

# CAP Memorandum of Understanding

## MEMORANDUM OF UNDERSTANDING between the INTERNAL REVENUE SERVICE and

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Taxpayer Name

TIN

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For Tax Year Ending

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\_\_\_\_\_ hereinafter referred to as “the Taxpayer,” and the Internal Revenue Service (IRS) (collectively referred to as the “Parties”) desire to enter into this Memorandum of Understanding (MOU) for the Compliance Assurance Process (the CAP). By executing this MOU, the Parties agree to work diligently and in good faith toward the successful completion of the CAP.

### **(A) Objectives**

The CAP employs real-time issue resolution to improve federal tax compliance and utilize resources more efficiently. In the CAP, the Parties work contemporaneously to achieve federal tax compliance by resolving tax positions prior to the filing of a tax return. Successful conclusion of the CAP allows the IRS to achieve an acceptable level of assurance regarding the accuracy of the Taxpayer’s filed tax return and to substantially shorten the time for a post-filing examination. Please note, tax positions will not be reviewed or resolved, and no assurances will be provided for Taxpayers in the Bridge phase (See Section (D) 5 for more details).

The IRS’ participation in the pre-filing review during the CAP does not constitute an examination or inspection of the Taxpayer’s books of account for purposes of IRC 7605(b).

### **(B) Account Coordinator**

At the outset of the CAP, the IRS will assign an Account Coordinator (AC) to the Taxpayer. The AC serves as the primary IRS representative, facilitates compliance, and provides a single point of contact for all federal tax matters. If the AC is unable to continue to act in the role of the AC or the IRS determines the need to replace the AC, the IRS will notify the Taxpayer and promptly assign a replacement. Changes in IRS personnel will not alter or void this MOU.

### **(C) Duration of the Memorandum of Understanding in the CAP**

This MOU is applicable to the tax year ending \_\_\_\_\_ (hereinafter known as “the CAP Year”) and becomes effective immediately upon its execution by both Parties. Once selected into the CAP program (“the Program”), the Taxpayer must continue to meet the CAP eligibility and suitability criteria and fulfill all the CAP expectations. The Parties must adhere to this MOU until all the issues raised during the CAP pre-filing review and the post-filing examination are concluded in Large Business & International (LB&I), the Taxpayer is terminated from the CAP, or the Taxpayer elects to discontinue participation in the CAP. The Parties must enter into a new MOU for each CAP Year.

### **(D) Roles, Responsibilities and Communication**

#### **1. Scope of the CAP review**

The IRS and the Taxpayer will work together on a cooperative, transparent and contemporaneous basis





The IRS will risk assess material cross-border transactions between the taxpayer and foreign related parties. If an Advance Pricing Agreement (APA) is deemed the most appropriate treatment, the AC will schedule a meeting between the Taxpayer and the Advance Pricing and Mutual Agreement (APMA) Team to discuss the benefits of entering into an APA. Taxpayers in the CAP Program that have already submitted a request for an APA under Revenue Procedure 2015-41 (or successor thereto) and/or a request for assistance from the U.S. Competent Authority under Revenue Procedure 2015-40 (or successor thereto) should notify their AC of the existence of such requests. The AC will then contact the appropriate APMA Team or the Treaty Assistance and Interpretation Team (TAIT) lead or analyst to ensure ongoing coordination between the CAP and APMA/TAIT Programs.

A Taxpayer, who is required to provide the CAP Research Credit Questionnaire (CRCQ) with the CAP application, will update any material changes on a contemporaneous basis during the CAP year. The Research Risk Review Team (RT) will evaluate the CRCQ to assist the CAP team with selecting or deselecting research issues to review.

The Taxpayer will complete the Tax Control Framework Questionnaire (TCFQ) if any significant changes are identified at the opening conference or at any other time during the CAP year. Significant changes include items such as major reorganizations, acquisitions, mergers, new tax leadership and/or outsourcing of the tax function.

The Taxpayer will provide notice and documentation of any subsequent resolution(s) of issues in prior exam cycles within 15 business days of the agreed determination(s). The Parties will discuss the effect of such resolutions on any unexamined tax year(s) and on the CAP Year and incorporate the changes as appropriate.

