

LB&I International Practice Service Concept Unit

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Unit Name	Types of EOI Exchanges
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General Overview

Types of EOI Exchanges

The purpose of this International Practice Service (IPS) Unit is to describe the types of exchange of information (EOI) programs available to all IRS employees who determine that information relevant to an examination is located outside of the United States.

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)

Types of EOI Exchanges

This 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 as they may be different.


General Overview (cont'd)

Types of EOI Exchanges

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 United States 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 United States Central Authority.

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.


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 Centre (JITSIC) in Washington, DC.

 **CAUTION:** Only the delegated Competent Authority can directly contact the foreign Competent Authority in making or responding to a specific request. There are no legal provisions for any “informal” exchange of taxpayer-specific information outside of the U.S. Competent Authority Office.

Detailed Explanation of the Concept

Types of EOI Exchanges


Specific requests involve the coordination of both inbound (i.e. made by a foreign Competent Authority) and outbound (i.e. initiated by IRS personnel) requests for information pertaining to a specific taxpayer, entity or group under examination or investigation for a specific tax period.

Analysis	Resources
<p>Specific requests may arise from collection matters, criminal investigations, or other tax administrative or court procedures.</p> <p>Specific requests can be the exchange of information bilaterally, between two countries or multilaterally, between three or more countries.</p> <p>All domestic means of obtaining the information should be exhausted, except those that would give rise to disproportionate difficulties, prior to requesting assistance from a foreign partner.</p> <p> CONSULTATION: Contact the country appropriate EOI HQ, the RSR in Plantation, FL, the Tax Attachés stationed at the various overseas IRS posts or the Program Manager, JITSIC in Washington, DC for assistance.</p>	<ul style="list-style-type: none">▪ IRM 4.60.1.1.3.1, Specific Exchange of Information Program▪ IRM 4.60.1.2, Specific Exchange of Information Program

Detailed Explanation of the Concept (cont'd)

Types of EOI Exchanges

Spontaneous exchanges of information, which operate through the exchange of information provisions of tax treaties and TIEAs, involve the transmission of information that has not been specifically requested by a foreign Competent Authority, but which in the judgment of the providing authority may be of interest to a foreign partner for tax purposes.

Analysis	Resources
<p>The exchange typically involves information discovered during a tax examination, investigation, or other administrative procedure that suggests or establishes noncompliance with the tax laws of a foreign partner, or that is otherwise determined to be potentially useful to a foreign partner for tax purposes. The information may pertain to nonresident aliens, United States citizens, domestic or foreign corporations, or other taxpayers.</p> <p> CAUTION: All exchanges of information under the provisions of tax treaties and TIEAs must be conducted through the U.S. Competent Authority office. Contact EOI HQ for assistance.</p>	<ul style="list-style-type: none">▪ IRM 4.60.1.1.3.2, Spontaneous Exchange of Information Program▪ IRM 4.60.1.3, Spontaneous Exchange of Information Program

Detailed Explanation of the Concept (cont'd)

Types of EOI Exchanges

Tax treaties and TIEAs commonly include provisions for the **automatic exchange** of information, by which the tax treaty or TIEA partners agree to exchange certain tax-related information on a regular and systematic basis, without the need for a specific request.

Analysis	Resources
<p>Automatic exchanges are coordinated through EOI HQ.</p> <p>Generally, the information exchanged under the automatic exchange program includes “fixed, determinable, annual, or periodical” (FDAP) income data routinely reported by payers in one partner country for payees reporting to be residents of the other partner country. FDAP income includes, but is not limited to, dividends, interest, rents, royalties, salaries and annuities. Other information, such as changes of residence or details on the purchase or disposition of real property, may also be exchanged.</p> <p>Upon receipt of the information, the reported country of residence may review its tax records to verify whether resident taxpayers have correctly reported their foreign source income.</p>	<ul style="list-style-type: none">▪ IRM 4.60.1.1.3.3, Automatic Exchange of Information Program▪ IRM 4.60.1.4, Automatic Exchange of Information Program

Detailed Explanation of the Concept (cont'd)

Types of EOI Exchanges

Industry-wide exchanges of information involve meetings between tax officials of two or more partner countries that do not involve specific taxpayer information.

