

# International Overview Training – Post 2017 Tax Reform

## Topic V

### IRS Treaty Administration: Post Tax Cuts and Jobs Act of 2017



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# IRS Front Matters

- The IRS Mission Statement
- 14 General Principles of Ethical Conduct for Federal Employees
- Your Rights as a Taxpayer

# Learning Objectives

At the end of this lesson, you will be able to:

- A. Describe the basic purpose of tax treaties
- B. Identify a few key provisions of tax treaties and the Competent Authority's ("CA") role and assistance
- C. Explain how tax treaties may affect examinations



# A. Basic Purpose of Tax Treaties



# Purpose of Tax Treaties

- Avoid double taxation:
  - Allocate taxing rights among the source and residence countries
  - Resolve transfer pricing disputes
  - Credit/exemption mechanisms
  - Allow CAs to agree to provide relief in cases of taxation not in accordance with the treaty
- Prevent fiscal evasion through exchange of information and mutual collection assistance

# US Tax Treaties

## Countries with a US tax treaty in force:

Armenia*	Hungary	Pakistan
Australia	Iceland	Philippines
Austria	India	Poland
Azerbaijan*	Indonesia	Portugal
Bangladesh	Ireland	Romania
Barbados	Israel	Russia
Belarus*	Italy	Slovak Republic
Belgium	Jamaica	Slovenia
Bermuda	Japan	South Africa
Bulgaria	Kazakhstan	Spain
Canada	Korea	Sri Lanka
China	Kyrgyzstan*	Sweden
Cyprus	Latvia	Switzerland
Czech Republic	Lithuania	Tajikistan*
Denmark	Luxembourg	Thailand
Egypt	Malta	Trinidad and Tobago
Estonia	Mexico	Tunisia
Finland	Moldova*	Turkey
France	Morocco	Turkmenistan*
Georgia*	Netherlands	Ukraine
Germany	New Zealand	United Kingdom
Greece	Norway	Uzbekistan*
		Venezuela

\*US-USSR. Income Tax Treaty signed in 1973 applies



# General Operation of Tax Treaties

- Tax Treaty Interpretation:
  - Every treaty contains different language and needs to be independently analyzed
  - Treaties do not impose tax or provide a basis for taxation independent of domestic law
  - First, analyze the transaction under the Internal Revenue Code (“IRC”). Then, consider how a treaty might alter the result
  - Treaties, like the IRC, have the force and effect of law and should be read harmoniously with the IRC to the extent possible. But, if there is a direct conflict, the more recently-enacted provision controls
  - Characterization

# General Operation of Tax Treaties (Cont'd)

- US treaty provisions can be viewed as serving one of the following roles:
  - Scope
  - Definitions
  - Operation
  - Administration





# **B. Key Provisions of Tax Treaties**



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# Key Provisions of Tax Treaties: Scope

- Eligibility for Treaty Benefits
  - In order to claim treaty benefits, a person must:
    - Be a resident of one of the Contracting States (“CS”) to the treaty, and
    - If the treaty has a Limitation on Benefits (“LOB”) article, meet one of the tests set forth in the LOB article

# Key Provisions of Tax Treaties: Scope (Cont'd)

- Covered taxes generally only include income taxes in effect as of the signature date of the treaty
  - The treaty generally will also apply to any identical or substantially similar income taxes imposed after the signature date of the treaty
- Taxes covered by US totalization agreements (e.g., FICA taxes) as well as estate and gift taxes generally are not covered

# Key Provisions of Tax Treaties: Definitions

- Definitions
  - Article 3, US Model Treaty (2006)
  - Throughout treaty (e.g., Article 12 (Royalties), US Model Treaty (2006))
- Undefined terms
  - Generally, look to US domestic law when US tax is at issue.
- CA agreements

# Key Provisions of Tax Treaties: Operation

## Income From

Real property  
Property gains  
Directors' Fees

Dividends  
Business profits  
Gov't service

Employment  
Interest  
Royalties

- Shipping and air transport
- Students & trainees
- Entertainers & athletes
- Associated enterprises
- Pensions, social security, annuities, alimony & child support
- Other income