The Taxpayer will immediately notify the AC of any investigation initiated on the Taxpayer by a federal or state agency. The notification should include: a detailed explanation of the investigation, an evaluation of whether access to corporate books and records could be limited, and any material tax item(s) that could result from the investigation.

The Taxpayer will notify the AC of any foreign initiated examinations, pending adjustments, or assessments that may impact income, expenses and/or credits reported in the United States, for the CAP year or any prior tax years, and will update such information as the information becomes available.

All information provided to the IRS in connection with the CAP is return information protected from disclosure by the confidentiality provisions of IRC 6103.

The procedures of Rev. Proc. 2022-39 are not applicable to CAP taxpayers.

### **3. Establishing and Adhering to Materiality Thresholds and Identifying Issues for Review**

The Taxpayer and IRS will jointly determine the scope of the CAP review, including materiality thresholds. Materiality thresholds are used as a guide by both Parties in determining issues to review. The Parties will openly discuss situations where exceptions to the materiality threshold may be warranted. However, the ultimate decision of identifying issues for the compliance review remains within the discretion of the IRS.

Further, materiality thresholds may be reconsidered during the CAP. The materiality thresholds will be documented in the CAP Plan and apply only to the relevant CAP Year. The CAP Plan will be discussed with and provided to the Taxpayer. Notwithstanding the materiality thresholds and issue identification procedures discussed above, the IRS may consider for a compliance review the following items regardless of when or how they are identified: tax shelters, listed transactions, transactions of interest, fraudulent items, LB&I compliance initiatives, LB&I Directives, and emerging issues. The Parties

reserve the right to correct obvious computational/ mathematical or accounting errors/ omissions that are not technical or legal in nature. Materiality thresholds are used in the CAP so that the Taxpayer knows which issues should be disclosed. Materiality thresholds relate to the total amount of the issue and are not relevant to the tax effect or possible adjustments that may be made as a consequence of such issues. Adjustments to the amounts to be reported on the return for issues that are reviewed as part of the CAP, may be made that are below the materiality thresholds. If the issues are not resolved before the return is filed, these adjustments may be made to the return after it is filed.

#### **4. Communication between Taxpayer and the IRS**

Honest and open communication is critical to the success of the CAP. In addition, collaborative interaction combined with a sense of urgency is necessary to meet the objective of reaching resolution on the federal income tax liability prior to the filing of the tax return. There should be no communication barrier or filter between the IRS and the Taxpayer, and a Taxpayer employee should be designated as the primary point of contact for the CAP review. Simultaneously with the execution and delivery of this MOU by the Taxpayer, the Taxpayer will attach Form 2848 – Power of Attorney and Declaration of Representative to this MOU designating personnel to act as points of contact for gathering information and resolving questions or issues.

To aid communications and the flow of information, the Parties will agree to participate in electronic communication exchange by using Secure Email Messaging (SEMS), Taxpayer Digital Communication (TDC), and/or any other approved electronic information exchange method.

During the Opening Conference, the IRS will provide a list of IRS participants on the CAP Team to the Taxpayer. The IRS team will include but may not be limited to the AC, Specialist Revenue Agents, the Case Manager, the Geographic Territory Manager and the Geographic Director, Field Operations (DFO).

The Parties will interact on a regular basis. Regular interaction is critical to the success of the CAP and can take many forms including telephone, email, and in-person meetings. Meetings should be held as needed to discuss and provide relevant information, documentation and interviews, and to discuss the status of the CAP and resolve any concerns that arise. At the meetings, each Party will have in attendance representatives with authority to resolve any problems, issues or concerns being addressed. The Geographic Territory Manager will participate in the opening conference for new CAP taxpayers, and as needed for returning taxpayers but should normally attend at least one meeting per year. The Geographic DFO is not required to attend meetings (unless specific issues occur that need to be resolved) but should normally communicate with the Taxpayer at least two times in each CAP cycle.

Cooperation and Transparency from both Parties is a critical element in the success of the CAP. When there is an issue with cooperation and/or transparency or when the terms of this MOU are not being adhered to by either the Taxpayer or the IRS, the Parties will meet to discuss how to resolve such issues. These meetings should be held contemporaneously and documented using the Evaluation of Cooperation and Transparency Form.

