MANUAL TRANSMITTAL

4.25.4

Department of the Treasury
Internal Revenue Service

MAY 26, 2023

EFFECTIVE DATE

(05-26-2023)

PURPOSE

(1) This transmits revised IRM 4.25.4, Estate and Gift Tax, International Estate and Gift Tax Examinations.

MATERIAL CHANGES

(1) IRM 4.25.2(1) - revised to provide additional detail on filing requirements.

(2) IRM 4.25.4.3(2) - removed duplicative sentence.

(3) IRM 4.25.4.3.1 - added a Note regarding the application of a Canadian bilateral income tax treaty to provincial-level taxes.

(4) IRM 4.25.4.4 - corrected form titles and line numbers, and removed old effective date information.

(5) IRM 4.25.7.1(1)(c) - revised to more closely mirror statutory language.

(6) IRM 4.25.4.8.1(3)(c) - updated the value of the spousal exclusion amount for recent filing years.

(7) Editorial changes have been made throughout this IRM. Website addresses, legal references, and IRM references were reviewed and updated as necessary.

EFFECT ON OTHER DOCUMENTS

This material supersedes the July 31, 2020 publication of IRM 4.25.4, Estate and Gift Tax, International Estate and Gift Tax Examinations.

AUDIENCE

This section contains instructions and guidelines for Small Business/Self-Employed Estate and Gift Tax Specialty Programs employees.

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4.25.4
International Estate and Gift Tax Examinations

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4.25.4.1
(07-20-2018)
Program Scope and Objectives

(1) **General Overview** - This IRM provides information about estate and gift tax examiner responsibilities, estate and gift IRM sections, and forms used in the examination of international estate, gift and generation-skipping transfer tax issues, returns and claims.

(2) **Purpose** - This IRM explains Estate and Gift examiner responsibilities so that managers, senior-level officials and estate, gift and generation-skipping transfer tax return examiners will be better equipped to prepare and submit accurate reports.

(3) **Audience** - This IRM is for Estate and Gift Specialty Tax managers, examiners and personnel at the campus who process international estate, gift and generation-skipping transfer tax returns, refunds and claims.

(4) **Policy Owner** - Director, Specialty Examination Policy is responsible for the administration, procedures and updates related to the technical guidance and information processing steps and methods specific to Estate and Gift Tax examiner responsibilities, IRM subsections, and forms created for the examination of returns and claims.

(5) **Program Owner** - Director, Examination - Specialty Tax owns Estate and Gift Tax Examination.

(6) **Primary Stakeholders** - Appeals, Collection Advisory, Counsel, Estate and Gift Tax Workload Selection and Delivery, Specialty Examination, and SB/SE Examination Quality & Technical Support are the primary stakeholders for this IRM.

4.25.4.1.1
(07-20-2018)
Background

(1) This IRM provides internal estate, gift and generation-skipping transfer tax examination guidance, relating to international issues, returns and claims. This guidance applies when:

a. The decedent or donor is not a citizen or domiciliary of the United States for transfer tax purposes.
b. The decedent or donor was a United States citizen but was domiciled outside of the United States.
c. A donor or decedent transferred property located outside of the United States by gift or testamentary transfer.

4.25.4.1.2
(07-31-2020)
Authority

(1) Estate and gift tax examiners and managers assigned to examine and oversee the examination of international estate and gift tax returns and issues are responsible for complying with servicewide policies and authorities set forth in IRM 1.2.1.5, Servicewide Policies and Authorities, Policy Statements for the Examining Process.

(2) Examination of estate and gift tax returns should be conducted in a manner that will promote public confidence as stated in the Mission of the Service. See IRM 1.2.1.2.1, Policy Statement 1-1.

(3) Policy Statement 4-52 established a general guideline that examination and processing of returns should be completed within 18 months of the filing date. See IRM 1.2.1.5.18, Policy Statement 4-52.

(4) Estate and gift tax examiners and managers assigned to examine and oversee the examination of international estate and gift tax returns and issues are responsible for complying with all applicable servicewide examination delegation

orders and SB/SE delegation orders. A table summarizing estate and gift delegation orders is available at IRM 4.25.14.8, Estate and Gift Tax, Miscellaneous Procedures, Signature Authority.

(5) Section 3504 of RRA 98, Public Law 105-206 requires the Service to include an explanation of the examination and collection process, as well as information about assistance from the Taxpayer Advocate with any first report/notice of proposed deficiency. Pub 3498, The Examination Process, must be used for this purpose.

(6) Statement of Procedural Rules 26 CFR 601.506 requires that examiners must forward any correspondence (or copy), discussions, reports and/or other material to the taxpayer at the same time it is sent to the representative.

(7) The Form 706 and 706-NA return instructions and 26 CFR 20.6018-4, 26 CFR 25.6019-3, and 26 CFR 25.6019–4 list required filing documents.

4.25.4.1.3
(07-31-2020)
Program Objectives and Review

(1) The National Quality Review System (NQRS) is a web-based review system used by Estate and Gift Tax Policy, Estate and Gift Tax Examination Management and Estate and Gift Tax Quality Measures and Analysis (QMA) to generate and review reports analyzing national quality performance based upon standardized quality attributes set forth in Document 12499, Estate and Gift Tax Examination Embedded Quality Job Aid. NQRS report data is compiled by QMA on a quarterly basis, but **ad hoc** reports may be obtained monthly. The use of NQRS is explained in additional detail in IRM 4.25.1.11, Manager Embedded Quality Review and Specialty Exam National Embedded Quality Review Programs.

(2) Operational Reviews and related NQRS reports are conducted by Territory Managers and the Chief of Estate and Gift to measure national adherence to quality standards and managerial performance and/or oversight.

(3) Customer (i.e., taxpayer) satisfaction reports are generated by SB/SE Operation Support Research on a quarterly basis. These reports provide masked taxpayer narratives that are responsive to a pre-defined set of survey questions. The quarterly survey reports are to be used to identify areas for examination quality improvement.

(4) Front-line manager reviews are conducted under the Examination Quality Review System (EQRS), with the frequency based on annual personnel requirements.

