent authority request;

Attachments to Competent Authority Requests for APMA

	<p>c. Income statements and balance sheets, segmented as necessary to demonstrate the effect of the competent authority issue(s) on taxable income for the taxpayer and the members of the controlled group whose taxable incomes would be affected by a competent authority resolution being reached in the taxpayer's competent authority case, for all taxable years covered by the competent authority request and, as applicable, for the three taxable years ending before and the three taxable years ending after the years covered by the competent authority request; and</p> <p>d. Covered issue diagrams, as described in Exhibit 11 listed in the Appendix to Rev. Proc. 2015-41</p>
Tab 9	<i>Pre-filing submissions:</i> Include any pre-filing memoranda or other materials submitted prior to the competent authority request
Tab 10	<i>Optional e-mail memorandum of understanding:</i> At the taxpayer's option, an executed memorandum of understanding in the form prescribed by APMA (as may be posted on the APMA website or otherwise available by contacting APMA) permitting APMA to communicate with the taxpayer's authorized representatives through encrypted e-mail

.03 Manner of Filing Competent Authority Request with APMA.

(1) *In General.* The taxpayer must provide five (5) copies of its competent authority request for APMA as follows: one (1) original, bound printed submission containing signed originals of the request letter and attachments; two (2) bound photocopies of the contents of the original printed submission; and two (2) electronic copies of the contents of the original printed submission on CD or flash drive or similar acceptable electronic storage medium. All five (5) copies of the competent authority request must be filed with APMA at the address set forth in section 2.04.

(2) *Format of Printed Copies.* Each printed copy may be filed in one or more bound volumes. The attachments must be tabbed and identified and ordered as presented in section 2.02 of this Appendix. If an attachment is not applicable to the competent authority request, a statement to this effect must be included in the relevant tabbed attachment.

(3) *Content and Format of Electronic Copies.*

(a) *Content.* The electronic copies of the competent authority request must contain (1) the request letter, 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 and descriptions presented in section 2.02 of this Appendix. If an attachment is not applicable to the competent authority request, a statement to this effect must be included in the electronic file.

(b) *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. Documents presented in Excel format to APMA must be provided with formulas and internal cell

linkages intact. For some competent authority requests, including those that are complex, the taxpayer may choose additionally to provide, or APMA may require the taxpayer to provide, a bookmarked Adobe Portable Document Format file that includes the entire contents of the APA request.

.04 Address and Other Contact Information for APMA. Competent authority requests filed with APMA must be sent to the following address.

Deputy Commissioner (International)
Large Business and International
Division
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20224
SE:LB:IN:ADCI:TPO:APMA:
M3-370
(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. Additional contact information for APMA is as follows.

Telephone

Website

Office Location

Telephone numbers are available through the "contact us" link on the APMA website
www.irs.gov/Businesses/Corporations/APMA
801 Ninth Street, N.W.
Washington, D. C. 20001
(Mail not accepted at office location)

SECTION 3. INSTRUCTIONS AND REQUIREMENTS APPLICABLE TO COMPETENT AUTHORITY REQUESTS FILED WITH TAIT

.01 *In General.* Competent authority requests filed with TAIT should follow the instructions and requirements on content and structure of competent authority requests filed with APMA, except as modified by this section. Requests filed with TAIT do not need to include the material listed under Tab 8 found in section 2.02 of this Appendix. Applicants seeking discretionary LOB relief and pension plan determinations should provide the additional information described in sections 3.03 and 3.04 of this Appendix. Applicants seeking

to file a request concerning Article XIII(8) of the U.S.-Canada Treaty should also consult Rev. Proc. 98-21, 1998-1 C.B. 585. With regard to this and other aspects of filing a competent authority request with TAIT, the taxpayer may contact TAIT for further information prior to filing its competent authority request. If a competent authority request does not arise through the mutual agreement article of a U.S. tax treaty and is neither a discretionary LOB request nor a pension plan request, the taxpayer should consult with TAIT. See section 3.05(2) of this Appendix for information on how to contact TAIT.

.02 *Case presented by foreign competent authority.* If a case is presented by a

foreign competent authority and no corresponding competent authority request has been filed with TAIT in accordance with the revenue procedure, TAIT may require that the relevant U.S. taxpayer, if any (or, if none, the foreign person) file a competent authority request in accordance with the revenue procedure.

.03 *Requirements for Discretionary LOB Requests.* In addition to following the requirements in section 2.02 of this Appendix as modified by section 3.01, an applicant filing a discretionary LOB request also must include an additional section in its request letter addressing the following:

Part 4: Additional Information for Discretionary LOB Requests	
4.1	<p>Information necessary for identification and discretionary LOB request review:</p> <ul style="list-style-type: none"> a. Statement about the type(s) of benefits requested (<i>e.g.</i>, dividends, interest, royalties, or branch profits) 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's 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 branch, 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, contact telephone number, 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 stating i) the name and country of tax residence or organization of the applicant and every entity or individual in its chain of ownership up to, and including, its ultimate beneficial owners; ii) the classification of each such entity under the tax law of the country in which it is organized and the United States (<i>e.g.</i>, corporation, pension or other tax-exempt entity, or partnership); iii) whether each entity is fiscally transparent or opaque (<i>i.e.</i>, non-transparent) under U.S. and foreign tax law; and iv) a description of the amount and type of ownership interests (<i>e.g.</i>, preferred stock, common stock, or membership interests) held in each entity; 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 f. Description of the relevant transactions, activities, or other circumstances involved in the matter covered by the request

Part 4: Additional Information for Discretionary LOB Requests

4.3

Additional applicant information:

- a. Analysis of why the applicant does not qualify for the requested benefits under the relevant LOB provisions (*e.g.*, (i) 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, (ii) 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, (iii) if the applicant's parent was recently delisted from a recognized stock exchange and why, (iv) if the applicant's parent is publicly traded on a stock exchange not recognized under the treaty);
- 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 reasons;
- c. Detailed description of the facts and circumstances that demonstrate that the applicant has a sufficient relationship or nexus to the treaty country;
- 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;
- 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;
- f. A statement whether the applicant received any tax rulings or tax concessions issued to the applicant by the country in which it is organized, and a statement of whether the applicant otherwise benefits from a special tax regime in that country, and a description of the benefits;
- g. Statement from the applicant whether an examination by any tax authority has been or is currently in process that is related to the benefit covered by the request;
- h. 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;
- i. Statement listing each entity between the applicant and the ultimate owners and indicating whether each such entity meets the base erosion component of the ownership base erosion test of the treaty;
- j. 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, and dividend rate), 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;
- k. 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;
- l. 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;
- m. 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;
- n. Statement of the applicant's effective global tax rate;
- o. Statement of the extent to which deductible payments are made outside the ordinary course of the applicant's business;
- p. Detailed description of the tax treatment in the other contracting state if discretion is granted, including source and character; and
- q. 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 14 of the revenue procedure

In addition, a discretionary LOB request must contain the four additional attachments listed in the following table, separately tabbed:

Additional Attachments for Discretionary LOB Requests	
Tab 11	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
Tab 12	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, if available, 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
Tab 13	English translations of all tax rulings or tax concessions issued to the applicant by the country in which it is organized
Tab 14	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

.04 *Instructions and Requirements Applicable to Pension Plan Requests.* For a pension plan request, in addition to following the instructions and requirements in section 2.02 of this Appendix, as modified by section 3.01, the taxpayer also must include an additional section (Part 4) in its request letter explaining why the foreign pension plan should be deemed to “generally correspond” to a pension plan recognized for tax purposes in the United States. In addition, a pension plan request must contain the three additional attachments listed in the following table, separately tabbed:

Additional Attachments for Pension Plan Requests	
Tab 11	Copies of the Plan Documents (translated into English). For this purpose, the Plan Documents includes the plan itself, the trust agreement, the summary plan description or similar document provided to plan participants, and any other document that will assist the U.S. competent authority in making its determination
Tab 12	If the plan at issue relates to another plan of the employer, copies of the Plan Documents (as described above) for that other plan (translated into English)
Tab 13	Copies of all applicable statutory provisions that govern the foreign pension plan (translated into English)

.05 *Manner of Filing Competent Authority Request with TAIT.*

(1) *Format.* The taxpayer must provide two copies of its competent authority request in the same manner and format as filing requests to APMA as described in section 2.03 of this Appendix, except as otherwise permitted by TAIT for small case competent authority requests (*see* section 5 of the revenue procedure). One copy must be an original printed submission containing signed originals of the request letter and attachments. One copy must be an electronic copy of the contents of the original printed submission on CD or flash drive or similar acceptable electronic storage medium.

(2) *Address and Other Contact Information for TAIT.* Competent Authority requests filed with TAIT must be sent to the following address.

Deputy Commissioner (International)
 Large Business and International Division
 Internal Revenue Service
 1111 Constitution Avenue, N.W.
 Washington, D.C. 20224
 SE:LB:IN:ADCI:TAIT:M4-365
 (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. Additional contact information is as follows.

Telephone 202-515-4476
 Website http://lmsb.irs.gov/international/dir_treaty/index.asp
 Office Location 801 Ninth Street, N.W.
 Washington, D. C. 20001
 (Mail not accepted at office location)

Rev. Proc. 2015-41

SECTION 1. PURPOSE, BACKGROUND, RULES OF CONSTRUCTION, AND DEFINITIONS

SECTION 2. SCOPE AND GENERAL APPLICATION

SECTION 3. PROCEDURES FOR FILING APA REQUESTS

SECTION 4. ACTIONS ON APA REQUESTS

SECTION 5. COORDINATION WITH REV. PROC. 2015-40 AND ROLLBACKS

SECTION 6. LEGAL EFFECT OF AN APA

SECTION 7. ADMINISTERING AN APA

SECTION 8. RENEWING AN APA

SECTION 9. DISCLOSURE

SECTION 10. EFFECT ON OTHER DOCUMENTS

SECTION 11. EFFECTIVE DATE

SECTION 12. PAPERWORK REDUCTION ACT

SECTION 13. DRAFTING INFORMATION

APPENDIX. APA REQUEST REQUIREMENTS

SECTION 1. PURPOSE, BACKGROUND, RULES OF CONSTRUCTION, AND DEFINITIONS

.01 *Purpose and Background.* This revenue procedure provides guidance on the process of requesting and obtaining advance pricing agreements from the Advance Pricing and Mutual Agreement program (“APMA”), a constituent office of the U.S. competent authority, within the office of the Deputy Commissioner International, Large Business & International Division. This revenue procedure also provides guidance on administration of executed APAs. This revenue procedure updates and supersedes Rev. Proc.

2006-9, 2006-1 C.B. 278, as modified by Rev. Proc. 2008-31, 2008-1 C.B. 1133, which is also superseded. This revenue procedure is being released in conjunction with Rev. Proc. 2015-40, 2015-35 I.R.B. 236, which provides procedures and guidance on the process of requesting assistance from the U.S. competent authority under the provisions of U.S. tax treaties.

A proposed version of this revenue procedure was released for public comment in Notice 2013-79, 2013-2 C.B. 653. This revenue procedure is issued following consideration of all public comments received by the IRS and the Treasury Department and also reflects the continuing internal monitoring and modifications of APMA’s administrative procedures to ensure that the administration of APAs is consistently principled, effective, and efficient.

The principal differences between this final revenue procedure and the proposed version in Notice 2013-79 may be summarized as follows:

(1) This revenue procedure clarifies that if APMA requires, as a condition of continuing with the APA process, that the taxpayer expand the proposed scope of its APA request to cover interrelated matters (interrelated issues in the same years, covered issues or interrelated issues in other years, and covered issues or interrelated issues in the same or other years as applied to other countries), APMA will do so with due regard to considerations of principled, effective, and efficient tax administration and only after considering the views of the taxpayer and the applicable foreign competent authority. Further, APMA will communicate to the taxpayer any concerns about interrelated matters and possible scope expansion as early as possible. Examples are provided of interrelated matters. *See* section 2.02(4).

(2) In the interest of efficient tax administration, rollback years may be formally covered within an APA. A rollback will be included in an APA when a rollback is either requested by the taxpayer and approved after coordination and collaboration between APMA and other offices within the IRS or, in some cases, is required by APMA, after coordination and collaboration with other offices within the IRS, as a condition of beginning or con-

tinuing the APA process. *See* sections 2.02(4)(c), 3.03(2), 3.08, and 5.02.

(3) This revenue procedure provides expanded guidance as to when an APA request will be considered complete. *See* section 3.03(3).

(4) The required contents of APA requests that were specified in the Appendix of the proposed revenue procedure have been refined but generally retained, which APMA continues to view as necessary to conduct informed and efficient evaluations of APA requests.

(5) As stated in Notice 2013-79, taxpayers are required to execute consent agreements to extend the period of limitations for assessment of tax for each year of the proposed APA term, and the required consent could be either general or restricted. This revenue procedure expressly provides that APMA will coordinate and collaborate with other offices within the IRS and with the taxpayer on the type of consent the taxpayer will be instructed to execute, which, if restricted, will follow standardized language provided by APMA. This revenue procedure also provides that in certain cases, only general consents will be used. *See* section 2.03(3).

(6) This revenue procedure increases the user fees for APA requests and provides that total user fees may be reduced for multiple APA requests filed by the same controlled group within a sixty-day period. *See* section 3.03(2) of the Appendix.

(7) This revenue procedure substantially restructures the proposed guidance in Notice 2013-79 to improve clarity, readability, and organization.

.02 *Section References and Defined Terms.* Unless indicated by context or otherwise, section references are to the sections of this revenue procedure.

.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 legal holiday in the District of Columbia.

.04 *Definitions.* As used in this revenue procedure, certain acronyms and other terms have the meanings set forth in this section.