#### **5. Level of Review by the IRS**

During the CAP, the IRS, at its discretion, may reduce the level of review based on the complexity and number of issues, and the Taxpayer's history of compliance, cooperation and transparency in the CAP. In these circumstances, the Taxpayer will remain in the CAP and will receive the appropriate assurance letter at the conclusion of the post-filing review.

## **Compliance Maintenance Phase**

The IRS, at its discretion, may determine that the Taxpayer should be in the Compliance Maintenance (CM) phase. In this phase, the IRS will reduce the level of review based on the complexity and number of material issues, and the Taxpayer's history of compliance, cooperation and transparency in the CAP. In the CM phase, the Taxpayer must continue making the same open, comprehensive, and contemporaneous disclosures as they would in the CAP phase. The IRS may move the Taxpayer between the CAP phase and the CM phase on a yearly basis depending on the complexity and/or volume of transactions or other factors.

## **Bridge Phase**

The IRS, at its discretion, may determine that the Taxpayer should be in the Bridge phase. The Bridge phase is intended for Taxpayers with a low risk of non-compliance who are cooperative and transparent with few, if any, material issues that require resolution. In this phase, the IRS will not accept any disclosures, will not conduct any reviews, and will not provide any letters of assurance for the Bridge year. If the Taxpayer wants assurance on an issue while in the Bridge phase, the Taxpayer may apply for a Pre-Filing Agreement (PFA), if the issue is eligible for a PFA.

When in the Bridge phase, the Taxpayer is expected to exhibit the same level of tax compliance when filing the return as they would if in the CAP or CM phases. Because the IRS does not conduct review activities in the Bridge phase, the IRS will not hold an Opening Conference and will not provide a CAP Plan. In addition, the Taxpayer does not provide any disclosures or the periodic MITTs, and related documents, for the Bridge year. See the MITT discussion in Section D (2) of this MOU, and the Form 14234-B MITT instructions on IRS.gov.

The IRS does not intend to open a Bridge year for examination. However, there may be some limited circumstances where the IRS could open a Bridge year return for examination if there is evidence of fraud, malfeasance, collusion, concealment or misrepresentation of a material fact, a new material issue not previously reviewed, a material change to a previously reviewed issue, a material issue that was reserved for or reported on Schedule UTP during the Bridge year, a material Campaign issue, a clear arithmetic error or material error based on an established service position, a Joint Committee claim and/ or any other circumstances where a failure to open an examination would not be in the interest of tax administration.

A limited-scope pilot program was approved for a new CAP phase called Bridge Plus, which is based on risk assessment. A CAP Taxpayer in the 2022 CAP Bridge Phase that is also recommended for Bridge in the 2023 CAP Cycle, will receive a Bridge Plus Invitation letter. Taxpayer participation in Bridge Plus is voluntary. The IRS will complete a risk assessment. If risk is determined to be low, the Taxpayer will be accepted into Bridge Plus and receive an appropriate assurance letter. If the IRS determines that the risk is not low in either a pre-filing or post-filing review, the Taxpayer will continue in the Bridge Phase and the IRS will not issue an assurance letter.

When in the Bridge phase or Bridge Plus, the Taxpayer remains in the CAP program and will be considered a returning Taxpayer if applying for the subsequent CAP year. Bridge years will not be considered as open years under the CAP open year eligibility criteria unless the return is opened for a post-filing exam.

### **(E) Issue Resolution Agreement**

The Parties will work together during the CAP to identify and resolve issues. The Parties will regularly engage in discussions to resolve factual or technical differences. After the Parties have completely addressed an issue, the IRS will draft an Issue Resolution Agreement (IRA) for that issue. The IRS will draft a Full IRA including a Form 886-A where the IRS does not agree with the Taxpayer's position, or when a Closing Agreement is necessary. The IRS will draft a Simple IRAs without a Form 886-A when the IRS agrees with the Taxpayer's tax position. However, the IRS will not draft an IRA for issues that are resolved through simple factual clarification.

Upon the issuance of each IRA, the Parties will mutually agree to a timely response date. In its response, the Taxpayer will indicate its agreement or disagreement with the IRA. If the Taxpayer disagrees with the IRA, it will state all relevant facts and legal arguments for its position(s). If for any reason the Taxpayer is unable to comply with the due date of an IRA, the Taxpayer will notify the IRS immediately and explain the circumstances for the delay and the Parties will agree to a revised due date. Ordinarily, Closing Agreements are not necessary for resolving CAP issues. However, at the end of the CAP Year, and as deemed appropriate by the IRS, the AC should incorporate the resolution of the agreed upon issues in Form(s) 906, Closing Agreement(s), based on the completed IRA(s).