4.25.4.1.4
(07-20-2018)
Terms/Definitions/ Acronyms

(1) The following table sets forth Estate and Gift Tax program specific terms and definitions:

Term	Definition
Citizen of United States, and resident of United States Possession	A decedent who was a citizen of the United States and a resident of a possession thereof at the time of their death shall, for purposes of the tax imposed by Chapter 11, be considered a nonresident not a citizen of the United States within the meaning of that term wherever used in Title 26, but only if such person acquired their United States citizenship solely by reason of (1) being a citizen of such possession of the United States, or (2) birth or residence within such possession of the United States. IRC 2209.
Domicile	Domicile is defined as living within a country with no definite present intent of leaving. Determining domicile for estate and gift tax purposes is fact specific. Once a noncitizen establishes the United States as their domicile, they remain a United States domiciliary until a new domicile is established. If there is doubt as to the location of domicile, there is a rebuttable presumption that the decedent was domiciled within the country where they resided. See 26 CFR 20.0-1, paragraph (b)(1).
Exchange of Information Agreement	Exchange of Information Agreements are preexisting agreements between the United States and foreign jurisdictions to exchange certain kinds of taxpayer information.
Nonresident alien decedent	A nonresident alien decedent is a decedent who is neither domiciled in nor a citizen of the United States at the time of death. For purposes of Form 706-NA, a citizen of a U.S. possession is not a U.S. citizen.
Resident	The term “resident” in the transfer tax context is different from the definition of resident in the income tax context. Residence in the transfer tax context is based on the individual’s domicile.
Situs	The place to which, for purposes of legal jurisdiction or taxation, a property belongs.
Territory	Territory and United States Possession are used interchangeably throughout the Internal Revenue Code.
Transfer Certificate	A transfer certificate is a release of the Federal estate tax lien on a decedent’s property.
Treaty	A bilateral agreement made by two countries to resolve issues involving double taxation.

(2) The following table sets forth common Estate and Gift Tax program acronyms:

Term	Acronym
Deceased Spousal Unused Exclusion	DSUE
Exchange of Information	EOI
Foreign Account Tax Compliance Act	FATCA
Foreign Bank Account Report	FBAR
Foreign Death Tax Credit	FDTC
Intergovernmental Agreements	IGA
Mutual Legal Assistance Treaties	MLAT
Qualified Domestic Trust	QDOT
Tax Information Exchange Agreement	TIEA

4.25.4.1.5
(07-31-2020)
Related Resources

(1) The Estate and Gift Tax program is required to follow all servicewide examination procedures and those set forth in the SBSE examining process IRM. The following IRM subsections provide additional information relating to the processing, classification and examination of Estate and Gift Tax program returns and claims:

- IRM 4.25.1, Estate and Gift Tax, Estate and Gift Tax Examinations
- IRM 4.25.2, Campus Estate and Gift
- IRM 4.25.3, Planning, Classification, and Selection
- IRM 4.25.5, Technical Guidelines for Estate and Gift Tax Issues
- IRM 4.25.6, Report Writing Guide for Estate and Gift Tax Examinations
- IRM 4.25.7, Estate and Gift Tax Penalty and Fraud Procedures
- IRM 4.25.8, Delinquent Returns and SFR Procedures
- IRM 4.25.9, Requests for Abatement, Claims for Refund and Doubt as to Liability Offer in Compromise in Estate and Gift Tax Cases
- IRM 4.25.10, Case Closing Procedures
- IRM 4.25.11, Special Examination Procedures
- IRM 4.25.12, Valuation Assistance
- IRM 4.25.13, Appeals, Mediation and Settlement Procedures
- IRM 4.25.14, Miscellaneous Procedures
- IRM 3.21, International Returns and Documents Analysis
- IRM 25.6, Statute of Limitations
- IRM 4.60.1, Exchange of Information
- IRM 5.5.7, Collecting Estate Tax

4.25.4.2
(05-26-2023)
Estate Tax Return Filing Requirements for Estates with International Issues

(1) The U.S. estate tax filing requirements of a decedent's estate are determined by whether, at death, the decedent was a U.S. citizen; whether, at death, the decedent was a U.S. resident for estate tax purposes; and if the decedent was not a U.S. citizen nor a U.S. resident, at death, whether the decedent had U.S. *situs* property. For estate tax purposes, residence of a decedent is determined based on domicile; it is not the same definition of residence that applies for income tax purposes under IRC 7701(b). The world-wide estate of a U.S.

citizen or a U.S. resident is subject to U.S. estate tax and the executor of such an estate is required to file a U.S. estate tax return. A noncitizen nonresident decedent will be subject to U.S. estate tax on U.S. *situs* assets. If the value of the gross estate plus the decedent's lifetime gifts, subject to certain adjustments, exceeds the filing threshold the executor of an estate of a U.S. citizen or U.S. resident decedent is required to file a Form 706, and report the fair market value of all of the decedent's world-wide ownership interests. In contrast, the executor of an estate of a noncitizen, nonresident decedent is required to file a Form 706-NA to report property located within the United States worth more than $60,000. Note that certain bank deposits and debt obligations are not considered property located within the United States. See IRC 2105(b). The filing requirements are the same for estates of U.S. citizens (regardless of whether they die abroad) and non-United States citizens resident in the United States for estate tax purposes (domiciled in the United States). There are special rules that apply to certain expatriates and residents of United States possessions.

(2) The Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, is filed by the executors of the estates of decedents who were United States citizens or who were non-U.S. citizens domiciled in the United States at the time of death.

(3) Form 706-NA , United States Estate (and Generation-Skipping Transfer) Tax Return, Estate of nonresident not a citizen of the United States, is filed by estates of decedents who were (i) nonresidents, noncitizens of the United States, or (ii) residents of U.S. possessions whose U.S. gross estate (made up of U.S. situs property) value exceeded the filing requirement of $60,000 at the time of death.

a. Certain expatriates who expatriated prior to June 17, 2008, who are subject to IRC 877, and who died within the 10 year period after expatriation may be subject to special rules. See IRM 4.25.4.2.3, Expatriates.
b. A decedent who was a U.S. citizen solely by reason of the decedent's birth, citizenship, or residency in a United States possession is deemed a nonresident, noncitizen for estate tax purposes. See IRC 2208 and IRC 2209.

4.25.4.2.1
(07-31-2020)
Domicile

(1) The term "resident" in the transfer tax context is different from the definition of "resident" in the income tax context. Residence in the transfer tax context is based on the individual's "domicile." Domicile is defined as living within a country with no definite present intent of leaving. Determining domicile for estate and gift tax purposes is fact specific. Once a noncitizen establishes the United States as their domicile, they remain a United States domiciliary until a new domicile is established. If there is doubt as to the location of domicile, there is a rebuttable presumption that the decedent was domiciled within the country where he or she resided. See 26 CFR 20.0-1, paragraph (b)(1).

(2) If an examiner is examining a return of a decedent who was not a United States citizen, residence for estate tax purposes must be established by determining the decedent's domicile at the time of death. The examiner will need to research current United States and foreign laws, and applicable estate tax treaties, to determine the correct transfer tax treatment for the decedent.

(3) If there is a question about the decedent's domicile at the time of death and the decedent was a resident of a U.S. possession, the examiner may contact

International Accounts at the Philadelphia Service Center to determine whether Form 8898, Statement for Individuals Who Begin or End Bona Fide Residence in a U.S. Possession, was filed by the decedent prior to death.