Abbreviated APA request	An APA request in which information, documents, or content required for a complete APA request has been truncated or omitted, per explicit authorization from APMA (<i>see</i> section 3.04(2))
ACAP	Accelerated competent authority procedure (<i>see</i> section 4.01 of Rev. Proc. 2015–40)
ACAP request	A request filed under section 4.01 of Rev. Proc. 2015–40 to include ACAP years in a competent authority case
ACAP years	Taxable years covered by an ACAP request or that are eligible for ACAP
Ancillary issue	An issue eligible for coverage by an APA, such as the repatriation of funds (<i>see</i> section 7.01), interest on refunds and deficiencies, and penalties with respect to U.S.-initiated adjustments, that arises out of the resolution of another, underlying covered issue
APA	An advance pricing agreement
APA annual report	The report prepared by the taxpayer for each APA year demonstrating the taxpayer's compliance with the covered method(s) and APA terms and conditions
APA primary adjustment	An adjustment made by a taxpayer to its results, as shown in its books and records for an APA year and/or reflected in its U.S. return for an APA year, in order to make its reported taxable income consistent with the application of the covered method(s) (<i>see</i> section 7.01)
APA process	The series of formal or informal steps described in this revenue procedure or established by the APA team during the course of its evaluation of an APA request that are involved in reaching an APA, including steps relating to pre-filing conferences and memoranda
APA request	A request for a unilateral, bilateral, or multilateral APA submitted under this revenue procedure
APA team	The IRS team assembled to process an APA request
APA team leader	The taxpayer's primary point of contact within the IRS during the APA process
APA term	The time period consisting of all APA years
APA terms and conditions	The terms and conditions of the APA, including (but not limited to) the APA years, operational and compliance provisions, critical assumptions, and record-keeping and annual reporting responsibilities
APA year	A taxable year covered by an APA
APMA	The Advance Pricing and Mutual Agreement Program, a representative office of the U.S. competent authority and one of the divisions of TPO
Arbitration treaty	A U.S. tax treaty in which the mutual agreement procedure article includes a provision for mandatory arbitration of certain cases, as described in section 10 of Rev. Proc. 2015–40
Back year	In relation to an APA, any taxable year ending before the first prospective year; and in relation to a proposed APA, any taxable year ending before the first prospective year as proposed by the taxpayer in its APA request or as determined by APMA, as applicable
Bilateral APA	An APA in which the covered issue(s), covered method(s), and APA terms and conditions are premised on an underlying competent authority resolution reached between the U.S. competent authority and a foreign competent authority
Bilateral APA request	A request for a bilateral APA submitted under this revenue procedure
Closed filed year	A filed year for which the period of limitations for assessment of tax has expired in the United States
Code	The Internal Revenue Code of 1986 (26 U.S.C.), as amended
Competent authority case	A competent authority case, as defined in Rev. Proc. 2015–40, modified for purposes of this revenue procedure to include the consideration of a bilateral or multilateral APA request
Competent authority issue	A competent authority issue, as defined in Rev. Proc. 2015–40, in one or more competent authority years, which includes issues raised by a bilateral or multilateral APA request

Competent authority process	The competent authority process, as defined in Rev. Proc. 2015–40, modified for purposes of this revenue procedure to include the APA process with regard to a bilateral or multilateral APA request
Competent authority request	A competent authority request, as defined in Rev. Proc. 2015–40, modified for purposes of this revenue procedure to include a bilateral or multilateral APA request
Competent authority resolution	A competent authority resolution, as defined in Rev. Proc. 2015–40, modified for purposes of this revenue procedure to include a resolution by the U.S. competent authority and foreign competent authority(ies) (or through arbitration) of covered issue(s) in a case initiated by a bilateral or multilateral APA request under this revenue procedure, as appropriate
Competent authority year	A competent authority year, as defined in Rev. Proc. 2015–40, modified for purposes of this revenue procedure to include proposed APA years of a bilateral or multilateral APA request
Controlled group	The group of controlled taxpayers, within the meaning of the term set forth in Treas. Reg. § 1.482–1(i), of which the taxpayer filing the APA request is a member
Coverable issues	The issues eligible to be covered by an APA, including (1) issues arising under section 482 of the Code, (2) other issues for whose resolution transfer pricing principles are relevant, which in a particular case could include (a) issues arising under section 367(d) of the Code, (b) competent authority issues arising under the business profits and associated enterprises articles of U.S. tax treaties, and (c) the determination of the income effectively connected with the conduct of a trade or business within the United States, and (3) ancillary issues
Covered group	The U.S.- and non-U.S. taxpayers within a controlled group, including the taxpayer filing the APA request, whose intercompany transactions or other business activities are within the scope of the covered issue(s)
Covered issue diagrams	Diagrams, charts, tables, or similar representations, as described more fully in the Appendix, that depict the structure and value chain of the proposed covered group as they relate to the proposed covered issue(s) and (if applicable) interrelated issues
Covered issue(s)	The coverable issue(s) that is (are) covered by the APA
Covered method(s)	The transfer pricing method(s) or other method(s) set forth in the APA for resolving the covered issues
Critical assumption	A fact whose continued existence is identified in an APA as being material to the reliability of the APA’s covered methods; such fact may be related to the taxpayer, a third party, an industry, or business and economic conditions
Dollar file request	An APA request filed in accordance with the provisions of section 3.03(3)(b)
Effective date of an APA	The first date on which the APA has been executed by both the IRS and the taxpayer
Filed year	A taxable year for which the taxpayer has filed its U.S. return, determined by reference to the stage in the APA process at which the characterization as filed or not filed is relevant
Foreign competent authority	The competent authority of a treaty country
Global trading arrangement	Any arrangement involving multiple associated enterprises or the 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, including 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 (or an arrangement treated as such) as defined in Treas. Reg. § 1.482–7 or a qualified cost sharing arrangement (or an arrangement treated as such) as defined in Treas. Reg. § 1.482–7A (collectively, a “CSA”); and an arrangement (other than a CSA) for which 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 the facts and circumstances between such arrangement and a CSA. <i>See also</i> Treas. Reg. § 1.482–1(b)(2)(iii)
IRS	Internal Revenue Service

IRS Examination	The function(s) within the IRS responsible for examining federal tax and information returns for purposes of determining tax liability
LB&I	IRS Large Business & International Division
Multilateral APA	An APA in which the covered issue(s), covered method(s), and APA terms and conditions are premised on one or more underlying competent authority resolutions reached between the U.S. competent authority and more than one foreign competent authority
Multilateral APA request	A request for a multilateral APA submitted under this revenue procedure
OECD Guidelines	The transfer pricing guidelines promulgated by the Organisation for Economic Cooperation and Development
Open filed year	A filed year for which the period of limitations for assessment of tax has not expired in the United States
Opening conference	Typically, the first meeting between the taxpayer and an APA team after an APA request has been submitted
Pre-filing conference	A conference held with APMA before an APA request is filed (<i>see</i> section 3.02)
Pre-filing memorandum	A memorandum or similar paper submitted to APMA before an APA request is filed (<i>see</i> section 3.02)
Pre-filing requirements	The requirements regarding pre-filing memoranda and pre-filing conferences set forth in section 3.02
Protective claim	A contingent claim filed with the U.S. competent authority as described in section 11 of Rev. Proc. 2015–40 and section 3.06
Prospective year	An APA year that is described as a prospective year in section 3.03(2)
Rev. Proc. 2006–9	Rev. Proc. 2006–9, 2006–1 C.B. 278
Rev. Proc. 2015–40	Rev. Proc. 2015–40, 2015–35 I.R.B. 236
Rollback	The application (with appropriate modifications, if necessary) of the covered method(s) to specific back years (<i>see</i> sections 2.02(4)(c) and 5.02)
Rollback request	A request for a rollback submitted under this revenue procedure
Rollback year	An APA year that is described as a rollback year in section 3.03(2)
SAP review	The review of a competent authority issue by the U.S. competent authority with the assistance of IRS Appeals under the simultaneous appeals procedure described in section 6.04 of Rev. Proc. 2015–40
Small case APA user fee	The user fee required for APA requests that meet the criteria set forth in section 3.04 of the Appendix
Taxpayer	Unless the context indicates otherwise, the member of the covered group that is either a U.S. person, as defined in section 7701(a)(30) of the Code, or a non-U.S. person that is expected to file one or more U.S. returns during the proposed APA years that will reflect the treatment of covered issues. However, if such a member of the covered group is a member of a consolidated group other than the common parent (as defined in Treas. Reg. § 1.1502–1), then the common parent, rather than that member of the consolidated group, is considered to be the “taxpayer.” Further, if there is more than one entity that satisfies the preceding definition of “taxpayer,” then the term “taxpayer” refers collectively to all such entities.
TPO	Transfer Pricing Operations, the director of 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
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 (<i>see</i> section 2.01 of Rev. Proc. 2015–40)
U.S. return	A federal income tax return filed with the IRS pursuant to the Code
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 the taxable income of a taxpayer
Unilateral APA	An APA in which the covered issue(s), covered method(s), and APA terms and conditions are not premised upon an underlying competent authority resolution
Unilateral APA request	A request to enter into a unilateral APA under this revenue procedure

SECTION 2. SCOPE AND GENERAL APPLICATION

.01 Contact Information. APMA may be contacted with general or specific questions about this revenue procedure by one of the means identified in the Appendix. Unless otherwise instructed by APMA, any item (*e.g.*, an APA request or a pre-filing memorandum) that the taxpayer either is required or chooses to file with APMA must be sent to APMA at the address listed in the Appendix.

.02 Principles of Administering APAs.

(1) In February 2012, the IRS established APMA to oversee its APA program and to act as the representative office of the U.S. competent authority responsible for handling competent authority cases arising under the business profits and associated enterprises articles of U.S. tax treaties. APMA also has shared responsibility for cases arising under the permanent establishment articles of U.S. tax treaties. *See* section 2.01(3) of Rev. Proc. 2015–40. In accordance with its mission, APMA endeavors to administer the programs within its jurisdiction in a manner that is consistent with U.S. tax treaty obligations and that secures the appropriate tax bases of the United States and its treaty partners, prevents fiscal evasion, promotes consistency and reasonableness in outcomes, and provides taxpayers access to competent authority assistance and to the APA process in accordance with considerations of principled, effective, and efficient tax administration.

(2) APMA’s APA program provides a voluntary process whereby the IRS and taxpayers may resolve transfer pricing issues and issues for which transfer pricing principles may be relevant in a principled and cooperative manner on a prospective basis. Ancillary issues such as interest and penalties may also be resolved, but only to the extent to which APMA has authority under the Code or under a U.S. tax treaty

to resolve the issues. The APA process increases the efficiency of tax administration by encouraging taxpayers to come forward and present all the facts necessary for a proper evaluation of their proposed covered issues and to work towards a resolution of such issues in a spirit of openness and cooperation. The voluntary and prospective nature of the APA process lessens the burden of compliance by giving taxpayers greater certainty regarding covered issues and promotes the principled resolution of these issues by allowing for their discussion and resolution in advance, before the consequences of such resolution are fully known to either taxpayers or the IRS. As such, the APA process is intended to address issues that are ongoing in nature or have already arisen (or, based on firm commitments, are expected to arise). Conversely, the APA process is not available for addressing hypothetical or merely contemplated issues. In particular, the taxpayer will not be permitted to use the APA process to obtain an advance view of the IRS’s likely treatment of particular transactions (for example, business restructurings or intangible development arrangements) the taxpayer may be considering.

(3) The APMA Director, directly or by delegation, may take any action – not contrary to statute, regulation, or treaty – necessary to carry out the intent of this revenue procedure. Such actions include, but are not limited to, declining to initiate or suspending or terminating the APA process (*see* section 4.02(1)) and modifying the application of provisions contained in this revenue procedure in particular cases (for example, regarding time limits). Such actions are not subject to administrative review.

(4) Scope of APAs

(a) *In General.* A taxpayer’s APA request will include one or more covered issues, as applied to certain proposed taxable years, and (in the case of bilateral and multilateral APA requests) involving one or more foreign competent authorities. In

evaluating the taxpayer’s request, in some cases APMA may also need to consider additional, interrelated issues, additional taxable years (including potential rollback years, *see* sections 2.02(4)(c) and 5.02), or additional treaty countries (collectively, “interrelated matters”) in order to reach a resolution that is in the interest of principled, effective, and efficient tax administration. APMA will endeavor to communicate to the taxpayer any concern about interrelated matters, and any possible need to expand the scope of the APA (as discussed below), as early as possible in the APA process. APMA may do so, for example, when the taxpayer’s proposed covered issues are most reliably evaluated together with other issues. *See* Treas. Reg. §§ 1.482–1(f)(2)(i), 1.482–7(g)(2)(iv). For specific examples of interrelated matters, *see* section 2.02(4)(b). In cases requiring consideration of interrelated matters, APMA will endeavor to reach a resolution of the taxpayer’s proposed covered issues, but only to the extent that such resolution is consistent with the treatment of the identified interrelated matters. Further, after considering the views of the taxpayer and (if applicable) the foreign competent authority(ies) in such cases, APMA may decide that it is not in the interest of principled, effective, and efficient tax administration to reach a resolution on the taxpayer’s proposed covered issues without also reaching a resolution on such identified interrelated matters. In these circumstances APMA may condition its acceptance, continued consideration, or resolution of an APA request upon the agreement of the taxpayer (and, if applicable, of the foreign competent authority(ies)) to expand the scope of the APA.

(b) Examples of Interrelated Matters.

APMA will always consider the taxpayer’s particular facts and circumstances and the scope of the covered issue(s) as proposed in the APA request before deciding that interrelated matters also need to be considered. However, it is possible to

identify some common fact patterns in which APMA will be more likely to so decide.

(i) Assume that the taxpayer proposes to cover a company's license of intangible property in certain years to a second company in the same controlled group, when that intangible property had been sold in an earlier year by the second company (the licensee) to the first company (the licensor). In such a case, APMA might consider that the ongoing license should be evaluated in a manner consistent with the evaluation performed for the previous sale (for example, using the same underlying assumptions unless there were specific reasons why certain assumptions would have changed in the interim).

(ii) The taxpayer might propose to cover the compensation for services provided by one company to a second company in the same controlled group, when providing the services requires using intangible property that had been transferred in an earlier year from the first company to the second company as part of a business restructuring. In such a case, APMA might seek to ensure that the services are valued in a manner consistent with the valuation done in connection with the restructuring, in the absence of some factual reason why the valuations should not be consistent.

(iii) In evaluating a platform contribution transaction ("PCT") in a cost sharing arrangement under Treas. Reg. § 1.482-7, APMA might also consider whether the intangible development costs in that arrangement are being properly shared.

(iv) Assume that the taxpayer makes a bilateral APA request to cover sales of goods from a manufacturer in a treaty country to a U.S. distributor that is in the same controlled group, when the U.S. distributor, in turn, resells most of these goods to a distributor in another country (which may or may not be a treaty country) that is in the same controlled group. Before agreeing to a price that the U.S. distributor should pay to the manufacturer, APMA might consider the price that this distributor receives for its resale.

(v) Other examples of types of APA requests that could involve interrelated matters are listed among those for which a pre-filing memorandum is required in section 3.02(4), such as cases involving

transactions within a global trading arrangement or involving hybrid entities or entities disregarded for U.S. tax purposes.

(c) *Rollbacks; Coordination between APAs and Competent Authority Cases.* An APA is primarily a means to resolve coverable issues for prospective years (as defined in section 3.03(2)). However, an APA can also be "rolled back" to cover one or more earlier taxable years. When rollback years are included, the APA term will then comprise both rollback years and prospective years (see sections 3.03(2) and 3.08). Rollback years are defined in section 3.03(2), and rollbacks are further discussed in section 5.02. Rollback years need not be, but typically are, the subject of an ongoing or anticipated competent authority case under Rev. Proc. 2015-40. In recognition of these connections, APMA views APAs and competent authority resolutions under Rev. Proc. 2015-40 as being two interconnected means by which taxpayers can manage and address transfer pricing and other cross-border tax issues for which transfer pricing principles may be relevant. Accordingly, APMA will endeavor to address APA requests and competent authority requests under Rev. Proc. 2015-40 in a way that will achieve substantive and procedural consistency between the APA process and the competent authority process under Rev. Proc. 2015-40, and that will provide resolution and certainty across taxable years for taxpayers and the IRS. For example, when warranted by similarity of facts and circumstances across taxable years, APMA will encourage and in some cases require (see section 2.02(4)(a)) a taxpayer to expand the scope of its APA request to include a rollback when a comprehensive resolution of coverable issues would further the interests of principled, effective, and efficient tax administration. Conversely, when a taxpayer that has sought APMA's assistance for a competent authority case under Rev. Proc. 2015-40, APMA may request (but will not require) that the taxpayer also pursue ACAP to extend the competent authority resolution from that case to cover one or more of its ACAP years (see section 2.04 of Rev. Proc. 2015-40). In such cases, APMA may also encourage (but will not formally request or require) the taxpayer to further extend the competent authority

resolution into an APA as a means of obtaining certainty in future taxable years (see section 2.05 of Rev. Proc. 2015-40). The relationship between APAs, competent authority cases under Rev. Proc. 2015-40, and ACAP is addressed in more detail in section 5 and in Rev. Proc. 2015-40.

