



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

4.60.2

AUGUST 9, 2021

EFFECTIVE DATE

(08-09-2021)

PURPOSE

- (1) This transmits revised IRM 4.60.2, Mutual Agreement Procedures and Report Guidelines.

BACKGROUND

- (1) This IRM provides procedural guidance and technical information to LB&I personnel on Mutual Agreement Procedure (MAP) articles and other income tax treaty issues.

MATERIAL CHANGES

- (1) IRM 4.60.2.1: Added Program Scope and Objectives, in accordance with requirements described in IRM 1.11.2.2.5, Address Management and Internal Controls, and renumbered subsequent sections accordingly.
- (2) Updated IRM to reflect Rev. Proc. 2015-40.
- (3) Completely revised and reorganized content to reflect current processes and procedures relating to MAP articles and other income tax treaty issues.
- (4) The following IRM sections were renamed, renumbered and existing content revised:
 - IRM 4.60.2.1, Notification to Taxpayers of Potential Double Taxation, was renamed and renumbered to IRM 4.60.2.5, Notification to Taxpayers of Potential Double Taxation or Taxation Otherwise Inconsistent with a Tax Treaty/Tax Coordination Agreement, and content completely revised.
 - IRM 4.60.2.2, Role of Examination, was renumbered to IRM 4.60.2.4 and content completely revised.
 - IRM 4.60.2.5, Foreign Initiated Adjustments Affecting a U.S. Tax Return or Claimed on Examination, was renamed and renumbered to IRM 4.60.2.8, Foreign Initiated Adjustments Affecting a U.S. Tax Return and Foreign Tax Credits Claimed During an Examination, and content completely revised.
- (5) The following former subsections were removed and existing content updated and incorporated into new subsections described in (6) below:

IRM Section	Title
4.60.2.3	Processing Examination Cases
4.60.2.4	MAP Report
4.60.2.6	U.S. Possessions

- (6) The following new sections and subsections were added. Where content from removed IRM subsections was incorporated, updated, or otherwise revised, such changes are noted:

IRM Section/ Subsection	Title
4.60.2.2	U.S. Competent Authority Jurisdiction Over Competent Authority Issue(s) in a Competent Authority Request
4.60.2.2.1	When the U.S. Competent Authority Has Jurisdiction
4.60.2.2.2	Notice of the U.S. Competent Authority's Jurisdiction
4.60.2.3	Competent Authority Resolutions and Examination
4.60.2.3.1	Notice of a Competent Authority Resolution
4.60.2.3.2	Terms of a Competent Authority Resolution
4.60.2.3.3	Contacting the U.S. Competent Authority
4.60.2.5	Notification to Taxpayers of Potential Double Taxation or Taxation Otherwise Inconsistent with A Tax Treaty/ Tax Coordination Agreement. This new section incorporates and updates content from previous IRM 4.60.2.1, Notification to Taxpayers of Potential Double Taxation.
4.60.2.5.1	Notification Applicable to Tax Treaties. This new subsection incorporates and updates content from previous IRM 4.60.2.1, Notification to Taxpayers of Potential Double Taxation, and incorporates Rev. Proc. 2015-40.
4.60.2.5.2	Notification Applicable to Tax Coordination Agreements. This new subsection incorporates and updates content from previous IRM 4.60.2.6, U.S. Possessions.
4.60.2.5.3	When to Notify a Taxpayer. This new subsection incorporates and updates content from previous IRM 4.60.2.1, Notification to Taxpayers of Potential Double Taxation.
4.60.2.5.4	Recordkeeping. This new subsection incorporates content from previous IRM 4.60.2.1, Notification to Taxpayers of Potential Double Taxation.
4.60.2.5.5	Large Corporate Compliance Taxpayers. This new subsection incorporates and updates content from previous IRM 4.60.2.1, Notification to Taxpayers of Potential Double Taxation.
4.60.2.6	Processing Cases with Competent Authority Issue(s)
4.60.2.6.1	Competent Authority Issue(s) Arising From/Related to a U.S.-Initiated Adjustment. This new subsection incorporates and updates content from previous IRM 4.60.2.3, Processing Examination Cases.

IRM Section/ Subsection	Title
4.60.2.6.2	Domestic Period of Limitations. This new subsection incorporates content from previous IRM 4.60.2.2, Role of Examination.
4.60.2.6.3	Competent Authority Issue(s) Arising From/Related to a Foreign-Initiated Adjustment. This new subsection incorporates and updates content from previous IRM 4.60.2.3, Processing Examination Cases.
4.60.2.6.4	Requests for Evaluation of Positions and/or Additional Information. This new subsection incorporates and updates content from previous IRM 4.60.2.3, Processing Examination Cases.
4.60.2.6.5	Competent Authority Resolution Process
4.60.2.6.6	Closing Agreements. This new subsection incorporates and updates content from previous IRM 4.60.2.1, Notification to Taxpayers of Potential Double Taxation, and incorporates Rev. Proc. 2015-40.
4.60.2.7	Qualification for Tax Treaty Benefits
4.60.2.7.1	Limitation on Benefits (LOB) Requirement
4.60.2.8	Foreign-Initiated Adjustments Affecting a U.S. Tax Return and Foreign Tax Credits Claimed During an Examination

(7) The following exhibits were removed:

- Exhibit 4.60.2-1, Right to Request Competent Authority Consideration Letter 1853(P) (Rev. 06-16-2019)
- Exhibit 4.60.2-2, Right to Request Assistance Under Agreement on the Coordination of Tax Administration with U.S. Territories – Pattern Letter 1915(P)(Rev. 06-16-2019)
- Exhibit 4.60.2-3, Double Taxation Issue Schedules 1853(P)/1915(P).

