



PRIVACY, GOVERNMENTAL  
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, DC 20224

Date: December 14, 2012

**Control #:** PGLD-11-1212-01  
**Affected IRM:** 11.3.28  
**Expiration Date:** December 14, 2013

MEMORANDUM FOR GLD AREA MANAGERS, DISCLOSURE MANAGERS,  
AND DISCLOSURE EMPLOYEES

FROM:

Bernice B. Fischer

A handwritten signature in black ink that reads "Bernice B. Fischer".

Director, Governmental Liaison and Disclosure

SUBJECT:

Interim Guidance on Mutual Legal Assistance Treaty (MLAT) Cases

This memorandum issues guidance on processing Mutual Legal Assistance Treaty (MLAT) cases. Please ensure that this information is distributed to all affected employees within your organization.

**Purpose:** This memorandum reflects the change that the exclusive processing of Mutual Legal Assistance Treaty (MLAT) cases will no longer be with Disclosure Office 4 (Chicago) but will now be worked exclusively by Headquarters Freedom of Information Act (FOIA) Group. These requests are an exception to the FOIA work normally handled by this group. IRM 11.3.28 will be updated at the next revision.

**Background/Source(s) of Authority:** IRM 11.3.28 discusses Disclosures to Federal Agencies for Administration of Nontax Criminal Laws pursuant to IRC §6103 (i)(1), (i)(2) and (k)(4) for disclosure to the Department of Justice (DOJ) based on an MLAT request from a treaty partner.

**Procedural Change:** See the attached guidance.

**Effect on Other Documents:** This guidance will be incorporated into IRM 11.3.28, Disclosures to Federal Agencies for Administration of Nontax Criminal Laws. This guidance also affects procedures followed by Large Business & International (LB&I) when referring an MLAT to Disclosure for processing.

**Effective Date:** Immediately

**Contact:** Anne Jensen at 215-861-1767.

**Distribution**

[www.irs.gov](http://www.irs.gov)

## Attachment

### Interim Guidance

**Control #:** PGLD-11-1212-01

The following changes are hereby effective immediately for IRM 11.3.28.3.1  
(08-25-2009)

Disclosures Based on a Mutual Legal Assistance Treaty (MLAT) Request in Criminal Matters

- (1) A summary of the procedures for processing the requests for assistance (e.g., providing tax returns and return information) under the various treaties on an MLAT follows:
  - a. The Department of Justice Office of International Affairs, Criminal Division (DOJ OIA) is authorized to act as the "Central Authority" under all MLATs. The DOJ OIA forwards all requests under MLAT for assistance pertaining to tax information to Executive Director, International Operations, Criminal Investigation (CI).
  - b. CI staff reviews the request and determines if returns/return information are requested or if the request is solely for financial investigative assistance. Only requests for returns/return information will be sent to the Deputy Commissioner, International, Large Business & International (DCI)(LB&I). CI will process financial investigative assistance requests.
  - c. CI forwards the request package to DCI. DCI then forwards a copy of the request package to Associate Chief Counsel (International) (ACCI) for a legal opinion whether the respective MLAT and the Internal Revenue Code authorize compliance with the request for tax information.

**Example:** ACCI determines if the MLAT is a convention relating to the exchange of tax information within the meaning of IRC § 6103(k)(4).

- (2) DCI also forwards a copy of the request package to the Headquarters Freedom of Information Act (FOIA) Group Senior Tax Law Specialist (TLS). In a brief e-mail message or memo, ACCI conveys to DCI, CI, and the Headquarters FOIA TLS, the conclusions of its evaluation of the MLAT, but not the legal analysis. The conclusion is limited to:
  - a. Whether the respective MLAT and the Internal Revenue Code authorize compliance with the request for tax information and
  - b. The conditions to be met before disclosing the information (such as an ex parte order from the District Court under IRC § 6103(i)(1) or a letter under IRC § 6103(i)(2) from the appropriate Department of Justice official). A copy of ACCI's

file memo, containing the legal analysis, may be attached to the communications to DCI and CI, but not to the TLS.

- (3) Based on the message from ACCI, the TLS will request OIA to obtain additional information, such as an ex parte court order from the District Court under IRC § 6103(i)(1), or a letter under IRC § 6103 (i)(2) from the appropriate Department of Justice (DOJ) official. Upon receipt of an ex parte court order or a letter under § 6103(i)(2), ACCI will fax a copy to the TLS.
- (4) The TLS will contact a field Disclosure Office, in writing, requesting assistance with IDRS research and securing the tax returns.
- (5) The TLS will forward the relevant documents to DCI. DCI will comply with the MLAT request by forwarding the documents to DOJ OIA, under the signature of the IRS Competent Authority and in a sealed envelope. The cover letter will include instructions to transmit the envelope to the Central Authority of the requesting treaty partner under the MLAT. DCI may include appropriate instructions regarding confidentiality of the documents and limitations on their use, if any, in the cover letter to DOJ OIA. A copy of the cover letter will be forwarded by DCI to CI.
- (6) Although these disclosures are made to DOJ (to be passed on to the treaty partner), they are considered to be IRC § 6103(k)(4) disclosures and must be accounted for under that section.