

## LB&I International Practice Service Process Unit – Overview

IPS Level	Number	Title	UIL Code	Number
Shelf	N/A	Cross-Over	–	–
Volume	20	Exchange of Information	<b>Level 1 UIL</b>	9455
Part	20.2	Specific Exchange of Information Program	<b>Level 2 UIL</b>	9455.XX

<b>Unit Name</b>	Field Procedures for Handling Foreign Initiated “Specific” Requests under EOI Agreements
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<b>Document Control Number (DCN)</b>	EOI/PUO/P_20.2_04(2015)
<b>Date of Last Update</b>	12/08/2015

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# Introduction

## Field Procedures for Handling Foreign Initiated “Specific” Requests under EOI Agreements

Exchanges of information involve the coordination of requests for information pertaining to specific taxpayers. The information requested relates to an examination, inquiry, or investigation of a taxpayer’s tax liability for a specified tax period. Most requests generally result from an on-going examination of a particular tax return, though requests may also arise from collection matters, criminal investigations, or other tax administrative procedures as covered by the international tax information sharing agreement pursuant to which the request was submitted.

Foreign initiated specific exchange of information (EOI) requests arise when a foreign country with which the U.S. has a tax information sharing agreement (a.k.a. “foreign partner”) sends a specific request for tax related information to the U.S. Competent Authority, delegated to the Deputy Commissioner (International), LB&I. These foreign initiated requests are coordinated by the various Internal Revenue Service EOI offices, including the Program Manager, EOI in Washington, DC; the Revenue Service Representative (RSR) in Plantation, FL; the various Tax Attachés; and the Program Manager, Joint International Tax Shelter Information and Collaboration (JITSIC, formerly called the Joint International Tax Shelter Information Centre) in Washington, DC, based on jurisdiction. EOI analysts may request the assistance of IRS personnel in Large Business & International (LB&I), Small Business/Self-Employed (SB/SE), or other operating divisions to secure the requested information. All communications with the foreign partner are coordinated through the EOI analyst assigned to the incoming specific EOI request.

The purpose of this International Practice Service (IPS) unit is to describe the processes and procedures for IRS civil and Criminal Investigation (CI) (collectively, “field personnel”) to follow when working with EOI on a foreign-initiated specific exchange.

# Process Overview

## Field Procedures for Handling Foreign Initiated “Specific” Requests under EOI Agreements

The process covered in this IPS Unit is initiated when a foreign tax authority submits to the U.S. Competent Authority (aka the LB&I Deputy Commissioner (International)) a specific request for information pursuant to an international tax information sharing agreement. The appropriate EOI office will review the request from the foreign tax authority to see if it is within the authorized scope of the EOI provision in the relevant agreement and that it does not violate any secrecy or trade secret exceptions to EOI. The EOI analyst may then request the assistance of the appropriate IRS civil group manager or of the Executive Director, Criminal Investigation: International Operations (CI:IO) in fulfilling the foreign-initiated information request. Specific provisions of the IRM govern the form of the request to the Field for such information and the manner in which the Field processes the request, including specific time lines for responses. In some cases, EOI personnel may prepare a summons to obtain the information sought by the foreign initiated specific request, and IRS field personnel may be called upon to serve that summons.

# Detailed Explanation of the Process

## Field Procedures for Handling Foreign Initiated “Specific” Requests under EOI Agreements

### Analysis

Exchanges of tax-related information between countries generally only occur under the provisions of one of the following types of international tax information sharing agreements:

- Tax Treaties
- Tax Information Exchange Agreements (TIEAs)
- Mutual Legal Assistance Treaties (MLATs)
- Multilateral Agreements
- Tax Implementation or Coordination Agreements
- Intergovernmental Agreements (IGAs)

Specific requests operate through the exchange of information provisions of tax treaties and TIEAs.

Tax treaties are also called “income tax conventions” or “double taxation conventions.” They are bilateral agreements, meaning that both parties have made mutual promises under the treaty, and they are primarily intended to prevent the double taxation of income from international economic activity in two jurisdictions. Most treaties also include articles authorizing the exchange of tax-related information between the partner countries. Many of these treaties’ EOI articles are based on Article 26 (Exchange of Information and Administrative Assistance) of the U.S. Model Income Tax Convention.