(8) Added Exhibit 4.60.2-1, Terms/Definitions/Acronyms.

(9) Editorial changes made throughout.

EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 4.60.2, Mutual Agreement Procedures and Report Guidelines, dated January 01, 2002.

AUDIENCE

All Large Business and International (LB&I) personnel.

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4.60.2

Mutual Agreement Procedures and Report Guidelines

Table of Contents

4.60.2.1 Program Scope and Objectives

4.60.2.1.1 Background

4.60.2.1.2 Authority

4.60.2.1.3 Roles and Responsibilities

4.60.2.1.4 Terms/Definitions/Acronyms

4.60.2.2 U.S. Competent Authority Jurisdiction Over Competent Authority Issue(s) in a Competent Authority Request

4.60.2.2.1 When the U.S. Competent Authority Has Jurisdiction

4.60.2.2.2 Notice of the U.S. Competent Authority's Jurisdiction

4.60.2.3 Competent Authority Resolutions and Examination

4.60.2.3.1 Notice of a Competent Authority Resolution

4.60.2.3.2 Terms of a Competent Authority Resolution

4.60.2.3.3 Contacting the U.S. Competent Authority

4.60.2.4 Role of Examination

4.60.2.5 Notification to Taxpayers of Potential Double Taxation or Taxation Otherwise Inconsistent with A Tax Treaty/Tax Coordination Agreement

4.60.2.5.1 Notification Applicable to Tax Treaties

4.60.2.5.2 Notification Applicable to Tax Coordination Agreements

4.60.2.5.3 When to Notify a Taxpayer

4.60.2.5.4 Recordkeeping

4.60.2.5.5 Large Corporate Compliance Taxpayers

4.60.2.6 Processing Cases with Competent Authority Issue(s)

4.60.2.6.1 Competent Authority Issue(s) Arising From/Related to a U.S.-Initiated Adjustment

4.60.2.6.2 Domestic Period of Limitations

4.60.2.6.3 Competent Authority Issue(s) Arising From/Related to a Foreign-Initiated Adjustment

4.60.2.6.4 Requests for Evaluation of Positions and/or Additional Information

4.60.2.6.5 Competent Authority Resolution Process

4.60.2.6.6 Closing Agreements

4.60.2.7 Qualification for Tax Treaty Benefits

4.60.2.7.1 Limitation on Benefits (LOB) Requirement

4.60.2.8 Foreign-Initiated Adjustments Affecting a U.S. Tax Return and Foreign Tax Credits Claimed During an Examination

Exhibits

4.60.2-1 Terms/Definitions/Acronyms

4.60.2.1
(08-09-2021)
Program Scope and Objectives

- (1) **Purpose:** This IRM provides guidance on the responsibilities of LB&I Examination with regards to the competent authority process and other income tax treaty issues.
- (2) **Audience:** All LB&I personnel.
- (3) **Policy Owner:** LB&I Policy under the Strategy, Policy and Governance office in the Assistant Deputy Commissioner Compliance Integration organization.
- (4) **Program Owner:** Treaty and Transfer Pricing Operations (TTPO).
- (5) **Primary Stakeholders:** LB&I personnel.

4.60.2.1.1
(08-09-2021)
Background

- (1) 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/agreement when a taxpayer believes that the actions of the United States or the applicable U.S. treaty partner/U.S. territory result or will result in the taxpayer being subject to taxation not in accordance with the applicable treaty/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.

4.60.2.1.2
(08-09-2021)
Authority

- (1) Generally, the MAP articles of U.S. tax treaties and tax coordination agreements provide the authority for taxpayers to request, and competent authorities to provide, relief from taxation not in accordance with a tax treaty/tax coordination agreement. U.S. competent authority procedural authority is provided by Treasury Order 150-10 and IRS Delegation Order 4-12 (Rev. 4). See IRM 1.2.2.5.11, Delegation Order 4-12 (Rev. 4).
- (2) By law, the IRS has the authority to conduct examinations under Title 26 (Internal Revenue Code) Subtitle F (Procedure and Administration) Chapter 78 (Discovery of Liability and Enforcement of Title) Subchapter A (Examination and Inspection), which includes, but is not limited to:
 - IRC 7602 (Examination of books and witnesses)
 - IRC 7605 (Time and place of examination)

4.60.2.1.3
(08-09-2021)
Roles and Responsibilities

- (1) The roles and responsibilities of the U.S. competent authority and Examination (as defined in Exhibit 4.60.2-1, Terms/Definitions/Acronyms) are provided for in this IRM.
- (2) For related guidance on when Examination or the U.S. competent authority has control over a competent authority issue(s), see IRM 4.60.2.2.
- (3) Additional roles and responsibilities of the U.S. competent authority are provided for in IRM 4.60.3, Tax Treaty Related Matters.

4.60.2.1.4
(08-09-2021)
Terms/Definitions/Acronyms

- (1) See Exhibit 4.60.2-1, Terms/Definitions/Acronyms, for a list of commonly used acronyms and terms in this IRM.