# Key Provisions of Tax Treaties: Operation (Cont'd)

## Business Profits & Permanent Establishment Articles

- Business profits of an enterprise of one CS may be taxed by that CS
- Business profits of an enterprise of one CS may **not** be taxed by the other CS **unless** the enterprise carries on business in that other CS through a **permanent establishment** (“PE”) situated therein
- When the enterprise of one CS carries on business in the other CS through a PE, the CS in which the PE is situated may tax the enterprise on the net income that is “attributable” to the PE
- E.g., see US Model Treaty (2006):
  - Article 7 (Business Profits)
  - Article 5 (Permanent Establishment)



# Key Provisions of Tax Treaties: Operation (Cont'd)

- The Associated Enterprises article permits each country to assert transfer pricing adjustments on intercompany transactions based on arm's-length principles under IRC 482
- If the CA agrees to a foreign-initiated transfer pricing adjustment, the Associated Enterprises article allows the CA to provide a correlative adjustment to reflect the foreign-initiated adjustment to mitigate double taxation

# Key Provisions of Tax Treaties: Administration

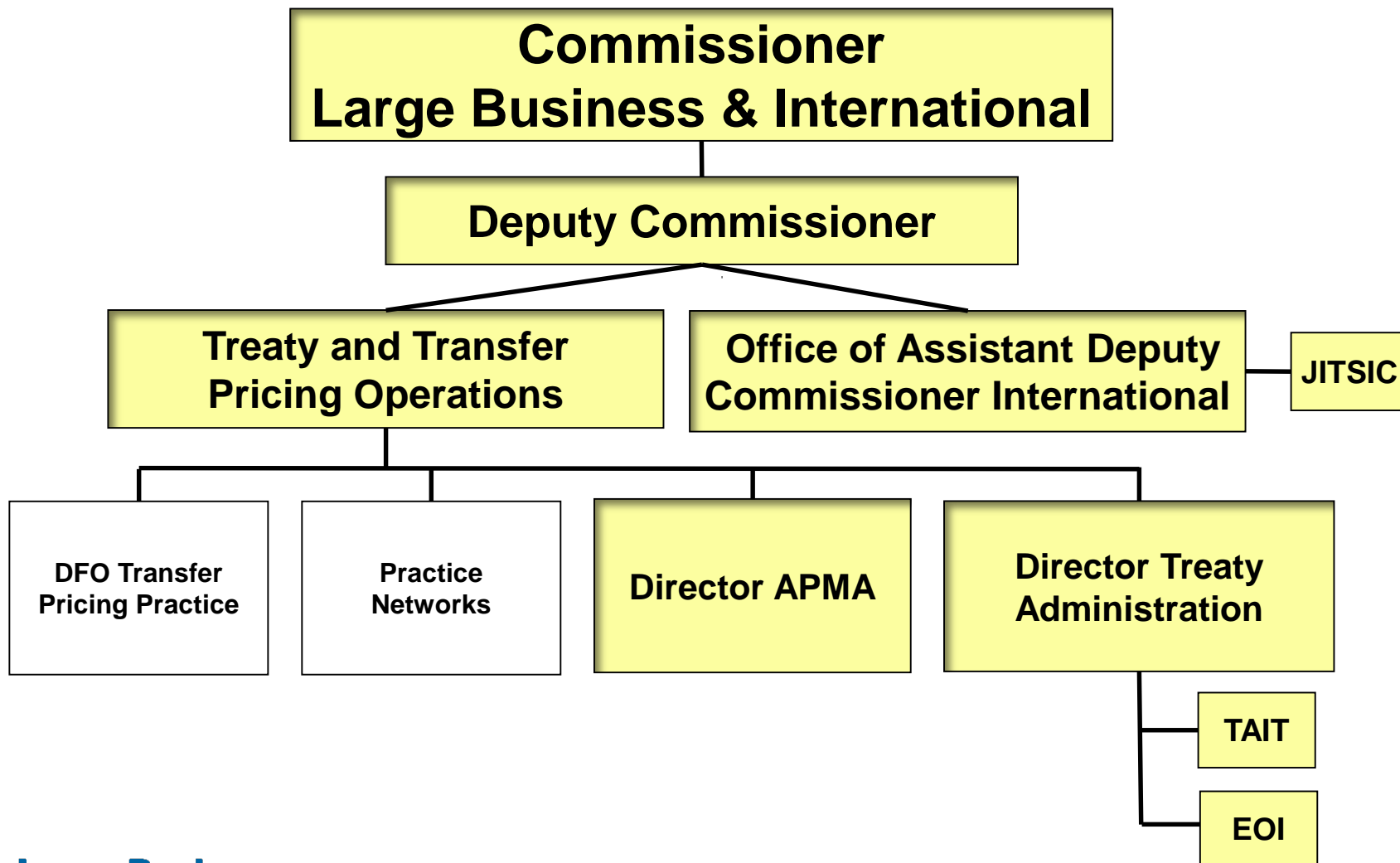
- Relief from Double Taxation
  - US Model Treaty (2006): Article 23
- Mutual Agreement Procedure
  - US Model Treaty (2006): Article 25
- Exchange of Information (“EOI”)
  - US Model Treaty (2006): Article 26



