

## LB&I Process Unit Knowledge Base – International

Library Level	Number	Title
<b>Shelf</b>		Business Outbound
<b>Book</b>	1	Income Shifting (Outbound)
<b>Chapter</b>	1.7	Pre-Audit and Post Issue Analysis
<b>Section</b>	1.7.3	Competent Authority
<b>Subsection</b>		

<b>Unit Name</b>	Competent Authority Revenue Procedure 2015-40 Guidance: U.S.-Initiated Adjustment(s)	
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# Process Overview

## Competent Authority Revenue Procedure 2015-40 Guidance: U.S.-Initiated Adjustment(s)

Multinational companies doing cross-border business in several countries face potential double taxation. Nearly all bilateral income tax treaties contain a Mutual Agreement Procedures (“MAP”) article, which, among other things, provides the legal framework for resolving international tax disputes between the treaty partners. Taxpayers can request assistance from the U.S. competent authority to reduce or eliminate the effects of double taxation under U.S. tax treaties. The MAP article is generally invoked by taxpayers, but may be invoked by the U.S. or foreign competent authorities in certain circumstances.

During the course of an examination, a Revenue Agent (“examiner”) may determine that an adjustment should be made to the taxable income of a U.S. or non-U.S. person (as defined under IRC 7701(a)). The adjustment may give rise to double taxation or other taxation that is inconsistent, or not in accordance, with the provisions of a given U.S. income tax treaty. If this is the case, the affected taxpayer may be eligible to invoke its rights under that U.S. tax treaty to seek the assistance of the U.S. competent authority (“U.S. CA”) to alleviate such taxation (or foreign competent authority in some treaties).

The U.S. CA is authorized to act on such requests for assistance and to address related issues concerning the application of U.S. tax treaties. Rev. Proc. 2015-40, 2015-35 IRB 236, provides the procedures for taxpayers to follow in order to seek assistance of the U.S. CA. (If the adjustment involves the U.S. territories of American Samoa, Guam, Commonwealth of the Northern Mariana Islands, United States Virgin Islands, and Puerto Rico, the taxpayer should consult Rev. Proc. 2006-23, 2006-1 C.B. 900. Unless otherwise noted, this unit will address only requests under Rev. Proc. 2015-40.)

# Process Overview (cont'd)

## Competent Authority Revenue Procedure 2015-40 Guidance: U.S.-Initiated Adjustment(s)

The U.S. CA has two different offices that resolves disputes deriving under U.S. tax treaties:

- Advance Pricing and Mutual Agreement Program (“APMA”) – this office provides assistance primarily for cases involving transfer pricing adjustments made under IRC 482 (or under equivalent transfer pricing provisions of treaty countries); this business unit also negotiates unilateral, bilateral, and multilateral Advance Pricing Agreements (“APAs”).
- Treaty Assistance and Interpretation Team (“TAIT”) – this office provides assistance for cases arising under tax treaties other than transfer pricing cases (e.g., treaty residence determinations, cases involving fiscally transparent entities, and discretionary determinations under a limitation on benefits article) and most other -interpretative matters that arise under such treaties, such as those arising under the MAP article. TAIT also has primary responsibility for cases arising under U.S. tax treaties with respect to estate and gift taxes.

APMA and TAIT can each consider cases arising under the permanent establishment articles of U.S. tax treaties, and both will coordinate and collaborate on such cases, and on any other cases, as appropriate.

The obligations of the examiner in relation to the CA process are set forth in the Internal Revenue Manual (“IRM”). See e.g., IRM section 4.60.2. In general, the examiner's first step after determining an adjustment should be made to ensure that the affected taxpayer has been informed of its right to seek assistance of the U.S. CA (or in some circumstances the competent authority of the other Contracting State) on a timely basis.

Once the taxpayer has been notified by the examiner of the potential double taxation, the onus is then on the taxpayer to follow the instructions and guidance provided in Rev. Proc. 2015-40 and the governing U.S. tax treaty to request the assistance of the U.S. or foreign CA. After submitting its request for assistance, the taxpayer will work primarily with the CA to which the request was made to address the issue. However, the examiner continues to be involved in the process and remains an important source of information for the U.S. CA. Eligibility to file a request for CA assistance is determined by reference to the applicable U.S. tax treaty and the requirements of Rev. Proc. 2015-40.

# Process Overview (cont'd)

## Competent Authority Revenue Procedure 2015-40 Guidance: U.S.-Initiated Adjustment(s)

This unit focuses on procedures for U.S.-initiated adjustments, i.e., adjustments made by the examiner concerning the taxable income reported by a U.S. company (or by a foreign company that, e.g., has income effectively connected to a U.S. trade or business or, under a U.S. tax treaty, has a permanent establishment to which profits are, or should be, attributed).

Circumstances under which this process applies:

Various U.S.-initiated adjustments can give rise to a taxpayer pursuing assistance of the U.S. CA under Rev. Proc. 2015-40. Listed below are examples of adjustments that may require CA consideration (this listing is not all inclusive):

- Transfer pricing adjustments (Increases/decreases to prices of tangible goods; to royalty or other payments for intangible property; to fees or other remuneration for intercompany services transactions).
- Potential existence of a permanent establishment (“PE”) and income attributable to a PE.
- Characterization of income (changes to the character of income received or of payments made, e.g., whether a payment is for a royalty or for a service; whether a royalty payment is for the use of a patent or some other type of intangible property) (for example, payments deemed to occur as a result of U.S.-initiated adjustments).
- Timing of income (differences in taxable year in which a certain item of income is recognized).
- Source of income (differences in the source to which a certain item of income is attributed).

# Process Overview (cont'd)

## Competent Authority Revenue Procedure 2015-40 Guidance: U.S.-Initiated Adjustment(s)

MAP articles are intended to assist taxpayers facing double taxation (or taxation not in accordance with a treaty). The MAP articles provide the mechanism for the U.S. competent authority and the competent authority of the treaty partner to endeavor to reach a mutual agreement alleviating the double taxation. In many cases, the competent authorities will reach an agreement (a “mutual agreement”, or a “competent authority resolution”, under Rev. Proc. 2015-40) that alleviates the double taxation in its entirety. However, in some cases, the agreement does not alleviate all double taxation, and in other cases, no agreement is reached at all. In those situations where an agreement is not reached, some treaties (such as the treaty between the United States and Canada) allows a taxpayer to have its case resolved through mandatory, binding arbitration if the competent authorities do not reach a mutual agreement within a prescribed time period.

**T** **TREATY IMPLICATION:** Taxpayers, the IRS, and foreign tax authorities may use competent authority resolutions as a framework for managing similar or recurring competent authority issues. When 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/or if it included a rollback request years in its APA request, such APA request will be coordinated between APMA and other offices within IRS, for example field exam.

# Process Overview (cont'd)

## Competent Authority Revenue Procedure 2015-40 Guidance: U.S.-Initiated Adjustment(s)

This unit primarily addresses only adjustments proposed by examiners. For the most part, it does not address foreign-initiated adjustments, i.e., adjustments made by tax examiners in other countries. In most instances, a U.S. taxpayer can present a request for assistance relating to a foreign-initiated adjustment to the U.S. competent authority under Rev. Proc. 2015-40. Questions about whether a taxpayer is eligible to present a request for assistance in relation to a foreign-initiated adjustment should be directed to the U.S. competent authority.

Taxpayers can consult with the U.S. CA informally on any issues relating to tax treaties, whether or not the issue clearly involves a request for assistance under a treaty. The consultation can be anonymous and is non-binding on the IRS. For example, the taxpayer may consult the U.S. competent authority regarding exhaustion of competent authority and administrative remedies relating to foreign tax credit determinations.