4.60.2.2
(08-09-2021)
**U.S. Competent
Authority Jurisdiction
Over Competent
Authority Issue(s) in a
Competent Authority
Request**

- (1) The U.S. competent authority has exclusive control or jurisdiction over the competent authority issue(s) in an accepted competent authority request, with the exception of securing an extension of the applicable domestic period of limitations under IRM 4.60.2.6.2.
- (2) Examination must suspend any administrative action (e.g., assessment and collection procedures) with respect to the competent authority issue(s) covered in such request, unless the U.S. competent authority directs otherwise (e.g., if the U.S. competent authority ceases providing assistance regarding a competent authority issue(s), the U.S. competent authority will return jurisdiction over the issue(s) to Examination or other relevant office(s) within the IRS).

4.60.2.2.1
(08-09-2021)
**When the U.S.
Competent Authority
Has Jurisdiction**

- (1) The U.S. competent authority's jurisdiction over competent authority issue(s) in a competent authority request begins when the U.S. competent authority accepts such competent authority request (in the case of competent authority requests made to U.S. competent authority) or the U.S. competent authority is notified by the competent authority of a U.S. treaty partner/U.S. territory of a competent authority request.
- (2) The U.S. competent authority will return jurisdiction over the issue(s) to the relevant office(s) within the IRS when the U.S. competent authority ceases to provide assistance regarding a competent authority issue(s).

4.60.2.2.2
(08-09-2021)
**Notice of the U.S.
Competent Authority's
Jurisdiction**

- (1) In cases where a competent authority request arises from an examination, the U.S. competent authority will notify the Examination office if it accepts the competent authority request or is notified by a U.S. treaty partner/U.S. territory of a competent authority request.
- (2) Such notification will include the name and contact information of the Advanced Pricing and Mutual Agreement Program (APMA) team leader or the Treaty Assistance and Interpretation Team (TAIT) competent authority analyst assigned to the competent authority request.
- (3) Examination also has notice that the U.S. competent authority has jurisdiction over the related competent authority issue affecting a tax return by a 'TC 971 AC 080' activity code associated with the account/return in the Master File (i.e., this activity code indicates the return(s) has an accepted, unresolved/open competent authority request associated with it). The U.S. competent authority analyst may make a request to add this activity code by using Form 3177, Notice of Action for Entry on Master File. See IRS Document 6209 (IRS Processing Codes and Information), Section 8C (Master File Codes) Subsection 9 (TC 971 Action Codes) for additional information.

4.60.2.3
(08-09-2021)
**Competent Authority
Resolutions and
Examination**

- (1) 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.

4.60.2.3.1
(08-09-2021)
**Notice of a Competent
Authority Resolution**

- (1) When a competent authority request arises from an examination, the U.S. competent authority notifies the Examination office if a competent authority resolution is reached.

- (2) When Examination is directed to implement a competent authority resolution, the U.S. competent authority or the International Referral Recipient (IRR) will notify Examination of the competent authority resolution.
- (3) In all other circumstances where a competent authority resolution did not arise from an examination, Examination has notice that a competent authority resolution applies to a particular year/return by an indication of such on the applicable U.S. income tax return (i.e., a taxpayer filing a return on the basis of a competent authority resolution is directed to attach a copy of the competent authority closing letter to such return and to expressly state on page one of the return that it is filed pursuant to a competent authority settlement). Examination is not required to take action in this circumstance unless the particular return/year is subsequently assigned to them and an examination is opened.

4.60.2.3.2
(08-09-2021)
**Terms of a Competent
Authority Resolution**

- (1) Examination can ensure the results of an examination are consistent with an applicable competent authority resolution by referring to the competent authority closing letter attached to the applicable return(s) and/or the disposition memorandum (which the U.S. competent authority provides to the IRR with examination jurisdiction over the taxpayer). See IRM 4.60.3, Tax Treaty Related Matters, for information regarding the U.S. competent authority's provision of the disposition memorandum to the IRR.

4.60.2.3.3
(08-09-2021)
**Contacting the U.S.
Competent Authority**

- (1) Examination may direct questions relating to a competent authority request (or other tax treaty/tax coordination agreement issue) under the U.S. competent authority's jurisdiction or to a competent authority resolution to the assigned APMA team leader or TAIT competent authority analyst (as applicable).
- (2) The contact information for the assigned APMA team leader or TAIT competent authority analyst is referenced in the U.S. competent authority's notification to Examination of the U.S. competent authority's acceptance of a competent authority request, as well as any competent authority resolution disposition memorandum or closing letter.
- (3) Examination may direct questions relating to a competent authority request or other tax treaty/tax coordination agreement issues not under the jurisdiction of the U.S. competent authority to the Treaties Practice Network. See IRM 4.60.2.2 and IRM 4.60.2.3 for additional information.

4.60.2.4
(08-09-2021)
Role of Examination

- (1) Examination should be familiar with U.S. administrative guidance (including Rev. Proc. 2015-40 and Rev. Proc. 2006-23, or their successors) that apply to competent authority requests. Examination may direct questions relating to a competent authority request, other tax treaty/tax coordination agreement issues, or a competent authority resolution to the appropriate office as provided under IRM 4.60.2.3.3.
- (2) Examination is responsible for determining whether any issue within the scope of an examination is under the U.S. competent authority's jurisdiction. Examination makes this determination as early as possible in its proceeding. See IRM 4.60.2.2 for additional information.
- (3) Generally, Examination has a role in the competent authority process only if a competent authority issue(s) arises from (or otherwise relates to a year in which there is) an examination. Examination's general responsibilities for processing a case with competent authority issues are set out at IRM 4.60.2.6

(e.g., protecting domestic periods of limitations in cases under competent authority consideration). Additionally, Examination has the following specific responsibilities for competent authority issue(s) arising out of/related to examinations:

- a. Examination notifies the taxpayer of potential double taxation or taxation otherwise inconsistent with a tax treaty or tax coordination agreement in accordance with IRM 4.60.2.5.
 - b. Examination prepares the International Examiners Report (Form 3963) and MAP Report in accordance with IRM 4.46.6, Workpapers and Reports Resources.
- (4) Examination performs other functions related to the competent authority process, even where a competent authority issue did not arise out of or relate to an examination.
 - a. Where an examination relates to a year to which a competent authority resolution applies, Examination ensures that the examination's results are not inconsistent with the terms of a competent authority resolution. Examination should contact the U.S. competent authority if there are any questions related to making this determination. See IRM 4.60.2.3 for additional information.
 - b. Where a claim or return filed pursuant to a competent authority resolution is submitted to Examination by a taxpayer, the Examination office to which the claim/return is charged ensures such claim/return is processed consistent with and otherwise appropriately supported by the terms of the competent authority resolution. See IRM 4.60.2.3 for additional information.
 - c. The U.S. competent authority may request Examination evaluate a foreign competent authority's position, similar to requests under IRM 4.60.2.6.4.
 - d. The U.S. competent authority may request that Examination evaluate an Accelerated Competent Authority Procedure (ACAP) request.
- (5) Where a taxpayer takes a return position based on a tax treaty in relation to an examination, and the issue(s) is not under the jurisdiction of the U.S. competent authority or made pursuant to or otherwise supported by a competent authority resolution, Examination evaluates whether the taxpayer qualifies for such position, as provided for in the applicable tax treaty and U.S. tax law. See IRM 4.60.2.7 for additional information on qualification for tax treaty benefits.
- (6) Examination identifies and evaluates foreign-initiated adjustments, including those that resulted in a settlement between a taxpayer and a foreign tax authority, and taxpayer-initiated positions (i.e., taxpayer-initiated adjustments) that may reduce U.S. tax liability (through a deduction, foreign tax credit or otherwise) and coordinates with the U.S. competent authority in such cases (as necessary), in accordance with IRM 4.60.2.8.

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| <p>4.60.2.5
(08-09-2021)
Notification to Taxpayers of Potential Double Taxation or Taxation Otherwise Inconsistent with A Tax Treaty/Tax Coordination Agreement</p> | <ol style="list-style-type: none"> (1) If Examination proposes an adjustment that may result in double taxation or taxation otherwise inconsistent with a tax treaty or tax coordination agreement (i.e., a competent authority issue), Examination notifies the taxpayer of the right to make a competent authority request. (2) As a courtesy, Examination may notify a taxpayer of double taxation if the issue involves a country with which the United States does not have a tax treaty in effect. (3) Notification to a taxpayer of potential double taxation or taxation otherwise inconsistent with a tax treaty is made by issuing Pattern Letter 1853(P) or similar correspondence. (4) Notification to a taxpayer of potential double taxation or taxation inconsistent with a tax coordination agreement is made by issuing Pattern Letter 1915(P) or similar correspondence. (5) If applicable, Examination must also include with such notification Schedule 1853(P)/1915(P) or similar schedule. A separate schedule is prepared for each U.S. treaty partner/U.S. territory entity involved. |
| <p>4.60.2.5.1
(08-09-2021)
Notification Applicable to Tax Treaties</p> | <ol style="list-style-type: none"> (1) Notification to a taxpayer of potential double taxation or taxation otherwise inconsistent with a tax treaty advises the taxpayer of its right to request competent authority assistance. The notification also refers the taxpayer to the MAP article of the applicable tax treaty and Rev. Proc. 2015-40 (or its successor) for procedures for making a competent authority request, under a tax treaty, to the U.S. competent authority. (2) Where the MAP article of an applicable tax treaty contains a treaty notification period or does not allow for the waiver of time limits or other procedural limitations under the domestic law of the U.S. treaty partner, notification to a taxpayer contains information about such MAP article limitations. See IRM 4.60.2.5.3 for additional information. |
| <p>4.60.2.5.2
(08-09-2021)
Notification Applicable to Tax Coordination Agreements</p> | <ol style="list-style-type: none"> (1) Notification to a taxpayer of potential double taxation or taxation otherwise inconsistent with a tax coordination agreement advises the taxpayer of its right to request competent authority assistance and refers the taxpayer to the MAP article of the applicable tax coordination agreement and Rev. Proc. 2006-23 (or its successor) for procedures for making a competent authority request, under a tax coordination agreement, to the U.S. competent authority. |
| <p>4.60.2.5.3
(08-09-2021)
When to Notify a Taxpayer</p> | <ol style="list-style-type: none"> (1) Examination does not notify a taxpayer of a potential competent authority issue until the issue is sufficiently developed and the adjustment can reasonably be estimated. (2) Examination notifies the taxpayer at the earliest date possible and no later than when it issues a proposed adjustment that potentially leads to double taxation or taxation not in accordance with a tax treaty or tax coordination agreement. (3) If the development of an issue does not permit timely notification to the taxpayer, Examination should contact the appropriate office of the U.S. competent authority. See IRM 4.60.2.3.3. |

- (4) Certain tax treaties have treaty notification period provisions that require, for purposes of accessing MAP, the taxpayer to notify the United States or the applicable U.S. treaty partner when Examination proposes an adjustment that implicates a competent authority issue.
- (5) A minority of tax treaties' MAP articles do not allow for the waiver of time limits or other procedural limitations under the domestic law of the Contracting States.
- (6) Depending upon the facts and circumstances, if the taxpayer does not receive timely notice of a proposed adjustment, the IRS may be required to withdraw a proposed adjustment to the extent the adjustment would give rise to double taxation or taxation otherwise inconsistent with an applicable treaty.
- (7) "Timely notice" generally means that the taxpayer receives notification of a proposed adjustment or of the likelihood of a proposed adjustment prior to the expiration of a period of limitations specified in the MAP article of an applicable income tax treaty. Because treaty notification provisions vary and are potentially subject to case-by-case interpretation by the competent authorities of contracting states following the conclusion of an examination, timely notice to the taxpayer, regardless of the applicable notification period, is imperative in order to ensure that taxpayers have the ability to preserve their access to MAP.