4.25.4.2.2
(07-31-2020)
U.S. Decedent Lived and/or Died Abroad

(1) The estate tax liability of a U.S. citizen who lived and/or died abroad is considered "international." Regardless, the decedent's estate is required to file Form 706, report the decedent's world-wide assets, and pay tax on the decedent's world-wide assets.

(2) If at the time of death, the decedent was a U.S. citizen but not a resident of the United States for estate tax purposes, the following must be submitted with Form 706:

a. An inventory of property and a schedule of liabilities, claims against the estate, and expenses of administration filed with any foreign court of probate jurisdiction. These documents must be certified by the foreign court.
b. A copy of any return filed under foreign inheritance, estate, legacy, succession, or other death tax laws, that is certified by an official of the foreign tax department.
c. A certified copy of the decedent's will.
d. Death Certificate. State Department Form DS-2060, Report of the Death of an American Citizen Abroad, or death certificate issued by the foreign country and a copy of the decedent's current passport or other proof of US citizenship.

(3) A transfer certificate is a release of the Federal estate tax lien on a decedent's property. If an estate needs information or assistance with a request for a transfer certificate, refer the estate to the instructions located on the *transfer certificate page* on IRS.gov.

4.25.4.2.3
(07-31-2020)
Expatriates

(1) Generally, an expatriate is someone who relinquished U.S. citizenship or ceases to be treated as a lawful permanent resident. There are special expatriation regimes that generally apply to U.S. citizens who relinquish U.S. citizenship and long-term residents who cease to be treated as a U.S. lawful permanent resident (a long-term resident is defined as U.S. green card holder who has had a green card for at least 8 out of the last 15 years ending with the year residency is terminated).

(2) Special rules under IRC 2107 apply to a noncitizen nonresident decedent who expatriated from the United States prior to June 17, 2008, no more than 10 years prior to death, and who was subject to tax under IRC 877(b).

(3) If a decedent to whom IRC 877(b) applies expatriated from the United States within 10 years of death, the estate is required to file Form 706-NA to report estate tax liability as set out under IRC 2107.

(4) A decedent who is subject to tax under IRC 2107 is generally subject to estate tax as any other nonresident noncitizen decedent, except that the decedent is also deemed to own and will be taxed on a prorated share of U.S. property of any foreign corporation in which they directly or indirectly owned 10 percent or more of voting stock, and with related interests, controlled over 50 percent of the corporation (either through voting power or value of stock). There are also special crediting rules under IRC 2107 that apply to expatriates subject to IRC 2107.

(5) If a decedent to whom IRC 877(b) applies expatriated more than 10 years prior to death, IRC 2107 does not apply, and Form 706-NA would be filed to report estate tax liability on property situated in the United States in the same manner as any other nonresident noncitizen decedent.

(6) United States citizens and long-term residents who relinquished citizenship or residency on or after June 17, 2008, are not subject to IRC 2107 and are not considered expatriates for purposes of Form 706-NA. These individuals are generally treated in the same manner as any other nonresident noncitizen decedent. U.S. persons receiving gifts or bequests from individuals who expatriated on or after June 17, 2008, and are treated as "covered expatriates" under IRC 877A, may have tax consequences under IRC 2801.

4.25.4.2.4
(07-20-2018)
Non-Domiciled, Non-United States Citizens and Residents of United States Possessions

(1) The examiner should conduct a complete factual and legal analysis of each case where the decedent and/or donor are identified as a non-domiciled, non-United States citizen. Verifying the domicile of the decedent and/or donor is critical since all foreign *situs* property owned by a nonresident, noncitizen is not subject to U.S. gift or estate tax.

(2) The examiner should also verify when a decedent and/or donor is identified as a resident of a possession of the United States. A decedent who was a U.S. citizen and a resident of a U.S. possession at the time of death will be treated as a U.S. citizen for estate tax purposes unless such individual acquired U.S. citizenship solely by being a citizen of the possession or by birth or residence within such possession. See IRC 2209.

4.25.4.3
(05-26-2023)
Treaties

(1) Estate and gift tax treaties provide rules to minimize and avoid double taxation that can arise when two countries both have the right to tax the decedent under their domestic laws. Treaties do so by providing primary and secondary taxing rights, *situs* rules, and special rules dealing with credits, deductions and exemptions.

(2) Each United States estate tax treaty is unique and must be consulted if applicable. Estate tax treaties vary; some provide a list of rules whereby the two countries party to the treaty agree as to the *situs* of certain property and thus the primary taxing right with respect to that property. Other estate tax treaties generally provide that unless property is expressly addressed in the treaty, the state of residence has the primary right to tax. In these residence-type treaties, the nonresidence country can usually exercise taxing rights over real property and business property located in such country. The United States generally retains the right to tax its U.S. citizens and residents under the treaty.

(3) Liability for estate or gift tax for a nonresident, noncitizen may vary based on the governing treaty. A list of current treaty agreements may be found at: *Estate and Gift Treaties*.

(4) If an estate claims treaty benefits that change the tax treatment that property would normally be subject to under the Code, a notice invoking those treaty rights must be filed with the return. The notice is provided by attaching a statement or Form 8833, Treaty-Based Return Position Disclosure, under Section 6114 or 7701(b) .

(5) Some treaties increase the unified credit allowed to nonresident noncitizens by the Code and allow a prorated unified credit based on the ratio of property in

the U.S. over the gross estate, wherever situated. Examiners must consult the applicable treaty for specific provisions, as each treaty has unique terms and provisions.

(6) Some of the most common estate tax treaty issues arise from the United States' treaties with Canada and the United Kingdom. IRM 4.25.4.3.1 and IRM 4.25.4.3.2 highlight some, but not all, of the rules from those treaties.

4.25.4.3.1
(05-26-2023)
Canada

(1) Article XXIX B (Taxes Imposed by Reason of Death) of the U.S.-Canada Income Tax Treaty ("Treaty") provides special rules that may reduce taxes for U.S. citizen or resident decedents with Canadian property and Canadian residents with U.S. property. These rules were first incorporated into the Treaty under the 1995 Protocol to the Treaty.

(2) If the decedent was a Canadian resident but not a U.S. citizen at the time of death, the estate can take a "pro rata" unified credit to compute U.S. estate tax. The pro rata credit under the Canadian treaty is determined by multiplying the exclusion amount available to a U.S. citizen decedent by a fraction of the value of the decedent's U.S. assets over the value of the decedent's world-wide assets. A statement invoking the right under the Treaty described above and showing the tax calculation must be attached to Form 706-NA. See paragraph 2 of Article XXIX B of the Treaty.

