

Pre-CAP Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING
between the
INTERNAL REVENUE SERVICE
and

(Name of Corporation)

TIN

[List open tax years]

_____ 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 Pre-Compliance Assurance Process (the Pre-CAP). By executing this MOU, the Parties agree to work diligently and in good faith toward the successful completion of the examinations of the filed tax returns with the goal of preparing the Taxpayer for the Compliance Assurance Process (the CAP).

(A) Objectives

In the Pre-CAP phase, the Taxpayer will work with the IRS in the traditional post-file examination process to close examinations of filed tax returns with the goal of meeting the CAP selection criteria and progressing to the CAP phase. The Taxpayer and the IRS will develop an action plan to examine tax returns of the open years within an agreed upon timeframe.

(B) Team Coordinator

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

(C) Duration of the Memorandum of Understanding in the Pre-CAP

This MOU is applicable to _____ (hereinafter known as the “Pre-CAP Years”) and becomes effective immediately upon its execution by both Parties. Once selected into the Pre-CAP, the Taxpayer must continue to meet the Pre-CAP criteria and fulfill all the Pre-CAP expectations. The Parties must adhere to this MOU for each Pre-CAP Year until the Taxpayer is eligible for the CAP phase, is terminated from the Pre-CAP, or elects to discontinue participation in the Pre-CAP.

(D) Roles, Responsibilities and Communication

1. Taxpayer Disclosures

The IRS and the Taxpayer will work together to develop an action plan to complete all required examinations within an established timeframe. During the Pre-CAP phase, the Taxpayer must exhibit the same level of transparency and cooperation that is required of taxpayers in the CAP phase. The Taxpayer must identify the existence of transactions, its return reporting position, and a description of the steps within the transactions that have a material effect on its federal income tax liability. Further, the Taxpayer must disclose any other item that has a material effect on its federal income tax liability and its return reporting position with regard to those items. It must provide relevant information within the established timeframes. The Taxpayer disclosures described in this paragraph will be in writing.

In addition to transactions, description of steps within a transaction and other material items described above, the Taxpayer will provide the IRS with: the industry overview, current legal, accounting and tax organizational charts reflecting all related entities and the flow of relevant information involving those entities, financial performance information, information on any significant events that affected reporting for the tax year, access to accounting records and systems, and necessary resources for disclosure of requested information.

The Taxpayer will provide information and documentation proactively and as requested by the TC. The TC will promptly review all relevant information provided and will communicate to the Taxpayer whether (1) additional information is required; (2) the IRS disagrees with the Taxpayer's tax treatment; or (3) the tax treatment is appropriate.

The Parties will discuss the scope of any necessary Information Document Requests (IDRs) in an open and honest manner and reach mutually agreed upon due dates for the responses. If for any reason the Taxpayer is unable to comply with the due date of an IDR, the Taxpayer will notify the IRS immediately and explain the circumstances for the delay, and the Parties will agree to a revised due date. The IRS will promptly evaluate the IDR responses for completeness and, after a thorough analysis of the responses, will discuss the results of the review with the Taxpayer. The Parties should strive for expediency and urgency during this examination process in order to meet the CAP program (the Program) objectives. With respect to IDRs, the Large Business and International Directive on Information Document Requests Enforcement Process dated February 28, 2014, applies.

The Taxpayer will provide the TC with tax schedules and computations for all rollover and recurring adjustments from any previously examined and closed tax period(s) that impact the returns of the Pre-CAP Years, including the impact of any closing agreements or Appeals settlements. The Taxpayer shall provide these disclosures within 15 business days of the Pre-CAP Opening Conference.

Taxpayers in the Pre-CAP that have already submitted a request for an Advance Pricing Agreement under Revenue Procedure 2006-9 (or successor thereto) and/or a request for assistance from the U.S. Competent Authority under Revenue Procedure 2006-54 (or successor thereto) should notify their TC of the existence of such requests. The TC will then contact the appropriate Advance Pricing and Mutual Agreement (APMA) Team or the Treaty Assistance and

Interpretation Team (TAIT) lead or analyst to ensure ongoing coordination between the CAP and APMA/TAIT Programs.

Pre-CAP taxpayers are encouraged to seek Advance Pricing Agreements to cover recurring controlled transactions. Taxpayers with ongoing transfer pricing issues may contact the TC to request a meeting with APMA to discuss the benefits of entering into an APA.

The Taxpayer will provide notice and documentation of any subsequent resolution(s) of items or 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 Pre-CAP Years and incorporate the changes as appropriate.

The Taxpayer will immediately notify the TC 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 TC of any foreign initiated examinations, pending adjustments, or assessments that may impact income, expenses and/or credits reported in the United States, for the Pre-CAP tax years, and will update such information on a quarterly basis as the information becomes available.

