

LB&I Concept Unit Knowledge Base – International

Library Level	Number	Title
Shelf		Cross-Over
Book	20	Exchange of Information
Chapter	4	Automatic Exchange of Information
Section	1	Traditional Automatic Exchange of Information

Unit Name	Introduction to Traditional Automatic Exchange of Information	
Primary UIL Code	9455.03	Automatic Exchange of Information Program

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General Overview

Introduction to Traditional Automatic Exchange of Information

The Automatic Exchange of Information (AEOI) Program is a component of Treaty Administration, which also includes the Exchange of Information Program (EOI) and the Treaty Assistance and Interpretation Team (TAIT). Treaty Administration oversees the administration of tax treaties and bilateral and multilateral tax information exchange agreements (TIEAs). Treaty Administration supports the Treasury Department in tax treaty negotiations and addresses a variety of issues related to the application of the Foreign Account Tax Compliance Act (FATCA).

The AEOI Program primarily facilitates the exchange of information in connection with FATCA, the Organisation for Economic Co-operation and Development (OECD)'s Base Erosion and Profit Shifting (BEPS) project, and certain traditional (automatic) exchanges of information between the U.S. and foreign governments.

Detailed Explanation of the Concept

Introduction to Traditional Automatic Exchange of Information

Generally, tax treaties and TIEAs authorize the automatic exchange of information, i.e., the regular and systematic exchange of tax-related information without a specific request. Tax treaties and TIEAs commonly include explicit provisions providing for the automatic exchange of information.

Analysis

The AEOI Program administers the regular and systematic exchange of “bulk” taxpayer information to tax treaty and TIEA partners. Following the implementation of FATCA, the AEOI Program activities that predate and operate independently of FATCA are now referred to as the “traditional” AEOI program (Traditional AEOI).

Generally, information exchanged in Traditional AEOI consists of “fixed, determinable, annual or periodical” (FDAP) income data (e.g., dividends, interest, rents, royalties, salaries, pensions, etc.) routinely reported by payers in one partner country for payees claiming to be residents of the other partner country. Other information, such as changes of residence or details on the purchase or disposition of real property, may also be exchanged.

Information Provided to Foreign Governments

The IRS provides FDAP income data to certain U.S. treaty and TIEA partners. Information provided to foreign governments is derived from domestic reporting. Such information is ordinarily derived from Forms 1042-S that are filed with the IRS by the withholding agent.

Information returns are also mailed to the foreign payees, indicating any IRS tax withholding amounts.

Resources

- *IRM 4.60.1.10 - Automatic Exchange of Information Program*

- *Form 1042-S - Foreign Person's U.S. Source Income Subject to Withholding*

Detailed Explanation of the Concept (cont'd)

Introduction to Traditional Automatic Exchange of Information	
Analysis	Resources
<p><u>Research, Applied Analytics, and Statistics Division Search Tools</u></p> <p>Search tools developed by the Research, Applied Analytics, and Statistics Division (RAAS) Advanced Research Lab (ARL) allow IRS personnel to make queries and view treaty data received from foreign jurisdictions.</p> <p>Automatic exchange data (including U.S. residents' foreign-sourced income) received from foreign tax authorities pursuant to tax treaties and TIEAs is made available to approved IRS employees with a business need via the AEOI Database using the "Easy Search" tool. Easy Search is available within the RAAS ARL.</p> <p>There is a three-step process to receive access to Easy Search:</p> <ol style="list-style-type: none"> 1. Complete the web-based orientation, <i>Automatic Exchange of Information Data Security & Governance Orientation</i>. 2. After you certify completion of the orientation, you must submit an OL5081 for the RAAS Advanced Research Lab. Detailed instructions can be found at the end of the orientation. 3. Once your application is approved, the Easy Search administrator will send an email with instructions for accessing Easy Search and the AEOI Database. <p> CAUTION: Your OL5081 will require manager approval and employee signature before access is granted.</p>	<ul style="list-style-type: none"> ▪ Audit Tool - Easy Search Tool ▪ <i>Automatic Exchange of Information Data Security & Governance Orientation</i>

Detailed Explanation of the Concept (cont'd)

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<p><u>Traditional AEOI Data</u></p> <p>Traditional AEOI data usually consists of FDAP income information.</p> <p>The basic data elements available in the Easy Search database generally include:</p> <ul style="list-style-type: none">▪ Recipient of the income (name, address, DOB if applicable/known, agent/intermediary information, etc.)▪ Payer of the income (name, address, agent/intermediary information, etc.)▪ Residence and source country taxpayer identification numbers▪ Income details (tax year, type of payment, amount of payment, currency, etc.) <p>Summary of the Traditional AEOI Data is available by year and jurisdiction.</p>	<ul style="list-style-type: none">▪ Audit Tool - Summary of the Traditional AEOI Data

Detailed Explanation of the Concept (cont'd)

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<p><u>Confidentiality Provisions</u></p> <p>Traditional AEOI data is subject to the confidentiality provisions of the tax treaty, TIEA, or other agreement for the exchange of information with a foreign government pursuant to which the information was exchanged. Traditional AEOI data received pursuant to tax treaties and TIEAs is marked or stamped to indicate it is confidential and to be disclosed only in conformance with the confidentiality provisions of the applicable tax treaty or TIEA.</p> <p>IRC 6105 provides for the nondisclosure of “tax convention information,” which includes information exchanged pursuant to a tax convention that is treated as confidential or secret under the tax convention.</p> <p>Permitted uses of tax convention information include disclosure to persons or authorities concerned with the administration of taxes covered by the tax treaty or TIEA.</p>	<ul style="list-style-type: none">▪ IRC 6105 - <i>Confidentiality of Information Arising Under Treaty Obligations</i>