(3) The estates of certain decedents transferring property to a U.S. resident or Canadian resident surviving spouse that meet the five conditions described in the Treaty may be entitled to a nonrefundable marital credit against U.S. estate tax when the executor elects the Treaty benefit and waives the benefit of the estate tax marital deduction allowed under U.S. law. This credit is generally limited to the lesser of:

- The allowable unified credit under paragraph 2 of Article XXIX B, or
- The amount of estate tax that would otherwise be imposed on the transfer of qualifying property to the surviving spouse under U.S. law. See paragraphs 3 and 4 of Article XXIX B of the Treaty.

(4) A small estate exemption is available when the world-wide gross estate of a Canadian resident decedent does not exceed $1.2 million. It applies to U.S. securities and certain other property located in the United States. See Paragraph 8 of Article XXIX B of the Treaty.

Note: Except as specifically provided in a Canadian bilateral income tax treaty, a Canadian province may not be required to follow, with respect to provincial-level taxes that are similar to Canadian federal taxes addressed in a treaty, the rules set forth in a bilateral treaty for those Canadian federal taxes.

4.25.4.3.2
(08-05-2016)
United Kingdom

(1) The U.S.-U.K. Estate Tax Treaty contains various rules that may reduce taxes for U.S. citizen or U.S. resident decedents with respect to U.K. property and may reduce taxes for U.K. citizen or U.K. resident decedents with respect to U.S. property.

(2) A special exemption rule under Article 8 (Deductions, Exemptions, Etc.) of the Treaty allows a U.K. citizen, who was neither a U.S. resident nor a U.S. citizen, who has taxable property in the United States to limit U.S. estate tax to the amount of tax that the U.S. could impose on such decedent if such decedent were treated as a U.S. resident immediately before death.

(3) A statement invoking the right under the Treaty described above and showing the tax calculation must be attached to Form 706-NA. See paragraph 5 of Article 8 (Deductions, Exemptions, Etc.) of the Treaty.

4.25.4.4
(05-26-2023)
Foreign Accounts

(1) If the decedent had an interest in or signature or other authority over an account in a foreign country, "Yes" should be checked on line 15 of page 3 of Form 706. "Accounts" include, but are not limited to, bank deposits, securities accounts, and offshore trusts. In addition to filing a Form 706, the estate may have an obligation to file Form 3520, Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts, Form 3520-A, Annual Return of Foreign Trust with a U.S. Owner, Form 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations, Form 8621, Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund, Form 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships, and/or the Financial Crimes Enforcement Network's Form 114, Report of Foreign Bank and Financial Accounts.

(2) Review the decedent's recent Forms 1040, Schedule B, Part III for information on foreign accounts and trusts.

(3) Review income tax returns, including Forms 1040 and/or business income tax returns, for attached Forms 8938. Form 8938, Statement of Specified Foreign Financial Assets, is used to report certain specified foreign financial assets in which the decedent had an interest, that should be reflected on the Form 706, if the total value of all the specified foreign financial assets was more than the appropriate reporting threshold.

   a. A Form 8938 filer who satisfies the Form 8938 reporting obligation by completing Form 8938, Part IV, Excepted Specified Foreign Financial Assets, must complete the check-box on Form 3520, Form 3520-A, Form 5471, Form 8621, or Form 8865 to indicate that the respective form is included in the number of forms reported in Part IV of Form 8938. See 26 CFR 1.6038D-7 for additional information regarding the effective date of exceptions from the reporting requirements. For more information, see the instructions for Forms 3520, 3520-A, 5471, 8621, or 8865. These other forms may report foreign accounts and/or foreign assets in which the decedent owned an interest. Also see, IRM 20.1.9.22, IRC 6038D — Information With Respect to Specified Foreign Financial Assets, for further information.
   b. Form 8938, at Part I, line 5; Part II, line 12; Part V, line 22; and at Part VI, line 31, provides information on the disposition, gratuitous transfer, sale, or closure of an account or other foreign asset.
   c. If during review of the taxpayer's Form 8938 (attached to Form 1040), it is determined that there may be penalties applicable to Form 8938, you must refer the potential Form 8938 penalties to income tax. Follow the instructions in Part 1 of Referral Procedures in the Referrals – to and from EG folder on the Estate and Gift Tax SharePoint.

(4) The filing of Form 8938 does not relieve a taxpayer's requirement for filing FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR) if the taxpayer is otherwise required to file the FBAR. The accounts and assets reported on the FBAR and Form 8938 are not identical. Both filings should be reviewed and compared with the assets reported on the decedent's Form 706. See IRM 5.21.6-1, Comparison of Form 8938 and FBAR Requirements, IRM

4.26.16, Bank Secrecy Act, Report of Foreign Bank and Financial Accounts (FBAR) and IRM 4.26.17, Bank Secrecy Act, Report of Foreign Bank and Financial Accounts (FBAR) Procedures.

4.25.4.4.1
(07-31-2020)
Foreign Account Tax Compliance Act (FATCA)

(1) The Foreign Account Tax Compliance Act (FATCA), generally requires that foreign financial institutions and certain other non-financial foreign entities report on the foreign assets held by their U.S. account holders or be subject to withholding on payments. The HIRE Act also contains legislation requiring U.S. persons to report, depending on the value, their foreign financial accounts and foreign assets.

(2) When requesting a taxpayer's FATCA data, Estate and Gift Tax examiners must observe the applicable use restrictions compiled by Automatic Exchange of Information (AEOI). Procedures for requesting FATCA data, as well information on the FATCA Data Use Restrictions Chart, are in the FATCA folder on the E&G SharePoint.

(3) Before requesting FATCA data for Estate and Gift Tax examinations, examiners must review the FATCA workshop, Obtaining FATCA Data, located on the E&G SharePoint in the FATCA Workshop subfolder.

4.25.4.5
(01-06-2014)
Foreign Death Tax Credit

(1) Estates of U.S. citizens or U.S. resident decedents are entitled to a credit for death taxes paid to a foreign country that may be claimed on the Form 706. See IRC 2014. For purposes of the credit, United States possessions are deemed foreign countries.

(2) The foreign death tax credit is authorized either by statute under IRC 2014 or under an applicable treaty.

4.25.4.5.1
(07-31-2020)
Statutory Authority

(1) An estate of a U.S. citizen or U.S. resident decedent for estate tax purposes may face double taxation as a result of the decedent's ownership of foreign property because the United States generally taxes the world-wide property of a U.S. decedent and the foreign country may tax property situated within such foreign country. The credit for foreign death taxes authorized under IRC 2014 may relieve the burden from double taxation by allowing the estate of a U.S. citizen or resident decedent to claim a credit against the U.S. estate tax for foreign death taxes actually paid to another country with respect to property located in that country. The credit specifically applies to taxes that are the equivalent to a death, estate, inheritance, legacy, succession tax or similar transfer tax.

