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IRS practice unit: Foreign-initiated adjustments, competent authority guidance

The IRS Large Business and International (LB&I) division released a “practice unit”—part of a series of IRS examiner “job aides” and training materials intended to describe for IRS agents leading practices about tax concepts in general and specific types of transactions.

The title of the practice unit is: *Competent authority Revenue Procedure 2015-40 guidance: Foreign-initiated adjustment(s)*

Read text of the practice unit on the [IRS practice unit webpage](#) (posting date of March 21, 2019).

The IRS practice unit provides the following background:

Multinational companies carrying out cross-border business face potential double taxation. Nearly all bilateral income tax treaties contain a Mutual Agreement Procedure (MAP) article, which, among other things, provides the legal framework for resolving international tax disputes between the treaty partners on a bilateral basis. Taxpayers can request assistance from the U.S. competent authority (U.S. CA), and, in appropriate circumstances (e.g., when an applicable treaty’s MAP article allows a taxpayer to submit a competent authority request to either Contracting State), the foreign competent authority (foreign CA), to reduce or eliminate the effects of double taxation under U.S. tax treaties. In addition to double tax cases, taxpayers may also request such assistance when they have incurred taxation that is otherwise not in accordance (i.e., inconsistent) with the provisions of an applicable U.S. tax treaty. The MAP article is generally invoked by taxpayers, but may be invoked by the U.S. or foreign CAs in certain circumstances.

During the course of an examination, a Revenue Agent (examiner) may determine that an adjustment should be made to the taxable income of a U.S. or non-U.S. (i.e., a foreign) person (as defined under IRC 7701(a)). The adjustment may give rise to double taxation, or taxation otherwise not in accordance with the provisions of an applicable U.S. income tax treaty. Similarly, such adjustments and potential tax treaty considerations may occur during the course of examinations conducted by foreign jurisdictions that are U.S. treaty partners. In each of these cases, the affected taxpayer may be eligible to invoke its rights under that U.S. tax treaty to seek the assistance of the CAs to alleviate such taxation.

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

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