4.60.2.5.4
(08-09-2021)
Recordkeeping

- (1) Examination maintains a copy of the notification provided to the taxpayer with the examination workpapers.

4.60.2.5.5
(08-09-2021)
**Large Corporate
Compliance Taxpayers**

- (1) Examination should ensure that the following notification language is included in the audit plan for Large Corporate Compliance (LCC) taxpayers: *"During the examination, adjustments may be recommended to your income tax liability causing economic double taxation as a result of your various affiliates operating in foreign countries. Therefore, we suggest you advise your foreign affiliates in these countries to notify the appropriate taxing authorities about postponing the expiration of the statutory period of limitations on refunds or other tax adjustments. This procedure should not be limited to those foreign affiliates listed on page 4 of this portion of the examination plan. In the event these adjustments affect the tax liability of an affiliate operating in a country with which the United States has an income tax treaty in effect, you have the right to request competent authority consideration for relief from economic double taxation under Revenue Procedure 2015-40 or its successor."*
- (2) This notification language does not relieve Examination of the responsibility to provide notification under IRM 4.60.2.5.

4.60.2.6
(08-09-2021)
**Processing Cases with
Competent Authority
Issue(s)**

- (1) A taxpayer may request assistance with a competent authority issue arising from a U.S.-initiated adjustment or a foreign-initiated adjustment.
- (2) The U.S. competent authority and Examination have various responsibilities with respect to processing these cases.

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| 4.60.2.6.1
(08-09-2021)
Competent Authority
 Issue(s) Arising
 From/Related to a
 U.S.-Initiated Adjustment | <ol style="list-style-type: none"> (1) A taxpayer may file a competent authority request with respect to competent authority issues arising from adjustments proposed during the U.S. examination process. (2) When a taxpayer requests assistance from the U.S. competent authority, the U.S. competent authority notifies the relevant Examination office of the request and may also request a copy of the MAP Report from Examination at that time. |
| 4.60.2.6.2
(08-09-2021)
Domestic Period of
 Limitations | <ol style="list-style-type: none"> (1) The Examination office to which the return is charged is responsible for ensuring that the applicable domestic period of limitations for assessment of tax for taxable periods covered by a competent authority request does not expire in cases under competent authority consideration/jurisdiction. (2) The U.S. competent authority should be notified promptly if a taxpayer rejects a request to execute an extension of the period of limitations for assessment. (3) In any case where a taxpayer refuses to extend the period of limitations for the resolution of U.S.-initiated adjustments, Examination should consider pursuing a quick assessment. See IRM 5.1.4.4, Jeopardy, Termination, Quick and Prompt Assessments, for additional information. (4) A taxpayer's rejection of a request to extend such limitations period can result in denial of assistance by the U.S. competent authority with respect to the competent authority request. (5) The U.S. competent authority notifies Examination if it accepts a competent authority request or it is notified of a competent authority request with a U.S. treaty partner/U.S. territory. (6) Examination suspends any further administrative action (e.g., assessment and collection procedures) with respect to the competent authority issue(s) covered in a competent authority request once the U.S. competent authority accepts a request or receives notice of a request made to a U.S. treaty partner/U.S. territory (with the exception of securing an extension of the applicable domestic period of limitations under IRM 4.60.2.6.2). See IRM 4.60.2.2 for additional information. However, Examination continues to apply its standard administrative procedures for issues not included in the competent authority request. |
| 4.60.2.6.3
(08-09-2021)
Competent Authority
 Issue(s) Arising
 From/Related to a
 Foreign-Initiated
 Adjustment | <ol style="list-style-type: none"> (1) A taxpayer requesting competent authority assistance regarding foreign-initiated actions is not required to file a copy of the request with Examination, even when the competent authority issue relates to a U.S. examination. (2) Where a competent authority request arising from a foreign-initiated action is made to the U.S. competent authority, the U.S. competent authority contacts the IRR to notify them of the issues, forwards a copy of the taxpayer's request to the IRR and requests that an examiner be assigned. (3) Examination suspends administrative action (e.g., assessment and collection procedures) with respect to the competent authority issue(s) covered in a competent authority request once the U.S. competent authority accepts such request (or receives notice of a request made to the U.S. treaty partner/U.S. territory), unless the U.S. competent authority requests otherwise. See IRM 4.60.2.2 for additional information. However, Examination continues to apply its |

standard procedures for issues not included in the competent authority request.

- (4) Additional procedures related to foreign-initiated adjustments affecting a U.S. tax return or occurring during the examination of a U.S. taxpayer are provided in IRM 4.60.2.8.