Note: The credit provided under IRC 2014 may not be claimed by taxpayers who choose to claim a deduction for foreign death taxes pursuant to IRC 2053(d)(1). A taxpayer is either entitled to a credit or a deduction for foreign death taxes.

(2) Under the statute, the credit is allowable for all death taxes (national and local) imposed by a foreign jurisdiction.

(3) If the *situs* of the property subject to the foreign death tax credit is in question, it is determined according to the terms of the applicable treaty or by using the same principles used to determine the *situs* of property owned by a nonresident, noncitizen of the United States. See the instructions for Form 706-NA.

(4) The credit allowable under the statute will be calculated on Schedule P of Form 706. Tax paid to foreign jurisdictions on property not situated in that country or property not included in the gross estate should not be included as part of the calculation.

4.25.4.5.2 (07-20-2018) Treaty Authority for the Foreign Death Tax Credit

(1) If an estate tax treaty provides more favorable terms than the statute to the estate of a U.S. citizen or resident decedent and the executor of such estate elects to claim the benefits of the applicable treaty, the treaty provisions apply (rather than the IRC statute). The Form 706 should indicate the treaty provision being invoked.

(2) For a list of countries with current estate and gift tax treaties, see the instructions for Form 706 or *Estate and Gift Tax Treaties*.

(3) A credit claimed under a treaty is also figured on Schedule P (similar to statutory credits) with the following exceptions:

a. The *situs* rules of the treaty determine whether the property is located in one or the other treaty country.
b. Credit is only allowed for taxes specified in the treaty. Local taxes may not be eligible for the credit unless specifically stated in the treaty.
c. If allowed under the treaty, credit may be apportioned among properties deemed situated outside or within both countries.
d. The amount entered on line 4, Schedule P is the amount from Part 2, line 12 on page 1 of Form 706, less any amounts claimed as credit for pre-1977 gifts or credit for tax on prior transfers.

(4) If the credit is authorized by treaty, it is equal to the most beneficial of:

a. The credit figured under the treaty provisions, or
b. The credit figured under the statute, or
c. A combination of the credit figured under the treaty **plus** the credit figured under the statute in the case of death taxes paid to a political subdivision or possession not covered by the treaty.

4.25.4.5.3 (07-31-2020) Claiming the Foreign Death Tax Credit

(1) The estate must complete Schedule P of Form 706 and attach a copy of Form 706-CE, Certificate of Payment of Foreign Death Tax, to support any credit claimed.

(2) Generally, Form 706-CE should be certified by the foreign jurisdiction to which tax was paid. If the foreign jurisdiction refused to certify Form 706-CE, it should be filed directly with the IRS along with a statement explaining why the foreign government refused to certify, a copy of the foreign death tax return, and proof of tax payment.

(3) If tax has been paid to more than one foreign jurisdiction, separate computations for each jurisdiction must be attached to Form 706, Schedule P.

(4) Taxes paid to a foreign jurisdiction should be converted to United States dollars (USD) using the rate of exchange in effect at the time the foreign tax is paid.

(5) The examiner may verify or recalculate the applicable foreign death tax credit using the Estate and Gift Tax Notebook Job Aid. A foreign death tax credit adjustment may be made manually or by using the Foreign Death Tax Credit (FDTC) Worksheet.

a. The FDTC Worksheet adjustments correspond to lines 16 and 18 of Form 1273, Report of Estate Tax Examination Changes. If the credit is limited to a fixed dollar amount, use a manual entry. See IRM 4.25.6.6.3, Foreign Death Tax Credit (Statutory)/Foreign Death Tax Credit (Treaty/ Canadian Marital Credit) Worksheet.
b. The FDTC Worksheet will generate a Form 886-A, Explanation of Items, for both statutory and treaty-based adjustments. Do not remove the credit that does not result in an adjustment. Doing so will negatively impact the computations and result.
c. The FDTC Worksheet must be used in cases that have either an interrelated marital or charitable computation or an IRC 6166 installment election.

4.25.4.5.4
(07-20-2018)
Limitations on the Foreign Death Tax Credit

(1) If the decedent was a resident of the United States and a citizen of another country, the credit is only allowed to the extent that the decedent's country of citizenship allows a corresponding credit for United States citizens who were residents of that country at the time of death.

(2) The foreign death tax credit allowable may not exceed the total federal estate tax attributable to the property.

(3) The foreign death tax credit is limited to amounts actually paid and for which a credit is claimed within the later of:

a. Four years after the filing date of Form 706,
b. The expiration of any extension of time for payment of federal estate tax, or
c. Sixty days after a final decision of the Tax Court on a timely filed petition for redetermination of deficiency.

(4) The foreign death tax credit cannot be finally allowed until the foreign tax is actually paid and evidence of payment is submitted to the IRS.

(5) The estate is required to file notice with the Service if any foreign tax for which a foreign death tax credit has been allowed is recovered. See 26 CFR 20.2016-1.

4.25.4.6
(01-06-2014)
Property Passing to Non-U.S. Citizen Surviving Spouse

(1) There are special rules and limitations placed on a decedent and/or donor's ability to transfer property at death to a non-United States citizen surviving spouse. The transfer of property to a non-U.S. citizen surviving spouse is governed by United States law, foreign law, and treaty agreements.

4.25.4.6.1
(01-06-2014)
Jointly Held Property

(1) If the decedent owned property with a surviving spouse who is not a citizen of the United States, the value of that property must be reported in full on Schedule E, Part 2 of Form 706.

(2) Jointly-held property may be listed on Form 706 at less than full value if the estate can prove that the property:

a. Originally belonged to the surviving spouse
b. Was not acquired from the decedent for less than full and adequate consideration in money or money's worth
c. Was acquired with consideration belonging to the surviving spouse, or

d. Was acquired by the decedent and the surviving spouse by gift, bequest, devise or inheritance as joint tenants

(3) To establish the right to report the lesser value of jointly-held property, the estate must include proof of the extent, origin and nature of the decedent's and surviving spouse's interest in the property with Form 706.

4.25.4.6.2
(07-31-2020)
Qualified Domestic Trust

(1) The unlimited marital deduction is generally not available for property passing to a surviving spouse who is not a United States citizen. See IRC 2056(d)(1).

(2) Under IRC 2056A, bequeathing property to a noncitizen surviving spouse through a qualified domestic trust (QDOT) allows an estate to take a marital deduction. For the marital deduction to apply, property must be transferred to the QDOT prior to the death of the decedent or the filing of the Form 706.

