

LB&I International Practice Service Concept Unit

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General Overview

Overview of Exchange of Information Programs

The purpose of this International Practice Service unit is to provide an overview of the Exchange of Information (EOI) programs. EOI is a tool available to IRS field personnel. EOI provides an opportunity for U.S. tax authorities to secure foreign based documents to develop tax-related issues. EOI also provides an opportunity for foreign tax authorities to obtain U.S. based records to develop tax-related issues.

EOI, in this context, refers to the sharing of tax-related information between two or more countries for tax administration and enforcement purposes. Exchanges of tax-related information between countries generally only occur under the provisions of international tax information sharing agreements. Such agreements include:

- *Tax treaties.* The provisions of these bilateral agreements, also known as income tax conventions or double taxation conventions (DTCs), are primarily intended to prevent the duplicative taxation of income from international economic activity in two jurisdictions. Most treaties include articles authorizing the exchange of tax-related information between the partner countries. Please see the next slide for an excerpt from Article 26 (Exchange of Information and Administrative Assistance) of the U.S. Model Income Tax Convention (2006).
- *Tax Information Exchange Agreements (TIEAs).* The sole purpose of these bilateral agreements is to facilitate the exchange of tax-related information between the partner countries.
- *Mutual Legal Assistance Treaties (MLATs).* These bilateral agreements authorize the exchange of information for the purpose of the enforcement of criminal laws. However, MLATs generally cover criminal non-tax matters and in some instances will cover criminal tax matters.
- *Multilateral agreements.* Certain multilateral agreements to which the United States is a party also authorize EOI for tax purposes, such as the Hague Convention on the Taking of Evidence, the Convention on Mutual Administrative Assistance in Tax Matters, and the Inter-American Convention on Mutual Assistance in Criminal Matters.
- *Tax implementation or coordination agreements.* These bilateral agreements allow for exchanges of tax-related information between the United States and its five territories (American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands).

General Overview (cont'd)

Overview of Exchange of Information Programs

The following is an excerpt from the Exchange of Information Article (Article 26) of the U.S. Model Income Tax Convention (2006):

EXCHANGE OF INFORMATION AND ADMINISTRATIVE ASSISTANCE

1. The competent authorities of the Contracting States shall exchange such information as may be relevant for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes of every kind imposed by a Contracting State to the extent that the taxation thereunder is not contrary to the Convention, including information relating to the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, such taxes. The exchange of information is not restricted by paragraph 1 of Article 1 (General Scope) or Article 2 (Taxes Covered).
2. Any information received under this Article by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment, collection, or administration of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes referred to above, or the oversight of such functions. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.



CAUTION: Each international tax information sharing agreement contains uniquely worded provisions; therefore, the specific and most current applicable agreement should be consulted in each case.

Detailed Explanation of the Concept

Overview of Exchange of Information Programs

Only specific IRS offices & personnel have the authority to exchange information with foreign countries.

Analysis	Resources
<p>The “Competent Authority” or “Central Authority” of each country is responsible for all matters relating to the application and interpretation of the provisions of the international tax information sharing agreements to which that country is a party. This authority may be delegated to one or more subordinate officials. For tax treaties and TIEAs, the authority to act as the U.S. Competent Authority has been delegated by the Secretary of the Treasury to the Deputy Commissioner (International), LB&I. With respect to MLATs and similar law enforcement agreements, the Department of Justice, Office of International Affairs, Criminal Division (DOJ OIA) is authorized to act as the U.S. Central Authority.</p> <p>The authority to sign or act on behalf of the Deputy Commissioner (International), LB&I has been delegated to certain officials within the Office of the Deputy Commissioner (International), LB&I by Delegation Order 4-12. For example, the Program Manager, Exchange of Information (EOI HQ) has been delegated the authority to sign or act on all exchange of information under all treaties and TIEAs.</p> <p>All exchanges of information under tax treaties and TIEAs are administered by the Program Manager, Exchange of Information in Washington, DC , the Revenue Service Representative (RSR) in Plantation, FL, the Tax Attachés stationed at the various overseas IRS posts, and the Program Manager, Joint International Tax Shelter Information and Collaboration (JITSIC) in Washington, DC.</p>	<ul style="list-style-type: none">▪ IRM 4.60.1.1.1 - International Procedures - Exchange of Information- Responsible IRS Offices & Definitions

Detailed Explanation of the Concept (cont'd)

Overview of Exchange of Information Programs

Strict U.S. disclosure laws regarding taxpayer-specific information (including tax returns and tax return information) and other sensitive tax data govern the exchange of such information with foreign tax officials.