In the case of U.S.-initiated adjustment, the examiner will issue the appropriate letter (a Letter 1853(P)/1915(P)) along with Form 5701, or at the earliest time, the examiner believes when an adjustment could give rise to double taxation or might otherwise not be in accordance with the treaty involved. It is the policy of the U.S. competent authority to provide broad access to taxpayers with potential treaty-related disputes, so the examiner should consult with the U.S. CA if he or she has any questions about whether the appropriate letter should be issued with Form 5701.

A taxpayer requests assistance by following the instructions and guidance on submissions found in Rev. Proc. 2015-40 and the relevant provisions in the applicable income tax treaty (e.g., the provisions of the MAP article). The requirements on submissions are addressed in Section 3 of the Revenue Procedure and its Appendices.



# Process Overview (cont'd)

## Competent Authority Revenue Procedure 2015-40 Guidance: U.S.-Initiated Adjustment(s)

Depending on the facts and circumstances of the particular issue, to reach a principled resolution, and for effective and efficient tax administration, either of the CAs may identify and request information on any interrelated issues. See section 3.05(3) of Rev. Proc. 2015-40. The request may be amended to include additional facts, and the CAs will consider such additional information in reaching a settlement.

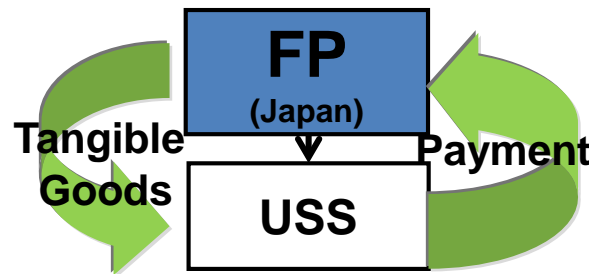
Most U.S. tax treaties provide that agreements reached by the competent authorities are to be implemented by the United States and the treaty country notwithstanding any time limits or other procedural limitations under the domestic law of either country. A minority of U.S. tax treaties may not allow 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, Section 11 of Rev. Proc. 2015-40 advises, as a general matter, that the taxpayer and members of its controlled group 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.

# Process Overview (cont'd)

## Competent Authority Revenue Procedure 2015-40 Guidance: U.S.-Initiated Adjustment(s)

The following general example provides an overview of the actions an examiner would take after raising a U.S.-initiated adjustment involving a transfer pricing issue (and thus handled by APMA):

- Foreign Parent (“FP”) owns 100% of U.S. Subsidiary (“USS”). FP is located in Japan, FP manufactures tangible goods and sells these to USS, which, in turn, sells the goods to third-party customers in North America.
- For a given taxable year, the examiner determines that the prices paid by USS to FP for the tangible personal property were too high under IRC 482 and increases (adjusts) the income of USS accordingly. FP would face double taxation as a result of the examiner's action if the treaty country does not allow a corresponding adjustment under its domestic law. The adjustment would result in a reduction to FP’s income, but the amount of this additional income would have already been included in the income of FP and taxed by the treaty country.
- The examiner should issue Form 5701 together with Letter 1853(P) to inform USS of its rights to seek assistance of the U.S. competent authority to alleviate this double taxation under the U.S. tax treaty. The assistance the U.S. competent authority can provide is to review the U.S.-initiated adjustment and, if it is justified under the U.S. tax treaty (i.e., presents a clear, principled application of the Code and application regulations), present the case to the treaty partner. (If the U.S.-initiated adjustment is not justified, the U.S. competent authority may withdraw the adjustment without presenting it to the treaty partner.) After consultations with the treaty partner, an agreement may be reached whereby the treaty partner provides “correlative relief” for some or all of the adjustment. The U.S. competent authority will instruct the examiner (through a disposition memorandum to the Internal Referral Recipient) as to how to implement the competent authority agreement regarding USS.



# Detailed Explanation of the Process

## Competent Authority Revenue Procedure 2015-40 Guidance: U.S.-Initiated Adjustment(s)

### Analysis

- All examiners should have “global awareness” of the adjustments they may make or consider to a taxpayer’s income. That is, any adjustment may result in differences in amount, character, and other tax attributes from what was reported to other tax administrations. These differences raise the possibility of double taxation or taxation not in accordance with a given treaty. Taxpayers have rights under treaties to pursue CA assistance to address such issues.
- The basic steps that an examiner should take in these circumstances are set forth in IRM 4.60.2.1, 4.60.2.3, and 4.60.3. As noted in the example, most importantly, the examiner must notify the taxpayer of its right to seek competent authority assistance under MAP. The examiner would notify USS by using Letter 1853(P) or similar correspondence. If the examiner’s adjustment will result in potential double taxation in more than one country, then a separate schedule should be prepared for each treaty country entity involved. See IRM 4.60.2.6 for matters involving U.S. territories.
- To resolve the double taxation (or taxation otherwise inconsistent with the applicable income tax treaty) issue, and if the taxpayer decides to seek assistance from the U.S. CA, it will follow certain procedures as set forth in the Rev. Proc. 2015-40 to request such assistance.
- If the taxpayer rejects the tentative resolution reached by the competent authorities, and if either country’s CA is unwilling to negotiate further, or the competent authorities are unable to reach an agreement, then the U.S. competent authority will formally close the case. The taxpayer may then pursue all the other domestically available remedies to resolve the issue.
- In the event a resolution is reached, the taxpayer may be able to claim additional credits or refunds, consistent with the MAP settlement. (or in some cases in which there is no tax settlement, a taxpayer may be able to claim a U.S. foreign tax credit if they adequately exhaust their administrative and judicial remedies.). In order to protect its rights to claim additional credits or refunds, and to retain its rights to alternative remedies under the Code, the taxpayer is advised to file a written protective claim as specified under IRC 6402 and the regulations thereunder. This claim may be filed before, or in conjunction with, a request for CA assistance. Instructions regarding such a claim are set forth in Rev. Proc. 2015-40.

# Detailed Explanation of the Process (cont'd)

## Competent Authority Revenue Procedure 2015-40 Guidance: U.S.-Initiated Adjustment(s)

### Analysis

- In general, per IRM 4.60.2, the examiner has the following obligations after determining an issue is sufficiently developed and that the adjustment can be reasonably estimated:
  - Issue a MAP letter – Letter 1853(P) (U.S. tax treaties) or Letter 1915(P) (U.S. territories), with relevant Schedule 1815(P) or 1915(P) – to the taxpayer
  - Contact the taxpayer’s representative (or the taxpayer him or herself, if self-represented) regarding the letter
  - Work with the audit team and communicate with the team regarding the process and the dates of meetings
  - Provide audit work papers, for example, a copy of the Notice Of Proposed Adjustment (“NOPA”), economists report, etc., to the assigned analyst (e.g., APMA team leader) on the case

# Detailed Explanation of the Process (cont'd)

## Competent Authority Revenue Procedure 2015-40 Guidance: U.S.-Initiated Adjustment(s)

### Analysis

#### Legal Guidance

Rev. Proc. 2015-40 provides procedures and guidance on the process of requesting assistance from the U.S. CA under the provisions of U.S. tax treaties. The revenue procedure was published on August 31, 2015, and updates and supersedes Rev. Proc. 2006-54. A proposed version of Rev. Proc. 2015-40 was released for public comment in Notice 2013-78. Rev. Proc. 2015-40 substantially restructured the proposed guidance in Notice 2013-78 to improve clarity, readability, and organization. Rev. Proc. 2015-40 affirms that the U.S. competent authority is committed to providing broad access to competent authority assistance under U.S. tax treaties. The effective date of the Rev. Proc. 2015-40 is generally for requests filed on or after October 30, 2015. Special effective date rules apply with respect to discretionary limitation on benefits (“LOB”) determinations and also with respect to the new triennial statement required by Section 3.06 of Rev. Proc. 2015-40, which generally applies to discretionary LOB determinations issued after October 30, 2015.