(3) A QDOT is any trust that is eligible for the estate tax marital deduction under IRC 2056 and meets all of the following requirements:

a. At least one trustee is a United States citizen or domestic corporation;
b. No distribution of corpus can be made unless the United States trustee has the right to withhold from the distribution the tax imposed on the QDOT;
c. Meets the requirements of all applicable regulations, and
d. The executor has made an election on Form 706.

(4) The QDOT election must be made on a Form 706, filed no more than one year after the due date (including extensions) and include:

a. The name and address of every trustee;
b. A description of each transfer from the decedent that is a source of trust property;
c. The employer identification number (EIN) of the trust, and
d. Schedule M lists the entire value of the QDOT or the entire value of the trust property

(5) There is a presumption of election if the trust or property is deducted on Schedule M. Once made, the election is irrevocable. The election is considered made for the entire trust, unless a portion of the trust is specifically identified as not subject to the election.

(6) Based on the value of the assets passing to the QDOT, the trust instrument must contain certain provisions indicating the trust's ability to pay the tax.

(7) If the value passing to the QDOT exceeds $2 million, the trust must meet at least one of the following conditions at all times:

a. At least one U.S. trustee must be a bank;
b. The U.S. trustee must furnish a bond to the IRS for 65 percent of the fair market value of trust assets, or
c. The U.S. trustee must furnish a letter of credit issued by a bank in an amount equal to 65 percent of the fair market value of trust assets.

(8) If the value passing to the QDOT is $2 million or less, the trust must meet at least one of the following conditions at all times:

a. No more than 35 percent of the fair market value of trust assets, as determined on the last day of the taxable year, will consist of real property located outside of the U.S., or
b. The trust will meet the above requirements for QDOTs with assets in excess of $2 million.

(9) If the trust decides to file a bond or letter of credit, the bond or letter of credit must be filed with the return on which the QDOT election is made. The U.S. trustee must include a written statement listing the assets that will fund the QDOT, the values of those assets, and disclosing whether the personal residence exclusion (see below) is being claimed.

(10) If there is more than one QDOT, the values of all trusts are aggregated for purposes of determining whether the $2 million threshold is exceeded.

(11) The executor may elect to exclude up to $600,000 in real property value (including furnishings) from the value of the QDOT if the real property is used by or held for the use of the surviving spouse as a personal residence; is owned directly by the QDOT; and if the real property passed or was treated as passing to the QDOT under the marital deduction rules when the surviving spouse was not a United States citizen.

Note: If the trust is dated prior to November 5, 1990, the requirements shown at (1) and (2) above will be deemed met if the trust instrument mandates that all trustees are United States citizens or domestic corporations.

(12) The examiner is responsible for determining whether the trust qualifies as a QDOT in accordance with IRC 2056A and applicable regulations. The determination will be made as of the filing date for Form 706. If judicial proceedings are commenced before the due date (including extensions) for Form 706 to have the trust reformed to meet QDOT requirements, the determination will not be made until any court-ordered changes are made. The QDOT Lead Sheet provides recommended audit steps and reminders for use in examining qualified domestic trusts. The QDOT Lead Sheet also provides suggestions for the types of documents and information needed to determine the validity and deduction allowable as a result of the IRC 2056A(d) election. The QDOT Lead Sheet is available in the Estate and Gift Tax Notebook Job Aid.

4.25.4.6.2.1
(08-06-2015)
QDOT and Deceased Spousal Unused Exclusion

(1) If there is a QDOT and the decedent's estate elected portability of the Deceased Spousal Unused Exclusion (DSUE) amount, a preliminary amount representing the DSUE will be shown on Form 706. This amount will decrease as distributions are made from the trust. The DSUE amount will be finally determined and available for use when the surviving spouse dies or the QDOT is otherwise terminated.

(2) A surviving spouse who is a nonresident, noncitizen of the United States may only apply the deceased spousal unused exclusion (DSUE) to the extent it is allowed by treaty with the decedent's country of citizenship.

4.25.4.6.2.2
(07-20-2018)
Form 706-QDT

(1) The Form 706-QDT, U.S. Estate Tax Return for Qualified Domestic Trusts, should be filed by the trustee or designated filer for a qualified domestic trust (QDOT) when the trust makes a hardship distribution, has a taxable event, or to notify the Service that the trust is exempt from future filings because the surviving spouse has become a United States citizen.

(2) The trustee is responsible for filing Form 706-QDT and paying any estate tax due.

(3) If the surviving spouse is the beneficiary of more than one QDOT, the executor of the decedent who created the trusts may identify a designated filer on either the decedent's estate tax return or on the first Form 706-QDT which is filed. The designated filer is responsible for filing all Forms 706-QDT and paying any tax due; the trustee will still be responsible for completing Schedule B and forwarding the information to the designated filer.

(4) Hardship distributions are distributions of principal made to the surviving spouse from the QDOT in response to an immediate and substantial financial need relating to the health, maintenance, education, or support of the surviving spouse or any person that the spouse has a legal obligation to support.

(5) Taxable events include the following:

a. Any distribution from the QDOT prior to the death of the surviving spouse except income and hardship distributions, or
b. The surviving spouse who was the beneficiary of the trust dies, or
c. The trust ceases to qualify as a QDOT.

(6) Generally, a Form 706-QDT is filed on or before April 15 of the year following the taxable event or hardship distribution. When the form is used to report the death of the surviving spouse or that the trust no longer qualifies as a QDOT, the return must be filed within nine months of the date of death or the cessation of the QDOT status.

(7) If Form 706-QDT is being filed due to the death of the surviving spouse and any property remaining in the trust is includible in the surviving spouse's estate (or would be, if the surviving spouse were a U.S. citizen or resident), the trustee or designated filer may elect to apply the following estate tax benefits to the trust:

- IRC 2032, Alternate valuation,
- IRC 2032A, Valuation of certain farm, etc., real property,
- IRC 6166, Extension of time for payment of estate tax where estate consists largely of interest in closely held business, and
- IRC 2056A, Qualified domestic trust.

4.25.4.6.2.3
(07-20-2018)
Change in Surviving Spouse's Citizenship Status

(1) If the surviving spouse became a U.S. citizen, the QDOT tax does not apply to any distributions made after the spouse became a citizen if:

a. The surviving spouse was a U.S. resident at all times after the death of the decedent before becoming a citizen, or
b. No QDOT tax was imposed on any distributions before the surviving spouse became a citizen.

(2) If neither of the above-referenced conditions apply, the QDOT tax will still not apply to distributions made after the surviving spouse becomes a citizen provided they elect to:

a. Treat any distributions subject to the QDOT tax as taxable gifts for purposes of determining estate or gift tax, and
b. Treat any of the decedent's applicable credit amount that was used to reduce the QDOT tax on taxable distributions as use of the surviving

spouse's own applicable credit for purposes of determining available credit under IRC 2505 for the year the surviving spouse becomes a citizen and all subsequent years.