Detailed Explanation of the Concept (cont'd)

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<p><u>Confidentiality Provisions (cont'd)</u></p> <p>Information protected by IRC 6105 may be disclosed to the following persons as a “person or authority concerned”:</p> <ul style="list-style-type: none"> ▪ Treasury officials and employees directly and personally involved in a tax matter ▪ The taxpayer and his proxy or representative ▪ Witnesses and record-keepers ▪ Department of Justice attorneys involved in tax cases ▪ Courts or administrative bodies (e.g., appeals officers, Tax Court) involved in a tax matter <p>Personnel receiving and reviewing AEOI Reports must adhere to IRM 10.5.1, <i>IRS Privacy and Information Protection, Privacy Policy</i>.</p> <p> CAUTION: Information received by the IRS through a tax treaty, TIEA, or other agreement providing for the exchange of tax information is subject to the confidentiality and disclosure provisions of IRC 6105, and the disclosure of such information must also comply with IRC 6103.</p>	<ul style="list-style-type: none"> ▪ IRM 10.5.1 - <i>IRS Privacy and Information Protection, Privacy Policy</i> ▪ IRC 6105 - <i>Confidentiality of Information Arising Under Treaty Obligations</i> ▪ IRC 6103 - <i>Confidentiality and Disclosure of Returns and Return Information</i>

Detailed Explanation of the Concept (cont'd)

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<p><u>Confidentiality Provisions (cont'd)</u></p> <p>Generally speaking, information protected by IRC 6105 may be used in connection with tax-related uses authorized by IRC 6103, including:</p> <ul style="list-style-type: none">▪ 6103(h) (disclosure to Treasury employees, Department of Justice, and courts in connection with tax administration matters)▪ 6103(k)(6) (investigative disclosures)▪ 6103(e) (disclosure to a taxpayer) <p>Access, use, and disclosures not in connection with tax administration (e.g., in connection with a non-tax criminal investigation) are impermissible.</p> <p> CAUTION: IRS employees accessing AEOI information should refer to the Reference Guide for the applicable tax treaty, TIEA, or other agreement providing for the exchange of tax information by jurisdiction. Information subject to IRC 6105 may not be accessed, used, or disclosed when there is an applicable use restriction (e.g., a non-covered tax).</p>	<ul style="list-style-type: none">▪ IRC 6103 - <i>Confidentiality and Disclosure of Returns and Return Information</i>▪ IRC 6105 - <i>Confidentiality of Information Arising Under Treaty Obligations</i>

Detailed Explanation of the Concept (cont'd)

Introduction to Traditional Automatic Exchange of Information	
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<p><u>Confidentiality Provisions (cont'd)</u></p> <p>Contact AEOI if:</p> <ul style="list-style-type: none">▪ You wish to use information protected by IRC 6105 in connection with the examination, investigation, or enforcement of the Foreign Bank Account Report (FBAR) requirements of Title 31.▪ Your examination concerns a non-covered tax and you wish to know whether information exists or is obtainable through other avenues. <p>Personnel receiving and reviewing AEOI Reports should reference <i>Exchange Of Information: Master List Of Tax Treaties And Other Agreements</i> to locate the instrument that determines the applicable taxes covered.</p>	<ul style="list-style-type: none">▪ Audit Tool - <i>Exchange Of Information: Master List Of Tax Treaties And Other Agreements</i>

Index of Referenced Resources

Introduction to Traditional Automatic Exchange of Information

IRC 6103 - *Confidentiality and Disclosure of Returns and Return Information*

IRC 6105 - *Confidentiality of Information Arising Under Treaty Obligations*

IRM 4.60.1.10 - *Automatic Exchange of Information Program*

IRM 10.5.1 - *IRS Privacy and Information Protection, Privacy Policy*

Form 1042-S - *Foreign Person's U.S. Source Income Subject to Withholding*

Audit Tool - Easy Search Tool

Audit Tool - *Exchange Of Information: Master List Of Tax Treaties And Other Agreements*

Audit Tool - Summary of the Traditional AEOI Data

Automatic Exchange of Information Data Security & Governance Orientation

Foreign Account Tax Compliance Act

Training and Additional Resources

Introduction to Traditional Automatic Exchange of Information

Type of Resource	Description(s)
Reference Materials – Treaties	▪ IRS.gov - <i>United States Income Tax Treaties - A to Z</i>

Glossary of Terms and Acronyms

Term/Acronym	Definition
AEOI	Automatic Exchange of Information
ARL	Advanced Research Lab
BEPS	Base Erosion and Profit Shifting
EOI	Exchange of Information
FATCA	Foreign Account Tax Compliance Act
FDAP	Fixed, Determinable, Annual or Periodical
IRC	Internal Revenue Code
IRM	Internal Revenue Manual
OECD	Organisation for Economic Co-operation and Development
LB&I	Large Business & International
RAAS	Research, Applied Analytics, and Statistics Division
TAIT	Treaty Assistance and Interpretation Team
TIEA	Tax Information Exchange Agreement
Traditional AEOI	AEOI Program activities that predate and operate independently of FATCA

Index of Related Practice Units

Associated UIL(s)	Related Practice Unit	DCN
9422	<i>Overview of FDAP</i>	WIT/C/15_01-01 (Formerly WIT/CU/P_15.1_01(2014))
9424.01	<i>FDAP Payments – Source of Income</i>	RPW/C/08_01-02 (formerly RPW/CU/P_08.1_04(2016)a)
9455	<i>Overview of Exchange of Information Programs</i>	EOI/C/20_01-01 (Formerly EOI/CU/P_20.1_01(2015))