Rev. Proc. 2015-40 was issued concurrently with Rev. Proc. 2015-41 (2015-35 IRB 263), the successor to Rev. Proc. 2006-9, as modified by Rev. Proc. 2008-31, which provides guidance on the process of requesting and obtaining APAs, as well as guidance on the administration of executed APAs.

Both Rev. Proc. 2015-41 and Rev. Proc. 2015-40 are consistent on many substantive points with respect to coordination and collaboration with examination on prominent procedural decisions. The two revenue procedures are intended to integrate the CA and APA processes and serve as complementary programs of tax and treaty administration.

# Detailed Explanation of the Process (cont'd)

## Competent Authority Revenue Procedure 2015-40 Guidance: U.S.-Initiated Adjustment(s)

### Analysis

#### General Outline of Rev. Proc. 2015-40

Section 1: Purpose, background, rules of construction and definitions

Section 2: Scope and general principles

Section 3: Procedures for filing CA requests

Section 4: ACAP and Ancillary Issues

Section 5: Small case CA requests

Section 6: Coordination of CA process U.S. administrative and judicial proceedings

Section 7: Acknowledgement of receipt and denial of assistance

Section 8: Consultations and related actions by the U.S. CA

Section 9: Results of CA case

Section 10: Arbitration

Section 11: Protective claims

Section 12: Treaty notifications

Section 13: Requests for rulings

Section 14: User fees

Section 15: Effect on other documents

Section 16: Effective date

Sections 17, 18: Paperwork Reduction Act; drafting information

Appendix: Filing instructions and requirements

Section 1: General instructions

Section 2: Requests for APMA

Section 3: Requests for TAIT

# Process Applicability

## Competent Authority Revenue Procedure 2015-40 Guidance: U.S.-Initiated Adjustment(s)

Taxpayers engaging in cross-border transactions may seek assistance from the U.S. CA under U.S. tax treaties to address actions, such as a U.S.-initiated adjustment, that have given rise to double taxation or taxation otherwise not in accordance with the treaty. Taxpayers should be informed of their rights to seek this assistance as early as possible in the audit process following the applicable IRM provisions. The procedures that an examiner should follow in these circumstances are set forth in IRM 4.60.2 and 4.60.3 and are discussed generally in Rev. Proc. 2015-40.

Criteria	Resources
When an examiner has identified an issue and raised an adjustment that may result in double taxation or taxation not in accordance with a U.S. tax treaty, e.g., an issue affecting material controlled transactions involving a reallocation of income or expenses amongst members of the controlled group and the examiner has reasonably estimated the amount of the adjustments	Form 5701, NOPA, and Letter and Schedule 1853(P)/1915(P) and applicable income tax treaties and explanatory documents (e.g., Treasury technical explanations)

# Summary of Process Steps

## Competent Authority Revenue Procedure 2015-40 Guidance: U.S.-Initiated Adjustment(s)

### Process Steps

Seeking U.S. CA assistance under a U.S. tax treaty is an effective way for taxpayers to resolve the resulting potential for double taxation or taxation not in accordance with the treaty. The procedure for seeking assistance is set forth in Rev. Proc. 2015-40.

<a href="#">Step 1</a>	Double Tax Determination
<a href="#">Step 2</a>	Notification to the Taxpayer
<a href="#">Step 3</a>	Mutual Agreement Process Procedures
<a href="#">Step 4</a>	Accelerated CA Procedures and Ancillary Issues



# Summary of Process Steps (cont'd)

## Competent Authority Revenue Procedure 2015-40 Guidance: U.S.-Initiated Adjustment(s)

### Process Steps

Seeking U.S. CA assistance under a U.S. tax treaty is an effective way for taxpayers to resolve the resulting potential for double taxation or taxation not in accordance with the treaty. The procedure for seeking assistance is set forth in Rev. Proc. 2015-40.

<a href="#">Step 5</a>	Coordination of CA Process
<a href="#">Step 6</a>	Role of the Taxpayer
<a href="#">Step 7</a>	Roles of the APMA and TAIT
<a href="#">Step 8</a>	Role of an Examiner

# Step 1: Double Tax Determination

## Competent Authority Revenue Procedure 2015-40 Guidance: U.S.-Initiated Adjustment(s)

### Step 1

Will the proposed adjustment give rise to double tax or taxation not in accordance with a U.S. tax treaty?

Considerations	Resources
<ul style="list-style-type: none"><li>▪ When a U.S. transfer pricing adjustment is made, it may result in double taxation or taxation not in accordance with a U.S. tax treaty. In the earlier example (slide 8), the examiner's proposed adjustment to USS increases its income, which would result in double taxation if there is no corresponding reduction in the taxable income of FP.</li> <li>▪ The following resources can help the examiner in identifying the effect of the adjustment:<ul style="list-style-type: none"><li>– Organization chart</li><li>– Intercompany transactions as reported on from Form 5471</li><li>– Transfer pricing report</li><li>– Applicable U.S. tax treaty and technical explanation, e.g., the Income Tax Convention between the United States and Canada</li><li>– Tax attributes, for example, Foreign Tax Credits (FTC) claimed on the U.S. Form 1120 as well as on the foreign country tax return</li></ul></li></ul>	

# Step 1: Double Tax Determination (cont'd)

## Competent Authority Revenue Procedure 2015-40 Guidance: U.S.-Initiated Adjustment(s)

### [Step 1](#)

Considerations	Resources
<ul style="list-style-type: none"><li data-bbox="84 475 1379 582">▪ The examiner should review the foreign tax returns or financial statements, for the original return position taken by the affiliate with respect to the controlled transactions, and the effect of the proposed adjustment on such return positions.</li><li data-bbox="84 644 1379 751">▪ The examiner should review the effect of the proposed adjustment and its interrelationship with other entities in the multinational organization to determine if the proposed adjustment may give rise to possible double taxation.</li><li data-bbox="84 812 1379 879">▪ The examiner should also review prior year examination reports such as Form 5701, for adjustments made to similar issues.</li></ul>	

# Step 2: Notification to the Taxpayer

## Competent Authority Revenue Procedure 2015-40 Guidance: U.S.-Initiated Adjustment(s)

### Step 2

Notification to the taxpayer - Issue the Letter 1853(P), Form 5701, or similar correspondence to the taxpayer.

Considerations	Resources
<ul style="list-style-type: none"><li>▪ One objective of U.S. tax treaties is to assist taxpayers in avoiding double taxation or taxation not in accordance with a tax treaty.</li><li>▪ When the potential for double taxation arises from an adjustment, the examiner must notify the taxpayer of the right to seek MAP consideration. The notification can be made using Letter 1853(P). This Letter should be prepared with a separate schedule for each treaty country involved.</li><li>▪ In the case of U.S. territory, Letter 1915(P) should be used to inform the taxpayer of the right to request assistance under agreement on the coordination of tax administration with possessions is prepared for each possession country.</li><li>▪ As a best practice, attach a copy of Form 5701 to the Letter 1853(P).</li></ul>	<ul style="list-style-type: none"><li>▪ IRM 4.60.2.1 – <i>Notification to Taxpayers of Potential Double Taxation</i></li></ul>

# Step 2: Notification to the Taxpayer (cont'd)

## Competent Authority Revenue Procedure 2015-40 Guidance: U.S.-Initiated Adjustment(s)

### [Step 2](#)

Considerations	Resources
<ul style="list-style-type: none"> <li>▪ Letter 1853(P) should be issued on a transfer pricing transaction between controlled parties, when an adjustment may be proposed that would relate to any article of a U.S. tax treaty. Therefore, it is mandatory to issue the notification regarding possible double taxation if the case would involve a treaty partner or a U.S. territory. Issuance of the letter is optional, in the case of non-treaty partner. Letter 1853(P)/1915(P) should be issued as early as possible in the examination after the issue(s) is (are) sufficiently developed and when the adjustment can reasonably be estimated.</li>   <li>▪ A double taxation issue schedule is provided with Letter 1853(P)/1915(P) for each treaty country involved. The schedule generally identifies the IRC section, the Uniform Issue Listing code, the tax year and the amount involved.</li> </ul>	<ul style="list-style-type: none"> <li>▪ IRM 4.60.2.1(3) – Issuance of Letter 1853(P)</li>   <li>▪ IRM 4.60.2.1(4) – Notifications involving Non-treaty Partners</li>   <li>▪ IRM 4.60.2 Exhibit 3 – <i>Double Taxation Issue Schedules 1853(P)/1915(P)</i></li> </ul>