(d) *Preference for Bilateral and Multilateral APAs.* APMA's interest in coordinating APAs and competent authority cases under Rev. Proc. 2015-40 is also reflected in its preference for bilateral and multilateral APAs over unilateral APAs. To minimize taxpayer and governmental uncertainty and administrative cost, bilateral and multilateral APAs are generally preferable to unilateral APAs. If a taxpayer requests a unilateral APA to cover any issue that could be covered under a bilateral or multilateral APA under the applicable tax treaty(ies), the taxpayer must explain in a pre-filing memorandum (see section 3.02(4)) why it believes that a unilateral APA is appropriate to cover that issue. The taxpayer might state, for example, that it believes that there is no APA process with the treaty country, or that the taxpayer's proposed covered issues involve so many treaty countries that the taxpayer believes that bilateral APAs or a multilateral APA would be impractical. After taking into account the taxpayer's views expressed in the memorandum (and in a pre-filing conference if one is held, see section 3.02), APMA will inform the taxpayer whether it will accept a unilateral APA request. APMA may reject a taxpayer's unilateral APA request for various reasons, particularly when accepting it would contravene procedures and practices established with particular treaty partners. Further, even if APMA and a taxpayer sign a unilateral APA, APMA might subsequently decline to consider a competent authority request for an issue that could reasonably and practically have been covered if the taxpayer had instead pursued a bilateral or multilateral APA. See section 7.02 of Rev. Proc. 2015-40. This would particularly be the case when APMA has already expended resources and fully considered the taxpayer's arguments in reaching a unilateral APA and when a reasonably foreseeable outcome of the competent authority case would be a reduction in U.S. taxable income beyond

the level to which APMA and the taxpayer had agreed in the unilateral APA. In the same vein, under the example described in section 2.02(4)(b)(iv), if the taxpayer is unwilling to expand the scope of the APA request to include the competent authority of a second treaty country, and APMA nevertheless is willing to reach an APA, APMA might subsequently decline to consider a MAP request concerning the resale of the goods to the distributor in that second treaty country. In deciding whether to pursue a bilateral or multilateral APA rather than a unilateral APA, or to expand the scope of the APA request to include the competent authority of a second treaty country, taxpayers should bear in mind that a failure to timely request competent authority assistance may adversely affect the availability of the foreign tax credit. *See* Treas. Reg. § 1.901-2(e)(5) and Rev. Rul. 92-75, 1992-2 C.B. 197.

(5) APMA is available for informal consultations with taxpayers within or outside of the APA process. Such consultations may address potential covered issues, and the APA process in general. Statements or representations, whether oral or written, made by APMA in connection with such consultations are informal only and are not binding on the IRS. Such consultations may be by telephone, written, and/or in person. Such consultations may relate to taxpayers whose identities remain anonymous to APMA, and in such cases may include participation of a taxpayer's officers or employees on an anonymous basis.

.03 General Requirements for Initiating and Continuing the APA Process.

(1) To initiate the APA process, the taxpayer must (i) meet the pre-filing requirements set forth in section 3.02, as applicable, (ii) submit a complete APA request, as explained in section 3.04(1), and (iii) pay the correct user fee, as described in section 3.05 and as instructed in the Appendix.

(2) Throughout the APA process, the taxpayer must supplement its APA request and provide updated information in accordance with sections 3.09 and 3.10.

(3) Throughout the APA process, the taxpayer and the IRS will execute consent

agreements as necessary to extend the period of limitations for assessment of tax for each proposed APA year (including both proposed prospective years and proposed rollback years). Each required consent agreement will be either general or restricted, as specified in this section. A restricted consent will not be appropriate for a proposed APA year for which an issue other than the proposed covered issues is under ongoing or potential examination by the IRS.

(a) *Requirement for APA Request.* As of the date the APA request is filed, the remaining period of limitations for assessment of tax for each proposed APA year must be at least two years. If the remaining period of limitations for a proposed APA year is less than two years from such date, then the request must contain an executed general consent to extend the period of limitations for assessment of tax for the proposed APA year(s) to at least two years.

(b) *Ongoing Requirement.* For each proposed APA year, as the APA process progresses, the taxpayer must submit executed consents to the IRS to extend the period of limitations for assessment of tax as specified in this section 2.03(3)(b). An executed consent must be submitted no later than twelve months before the end of the remaining period of limitations. Unless the taxpayer is otherwise instructed by APMA, each such consent must extend such period by at least one year. In most cases, the taxpayer should submit a general consent for this purpose. However, if there are no issues other than the proposed covered issues under examination by the IRS for a proposed APA year, then the taxpayer may request a restricted consent under this ongoing requirement. Requests for restricted consents must be made in writing no later than fifteen months before the end of the remaining period of limitations, and include the taxpayer's views on why a restricted consent is appropriate in light of its circumstances. APMA will then coordinate and collaborate with other offices within the IRS and inform the taxpayer of the type of consent to be executed (general or restricted). Any restricted consent will be on a form provided by APMA.

(4) An APA request, and an APA, must be signed by each entity that comes within

the definition of "taxpayer" in section 1.04. Any requirement in this revenue procedure applicable to the "taxpayer" is applicable to each such entity, except as agreed between APMA and the taxpayer.

SECTION 3. PROCEDURES FOR FILING APA REQUESTS

.01 *General.* This section sets forth procedures, rules, and guidelines relevant to filing an APA request. This section also addresses the taxpayer's obligations before and after filing the request. Instructions on preparing and filing an APA request are also set forth in the Appendix.

.02 Pre-filing Requirements and Requests for Pre-filing Guidance.

(1) *General.* In the interest of making the APA process effective and efficient, APMA invites, and in some cases requires, the taxpayer to meet with APMA in a pre-filing conference prior to filing the APA request. For the same reason, APMA invites, and sometimes requires, the taxpayer to submit a pre-filing memorandum prior to filing the APA request. Pre-filing requirements are set forth in sections 3.02(3) through 3.02(7).

(2) *APA Requests Eligible for Small Case APA User Fee.* The pre-filing requirements set forth in sections 3.02(3) through 3.02(7) do not apply to APA requests that are eligible for the small case APA user fee. A taxpayer that seeks to file such an APA request may submit the small case APA user fee together with a complete APA request, or may first contact APMA to discuss filing an abbreviated APA request or to discuss any other procedural or substantive issue.

(3) *Requesting Pre-filing Conferences.* A taxpayer that wishes to hold a pre-filing conference with APMA must submit its request as part of a mandatory pre-filing memorandum filed pursuant to section 3.02(4) or an optional pre-filing memorandum filed pursuant to section 3.02(5).

(4) *Mandatory Pre-filing Memoranda.* A pre-filing memorandum that identifies the taxpayer must be filed if:

(a) the taxpayer wishes to file a unilateral APA request to cover an issue that could be covered under a bilateral or multilateral APA under the pertinent tax treaty(ies) (*see* section 2.02(4)(d));

(b) the taxpayer seeks permission to file an abbreviated APA request pursuant to section 3.04(2); or

(c) the covered issue(s) proposed by the taxpayer will, or could reasonably be expected to, involve any of the following: (i) the license or other transfer of intangibles in connection with, or the development of intangibles under, an intangible development arrangement, (ii) a global trading arrangement, (iii) a business restructuring, or the use of intangibles whose ownership changed as a result of a business restructuring, or (iv) unincorporated branches, pass-through entities, hybrid entities, or entities disregarded for U.S. tax purposes.

This section is not intended to limit anonymous informal consultations with APMA as described in section 2.02(5). For example, a taxpayer might engage in informal consultations as described in section 2.02(5), including submitting an anonymous memorandum, and subsequently file a pre-filing memorandum that identifies the taxpayer and otherwise satisfies the requirements for a mandatory pre-filing memorandum.

(5) *Optional Pre-filing Memoranda.* A taxpayer may voluntarily submit a pre-filing memorandum in cases other than those set forth in section 3.02(4). Although not required, APMA generally recommends that a pre-filing memorandum be submitted for APA requests that may present novel or complex substantive or procedural issues, and APA requests for which APMA could reasonably have concerns regarding interrelated matters (*see* section 2.02(4)). Optional pre-filing memoranda may be submitted on an anonymous basis. APMA generally recommends, however, that optional pre-filing memoranda be provided on a named basis so as to facilitate a more informed understanding of the procedural and substantive issues that may arise during the APA process.

(6) *Contents of Pre-filing Memorandum.* A mandatory pre-filing memorandum must have a length and content appropriate to the size and complexity of the covered issue(s) proposed by the taxpayer, and must be primarily in memorandum form but may be accompanied by diagrams, slides, spreadsheets, and similar supporting materials. An optional pre-

filing memorandum must have a length and content appropriate to the substantive or procedural issues the taxpayer wishes to raise with APMA, and may be in a format chosen by the taxpayer. Whether mandatory or optional, a pre-filing memorandum must also do the following:

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

(b) Propose at least three possible dates for a pre-filing conference that normally would be at least two weeks after the date that the pre-filing memorandum is submitted, if either the pre-filing memorandum is mandatory (whether or not the taxpayer seeks a pre-filing conference, which might be required by APMA) or the pre-filing memorandum is optional and the taxpayer seeks a pre-filing conference;

(c) Include covered issue diagrams if the pre-filing memorandum is mandatory;

(d) If mandatory and if submitted pursuant to sections 3.02(4)(b) and 3.04(2)(a) to seek permission to file an abbreviated APA request, must (i) specify any information, documents, or other materials the taxpayer proposes to omit from its APA request, (ii) present the taxpayer's arguments that the information, documents, or other materials the taxpayer proposes to omit from its APA request are not necessary for APMA's evaluation of the APA request, including if applicable the taxpayer's arguments that the applicable law, facts and circumstances, economic conditions, proposed covered issue(s) and method(s), and other factors relevant to the proposed APA years are substantially the same as those relevant to the current APA or the competent authority resolution as the case may be (*see* sections 5.01 and 8), and (iii) in the case of a proposed renewal APA, summarize in a table the results and adjustments under the current APA, in absolute and (as applicable) percentage terms (*e.g.*, operating margin), with comparison to any arm's length points or ranges specified in the APA, and also summarize any proposed changes in terms from the current APA;

(e) List the name and contact information for the taxpayer's point of contact and, unless the pre-filing memorandum is submitted on an anonymous basis, provide, as necessary, a Form 2848 authorizing the point of contact to represent the

taxpayer in connection with the APA request or a Form 8821 authorizing the point of contact to inspect or receive confidential tax information about the taxpayer in connection with the APA request; and

(f) Identify all open back years of the taxpayer and which of such years, if any, are under examination by the IRS.

(7) *Place for Submission of Pre-filing Memorandum.* Two printed copies and one electronic copy of the pre-filing memorandum must be submitted to APMA at the address provided in section 4 of the Appendix. The electronic copy of the pre-filing memorandum must follow the rules for media and format of electronic submissions described in section 2 of the Appendix.

(8) *Actions Taken with Respect to Pre-filing Conferences and Memoranda.*

(a) APMA will notify the taxpayer whether it will accept or decline the taxpayer's request to hold a pre-filing conference. APMA may also require a pre-filing conference to follow a mandatory pre-filing memorandum even if the taxpayer did not request a conference. If APMA decides to hold a pre-filing conference, the conference will address procedural and substantive issues pertinent to the APA request. During the conference, the taxpayer should be prepared to discuss the relevant facts and circumstances surrounding the issue(s), method(s), and terms and conditions it proposes to cover in the APA, and (if applicable) the taxpayer's justification for its request to file an abbreviated APA request. If APMA decides against holding a pre-filing conference, it will direct the taxpayer to proceed with its APA request (*see* section 3.04(2) regarding the situation in which the taxpayer has sought permission to file an abbreviated APA request).

(b) Unless the taxpayer has submitted a mandatory pre-filing memorandum pursuant to section 3.02(4), which requires identification of the taxpayer, or has otherwise identified the taxpayer, a pre-filing conference may be held on an anonymous basis. APMA generally recommends, however, that pre-filing conferences be held on a named basis to facilitate a more informed discussion of procedural and substantive issues that may arise during the APA process.

(9) *Informal Advice in Pre-filing Conference.* Statements or representations made by APMA in a pre-filing conference are informal and are, therefore, not binding on the IRS (*see* section 2.02(5)).

.03 Time for Filing.

(1) *In General.* APAs are intended to apply primarily to prospective years, as defined in section 3.03(2). APMA normally expects an APA request to be filed early enough such that the proposed APA term would cover at least five prospective years (*see* section 3.08). This section 3.03 gives rules applicable to filing deadlines and determinations. These rules reference section 3.04, which provides guidance on the content and form of complete APA requests.

(2) *Prospective Years, Rollback Years, and Filing Deadline of Complete APA Request.* An APA term will comprise prospective years and rollback years (if any). Except as provided in section 3.03(2)(b), a prospective year is a taxable year in an APA term (or a requested APA term) for which the taxpayer has filed a complete APA request, or an APA request that is considered complete (*see* section 3.03(3)), as of a date that is no later than the applicable return date (as defined in section 3.03(2)(a)) for that taxable year. Any APA year, or proposed APA year, ending before the first prospective year will be a rollback year (*see generally* section 5.02). Depending on the taxable years that the taxpayer proposes be covered by the APA term and depending upon the date that APMA considers the taxpayer's APA request to be complete, the first prospective year of the APA may or may not be the same as what is proposed by the taxpayer. For example, the taxpayer may file its APA request intending that a certain taxable year be the first prospective year of the APA. If, however, APMA determines the APA request is not complete as of the applicable return date for that taxable year, then the taxable year the taxpayer intended to be the first prospective year will be considered to be a proposed rollback year. APMA will determine which proposed APA year will be the first prospective year according to the provisions of this section.

(a) *Applicable Return Date.* If the taxpayer timely files its U.S. return for a

taxable year, the applicable return date for that year is the later of (i) the actual filing date, and (ii) the U.S. return's due date prescribed by statute without regard to extensions. If the taxpayer does not timely file its U.S. return for a taxable year, the applicable return date for that year is the U.S. return's due date prescribed by statute without regard to extensions.

(b) *Special Filing Deadline Rule for Bilateral and Multilateral APA Requests.* An additional filing deadline applies in the case of bilateral and multilateral APA requests. In order to better coordinate the timing of discussions on bilateral and multilateral APAs with foreign competent authorities, the taxpayer should file a complete bilateral or multilateral APA request (or be considered to have filed such a complete request under section 3.03(3)) no later than 60 days after a corresponding bilateral or multilateral request proposing to cover substantially the same coverable issue(s) and APA years has been filed with a foreign competent authority. For this purpose, the filing of a corresponding request with a foreign competent authority shall be understood to mean the filing of a substantive request with that foreign competent authority rather than the mere filing of a notice of intent to file a substantive request. If the taxpayer does not meet the deadline for filing stated in this section 3.03(2)(b), then the first APA year that otherwise would be a prospective year under the rules of this section 3.03(2) will be considered to be a rollback year. If the taxpayer misses that deadline by more than one year, then the first two or more APA years (as determined by APMA in its discretion) that otherwise would be prospective years under the rules of this section 3.03(2) will be considered to be rollback years.

(3) *Date as of Which APA Request Considered Complete.*

(a) *In General.* In certain cases, a complete APA request will be considered to be filed on a date earlier than the date on which it is actually filed. Specifically, the curing of certain deficiencies in an APA request could relate back to the original filing date (*see* section 3.04(1)). The curing of an incorrect user fee could in exceptional cases relate back to the original

date of payment (*see* section 3.05). The filing of an APA request will in certain cases relate back to the date on which the user fee was paid (*see* section 3.03(3)(b)). More than one of these provisions just cited could apply in combination to the same APA request. For example, a complete APA request could be considered to have been filed by a particular date if (i) the user fee is paid by that date, (ii) an APA request is filed within the 120-day period specified in section 3.03(3)(b), and (iii) that APA request is not complete when filed, but prompt supplementation to cure minor deficiencies as specified in section 3.04(1) renders the APA request complete. As stated in section 3.04(1), APMA's decision of whether, and when, an APA request is complete or considered complete is not subject to administrative review.

(b) *"Dollar File" Requests.* For purposes of this section, APMA will consider a complete APA request as having been filed by a particular date if (i) the correct user fee is paid (within the meaning of section 7502(a) of the Code) by such date, and (ii) a complete APA request is filed within 120 days of such date. APMA may agree to extend such 120-day period by 30 days for good cause if the taxpayer requests such an extension before the 120-day period expires.

.04 Content and Form of Complete APA Requests.