# Key Provisions of Tax Treaties: Administration (Cont'd)

- Treaty Assistance and Interpretation (“TAIT”)
  - Non-allocation provisions and PE
- Advanced Pricing and Mutual Agreement Program (“APMA”)
  - Allocation provisions and PE
- Exchange of Information (“EOI”)
  - Exchange of information provisions (and for some treaties, collection assistance provisions)

# Key Provisions of Tax Treaties: Administration (Cont'd)



# Key Provisions of Tax Treaties: Administration (Cont'd)

## Mutual Agreement Procedure

### – US Model Treaty (2006), Article 25

- When a taxpayer is subject to double taxation or taxation not in accordance with a tax treaty, the taxpayer may request CA assistance under the Mutual Agreement Procedure (“MAP”) article
- The process of applying for CA assistance differs in each country (see Revenue Procedure 2015-40 for procedures governing requests for US CA assistance)

# Key Provisions of Tax Treaties: Administration (Cont'd)

## Advance Pricing Agreements (APAs)

- An APA may be concluded on a bilateral or multilateral basis between CAs through the mutual agreement procedure of the relevant treaty
- A bilateral APA is an agreement between tax administrations and a Taxpayer on the proper transfer pricing of related party cross-border transactions for a term of years, which often include prior years as well as future years

# Key Provisions of Tax Treaties: Administration (Cont'd)

## EOI – US Model Treaty (2006), Article 26

- Treaty Partners may exchange information foreseeably relevant for carrying out provisions of the treaty or of domestic laws
- Use and disclosure of information exchanged must be in accordance with the provisions of the specific treaty. Unless otherwise provided under the terms of the treaty:
  - May only be used for tax administration and tax enforcement purposes, and
  - Subject to same disclosure restrictions as information obtained under our domestic laws
- US initiated requests may be sent to [#LBI.Intl.Exchange.of.Information@irs.gov#](mailto:#LBI.Intl.Exchange.of.Information@irs.gov#)

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# Key Provisions of Tax Treaties: Administration (Cont'd)

- Specific Information Exchanged
  - Tax return information, including;
    - Filing status and address
    - Income and expenses
    - Information returns
  - Business records, invoices, contracts, agreements
  - Bank, brokerage, and other financial records
- Automatic Exchanges of Information
  - Fixed, Determinable, Annual, and Periodic
- Spontaneous Exchanges of Information
  - Information suggesting non-compliance with tax laws of a foreign jurisdiction