Like tax treaties, Tax Information Exchange Agreements, or TIEAs, are bilateral agreements. Unlike tax treaties, however, the sole purpose of a TIEA is to facilitate the exchange of tax-related information between the partner countries.



**CONSULTATION:** Each international tax information sharing agreement contains uniquely worded provisions, and the correct and most current agreement must be used in every exchange. An EOI analyst can assist in determining which agreement to use.

# Detailed Explanation of the Process (cont'd)

## Field Procedures for Handling Foreign Initiated “Specific” Requests under EOI Agreements

### Analysis

As previously mentioned, most tax treaties' exchange of information articles are based on Article 26 of the U.S. Model Treaty. The following excerpt from the U.S. Model Treaty's Article 26 sheds more light on the actual exchange of information provisions included in most treaties and describes the U.S.'s obligation to exchange information with its foreign treaty partners:

- 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...*

Note that this paragraph mentions the competent authorities of the Contracting States (which are the countries that are parties to the treaty). It goes on to say that the competent authorities shall exchange relevant information for purposes of carrying out their respective countries' tax laws, which means that the competent authorities are bound by the treaty to exchange such information.

# Detailed Explanation of the Process (cont'd)

## Field Procedures for Handling Foreign Initiated “Specific” Requests under EOI Agreements

### Analysis

When the U.S. Competent Authority receives a specific EOI request from a foreign country, that request is typically assigned to a particular IRS employee in an EOI office who will then verify whether the request is appropriate under the terms of the applicable treaty or TIEA. If the request is appropriate, the analyst will then work on fulfilling it. If the U.S. taxpayer that is the subject of the request is currently under examination or investigation here in the U.S., the EOI analyst will likely reach out to the field to seek assistance with fulfilling the request. There may be documents which the foreign country requested that the field already has in its possession. Also, if there are documents the analyst needs to request from the taxpayer, he may contact field personnel for assistance in issuing an IDR or serving a summons. In those cases, the analyst will provide guidance on how to proceed.



**CONSULTATION:** If you are aware of information that may be pertinent to the specific request which otherwise was not specifically requested, please contact the EOI analyst to discuss the relevancy of such information to the foreign jurisdiction. Similarly, if you have questions or concerns about whether the requested information should be shared with the foreign partner, contact the EOI analyst to discuss.



**CAUTION:** Taxpayer-specific information may only be provided to a foreign tax official through the U.S. Competent Authority under the provisions of a tax information sharing agreement pursuant to Internal Revenue Code (IRC) §6103(k)(4) and is confidential under the terms of IRC §6103 (which governs the disclosure and confidentiality of tax returns and tax return information in general) and IRC §6105 (which governs the disclosure and confidentiality of information exchanged under international tax information sharing agreements) and the provisions of the relevant treaty or agreement. **Under no circumstances should IRS field personnel contact a foreign government official in connection with an examination or investigation.**

# Summary of Process Steps

## Field Procedures for Handling Foreign Initiated “Specific” Requests under EOI Agreements

### Process Steps

The items listed below are the key processes & procedures for the field to follow in assisting EOI with foreign-initiated specific requests for information.

<a href="#">Step 1</a>	EOI Request to Field
<a href="#">Step 2</a>	Field Response to EOI Request
<a href="#">Step 3</a>	Use of a Summons to Fulfill an EOI Request

# Step 1: EOI Request to Field

## Field Procedures for Handling Foreign Initiated “Specific” Requests under EOI Agreements

### Step 1

The procedures described in this section are to be followed by field personnel assisting EOI analysts with specific requests for information initiated by foreign Competent Authorities.

