



EFFECTIVE DATE

(01-09-2023)

PURPOSE

- (1) This transmits revised IRM 4.61.3, International Program Audit Guidelines, Development of IRC 482 Cases.

MATERIAL CHANGES

- (1) IRM 4.61.3.1: Updated policy owner to ADCCI, SPG, Policy Office.
- (2) IRM 4.61.3.1.4: Changed title to Program Management and Review and revised language.
- (3) IRM 4.61.3.1.5: Added Program Controls section.
- (4) IRM 4.61.3.2: Renamed section title and revised content in Item (2) relating to de minimus adjustments.
- (5) IRM 4.61.3.3.1, 4.61.3.3.3 and 4.61.3.4.3.1: Removed references to CBA as TTPO has ownership of IRC 482.
- (6) IRM 4.61.3.3.1: Revised Item (3) relating to description of consultation with APMA program.
- (7) IRM 4.61.3.3.11(4): Replaced outdated reference to CIC with LCC.
- (8) IRM 4.61.3.4.3.1: Revised wording of Item (1)(b) relating to the issuance of the Initial Transfer Pricing Documentation IDR.
- (9) IRM 4.61.3.4.9: Added paragraphs about the application of the periodic adjustment rules.
- (10) IRM 4.61.3.4.10: Added paragraphs about the application of the periodic adjustment rules for CSAs.
- (11) IRM 4.61.3.6: Added clarifying information on coordination with U.S. Competent Authority.
- (12) IRM 4.61.3.7.4: Moved reference to CbC report training from previous section and updated references from ELMS to ITM.
- (13) Revised or removed content to comply with IRM 4.51.2, LB&I Administrative Guidance, for the following subsections:

Subsection	Title
4.61.3.2	Introduction
4.61.3.2.1	IRC 482 Regulations
4.61.3.3	Overview of the Planning Phase for IRC 482 Examinations
4.61.3.3.7	Assistance from Counsel
4.61.3.3.8	Initial Transfer Pricing Risk Assessment
4.61.3.3.9	Internal Planning Discussions

Subsection	Title
4.61.3.3.11	Opening Conference, Issue Discussion Meetings and Examination Plan
4.61.3.4.4(8)	Issue Management and Development
4.61.3.4.8	Taxpayer's Intercompany Transfer of Tangible Property
4.61.3.4.9	Taxpayer's Intercompany Transfer of Intangible Property
4.61.3.4.10	Cost Sharing Arrangements (CSAs) Under IRC 482 Regulations
4.61.3.4.11	Taxpayer's Intercompany Services Transactions
4.61.3.4.12	Searching for Comparable Uncontrolled Transactions
4.61.3.4.12.2	Functional Analysis
4.61.3.4.12.3	Comparable Transaction Risk Analysis
4.61.3.4.12.4	Contractual Terms
4.61.3.4.12.5	Economic Conditions
4.61.3.4.12.6	Property or Services
4.61.3.4.13	Selecting the Best Method
4.61.3.4.13.1	Transfer Pricing Review Panel (TPRP)
4.61.3.4.14	Computing the Adjustment
4.61.3.4.16	Economist Report
4.61.3.4.18	Penalty Considerations
4.61.3.5.4	Application of Rev. Proc. 99-32
4.61.3.6	Coordination with the U.S. Competent Authority
4.61.3.7	Country-by-Country (CbC) Report

- (14) IRM 4.61.3.1.6: Moved content to IRM Exhibit 4.61.3-2 and changed the exhibit name to Related Resources.
- (15) Editorial changes made throughout.

EFFECT ON OTHER DOCUMENTS

This IRM supersedes IRM 4.61.3, Development of IRC 482 Cases, dated December 13, 2018.

AUDIENCE

All LB&I personnel

Theodore D. Setzer
Assistant Deputy Commissioner Compliance Integration
Large Business and International Division

4.61.3

Development of IRC 482 Cases

Table of Contents

4.61.3.1 Program Scope and Objectives

4.61.3.1.1 Background

4.61.3.1.2 Authority

4.61.3.1.3 Roles and Responsibilities

4.61.3.1.4 Program Management and Review

4.61.3.1.5 Program Controls

4.61.3.1.6 Acronyms

4.61.3.1.7 Related Resources

4.61.3.2 Introduction

4.61.3.3 Overview of the Planning Phase for IRC 482 Examinations

4.61.3.3.1 Issue Team Member Collaboration and Coordination

4.61.3.3.2 Case Manager Roles and Responsibilities

4.61.3.3.3 Issue Manager Roles and Responsibilities

4.61.3.3.4 Managers of Team Members Who Are Not Designated as the Case Manager or Issue Manager

4.61.3.3.5 Other Specialists

4.61.3.3.6 Other Resources for the Issue Team

4.61.3.3.7 Assistance from Counsel

4.61.3.3.8 Initial Transfer Pricing Risk Assessment

4.61.3.3.9 Internal Planning Discussions

4.61.3.3.10 Issue Team Timelines and Key Milestones

4.61.3.3.11 Opening Conference, Issue Discussion Meetings and Examination Plan

4.61.3.4 Overview of the Execution Phase for IRC 482 Examinations

4.61.3.4.1 Examination Techniques to Gather Evidence

4.61.3.4.2 Researching Federal Tax Law

4.61.3.4.3 Information Document Request (IDR) Process

4.61.3.4.3.1 Issuing the Initial Transfer Pricing Documentation IDR for the Taxpayer's IRC 6662(e)
Documentation

4.61.3.4.4 Issue Management and Development

4.61.3.4.5 Continuous Risk Analysis

4.61.3.4.6 Taxpayer Meetings

4.61.3.4.7 Taxpayer's Intercompany Loans or Advances

4.61.3.4.8 Taxpayer's Intercompany Transfer of Tangible Property

4.61.3.4.9 Taxpayer's Intercompany Transfer of Intangible Property

4.61.3.4.10 Cost Sharing Arrangements (CSAs) Under IRC 482 Regulations

4.61.3.4.11 Taxpayer's Intercompany Services Transactions

- 4.61.3.4.12 Searching for Comparable Uncontrolled Transactions
 - 4.61.3.4.12.1 Comparability Analysis
- 4.61.3.4.13 Selecting the Best Method
 - 4.61.3.4.13.1 Transfer Pricing Review Panel (TPRP)
- 4.61.3.4.14 Computing the Adjustment
- 4.61.3.4.15 Written Acknowledgment of the Facts (AOF)
- 4.61.3.4.16 Economist Report
- 4.61.3.4.17 Notice of Proposed Adjustment (NOPA)
- 4.61.3.4.18 Penalty Considerations
- 4.61.3.5 Overview of the Resolution Phase for IRC 482 Examinations
 - 4.61.3.5.1 Issue Resolution
 - 4.61.3.5.2 Management Involvement in the Issue Resolution Process
 - 4.61.3.5.3 Completing the Transfer Pricing Examination
 - 4.61.3.5.4 Application of Rev. Proc. 99-32
 - 4.61.3.5.5 Appeals
- 4.61.3.6 Coordination with U.S. Competent Authority
- 4.61.3.7 Country-by-Country (CbC) Report
 - 4.61.3.7.1 Appropriate Use Guidelines
 - 4.61.3.7.2 The CbC Report and the Examination Process
 - 4.61.3.7.3 CbC Report Related Resources

Exhibits

- 4.61.3-1 Acronyms
- 4.61.3-2 Related Resources

4.61.3.1
(01-09-2023)
Program Scope and Objectives

- (1) This IRM provides general guidelines in the development of IRC 482 cases. The guidelines are intended to apply both to inbound and outbound transactions.
- (2) **Purpose:** The purpose of this IRM is to provide transfer pricing examination guidelines.
- (3) **Audience:** The intended audience is all Large Business & International (LB&I) personnel working transfer pricing cases.
- (4) **Policy Owner:** LB&I Policy under the Strategy, Policy and Governance (SPG) office in the Assistant Deputy Commissioner Compliance Integration (ADCCI) organization.
- (5) **Program Owner:** Treaty & Transfer Pricing Operations (TTPO).
- (6) **Primary Stakeholders:** LB&I personnel.
- (7) **Program Goals:** The goal of this program is to provide processes to assist with the planning, execution and resolution of transfer pricing examinations.