# Step 3: Mutual Agreement Process Procedures

## Competent Authority Revenue Procedure 2015-40 Guidance: U.S.-Initiated Adjustment(s)

### Step 3

#### Mutual Agreement Process Procedures

Considerations	Resources
<ul style="list-style-type: none"><li>▪ Nearly all U.S. tax treaties contain a MAP article. This article allows designated representatives (the U.S. CA and the competent authority of the treaty partner) to address cases in which a taxpayer might be subject to double taxation or taxation not in accordance with the treaty.</li><li>▪ With respect to U.S.-initiated adjustments, the affected taxpayer will generally be the party that will file a request with the U.S. competent authority under Rev. Proc. 2015-40. However, a taxpayer might file a request for assistance with the country of which it is a resident (e.g., a foreign-headquartered company might file with its competent authority).</li><li>▪ Many cases that implicate the MAP process relate to income allocation (e.g., 482 adjustments). However, MAP cases may also arise from adjustments relating to, imputed interest, and royalties, characterization of items of income, application of sourcing rules, APAs and application of domestic law regarding penalties, fines and interest etc.</li></ul>	

# Step 3: Mutual Agreement Process Procedures (cont'd)

## Competent Authority Revenue Procedure 2015-40 Guidance: U.S.-Initiated Adjustment(s)

### [Step 3](#)

Considerations	Resources
<ul style="list-style-type: none"> <li>▪ The taxpayer should file a CA request with the U.S. CA under the rules of Rev. Proc. 2015-40.</li> <li>▪ The taxpayer must take all protective measures to preserve its rights under the domestic laws of the U.S. and foreign jurisdictions. For example, if there is a foreign levy that might be contrary to the treaty, it is the taxpayer's responsibility to invoke MAP and file the necessary protective claims to protect the applicable statutes of limitation.</li> <li>▪ Section 3 of Rev. Proc. 2015-40 generally sets out all procedures a taxpayer must follow to file a US CA request, as supplemented by the various appendices.</li> <li>▪ Subject to instances where a pre-filing is required a taxpayer does not need to meet with the U.S. competent authority before filing a CA request. (e.g. a LOB request) The only exception to this is for "taxpayer-initiated requests" (which do not involve adjustments that result from an examination).</li> </ul>	<ul style="list-style-type: none"> <li>▪ Rev. Proc. 2015-40 Sec. 3 – <i>Procedures for Filing Competent Authority Requests</i></li> <li>▪ Rev. Proc. 2015-40 Sec. 11 – <i>Protective Claims</i></li> <li>▪ Rev. Proc. 2015-40, Sec.3.02(1) – <i>Pre-filing Procedures, In General</i></li> <li>▪ Rev. Proc. 2015-40 Sec. 3.04 (3) – <i>Timing of Competent Authority Request Concerning U.S.-initiated Actions</i></li> </ul>

# Step 3: Mutual Agreement Process Procedures (cont'd)

## Competent Authority Revenue Procedure 2015-40 Guidance: U.S.-Initiated Adjustment(s)

### [Step 3](#)

Considerations	Resources
<ul style="list-style-type: none"> <li>▪ 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. Any specific requirement set forth in the applicable U.S. tax treaty takes precedence over any conflicting provision in Rev. Proc. 2015-40.</li> <li>▪ The U.S. competent authority will not normally accept a competent authority request for a U.S.-initiated adjustment before the IRS has communicated the amount of the proposed adjustment in writing to the taxpayer, e.g., with a Form 5701, or a Form 4549.</li> <li>▪ Certain U.S. tax treaties may require that a competent authority request or a treaty notification be filed within a certain time limit. For example, under the U.S.-Japan treaty, the case must be brought to the CA within three years from the first notification of the action resulting in tax not in accordance with the treaty.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Rev. Proc. 2015-40 Sec. 12.01 – <i>Treaty Notifications, In General</i></li> <li>▪ Rev. Proc. 2015-40 Sec. 3.05 – <i>Content and Form of Competent Authority Request</i></li> <li>▪ Rev. Proc. 2015-40, Sec. 3.04(3) – <i>Timing of Competent Authority Request Concerning U.S. –Initiated Actions</i></li> <li>▪ Rev. Proc. 2015-40, Sec. 12 – <i>Treaty Notifications</i></li> <li>▪ U.S. Japan Treaty, Art. 25(1)</li> </ul>



# Step 3: Mutual Agreement Process Procedures (cont'd)

## Competent Authority Revenue Procedure 2015-40 Guidance: U.S.-Initiated Adjustment(s)

### [Step 3](#)

Considerations	Resources
<ul style="list-style-type: none"><li>▪ 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.</li></ul>	<ul style="list-style-type: none"><li>▪ Rev. Proc. 2015-40, Sec. 6 – <i>Coordination of the Competent Authority Process with U.S. Administrative and Judicial Proceedings</i></li><li>▪ Rev. Proc. 2015-40, Sec. 7.02 – <i>Denial and Termination of Assistance</i></li></ul>

# Step 4: ACAP and Ancillary Issues

## Competent Authority Revenue Procedure 2015-40 Guidance: U.S.-Initiated Adjustment(s)

### Step 4

Accelerated Competent Authority Procedure and Ancillary Issues

Considerations	Resources
<ul style="list-style-type: none"> <li>▪ Under the Accelerated Competent Authority Procedures (“ACAP”), either at the request of the taxpayer or at the request of the U.S. CA, the terms of a CA resolution for a given taxable year can be applied to subsequent years for which the taxpayer has filed tax returns but for which adjustments have not been raised (“ACAP years”). The U.S. CA may request that the taxpayer expand the CA request to include ACAP years in certain cases.</li>   <li>▪ The taxpayer may request the U.S. CA to consult on certain ancillary issues, such as penalties, repatriation of funds, etc., provided certain conditions set forth under the revenue procedure are met. If the tax consequences of repatriation are not addressed in the MAP settlement (e.g., an agreement with the U.S. CA to treat any necessary repatriations as loans in lieu of potential “secondary adjustments”), the provisions of the Code and regulations (and revenue procedures, especially, Rev. Proc. 99-32 (or its successor)) will apply.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Rev. Proc. 2015-40, Sec. 4.01(1) – <i>Accelerated Competent Authority Procedure, In General</i></li> <li>▪ Rev. Proc. 2015-40, Sec. 2.04 – <i>Scope of Competent Authority Cases</i></li>   <li>▪ Rev. Proc. 2015-40, Sec. 4.02 – <i>Ancillary Issues</i></li> <li>▪ Practice Unit, <i>Revenue Procedure 99-32 Inbound Guidance</i>, DCN: ISO/P/01_07_02-01(formerly ISO 9411.07_03 (2013))</li> </ul>