(1) *In General.* The Appendix sets forth the required contents of an APA request, identifies the order in which such contents should be presented, and provides information and instructions on other administrative matters relevant to filing a request. APMA will consider an APA request to be complete if it (1) is accompanied by payment of the correct user fee as specified in section 3.05, (2) contains all the information required by the Appendix (subject to any exceptions agreed to by APMA), and (3) proposes covered methods that provide a reasonable basis on which to consider resolution of the proposed covered issues. For this purpose, a subsequent remedy of minor deficiencies, made promptly under the circumstances, will relate back to the time of original filing. In exceptional circumstances, APMA may also allow a subse-

quent remedy of substantial deficiencies, made promptly under the circumstances, to relate back to the time of original filing. (Regarding deficiencies in the payment of the user fee, *see* section 3.05(3).) APMA's decision of whether, and when, a complete APA request is filed or considered filed is not subject to administrative review. Any questions about filing an APA request not addressed in this section or in section 2 should be directed to APMA.

(2) *Abbreviated APA Requests.* The taxpayer must obtain prior permission from APMA to file an abbreviated APA request. An abbreviated APA request that the taxpayer files without such permission will not be considered a complete APA request under this section 3.04. An abbreviated APA request might be appropriate for expansion of a competent authority request under Rev. Proc. 2015-40 into APA years under the circumstances described in section 5.01(2), for APA renewals under the circumstances described in section 8, in certain circumstances for APA requests eligible for the small case user fee as specified in section 3.04 of the Appendix, and in other, exceptional circumstances. In evaluating the taxpayer's request to file an abbreviated APA request, APMA will consider that in most cases it can most efficiently process an APA request when the APA request itself contains all documents reasonably needed to evaluate that request, even if some of those documents have been submitted before to the IRS. Before requesting permission to file an abbreviated APA request, the taxpayer should consider whether the documents that it proposes to omit from the APA request could alternatively be provided as exhibits to that request.

(a) *Abbreviated APA Requests Not Eligible for Small Case APA User Fee.* To request permission to file an abbreviated APA request that is not eligible for the small case APA user fee as specified in section 3.04 of the Appendix, the taxpayer must file a pre-filing memorandum as described in sections 3.02(4) and 3.02(6)(d). After reviewing the pre-filing memorandum and (if applicable) holding a pre-filing conference (*see* section 3.02(8)(a)), APMA will inform the taxpayer either that APMA will accept an abbreviated APA request (in which case APMA will instruct the taxpayer on the content of the

request), or that APMA will require a complete APA request.

(b) *Abbreviated APA Requests Eligible for Small Case APA User Fee.* To request permission to file an abbreviated APA request that is eligible for the small case APA user fee, the taxpayer may contact APMA informally to discuss the proposed contents of the request. After discussion with the taxpayer and consideration of any written material submitted by the taxpayer, APMA will inform the taxpayer either that APMA will accept an abbreviated APA request (in which case APMA will instruct the taxpayer on the content of the request), or that APMA will require a complete APA request.

(3) Any information submitted by a taxpayer in connection with its APA request must be true, correct, and complete (*see* the Appendix). All exhibits and documents included in or referred to in the APA request must be explained, as necessary, in sufficient detail to make their contents readily understandable. Such an explanation might include, for example, definitions of terms used, explanations of the goal and flow of calculations, the sources of data, and the identity of a document's creator and the purpose for which it was created.

.05 User Fees.

(1) The user fee requirements and rules of application are set forth in the Appendix. A taxpayer that seeks a decision on the user fee applicable to its APA request must contact APMA informally or submit a pre-filing memorandum.

(2) The taxpayer must pay the applicable user fee no later than the date it files the APA request. User fees must be paid through the Pay.gov website.

(3) APMA will notify the taxpayer if it has paid less than the correct user fee. In such a case, the taxpayer has the option of making up the difference or withdrawing its APA request and receiving a refund of the amount it has paid. In exceptional cases, APMA may allow the remedy of the insufficient user fee to relate back to the date that the insufficient user fee was paid for purposes of determining when a complete APA request is considered to be filed (*see* section 3.03(3)).

.06 *APA Request as Protective Claim.* For proposed covered issues, a protective

claim for credit or refund may be made by including the claim in a bilateral or multilateral APA request. To be a valid protective claim for credit or refund, the protective claim must fulfill the requirements of section 11.02(3) of Rev. Proc. 2015-40. *See* section 11 of Rev. Proc. 2015-40 and the Appendix. For purposes of the annual notification requirement of section 11.05 of Rev. Proc. 2015-40, a protective claim included in a bilateral or multilateral APA request shall be deemed to be continuously filed for as long as the subject matter of that claim is under consideration by APMA as part of that APA request.

.07 *Effect of Filing.* The submission of a complete APA request, updated and supplemented in accordance with the requirements of this section 3, will be a factor taken into account in determining whether the taxpayer has met the documentation requirements of Treas. Reg. § 1.6662-6(d)(2)(iii) for the proposed APA years. Submission of a complete APA request does not, in itself, suspend examination or enforcement proceedings. Although APMA will coordinate within the IRS to minimize duplicative requests in conducting its due diligence, the taxpayer remains obligated to respond to information document requests issued, and according to deadlines set, by other IRS offices in any examination or enforcement proceedings.

.08 *APA Term.* The APA term will comprise all of the prospective years and rollback years (if any) covered by the APA. In its APA request, the taxpayer must propose a term for the APA that is appropriate to the proposed covered issue(s) and to the commercial factors surrounding the taxpayer's industry and line(s) of business. Although the appropriate APA term will be determined on a case-by-case basis, an APA request typically should propose at least five prospective years, unless the taxpayer states a compelling reason to include fewer years. Additionally, in the interest of principled, effective, and efficient tax administration, APMA typically will seek to set the APA term so there are at least three unexpired years (i.e., years that have not yet ended) remaining in the APA term upon the execution of the APA (in the case of a unilateral APA) or upon the execution of the underlying competent authority resolution

(in the case of a bilateral or multilateral APA). APMA may require that the taxpayer agree to extend the APA term in order to achieve that goal. In the case of a bilateral or multilateral APA, any proposed term extension will be coordinated with the relevant foreign competent authority(ies).

.09 Requested and Supplemental Items.

(1) The information, documents, and materials required for APA requests that are identified in the Appendix might not exhaust the items an APA team needs to evaluate a given APA request. If the APA team determines that it needs additional information to analyze the APA request, the taxpayer will be asked, and thereby required, to provide such information. The taxpayer (or, as the case may be, related foreign taxpayers) must respond similarly to requests made by a foreign competent authority, as applicable. The APA team will endeavor to present focused, targeted requests for additional information. To the extent possible, the APA team will request information that the taxpayer would be likely to maintain in its normal course of business or information that is readily accessible or could be produced without placing undue burdens on the taxpayer. In this regard, the APA team will discuss and consider reasons offered by the taxpayer to modify the request or to provide other, but still responsive, information to that which was requested.

(2) In general, the taxpayer should be prepared to provide both (or all) competent authorities with any written responses, analyses, or other documents that it provides to one competent authority, whether such materials are provided in response to a request from a competent authority or are submitted voluntarily by the taxpayer in support of its APA request. In the interest of minimizing administrative burdens, the APA team will work with the taxpayer during the APA process as necessary to find efficient procedures for disseminating such materials to the competent authorities, such as using indexes to catalogue the materials that have been provided to each competent authority.

.10 Corrected and Updated Information.

(1) After the APA request is filed, any material errors or material omissions in the APA request or in supplemental submissions must be promptly corrected or remedied.

(2) The taxpayer must timely notify APMA of all material changes and updates to information previously submitted in connection with the APA request. The taxpayer must also submit any information or documents discovered or created during the APA process that are material to the APA request.

(3) Any financial data that are produced in connection with the APA request during the APA process, and that relate to the application of the proposed covered methods to the proposed covered issues, must be updated annually or on a schedule that is mutually acceptable to the taxpayer and to APMA. In addition, the APA request must be supplemented with a demonstration of the application of the proposed covered method(s) to the actual financial results of the applicable members of the proposed covered group for each taxable year completed while the APA request is pending. Such a supplemental submission must be provided within 180 days of the close of the taxpayer's taxable year, or by a date that is mutually acceptable to the taxpayer and to APMA. APMA recognizes that additional time may be appropriate if the covered methods require data from foreign parties that have different taxable years than the taxpayer. APMA may, at its discretion, grant an extension or modify these requirements if the taxpayer provides written notification before the date the supplemental submission would otherwise be due.

.11 Withdrawing the Request. The taxpayer may withdraw its APA request at any time before it executes the APA. APMA generally will not refund user fees if the taxpayer withdraws its APA request after APMA has begun its due diligence.

SECTION 4. ACTIONS ON APA REQUESTS

.01 Decision Letter and Contact Information. APMA will notify the taxpayer in writing that it has received the APA re-

quest. The letter will also provide the name and contact information of the APA team leader to whom the request has been assigned. In addition, the letter will: (1) state that the request is complete and that the APA process will proceed (and, if applicable, that the taxpayer must take certain administrative or procedural steps pertaining to the APA request), (2) state that the request is provisionally accepted but that the APA process will not proceed until specified deficiencies in the request have been addressed, or (3) state that the request is rejected and describe the circumstances, if any, under which the request might be accepted.

.02 Denial or Discontinuation of the APA Process.

(1) APMA may decline to enter into or continue with the APA process, either at the outset by rejecting the APA request or by terminating or suspending the APA process after it has accepted the APA request. APMA may take such actions if, for example, any of the circumstances described in, or similar to those described in, section 7.02 of Rev. Proc. 2015-40 are present, including failure to include the materials required by this revenue procedure in the APA request (*see* section 3) or the materials requested by the APA team during the APA process. APMA also will terminate the APA process for a requested unilateral APA if agreement cannot be reached on the APA's terms. For requested bilateral and multilateral APAs, APMA may terminate the APA process if a competent authority resolution is not reached; however, in some cases APMA and the taxpayer might then agree to execute a unilateral APA.

(2) If APMA declines to continue with the APA process after the process has begun, APMA will determine whether to refund the taxpayer's user fee. APMA will base its decision on various considerations, including the extent of the due diligence and analysis the APA team had undertaken before further assistance is denied.

(3) APMA's decision to decline to initiate, or to suspend or terminate, the APA process is not subject to administrative review.

.03 Initial Stages of APA Process.

(1) The APA team leader will contact the taxpayer once APMA has determined that the APA request is complete and that the APA process should continue. In most cases, the next step in the APA process is to hold an opening conference. However, depending on its experience and familiarity with the proposed covered issue(s) and method(s) and other aspects of the APA request, the APA team may determine that an opening conference is not needed. Generally, the APA team will forego an opening conference only if it has no substantial disagreement with what the APA request proposes. If the APA team decides to hold an opening conference, the APA team leader will work with the taxpayer to set a date for the conference. The APA team may request that the taxpayer provide responses to specific questions from the APA team about the APA request before the opening conference or at the opening conference. The APA team leader may set or agree to a due date before the opening conference for such responses and may postpone the opening conference if the responses are not provided by that date.

(2) An opening conference is intended to facilitate the APA team's understanding of the facts and circumstances underlying the taxpayer's proposed covered issue(s), covered method(s), and terms and conditions. The opening conference may also involve a discussion of the taxpayer's reasons for its selection of its proposed covered method(s). The APA team may also explore matters potentially interrelated with the proposed covered issues and discuss the possibility of including additional coverable issues, treaty countries, or years in the APA (*see* section 2.02(4)). At the opening conference, the taxpayer should be prepared to discuss the APA request in detail and to respond as fully as possible to questions about the facts and the proposals. In many cases, the discussion will focus on the taxpayer's responses to the APA team's questions provided in advance of the opening conference (*see* section 4.03(1)).

(3) The opening conference may also cover procedural matters, including whether a case plan will facilitate the APA team's evaluation of the taxpayer's APA request, and, if so, at what point in

the APA process it may be useful for the APA team to adopt a case plan. Ordinarily, a case plan will be adopted to facilitate efficient processing of the taxpayer's APA request. With or without a case plan, the APA team will endeavor to move through the APA process efficiently, given the scope and complexity of the proposed APA and the due diligence and analysis the APA team needs to undertake. In preparing a case plan, the APA team and the taxpayer will discuss milestones, which will depend on the nature of the covered issue(s), the quality of the APA request and any responses already provided by the taxpayer, and the further due diligence and analysis required. The time estimates for these milestones as reflected in a case plan are subject to revision. The time required to achieve milestones can be affected by various factors including (a) the quality and timeliness of information provided by the taxpayer, (b) the need to consider interrelated matters (*see* section 2.04(4)), (c) the emergence of unanticipated issues (for example, because of a change in the facts), (d) in the case of bilateral or multilateral APA requests, when the foreign competent authority(ies) are prepared to discuss the case, and (e) the ease with which an agreement can be reached with the taxpayer for unilateral APA requests or with the foreign competent authority(ies) for bilateral and multilateral APA requests.

.04 Evaluation and Presentation Stage of APA Process for Bilateral and Multilateral APA Requests.

(1) In evaluating a bilateral or multilateral APA request, the APA team will consider requests from, and may invite or require, the taxpayer to make presentations jointly to the APA team and to the foreign competent authority(ies). The provision of such information simultaneously to all competent authorities could facilitate efficient case processing. The APA team will consult as needed with the foreign competent authority(ies) as to its interest in joint presentations, and will notify the taxpayer accordingly.

(2) During the APA process, the APA team may also request teleconferences or in-person meetings with the taxpayer to discuss questions or concerns the APA team may have about the taxpayer's APA

request, or to discuss the APA team's provisional views on the request or aspects of the request. The APA team may also invite the taxpayer to provide written responses to memoranda discussing such issues. For example, the APA team may invite the taxpayer to respond to questions or concerns the APA team has about the discount rate the taxpayer has chosen for a discounted cash flow analysis and to provide its comments regarding a different discount rate that the APA team considers a viable alternative. Depending on the case, the APA team may simultaneously provide such invitation to the taxpayer and a copy to the foreign competent authority(ies) and invite the taxpayer to direct its responses to both the foreign competent authority(ies) and the APA team.

(3) The APA team may reach a point in the APA process when it prepares to formally present its view on the APA request to the foreign competent authority(ies). At this point, the APA team will convey the substance of its views to the taxpayer, generally in a paper or memorandum having a length, content, and format appropriate to the scope and duration of the APA process and to the size and complexity of the proposed covered issue(s) and method(s) and other relevant facts and circumstances surrounding the case. In some cases, the APA team may present the paper or memorandum to the taxpayer for its comment before the APA team formally presents its views to the foreign competent authority(ies). In other cases, the APA team may issue the paper or memorandum simultaneously to the taxpayer and to the foreign competent authority(ies). The taxpayer would then be invited to provide its comments to both the APA team and the foreign competent authority(ies) for their discussion and consideration towards reaching a competent authority resolution. The decision as to which approach is taken is within the discretion of the APA team.

(4) The APA team will then endeavor with the foreign competent authority(ies) to reach a competent authority resolution that will underlie the APA that will be executed between the taxpayer and the IRS. The mutual agreement procedure article in arbitration treaties requires that the competent authorities refer certain cases to mandatory arbitration in the event di-

rect discussion between the competent authorities does not lead to a mutual agreement within a prescribed time period. Taxpayers requesting bilateral or multilateral APAs should consult the mutual agreement procedure article under the applicable U.S. tax treaty to determine whether it is an arbitration treaty and the extent to which mandatory arbitration applies to cases initiated by bilateral or multilateral APA requests under such treaty. *See* section 10 of Rev. Proc. 2015-40.

.05 Evaluation and Presentation Stage of APA Process for Unilateral APA Requests.

Many of the steps involved in the evaluation and presentation stage of the APA process as applied to unilateral APA requests are similar to those relating to bilateral and multilateral APA requests. For example, at various points the APA team may invite the taxpayer to respond, either orally or in writing, as appropriate, to its questions or concerns about, or provisional views on, the APA request. The primary difference is that, in the case of a unilateral APA request, the APA team and the taxpayer will proceed directly to finalize an APA after the APA team has completed its due diligence and evaluation of the APA request and the APA team and the taxpayer have agreed to the APA's covered issue(s), covered method(s), and terms and conditions.

.06 Execution of Agreement.