4.61.3.1.1
(01-09-2023)
Background

- (1) IRC 482 transfer pricing examinations are factually intensive and require a thorough analysis of functions performed, resources employed and risks assumed along with an accurate understanding of relevant financial information.
- (2) This IRM incorporates LB&I's Transfer Pricing Examination Process (TPEP) to assist agents with transfer pricing issue development and examinations. The TPEP provides best practices and processes to assist with the planning, execution and resolution of transfer pricing examinations consistent with Publication 5125, LB&I Examination Process (LEP).
- (3) See *irs.gov* for the most recent TPEP or other procedural guidance that may be applicable to transfer pricing examinations.

4.61.3.1.2
(12-13-2018)
Authority

- (1) See IRM 4.46.1.1.2, Authority.

4.61.3.1.3
(12-13-2018)
Roles and Responsibilities

- (1) Personnel performing transfer pricing examinations, their managers and executives share an equal responsibility in the conduct of a quality transfer pricing examination. Also see IRM 4.46.1.1.3, Roles and Responsibilities.
- (2) For case manager responsibilities, see IRM 4.46.1.1.3.1, Case Manager Roles and Responsibilities.
- (3) For issue manager responsibilities, see IRM 4.46.1.1.3.2, Issue Manager Roles and Responsibilities.
- (4) For responsibilities of managers other than the case manager or issue manager, see IRM 4.46.1.1.3.3, Managers of Team Members Who Are Not Designated as the Case Manager or Issue Manager.

- 4.61.3.1.4
(01-09-2023)
Program Management and Review
- (1) TTPO directors prepare periodic briefing reports for the Commissioner, LB&I, on:
- Significant accomplishments and opportunities for improvement
 - Changes in procedures that have been implemented
 - Operational, technical, and staffing updates
 - Any other key information
- 4.61.3.1.5
(01-09-2023)
Program Controls
- (1) The relevant directors within TTPO (including the Director of Field Operations (DFO), Transfer Pricing Practice (TPP), and the Director, Advance Pricing and Mutual Agreement (APMA)) report to their respective directors on a continuous basis.
- (2) TTPO directors identify goals and objectives to be achieved by their organizations based on annual commitments of LB&I priorities.
- 4.61.3.1.6
(01-09-2023)
Acronyms
- (1) See Exhibit 4.61.3-1, Acronyms.
- 4.61.3.1.7
(01-09-2023)
Related Resources
- (1) See Exhibit 4.61.3-2, Related Resources.
- 4.61.3.2
(01-09-2023)
Introduction
- (1) This IRM provides general guidelines to issue teams in the development of IRC 482 cases. Issue teams should exercise care and good judgment when recommending IRC 482 adjustments.
- 4.61.3.3
(01-09-2023)
Overview of the Planning Phase for IRC 482 Examinations
- (1) The planning phase for a transfer pricing examination frames the anticipated scope of the examination. For information on the planning phase of an LB&I examination, see IRM 4.46.3, Planning the Examination.
- 4.61.3.3.1
(01-09-2023)
Issue Team Member Collaboration and Coordination
- (1) The Issue Selection and Collaboration Process should be used to determine if a specialist should be assigned to an Industry Case (IC). Refer to IRM 4.46.3, Planning the Examination, for more information. The team assigned to examine a specific issue, such as an intercompany transaction, is referred to as the issue team. For transfer pricing cases, the issue team will include members of the Transfer Pricing Practice (TPP). For examinations arising under LB&I campaigns, examination team members should follow the specific guidance provided for within the campaign. The transfer pricing issue team generally includes:
- Senior revenue agent (SRA) and revenue agent (RA)
 - Economist
 - Tax Law Specialist
- (2) In accordance with IRM 4.46.1.1.3, Roles and Responsibilities, there should be coordination and collaboration among team members and other specialists and advisors, including the:
- Case manager
 - Issue manager

- c. Team coordinator
- d. SRA and/or RA responsible for international issues
- e. Computer Audit Specialist (CAS)
- f. Counsel
- g. Other specialists and advisors, as necessary

- (3) For transactions between the U.S. taxpayer and related parties in U.S. treaty-partner countries that may generate adjustments, the transfer pricing issue team must consult with the Advance Pricing and Mutual Agreement (APMA) program to consider, among other things, whether the transactions are covered by an Advance Pricing Agreement (APA). For information on the APMA program, see IRM 4.61.3.6, Coordination with U.S. Competent Authority.

4.61.3.3.2
(12-13-2018)

Case Manager Roles and Responsibilities

- (1) See IRM 4.46.1.1.3.1, Case Manager Roles and Responsibilities.

4.61.3.3.3
(01-09-2023)

Issue Manager Roles and Responsibilities

- (1) For transfer pricing issues, TPP resources must be assigned to the examination and the TPP manager will be the issue manager. For examinations arising under LB&I campaigns, examination team members should follow the specific guidance provided for within the campaign.
- (2) See IRM 4.46.1.1.3.2, Issue Manager Roles and Responsibilities.

4.61.3.3.4
(12-13-2018)

Managers of Team Members Who Are Not Designated as the Case Manager or Issue Manager

- (1) See IRM 4.46.1.1.3.3, Managers of Team Members Who Are Not Designated as the Case Manager or Issue Manager.

4.61.3.3.5
(01-09-2023)

Other Specialists

- (1) Other specialists such as industry experts, engineers, financial product specialists and a CAS may also be requested, as needed, following appropriate referral processes.
- (2) If a specialist is assigned to the transfer pricing issue, the specialist should be consulted regarding internal meetings, Information Document Request (IDR) issuances and responses, questionnaires, interviews, tours, and other audit steps. For example, an engineer may be helpful touring a manufacturing plant or during interviews in a case in which software development processes are important.

4.61.3.3.6
(01-09-2023)

Other Resources for the Issue Team

- (1) The Transfer Pricing Practice Network (TPPN) is available to assist issue teams with case development transfer pricing and valuation issues and can connect issue teams to other employees with relevant industry knowledge and expertise.

4.61.3.3.7
(01-09-2023)

**Assistance from
Counsel**

- (1) LB&I Field Counsel should be consulted early and throughout the entire examination process. National Office Counsel, in coordination with LB&I Field Counsel, should be consulted on transfer pricing matters that are large, complex or involve controversial legal issues. Counsel is able to assist the issue team with all facets of the examination process.