# Step 5: Coordination of the CA Process

## Competent Authority Revenue Procedure 2015-40 Guidance: U.S.-Initiated Adjustment(s)

### Step 5


Coordination of CA Process with the U.S. Administrative and Judicial Proceedings

Considerations	Resources
<ul style="list-style-type: none"> <li>▪ If the taxpayer disagrees with the examiner's proposed U.S.-initiated adjustment, it may choose to pursue its administrative rights through Appeals or it may request CA assistance under Rev. Proc. 2015-40, if a U.S. tax treaty is implicated and it is considering CA assistance</li> <li>▪ In general, the taxpayer may effectively choose one option or the other. Rev. Proc. 2015-40 sets out precise rules regarding how a taxpayer may pursue Appeals before, or in coordination with, a request for CA assistance. One option for pursuing both CA assistance and a review by Appeals is through Simultaneous Appeals Procedures (“SAP”). With the consent of the relevant parties involved, taxpayers may also choose to “sever” their CA issues from the other issues they pursue in Appeals.</li> <li>▪ The rules regarding SAP review are substantially changed in Rev. Proc. 2015-40. All questions regarding coordination between CA assistance and other administrative reviews of U.S.-initiated adjustments should be directed to the U.S. competent authority.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Rev. Proc. 2015-40, Sec. 6 – <i>Coordination of Competent Authority Process with the U.S. Administrative and Judicial Proceedings</i></li> <li>▪ Rev. Proc. 2015-40 Sec. 6 – <i>Coordination of the Competent Authority Process with U.S. Administrative and Judicial Proceedings</i></li> </ul>

# Step 5: Coordination of the CA Process (cont'd)

## Competent Authority Revenue Procedure 2015-40 Guidance: U.S.-Initiated Adjustment(s)

### Step 5

Considerations	Resources
<ul style="list-style-type: none"> <li>▪ Once the taxpayer's request for CA assistance is accepted, then the U.S. CA will assume exclusive jurisdiction over all issues for which it accepts the request.</li> <li>▪ The IRS administrative procedures, such as assessment of tax and collection, will be suspended only on the issues accepted by the U.S. CA. If at any time, the taxpayer decides to withdraw its request for assistance, then U.S. CA will return the issues to the relevant offices within the IRS. All other non-MAP issues should proceed as normal.</li> <li>▪ U.S. CA can condition acceptance of a taxpayer's CA request on the taxpayer signing a Form 870 to waive the restrictions on assessment and collection.</li> <li>▪ U.S. CA will limit the assistance that it provides if taxpayer executes a closing agreement or Form 870-AD.</li> </ul> <p> <b>CONSULTATION:</b> The examiner and taxpayers should consult with the U.S. competent authority before entering into an alternative dispute resolution ("ADR") program in case the program would be considered under the jurisdiction of IRS Appeals.</p>	<ul style="list-style-type: none"> <li>▪ Rev. Proc. 2015-40 Sec. 6.02 – <i>Exclusive Jurisdiction within the IRS</i></li> <li>▪ Rev. Proc. 2015-40 Sec. 2.08 – <i>Withdrawal of Request</i></li> <li>▪ Rev. Proc. 2015-40 Sec. 6.03 – <i>Coordination with IRS Examination</i></li> <li>▪ Rev. Proc. 2015-40, Sec. 6.03(3) – <i>Alternative Dispute Resolution</i></li> </ul>

# Step 5: Coordination of the CA Process (cont'd)

## Competent Authority Revenue Procedure 2015-40 Guidance: U.S.-Initiated Adjustment(s)

### [Step 5](#)

Considerations	Resources
<p><u>Coordination with Litigation</u></p> <ul style="list-style-type: none"> <li>▪ Subject to certain limited exceptions, U.S. CA will not accept a request if the taxpayer pursues litigation regarding the action for which it might otherwise pursue CA assistance.</li> <li>▪ One such exception to this rule is that the U.S. CA may accept or continue to consider a request for assistance after consulting with the Associate Chief Counsel International.</li> <li>▪ U.S. CA will not accept a request if the IRS designates the case for litigation.</li> <li>▪ If the negotiations between the U.S. and foreign competent authorities cannot reach a resolution, the taxpayer may invoke its rights under the treaty to have its case decided through binding arbitration, but only if the treaty provides for mandatory binding arbitration.</li> </ul>	<ul style="list-style-type: none"> <li>▪ <i>Rev. Proc. 2015-40 Sec. 6.05 – Coordination with Litigation</i></li> <li>▪ <i>Rev. Proc. 2015-40 Sec. 9 – Results of Competent Authority Case</i></li> </ul>

# Step 6: Role of the Taxpayer

## Competent Authority Revenue Procedure 2015-40 Guidance: U.S.-Initiated Adjustment(s)

### Step 6

Role of the Taxpayer in CA Assistance Request Process

Considerations	Resources
<p>Some of the duties of taxpayer with respect to its CA request are as follows:</p> <ul style="list-style-type: none"> <li>▪ Taxpayer must follow the procedures set forth in Rev. Proc. 2015-40, including following the rules of section 3 and the Appendix regarding the content and format of its submission.</li> <li>▪ Taxpayer must be aware of the provisions concerning the circumstances under which the U.S. CA may deny assistance or cease providing assistance. Among other things, taxpayer must, to the extent requested by the competent authorities, actively contribute to the MAP discussions and must timely provide additional information, which is essential for both competent authorities to understand the case.</li> <li>▪ In the foreign country, taxpayer is advised to avoid the termination of its right to challenge any tax determination under applicable periods of limitation.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Rev. Proc. 2015-40, Sec. 3 – <i>Procedures for Filing Competent Authority Requests</i></li> <li>▪ Rev. Proc. 2015-40 Sec. 7 – <i>Acknowledgement of Receipt and Denial of Assistance</i></li> </ul>

# Step 6: Role of the Taxpayer (cont'd)

## Competent Authority Revenue Procedure 2015-40 Guidance: U.S.-Initiated Adjustment(s)

### [Step 6](#)

Considerations	Resources
<ul style="list-style-type: none"> <li>▪ Rev. Rul. 92-75 states that unless efforts are pursued to obtain refunds from a foreign country, no U.S. foreign tax credit will be allowed for deemed foreign taxes paid with respect to IRC 482 allocations or any other IRC section. Taxpayer must show it has exhausted all of its effective and practical remedies available under treaty. For example, in a case of foreign initiated adjustment, taxpayer would usually be expected to have sought assistance of the competent authorities in order to have exhausted its administrative remedies.</li>   <li>▪ Under most U.S. tax treaties, if the taxpayer files a CA request, U.S. refunds (and refunds in many foreign jurisdictions) due pursuant to the MAP resolution will be implemented irrespective of any procedural limitation in domestic law, provided certain notification requirements under the treaty are satisfied within the time limit. For example, the taxpayer must notify the other treaty partner. This is an annual notification requirement until the CA case has been resolved.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Treas. Reg. 1.901-2(e)(e) – Amount of Income Tax that is Creditable</li> <li>▪ Rev. Rul. 92-75 – Foreign Tax Credit</li>   <li>▪ Rev. Prov. 2015-40, Sec. 12 – <i>Treaty Notifications</i></li> <li>▪ Rev. Prov. 2015-40, Sec. 12.04 – <i>Annual Notification Requirement</i></li> </ul>

# Step 6: Role of the Taxpayer (cont'd)

## Competent Authority Revenue Procedure 2015-40 Guidance: U.S.-Initiated Adjustment(s)

### [Step 6](#)

Considerations	Resources
<ul style="list-style-type: none"><li>▪ Satisfying the requirements of this revenue procedure will not necessarily keep the domestic statute of limitations open in the other Contracting State. In such cases, taxpayers should take appropriate action to protect the foreign statute of limitations by, for example, satisfying any applicable notification and compliance requirements in that foreign country.</li><li>▪ Under certain U.S. tax treaties, there are specific timing requirements for requesting CA assistance as specified in the treaty. In case of a conflicting provision, the requirements set forth in the U.S. tax treaty take precedence over the provisions in Rev Proc. 2015-40.</li><li>▪ Taxpayer is responsible for seeking appropriate correlative adjustments with respect to the U.S or tax treaty countries.</li></ul>	<ul style="list-style-type: none"><li>▪ Rev. Proc. 2015-40, Sec. 3 – <i>Procedures for Filing CA Requests</i></li></ul>