### **(F) The CAP Conclusion and Post-Filing Review**

After the Taxpayer files its tax return, the AC will secure a copy of the return and initiate the post-filing review. In order to expedite the post-filing review, the Taxpayer is required to file the return electronically. As part of the post-filing review, the AC will complete the Required Filing Checks per IRM 4.10.5.

Within 30 days of the date the return is filed, the Taxpayer will provide to the AC a Post-Filing Representation executed by an officer of the Taxpayer with authority to sign the Taxpayer's U.S. income tax returns. The Post-Filing Representation should be in the form attached hereto as Attachment 1.

If, after the receipt and review of the Post-Filing Representation, the IRS determines that the taxpayer has fully complied with the terms of the MOU and all material issues have been disclosed and resolved through simple factual clarification, IRA, or closing agreement, the IRS will provide the Taxpayer with a Full Acceptance Letter. The Full Acceptance Letter constitutes written confirmation that, subject to the completion of the post-filing review of the return, the IRS will accept the Taxpayer's return if it is filed consistent with the resolutions of the resolved issues and no additional material issues or correlative adjustments are discovered during the post-filing review that were not previously disclosed.

If, after the receipt and review of the Post-Filing Representation, the IRS determines that the Taxpayer did not disclose all material issues or that the IRS and the Taxpayer did not resolve all identified material issues, the IRS will provide the Taxpayer with a Partial Acceptance Letter. Once the IRS completes the post-filing review of the tax return, the IRS will accept it as filed, but for any undisclosed and unresolved material issues. This acceptance is conditioned on the return being filed consistent with the resolved issues and no identification of undisclosed material issues and correlative adjustments during the post-filing review.

During the post-filing review, the Parties will jointly review the filed return to verify that all resolved issues were reported as agreed and that all disclosures were made in accordance with this MOU. To facilitate the joint review, the Taxpayer will conduct a "walk-through" and/or will provide a "road-map" to show where the resolved issues appear on the filed return. In cases where a Full Acceptance Letter is issued, the goal for completing the post-filing review of the filed return is within sixty (60) days of the filing of the return.

If the return is not consistent with simple factual clarification(s), IRA(s) or closing agreement(s), there are identified issues that are not resolved prior to filing the tax return, or there are material issues on the return that were not adequately disclosed, the IRS will examine any such issues through the traditional post-filing examination process. Simple IRAs, without Form 886-A, are required if the IRS agrees with the Taxpayer's position. Forms 5701, Notice of Proposed Adjustment are required if adjustments to the return are proposed. If the IRS decides not to review an adequately disclosed issue during the pre-filing stage and the filed return reports the transaction as disclosed by the Taxpayer, the IRS will generally not review the transaction during the post-filing review. The Taxpayer will retain access to consideration by the Office of Appeals with respect to any traditional post-filing examination that is conducted.

If the post-filing review indicates that all material issues were disclosed and resolved, the IRS will issue a No Change Letter concluding the examination of the Taxpayer's books of account for purposes of IRC 7605(b).

#### **(G) Termination or Withdrawal from the CAP**

If the Taxpayer or the IRS is unable or has failed to comply with the responsibilities and obligations contained in this MOU, the parties will attempt to resolve their concerns using the Evaluation of Cooperation and Transparency Form. If the concerns cannot be resolved and the IRS determines that the Taxpayer continues to fail to adhere to the terms of this MOU, the Geographic Territory Manager will issue a written notice of IRS concerns. If the concerns are not resolved within 30 days after receiving such notification, the Geographic DFO will issue a Termination Letter to the Taxpayer and the Taxpayer's participation in the Program will cease. The IRS may then conduct a traditional post-filing examination of the Taxpayer's return after it is filed.