4.61.3.3.8
(01-09-2023)

**Initial Transfer Pricing
Risk Assessment**

- (1) The issue team will complete an initial transfer pricing risk assessment. The purpose of the initial transfer pricing risk assessment is to identify specific transactions between the U.S. taxpayer and its affiliates warranting examination and its impact to other aspects of the tax return. See IRM 4.46.3.3.5.2, Overall Tax Impact. Priorities should be established through an issue-driven risk process, which compares the potential benefits to be derived from examining an issue to the resources required to perform the examination. See IRM 4.46.3.3, Risk Analysis Process, for information on general risk analysis of the return. The issue team should also establish if material intercompany transactions are with a treaty partner and consult with APMA to consider whether any intercompany transactions are covered by an APA in order to properly risk assess transactions and determine whether the issue should be examined.
- (2) The issue team should gain an understanding of the tax return and of the taxpayer's history, background, overall core business operations and profit drivers. Review the taxpayer's websites, investor relations materials including SEC registration statements, annual reports (Form 10-K and Form 20-F) and Regulation FD (Fair Disclosure) materials of public companies and certain other issuers, presentations of public companies, as well as foreign and private company research services. Also see IRM 4.46.3.3.5, Risk Analysis Factors to Consider.
- (3) Risk assessment includes the review of historical examination information and prior years' Issue Management System (IMS) information, if applicable, to identify potential controlled transactions. See IRM 4.46.3.3.1, Examiner's Preliminary Risk Analysis – Information Resources, on examiner's preliminary risk analysis relating to the documents from prior examinations, with an emphasis of the following items, but not limited to:
 - a. Taxpayer's transfer pricing documentation
 - b. NOPAs of prior transfer pricing issues
 - c. Prior economist's report
 - d. Other specialists' reports
 - e. Any legal advice
 - f. Taxpayer protests, examination's rebuttals to the taxpayer's protest and Appeals Case Memorandums (ACMs)
 - g. Any case historical notes
- (4) The current issue team should contact and meet with the issue team from the prior examination cycle, if possible.
- (5) The issue team should refer to the IRC 482 Audit Toolkit for general transfer pricing guidance and resources to assist with the initial risk assessment and throughout the transfer pricing examination. To assist in gaining an understanding of the tax return, the issue team can access the CAS Examination Resources webpage for a variety of applications and tools to conduct analysis of various returns. The Auditor's Workbench is also a tool that can be used to analyze data from Forms 1120, 1065, 1120S, and other tax return schedules and information returns that provide specific analysis of transfer pricing issues.

- (6) See IRM 4.61.3.7, Country-by-Country (CbC) Report, for more information about reviewing Form 8975 and the accompanying Schedules A (Tax Jurisdiction and Constituent Entity Information) in planning the examination. If the taxpayer is part of a foreign multinational enterprise but is not the ultimate parent, review a copy of the CbC Report that the U.S. receives from the foreign tax authority. Also see IRM 11.3.25.2, Information Received from Foreign Tax Authorities, for information on automatically exchanged foreign reports.
- (7) The issue team should compute key financial ratios for multiple years, make industry comparisons, and consider whether cross border income shifting is occurring. Ratios should be based on both tax and financial data. The ratios are useful as a diagnostic tool to help focus the examination. However, they do not provide a definitive indication as to whether the price for a controlled transaction achieves an arm's length result. To determine whether ratios indicate potential transfer pricing issues, the issue team should appropriately develop the relevant facts. Below are some of the tools that can be used to compute ratio analyses of the U.S. party and foreign related parties to the transaction:
- a. Auditor's Workbench - ratio analysis reports
 - b. Taxpayer Information Gateway (TIG) Report - company financial data, worldwide profitability analysis and historical information
 - c. Campaign and Case Built File - provides issue-focused financial ratios and analysis

Note: The IRS has subscriptions to other helpful tools. Subscription services may change over time, consult the TPPN with any questions.

- (8) The issue team should utilize research tools that can be helpful in understanding a company's overall business and profit drivers. Consider expected arm's length profit ranges for particular functions (for example, distribution, manufacturing, services, etc.) and geographic regions (for example, North America, Latin America, Asia, etc.). Substantial deviations from the standard industry ratios may indicate a need for further probe or inquiry.
- (9) While industry average returns can be used to assess transfer pricing risk, they alone cannot be used to make transfer pricing adjustments. See Treas. Reg. 1.482-1(d)(2).
- (10) The issue team will document their initial risk analysis. For information on conducting and documenting risk analysis performed as part of the examination, refer to IRM 4.46.3.3.6, Documenting the Risk Analysis.

4.61.3.3.9
(01-09-2023)
**Internal Planning
Discussions**

- (1) The issue team will conduct internal planning discussions. See the TPEP for a list of general agenda items and other topics specific to the transfer pricing examination that should be included in the internal planning discussions.
- (2) For more information on general internal planning and discussions, see also IRM 4.46.3.4, Internal Planning and Internal Planning Discussions.

4.61.3.3.10
(01-09-2023)
**Issue Team Timelines
and Key Milestones**

- (1) See IRM 4.46.3.4.8.4, Setting Tentative Timelines for the Case and Issues. The issue team should:
- a. Collaborate with the team coordinator and case manager regarding the potential transfer pricing issue(s).

- b. Establish a tentative timeline with key milestone dates for completion of the transfer pricing examination. Key milestone dates may include, but are not limited to, the due date for the mid-cycle risk analysis, the last date for which IDRs can be issued, and the estimated completion date for the examination.

4.61.3.3.11
(01-09-2023)
**Opening Conference,
Issue Discussion
Meetings and
Examination Plan**

- (1) The transfer pricing issue team will participate in the formal opening conference with the taxpayer if the issue team has been assigned at the time of the opening conference. For information on opening conference agenda topics see IRM 4.46.3.6.1, Opening Conference/Meeting Agenda, and IRM Exhibit 4.46.3-3, Sample Agenda for Opening Conference/Meeting.
- (2) The issue team should discuss the TPEP with the taxpayer in order to facilitate an understanding of the process and provide insight into what is expected during a transfer pricing examination.
- (3) The issue team should participate in issue discussions with the taxpayer after the preliminary transfer pricing risk analysis has been prepared. See IRM 4.46.3.8, Issue Discussion Meetings.
- (4) The issue team will prepare required examination plan forms for the transfer pricing issues(s) that will be incorporated into the overall case examination plan. The issue team will establish a plan to complete the transfer pricing examination in a timely manner. The transfer pricing examination plan should be developed in a transparent manner working with the taxpayer, be issue-driven, and specify the following: material intercompany transactions, audit steps, timeline(s), and communication agreements. The examination plan may be adjusted throughout the examination process. See IRM 4.46.3.9, Examination Plan.
 - a. For information on the IC Examination Plan, see IRM 4.46.3.9.6, IC Examination Plan.
 - b. For information on the Large Corporate Compliance (LCC) Program, see IRM 4.46.3.10.1, LCC Examination Plan and IRM 4.50.3, LB&I Compliance Integration, Large Corporate Compliance Program.

4.61.3.4
(01-09-2023)
**Overview of the
Execution Phase for IRC
482 Examinations**

- (1) Stages of issue development include determining the facts, applying the law to those facts and understanding the various tax implications of the issue. The issue team should conduct interactive discussions using the IDR process to develop the facts. Open communication and continuous reassessment of the examination plan and compliance risk should occur throughout the execution phase.
- (2) For more information on the execution phase, see IRM 4.46.4, Executing the Examination.

4.61.3.4.1
(12-13-2018)
**Examination Techniques
to Gather Evidence**

- (1) In addition to the audit steps outlined in the examination plan, the issue team should also consider the other examination techniques used to gather evidence in IRM 4.46.4.3, Examination Techniques Used to Gather Evidence.