With regard to either a unilateral APA or a bilateral or multilateral APA, the agreement will become effective on the date when it has been executed by both the IRS and each entity included within the definition of the taxpayer in section 1.04, and the APA then will have effect as provided therein. When an APA's covered group includes a member of a consolidated group other than the common parent (as defined in Treas. Reg. § 1.1502-1), the common parent must sign the APA as provided in Treas. Reg. § 1.1502-77. The person who signs an APA for a corporation must be an authorized officer of that corporation, have personal knowledge of the APA's covered issue(s), covered method(s), and terms and conditions, perform duties not limited to obtaining letter

rulings or determination letters from the IRS or entering into APAs, and have authorization to sign that corporation's income tax return pursuant to section 6062 of the Code. An APA for a non-corporate taxpayer must be signed by an individual who has personal knowledge of the APA's covered issue(s), covered method(s), and terms and conditions, and who is authorized to sign that taxpayer's income tax return pursuant to section 6061 or 6063 of the Code, as applicable. In the case of a partnership, APMA may additionally require that some or all partners sign the APA. Any questions about the required signatory or signatories of an APA should be directed to the APA team leader.

.07 Not an Examination. APMA's evaluation of the APA request will not constitute an examination or inspection of the taxpayer's books and records under section 7605(b) or other provisions of the Code.

SECTION 5. COORDINATION WITH REV. PROC. 2015-40 AND ROLLBACKS

.01 Extension of a Competent Authority Resolution under Rev. Proc. 2015-40 to an APA.

(1) Under Rev. Proc. 2015-40, APMA may propose that a taxpayer pursue ACAP to extend a competent authority resolution in its competent authority case to one or more ACAP years. APMA may also discuss with the taxpayer the possibility of extending the competent authority resolution forward into an APA.

(2) A request to extend a competent authority resolution under Rev. Proc. 2015-40 forward into an APA may be made either by filing a complete APA request, or by filing an abbreviated APA request with APMA's permission pursuant to section 3.04(2). An abbreviated APA request might be appropriate provided that the taxpayer establishes that the applicable law, facts and circumstances, economic conditions, proposed covered issue(s) and method(s), and other relevant factors surrounding the taxpayer's proposed APA years are reasonably expected to be substantially the same as such factors surrounding the years in its competent authority case under Rev. Proc. 2015-40.

.02 Rollbacks.

(1) An APA is primarily a means to resolve coverable issues for prospective years. However, an APA may apply the covered methods (with appropriate modifications, if necessary) to one or more earlier, rollback years. (*See generally*, section 3.03.) Typically the taxpayer requests a rollback, but APMA may also consider a rollback even in the absence of a taxpayer's request.

(2) A rollback request generally should be included in the taxpayer's APA request (*see* the Appendix). APMA may, in its discretion, consider a later written request for a rollback.

(3) Whether included in the APA request or in a subsequent written request, the rollback request must include the same kind of information regarding the proposed rollback years that is required to be submitted regarding the proposed prospective years.

(4) After coordinating and collaborating with other offices within the IRS, APMA will inform the taxpayer whether its rollback request has been accepted for consideration. Except in unusual circumstances, APMA will not agree to cover a closed filed year with a rollback of a unilateral APA request. For a rollback that is requested in conjunction with a bilateral or multilateral APA request, APMA will (i) agree to cover an open filed year only if it would agree to accept a competent authority or ACAP request covering such year (*see* section 7.02 of Rev. Proc. 2015-40), and (ii) agree to cover a closed filed year only if it would agree to accept a competent authority or ACAP request covering such year and only if the applicable U.S. tax treaty(ies) allows the corresponding competent authority resolution to be implemented in that filed year.

(5) Regardless of whether the taxpayer pursues a rollback request, APMA reserves the right to coordinate with applicable IRS offices to pursue a rollback to any or all of the taxpayer's open back years. In general, APMA will consider taking such action where there is sufficient similarity in relevant facts and circumstances across the proposed prospective years and the taxpayer's open back years. APMA will inform the taxpayer in writing, either before the APA process

begins or at any time during the APA process, whether it will pursue a rollback and the back years it will seek to cover. If the taxpayer refuses to accept a rollback, and after considering the taxpayer's reasons for the refusal, APMA may decline to initiate the APA process or may suspend or terminate the process if it has already begun (*see* section 2.02(4)(a)). Even if APMA does not require a rollback, APMA might still condition its agreement to an APA on the APA's terms being consistent with the tax treatment of issues in what might otherwise have been one or more rollback years (*see* section 2.02(4)(a)).

(6) A rollback request submitted in connection with a bilateral or multilateral APA request is subject to the provisions regarding coordination with IRS Appeals set forth in section 6.04 of Rev. Proc. 2015-40, and is subject to the requirement that the taxpayer submit a waiver of *ex parte* communication (*see* Appendix, section 1.03, Exhibit 4).

(7) A taxpayer's rollback request submitted in connection with a bilateral or multilateral APA request and involving a taxable period and issue that are either designated for litigation, in litigation, or the subject of a judicial determination or litigation settlement, or involving a taxable period for which the taxpayer otherwise is in litigation concerning its federal tax liability will be governed by the provisions regarding coordination set forth in section 6.05 of Rev. Proc. 2015-40.

SECTION 6. LEGAL EFFECT OF THE APA

.01 Binding Agreement. An APA is a binding agreement between the taxpayer and the IRS.

.02 Effect of Compliance. If the taxpayer complies with the APA terms and conditions, the IRS will not contest the application of the covered method(s) to the covered issue(s) of the APA except as provided in this revenue procedure. The taxpayer remains otherwise subject to U.S. income tax laws and applicable U.S. tax treaties.

.03 Scope of Agreement. Except as otherwise provided in this section, an APA will have no legal effect except with respect to the taxpayer, taxable years, and issues to which the APA specifically relates. If a covered issue is the transfer of intangible property (which does not con-

stitute a platform contribution transaction as defined in Treas. Reg. § 1.482-7(b)(1)(ii)) within the meaning of Treas. Reg. § 1.482-4, the APA may provide that such transfer will not be subject to periodic adjustments, during or after the APA term, under Treas. Reg. § 1.482-4(f)(2) or (6). If a covered issue is a platform contribution transaction, the APA may provide that such transaction will not be treated as a Trigger PCT within the meaning of Treas. Reg. § 1.482-7(i)(6)(i) for purposes of making periodic adjustments, during or after the APA term, under Treas. Reg. § 1.482-7(i)(6).

.04 Use as Evidence. Unless provided otherwise by written agreement or regulations, the IRS and the taxpayer may not introduce the APA or non-factual oral and written representations made in conjunction with the APA request as evidence in any judicial or administrative proceeding regarding any tax year, issue, or person not covered by the APA. This paragraph does not preclude the IRS and the taxpayer from agreeing to roll back the APA's covered method(s), or the IRS's use of any non-factual material otherwise discoverable or obtained other than in the APA process merely because the parties considered the same or similar material in the APA process.

.05 Use as Admissions. Unless provided otherwise by written agreement or regulations, the IRS and the taxpayer may not introduce a proposed, cancelled, or revoked APA, or any non-factual oral or written representations or submissions made during the APA process, as an admission by the other party, in any judicial or administrative proceeding regarding any taxable year of the requested APA term. This paragraph does not preclude the IRS's use of any non-factual material otherwise discoverable or obtained other than in the APA process merely because APMA and the taxpayer considered the same or similar material in the APA process.

SECTION 7. ADMINISTERING THE APA

.01 Reporting of Income, APA Primary Adjustments, Conforming Adjustments, and Repatriation of Funds.

(1) *Reporting of Income and APA Primary Adjustments.* The taxpayer's report-

ing of income, deductions, credits, allowances, basis, or any other item or element affecting taxable income during the APA term must clearly reflect the application of the covered method(s) to the covered issue(s). In some cases, such reporting for an APA year will require an adjustment to the amounts shown in the taxpayer's books and records for that APA year and/or to the amounts reflected on a U.S. return (APA primary adjustment). An "APA primary adjustment" for an APA year must be reported (a) on a timely-filed U.S. return for such APA year, (b) on an amended U.S. return for such APA year that is filed within 120 days of the APA's effective date, or (c) by an alternative means that is specified in the APA. Manners (b) and (c) in the previous sentence are permitted only if the original U.S. return for such APA year is timely filed no later than 60 days after the APA's effective date. For an APA year for which the taxpayer reports an adjustment under manner (b) or (c), the computation of any required estimated tax installments for the taxable year will not take into account the APA primary adjustment and any related adjustments (*see* section 7.01(2)). Further, for such an APA year, the taxpayer will not be subject to the failure to pay penalties under sections 6651 and 6655 of the Code, or the failure to make timely deposit of taxes penalty under section 6656 of the Code, by reason of the APA primary adjustment and any related adjustments.

(2) *Conforming Adjustments and Repatriation of Funds.* This section 7.01(2) applies only to APA primary adjustments that arise from applying a covered method that addresses the allocation of income, deductions, credits, allowances, basis, or any other item or element affecting taxable income between members of a controlled group. (Such allocation generally would be governed for U.S. tax purposes by section 482 or 367(d) of the Code, as modified by any applicable treaty provision.) Thus, this section 7.01(2) would not apply, for example, to APA primary adjustments attributable to a U.S. permanent establishment of a foreign corporation.

(a) *Need for Conforming Adjustments; Payment of Funds.* For an APA primary adjustment, a further adjustment is needed to conform the accounts of the affected

members of the controlled group (conforming adjustment). In some cases the “conforming adjustment” can be accomplished by a payment of funds between the affected members; such payment is referred to as a repatriation of funds when the affected members are in different countries.

(b) *Application of Rev. Proc. 99–32.* Rev. Proc. 99–32, 1999–2 C.B. 296, or successor guidance, will govern the repatriation of funds to conform the accounts following an APA primary adjustment, unless the competent authority repatriation specified in section 7.01(2)(c) applies to that APA primary adjustment.

(c) *Competent Authority Repatriation.* For bilateral and multilateral APAs, APMA will apply the rules and principles set forth in section 4.02 of Rev. Proc. 2015–40 governing competent authority repatriation to determine the terms of any repatriation of funds to conform the accounts following an APA primary adjustment, if competent authority repatriation is agreed to as part of the competent authority resolution underlying the APA. APMA will not include competent authority repatriation as part of the competent authority resolution unless the following two conditions are satisfied: (i) no person (whether or not a “United States taxpayer” within the meaning of Rev. Proc. 99–32 or successor guidance) 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 or successor guidance, and (ii) the taxpayer explicitly requests competent authority repatriation in its APA request, or in a supplemental written submission filed with APMA prior to a tentative competent authority resolution being reached.

(d) *Implementation in APA.* Whether unilateral, bilateral, or multilateral, the APA will specify the terms of conforming adjustments, including, but not limited to, the terms of any repatriation of funds.

(e) *Documentation in annual reports.* The taxpayer must document how the conforming adjustment for any APA primary adjustment is made, including the relevant amounts, timing, and manner of all payments and deemed payments, and must disclose these facts in the APA annual report for the APA year to which the

APA primary adjustment relates (*see* section 7.02).

.02 Annual Reports.

(1) An APA annual report must be filed for each APA year. The report must demonstrate the taxpayer’s compliance with the APA terms and conditions, including the amount of any APA primary adjustment for a given APA year. The report must also include all other items required by the APA and should disclose any pending requests to renew, modify, or cancel the APA. In addition, the report must identify and correct any materially false, incorrect, or incomplete information submitted during the APA process that the taxpayer discovers during the APA year.

(2) The taxpayer must file annual reports on or before the later of (i) the fifteenth day of the twelfth month following the close of the APA year, and (ii) 90 days after the effective date of the APA. APMA may agree to alternative filing dates if requested by the taxpayer. For bilateral and multilateral APAs, APMA may require the taxpayer to simultaneously file a copy of the annual report with the applicable foreign competent authority(ies).

(3) The taxpayer must file one original annual report containing a signed original of the “penalties of perjury” declaration, one printed copy of the contents of the original annual report, and one electronic copy of the contents of the original annual report. The taxpayer must file all three copies of the annual report with APMA at the address set forth in the Appendix. The electronic copy of the annual report must follow the rules for media and format of electronic submissions described in the Appendix. Upon request, the taxpayer must file additional printed copies.

(4) The taxpayer will be notified if it is necessary to clarify or complete the information submitted in the annual report. The taxpayer must supply the additional information by the date specified in the notice.

(5) Any request that the taxpayer receives to clarify or complete information in an annual report is not an examination or the commencement of an examination of the taxpayer for purposes of section 7605(b) of the Code or any other provision of the Code.

(6) The taxpayer must amend its annual report within 45 days after becoming aware of any information that is materially incomplete or incorrect or of any incorrect application of the covered method(s) presented in the report.

(7) APMA may, at its discretion, grant an extension to submit the annual report if the taxpayer provides written notification of its request before the due date and explains the circumstances necessitating the extension.

(8) The annual report must contain the following declarations, as applicable:

Under penalties of perjury, I declare that I have examined this annual report including accompanying documents, and, to the best of my knowledge and belief, this annual report contains all the relevant facts relating to the annual reporting requirements pursuant to the APA, and such facts are true, correct, and complete.

[If applicable: An adjustment to conform taxable income and other relevant items to reflect the results reported herein has been reported to IRS Examination.]

[If applicable: An amended income tax return to conform taxable income and other relevant items to reflect the results reported herein [has been] [will be] filed with the appropriate Internal Revenue Service Center.]

(9) The taxpayer must sign the declaration(s) according to the instructions in the Appendix regarding perjury statements.

(10) Failure to file an annual report that is timely, complete, and accurate may be grounds for canceling or revoking the APA under section 7.06.

.03 Examination.

(1) With respect to the covered issue(s), the IRS will not reconsider the covered method(s) but will instead limit the examination of a taxpayer’s income tax return in any given APA year to, and may require that the taxpayer establish, the following: (i) the taxpayer’s compliance with the APA terms and conditions, (ii) the accuracy of the APA annual report’s material representations, and (iii) the correctness of the supporting data and

computations used to apply the covered method(s).

(2) The IRS may audit and propose adjustments to the taxpayer's results as determined under the APA's covered method(s) without affecting the APA's validity or applicability. The taxpayer may agree with the proposed adjustments in the same manner as any other adjustment, in which case the IRS will assess any resulting additional tax or refund any resulting overpayment of tax accordingly. If it does not agree with the proposed adjustment, the taxpayer may contest it through available administrative and judicial procedures. The taxpayer must include the audit adjustments as finally determined for the purpose of applying the covered method(s), and must then make any resulting APA primary adjustments.

.04 Record Retention.

(1) The taxpayer must maintain books and records that are sufficiently detailed to verify that it has complied with the APA terms and conditions. The taxpayer's compliance with this paragraph fulfills the record-keeping requirements of sections 6038A and 6038C of the Code as applied to the covered issue(s).

(2) Upon examination of the covered issue(s), IRS may request that the taxpayer submit additional information or translate specific documents within 30 days. The IRS may extend this period for good cause. The fact that a non-U.S. jurisdiction may impose a penalty upon the taxpayer or other person for disclosing any such requested material will not constitute reasonable cause for noncompliance with the IRS's request.

.05 Revising the APA.

(1) An APA may be revised by agreement of the parties, and any such revision is effective upon the date of the execution of the revision. APMA may agree to revise an APA in lieu of canceling or revoking it.

(2) If APMA is willing to agree to a revision proposed by the taxpayer to a bilateral or multilateral APA, it will seek the consent of the applicable foreign competent authority(ies) with respect to the revision. If the U.S. and foreign competent authority(ies) agree to such revision,

or agree to another revision acceptable to the taxpayer, then APMA will agree with the taxpayer to revise the APA. If the U.S. and foreign competent authority(ies) cannot so agree, the APA remains in force without revision. However, in some cases APMA and the taxpayer may then agree, for U.S. domestic purposes, to (i) revise the APA with respect to one or more APA years, or (ii) cancel the APA as of a specific date.

.06 Revoking or Canceling the APA.