# Step 6: Role of the Taxpayer (cont'd)

## Competent Authority Revenue Procedure 2015-40 Guidance: U.S.-Initiated Adjustment(s)

### [Step 6](#)

Considerations	Resources
<ul style="list-style-type: none"><li>▪ Taxpayer may request that the terms of a CA for the year under audit be extended to cover the tax returns filed in the subsequent taxable years. To conform the member's accounts to the CA adjustment(s), funds may need to be repatriated to settle accounts payable/receivable. Rev. Proc. 99-32, 1999-2 C.B. 296 generally governs the repatriation payments and allows for specific treatment of repatriation payments between the affected related parties. In a case where the U.S. CA determine the terms of repatriation in its agreement, then those terms govern and take precedence over Rev. Proc. 99-32.</li></ul>	<ul style="list-style-type: none"><li>▪ Practice Unit, <i>Revenue Procedure 99-32 Inbound Guidance</i>, DCN: ISO/P/01_07_02-01(formerly ISO 9411.07_03 (2013))</li></ul>

# Step 7: Roles of the APMA and TAIT

## Competent Authority Revenue Procedure 2015-40 Guidance: U.S.-Initiated Adjustment(s)

### Step 7

Roles of the APMA Program and TAIT in CA Assistance Request Process

Considerations	Resources
<ul style="list-style-type: none"> <li>▪ The U.S. competent authority has authority to interpret and 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.</li> <li>▪ 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.</li> <li>▪ APMA has primary responsibility for cases arising under the business profits and associated enterprises articles of U.S. tax treaties.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Rev. Proc. 2015-40, Sec. 2 – <i>Scope and General Application</i></li> <li>▪ IRM 4.60.2.3(1) – <i>U.S.-Initiated Cases</i></li> </ul>

# Step 7: Roles of the APMA and TAIT (cont'd)

## Competent Authority Revenue Procedure 2015-40 Guidance: U.S.-Initiated Adjustment(s)

### [Step 7](#)

Considerations	Resources
<ul style="list-style-type: none"> <li>▪ TAIT has primary responsibility for cases arising under all other articles of U.S. tax treaties. TAIT also has primary responsibility for cases concerning estate and gift taxes, which typically implicate estate and gift tax treaties.</li> <li>▪ 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.</li> <li>▪ In presenting the U.S. position to, and in negotiating with, a treaty partner, the U.S. CA relies on a well-developed MAP Report prepared by the examiner at the completion of the allocation adjustment.</li> <li>▪ When taxpayer submits to the U.S. CA a request for CA assistance, the U.S. CA will acknowledge in writing if the request is complete, and whether it accepts the request. U.S. CA will also include the name and the contact information of the assigned representative and any other supplemental information.</li> </ul>	<ul style="list-style-type: none"> <li>▪ IRM 4.60.2.3(2) – <i>Foreign Initiated Cases</i></li> <li>▪ IRM 4.60.2.4 – Well developed MAP report</li> <li>▪ Rev. Proc. 2015-40, Sec. 7.01 – <i>Acknowledgement of Receipt and Denial of Assistance, In General</i></li> </ul>

# Step 7: Roles of the APMA and TAIT (cont'd)

## Competent Authority Revenue Procedure 2015-40 Guidance: U.S.-Initiated Adjustment(s)

### [Step 7](#)

Considerations	Resources
<ul style="list-style-type: none"> <li>▪ After the issue has been referred to the U.S.CA for U.S.-Initiated adjustment, the U.S. CA will assume exclusive jurisdiction over the issues it has accepted. These issues are not subject to the concurrent jurisdiction of IRS Appeals or any other division of the IRS. At the request of the taxpayer (and concurrence of U.S. CA), IRS Appeals may simultaneously work with CA on a U.S.-initiated adjustment.</li> <li>▪ U.S. CA may deny or cease to provide assistance by notifying the taxpayer, in certain circumstances.</li> <li>▪ It is generally expected that the outcome of the issue referred to a CA will be resolved with a complete or partial relief from double taxation in accordance with the applicable U.S. tax treaty. If CA is not able to reach a resolution, then the arbitration rules under the applicable U.S. tax treaty will apply, if the U.S. tax treaty provides for mandatory binding arbitration.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Rev. Proc. 2015-40 Sec. 7.02 – <i>Denial and Termination of Assistance</i></li> <li>▪ Rev. Proc. 2015-40, Sec. 6 – <i>Coordination of the Competent Authority Process with Administrative and Judicial Proceedings</i></li> <li>▪ Rev. Proc. 2015-40 Sec. 10 – <i>Arbitration</i></li> </ul>

# Step 8: Role of an Examiner

## Competent Authority Revenue Procedure 2015-40 Guidance: U.S.-Initiated Adjustment(s)

### Step 8

Role of the Examiner in CA Assistance Request Process

Considerations	Resources
<p>The examiner plays major role at various stages of the case, such as in preparation of the issue to refer to CA assistance, during the CA process and after CA resolution.</p> <p><u>Preparation to Refer to CA Assistance</u></p> <ul style="list-style-type: none"> <li>▪ When an examiner makes a proposed adjustment and the issue may potentially lead to double taxation, or taxation otherwise not in accordance with a U.S. tax treaty, the taxpayer must be notified of its right to seek CA assistance.</li> <li>▪ In general, the examiner will issue Letter 1853(P) or Letter 1915(P) to the taxpayer when an adjustment relating to any tax treaty article is proposed and, for example, any of the following relationships are present:               <ul style="list-style-type: none"> <li>- Parent/Affiliate</li> <li>- Brother/Sister Corporation</li> <li>- Foreign Corporation/U.S. Branch (Form 1120F)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ IRM 4.60.2.1 – <i>Notification to Taxpayers of Potential Double Taxation</i></li> </ul>

# Step 8: Role of an Examiner (cont'd)

## Competent Authority Revenue Procedure 2015-40 Guidance: U.S.-Initiated Adjustment(s)

### [Step 8](#)

Considerations	Resources
<p><u>Preparation to Refer to CA Assistance (cont'd)</u></p> <p>The examiner plays several important roles in the process. An important role is providing the taxpayer with Letter 1853(P)/1915(P) to notify it of its rights to seek competent authority assistance in the face of a U.S.-initiated adjustment.</p> <ul style="list-style-type: none"> <li>▪ A separate schedule should be prepared for each treaty country entity or U.S. territory entity involved. This schedule is not on the form publishing site. It can be found in IRM Exhibit 4.60.2-3. Issues should be clearly identified with appropriate IRC section / UIL code.</li> <li>▪ If the expiration of the statute of limitations of the foreign entity is imminent, estimates can be used.</li> <li>▪ If the same issue has been developed in prior audits, then the examiner should issue the MAP letter after determining that there has been no change to the relevant facts or applicable laws in the current period.</li> </ul>	<ul style="list-style-type: none"> <li>▪ IRM 4.60.2-3, Exhibit – <i>Double Taxation Issue Schedules 1853(P)/1915(P)</i></li> <li>▪ IRM 4.60.2.1 (2) – MAP Letter for Carryover of Prior Year Issues</li> </ul>