Analysis	Resources
<p>Improper disclosure of returns and return information as defined under IRC 6103(b) may result in civil or criminal penalties under IRC 7431 and 7213. Moreover, the improper disclosure of sensitive information by the IRS may result in the impairment of tax administration and/or damage to intergovernmental relations.</p> <p>To avoid such complications and to ensure compliance with applicable disclosure and confidentiality rules, no IRS employee (with the exception of employees in EOI HQ, the RSR office, the Attaché offices, and JITSIC, and—for transfer pricing and mutual agreement proceedings—APMA and TAIT) may contact, provide any information to, request any information from or exchange any information with a foreign tax official. Therefore, any IRS employee considering such a contact or exchange with a foreign tax official should email the EOI office at # [REDACTED] #; an EOI manager or analyst will subsequently contact the employee to provide guidance.</p>	<ul style="list-style-type: none"> ▪ IRM 4.60.1.1.2 - International Procedures - Exchange of Information- Disclosure, Confidentiality & Contacts with Foreign Tax Officials ▪ IRM 11.3.25.1- Disclosure of Official Information- Disclosure to Foreign Countries Pursuant to Tax Treaties- General

Detailed Explanation of the Concept (cont'd)

Overview of Exchange of Information Programs

To ensure compliance with applicable disclosure and confidentiality rules, if a foreign tax official directly contacts an IRS office (other than the U.S. Competent Authority, designated as the Deputy Commissioner (International), LB&I, or his/her delegate), the IRS office should not respond to the official, and must instead refer the contact to EOI HQ.

Analysis	Resources
<p>Generally, information received by the U.S. Competent Authority from foreign tax officials pursuant to a tax information sharing agreement (i.e., sensitive information and/or taxpayer-specific information) is to be used and safeguarded by the IRS in accordance with the disclosure and confidentiality provisions of the relevant agreement and IRC 6103 (in the case of taxpayer-specific information) and 6105 (which governs the disclosure and confidentiality of information exchanged under international tax information sharing agreements). All information provided or received pursuant to a tax information sharing agreement is stamped or otherwise noted with the text:</p> <p><i>“This information is furnished under the provisions of an [income tax treaty, TIEA, etc.] with a foreign government. Its use and disclosure must be governed by the provisions of that [treaty or agreement].”</i>, thus indicating the information is subject to disclosure provisions under the relevant agreement and IRC 6105.</p> <p>Information exchanged with foreign tax officials not required to be transmitted pursuant to a tax information sharing agreement (i.e., non-sensitive information and/or publicly available information) is not governed by the disclosure and confidentiality provisions of IRC 6103 (assuming the information does not include any taxpayer-specific information) or 6105.</p>	<ul style="list-style-type: none"> ▪ IRM 4.60.1.1.2.1 - International Procedures - Exchange of Information- Taxpayer-Specific Information ▪ IRM 4.60.1.1.2.3- International Procedures- Exchange of Information- Non-Sensitive Information

Detailed Explanation of the Concept (cont'd)

Overview of Exchange of Information Programs

To ensure compliance with applicable disclosure and confidentiality rules, if a foreign tax official directly contacts an IRS office (other than the U.S. Competent Authority, designated as the Deputy Commissioner (International), LB&I, or his/her delegate), the IRS office should not respond to the official, and must instead refer the contact to EOI HQ.

Analysis	Resources
<p>If any IRS office in possession of information originally received from foreign tax officials is sought in response to court orders, subpoenas, or Freedom of Information Act (FOIA) requests in the U.S., that office should contact the Exchange of Information office.</p> <p>If any IRS office discovers or suspects that an unauthorized disclosure of information received from or provided to foreign tax officials may have occurred, that office must immediately notify EOI HQ.</p>	<ul style="list-style-type: none">▪ IRM 4.60.1.1.2.6 - International Procedures - Exchange of Information- Information Received from and Contacts Made by Foreign Tax Officials

Detailed Explanation of the Concept (cont'd)

Overview of Exchange of Information Programs

There are 9 basic types of exchanges which the EOI offices work, each of which has its own procedures. An examiner can use the EOI program to secure foreign based documents to assist in the development of tax related issues.