Considerations	Resources	6103 Protected Resources
<p>IRS civil or CI personnel assisting with a foreign request for information may not directly contact any foreign tax official regarding the request or any other matter. All contacts with foreign Competent Authorities are to be coordinated by the EOI representative assigned to the request. For more information regarding authorized IRS contacts with foreign tax officials, see Internal Revenue Manual (IRM) 4.60.1.1.2, Exchange of Information – Disclosure, Confidentiality, and Contacts with Foreign Tax Officials.</p>	<ul style="list-style-type: none"> <li>▪ IRM 4.60.1.1.2 - Exchange of Information – Disclosure, Confidentiality, and Contacts with Foreign Tax Officials</li> <li>▪ IRM 4.60.1.2.2.3 - Foreign-Initiated Specific Requests for Information – Procedures for Cases Involving IRS Civil or Criminal Investigation Assistance</li> </ul>	

# Step 1: EOI Request to Field (cont'd)

## Field Procedures for Handling Foreign Initiated “Specific” Requests under EOI Agreements

### Step 1

The procedures described in this section are to be followed by field personnel assisting EOI analysts with specific requests for information initiated by foreign Competent Authorities.

Considerations	Resources	6103 Protected Resources
<p>If the assigned EOI analyst determines that IRS civil or CI assistance would be effective in fulfilling a foreign-initiated specific request for information, the EOI analyst forwards the following documentation to the appropriate IRS civil group manager or to the Executive Director, Criminal Investigation: International Operations (CI:IO):</p> <ul style="list-style-type: none"> <li>▪ A cover memorandum and attached guidance describing the nature of the request from the foreign authority, instructions for securing the requested information, and the contact information for the assigned EOI analyst. (Note: The foreign Competent Authority letter is not to be included in this attachment; exceptions to this procedure must be approved by the EOI Program Manager, RSR, Tax Attaché, or JITSIC Program Manager.)</li> </ul>	<ul style="list-style-type: none"> <li>▪ IRM 4.60.1.2.2.3 - Foreign-Initiated Specific Requests for Information – Procedures for Cases Involving IRS Civil or Criminal Investigation Assistance</li> </ul>	

# Step 1: EOI Request to Field (cont'd)

## Field Procedures for Handling Foreign Initiated “Specific” Requests under EOI Agreements

### Step 1

The procedures described in this section are to be followed by field personnel assisting EOI analysts with specific requests for information initiated by foreign Competent Authorities.

Considerations	Resources	6103 Protected Resources
<p><i>(Cont'd from previous slide)</i></p> <ul style="list-style-type: none"> <li>▪ A prepared IDR and/or administrative summons for issuance or service by the civil or CI office to the person or entity in possession of the requested information.</li> <li>▪ Additional documentation or instructions pertinent to the request, as necessary.</li> </ul> <p>Upon receipt of the aforementioned documentation, the IRS civil or Criminal Investigation manager confirms receipt with the EOI analyst, and provides the contact information for the IRS personnel assigned to the request.</p>	<ul style="list-style-type: none"> <li>▪ IRM 4.60.1.2.2.3 - Foreign-Initiated Specific Requests for Information – Procedures for Cases Involving IRS Civil or Criminal Investigation Assistance</li> </ul>	

# Step 1: EOI Request to Field (cont'd)

## Field Procedures for Handling Foreign Initiated “Specific” Requests under EOI Agreements

### Step 1

The procedures described in this section are to be followed by field personnel assisting EOI analysts with specific requests for information initiated by foreign Competent Authorities.

Considerations	Resources	6103 Protected Resources
<p>The IRS personnel assigned to the specific request must obtain the requested information within 60 days from the date of the EOI memorandum. IRS personnel should follow the response timeframes outlined in Step 2.</p> <p>Once the requested information is secured, the assisting IRS personnel forwards the information to the EOI analyst through IRS civil or CI management. If the assisting IRS personnel believes any of the secured information should not be disclosed to the foreign tax authority, the specific rationale for not disclosing the information must be provided to the EOI analyst.</p>	<ul style="list-style-type: none"> <li>▪ IRM 4.60.1.2.2.3 - Foreign-Initiated Specific Requests for Information – Procedures for Cases Involving IRS Civil or Criminal Investigation Assistance</li> </ul>	

# Step 1: EOI Request to Field (cont'd)

## Field Procedures for Handling Foreign Initiated “Specific” Requests under EOI Agreements

### Step 1

The procedures described in this section are to be followed by field personnel assisting EOI analysts with specific requests for information initiated by foreign Competent Authorities.