# Key Provisions of Tax Treaties: Administration (Cont'd)

- Joint International Taskforce on Shared Intelligence and Collaboration (“JITSIC”) also assists with exchanges of information
  - The EOI Program manages almost all exchange of information requests, outgoing and incoming
  - JITSIC performs a relatively small number of requests. JITSIC exchanges involve; i) JITSIC Network project exchanges, ii) joint audits or joint collaborations with JITSIC Network member countries, or iii) complex, cross-border tax avoidance schemes involving JITSIC Network member countries  
(<http://www.oecd.org/tax/forum-on-tax-administration/jitsic/>)
- Both programs adhere to Internal Revenue Manual 4.60.1, Exchange of Information procedures



# **C. How Tax Treaties May Affect Tax Examinations**



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# Compliance Role

- Have a general familiarity with how a treaty applies and affects US tax
- Consider the potential impact of a transfer pricing issue to the foreign related party
- Notify US Taxpayer of MAP rights when double tax/tax inconsistent with treaty
- Know when to consider EOI procedures
- Evaluate foreign-initiated adjustments

# Compliance Role (Cont'd)

- When an examination involves a transfer pricing issue, the Issue Team will be expected to follow the memorandum from LB&I Commissioner on “*Interim Guidance on Mandatory Issue Team Consultations with APMA for Examination of Transfer Pricing Issues Involving Treaty Countries*” (dated February 19, 2019)

# Compliance Role (Cont'd)

- Compliance role when MAP may arise:
  - Notify US Taxpayer of MAP rights
  - Protect US statute of limitations
  - Suspend US administrative action (e.g., assessments, collection procedures) on CA issues; and
  - Prepare Issue Team and MAP Reports