4.25.4.6.3
(01-06-2014)
Canadian Marital Credit

(1) In addition to certain other credits, the treaty between the United States and Canada allows for a marital credit against U.S. estate tax with respect to certain bequests by a decedent to a surviving spouse who is a resident of the United States or Canada at the time of decedent's death. See paragraphs 3 and 4 of Article XXIX B (Taxes Imposed by Reason of Death) of the *United States-Canada Income Tax Convention*.

(2) The credit will be included in the total on line 15 of page 1 of Form 706. A notation, "Canadian marital credit" should be to the left of the entry space.

(3) The amount of the marital credit is limited to the lesser of the amount of the unified credit allowed to the estate under paragraph 2 of Article XXIX B of the treaty and the amount of U.S. estate tax that would otherwise be imposed under U.S. law on the transfer of the qualifying property to the surviving spouse.

Note: If the surviving spouse is a U.S. citizen, the credit cannot exceed the U.S. estate tax attributable to the property that qualifies for a marital deduction.

(4) In order to claim the Canadian marital credit under the U.S.-Canada Income Tax Treaty, the executor of the decedent's estate must elect the benefits of the treaty and must waive any estate tax marital deduction benefit allowed under United States domestic law.

(5) The estate must meet one of the following treaty requirements before claiming the Canadian marital credit:

a. At death, the decedent must have been a U.S. citizen or resident of either the United States or Canada;
b. The surviving spouse was a resident of the United States or Canada at the time of decedent's death; or
c. If both the decedent and the surviving spouse were residents of the United States, one or both was a citizen of Canada.

4.25.4.7
(01-06-2014)
Examining the Form 706-NA

(1) This section provides field examination guidance for examining the Form 706-NA, United States Estate (and Generation-Skipping Transfer) Tax Return, Estate of nonresident not a citizen of the United States. The Form 706-NA is generally filed by an executor of a nonresident non-U.S. citizen decedent if at the date of death the value of the gross estate located in the United States exceeds $60,000.

4.25.4.7.1
(05-26-2023)
Determining Whether Property is Located in the United States

(1) Unless a treaty provides otherwise, apply the following rules to determine whether assets owned at death by a nonresident noncitizen decedent are located in the United States:

a. Real estate is deemed U.S. *situs* property if situated in the United States.
b. Tangible personal property is deemed to be U.S. *situs* property if physically present in the United States on the date of death. There is an

exception for works of art which are imported solely for public exhibition, on loan to a non-profit gallery or museum, or on exhibition or en route to or from an exhibition.

c. Stock of U.S. corporations is considered property in the United States.
d. Generally, debt obligations are property located in the United States if they are debts of a U.S. citizen or resident, a domestic partnership or corporation, a domestic estate or trust, the United States, a state, or a political subdivision of a state or the District of Columbia.
e. Deposits with a U.S. branch of a foreign corporation that is engaged in the commercial banking business are treated as property located in the United States.

(2) If an asset is includible in the decedent's gross estate solely due to one of the transfer provisions of IRC 2035, IRC 2036, IRC 2037 or IRC 2038, the asset transferred is considered located in the United States if the above rules apply to situate the asset in the United States either at the time of the transfer **or** at the time of the decedent's death.

4.25.4.7.2
(07-31-2020)
Unified Credit

(1) In general, a unified credit against estate tax of $13,000 is available to estates filing Form 706-NA.

(2) If the decedent was a resident of a United States possession, the unified credit is the greater of $13,000 or $46,800 multiplied by the ratio of U.S. *situs* property to the gross world-wide estate.

(3) Treaty provisions and any unified credit previously allowed against gift tax can change the amount of available unified credit.

(4) The Canadian Marital Credit (IRM 4.25.4.6.3) may be allowed in addition to the unified credit.

4.25.4.7.3
(01-06-2014)
Credits and Deductions

(1) The marital deduction may only be taken if the surviving spouse is a United States citizen or if the property passes to a qualified domestic trust (QDOT), unless otherwise allowed by treaty. Schedule M of Form 706 must be attached.

(2) Unless otherwise provided by treaty, a charitable deduction may only be taken if the transfer is to a domestic entity or for use in the United States. Schedule O of Form 706 must be attached.

(3) A credit for federal gift taxes paid is allowable. A computation of the credit must be attached to Form 706-NA.

(4) A deduction for estate, inheritance, legacy, or succession taxes paid to a state or the District of Columbia is allowable. This deduction must, generally, be claimed within four years of filing the return and a certification from the appropriate official of the taxing state must be submitted, showing:

- The total tax charged,
- Any discount allowed,
- Any penalties and/or interest imposed,
- The amount of tax actually paid, and
- Each payment date.

4.25.4.8
(07-31-2020)
Form 709

(1) Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, is filed by citizens or residents of the United States to report transfers made by gift or generation-skipping transfer (GST) during a calendar year. Nonresident, non-U.S. citizens are also required to file a Form 709 to report transfers of property situated in the United States under the gift tax rules. Additionally, gifts to non-U.S. citizen spouses do not qualify for the gift tax marital deduction.

4.25.4.8.1
(05-26-2023)
Gifts from Nonresident, Non-U.S. Citizens

(1) The term "resident" in the transfer tax context is different from the definition of "resident" in the income tax context. Residence in the transfer tax context is based on the individual's "domicile." Domicile is defined as living within a country with no definite present intent of leaving. Determining domicile for gift tax purposes is the same inquiry as for estate tax purposes described above in IRM 4.25.4.2.1, and is very fact specific. Once a noncitizen establishes the United States as their domicile, they remain a United States domiciliary until a new domicile is established. If there is doubt as to the location of domicile, there is a rebuttable presumption that the decedent was domiciled within the country where they resided at the time the gift was made. A person is considered a nonresident, not a citizen of the United States for gift tax purposes if, at the time of the gift, they are not a United States resident or citizen or hold United States citizenship or residency solely due to birth or domicile in a United States possession. See 26 CFR 25.2501-1.

(2) Nonresident, non-U.S. citizens are subject to gift and GST taxes for transfers of property situated in the United States.

(3) Nonresident, non-U.S. citizens must file Form 709 if they:

a. Make a gift of a future interest of a U.S. *situs* tangible asset
b. Make a gift of a present interest of a U.S. *situs* tangible asset that exceeds the annual exclusion amount for the year of the gift to any donee other than a spouse
c. Make a gift to a non-U.S. citizen spouse exceeding the spousal exclusion amount for the year of the gift ($100,000 indexed for inflation; $164,000 in 2022 and $175,000 and 2023). See IRC 2523(i)(2).