# Step 8: Role of an Examiner (cont'd)

## Competent Authority Revenue Procedure 2015-40 Guidance: U.S.-Initiated Adjustment(s)

### [Step 8](#)

Considerations	Resources
<p><u>Forms Used in the MAP Process:</u></p> <ul style="list-style-type: none"> <li>▪ Form 3963 (International Examiner's Report) is the first sheet of the MAP Report. Page 1 serves as the cover sheet. Part 4 at the bottom of page 1 serves as procedural reminder regarding requirements. The examiner must include the following information:               <ul style="list-style-type: none"> <li>– Description of taxpayer's U.S. business operations including subsidiaries involved in MAP request.</li> <li>– Copies of Form 3963 and work papers pertinent to the MAP issue.</li> <li>– Statement as to taxpayer's cooperation.</li> </ul> </li> <li>▪ Forms used in the MAP process/Part 4 of Form 3963 must contain:               <ul style="list-style-type: none"> <li>– A statement indicating the examiner's position concerning the facts in the MAP report (if taxpayer has submitted a formal MAP request) and if the examiner agrees/disagrees with the position.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ IRM 4.60.9 – International Examiner's Report</li> <li>▪ IRM 4.60.9.4 – <i>Specific Instructions for Preparing Form 3963</i></li> <li>▪ Form 3963 – <i>International Examiner's Report</i></li> </ul>

# Step 8: Role of an Examiner (cont'd)

## Competent Authority Revenue Procedure 2015-40 Guidance: U.S.-Initiated Adjustment(s)

### [Step 8](#)

Considerations	Resources
<p><u>Forms Used in the MAP Process (cont'd)</u></p> <p>Forms used in the MAP process/Part 4 of Form 3963 must contain (cont'd):</p> <ul style="list-style-type: none"> <li>- The status of the applicable statutes of limitations.</li> <li>- An evaluation of taxpayer's transactions and if they are arm's length, in transfer pricing cases.</li> <li>- The request for economic assistance during the exam and the results.</li> <li>- Copies of pattern letters issued.</li> </ul> <ul style="list-style-type: none"> <li>▪ Form 4549B, report should list each recommended adjustment as follows:           <ul style="list-style-type: none"> <li>- Primary adjustment, for example income adjustment</li> <li>- Sourcing adjustment</li> <li>- Foreign tax credit adjustment</li> <li>- Alternative adjustment</li> <li>- Dollar amount of adjustment</li> </ul> </li> <li>▪ Form 886-A should be attached for each primary and alternative adjustment.</li> <li>▪ Form 5701, NOPA.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Form 4549B – <i>Income Tax Examination Changes</i></li> <li>▪ Form 886-A – <i>Explanation of Items</i></li> <li>▪ Form 5701 – <i>Notice of Proposed Adjustment</i></li> </ul>



# Step 8: Role of an Examiner (cont'd)

## Competent Authority Revenue Procedure 2015-40 Guidance: U.S.-Initiated Adjustment(s)

### Step 8

Considerations	Resources
<ul style="list-style-type: none"> <li>▪ If taxpayer requests CA assistance, the U.S. competent authority will expect the examiner to provide its report on the adjustment. The examiner should expect to work with the U.S. competent authority so that the assigned team leader or analyst understands the facts and circumstances of the case and the basis for the taxpayer's request.</li> <li>▪ A well prepared MAP report provides the U.S. CA analyst with complete description of the facts and legal basis for the adjustment to aid in successful negotiations with U.S. tax treaty partners. It is an important document for the U.S. CA.</li> </ul> <p><u>Examiner Role During the CA Process</u></p> <ul style="list-style-type: none"> <li>▪ In addition to informing a taxpayer of its rights to pursue assistance of the U.S. CA, the examiner has an important role in facilitating the U.S. CA's analysis of issues presented in the taxpayer's request. This is done by providing the U.S. CA with a clear and comprehensive MAP report. The contents of the MAP report and the procedures to follow in providing the report to the U.S. CA are set forth in IRM 4.60.2.4. In case of transfer pricing issues, the MAP report must contain reasons why the method selected by the IRS is the "best method" under Treas. Reg. 1.482-1(c).</li> </ul>	<ul style="list-style-type: none"> <li>▪ IRM 4.60.2.4 – <i>MAP Report</i></li> <li>▪ IRM 4.60.2.4(2) – Items to be included in a MAP report for various types of proposed adjustments</li> </ul>

# Step 8: Role of an Examiner (cont'd)

## Competent Authority Revenue Procedure 2015-40 Guidance: U.S.-Initiated Adjustment(s)

### [Step 8](#)

Considerations	Resources
<p><u>Examiner Role During the CA Process (cont'd)</u></p> <ul style="list-style-type: none"><li>▪ If a taxpayer requests assistance of the U.S. CA during the course of an examination, the normal processing of a case should proceed except for issues that are covered by the request.</li><li>▪ The examiner may also be asked to provide the U.S. CA with any further information about the taxpayer or its affiliates that is needed for the evaluation of the issue.</li><li>▪ The APMA Program does not control statutes or initiate statute extensions. The examiner assigned to the case while under the jurisdiction of APMA will be expected to manage and control statutes and statute extensions.</li></ul>	<ul style="list-style-type: none"><li>▪ IRM 4.60.2.3 – <i>Processing Examination Cases</i></li></ul>

# Step 8: Role of an Examiner (cont'd)

## Competent Authority Revenue Procedure 2015-40 Guidance: U.S.-Initiated Adjustment(s)

### [Step 8](#)

Considerations	Resources
<p><u>Examiner Role After the CA Reach a Mutual Agreement</u></p> <ul style="list-style-type: none"> <li>▪ The double taxation can be alleviated (in full) in one of three ways: (1) the U.S. CA can withdraw the adjustment; (2) the CA of the treaty partner can provide full correlative relief; or (3) the two CAs can reach an agreement whereby some portion of the adjustment is withdrawn and correlative relief is provided for the remainder.               <ul style="list-style-type: none"> <li>– Once the case is concluded, the U.S. CA will send a disposition memorandum to the Revenue Agent (through the Internal Referral Recipient) to implement the mutual agreement that has been reached.</li> <li>– In certain cases the CA resolution may require the examiner to make certain withholding tax adjustment, with possibility of correlative relief (e.g., an increased foreign tax credit) provided in foreign jurisdiction.</li> </ul> </li> <li>▪ When a CA resolution results in 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 CA resolution might also include CA repatriation as a means to conform their accounts to reflect the primary adjustment.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Rev. Proc. 2015-40 Sec. 4.02(2) – <i>Competent Authority Repatriation</i></li> <li>▪ Practice Unit, <i>Revenue Procedure 99-32 Inbound Guidance</i>, DCN: ISO/P/01_07_02-01(formerly ISO 9411.07_03 (2013))</li> </ul>

# Step 8: Role of an Examiner (cont'd)

## Competent Authority Revenue Procedure 2015-40 Guidance: U.S.-Initiated Adjustment(s)

### [Step 8](#)

Considerations	Resources
<p><u>Examiner Role After the CA Reach a Mutual Agreement (cont'd)</u></p> <ul style="list-style-type: none"><li>▪ In the absence of the specific provisions governing repatriation set forth by the U.S. CA, in the applicable MAP settlement (or other closing documents), the provisions of the Code and regulations (and revenue procedures, especially, Rev. Proc. 99-32 (or its successor)) as well as applicable treaty article(s), with respect to repatriation may apply.</li></ul>	<ul style="list-style-type: none"><li>▪ Rev. Proc. 2015-40 Sec. 4.02(2)(c) – <i>Terms and Effect of Competent Authority Repatriation</i></li></ul>

# Definitions

## Competent Authority Revenue Procedure 2015-40 Guidance: U.S.-Initiated Adjustment(s)

### Description

- **Controlled Parties:** Two or more organizations, trades, or businesses (whether or not incorporated, whether or not organized in the United States, and whether or not affiliated) owned or controlled directly or indirectly by the same interests. Controlled entities are often referred to as “related” parties.
- **Controlled Transaction:** Transaction between two or more Controlled Parties.
- **Transfer Pricing Methodology (“TPM”):** Organisation for Economic Co-operation and Development (“OECD”), transfer pricing guidelines, as well as the regulations under IRC 482 prescribe specific methods to evaluate the pricing of related party transactions. The methods prescribed are specific to each type of transactions.
- **Best Method:** The method that, under the facts and circumstances, provides the most reliable measure of an arm’s length result.