4.60.2.6.4 (08-09-2021)

Requests for Evaluation of Positions and/or Additional Information

- (1) In cases of U.S.-initiated adjustments, the U.S. competent authority may request additional information from Examination about the adjustments. Cases accepted for competent authority consideration in which the IRS position is not sufficiently developed will be returned to Examination either for further development or with the direction to withdraw the adjustments.
- (2) In cases of foreign-initiated actions, the U.S. competent authority may request an evaluation of the foreign position/issue from Examination.
- (3) Requests for evaluation of foreign positions and/or additional information are directed to the Examination office conducting the examination proceeding that the related competent authority issue(s) arise from/relate to at the time that the request is made. Examination handles these requests as priority action items, with a target date for submission of the completed response within 60 days from the time of receipt.
- (4) Examination follows locally prescribed measures to record and control incoming correspondence and enter a response due date of 60 days from the date of receipt. A memorandum to the appropriate U.S. competent authority office (i.e., TAIT or APMA) indicates the office to which the request was forwarded, the name and contact information of the individual within that office who may be contacted, and the response due date given to the action office.
- (5) The acknowledgment memorandum will be routed through appropriate Examination channels. If an evaluation cannot be completed within the requested 60-day period, personnel performing the evaluation will consult with the U.S. competent authority to describe the actions taken to complete the request, the reason the evaluation cannot be completed by the response due date, and the projected completion date.

4.60.2.6.5 (08-09-2021)

Competent Authority Resolution Process

- (1) When a taxpayer accepts the terms of a tentative competent authority resolution, the U.S. competent authority proceeds to formally close the case.
- (2) The U.S. competent authority provides the appropriate Examination office (or IRR in some circumstances) a disposition memorandum explaining the terms of the resolution. Examination and/or the taxpayer are responsible for implementing the terms of the resolution set out in the disposition memorandum. See IRM 4.60.2.3.
- (3) To the extent authorized under the applicable tax treaty, the competent authority resolution is implemented even if implementation would otherwise be barred by a domestic period of limitations or other procedural limitation. In certain circumstances, the IRS may request that the taxpayer execute a closing agreement reflecting the terms of the competent authority resolution.
- (4) Where no competent authority agreement is reached between the United States and the U.S. treaty partner/U.S. territory, or where the taxpayer does not accept the terms of a tentative competent authority resolution, the U.S.

competent authority returns jurisdiction over the competent authority issue(s) in the competent authority request to Examination via memorandum.

4.60.2.6.6
(08-09-2021)
Closing Agreements

- (1) When a taxpayer either executes a closing agreement with respect to a potential competent authority issue(s) or otherwise reaches a settlement with Examination, Appeals or the IRS Office of Chief Counsel on the issue(s), any related competent authority request may be limited in scope or entirely precluded, depending on the terms of the settlement. For example, the MAP may be limited to the U.S. competent authority requesting correlative relief from the U.S. treaty partner or U.S. territory. See Rev. Proc. 2015-40 (or its successor) or Rev. Proc. 2006-23 (or its successor), as applicable, for additional information. Any such agreement or settlement should specify that the taxpayer acknowledges that its rights for competent authority consideration on the issue will be restricted in this manner.

4.60.2.7
(08-09-2021)
Qualification for Tax Treaty Benefits

- (1) Generally, a taxpayer must satisfy certain threshold requirements to be entitled to the benefits of a tax treaty. These threshold requirements generally include (but are not limited to) the Residence article and, if applicable, the Limitation on Benefits (LOB) article of the treaty, in addition to any other specific requirements prescribed by an applicable tax treaty article, such as the ownership requirements that must be satisfied to claim a reduction of the source country tax on dividends. Other requirements may also apply in certain circumstances. For example, when a taxpayer derives income through a hybrid entity, the requirements of IRC 894(c) (and corresponding Treasury regulations) may need to be satisfied, along with any tax treaty rules addressing income derived through transparent entities.
- (2) In an examination, where a taxpayer had taken a return position that was based on a tax treaty, and the issue(s) is not under the jurisdiction of the U.S. competent authority or the treaty position is not made pursuant to a competent authority resolution, Examination evaluates whether the taxpayer qualifies for such treaty position, as provided for in the applicable treaty and U.S. tax law. Examination is encouraged to direct questions regarding such treaty positions to the U.S. competent authority through the *Treaties Practice Network*.

4.60.2.7.1
(08-09-2021)
Limitation on Benefits (LOB) Requirement

- (1) Many U.S. tax treaties contain a LOB article. Where applicable, a LOB article enumerates multiple, self-executing objective tests to determine whether a resident of the United States or the U.S. treaty partner is entitled to benefits under the applicable tax treaty. Most LOB articles provide that if a resident does not otherwise satisfy one of the applicable objective tests, the resident may be granted treaty benefits at the discretion of the competent authority from which benefits are sought. For additional information on the LOB requirement, see IRM 4.60.3, Tax Treaty Related Matters.
- (2) In the absence of a discretionary LOB determination by the U.S. competent authority (and otherwise subject to IRM 4.60.2.7(2)), a copy of which is required to be attached to any affected U.S. income tax returns, Examination is responsible for determining whether a taxpayer claiming treaty benefits meets one of the applicable objective tests in the LOB article in order to qualify for treaty benefits.
- (3) If a taxpayer received a discretionary LOB determination, Examination reviews the determination in relation to the applicable U.S. tax return(s) and notifies the U.S. competent authority of any contradictions with information gathered during

Examination's proceeding, in accordance with IRM 4.60.2.4(4). A material change in any law or fact forming the basis of a discretionary LOB determination may result in termination of the discretionary benefits. If Examination concludes that a material change has occurred, it must contact the U.S. competent authority to determine next steps. See IRM 4.60.2.3.3 for more information.