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

2. Establishing and Adhering to Materiality Thresholds and Identifying Items for Examination

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

Further, materiality thresholds may be reconsidered during the Pre-CAP examination. The materiality thresholds will be documented in the Pre-CAP action plans. The Pre-CAP action plans will be discussed and provided to the Taxpayer.

Notwithstanding the materiality thresholds and item identification procedures discussed above, the IRS may conduct an examination of the following items regardless of when or how they are identified: tax shelters, listed transactions, transactions of interest, fraudulent items, Large Business & International (LB&I) compliance initiatives, Industry Director and Operating Division Directives, coordinated issues, 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 Pre-CAP for the Taxpayer to know which transactions should be reviewed. They are not relevant to the adjustments that may be made with regard to the tax

consequences of such transactions. Adjustments to the amounts reported on the return for the transactions that are examined as part of the Pre-CAP, may be made that are below the materiality thresholds.

3. Communication between Taxpayer and the IRS

Honest and open communication is critical to the success of the Pre-CAP. In addition, collaborative interaction combined with a sense of urgency is necessary to meet the objectives of the Pre-CAP. Simultaneously with the execution and delivery of this MOU by the Taxpayer, the Taxpayer will attach a letter of authorization to this MOU designating personnel to act as points of contact for gathering information and resolving questions or issues. The IRS Territory Manager will attend the Pre-CAP Opening Conference. During the Pre-CAP Opening Conference, the IRS will also provide a list of IRS participants on the Pre-CAP Team to the Taxpayer. The IRS team will include, but may not be limited to the TC, the Team Manager, the Territory Manager, and the Director, Field Operations (DFO).

The Parties will interact on a regular basis. Regular periodic (weekly, monthly, or at a minimum quarterly) meetings should be held to discuss and provide relevant information, documentation and interviews, and, as needed, to discuss the status of the Pre-CAP action plan and resolve concerns as they arise during the course of the Pre-CAP examination. Each Party will have in attendance representatives with authority to resolve any problems, issues or concerns being addressed. In addition, the Parties will collectively discuss and provide feedback on the level of cooperation and transparency from each Parties perspective.

(E) Traditional Post-file Procedures

Traditional post-file procedures will be utilized during the course of the Pre-CAP for any adjustments; Form 906, Closing Agreement, will be provided when warranted; and the appropriate Revenue Agent Report(s) will be issued based on the results of the examinations.

(F) Unagreed Issues

If a Taxpayer does not agree with the proposed resolution, the Taxpayer and the IRS may use existing issue resolution processes. These processes will be available on an expedited basis. The IRS will participate in Fast Track Settlement (see Revenue Procedure 2003-40) if requested by the Taxpayer and not otherwise precluded.

(G) Termination or Withdrawal from the Pre-CAP

Resolution of disputes as to whether the Taxpayer or the IRS is unable, or has failed to comply with its responsibilities and obligations as set forth in this MOU will follow the procedures in IRM 4.51.1. These procedures will be available on an expedited basis. If the IRS determines that the Taxpayer failed to adhere to the terms of this MOU, the Territory Manager assigned to the case will issue a written notice of the IRS' concerns. If the concerns are not resolved within 30 days after the Taxpayer receives such notification, the DFO assigned to the case will issue a Termination Letter to the Taxpayer and the Taxpayer's participation in the Program will cease. The IRS will then conduct a traditional post-filing examination of the Taxpayer's filed return.

Quarterly, the Pre-CAP Team Manager (with input from the other members of the CAP Team) and the Taxpayer and/or their representative will assess and document transparency and cooperation. Meetings will be held to discuss the results of these assessments so any potential concerns can be addressed.

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 transactions, steps within the transactions, and other items required to be disclosed under Section D1 of this MOU; (4) failing to disclose a tax shelter or listed transaction; (5) failing to disclose an investigation or litigation that limits the IRS' access to current corporate records, and (6) 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 Program. 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 will then conduct a traditional post-filing examination of the Taxpayer's filed return.

(H) Claims and Joint Committee on Taxation Review

1. Claims

All potential refund claims must be brought to the attention of the TC as soon as the Taxpayer becomes aware that it has potential refund claims. All claims or request for tentative refunds affecting federal income tax liability must be filed using Form 1120X or Form 1139. Claims should meet the standards of Treasury Regulation section 301.6402-2, which provides that a valid claim must:

- Have appropriate supporting evidence;
- Set forth in detail each ground upon which credit or refund is claimed;
- Present facts sufficient to apprise the IRS of the exact basis for the claim; and
- Contain a written declaration that it is made under penalties of perjury.

2. Joint Committee on Taxation

If it is determined at the conclusion of a Pre-CAP examination that there is a refund or credit that is subject to review by the Joint Committee on Taxation (JCT), IRC section 6405 will apply. If IRC section 6405 applies, 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 8.13.1.4.6.1, 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.

Agreement of MOU

The undersigned representatives of the Parties hereby indicate their mutual 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 Pre-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: _____