(1) APMA may revoke an APA due to fraud or malfeasance (as those terms are used in section 7121 of the Code), or disregard (as that term is used in sections 6662(b)(1) and (c) of the Code) by the taxpayer in connection with the APA, including, but not limited to, fraud, malfeasance, or disregard involving (i) material facts in the request or subsequent submissions (including an annual report) or (ii) lack of good faith compliance with the APA terms and conditions.

(2) APMA may cancel an APA due to the taxpayer's misrepresentation, mistake with respect to a material fact, failure to state a material fact, failure to file a timely annual report, or lack of good faith compliance with the APA terms and conditions.

(3) Unless the parties agree to revise the APA, APMA will cancel an APA in the event of a failure of a critical assumption or a material change in governing case law, statute, regulation, or applicable treaty.

(4) For purposes of this section 7.06(1) and (2), APMA will consider facts material if, for example, knowledge of the facts could reasonably have resulted in an APA with significantly different terms and conditions. With respect to annual reports, APMA will consider facts material if, for example, knowledge of the facts would have resulted in (a) a materially different allocation of income, deductions, or credits than those reported in the annual report, or (b) the failure to meet a critical assumption.

(5) APMA may waive cancellation if the taxpayer can show good faith and reasonable cause and agrees to make all adjustments proposed to correct for the misrepresentation, mistake regarding a

material fact, failure to state a material fact, or noncompliance.

(6) If APMA revokes an APA, the revocation relates back to the first day of the first APA year. The IRS may (a) determine deficiencies in income taxes and additions thereto, (b) deny relief under Rev. Proc. 99-32 or successor guidance, (c) allow the taxpayer relief under Rev. Proc. 99-32 or successor guidance, but determine the interest on any account receivable established under section 4.01 of Rev. Proc. 99-32 or successor guidance without mutual agreement or correlative relief, (d) revoke the APA as an "egregious case" under Rev. Rul. 80-231, 1980-2 C.B. 219, to deny the taxpayer a foreign tax credit, and (e) deny a request for relief submitted under Rev. Proc. 2015-40. APMA will seek to coordinate these or any other actions concerning the revocation of a bilateral or multilateral APA with the foreign competent authority(ies).

(7) APMA's cancellation of an APA generally is effective as of the beginning of the taxable year in which the critical assumption failed or the beginning of the taxable year to which the misrepresentation, mistake regarding a material fact, failure to state a material fact, or noncompliance relates. If, however, the cancellation results from a change in case law, statute, regulation, U.S. tax treaty, or coordination agreement, the cancellation generally is effective at the beginning of the year that contains the effective date of the change in case law, statute, regulation, U.S. tax treaty, or coordination agreement.

(8) For periods following the effective date of the cancellation, the APA has no further force and effect with respect to the IRS and the taxpayer for U.S. income tax purposes. APMA will seek to coordinate any action concerning the cancellation of a bilateral or multilateral APA with the foreign competent authority(ies).

.07 Change in Case Law, Statute, Regulation, or Treaty. If controlling U.S. case law, statutes, regulations, or treaties change the federal income tax treatment of any matter covered by the APA, the new case law, statute, regulation, or treaty provision supersedes any inconsistent terms and conditions of the APA.

SECTION 8. RENEWING THE APA

.01 General. A request to renew a current APA may be made either by filing a complete APA request or by filing an abbreviated APA request with APMA's permission pursuant to section 3.04(2). An abbreviated APA request might be appropriate if the taxpayer can establish to APMA's satisfaction that the applicable law, facts and circumstances, economic conditions, proposed covered issue(s) and method(s), and other relevant factors surrounding the current APA are reasonably expected to be substantially the same as those in the proposed renewal APA years.

.02 Timing. Taxpayers are encouraged to file a request to renew a current APA at least nine months before the expiration of the final APA year.

SECTION 9. DISCLOSURE

.01 Confidentiality. An APA, any background information relating to an APA, and the taxpayer's APA request and any supplementary materials submitted in conjunction with the APA request are return information and are confidential. *See* sections 6103, 6105, 894, and 7852(d) of the Code.

.02 Not "Written Determinations." An APA, any background information relating to an APA, an APA request, and any supplementary materials submitted in conjunction with the APA request are not "written determinations" and are not open to public inspection. *See* section 6110 of the Code.

.03 Statutory Report. The Secretary must prepare an annual report for public disclosure. *See* section 521(b) of the Ticket to Work and Work Incentives Improvement Act of 1999, Pub. L. 106-170, 113 Stat. 1860, 1925. That report includes specifically designated information concerning all APAs, in a form that does not identify taxpayers, their trade secrets, or proprietary or confidential business or financial information.

.04 Exchange of Information. APAs, annual reports, and factual information contained in APA requests are subject to exchange of information under U.S. tax treaties or U.S. income tax information exchange agreements in accordance with the terms of such treaties and agreements (including terms regarding relevancy,

confidentiality, and the protection of trade secrets). In cases in which the exchange of information would be discretionary, information may be exchanged to the extent consistent with principled, effective, and efficient tax administration and the practices of the relevant foreign competent authority(ies), including where relevant the existence and application by the foreign competent authority(ies) of rules similar to those described in sections 6.04 and 6.05.

SECTION 10. EFFECT ON OTHER DOCUMENTS

Rev. Procs. 2006-9, 2006-1 C.B. 278, and 2008-31, 2008-1 C.B. 1133, are modified and superseded by this revenue procedure. Rev. Proc. 2015-40, 2015-35 I.R.B. 236 is amplified.

SECTION 11. EFFECTIVE DATE AND TRANSITION RULE

.01 General. This revenue procedure will apply to all APA requests filed under this revenue procedure. An APA request filed after August 31, 2015 may instead be filed under Rev. Proc. 2006-9 only if a substantially complete APA request is filed under that revenue procedure no later than December 29, 2015. For purposes of this section, the 120-day allowance in section 4.07(2) of Rev. Proc. 2006-9 shall not apply in determining the date on which a substantially complete APA request is considered filed under Rev. Proc. 2006-9. APA requests filed on or before December 29, 2015 should clearly state under which revenue procedure they are filed.

.02 Rollbacks. Rev. Proc. 2006-9 is retroactively amended so that rollbacks (within the meaning of section 8 of Rev. Proc. 2006-9) may be implemented and given legal effect in an APA (within the meaning of Rev. Proc. 2006-9 as modified by Rev. Proc. 2008-31, 2008-1 C.B. 1133). This retroactive amendment applies to any APA governed by Rev. Proc. 2006-9 that includes such a rollback.

SECTION 12. 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 1545-1503.

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, 3.04, 3.06, 3.09, 3.10, 4.04, 4.05, 5.01, 5.02, 7.02, 7.04 and 8.01 and in the Appendix. This information is required, and will be used, to provide the IRS sufficient information to evaluate and process the APA request or to determine whether the taxpayer is in compliance with the terms and conditions of an APA. APMA will use this information to evaluate the proposed covered method(s) and the taxpayer's compliance with the terms and conditions of any APA to which it is a party. The collection of information is required to obtain an APA. The likely respondents are business or other for-profit institutions.

The estimated total annual reporting and/or recordkeeping burden is 10,900 hours.

The estimated average burden for an APA pre-filing memorandum (and, if applicable, pre-filing conference) is 10 hours, the estimated average burden for an APA request is 60 hours, and the estimated average burden for preparation of an annual report by a party to an APA is 15 hours. The estimated number of respondents and/or recordkeepers is 390.

The estimated annual frequency of responses is one request or report per year per applicant or party to an APA, except that a taxpayer requesting an APA may also submit a pre-filing memorandum (and, if applicable, attend a pre-filing conference).

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 13. DRAFTING INFORMATION

The principal authors of this document are John Hughes and Robert Weissler of the Office of the Deputy Commissioner (International), LB&I, and Angela Holland of the Office of the Associate Chief Counsel (International). For further information regarding this revenue procedure, please contact Mr. Hughes at (202) 515-4307 or Ms. Holland at (202) 317-6939 (not toll free numbers).

**APPENDIX
APA REQUEST REQUIREMENTS**

This Appendix sets forth instructions on preparing and filing an APA request. Unless APMA has explicitly instructed the taxpayer in writing to file an abbreviated APA request pursuant to section 3.04(2) of the revenue procedure, the APA request must be prepared and submitted according to the instructions provided in this Appendix. APMA may reject an APA request that does not comply with these instructions.

An APA request that is not an abbreviated APA request will provide the information specified below. An APA request, whether or not abbreviated, should also include any additional material that the taxpayer believes is important to facilitate the APA team’s evaluation of the request. The level of detail required in the APA

request will depend on the facts and circumstances of each case and will be governed by relevancy and materiality considerations (keeping in mind that the APA request should provide enough information to allow the reader to concur that a matter is not relevant or material). The information in the APA request should be tailored to the facts relating to the proposed covered group, the proposed covered issue(s), and relevant legal authority. It should also take into account discussions with APMA in any pre-filing memorandum or pre-filing conference.

Section 1 of this Appendix addresses the required content of APA requests. Section 2 sets forth instructions on submitting printed and electronic copies of APA requests. Section 3 presents instructions on paying user fees for APA requests. Section 4 provides addresses and contact information.

SECTION 1. CONTENT OF COMPLETE APA REQUESTS

.01 *General.* An APA request must include a request letter followed by the exhibits presented in the order as listed in this section. This section contains cross-references to parts of the request letter (e.g., PART 2.1) and to particular exhibits (e.g., Exhibit 3). The required exhibits may be followed by any other exhibits the taxpayer believes are necessary or useful to facilitate APMA’s review of its APA

request. An original of the request letter, signed and dated by the taxpayer or the taxpayer’s authorized representative, must be included in one of the three required printed copies of the APA request (see section 2 of this Appendix). If the taxpayer’s authorized representative signs the original of the request letter, the taxpayer and authorized representative must satisfy the relevant instructions on signatures in Rev. Proc. 2005–1, 2005–1 I.R.B. 1 or successor guidance. The request letter and the exhibits must contain or respond to the required statements, descriptions, explanations, and other requested information. If the taxpayer believes a required item is not applicable to its APA request, this must be shown as “N/A” or “Not Applicable” (as opposed to being left blank). If the taxpayer maintains that it is unable to provide the required item or seeks an exception to the filing requirement, it must provide a statement of its reasons for not providing the item or its basis for the exception it seeks (as opposed to leaving the entry blank). APMA may permit exceptions to the filing requirements in this Appendix on a case-by-case basis.

.02 *Request Letter.* The request letter must be presented according to the instructions and structure set forth below, and must include a table of contents giving the page on which each part and subpart begins.

Part 1. Executive Summary

1.1	<i>Identifying information:</i> List the name, address, and taxpayer identification number(s) of each member of the proposed covered group and the Standard Industrial Classification (“SIC”) and the North American Industry Classification System (“NAICS”) codes (number and code description) of the controlled group as reported on the taxpayer’s most recently filed federal tax returns
1.2	<i>Summary of APA request:</i> Provide an executive summary of the content of the APA request that addresses the following: <ul style="list-style-type: none"> a. Whether the taxpayer proposes a unilateral APA or a bilateral or multilateral APA, and, if applicable, the U.S. tax treaty(ies) and treaty articles governing the APA request; b. Whether the APA request proposes a renewal of an existing APA or the extension of a competent authority resolution from competent authority or ACAP years into APA years; c. The proposed prospective years and the proposed rollback years; d. The proposed covered issue(s) and an estimated dollar value of such issue(s) in the proposed APA years; and e. The proposed covered method(s), including, as applicable, the proposed tested party(ies), profit level indicator(s), and interquartile range(s)

Part 2. Administrative Information

2.1	<i>Authorization:</i> List the names of and contact information for all individuals authorized by a Form 2848 to represent the taxpayer in connection with the APA request and all individuals authorized by a Form 8821 to inspect or receive confidential tax information about the taxpayer in connection with the APA request, along with a designation as to which individual will serve as the point of contact for the APA team
2.2	<i>IRS office:</i> Identify the IRS office having examination jurisdiction over the taxpayer, together with the name of and contact information for the taxpayer's IRS Examination team manager if the taxpayer is under examination when the APA request is filed
2.3	<i>Filed years:</i> Provide a table with the following information for each member of the proposed covered group: a. All open filed years in the United States and the relevant treaty country(ies), whether or not such years are currently under examination by the IRS or a foreign tax authority; b. The expiration dates of statutes of limitations for all open filed years in the United States and in the relevant treaty country(ies) c. All open filed years in which a proposed covered issue or a substantially similar issue is under review by IRS Appeals or its equivalent in the relevant treaty country(ies); and d. All open filed years in which an actual or proposed adjustment has been made by either the IRS or a foreign tax authority relating to the proposed covered issue(s) or to substantially similar issues
2.4	<i>Request for SAP review:</i> If applicable, include a statement that the APA request is intended to serve as a request for SAP review for specified taxable years, pursuant to section 5.02(6) of the revenue procedure
2.5	<i>Optional e-mail memorandum of understanding:</i> At the taxpayer's option, an executed memorandum of understanding in the form prescribed by APMA (as may be posted on the APMA website or otherwise available by contacting APMA) permitting APMA to communicate with the taxpayer's authorized representatives through encrypted e-mail

Part 3. Proposed Covered Issue(s)

3.1	<i>Pre-filing information:</i> 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
3.2	<i>Rollback:</i> Provide the following information: a. If the taxpayer is seeking consideration of a rollback, list the proposed rollback years; and b. If the taxpayer is not seeking consideration of a rollback, discuss the reasons as to why a rollback is not appropriate
3.3	<i>Background on proposed covered group:</i> Provide background on the following points, with reference to the covered issue diagrams: a. The general history of the business operations of the proposed covered group and of the controlled group; b. The worldwide gross revenue of the controlled group in the most recent taxable year available; c. The functional currency of each member of the proposed covered group; d. For each member of the proposed covered group, any business line(s) that is (are) outside the scope of the proposed covered issue(s); and e. The industry in which the proposed covered group operates, including discussion of relevant macroeconomic and other industry-wide factors affecting the proposed covered group, the commercial features of the markets and geographical areas in which the proposed covered group operates, and the participants and competitors in the proposed covered group's industry

3.4	<p><i>Narrative with reference to proposed covered issues in covered issue diagrams:</i> For each proposed covered issue, provide a detailed discussion of the following, with reference to the covered issue diagrams in Exhibit 11:</p> <ol style="list-style-type: none"> The functions performed by each member of the proposed covered group in relation to the proposed covered issue; The assets employed by each member of the proposed covered group in relation to the proposed covered issue; The risks assumed by each member of the proposed covered group in relation to the proposed covered issue; Transactional or commercial flows relating to the proposed covered issue(s) between and among members or business units of the proposed covered group, between members or business units of the proposed covered group and customers and other uncontrolled parties, and between members or business units of the proposed covered group and members or business units of the controlled group outside of the proposed covered group; Principal intercompany contracts or other agreements, written or otherwise, between and among members of the proposed covered group relating to the proposed covered issue(s); and Unless the proposed covered method involves a profit split (within the meaning of Treas. Reg. § 1.482–6 or Chapter II of the OECD Guidelines) between two or more members of the proposed covered group, the identity of the member of the controlled group that is proposed to be regarded as the principal in relation to the proposed covered issue, whether or not it is a member of the proposed covered group
3.5	<p><i>Narrative with reference to non-proposed covered issues in covered issue diagrams:</i> For each issue that is not a proposed covered issue, but is an issue that APMA might reasonably consider in analyzing the proposed covered issues under the principles expressed in section 2.02(4)(a), a discussion of why in the interest of principled, effective, and efficient tax administration such issue need not be a covered issue, and of the extent to which such issue should be considered in the APA process</p>
3.6	<p><i>Rulings, determinations, and proceedings:</i> Provide information on the following:</p> <ol style="list-style-type: none"> Current or expired rulings issued by a relevant foreign tax authority covering intercompany transactions or business activities of members of the proposed covered group that are similar to the proposed covered issue(s); The terms of any competent authority resolution addressing intercompany transactions or business activities of members of the proposed covered group that are similar to the proposed covered issue(s); and Any judicial or administrative proceedings in the United States or in the relevant treaty country(ies) to which any members of the proposed covered group are or have been parties involving intercompany transactions or business activities that are similar to the proposed covered issue(s)
3.7	<p><i>Ancillary issues:</i> List the ancillary issues (if any) proposed to be covered by the APA</p>