- (4) Tax coordination agreements generally do not have the same taxpayer qualification requirements as tax treaties. Tax coordination agreement provisions generally apply to persons subject to the provisions of the IRC or domestic tax law of the U.S. territory.

4.60.2.8
(08-09-2021)
Foreign-Initiated
Adjustments Affecting a
U.S. Tax Return and
Foreign Tax Credits
Claimed During an
Examination

- (1) A U.S. taxpayer might take the position that foreign-initiated adjustments reduce its U.S. tax liability by claiming foreign tax credits and adjusting its transfer pricing.
- (2) A U.S. taxpayer claiming a foreign tax credit must exhaust all effective and practical remedies, including invocation of competent authority procedures available under applicable tax treaties to reduce, over time, the taxpayer's liability for foreign tax (including liability pursuant to a foreign tax audit adjustment), as required by Treas. Reg. 1.901-2(e)(5)(i).
- (3) Likewise, a controlled foreign corporation must exhaust all effective and practical remedies, as described in IRM 4.60.2.8(2), in circumstances where its foreign taxes may be claimed as U.S. foreign tax credits by its U.S. shareholder(s).
- (4) Examination endeavors to identify foreign-initiated adjustments early in the examination cycle. Examination may reach these adjustments by scrutinizing tax attributes and other items, including the following: U.S. foreign tax credits; liability accounts, such as deferred taxes; intercompany accounts; and adjustments to transfer prices, management fees, license fees, or any intercompany charged expenses. Foreign-initiated adjustments affecting the U.S. foreign tax credit may be identified on Form 1118, Foreign Tax Credit – Corporations, and other forms, such as Form 5471, Information Return of U.S. Persons with Respect to Certain Foreign Corporations, Form 8858, Information Return of U.S. Persons with Respect to Certain Foreign Corporations, and Form 8865, Return of Certain U.S. Persons with Respect to Certain Foreign Partnerships.
- (5) During the examination, Examination requests that the taxpayer provide a written response concerning any foreign-initiated adjustment, regardless of whether the adjustment has been reported to the IRS. The response should include information related to foreign tax redeterminations under IRC 905(c) and the corresponding Treasury regulations.
- (6) When foreign-initiated adjustments are made by a country not party to a tax treaty with the United States, Examination follows the IRC and Treasury regulations thereunder to determine the U.S. tax liability associated with any foreign-initiated adjustments.
- (7) When foreign-initiated adjustments made by a U.S. treaty partner or U.S. territory are identified, in Examination's determination of whether associated foreign taxes are creditable, Examination coordinates, as appropriate, with the U.S. competent authority. For example, taxpayers claiming foreign tax credits may fail to invoke competent authority assistance or otherwise fully exhaust available remedies to reduce the taxpayer's liability for foreign tax. In such cir-

cumstances, the taxes attributable to the foreign-initiated adjustment may not constitute compulsory payments under Treas. Reg. 1.901-2(e)(5)(i).

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Exhibit 4.60.2-1 (08-09-2021)
Terms/Definitions/Acronyms

The following table lists terms, acronyms, and corresponding definitions used in this IRM:

Term	Definition
ACAP request	Under ACAP (accelerated competent authority request procedure), a taxpayer may request that the terms of a competent authority resolution for a given taxable period be extended to cover subsequent taxable periods for which it has filed tax returns. See Rev. Proc. 2015-40 sec. 4.01 and IRM 4.60.3, Tax Treaty Related Matters, for additional information.
APMA	The Advance Pricing and Mutual Agreement Program, a representative office of the U.S. competent authority within LB&I's TTPO Practice Area. APMA has primary responsibility for cases arising under the Business Profits and Associated Enterprises articles of tax treaties. An example of a competent authority issue handled by APMA is the double tax that could be incurred as a result of an allocation made by the IRS under IRC 482 or by a foreign tax authority under an equivalent provision in its domestic law. APMA and TAIT each can consider cases arising under the Permanent Establishment articles of tax treaties, and both offices will coordinate and collaborate on such cases and on any other cases as appropriate.
Appeals	For purposes of IRM 4.60.2, Appeals generally refers to the appropriate IRS office or officer responsible for appeals function having administrative jurisdiction over the issue.
Competent authority case	A case initiated by a competent authority request involving one or more competent authority issues.
Competent authority issue(s)	An issue that can be resolved by the U.S. competent authority, typically under the MAP article of a tax treaty or tax coordination agreement (generally, double taxation or other taxation not in accordance with a tax treaty/tax coordination agreement). A competent authority issue will usually arise from an action proposed by the United States or the U.S. treaty partner/U.S. territory that results or is likely to result in taxation not in accordance with a tax treaty/tax coordination agreement).