Examples of significant or consistent failures to adhere to the terms set forth in this MOU that will result in a Termination Letter include: (1) not adhering to IDR response times or providing non-responsive or incomplete responses to IDRs; (2) not engaging in meaningful or good faith item or issue resolution discussions; (3) failing to thoroughly disclose business transactions and material steps within the transactions required to be disclosed under Section D2 of this MOU; (4) failing to provide the Material Intercompany Transaction Templates (MITTs) by the due dates or providing MITTs that are incomplete and/or do not adhere to the instructions, (5) failing to disclose a tax shelter or listed transaction; (6) failing to disclose an investigation or litigation that limits the IRS' access to current corporate records; (7) frequently filing claims or requesting Appeals consideration; and (8) not adhering to any other commitment included in this MOU.

If at any time the Taxpayer determines it cannot or will not comply with the expectations of this MOU, the Taxpayer may provide a written request to withdraw from the CAP. Upon receipt of such a request, the IRS will issue a Termination Letter to the Taxpayer and the Taxpayer's participation in the Program will terminate. The IRS may then conduct a traditional post-filing examination of the Taxpayer's return after it is filed.

## **(H) Claims and Joint Committee on Taxation Review**

### **1. Claims**

All potential refund claims must be brought to the attention of the AC as soon as the Taxpayer becomes aware that it has potential refund claims. All claims or requests for tentative refunds affecting federal income tax liability must be filed using Form 1120X or Form 1139. The Taxpayer seeking to claim a research credit refund must file its amended return pursuant to Notice 2008-39. Claims should meet the standards of Treasury Regulation section 301.6402-2, which states that if a Taxpayer is required to file a claim for refund or credit using a particular form, then the claim, together with appropriate supporting evidence, will be filed in a manner consistent with such form, form instructions, publications, or other guidance found on the IRS.gov Website.

### **2. Joint Committee on Taxation**

If it is determined prior to the filing of the CAP Year return that the tax return, when filed, will result in a refund claim subject to review by the Joint Committee on Taxation (JCT), IRC 6405 will apply. If IRC 6405 applies, any closing agreements cannot be executed on behalf of the government until they have been reviewed and approved by the JCT. See IRM 4.36.3.6.2. Pursuant to IRM 8.13.1.4.4.1, closing agreements signed by the Taxpayer will be submitted as part of the original Joint Committee report. If the JCT takes no exception to the report and the proposed closing agreements, the appropriate operating division official may sign the closing agreements.

If a Full Acceptance Letter was issued and the post-filing review confirms that the return was filed consistent with the pre-filing resolutions, and there were no additional issues discovered on the return as filed, the AC will prepare the documents necessary for a Joint Committee Specialist to perform a review, prepare the Joint Committee report and submit such report to the JCT. When the JCT has completed its review and sent clearance notification to the IRS, any closing agreements will be executed by the IRS. For a return in which a Partial Acceptance Letter was issued, once all the remaining issues have been fully resolved, the Joint Committee report will be forwarded to the JCT. When the JCT has completed its review and sent clearance notification to the IRS, any closing agreements will be executed by the IRS.

**Agreement of MOU**

The undersigned representatives of the Parties hereby indicate their agreement to these objectives, responsibilities, and procedural guidelines. It is understood by the Parties that this document is intended to govern the conduct of the CAP but is not a legally enforceable agreement.

Signatures and dates:

For the Taxpayer (Corporate Officer authorized to sign Taxpayer’s U.S. federal income tax return):

\_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

For the Internal Revenue Service:

\_\_\_\_\_

LB&I Director, Field Operations

Date: \_\_\_\_\_

**ATTACHMENT 1**

**Post-Filing Representation by Taxpayer**

In accordance with Section F of the CAP Memorandum of Understanding (MOU) between the Internal Revenue Service (IRS) and \_\_\_\_\_ (Taxpayer) dated \_\_\_\_\_, the undersigned represents for the tax year ended \_\_\_\_\_ that:

- a. all material issues [except those (if any) described in attachment 1a] were fully disclosed and resolved on the filed return
  
- b. all resolved issues [except those (if any) described in attachment 1b] were reported as agreed on the filed return

Under penalties of perjury, I declare that I have examined this representation and accompanying documents, if any, and that, to the best of my knowledge and belief, this representation contains all relevant information, and that the representations made are true, correct, and complete.

Signature and Date:  
(Corporate Officer authorized to sign taxpayer's U.S. federal income tax return)

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



**ATTACHMENT 1b**

List any resolved issues that were not reported on the filed return as agreed in pre-filing through factual clarification, IRA(s) or Closing Agreement(s)