Part 4. Proposed Covered Method(s)

4.1	<p><i>Selection and application of proposed covered method(s):</i> Discuss the selection of the proposed covered method(s) with reference to the standards governing the selection of the “best method” under Treas. Reg. § 1.482–1(c) and, in the case of bilateral or multilateral APA requests, the selection of the “most appropriate” method under Chapter I of the OECD Guidelines, and how overall that method is applied, including the definition of the tested party(ies)</p>
4.2	<p><i>Search and screening process:</i> Describe the research and screening process and criteria used to identify and select independent comparable agreements or independent companies or other market data upon which the proposed covered method is based, including the initial search universe, the qualitative and quantitative screens used to accept or reject potential comparable agreements or companies or other market data, the order in which different criteria were applied, the precise specification of each criterion (including for example the precise way in which multiyear averages are used, or in which requirements are applied across multiple years), and the numbers of potential comparable agreements or companies or other market data accepted and rejected at the different stages of the search and screening process</p>
4.3	<p><i>Application of proposed covered method(s):</i> Provide a detailed explanation of (a) the data and assumptions used and (b) any adjustments made to the selected proposed comparable agreements or results of independent companies or other market data, or to the results of the tested party, such as adjustments relating to: (i) product line segregations, (ii) differences in accounting practices, (iii) differences in functions performed, assets employed, or risks assumed (especially noting working capital or other balance sheet adjustments made to the tested party(ies) or to the comparables and any differences between such adjustments and the adjustments incorporated into the APA template (as may be posted on the APMA website or otherwise available by contacting APMA), (iv) volume or scale differences, or (v) differences in economic or market conditions</p>

4.4	<i>Demonstration of proposed covered method(s)</i> : Provide a table summarizing the results of applying the proposed covered method(s) to the relevant members of the proposed covered group for (i) all proposed rollback years, (ii) the most recent three back years, if they are not proposed rollback years (or as many such back years as have data available, if not all have data available), (iii) the first proposed APA year, using actual data if available and otherwise using forecasted data, and (iv) other proposed APA years, using forecasted data, to the extent forecasts are available
4.5	<i>Segmentation of financial results</i> : If the proposed covered method(s) is (are) applied to a subset of the assets, liabilities, income, and expenses in the financial statements (<i>see</i> Exhibit 18), provide a segmentation of the financial statements and describe in detail (i) those items in the segmented financial statements that have been allocated or apportioned to the applicable proposed covered issue(s) and to other issues, and (ii) the method(s) of allocation or apportionment applied

Part 5. Proposed APA Terms and Conditions

5.1	<i>Review of proposed APA</i> : Provide a detailed discussion and explanation of the proposed APA terms and conditions as reflected in the draft APA submitted with the APA request (<i>see</i> Exhibit 15), noting, in particular, any proposed APA terms and conditions that differ from the APA terms and conditions as reflected in the model APA (<i>see</i> Exhibit 15)
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.03 *Exhibits*. The APA request must also include the following exhibits after the request letter, separated and ordered as indicated. Additional exhibits may be provided as needed. The taxpayer should be prepared to translate, upon request, material in exhibits that is presented in a foreign language. While all of the exhibits must be included as part of a complete APA request, certain exhibits are required to be produced in both printed and electronic forms; other exhibits need be produced only in electronic form (*see* section 2 of this Appendix). The description of Exhibit 7, the “penalties of perjury” declaration, is written so as to accommodate such a declaration accompanying both an APA request and a supplemental submission.

Exhibit 1	<i>Contents of exhibits</i> : Provide a table or similar comprehensive list of the exhibits submitted, indicating the form (printed, electronic, or both) in which they are submitted
Exhibit 2	<i>Authorization form</i> : Include a properly executed Form 2848 (Power of Attorney and Declaration of Representative) for all individuals authorized to represent the taxpayer in connection with the APA request or Form 8821 (Tax Information Authorization) for all individuals authorized to inspect or receive confidential tax information about the taxpayer in connection with the APA request
Exhibit 3	<i>Protective claim</i> : In the case of a bilateral or multilateral APA request, provide a statement affirming whether the APA request is to serve as a protective claim pursuant to section 11 of Rev. Proc. 2015–40 and, if so, include the information required by section 11.02(3) of Rev. Proc. 2015–40
Exhibit 4	<i>Waiver of ex parte communication</i> : If the APA request involves proposed rollback years in which the proposed covered issue(s) or a related issue is unresolved and under consideration by IRS Appeals, include a waiver, modeled on the following language, of the taxpayer’s right to be present during communications between IRS Appeals and members of the APA team: Waiver of Ex Parte Communication: [Name of taxpayer(s)] agrees to the participation of IRS Appeals in the consideration of this APA request and hereby waives its right to be present during, or to participate in, meetings relating to the APA request or to be a party to discussions concerning the proposed covered issue(s) between IRS Appeals and members of the APA team
Exhibit 5	<i>Consent to disclosure</i> : In the case of a bilateral or multilateral APA request, include a declaration, dated and signed by an authorized officer of the taxpayer having personal knowledge of the facts concerning the proposed covered issue(s), that the taxpayer consents to the disclosure of the contents of the APA 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 APA request
Exhibit 6	<i>Consents regarding period of limitations</i> : Any executed consents to extend the period of limitations for assessment of tax that are required under section 2.03(3)(a) of the revenue procedure
Exhibit 7	“ <i>Penalties of perjury</i> ” declaration: Include the following “penalties of perjury” declaration:

	<p>Under penalties of perjury, I declare that I have examined this [APA request] [supplemental submission relating to an APA request], including accompanying documents, and, to the best of my knowledge and belief, the [APA request] [supplemental submission] contains all the relevant facts relating to the [APA request] [supplemental submission], and such facts are true, correct, and complete.</p> <p>The declaration must be signed by the taxpayer 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, whose duties are not limited to obtaining letter rulings or determination letters from the IRS or negotiating APAs, and who is authorized to sign the taxpayer's income tax return pursuant to section 6062 of the Code. The person signing for any non-corporate taxpayer must be an individual who has personal knowledge of the facts and who is authorized to sign in accordance with sections 6061 or 6063 of the Code, as applicable</p>
Exhibit 8	<i>User fee receipt:</i> Include a copy of the receipt obtained after paying the required APA user fee (<i>see</i> section 3 of this Appendix)
Exhibit 9	<i>Documents submitted to foreign competent authorities:</i> List all documents or written submissions provided to a foreign tax authority or foreign competent authority in connection with the APA request, either prior to or concurrently with the submission of the APA request to APMA, noting the documents or written submissions for which English translations are available and any documents or written submissions provided to a foreign tax authority or foreign competent authority in connection with the APA request that are not included in the APA request submitted to APMA
Exhibit 10	<i>Pre-filing submissions:</i> Include any pre-filing memoranda or other materials submitted in connection with the APA request
Exhibit 11	<p><i>Covered issue diagrams:</i> Include diagrams, charts, or similar representations depicting the following information as it relates to the proposed covered issues and any interrelated matters that APMA might reasonably consider in analyzing the proposed covered issues under the principles expressed in section 2.02(4)(a), each presented in a manner similar to and with a degree of detail no less than that presented in the diagrams accompanying the case studies "Alpha" through "Foxtrot" in Joint Committee on Taxation, <i>Present Law and Background Related to Possible Income Shifting and Transfer Pricing</i> (JCX-37-10), July 20, 2010 (available at www.jct.gov; <i>see also</i> APMA website):</p> <ol style="list-style-type: none"> The controlled group's legal structure, with clear indications as to the members of the proposed covered group; The controlled group's tax structure, with clear indications as to, among other items, ownership relationships and tax filing characterizations of members of the proposed covered group under the Code and under applicable rules in the relevant treaty country(ies) (<i>e.g.</i>, partnerships, branches, or disregarded entities); The controlled group's and proposed covered group's business units or similar organizational divisions as used for management purposes, together with a table, narrative, or other reconciliation showing the relationship between such business units and the legal entities comprising the controlled and proposed covered groups; The value chain of the proposed covered group, comprising commercial or transactional flows between and among members or business units of the proposed covered group, between members or business units of the proposed covered group and customers and other uncontrolled parties, and between members or business units of the proposed covered group and any other members or business units of the controlled group outside the proposed covered group; and Organization or management charts identifying executive-level functional or occupational roles within the business units or within members of the proposed covered group that are relevant to the proposed covered issue(s) (<i>e.g.</i>, vice president of marketing for transactions involving sales of tangible goods), together with (i) the names of individuals occupying such executive-level functional roles at the time the APA request is filed, and (ii) headcounts for the relevant business units or members of the proposed covered group
Exhibit 12	<i>APAs:</i> Include a copy of the most recent APA, if any, that the taxpayer or another member of the proposed covered group has entered into with (i) the IRS, and (ii) each involved foreign tax authority, concerning transactions or other business activities within the scope of the proposed covered issue(s)

Exhibit 13	<i>Selection process:</i> Provide a table or similar report on the step-by-step results of applying criteria for selecting comparable agreements or independent comparable companies or other market data, including a table or matrix showing the reason(s) for rejecting agreements or independent companies or other market data (see PART 4.2)
Exhibit 14	<i>Information on selected comparables:</i> As applicable, include a detailed discussion of the contractual terms (within the meaning of Treas. Reg. § 1.482-1(d)(3)(ii)) of selected comparable agreements, including the form of consideration charged or paid, and for APA requests in which the proposed covered method(s) involve(s) an application of the comparable profits method (as defined in Treas. Reg. § 1.482-5) or the transactional net margin method (as defined in the OECD Guidelines), include (i) unadjusted income statement data for the most recent five taxable years (or as many years as are available, if fewer than five years are available) and balance sheet data for the most recent six taxable years (or as many years as are available, if fewer than six years are available) of the selected independent comparable companies, and (ii) (if applicable) the application to such financial data of any adjustments pursuant to the proposed covered method(s) (see PARTS 4.3 and 4.4)
Exhibit 15	<i>Proposed draft APA:</i> Provide a proposed draft APA in a form substantially similar to APMA’s current model APA (as may be posted on the APMA website or otherwise available by contacting APMA), together with a “redline” version of the same showing the differences between the model APA and the proposed draft APA
Exhibit 16	<i>Application of APA template:</i> For APA requests in which the proposed covered method involves an application of the comparable profits method (as defined in Treas. Reg. § 1.482-5) or the transactional net margin method (as defined in the OECD Guidelines), provide income statement data for the most recent five taxable years (or as many years as are available, if fewer than five years are available) and balance sheet data for the most recent six taxable years (or as many years as are available, if fewer than six years are available) for the relevant member(s) of the proposed covered group, using the APA template (as may be posted on the APMA website or otherwise available by contacting APMA)
Exhibit 17	<i>Federal income tax filings:</i> Provide copies of the following federal income tax forms for each of the three most recent filed years of the taxpayer: a. Form 1120 or applicable equivalent; b. Form 5471 (Information Return of U.S. Persons With Respect to Certain Foreign Corporations); c. Form 5472 (Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business); and d. Form 8858 (Information Return of U.S. Persons With Respect to Foreign Disregarded Entities)
Exhibit 18	<i>Financial statements:</i> Provide copies of financial statements, including full income statements, balance sheets, and cash flow statements (audited, if available, and in English, if available), for each relevant member of the proposed covered group for each of the most recent three back years and specify the accounting standard used (e.g., U.S. GAAP)
Exhibit 19	<i>Section 6662 documentation:</i> Include a copy of the documentation prepared in consideration of section 6662(e) of the Code (and, if applicable, a copy of similar documentation filed with or subject to request by the relevant foreign tax authority(ies)) relating to intercompany transactions or business activities that are within the scope of the proposed covered issue(s) for each relevant member of the proposed covered group for each of the most recent three back years
Exhibit 20	<i>Regulatory filings:</i> Include a copy of the Form 10-K or similar annual SEC filing submitted for U.S. regulatory purposes by the controlled group for each of the most recent three back years

Exhibit 21	<i>APA annual reports:</i> For renewal APA requests, provide all APA annual reports filed with APMA with respect to the current APA
Exhibit 22	<i>Intercompany agreements:</i> Include copies of any written intercompany contracts or agreements between the taxpayer and other members of the proposed covered group that are within the scope of the proposed covered issue(s), with a statement of when each contract or agreement was actually executed, and a summary of any oral intercompany agreements that are material to the proposed covered issues. For proposed APAs relating to intangible development arrangements, these agreements or contracts would include, as applicable, documents forming or revising the intangible development arrangement and documents relating to use under the intangible development arrangement of rights, resources, and capabilities owned by participants or related non-participants.

SECTION 2. MANNER AND MEDIA OF APA REQUEST FILINGS

.01 *General.* The taxpayer must provide copies of its APA request as follows: one (1) original, bound printed submission containing signed originals of the request letter and “penalties of perjury” declaration and, as applicable, of the authorization forms, consent to disclosure, and e-mail authorization, together with copies of all other required printed information, two (2), as applicable, original signed consents to extend the period of limitations for assessment of tax that are required under section 3.03(3) of the revenue procedure, placed in a separate, clearly labeled envelope, two (2) bound photocopies of the contents of the original printed submission, and three (3) electronic copies of the contents of the original printed submission, together with the required electronic-only attachments, on CD or flash drive or similar acceptable electronic storage medium. All of these originals and copies of the APA request must be filed with APMA at the address set forth in section 4 of this Appendix. Upon request, the taxpayer must provide additional electronic copies and/or bound photocopies of the contents of the original printed submission.

.02 *Contents and Format of Printed Submissions.* Each printed copy of the APA request must contain (i) the request letter, and (ii) Exhibits 1 through 15. The exhibits must be tabbed and ordered as presented in section 1 of this Appendix. If an exhibit is not applicable to the APA request, a statement to this effect must be included in the relevant tabbed section. The original signed consents to extend the period of limitations for as-

essment of tax should be individually stapled as needed, with all such consents bound together with a binder clip.

.03 *Contents and Format of Electronic Copies.*

(1) The electronic copies of the APA request must contain (i) the request letter, and (ii) Exhibits 1 through 22 and any additional exhibits. The exhibits should consist of separate electronic files named in a manner that corresponds to the exhibit numbers and descriptive captions presented in section 1 of this Appendix. If an exhibit is not applicable to the APA request, a statement to this effect must be included in the electronic file.

(2) The electronic copies of the APA request must include the request letter in both Microsoft Word (“Word”) and in Adobe Portable Document (“.pdf”) formats. Exhibit 15 must be provided in Word format. All other exhibits readily available in Word or Microsoft Excel (“Excel”) format should be provided in those forms as applicable, instead of, or in addition to, .pdf format.

(3) All electronic documents provided in conjunction with an APA request and throughout the APA process must be searchable, unless the file is not readily available in searchable form (e.g., a photocopy of an intercompany agreement).

(4) All documents presented in Excel format must be provided with formulas and internal cell references intact.

(5) For some APA requests (especially complex APA requests), the taxpayer may choose to additionally provide a bookmarked .pdf file that includes the entire contents of the APA request. In some

cases, APMA may require that the taxpayer provide such a file.

SECTION 3. USER FEES

.01 *General.* User fees must be paid through the Pay.gov website. Instructions on making user fee payments are available on the APMA website. APMA will not consider an APA request complete, and will hold the APA request in suspense, until the correct user fee is paid through the Pay.gov website.

.02 *Separate Fees.* Subject to the provisions of this section, a separate user fee is required for each APA request submitted by each controlled group. For this purpose, a multilateral request is considered to be a set of bilateral requests for each country involved.