Note: Generally, transfers of intangible property are not subject to gift tax. See IRC 2501(a)(2). Gifts of future interests are not eligible for the annual gift tax exclusion amount. See IRC 2503(b)(1).

(4) Nonresident, non-U.S. citizen donors may not claim the unified (applicable) credit against the gift tax. See IRC 2505(a).

(5) A nonresident, non-U.S. citizen donor may not split gifts.

(6) A nonresident, non-U.S. citizen donor may not take into account the deceased spousal unused exclusion (DSUE) amount of a predeceased spouse, except to the extent authorized by treaty with the donor's country of domicile. For a current list of countries with gift tax treaties see *Estate and Gift Tax Treaties*.

4.25.4.8.2
(07-31-2020)
Gifts to Non-U.S. Citizen Spouses

(1) Gifts to non-U.S. citizen spouses (regardless of whether the donor is a U.S. donor or a nonresident noncitizen donor) are not eligible for the unlimited gift tax marital deduction. See IRC 2523(i)(1).

(2) An increased annual exclusion ($157,000 for 2020), adjusted for inflation is available for gifts of present interests, made to non-U.S. citizen spouses, provided such gifts would otherwise qualify for the gift tax marital deduction.

(3) If the value of gifts made to a non-U.S. citizen spouse exceeds the gift tax annual exclusion for the year in which they are made, Form 709 must be filed for that year.

(4) Gifts of future interests to spouses that are not U.S. citizens must be reported on Form 709, Schedule A. The 2020 Form 709 instructs taxpayers that, "if all gifts to your spouse were present interests, do not report on Schedule A any gifts to your spouse if the total of such gifts for the year does not exceed $157,000 and all gifts in excess of $15,000 would qualify for a marital deduction if your spouse were a U.S. citizen (see the instructions for Schedule A, Part 4, line 4). If the gifts exceed $157,000, you must report all of the gifts even though some may be excluded."

Note: Gifts of future interests are not eligible for the annual gift tax exclusion amount. See IRC 2503(b)(1).

4.25.4.9
(07-31-2020)
Exchange of Information Under Estate and Gift Tax Treaties

(1) Exchange of Information (EOI) refers to the sharing of tax-related information between two or more countries for tax administration and enforcement purposes. Complete guidance on the exchange of information process may be found at IRM 4.60.1 Exchange of Information.

(2) Exchanges of tax-related information between national tax authorities generally occur under the provisions of international exchange agreements. Such agreements include: bilateral tax treaties; Tax Information Exchange Agreements (TIEAs); Intergovernmental Agreements (IGAs) under the U.S. Foreign Account Tax Compliance Act (FATCA); mutual legal assistance treaties (MLATs); multilateral treaties and agreements; and U.S. territory tax implementation or coordination agreements between the United States and the U.S. territories of American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. For more information see IRM 4.60.1.1.1, Background

(3) Strict U.S. disclosure laws regarding returns, return information, and other sensitive tax data govern the exchange of such information with foreign tax officials. Procedural and legal authority for the exchange of information with foreign partners is found primarily within IRM 4.60.1.1.2.1, Authority - Disclosure, Confidentiality and Contacts with Foreign Tax Officials. Any Estate and Gift Tax program employee considering any contact or exchange with a foreign tax official must contact EOI for guidance. See IRM 4.60.1.1.2.1 paragraph 2 for EOI contact instructions.

(4) Certain tax treaties to which the United States is a party provide for mutual assistance in the collection of taxes. The collection assistance provisions of a tax treaty enable one contracting state to collect taxes covered by the treaty on behalf of the other contracting state. A request for such assistance is referred to as a Mutual Collection Assistance Request (MCAR). The MCAR program request procedures and policies are located in IRM 4.60.1.6, Mutual Collection Assistance Request (MCAR) Program .

(5) A Mutual Legal Assistance Treaty (MLAT) is a bilateral agreement authorizing a partner country to secure evidence to be used in criminal judicial proceedings

in the requesting country. Each MLAT specifies a "Central Authority" to act on behalf of each treaty partner to make requests, receive and execute requests, and generally administer the treaty relationship. The U.S. Department of Justice, Office of International Affairs, Criminal Division (DOJ OIA) is the U.S. Central Authority for MLAT purposes. If an MLAT request seeks returns or return information from the IRS, IRS assistance is coordinated through the office of the Program Manager, Exchange of Information (EOI Program within LB&I), in collaboration with IRS Criminal Investigation. MLAT program request procedures and policies are located in IRM 4.60.1.7, Mutual Legal Assistance Treaty (MLAT) Program.

(6) When a taxpayer submits a request under the Freedom of Information Act (FOIA) to access information in the taxpayer's IRS file obtained from a foreign jurisdiction pursuant to an international exchange agreement (whether the information was obtained via a U.S.-initiated or foreign-initiated request for information), an assigned EOI analyst must review the information under consideration for release to the taxpayer. See IRM 4.60.1.8, Freedom of Information Act (FOIA) Requests for Information Received from a Foreign Tax Authority.

(7) Each international exchange agreement contains uniquely worded provisions; therefore, the specific and most current applicable agreement should be consulted in each case. Nevertheless, EOI provisions in such agreements generally consist of the following components:

a. A general obligation to exchange information as is foreseeably relevant for carrying out the provisions of the agreement or to the administration or enforcement of the domestic laws concerning the taxes covered by the agreement for exchange of information purposes;
b. Procedures regarding the use and disclosure of the exchanged information, which generally require that information received be treated as secret in the same manner as information obtained under the domestic laws of the receiving country, and which permit disclosure of such information only to persons or authorities (such as courts and administrative bodies) specified by the agreement as concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes covered by the agreement for exchange of information purposes; and
c. Language which limits the obligation of the parties to provide information which: i) is not obtainable, either by the requesting country under its own laws or by the receiving country; ii) would require the receiving country to carry out administrative procedures at variance with its laws or those of the requesting country (although some agreements require the provision of banking and financial information notwithstanding these limitations); or iii) would disclose trade secrets or other information contrary to public policy.

(8) A request for information pursuant to a Tax Treaty or TIEA should be sent to the EOI Program following the procedures set forth in IRM 4.60.1.2.1, United States-Initiated Specific Requests for Information. All requests for information must be made in writing and contain the information required by IRM 4.60.1.2.1(4).

(9) Any information received under a treaty or agreement for exchange of information purposes may only be used for the administration of a tax covered by the

treaty or agreement. Contact the EOI office (see IRM 4.60.1.1.2.1(2)) in order to confirm if an agreement covers estate and gift taxes.