- 4.61.3.4.2
(12-13-2018)
Researching Federal Tax Law
- (1) Issue teams must consider the various legal authorities and guidance available to them when developing and resolving issues. See IRM 4.46.4.4, Researching Federal Tax Law, for a listing of various legal authorities and guidance. Obtain LB&I Field Counsel assistance when appropriate.
 - (2) For transfer pricing issues, relevant guidance is provided primarily in IRC 482 and the regulations thereunder. Treas. Reg. 1.482-0 will help issue teams locate detailed guidance in the transfer pricing regulations relevant to specific issues and concepts.
- 4.61.3.4.3
(12-13-2018)
Information Document Request (IDR) Process
- (1) Issue IDRs for factual development, including requests for interviews, plant tours and site visits.
 - (2) The issue team should coordinate IDRs with the entire case team to avoid duplicate IDR requests.
 - (3) Follow the requirements in IRM 4.46.4.7, Information Document Request Process, and IRM 4.46.4.7.3, IDR Enforcement Process.
- 4.61.3.4.3.1
(01-09-2023)
Issuing the Initial Transfer Pricing Documentation IDR for the Taxpayer's IRC 6662(e) Documentation
- (1) The Initial Transfer Pricing Documentation IDR for the taxpayer's IRC 6662(e) documentation will be issued in accordance with the following procedures:
 - a. For examinations arising under approved LB&I campaigns, issue team members will follow the specific guidance for the Initial Transfer Pricing Documentation IDR provided for within the campaign. If no such guidance is provided, the procedures under item b, below, will apply.
 - b. For examinations with initial indications of transfer pricing compliance risk, the issue team coordinator and issue team members will collaborate with TPP on the issuance of the Initial Transfer Pricing Documentation IDR. It is important to issue the Initial Transfer Pricing Documentation IDR early in the examination process to start working the issue as soon as possible in order to close the examination in a timely manner.
 - (2) In all circumstances, time expended for the issuance of the Initial Transfer Pricing Documentation IDR will be charged to SAIN 003 Preliminary Examination Time; Uniform Issue List (UIL) 00000.00-00 – Administrative Procedures until the issue team decides the issue will be developed and the appropriate international UIL code (i.e., 9411, 9422, or 9423) will be determined and utilized going forward. The Initial Transfer Pricing Documentation IDR should include a request for principal documents.
 - (3) IRC 6662(e)(3)(B)(i)(III) and (ii)(III) and Treas. Reg. 1.6662-6(d)(2)(iii) require that the taxpayer respond within 30 calendar days. The 30-day response period starts with the date the Initial Transfer Pricing Documentation IDR is issued.
 - a. The 30-day response period is specified by statute.
 - b. The issue team should use this 30-day period to perform analysis of currently available information which should include prior tax returns and financial statements.
 - (4) Taxpayers are not required to have IRC 6662(e) documentation. However, penalties apply when the taxpayer fails to create or to timely provide IRC 6662(e) documentation or when the IRC 6662(e) documentation provided is unreasonable or inadequate, assuming the net adjustment penalty thresholds

are met. See IRM 4.61.3.4.18, Penalty Considerations, below.

4.61.3.4.4
(01-09-2023)
**Issue Management and
Development**

- (1) See IRM 4.46.4.8, Issue Management and Development. The issue team members should work collaboratively.
- (2) The issue team should review the taxpayer's IRC 6662(e) documentation prior to the taxpayer orientation meetings and note areas that require further development, confirmation or inquiry:
 - a. Coordinate and update the initial risk analysis, timeline, examination plan, and hypothesis with issue team members.
 - b. Evaluate the taxpayer's best method selection and the potential applicability of other methods.
 - c. Evaluate the taxpayer's application of its best method selection (for example, inputs and assumptions).
 - d. Consider whether documentation meets the requirements of Treas. Reg. 1.6662-6(d)(2) or (d)(3).
 - e. Determine whether the documentation covers all material controlled transactions.
 - f. Consult with APMA when the transaction involves a treaty partner.

Reminder: In evaluating the taxpayer's IRC 6662(e) documentation, the issue team should consider not only whether the documentation timing requirements of Treas. Reg. 1.6662-6(d)(2)(iii) are met, but also whether the taxpayer's IRC 6662(e) documentation reasonably and adequately addresses the related party transactions and whether the conclusions reached can be considered reasonable.

- (3) The issue team economist will:
 - a. Evaluate the taxpayer's best method selection analysis based upon its transfer pricing documentation in accordance with Treas. Reg. 1.482-1 and IRM 4.61.3.4.13, Selecting the Best Method.
 - b. Coordinate the issuance of IDRs with other issue team members as necessary to obtain appropriate documents and information necessary for the economic analysis.
 - c. Analyze the facts, including accounting data, to determine the applicable economic analysis.
 - d. Start drafting portions of the economist report to document the facts and conclusions throughout the development of the issue. See IRM 4.61.3.4.16, Economist Report.
- (4) The issue team should prepare and issue an IDR to request a financial statement orientation to be conducted within 30 days from the opening conference. The orientation meeting should be scheduled to coordinate with the availability of the issue team. Generally, the financial statement orientation IDR should request, but should not be limited to:
 - a. A walk-through of the geographic, legal entity, tax, and functional organizational charts, and all reporting platforms that exist (for example, different management reporting systems).
 - b. Reconciliation from the geographic trial balance to the Form 10-K consolidated financial statements.

- c. Reconciliation between relevant foreign accounting standards and Generally Accepted Accounting Principles (GAAP) (for example, International Financial Reporting Standards versus GAAP).
 - d. Segmented financial statements and roll-ups to the consolidated financial statements, including roll-ups of disregarded entities into controlled foreign corporations.
 - e. Map from the tax return, to the trial balance, to the general ledger.
 - f. Working papers for book/tax differences.
 - g. Year-end and month-end adjusting entries.
 - h. True-up entries.
 - i. Chart of accounts.
 - j. List of cost centers and profit centers.
 - k. Taxpayer's relevant accounting practices and policies.
- (5) The issue team should prepare and issue an IDR early in the execution phase requesting a transfer pricing/supply chain orientation meeting. The meeting should include, but is not limited to, discussion of:
- a. The taxpayer's background and the history of intercompany transactions.
 - b. Selected intercompany transactions in the year(s) under examination, including: the taxpayer's rationale for entering into the transactions; the taxpayer's value driver(s) associated with intangibles, services, loans, leases, and sales of tangible property and other transactions; and the taxpayer's explanation as to how each intercompany transaction may be associated with the transfer of functions, risks, assets and/or potential income.
 - c. The characterization and business reason for the transaction.
 - d. Identification of persons responsible for structuring the transactions from the tax planning perspective, including step plans for structuring/restructuring including, but not limited to, special purpose or new entities.
 - e. The functions performed, resources employed and risks assumed by each controlled party to the controlled transaction.
 - f. The total profits or losses associated with each material controlled transaction and each controlled party's share of the total profits or losses.
 - g. How the preparer of the IRC 6662(e) documentation gained knowledge of each controlled party's functions performed, resources employed and risks assumed (for example, interviews or meeting minutes).
 - h. The need to request background documentation or identify taxpayer and/or preparer personnel to interview.
 - i. The need to request additional documentation, including contracts and agreements.
 - j. The transfer pricing methods selected by the taxpayer for significant transactions.
- (6) The issue team should consider other transactions and broader financial results of the controlled taxpayers with uncontrolled parties for potential comparables.
- (7) The issue team should gain an understanding of the taxpayer's business, industry, operations and activities. As a starting point, the issue team can review publicly available information (for example, the taxpayer's website, industry websites, industry publications, public announcements, and the like). The issue team should prepare and issue IDRs to follow-up on and establish facts learned from outside sources of information. Establishing facts regarding

the taxpayer's industry, operations and activities may entail preparing and issuing IDRs for documents including, but not limited to:

- a. Annual reports and other significant securities filings
 - b. Investor solicitations and investor relations materials
 - c. Articles about the taxpayer from trade publications and other sources
 - d. Reports published by securities firms
 - e. Internal publications
 - f. Minutes of meetings of the following: board of directors, shareholders, various departments, and committees reporting to the board of directors
 - g. Policy and procedure manuals
 - h. Customs entry documents
 - i. Sales catalogs, brochures and pamphlets
 - j. E-mails, faxes and other written correspondence between the U.S. taxpayer and foreign affiliates
- (8) Issue team members may want to consider consulting with an outside industry expert when appropriate. See IRM 4.46.10, Outside Expert Program, for guidelines and procedures.
- (9) The issue team should request and perform a review and analysis of relevant intercompany agreements. Collaborate with LB&I Field Counsel to understand legal terms and content of intercompany agreements.