Analysis	Resources
<ul style="list-style-type: none"> ▪ Types of Exchanges: <ul style="list-style-type: none"> – Specific Requests – Spontaneous Exchanges – Automatic Exchanges – Industry-Wide Exchanges – Simultaneous Examination Program (SEP) – Joint Audits – Simultaneous Criminal Investigation Program (SCIP) – Mutual Legal Assistance (MLAT) Program – Mutual Collection Assistance Request (MCAR) Program <p>Listed below are some but not all of the types of information that can be obtained under treaties or TIEAs:</p> <ul style="list-style-type: none"> ▪ Tax returns and return information, for example, to verify: <ul style="list-style-type: none"> – Filing status – Income/expenses/tax liability – Citizenship/residency ▪ Bank and brokerage records ▪ Business records ▪ Public records (e.g., deeds; birth, death, and marriage records) ▪ Witness interviews ▪ Property ownership information 	<ul style="list-style-type: none"> ▪ IRM 4.60.1.1.3 - International Procedures - Exchange of Information- Exchange of Information Programs- Overview

Detailed Explanation of the Concept (cont'd)

Overview of Exchange of Information Programs

When examiners seek information about a transaction or taxpayer from a treaty partner, the basic Code and regulatory rules, along with case law apply. Under IRC 7602, the IRS may examine any books, papers, records or other data which may be relevant or material in connection with “ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue . . . or collecting any such liability.”

Analysis

The exchange of information provisions of our treaties and TIEA partners overlay these basic code & regulatory rules. Under those provisions, in general, information relevant for carrying out the provisions of the particular treaty or the domestic laws of the United States or of the other Contracting State concerning covered taxes can be exchanged.

In formulating a request, the examiner should demonstrate the foreseeable relevance of the requested information and show a transactional relationship or nexus between the taxpayer and the foreign-based information.



CAUTION: Examiners should first exhaust all domestic means to access the requested information prior to making a specific exchange of information request, except those that would give rise to disproportionate difficulties.

Please note that examiners should only request the appropriate and relevant amount of information that will help develop issues in their case.



CONSULTATION: EOI personnel have knowledge of the different international tax information agreements sharing arrangements and will be able to assist you in making a request to a foreign competent authority.

Resources

- IRM 4.60.1.1.3 - International Procedures - Exchange of Information- Exchange of Information Programs- Overview

- IRM 4.60.1.1.3.1- International Procedures- Exchange of Information- Specific Exchange of Information Program

Training and Additional Resources

Overview of Exchange of Information Programs

Type of Resource	Description(s) and/or Instructions for Accessing	References
EOI IRM	<ul style="list-style-type: none">Chapter 60.1 in Part 4 of the IRM contains the International Procedures for Exchange of Information.	<ul style="list-style-type: none">IRM 4.60.1 - International Procedures - Exchange of Information
U.S. Treasury Department Website	<ul style="list-style-type: none">Treaties and Other International Documents page- posts the texts of U.S. income tax treaties, TIEAs and the accompanying technical explanations.	<ul style="list-style-type: none">Treaties & Other International Documents

Glossary of Terms and Acronyms

Acronym	Definition
DOJ OIA	Department of Justice, Office of International Affairs
DTC	Double Tax Convention
EOI	Exchange of Information
EOI HQ	Exchange of Information Headquarters
FOIA	Freedom of Information Act
IPS	International Practice Service
IRC	Internal Revenue Code
IRM	Internal Revenue Manual
JITSIC	Joint International Tax Shelter Information and Collaboration
LB&I	Large Business & International
MCAR	Mutual Collection Assistance Request Program
MLAT	Mutual Legal Assistance Treaty
RSR	Revenue Service Representative
SEP	Simultaneous Examination Program
SCIP	Simultaneous Criminal Investigation Program
TIEA	Tax Information Exchange Agreement

Index of Related Issues

Issue	Associated UIL(s)	References
Treaties	<ul style="list-style-type: none"><li data-bbox="528 289 638 315">▪ 9450	<ul style="list-style-type: none"><li data-bbox="1265 289 1978 396">▪ OECD (2012), Model Tax Convention on Income and on Capital 2010 (updated 2010), OECD Publishing.<li data-bbox="1265 458 1929 565">▪ United States Model Income Tax Convention (November 2006 rev) and Technical Explanations
Types of Exchanges	<ul style="list-style-type: none"><li data-bbox="528 592 685 618">▪ 9455.XX	<ul style="list-style-type: none"><li data-bbox="1265 592 1914 618">▪ IPS Concept Unit, Types of EOI Exchanges