Analysis	Resources
Industry-wide exchanges focus on trends, policies, and operating practices in a particular industry, economic sector or other areas of common interest. (Examples: Oil & Gas, Offshore Compliance Initiatives, Tax Shelters).	▪ IRM 4.60.1.1.3.10, Industry Wide Exchanges of Information

Detailed Explanation of the Concept (cont'd)

Types of EOI Exchanges

Simultaneous examinations involve the United States and one or more of its foreign partners conducting separate independent examinations of selected taxpayer(s) within their respective jurisdictions in which the partners have a common or related interest.

Analysis	Resources
<p>During the course of the examinations and under the oversight of an assigned EOI analyst, representatives of the IRS and its foreign partner(s) meet to coordinate strategies and discuss technical issues developed during the examinations. There is no exchange of personnel between the IRS and the foreign partner administration(s) during a simultaneous examination. The objective of this program is to facilitate exchanges of information between the United States and its foreign partners, and to mutually secure other tax compliance efficiencies and benefits.</p> <p>This program is coordinated through EOI HQ.</p>	<ul style="list-style-type: none">▪ IRM 4.60.1.1.3.4, Simultaneous Examination Program (SEP)▪ IRM 4.60.1.5, Simultaneous Examination Program (SEP)

Detailed Explanation of the Concept (cont'd)

Types of EOI Exchanges

Joint audits involve the United States and one or more of its foreign partners collaborating to conduct an examination of a taxpayer or a related taxpayer within their respective jurisdictions.

Analysis	Resources
<p>During the course of the examination, representatives of the IRS and the foreign partner(s) coordinate strategies to jointly examine an issue(s) central to the participating tax administrations.</p> <p>Joint audits are not the same as the simultaneous examination program (SEP). There are distinctions between the two programs. A joint audit involves two or more countries joining together to form a single audit team to examine a transaction(s) of one or more related taxpayers (e.g., related affiliated companies) with cross-border business activities, and in which the countries have a common or complementary interest; the taxpayer jointly makes presentations and shares information with the countries, and the audit team may include an LB&I Advance Pricing and Mutual Agreement (APMA) representative to address double taxation issues from each country. In contrast, a SEP is an arrangement between two or more tax administrations to examine simultaneously, each in its own territory, the tax affairs of taxpayer(s) in which they have a common or related interest, with a view to exchanging any relevant information obtained.</p> <p>This program is currently coordinated through JITSIC.</p>	<ul style="list-style-type: none">▪ IRM 4.60.1.1.3.5, Joint Audits

Detailed Explanation of the Concept (cont'd)

Types of EOI Exchanges


The **Simultaneous Criminal Investigation Program (SCIP)**, which operates through the exchange of information provisions of tax treaties and TIEAs, involves the United States and one of its foreign partners conducting separate, independent criminal income tax investigations of selected taxpayer(s) within their respective jurisdictions in which the partners have a common or related interest.

Analysis	Resources
<p>During the course of the investigations and under the oversight of an assigned EOI analyst, criminal investigators from the IRS and the foreign partner meet to coordinate strategies and discuss technical issues developed during the investigations. The objective of the program is to facilitate exchanges of information between the U.S. and its foreign partners, and to mutually secure other tax compliance efficiencies and benefits.</p> <p>SCIPs may be conducted pursuant to written working arrangements entered into by the U.S. Competent Authority (the Deputy Commissioner (International), LB&I) and the Competent Authority of a foreign partner. However, the absence of a working arrangement does not preclude the IRS from conducting a simultaneous criminal investigation with another tax administration.</p> <p>This program is coordinated through EOI HQ.</p>	<ul style="list-style-type: none"> ▪ IRM 4.60.1.1.3.6, Simultaneous Criminal Investigation Program (SCIP) ▪ IRM 4.60.1.6, Simultaneous Criminal Investigation Program (SCIP)

Detailed Explanation of the Concept (cont'd)

Types of EOI Exchanges

A **mutual legal assistance treaty (MLAT)** is an agreement authorizing a partner country to secure evidence to be used in criminal judicial proceedings in the requesting country. IRS assistance in providing information requested under these treaties, if applicable, is coordinated through EOI HQ, in collaboration with IRS Criminal Investigation.