4.61.3.4.5
(01-09-2023)

**Continuous Risk
Analysis**

- (1) New information discovered by LB&I during an examination may necessitate modifying the examination plan to include new issues or remove issues. The issue team should refer to IRM 4.46.4.10, Continuous Risk Analysis, for general guidance. In addition, the issue team should:
- a. Perform a mid-cycle risk analysis in accordance with IRM 4.46.3.3.6, Documenting the Risk Analysis.
 - b. Conduct internal meetings to discuss the progress of transfer pricing issues and re-evaluate audit steps and timing for next steps.
 - c. Discuss materiality and compliance considerations of the transfer pricing issue(s).
 - d. Elevate any concerns that may impact the case timeline.
 - e. Collaborate with case manager and team coordinator to update the examination plan, timeline and milestone dates, as needed.
 - f. Contemporaneously document workpapers and monitor progress of the transfer pricing examination.

4.61.3.4.6
(12-13-2018)

Taxpayer Meetings

- (1) The issue team should meet periodically with the taxpayer to confirm all relevant facts for transfer pricing issue(s) developed during the examination. Early and frequent discussions beginning with the development of the transfer pricing issue and continuing through resolution are crucial for a complete understanding of the respective merits of each parties' positions on the transfer pricing issue.
- (2) The issue team should:
- a. Consider a full and open discussion with the taxpayer, including the relevant personnel from the taxpayer's business operations, as the tax department may not be knowledgeable of all the facts and circumstances

relevant to the transfer pricing issue. Discussions may be facilitated through presentations made to the issue team by the taxpayer's knowledgeable personnel.

- b. Ensure that facts to be relied upon are gathered and collaborate with the taxpayer to obtain all information necessary for the examination. Discuss and issue additional IDRs, as necessary.
 - c. As the transfer pricing examination is concluding, discuss the preliminary findings with the taxpayer and engage in a meaningful discussion to ensure all facts are known and each party understands each other's positions and the interpretation of material facts relied upon.
 - d. Explain the APA program and its benefits to the taxpayer and encourage its use as a tool to achieve certainty in transfer pricing transactions when appropriate.
- (3) A written agenda should be prepared for every taxpayer meeting and shared with the taxpayer in advance. Designate a dedicated note taker for meetings and make sure to document attendees present at each meeting. Also consider whether meetings should be documented by a court reporter or other recording, depending on the size and scope of the potential transfer pricing issue, the nature of the discussion and any recommendations of Counsel. See IRM 4.46.4.11.1, Hold Issue Discussions.

4.61.3.4.7
(01-09-2023)
**Taxpayer's
Intercompany Loans or
Advances**

- (1) The Issue team should assess interest rates charged for loans or advances in uncontrolled comparable transactions in determining whether an appropriate arm's length interest rate was charged in an intercompany loan or advance transaction. The issue team should also note that there is a safe-haven interest rate that can be charged for intercompany U.S. dollar denominated loans. See Treas. Regs. 1.482-2(a)(i) and 1.482-2(a)(2)(iii)(B).

4.61.3.4.8
(01-09-2023)
**Taxpayer's
Intercompany Transfer
of Tangible Property**

- (1) Controlled transactions often involve tangible property. In determining an arm's length price for controlled transactions involving tangible property, the issue team should apply the methods described in Treas. Reg. 1.482-3.

4.61.3.4.9
(01-09-2023)
**Taxpayer's
Intercompany Transfer
of Intangible Property**

- (1) The issue team should gain an understanding of the taxpayer's intangible property and any relevant intercompany transactions. Identifying and analyzing intangible transactions within the taxpayer's affiliated group is a key step to any IRC 482 examination.
- (2) When intercompany transactions involve significant income-producing intangible property, determining their arm's length price is important. See Treas. Reg. 1.482-4 for the list of methods used to determine an arm's length charge for a controlled transfer of intangible property.
- (3) The parent entity may transfer a bundle of intangibles in a single transaction or multiple transactions to a subsidiary. In these cases, the issue team should identify the different individual intangibles being transferred. The consideration and use of aggregation or consideration of available realistic alternatives may be necessary in order to determine the most reliable means of valuation of such transfer.

- (4) If a taxpayer's or affiliate's actual profits associated with an intangible transferred in a controlled transaction substantially exceeds the price paid for the intangible, the issue team should consider potential application of the periodic adjustment rules.
- (5) The periodic adjustment rules provide that if an intangible is transferred under an arrangement that covers more than one year, the consideration charged for each taxable year may be adjusted to ensure that it is commensurate with the income attributable to the intangible. The IRS may make periodic adjustments in open years even if the year of the transfer is closed to assessment of additional tax, and even if the taxpayer structured the consideration as a lump sum. These adjustments shall be consistent with the arm's length standard and provisions of Treas. Reg. 1.482-1. See Treas. Reg. 1.482-4(f)(2). The IRS, not the taxpayer, has the right to make IRC 482 adjustments including periodic adjustments. See IRC 482 and Treas. Reg. 1.482-1(a)(2)-(3).

4.61.3.4.10
(01-09-2023)
**Cost Sharing
Arrangements (CSAs)
Under IRC 482
Regulations**

- (1) A CSA is a contract by which the participants agree to share the cost of developing one or more intangibles (referred to as "cost shared intangibles") within the intangible development activity (IDA) of the CSA that will be separately exploited by each of the participants.
- (2) A CSA produces arm's length results if, and only if, the requirements of the relevant regulations are satisfied, which include various documentation and reporting requirements. The IRC 6662(e) penalty regulations apply to CSAs.
- (3) CSAs often involve "Platform Contribution Transactions" (PCTs) of resources, capabilities, and rights by one or more participants. Treas. Reg. 1.482-7(g) provides methods for pricing PCTs.
- (4) If a taxpayer's actually experienced return from its participation in a CSA substantially exceeds its CST and PCT payments (even if the PCT and PCT payments occurred in "closed years"), the issue team should consider potential application of the periodic adjustment rules for CSAs and consider performing the computations to determine whether the IRS may invoke them.
- (5) Periodic adjustments may be made under Treas. Reg. 1.482-7(i)(6) if, for a particular PCT (the Trigger PCT), the PCT Payor's Actually Experienced Return Ratio (defined in the regulations) is outside a specified ratio range. Treas. Reg. 1.482-7(i)(6)(v) provides specific rules for calculating the amounts of periodic adjustments. They are made in the Adjustment Year and subsequent years, and they are made with respect to all PCT payments for the years up to and including the Adjustment Year as well as all subsequent years. Periodic adjustments may be made to an open tax year even if the tax year of the PCT is closed or the PCT Payment form was a single lump sum in a closed year.
- (6) In determining whether to make such adjustments, the issue team may consider whether the outcome as adjusted more reliably reflects an arm's length result under all the relevant facts and circumstances.
- (7) The issue team should issue IDRs to review CSAs, related agreements and amendments to gather an understanding of the participants, intangibles and rights involved in the CSA. The issue team should understand the scope and costs of the IDAs covered by the CSA.