Exhibit 4.60.2-1 (Cont. 1) (08-09-2021)**Terms/Definitions/Acronyms**

Term	Definition
Competent authority process	All steps in the process of initiating and resolving a competent authority case, including steps in relation to pre-filing procedures. The competent authority process is generally addressed in paragraphs 1 and 2 of the MAP article in most tax treaties. See also Rev. Proc. 2015-40, section 2.01(2), and Rev. Proc. 2006-23, section 2.03, which provide a summary of the competent authority process.
Competent authority request	A taxpayer request for relief from double taxation or other taxation inconsistent with a tax treaty or tax coordination agreement, under the MAP article of such tax treaty or tax coordination agreement (for tax treaties, the request is typically made under paragraph (1) of the MAP article). The process for requesting competent authority assistance from the U.S. competent authority under a tax treaty is described in Rev. Proc. 2015-40 (or its successor). The process for requesting competent authority assistance from the U.S. competent authority under a tax coordination agreement is described in Rev. Proc. 2006-23.
Competent authority resolution	The resolution of competent authority issues constituting a competent authority case reached either: (i) unilaterally by a competent authority; (ii) between the U.S. competent authority and one or more foreign competent authority(ies) (as reflected in a signed mutual agreement and any additional agreements or understandings achieved through the competent authority process); or, (iii) through arbitration. The terms of a competent authority resolution are generally provided in the following documents: a signed mutual agreement between the competent authorities, which is subject to the restrictions of IRC 6105; a closing letter to the taxpayer, which must be attached to any U.S. income tax returns filed on the basis of the competent authority resolution; and/or an IRS-internal disposition memorandum, which explains the terms of the resolution to IRS personnel charged with its implementation. See IRM 4.60.2.3 for additional information.
Examination	For purposes of IRM 4.60.2, Examination generally refers to the appropriate IRS office or officer responsible for the examination function that has administrative jurisdiction over the issue.

Exhibit 4.60.2-1 (Cont. 2) (08-09-2021)
Terms/Definitions/Acronyms

Term	Definition
Foreign-initiated	For purposes of IRM 4.60.2, “foreign-initiated” includes actions taken by another country or a U.S. territory. Most references to “foreign-initiated” in IRM 4.60.2 refer to a U.S. treaty partner or U.S. territory, unless the context indicates otherwise (e.g., see IRM 4.60.2.8(5)).
IRR	International Referral Recipient. Additional information about IRR can be found at IRM 4.46.3, Planning the Examination.
LOB	Limitation on Benefits. A LOB article contains anti-treaty-shopping provisions that are primarily intended to prevent residents of third countries from benefiting from what is intended to be a reciprocal agreement between the two countries party to a tax treaty. See IRM 4.60.2.7.1 for additional information.
MAP	Mutual Agreement Procedure. MAP generally refers to the Mutual Agreement Procedure article of a tax treaty/tax coordination agreement. Note that “MAP” and “competent authority” are frequently used interchangeably when acting as modifiers (e.g., MAP request and competent authority request).
MAP Report	Certain documentation developed by Examination that the U.S. competent authority may use in a competent authority case. See IRM 4.46.6, Workpapers and Reports Resources for additional information.
TAIT	The Treaty Assistance and Interpretation Team, a representative office of the U.S. competent authority within APMA. TAIT has primary responsibility for cases arising under all articles of tax treaties other than Business Profits and Associated Enterprises. TAIT also has primary responsibility for cases arising under tax treaties with respect to estate and gift taxes. APMA and TAIT each can consider cases arising under the Permanent Establishment articles of tax treaties, and both offices will coordinate and collaborate on such cases and on any other cases as appropriate.

Exhibit 4.60.2-1 (Cont. 3) (08-09-2021)**Terms/Definitions/Acronyms**

Term	Definition
Tax Coordination Agreement	An agreement (tax coordination or tax implementation) for coordinating tax administration between the IRS and the tax agencies in American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands ("U.S. territories"). Tax coordination agreements contain provisions allowing the competent authorities of the United States and the applicable U.S. territory to resolve by mutual agreement inconsistent tax treatment by the two jurisdictions. For additional information, see Rev. Proc. 2006-23 (or its successor).
Tax treaty	A convention governing income taxes to which the United States is a party and that has entered into force, together with its protocols, exchanges of diplomatic notes, memoranda of understanding, and competent authority arrangements. U.S. estate and gift tax treaties fall outside the scope of IRM 4.60.2. Any questions related to estate and gift tax treaties should be directed to TAIT or the Treaties Practice Network (as applicable, see IRM 4.60.2.3.3).
Treaties Practice Network	Practice Networks are communities of LB&I employees seeking to collaborate in areas of international tax compliance. Practice Networks are designed to provide Examination the technical assistance they need to manage their cases more efficiently, consistently, and with the highest degree of technical proficiency. The Treaties Practice Network provides Examination with tools and resources to assist in identifying and analyzing tax treaty and tax coordination agreement issues. The Treaties Practice Network is managed by TAIT.
Treaty notification period	Under the MAP articles of certain tax treaties, notification to a competent authority is required within a specified period of time, that a request for competent authority assistance has been made to the other competent authority. See Rev. Proc. 2015-40, section 12, (or its successor) for additional information.
TTPO Practice Area	Treaty and Transfer Pricing Operations Practice Area

Exhibit 4.60.2-1 (Cont. 4) (08-09-2021)
Terms/Definitions/Acronyms

Term	Definition
U.S. competent authority	Tax treaties and tax coordination agreements designate a competent authority for each country/ U.S. territory that is a party to the treaty/ agreement. The respective competent authorities administer the provisions of the tax treaty/tax coordination agreement. The U.S. competent authority is the LB&I Commissioner who, in matters relating to MAP and treaty interpretation, primarily acts pursuant to applicable delegation orders through two offices, APMA and TAIT. Generally, references in IRM 4.60.2 to the “U.S. competent authority” refer to APMA or TAIT (as appropriate) unless the context indicates otherwise.
U.S. territory	For purposes of this IRM, “U.S. territory” refers to a U.S. territory which has a tax coordination agreement in effect with the United States; specifically, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, and Puerto Rico (collectively, “U.S. territories”).
U.S. treaty partner	A country party to a tax treaty with the United States.