.03 *Amounts.*

(1) *In General.* The user fee amounts are as follows:

(a) \$60,000 for each APA request, except as otherwise specified in this section;

(b) \$35,000 for each request to renew an APA that does not propose a substantial expansion of the APA’s scope or a substantial change in the covered method(s) (other than updating of the results under the covered method(s)), provided that the pertinent facts remain substantially the same, unless such renewal is eligible for the small case APA user fee;

(c) \$30,000 for each APA request eligible for the small case APA user fee; and

(d) \$12,500 for each amendment to a current unilateral, bilateral, or multilateral APA.

(2) *Multiple Requests.* If multiple APA requests are filed by the same controlled group within a sixty-day period, the maximum total fee charged will be \$60,000,

plus \$30,000 for each foreign competent authority involved (if any) beyond the first two.

.04 Small Case APA User Fee

Eligibility. An APA request is eligible for the small case APA user fee only if all of the following apply: (i) the controlled group has sales revenues, within the meaning of Treas. Reg. § 1.482-5(d)(1), of less than \$500 million in each of its most recent three back years, (ii) the aggregate value of the proposed covered issue(s) is not expected to exceed \$50 million in any given year of the proposed APA years, (iii) the aggregate value of any transfer of rights in, or rights to use, intangibles is not expected to exceed \$10 million in any given year of the proposed APA years, and (iv) no proposed covered issue involves intangible property arising

from, or otherwise related to, an intangible development arrangement.

.05 Fees for Amendments. For purposes of section 3.03 of this Appendix, an amendment includes coverage of additional issues, material changes to a proposed covered method, and any other material additions or changes to the terms and conditions of the APA. APMA will not impose this amendment fee if APMA or a foreign competent authority initiates the request to amend the proposed covered issue(s) or method(s).

SECTION 4. ADDRESSES AND CONTACT INFORMATION

Deputy Commissioner (International)
Large Business and International
Division
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20224
SE:LB:IN:TPO:APMA:M3-370
(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. Contact information for APMA and additional information is as follows.

Telephone

Telephone numbers are available through the “contact us” link on the APMA website

Website

www.irs.gov/Businesses/Corporations/APMA

Headquarters
Physical Location

801 Ninth Street, N.W.
Washington, D. C. 20001
(Mail not accepted at this location)

Part IV. Items of General Interest

FEDERAL TAX TREATMENT OF IDENTITY PROTECTION SERVICES PROVIDED TO DATA BREACH VICTIMS

Announcement 2015–22

Identity theft, also known as identity fraud, occurs when a person wrongfully obtains and uses another person's personal information (for example, name, social security number, or banking or credit account numbers) in a way that involves fraud or deception, typically for economic gain. Identity theft is a growing problem in the United States. Identity theft has been the number one consumer complaint to the Federal Trade Commission for fifteen consecutive years. The Bureau of Justice Statistics estimates that 16.6 million people were victims of identity theft in 2012, the latest year for which data is available. In addition, recent high-profile data breaches at various organizations have exposed many more millions of persons to the risk of identity theft.

Businesses, government agencies, and other organizations make significant efforts to secure the personal information of their customers and employees. Notwithstanding these efforts, a data breach of an organization's recordkeeping systems, whether due to computer "hacking" or otherwise, can expose this information to identity thieves. In response to such data breaches, organizations often provide credit reporting and monitoring services, identity theft insurance policies, identity restoration services, or other similar services (collectively "identity protection services") to the customers, employees, or other individuals whose personal information may have been compromised as a result of the data breach. These identity protection services are intended to prevent and mitigate losses due to identity theft resulting from the data breach.

Questions have been raised concerning the taxability of identity protection services provided at no cost to customers, employees, or other individuals whose personal information may have been compromised in a data breach. Existing guid-

ance does not specifically address these questions.

The IRS will not assert that an individual whose personal information may have been compromised in a data breach must include in gross income the value of the identity protection services provided by the organization that experienced the data breach. Additionally, the IRS will not assert that an employer providing identity protection services to employees whose personal information may have been compromised in a data breach of the employer's (or employer's agent or service provider's) recordkeeping system must include the value of the identity protection services in the employees' gross income and wages. The IRS will also not assert that these amounts must be reported on an information return (such as Form W-2 or Form 1099-MISC) filed with respect to such individuals. This announcement does not apply to cash received in lieu of identity protection services, or to identity protection services received for reasons other than as a result of a data breach, such as identity protection services received in connection with an employee's compensation benefit package. This announcement also does not apply to proceeds received under an identity theft insurance policy; the treatment of insurance recoveries is governed by existing law.

The Treasury Department and the IRS request comments on whether organizations commonly provide identity protection services in situations other than as a result of a data breach, and whether additional guidance would be helpful in clarifying the tax treatment of the services provided in those situations. Comments should be submitted in writing on or before October 13, 2015 to the following address:

Internal Revenue Service
CC:PA:LPD:PR
(Announcement 2015–22)
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Comments also may be sent electronically to notice.comments@irs.counsel.treas.gov. Please include "Announcement 2015–22" in

the subject line. All comments will be available for public inspection.

The principal author of this announcement is Seoyeon Sharon Park of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this announcement, contact Ms. Park at (202) 317-7006 (not a toll-free number).

Extension of Time to File Certain Information Returns

REG-132075-14

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: In the Rules and Regulations section of this issue of the **Internal Revenue Bulletin**, the IRS is issuing temporary regulations that will remove the automatic extension of time to file information returns on forms in the W-2 series (except Form W-2G). The temporary regulations will allow only a single 30-day non-automatic extension of time to file these information returns. In addition, the temporary regulations will update the list of information returns subject to the rules regarding extensions of time to file. These proposed regulations incorporate the temporary regulations with respect to extensions of time to file information returns on forms in the W-2 series (except Form W-2G). In addition, these proposed regulations would remove the automatic 30-day extension of time to file all information returns listed in the temporary regulation.

DATES: Written or electronic comments and requests for a public hearing must be received by November 12, 2015.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-132075-14), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-132075-

14), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent via the Federal eRulemaking Portal at www.regulations.gov (IRS REG-132075-14).

FOR FURTHER INFORMATION

CONTACT: Concerning these proposed regulations, Jonathan R. Black, (202) 317-6845; concerning submissions of comments and/or requests for a hearing, Regina Johnson (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations § 1.6081-8T in the Rules and Regulations section of this issue of the **Internal Revenue Bulletin** will amend 26 CFR part 1 by removing the automatic extension of time to file information returns on forms in the W-2 series (except Form W-2G), effective for filing season 2017. The temporary regulations will allow only a single 30-day non-automatic extension of time to file these information returns that the IRS may, in its discretion, grant if the IRS determines that an extension of time to file is warranted based on the filer's or transmitter's explanation attached to a Form 8809, "Application for Extension of Time to File Information Returns," signed under penalties of perjury. The temporary regulations will also add Forms 3921, 3922, 1094-C, and forms in the 1097 series to the list of information returns covered by § 1.6081-8T(a) and clarify that Forms 1095-B and 1095-C, but not Form 1095-A, are covered by the rules in § 1.6081-8T(a).

These proposed regulations would remove the automatic 30-day extension of time to file the information returns listed in § 1.6081-8T(a) and allow only a single non-automatic extension of time to file all information returns listed in § 1.6081-8T.

The IRS anticipates that, as described in the temporary regulations with respect to forms in the W-2 series (other than Forms W-2G), under the proposed regulations, the IRS will grant the non-automatic 30-day extension of time to file information returns listed in § 1.6081-8(a) only in limited cases where the filer's

or transmitter's explanation demonstrates that an extension of time to file is needed as a result of extraordinary circumstances or catastrophe, such as a natural disaster or fire destroying the books and records a filer needs for filing the information returns.

Treasury and the IRS request comments on the appropriate timing of the removal of the automatic 30-day extension of time to file information returns covered by these proposed regulations, such as Form 1042-S, including whether special transitional considerations should be given for any category or categories of forms or filers relative to other forms or filers. Although these regulations are proposed to be effective for requests for extensions of time to file information returns due on or after January 1 of the calendar year immediately following the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**, removal of the automatic 30-day extension of time to file will not apply to information returns (other than forms in the W-2 series except Forms W-2G) due any earlier than January 1, 2018. Please follow the instructions in the "Comments and Requests for Public Hearing" portion of this preamble.

The temporary regulations affect taxpayers who are required to file information returns on forms in the W-2 series (except Forms W-2G) and need an extension of time to file. These proposed regulations also affect taxpayers who need an extension of time to file any of the information returns listed in § 1.6081-8T(a).

The substance of the temporary regulations is incorporated in these proposed regulations. The preamble to the temporary regulations explains these amendments. These proposed regulations would also expand the rules in § 1.6081-8T(b) to the other information returns, which are listed in § 1.6081-8T(a).

Proposed Effective/Applicability Date

The regulations, as proposed, would apply to requests for extensions of time to file information returns due on or after January 1 of the calendar year immediately following the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these proposed regulations.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. As stated in this preamble, the proposed regulations would remove the automatic 30-day extension of time to file certain information returns (Form W-2G, 1042-S, 1094-C, 1095-B, 1095-C, 1097 series, 1098 series, 1099 series, 3921, 3922, 5498 series, and 8027). Under the proposed regulations, filers and transmitters would be permitted to request only one 30-day extension of time to file these information returns by timely submitting a Form 8809, including an explanation of the reasons for requesting the extension and signed under penalty of perjury. Although the proposed regulation may potentially affect a substantial number of small entities, the economic impact on these entities is not expected to be significant because filers who are unable to timely file as a result of extraordinary circumstances or catastrophe may continue to obtain a 30-day extension through the Form 8809 process, which takes approximately 20 minutes to prepare and submit to the IRS. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in the preamble under the "Addresses" heading. Treasury and the IRS request comments on all aspects of the proposed

regulations. All comments submitted will be made available at *www.regulations.gov* or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Jonathan R. Black of the Office of the Associate Chief Counsel (Procedure and Administration).

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.6081-8 is revised to read as follows:

§ 1.6081-8 Extension of time to file certain information returns.

(a) *In general.* Except as provided in paragraph (e) of this section, a person required to file an information return (the filer) on forms in the W-2 series (includ-

ing Forms W-2, W-2AS, W-2G, W-2GU, and W-2VI), 1097 series, 1098 series, 1099 series, or 5498 series, or on Forms 1042-S, 1094-C, 1095-B, 1095-C, 3921, 3922, or 8027, or the person transmitting the information return for the filer (the transmitter), may only request one non-automatic 30-day extension of time to file the information return beyond the due date for filing it. To make such a request, the filer or transmitter must submit an application for an extension of time to file in accordance with paragraph (b) of this section. No additional extension of time to file will be allowed pursuant to § 1.6081-1 beyond the 30-day extension of time to file provided by this paragraph.

(b) *Requirements.* To satisfy this paragraph (b), a filer or transmitter must—

(1) Submit a complete application on Form 8809, “Application for Extension of Time to File Information Returns,” or in any other manner prescribed by the Commissioner, including a detailed explanation of why additional time is needed;

(2) File the application with the Internal Revenue Service in accordance with forms, instructions, or other appropriate guidance on or before the due date for filing the information return; and

(3) Sign the application under penalties of perjury.

(c) *Penalties.* See sections 6652, 6693, and 6721 through 6724 for failure to comply with information reporting requirements on information returns described in paragraph (a) of this section.

(d) *No effect on time to furnish statements.* An extension of time to file an information return under this section does not extend the time for furnishing a statement to the person with respect to whom the information is required to be reported.

(e) *Form W-2 filed on expedited basis.* This section does not apply to an information return on a form in the W-2 series if the procedures authorized in Rev. Proc. 96-57 (1996-2 CB 389) (or a successor revenue procedure) allow an automatic extension of time to file the information return. See § 601.601(d)(2)(ii)(b) of this chapter.

(f) *Effective/applicability date.* This section applies to requests for extensions of time to file information returns due on or after January 1 of the calendar year immediately following the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

§ 1.6081-8T [Removed]

Par. 3. Section 1.6081-8T is removed.

John Dalrymple,
*Deputy Commissioner for
Services and Enforcement.*

(Filed by the Office of the Federal Register on August 12, 2015, 8:45 a.m., and published in the issue of the Federal Register for August 13, 2015, 80 F.R. 48472)

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with modified, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A

and B, the prior ruling is modified because it corrects a published position. (Compare with amplified and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the sub-

stance of a prior ruling, a combination of terms is used. For example, modified and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.

ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.

PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

Numerical Finding List¹

Bulletins 2015–27 through 2015–35

Announcements:

2015-17, 2015-28 I.R.B. 67
2015-18, 2015-33 I.R.B. 198
2015-19, 2015-32 I.R.B. 157
2015-21, 2015-34 I.R.B. 235
2015-22, 2015-35 I.R.B. 288

Notices:

2015-43, 2015-29 I.R.B. 73
2015-46, 2015-28 I.R.B. 64
2015-47, 2015-30 I.R.B. 76
2015-48, 2015-30 I.R.B. 77
2015-49, 2015-30 I.R.B. 79
2015-50, 2015-30 I.R.B. 81
2015-51, 2015-31 I.R.B. 133
2015-52, 2015-35 I.R.B. 227
2015-53, 2015-33 I.R.B. 190
2015-54, 2015-34 I.R.B. 210
2015-55, 2015-34 I.R.B. 217
2015-56, 2015-35 I.R.B. 235

Proposed Regulations:

REG-109370-10, 2015-33 I.R.B. 198
REG-115452-14, 2015-32 I.R.B. 158
REG-132075-14, 2015-35 I.R.B. 288
REG-138526-14, 2015-28 I.R.B. 67
REG-102648-15, 2015-31 I.R.B. 134
REG-102837-15, 2015-27 I.R.B. 43

Revenue Procedures:

2015-34, 2015-27 I.R.B. 4
2015-36, 2015-27 I.R.B. 20
2015-38, 2015-34 I.R.B. 220
2015-39, 2015-33 I.R.B. 195
2015-40, 2015-35 I.R.B. 236
2015-41, 2015-35 I.R.B. 263

Revenue Rulings:

2015-15, 2015-27 I.R.B. 1
2015-16, 2015-31 I.R.B. 130
2015-18, 2015-34 I.R.B. 209

Treasury Decisions:

9723, 2015-31 I.R.B. 84
9726, 2015-31 I.R.B. 98
9727, 2015-32 I.R.B. 154
9728, 2015-33 I.R.B. 169
9729, 2015-35 I.R.B. 221
9730, 2015-35 I.R.B. 223

¹A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2015–01 through 2015–26 is in Internal Revenue Bulletin 2015–26, dated June 29, 2015.

Finding List of Current Actions on Previously Published Items¹

Bulletins 2015–27 through 2015–35

Notices:

2014-4

Modified by

Notice 2015-51, 2015-31 I.R.B. 133

Revenue Procedures:

1992-75

Clarified by

Rev. Proc. 2015-40, 2015-35 I.R.B. 236

2003-40

Modified by

Rev. Proc. 2015-40, 2015-35 I.R.B. 236

2006-9

Modified by

Rev. Proc. 2015-41, 2015-35 I.R.B. 263

2006-9

Superseded by

Rev. Proc. 2015-41, 2015-35 I.R.B. 263

2006-54

Modified by

Rev. Proc. 2015-40, 2015-35 I.R.B. 236

2006-54

Superseded by

Rev. Proc. 2015-40, 2015-35 I.R.B. 236

2008-31

Modified by

Rev. Proc. 2015-41, 2015-35 I.R.B. 263

2008-31

Superseded by

Rev. Proc. 2015-41, 2015-35 I.R.B. 263

2011-49

Modified by

Rev. Proc. 2015-36, 2015-27 I.R.B. 20

2011-49

Superseded by

Rev. Proc. 2015-36, 2015-27 I.R.B. 20

2015-14

Modified by

Rev. Proc. 2015-39, 2015-33 I.R.B. 195

2015-40

Amplified by

Rev. Proc. 2015-41, 2015-35 I.R.B. 263

2015-41

Amplified by

Rev. Proc. 2015-40, 2015-35 I.R.B. 236

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