- (8) Refer to Treas. Reg. 1.482-7 and the International Knowledge Base for Practice Units on CSAs for more information.
- 4.61.3.4.11
(01-09-2023)
Taxpayer's Intercompany Services Transactions
- (1) The amount that a controlled party charges for services performed for another party of a controlled group must meet the arm's length standard. The price charged to the related party for these services should be what an uncontrolled party would pay for similar services under comparable circumstances.
- (2) Treas. Reg. 1.482-9 identifies available methods for determining an arm's length price for controlled services transactions.
- 4.61.3.4.12
(01-09-2023)
Searching for Comparable Uncontrolled Transactions
- (1) The availability of comparables will vary from examination to examination. The search for a comparable uncontrolled transaction should begin with a review of the taxpayer's operations and the taxpayer's search process for comparables as documented in the taxpayer's transfer pricing documentation.
- (2) The taxpayer may have engaged in uncontrolled transactions potentially comparable to the controlled transaction (internal comparable). The issue team should obtain documents and information to perform a comparability analysis to see if these internal comparables may be used to determine whether the taxpayer's pricing is arm's length. See IRM 4.61.3.4.12.1, Comparability Analysis, below.
- (3) Reviewing the taxpayer's operations may also reveal unrelated parties that engage in comparable uncontrolled transactions (external comparables). The issue team should obtain documents and information to perform a comparability analysis to see if these external comparables may be used to determine whether the taxpayer's pricing is arm's length.
- (4) The IRS has subscriptions to many helpful tools and resources that can assist in researching information on external comparables and the identification of comparables for purposes of the comparability analysis. Subscription services may change over time, so consult the TPPN with any questions.
- 4.61.3.4.12.1
(01-09-2023)
Comparability Analysis
- (1) The issue team should perform a detailed analysis of the similarities and differences between the controlled transaction and the potentially comparable uncontrolled transactions.
- (2) Treas. Reg. 1.482-1(d) provides general rules for determining comparability. Treas. Reg. 1.482-1(d)(3) provides five factors for determining whether controlled and uncontrolled transactions are comparable. The relative importance of the five comparability factors depends on the method applied. For example, some methods focus on product comparability and other methods focus on functional comparability. The comparability factors are:
- a. Functions performed
 - b. Contractual terms
 - c. Risks assumed
 - d. Economic conditions
 - e. Property or services
- (3) A comparability analysis is the basis for determining comparable transactions and profitability benchmarks. A comparability analysis is not a pricing method and by itself does not determine the arm's length result of the controlled trans-

action. Treas. Reg. 1.482-4 highlights comparability considerations in the context of the comparable uncontrolled transaction (CUT) method.

- (4) For more information refer to the TPEP and the Transfer Pricing Inbound and Outbound Practice Units, “Comparability Analysis for Tangible Goods Transactions – Inbound” and “Comparability Analysis for Tangible Goods Transactions – Outbound.”

4.61.3.4.13
(01-09-2023)

Selecting the Best Method

- (1) The issue team should start with the taxpayer’s best method selection and thoroughly analyze the taxpayer’s application of its selected method. Treas. Reg. 1.482-1(c) provides general rules for determining the best method to evaluate the pricing of the taxpayer’s controlled transaction. Further, examples in Treas. Reg. 1.482-8 are instructive in considering how to evaluate the reasonableness of the taxpayer’s best method analysis. The issue team should also fully review the taxpayer’s analysis of each method that was rejected.
- (2) If the issue team concludes that changes to the application of the taxpayer’s best method are appropriate to achieve an arm’s length result, these changes should be thoroughly developed and documented as early as possible in the examination.
- (3) Where, based upon the facts and circumstances, changes to the application of the taxpayer’s method cannot reliably achieve an arm’s length result, use of an alternative method may be warranted as the best method, subject to the Transfer Pricing Review Panel (TPRP) process. See IRM 4.61.3.4.13.1, Transfer Pricing Review Panel (TPRP), below.

4.61.3.4.13.1
(01-09-2023)

Transfer Pricing Review Panel (TPRP)

- (1) For examinations opened in IMS from October 1, 2017 forward, when the taxpayer has timely provided transfer pricing documentation that both clearly states and analyzes the best method selection, but the issue team determines, based on the specific facts and circumstances, that an alternative method is the best method to achieve a more reliable measure of the arm’s length result, the issue team must obtain TPRP approval for use of the alternative method. Approval for a best method change must be obtained from the TPRP for each examination cycle, even where the facts or issues remain the same.
- (2) When the taxpayer does not definitively identify the selection of a best method or provide sufficient supporting analysis in its transfer pricing documentation, the issue team’s use of an alternative best method is not subject to the TPRP approval process. Likewise, when the issue team changes the application of the taxpayer’s best method, but not the selection of the best method, TPRP approval is not required.
- (3) The TPRP approval process applies not only to examinations with TPP involvement, but also to those conducted by Geographic Practice Areas without TPP involvement (including campaigns). An issue team’s recommendation for a method change should be elevated through the issue manager’s management chain to the applicable Director of Field Operations for referral to the TPRP.
- (4) The TPRP will generally consist of the TPP Director of Field Operations or APMA Director (depending on whether the case is an examination case or an APA program case), a Senior Advisor to the TTPO Director and the TPPN Manager or other PN manager, but substitutions can be made by the TTPO

Director depending on personnel changes, case complexity or individual availability. See IRM 4.60.3.2.19 , Advance Pricing Agreement (APA) Overview.

4.61.3.4.14
(01-09-2023)
**Computing the
Adjustment**

- (1) In some cases, application of the best method will produce a single result that is the most reliable measure of an arm's length result. Arm's length results are rarely a precise answer. In many cases, applying the best method may produce a range of potential arm's length results (arm's length range or interquartile range). An IRC 482 adjustment is not appropriate if the taxpayer's results fall within an arm's length range or interquartile range. See IRM 4.46.5.7, Completing the Examination, for concluding an examination without an IRC 482 adjustment. If the taxpayer's results fall outside an arm's length range, an IRC 482 adjustment may be appropriate.
- (2) The issue team will clearly document and explain IRC 482 adjustment computations, specifically detailing the uncontrolled comparables used and any reasons for adjustments to the comparable data (or lack thereof). The computation should be documented in:
 - a. The case file workpapers.
 - b. The economist report (in the "IRS Economist's Determination of Arm's Length Price based Upon Economic Analysis" section). See IRM 4.61.3.4.16, Economist Report.
 - c. The NOPA. See IRM 4.61.3.4.17, Notice of Proposed Adjustment (NOPA).
- (3) The issue team will consider appropriate collateral adjustments with respect to allocations which may include correlative allocations, conforming adjustments and setoffs. See Treas. Reg. 1.482-1(g).
- (4) When an allocation is made under IRC 482, a conforming adjustment must be made to conform a taxpayer's account to reflect the allocated amount. Generally, the conforming adjustment treats the allocated amount, depending on the allocation, as either a dividend or a capital contribution. In appropriate cases, the allocated amount may, instead, be repaid in accordance with the applicable revenue procedures without the otherwise required conforming adjustment (or the tax consequences of the conforming adjustment). See IRM 4.61.3.5.4, Application of Rev. Proc. 99-32, for more information.