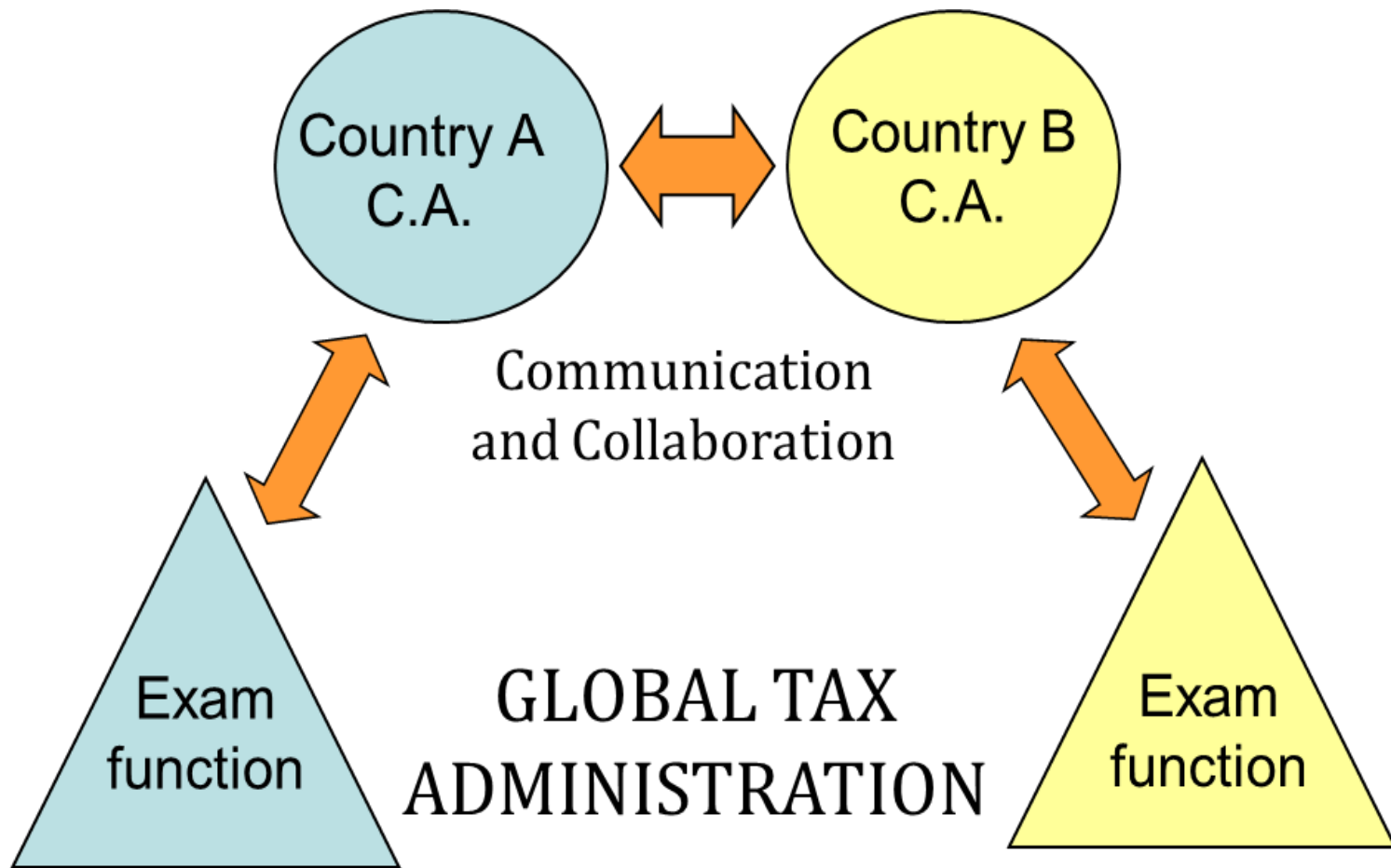
# Compliance Role: Global Awareness

- Building a clear picture of the global business
- Working with the taxpayer:
  - Encourage a collaborative approach,
  - Face-to-face dialogue can be more effective than lengthy exchanges of correspondence in developing an understanding of the business, and
  - Advocate direct interaction with key personnel of the taxpayer

# Compliance Role: Global Awareness (Cont'd)

- The Issue Team is an active participant in global tax administration.
- The Issue Team understands how proposed adjustments will impact multinational taxpayers by understanding:
  - Taxpayer's global business model and practices, and
  - Taxpayer's transfer pricing methods

# Compliance and CA





# What Did We Learn?



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# What did we learn?

You should now be able to:

- A. Describe the basic purpose of tax treaties
- B. Identify a few key provisions of tax treaties and the CA's role and assistance
- C. Explain how tax treaties may affect examinations



# Appendix



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# Resources

- [IRM 4.60.2](#) - Mutual Agreement Procedures and Report Guidelines
- [#LBI.Treaties.IPN@irs.gov#](#) - Treaties Practice Network
- [Treaties Practice Units](#)
- [APMA](#)

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# Resources (Cont'd)

- [#LBI.Exchange.of.Information.PN@irs.gov#](mailto:#LBI.Exchange.of.Information.PN@irs.gov#) - EOI Practice Network
- [EOI Practice Units](#)
- [Exchange of Information \(EOI\) Program](#)

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# Resources (Cont'd)

- [US Model Treaty \(2006\) and Technical Explanations](#)
- [US Income Tax Treaties/Model Treaties, TIEAs, and Technical Explanations](#)
- [OECD Model Treaty Convention on Income and Capital](#)
- [OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters \(MAAC\)](#)



# Resources (Cont'd)

- [LB&I International Practice Units](#)
- [Information Gathering Practice Units](#)
- [Information Gathering Contacts](#)

# Glossary of Terms

Acronym/Terms	Definition
APA	Advance Pricing Agreement
APMA	Advanced Pricing and Mutual Agreement
CA	Competent Authority
CS	Contracting State
EOI	Exchange of Information
IRC	Internal Revenue Code
LB&I	Large Business & International
LOB	Limitation on Benefits
MAP	Mutual Agreement Procedure
PE	Permanent Establishment
TAIT	Treaty Assistance and Interpretation
TPP	Transfer Pricing Practice