# Examples of the Process

## Competent Authority Revenue Procedure 2015-40 Guidance: U.S. Initiated Adjustment(s)

### Description

In general as illustrated on slide #9, a MAP request may involve issues related to, sale of tangible goods or licensing fees or royalty fees. In certain situations, CA may considered interrelated issues in evaluating arms length pricing. Following are few examples of interrelated issues under Rev. Proc. 2015-40, Sec. 2.04(2). This is not an exclusive list:

#### Example 1:

- During year 1, intangible property (IP) was sold by FP to a USS. In year 2, FP licenses the same IP from USS. In year 2, the examiner makes an adjustment to FP's income related to the IP and FP files a request for CA assistance. Although in year 2 only the licensing transaction is under consideration by CA, the IP sale occurred in year 1 will be considered as interrelated issue in evaluating the licensing transaction.

#### Example 2:

- During year 1, IP was sold by FP to USS. In year 2, USS provided services to FP using the same IP it received from FP. While evaluating the compensation for the services, for consistency, the valuation of the transferred IP will be considered by CA.

#### Example 3:

- While evaluating the valuation of a platform contribution transaction in a cost-sharing arrangement under Treas. Reg. §1.482-7, the U.S. CA may also consider whether the intangible development costs incurred pursuant to the arrangement were properly shared.

#### Example 4:

- FP (located in a treaty country) sold goods to USS, and USS in turn resells the goods to another customer in a non-treaty country. While evaluating pricing of goods between FP and USS, the CA may consider the USS's resale price of goods to a customer in a non-treaty country.

# Examples of the Process (cont'd)

## Competent Authority Revenue Procedure 2015-40 Guidance: U.S. Initiated Adjustment(s)

### Description

#### Example of the Time Limit for Seeking the CA Assistance as Stipulated in a Treaty Between the U.S. and the U.K.

- From Paragraph 1, Article 26, of the U.S.-U.K. Treaty (as amended through 2002 Protocol): 1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the CA of the Contracting State of which he is a resident or national. The case must be presented within 3 years from the first notification of the action resulting in taxation not in accordance with the provisions of this Convention, or if later, within 6 years from the end of the taxable year or chargeable period in respect of which that taxation is imposed or proposed.
- The case must be brought to the competent authorities within three years from the first notification of the action resulting in tax not in accordance with the treaty rules. For example, if the taxpayer was notified by U.K. on June 15, Year 7 of a transfer pricing adjustment that affected the taxpayer's U.S. tax year ended Dec. 31, Year 2, the taxpayer could present the case to the U.S. CA at any time before June 15, Year 10, since it is within the three year period.

# Other Considerations / Impact to Audit

<b>Competent Authority Revenue Procedure 2015-40 Guidance: U.S.-Initiated Adjustment(s)</b>	
<b>Considerations</b>	<b>Resources</b>
<ul style="list-style-type: none"><li>▪ The examiner assigned to the case need to manage and control statutes and statute extensions while the case is under the jurisdiction of APMA.</li></ul>	<ul style="list-style-type: none"><li>▪ IRM 4.60.2.3 – <i>Processing Examination Cases</i></li></ul>
<ul style="list-style-type: none"><li>▪ Nearly all U.S. income tax treaties contain a provision allowing for Competent Authorities Assistance. The operation of each treaty varies based on the terms of the treaty and type of issue involved. When examining issues involving Competent Authority assistance, the examiner needs to refer to the terms of the respective treaties</li></ul>	



# Index of Referenced Resources

## Competent Authority Revenue Procedure 2015-40 Guidance: U.S.-Initiated Adjustment(s)

Rev. Proc. 2015-40 – Requesting Competent Authority Guidance

Rev. Proc. 2006-23 – Procedure to obtain assistance from the U.S. Competent Authority

Rev. Proc. 2015-41 – Procedures for Advance Pricing Agreements

Rev. Rul. 92-75 – Foreign Tax Credit

IRM 4.60.2 – *Mutual Agreement Procedures and Report Guidelines.*

IRM 4.60.9 – International Examiner's Report

Form 886-A – *Explanation of Items*

Form 3963 – *International Examiner's Report*

Form 4549B – *Income Tax Examination Changes*

Form 5701 – *Notice of Proposed Adjustment*

Letter 1853(P)/1915(P) – Pattern Letter

Treas. Reg. 1.901-2(e) – Amount of Income Tax that is Creditable

U.S. Japan Treaty, Art. 25(1)

# Training and Additional Resources

Competent Authority Revenue Procedure 2015-40 Guidance: U.S.-Initiated Adjustment(s)	
Type of Resource	Description(s)
Saba Meeting Sessions	<ul style="list-style-type: none"><li>▪ <i>Competent Authority &amp; MAP – 2015 SABA</i></li></ul>
Issue Toolkits	<ul style="list-style-type: none"><li>▪ <i>Audit Tool – Transfer Pricing Audit Road Map</i></li><li>▪ <i>IRM 4.60.2 – Mutual Agreement Procedures and Report Guidelines</i></li><li>▪ <i>IRM 4.60.3 – Tax Treaty Related Matters</i></li><li>▪ <i>IRM 4.60.8 – International Procedures, International Examination and Processing Procedures</i></li></ul>
White Papers / Guidance	<ul style="list-style-type: none"><li>▪ <i>Rev. Proc. 2015-40 – Procedures for Requesting Competent Authority Assistance under Tax Treaties</i></li></ul>

# Glossary of Terms and Acronyms

Term/Acronym	Definition
ACAP	Accelerated Competent Authority Procedures
ADR	Alternative Dispute Resolution
AOA	Authorized OECD Approach
APA	Advanced Pricing Agreement
APMA	Advance Pricing and Mutual Agreement Program
BNA TMP	Bureau National Affairs, Tax Management Portfolio
CA	Competent Authority
IP	Intellectual Property
IRM	Internal Revenue Manual
ISI	Income Shifting Inbound
ISO	Income Shifting Outbound
LOB	Limitation on benefits
MAP	Mutual Agreement Procedures
MNE	Multinational Enterprise
NOPA	Notice of proposed adjustment
OECD	Organisation for Economic Co-operation and Development
PE	Permanent Establishment

# Glossary of Terms and Acronyms (cont'd)

Term/Acronym	Definition
SAP	Simultaneous Appeals Procedures
TAIT	Treaty Assistance and Interpretation Team
TPM	Transfer Pricing Methodology
U.S. CA	U.S. Competent Authority

# Index of Related Practice Units

Associated UIL(s)	Related Practice Unit	DCN
▪ 9411	<i>Overview of IRC Section 482</i>	▪ ISO/T/01-01(formerly ISO/9411.07_01(2013))
▪ 9411	<i>Comparability Analysis for Tangible Goods Transactions – Outbound</i>	▪ ISO/P/01_05-01(formerly ISO/PUO/V_1-01(2014))
▪ 9411.05	<i>Sales of Tangible Goods from a CFC to a USP – CUP Method</i>	▪ ISO/T/01_05-02(formerly ISO/9411.05_01(2013))
▪ 9411.0	<i>Advance Pricing Agreement for Tangible Goods Transactions – Outbound</i>	▪ ISO/P/01_05-04
▪ 9411.07	<i>Review of Transfer Pricing Documentation for Outbound Taxpayers</i>	▪ ISO/P/01_07_01-01(formerly ISO/PUO/P_1.7_02(2014))
▪ 9411.07	<i>Revenue Procedure 99-32 Outbound Guidance</i>	▪ ISO/P/01_07_02-01(formerly ISO 9411.07_03 (2013))
▪ 9413.01	<i>Exhaustion of Remedies</i>	▪ FTM/P/03_01_02-01 (formerly FTM/9413.01-02_01(2013))