4.61.3.4.15
(01-09-2023)
**Written Acknowledgment
of the Facts (AOF)**

- (1) The issue team must use an AOF IDR to solicit a written acknowledgment of the facts for all LB&I examinations on potentially unagreed issues before issuing a NOPA. See IRM 4.46.4.11, Written Acknowledgement of the Facts (AOF), for additional information.
- (2) The facts in the AOF must correspond to the facts in both the draft economist report and draft NOPA. See IRM 4.46.4.11.3, Issue the Draft Form 886-A with a Pro-Forma AOF IDR.
- (3) Consult Counsel for options to address missing and/or withheld material facts.

- 4.61.3.4.16
(01-09-2023)
Economist Report
- (1) The issue team economist has ultimate responsibility for drafting the economist report whether an IRC 482 adjustment is pursued or not. The issue team should work collaboratively to draft the factual background section and to ensure that information necessary to support IRS's position is clearly reflected in the economist report. The economist report should include the following:
- a. Executive Summary
 - b. Factual Background and Functional Analysis of the Taxpayer and the Transactions at Issue
 - c. Summary of Taxpayer's Proposed Economic Analysis for the Transaction at Issue
 - d. Critique of Taxpayer's Methodology and Analysis for the Transaction at Issue
 - e. IRS Economist's Determination of Arm's Length Price based Upon Economic Analysis
 - f. Summary and Conclusion
- 4.61.3.4.17
(01-09-2023)
Notice of Proposed Adjustment (NOPA)
- (1) For LB&I cases, all adjustments are proposed on Form 5701, Notice of Proposed Adjustment, which is accompanied by Form 886-A, Explanation of Items. The Form 5701 provides a summary of the proposed adjustment and the Form 886-A provides a detailed explanation of the adjustment.
- (2) The issue team and issue manager should adhere to IRM 4.46.4.13, Notice of Proposed Adjustment (NOPA).
- (3) The NOPA (and Explanation of Items) should include:
- a. Adjustment Table
 - b. Issue Statement
 - c. Executive Summary of Issue
 - d. Facts
 - e. Law
 - f. Taxpayer's Position
 - g. Analysis – Government's Position
 - h. Conclusion
- (4) For guidance on including the taxpayer's response to the AOF in the NOPA, see IRM 4.46.4.11.4, Incorporate the Taxpayer's Response in the Final Form 886-A Issued with the NOPA.
- (5) Coordinate with Counsel regarding the legal analysis presented in the NOPA and economist report.
- 4.61.3.4.18
(01-09-2023)
Penalty Considerations
- (1) Penalties should be considered when adjustments are made as part of the examination. Identifying, calculating and asserting the appropriate penalties are primarily the issue team's responsibility. These determinations should take place throughout the examination process and be discussed with the taxpayer at the same time as the primary adjustment. Workpapers must support the analysis and conclusion.
- (2) IRC 6662(e) documentation does not automatically protect against penalties. The IRC 6662(e) documentation must be assessed for adequacy and reasonableness.

- (3) Factors to consider in evaluating the adequacy of a taxpayer's transfer pricing documentation are outlined in the regulations. To meet the reasonable cause exception of the penalty regulations, taxpayers must document that they reasonably selected the best method for their analysis and they reasonably applied that best method.
- (4) One of the factors relevant to the determination of whether a taxpayer selected and applied a specified method in a reasonable manner is "[t]he extent to which the taxpayer relied on a transfer pricing methodology developed and applied pursuant to an Advance Pricing Agreement for a prior taxable year, or specifically approved by the Internal Revenue Service pursuant to a transfer pricing audit of the transactions at issue for a prior taxable year..." See Treas. Reg. 1.6662-6(d)(2)(ii)(A)(6).
- (5) The issue team should consult with Counsel, as appropriate. See IRM 4.46.4.12, Penalty Consideration.
- (6) For more information on penalties, see:
 - IRM 20.1.1.2.3, Approval Prerequisite to Penalty Assessments,
 - IRM 20.1.5.10, IRC 6662(e), Substantial Valuation Misstatement,
 - IRC 6662(h), Increase in Penalty in Case of Gross Valuation Misstatement, and
 - IRM Exhibit 20.1.5-3, IRC Section 6662(e) Transfer Pricing Penalty.

4.61.3.5
(12-13-2018)
**Overview of the
Resolution Phase for
IRC 482 Examinations**

- (1) See IRM 4.46.5, Resolving the Examination.
- (2) The goal of the resolution phase is to reach agreement, if possible, on the tax treatment of each issue examined and if necessary, issue a NOPA. See IRM 4.61.3.4.17, Notice of Proposed Adjustment (NOPA).
- (3) The issue manager, in collaboration with the case manager, will lead the issue team in the resolution phase of transfer pricing issues.

4.61.3.5.1
(01-09-2023)
Issue Resolution

- (1) The issue team should give the taxpayer an opportunity to agree or disagree with the findings for each transfer pricing issue developed during the examination. For a transfer pricing issue to be resolved there must be an open discussion by the issue team and the taxpayer throughout the examination. The issue team should follow:
 - IRM 4.46.5.2.1, Factual Development,
 - IRM 4.46.5.2.2, Application of the Law, and
 - IRM 4.46.5.2.3, Interpretation of the Law.

4.61.3.5.2
(12-13-2018)
**Management
Involvement in the Issue
Resolution Process**

- (1) See IRM 4.46.5.5, Management Involvement in the Issue Resolution Process.

4.61.3.5.3
(01-09-2023)
**Completing the Transfer
Pricing Examination**

- (1) Upon completion of the transfer pricing examination, the issue team should comply with IRM 4.46.5.7, Completing the Examination, to secure concurrence from the issue manager and case manager and complete their portion of the overall case examination report.

- (2) The issue team will finalize the NOPA, economist report, and secure final approvals. Refer to IRM 4.46.5.7.1, Types of Examination Reports Based on Agreement and IRM 4.46.6.3, International Examiner's Report (IER).
- (3) Issue final Letter 1853-P, Right to Request Competent Authority Consideration, with the final amounts and countries of origin. This provides notification to the taxpayer of potential double taxation and treaty-based rights.
- (4) Prepare the MAP report, if applicable. Coordinate and discuss with APMA.
- (5) The issue team and issue manager should collaborate with the team coordinator and the case manager to ensure the transfer pricing NOPA is timely prepared for inclusion into the Revenue Agent's Report (RAR).

4.61.3.5.4
(01-09-2023)

Application of Rev. Proc. 99-32

- (1) In some cases, the taxpayer may be eligible to elect Rev. Proc 99-32 relief.
- (2) Rev. Proc. 99-32 sets forth requirements and available procedures for treating and repaying the allocated amount as an interest-bearing account receivable or account payable. The transfer pricing issue team will determine whether the taxpayer is eligible to elect Rev. Proc. 99-32 relief. See Rev. Proc. 99-32 and IRM 4.60.3, Tax Treaty Related Matters. Only a U.S. taxpayer which is a domestic corporation or a foreign corporation engaged in U.S. trade or business is eligible.
- (3) Refer to Rev. Proc. 99-32 for the conditions that must be met for relief and the International Knowledge Base Practice Units on Rev. Proc. 99-32.