Analysis	Resources
<p>The Department of Justice Office of International Affairs, Criminal Division is authorized to act as the United States Central Authority for MLATs. They will receive and execute requests, and generally administer the treaty relationship.</p> <p>Requests received by the United States from foreign treaty partners (foreign initiated or “inbound” requests) may require IRS involvement in the form of financial investigative assistance, production of tax returns and/or tax return information.</p> <p>The role of EOI HQ is limited to obtaining tax returns and tax return information, with the assistance of IRS Associate Chief Counsel (International), Branch 7 and IRS Disclosure Headquarters. IRS Criminal Investigation will address all other components of the request, including any financial investigative assistance.</p> <p> CAUTION: Not all MLATs authorize the same type of assistance, and some do not allow for the exchange of tax-related information.</p>	<ul style="list-style-type: none"> ▪ IRM 4.60.1.1.3.8, Mutual Legal Assistance Treaty (MLAT) Program ▪ IRM 4.60.1.8, Mutual Legal Assistance Treaty (MLAT) Program

Detailed Explanation of the Concept (cont'd)

Types of EOI Exchanges

Certain tax treaties to which the United States is a party provide for mutual assistance in collection. 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)**.

Analysis	Resources
<p>The following United States tax treaties, identified respectively by country, type of treaty, and treaty article, currently provide for mutual collection assistance:</p> <ul style="list-style-type: none"> – Canada, Income, Article XXVIA; – Denmark, Income, Article 27; – France, Income, Article 28; – Netherlands, Income, Article 31; and – Sweden, Income, Article 27. <p>The Office of the Commissioner, LB&I has a working arrangement with SB/SE for designated Revenue Officers (SB/SE MCAR Coordinators) to process MCARs. EOI HQ analysts coordinate with these designated officers to fulfill each MCAR.</p> <p>This program is coordinated through EOI HQ.</p>	<ul style="list-style-type: none"> ▪ IRM 4.60.1.7.1, Tax Treaties with Collection Assistance Provisions ▪ IRM 4.60.1.1.3.7, Mutual Collection Assistance Request (MCAR) Program ▪ IRM 4.60.1.7.2, MCAR Processing Procedures

Training and Additional Resources

Types of EOI Exchanges		
Type of Resource	Description(s) and/or Instructions for Accessing	References
EOI SharePoint Site	<p>As a member of this SharePoint group, you can:</p> <ul style="list-style-type: none"> ▪ Participate in the SharePoint site at: Sharepoint For EOI ▪ View the group home page at: https://organization.ds.irsnet.gov/sites/lbi_intl_adci_org/eoi_internal/_layouts/people.aspx?MembershipGroupId=87 	
EOI IRM	<ul style="list-style-type: none"> ▪ IRM 4.60.1- Examining Process- International Procedures- Exchange of Information 	<ul style="list-style-type: none"> ▪ IRM 4.60.1
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
APMA	Advance Pricing and Mutual Agreement
DOJ OIA	Department of Justice, Office of International Affairs
DTC	Double Tax Convention
EOI	Exchange of Information
EOI HQ	Exchange of Information Headquarters
FDAP	Fixed, Determinable, Annual, or Periodical Income
IPS	International Practice Service
IRM	Internal Revenue Manual
JITSIC	Joint International Tax Shelter Information Centre
LB&I	Large Business & International
MCAR	Mutual Collection Assistance Request Program
MLAT	Mutual Legal Assistance Treaty
RSR	Revenue Service Representative
SB/SE	Small Business/Self-Employed
SEP	Simultaneous Examination Program
SCIP	Simultaneous Criminal Investigation Program
TIEA	Tax Information Exchange Agreement

Index of Related Issues

Issue	Associated UIL(s)	References
Exchange of Information	▪ 9455.XX	
Specific Exchange of Information Program	▪ 9455.XX	
Spontaneous Exchange of Information Program	▪ 9455.XX	
Automatic Exchange of Information Program	▪ 9455.XX	
Simultaneous Examination Program (SEP)	▪ 9455.XX	
Joint Audits	▪ 9455.XX	
Simultaneous Criminal Investigation Program (SCIP)	▪ 9455.XX	
Mutual Collection Assistance Request (MCAR) Program	▪ 9455.XX	
Mutual Legal Assistance Treaty (MLAT) Program	▪ 9455.XX	
Industrywide Exchanges of Information	▪ 9455.XX	