

Procedures for Requesting Competent Authority Assistance under Tax Treaties

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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., 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 (<u>see</u> 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 (<u>see</u> 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 (<u>see</u> 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 (<u>see</u> 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. <u>See also</u> Treas. Reg. §1.482-1(b)(2)(iii)
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
IRS Examination	The function(s) within the IRS responsible for examining federal tax and information returns and ascertaining the correctness of any return for purposes of determining the tax liability of taxpayers
LB&I	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. <u>See</u> 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 (1) 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 (2) 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 (<u>see</u> 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 additional 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 examine 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 authority 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 section 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 competent 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 exempt 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 supplement 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 penalties, 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 repatriation 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 intercompany 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
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	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 action 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 authority 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 are 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, either 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 foreign 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 reasonable 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 authority 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 section 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., 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 authority 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	<p><u>Identifying information</u>: Provide the following information for the taxpayer filing the competent authority request:</p> <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	<p><u>Authorizations and Contacts</u>: Provide names and contact information for the following:</p> <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	<p><u>IRS Office</u>: Provide the following information:</p> <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	<p><u>Treaty(ies)</u>: Identify the U.S. tax treaty(ies) and articles under which the request is being filed</p>

1.5	<u>Summary of competent authority issues:</u> Provide a summary of the competent authority issues for which assistance is being requested
1.6	<u>Years and amounts:</u> Provide the taxable years and amounts at issue, presented in both U.S. dollars and foreign currency, together with the exchange rate(s) that was used for currency conversion during the applicable taxable years
1.7	<u>Taxpayer proceedings:</u> Provide: 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 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
1.8	<u>Other proceedings:</u> 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
1.9	<u>Statutes of limitations:</u> Provide the expiration dates of applicable statutes of limitations in both the United States and the treaty country(ies) for the taxable years covered by the competent authority request

Part 2. Competent Authority Issues

2.1	<u>Competent authority issues:</u> Provide a thorough, informative explanation of the competent authority issues for which assistance is requested, including but not limited to descriptions or discussions of: a. The relevant transactions, activities, or other circumstances surrounding the competent authority issues for which assistance is requested; 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; c. The taxpayer's view on the justification for assistance under the applicable U.S. tax treaty(ies); and d. The content of any related requests for assistance submitted to the foreign competent authority, together with an explanation of
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	any material differences between the competent authority request filed under the revenue procedure and the request filed with the foreign competent authority
2.2	<u>Prior or current U.S. competent authority assistance</u> : 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
2.3	<u>Pre-filing information</u> : Provide the following information: a. Whether a pre-filing memorandum was filed; and b. Whether a pre-filing conference was held and, if so, the date of and attendees at the conference

Part 3. Assistance Requested and Required Statements

3.1	<u>Coordination with other proceedings</u> : Provide the following information: a. Whether the taxpayer entered into a previous agreement with IRS Examination as described in section 6.03 of the revenue procedure; 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 (<u>see</u> section 6.04(3)(a) of the revenue procedure); and c. Whether the taxpayer seeks SAP review, and if so, for which issues
3.2	<u>ACAP years</u> : Provide the following information: a. Whether the taxpayer requests ACAP and, if so, the ACAP years proposed to be covered; b. Whether the taxpayer does not seek to apply the 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 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
3.3	<u>Ancillary issues</u> : List the ancillary issues (if any) the taxpayer requests be addressed in the competent authority resolution, <u>e.g.</u> , competent authority repatriation
3.4	<u>Attachments not included</u> : 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 (<u>e.g.</u> , “N/A”)

.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	<u>Authorization form</u> : 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	<u>ACAP requests</u> : If the taxpayer is requesting ACAP, provide a statement that the taxpayer agrees to the following: a. The inspection of books of account or records under ACAP will not preclude or impede (under section 7605(b) of the Code or any administrative provision adopted by the IRS) a later examination of a return or inspection of books of account or records for any taxable period covered in the ACAP request; and b. The IRS need not comply with any applicable procedural restrictions (<u>e.g.</u> , providing notice under section 7605(b) of the Code) before beginning such later examination or inspection
Tab 3	<u>Protective claim and treaty notification</u> : If applicable, provide the following information: 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	<u>Consent to disclosure</u> : Include a declaration, dated and signed by a person having authority to sign the taxpayer’s federal tax returns, that the taxpayer consents to the disclosure of the contents of the 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><u>“Penalties of perjury” declaration:</u> 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	<p><u>Written notice of adjustment:</u> Provide the following information:</p> <p>a. For U.S.-initiated adjustments, a copy of the written notice of the adjustment, (<u>e.g.</u>, the Form 5701 or Form 4549, and any related attachments received from IRS Examination); or</p> <p>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</p>
Tab 7	<p><u>Information or documents in a foreign language:</u> List any information or documents in a foreign language that are submitted to a foreign tax authority or foreign competent authority in connection with, or that are otherwise relevant to, the competent authority request and for which a full translation in English is not provided</p>
Tab 8	<p><u>Transfer pricing documentation and related information:</u> Provide the following information:</p> <p>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;</p> <p>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;</p> <p>c. Income statements and balance sheets, segmented as necessary</p>

	<p>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	<u>Pre-filing submissions</u> : Include any pre-filing memoranda or other materials submitted prior to the competent authority request
Tab 10	<u>Optional e-mail memorandum of understanding</u> : 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 four 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	Telephone numbers are available through the “contact us” link on the APMA website
Website	www.irs.gov/Businesses/Corporations/APMA
Office Location	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 (<u>e.g.</u>, 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
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4.2	<p>Applicant's organization information:</p> <ol 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 (<u>e.g.</u>, corporation, pension or other tax-exempt entity, or partnership); iii) whether each entity is fiscally transparent or opaque (<u>i.e.</u>, non-transparent) under U.S. and foreign tax law; and iv) a description of the amount and type of ownership interests (<u>e.g.</u>, 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
4.3	<p>Additional applicant information:</p> <ol style="list-style-type: none"> a. Analysis of why the applicant does not qualify for the requested benefits under the relevant LOB provisions (<u>e.g.</u>, (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
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	<p>associated rights (<u>e.g.</u>, 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;</p> <p>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;</p> <p>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;</p> <p>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;</p> <p>n. Statement of the applicant's effective global tax rate;</p> <p>o. Statement of the extent to which deductible payments are made outside the ordinary course of the applicant's business;</p> <p>p. Detailed description of the tax treatment in the other contracting state if discretion is granted, including source and character; and</p> <p>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</p>
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In addition, a discretionary LOB request must contain the four additional attachments listed in the following table, separately tabbed:

<u>Additional Attachments for Discretionary LOB Requests</u>	
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) *Formal.* 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)