4.61.3.5.5
(12-13-2018)

Appeals

- (1) If the case is closed unagreed, the taxpayer generally has the right to have their case heard by the Appeals Division. See IRM 4.46.5.12, Conference with Appeals, for general information on the Appeals process for LB&I cases. If the transfer pricing issue is unagreed, upon contact from Appeals that the case has been assigned, the issue manager, in collaboration with the case manager, should work to:
 - a. Request a pre-conference meeting.
 - b. Prepare the pre-conference presentation with the assistance of Counsel.
 - c. Secure Counsel's participation in the pre-conference meeting, when warranted.
 - d. Contact the Appeals Officer and request the issue team's presence at the taxpayer's portion of the presentation to Appeals.
 - e. Be prepared to address any questions that Appeals may have for the issue team before the conference, during the conference and after the conference.
- (2) The issue team should be aware that a case could be returned from Appeals under certain circumstances. See IRM 4.46.5.12.3, Other Communications with Appeals, and IRM 4.46.5.13, Appeals Case Return Procedures.
- (3) In the event the case is settled in Appeals, the issue team will request a post-closing conference. See IRM 4.46.5.15, Post-Settlement Conference.
- (4) Counsel may assist in evaluating the settlement and ACM.
- (5) Determine if a dissent to Appeals' disposition of the issue is warranted and prepare the dissent, if necessary. See IRM 4.46.5.16, Dissent Procedures for Disagreements with Appeals Determinations.

4.61.3.6

(01-09-2023)

**Coordination with U.S.
Competent Authority**

- (1) The APMA Director is the delegated U.S. Competent Authority for cases arising under the business profits and associated enterprises articles of U.S. tax treaties (transfer pricing issues). APMA endeavors to resolve competent authority cases under the MAP agreement article of a U.S. tax treaty through consultations with the applicable foreign competent authority. The MAP articles of U.S. tax treaties and tax coordination agreements grant taxpayers the right to request the assistance of the appropriate competent authority specified in the treaty when a taxpayer believes that the actions of the United States or the applicable U.S. treaty partner result or will result in the taxpayer being subject to potential double taxation or taxation otherwise inconsistent with a treaty or tax coordination agreement. This situation typically arises from U.S. or foreign-initiated adjustments resulting from an examination but can also arise from other U.S. or foreign-initiated actions, including when taxes are withheld by a withholding agent. See IRM 4.60.3.2, Competent Authority and the Mutual Agreement Procedure (MAP) and the Practice Unit “Competent Authority Revenue Procedure 2015-40 Guidance: Foreign-Initiated Adjustment(s)”.
- (2) Upon resolution of a competent authority case, Examination may be directed to implement a competent authority resolution. Examination may also need to ensure that its examination, or any taxpayer return or refund claim, is consistent with an applicable competent authority resolution. The roles and responsibilities of the U.S. competent authority and Examination are provided in IRM 4.60.2, Mutual Agreement Procedures and Report Guidelines.

4.61.3.7

(01-09-2023)

**Country-by-Country
(CbC) Report**

- (1) The CbC Report is a tool intended to provide useful information to assess high-level transfer pricing risks, Base Erosion and Profit Shifting (BEPS) related risks and, where appropriate, for economic and statistical analysis. When reviewed in conjunction with the taxpayer’s IRC 6662(e) documentation and other available information, the CbC Report may provide indicators of where transfer pricing compliance risk may exist.
- (2) In the context of the LEP and the TPEP, which cover examination planning, execution and resolution procedures and processes, the CbC Report can be a useful tool.
- (3) Treas. Reg. 1.6038-4 sets forth CbC reporting requirements for certain U.S. taxpayers. CbC Reports will generally be filed with the tax authority in the residence jurisdiction of the multinational enterprise’s ultimate parent entity. Information from a CbC Report can be used by the issue team to understand, among other information, the location of revenues, profits, and employees in an enterprise.

4.61.3.7.1

(01-09-2023)

**Appropriate Use
Guidelines**

- (1) The information must not be used as a substitute for a detailed transfer pricing analysis of transactions and prices based on a full functional analysis and comparability analysis.
- (2) Information in a CbC Report on its own does not constitute conclusive evidence that transfer prices are or are not appropriate and, consequently, examiners must not base transfer pricing adjustments on the CbC Report alone.
- (3) The issue team may ask the taxpayer for additional information about relevant facts related to potential transfer pricing issues arising from the CbC Report. However, the taxpayer is not required to create and maintain records that reconcile the amounts on the CbC Report with tax returns or financial data.

4.61.3.7.2
(01-09-2023)

**The CbC Report and the
Examination Process**

- (1) The information in the CbC Report should not be the sole factor used to determine whether or not to proceed with an examination. When examining a return with a CbC Report, issue teams should conduct the risk analysis and planning activities consistent with the LEP, IRM 4.46.3.2, Initial Risk Analysis of the Return, and LB&I campaign guidance (if applicable).

4.61.3.7.3
(01-09-2023)

**CbC Report Related
Resources**

- (1) LB&I employees are required to complete the CbC Report training in Integrated Talent Management (ITM) prior to analyzing CbC Reports.
- (2) Technical resources related to the CbC Report include:
 - a. Form 8975 and related instructions
 - b. Treas. Reg. 1.6038-4, Information returns required of certain United States persons with respect to such person's U.S. multinational enterprise group
 - c. IRC 6103, Confidentiality and disclosure of returns and return information
 - d. IRC 6105, Confidentiality of information arising under treaty obligations
 - e. IRM 10.5.1, Privacy and Information Protection, Privacy Policy
 - f. IRM 11.3.25, Disclosure to Foreign Countries Pursuant to Tax Treaties
 - g. IRS Country-by-Country Reporting Guidance on IRS.gov

Exhibit 4.61.3-1 (01-09-2023)**Acronyms**

This table lists commonly used acronyms and their definitions.

Acronym	Definition
ACM	Appeals Case Memorandum
AOF	Acknowledgment of Facts
APA	Advance Pricing Agreement
APMA	Advance Pricing and Mutual Agreement
CAS	Computer Audit Specialist
CbC	Country-by-Country
CSA	Cost Sharing Arrangement
GAAP	Generally Accepted Accounting Principles
IDR	Information Document Request
IMS	Issue Management System
LB&I	Large Business and International
LCC	Large Corporate Compliance
LEP	LB&I Examination Process
MAP	Mutual Agreement Procedures
NOPA	Notice of Proposed Adjustment
RA	Revenue Agent
SRA	Senior Revenue Agent
TPEP	Transfer Pricing Examination Process
TPP	Transfer Pricing Practice
TPPN	Transfer Pricing Practice Network
TPRP	Transfer Pricing Review Panel
TTPO	Treaty and Transfer Pricing Operations
UIL	Uniform Issue List

Exhibit 4.61.3-2 (01-09-2023)**Related Resources**

Related resources include:

1. Publication 5125, LB&I Examination Process (LEP)
2. Publication 5300, Transfer Pricing Examination Process.
3. Income Shifting Inbound SharePoint site for inbound controlled transactions.
4. Income Shifting Outbound SharePoint site for outbound controlled transactions.
5. International Knowledge Base SharePoint site, which is a library that provides concept, process and transaction-based Practice Units.
6. Servicewide Knowledge Management Database.
7. IRC 482 Audit Toolkit.
8. Auditor's Workbench.
9. Computer Audit Specialist (CAS) Examination Resources webpage – Applications and Tools.
10. IRM 4.10.3, Examination Techniques
11. IRM 4.11.5, Allocation of Income and Deductions Under IRC 482
12. IRM 4.11.57, Third Party Contacts
13. IRM 4.46.3, Planning the Examination
14. IRM 4.46.4, Executing the Examination
15. IRM 4.46.5, Resolving the Examination
16. IRM 4.46.6, Workpapers and Reports Resources
17. IRM 4.46.10, Outside Expert Program
18. IRM 4.60.2, Mutual Agreement Procedures and Report Guidelines
19. IRM 4.60.3, Tax Treaty Related Matters
20. IRM 20.1.1, Introduction and Penalty Relief
21. IRM 20.1.5, Return Related Penalties
22. IRM 25.5, Summons