Considerations	Resources	6103 Protected Resources
<p>Note that a foreign-initiated request for information does not require the existence or initiation of an IRS examination and does not constitute an IRS examination. Therefore, each IDR prepared by IRS personnel for issuance to a U.S. person or entity in connection with a foreign request includes the following text:</p> <p style="padding-left: 40px;"><b>“This request for information is being made pursuant to the Exchange of Information article of a(n) [income tax treaty, TIEA, etc.]. This request does not constitute an IRS examination.”</b></p> <p>If an IRS examination is contemplated as a result of the request, the assisting IRS field personnel must advise the jurisdictional EOI manager of this action.</p>	<ul style="list-style-type: none"> <li>▪ IRM 4.60.1.2.2.3 - Foreign-Initiated Specific Requests for Information – Procedures for Cases Involving IRS Civil or Criminal Investigation Assistance</li> </ul>	

# Step 1: EOI Request to Field (cont'd)

## Field Procedures for Handling Foreign Initiated “Specific” Requests under EOI Agreements

### Step 1

The procedures described in this section are to be followed by field personnel assisting EOI analysts with specific requests for information initiated by foreign Competent Authorities.

Considerations	Resources	6103 Protected Resources
<p>Some information requested in an IDR prepared by the EOI office for issuance to a U.S. individual or entity may already be in the possession of the IRS office assisting with the request. In such cases, the assisting IRS office should include all requested information items in the IDR issued to the U.S. individual or entity and note within the IDR which items are already in the office's possession.</p>	<ul style="list-style-type: none"> <li>▪ IRM 4.60.1.2.2.3 - Foreign-Initiated Specific Requests for Information – Procedures for Cases Involving IRS Civil or Criminal Investigation Assistance</li> </ul>	

# Step 2: Field Response to EOI Request

## Field Procedures for Handling Foreign Initiated “Specific” Requests under EOI Agreements

### Step 2

The procedures described in this section discuss internationally agreed upon timeframes with respect to responding to foreign-initiated specific requests for information.

Considerations	Resources	6103 Protected Resources
<p>The field employee is expected to obtain the requested information within 60 days from the date of the EOI memorandum. In the event your office cannot meet the 60-day deadline, please contact the EOI analyst notated on the cover memorandum to request an extension of time and provide the analyst with a status report, including reasons for the delay and the estimated completion date.</p> <p>Please send all information and documents to the EOI analyst via secure email, if possible. Otherwise, mail the information to the EOI analyst via traceable mail to the address provided.</p> <p> <b>CAUTION:</b> Providing any information directly to the foreign government constitutes an improper disclosure under the provisions of IRC §6103.</p>	<ul style="list-style-type: none"> <li>▪ IRM 4.60.1.2.2.3 - Foreign-Initiated Specific Requests for Information – Procedures for Cases Involving IRS Civil or Criminal Investigation Assistance</li> <li>▪ IRC §6103- Confidentiality and disclosure of returns and return information</li> </ul>	

# Step 2: Field Response to EOI Request (cont'd)

## Field Procedures for Handling Foreign Initiated “Specific” Requests under EOI Agreements

### Step 2

The procedures described in this section discuss internationally agreed upon timeframes with respect to responding to foreign-initiated specific requests for information.

Considerations	Resources	6103 Protected Resources
<p>If a request cannot be completed during the 60-day timeframe, it is a best practice to provide interim status updates every 30 days to the assigned EOI analyst. These interim status updates can be sent via secure email, fax, or mail.</p> <p> <b>CONSULTATION:</b> If the record keeper fails to respond to the IDR in the specified timeframe, consult with the EOI analyst.</p>	<ul style="list-style-type: none"> <li>▪ IRM 4.60.1.2.2.3 - Foreign-Initiated Specific Requests for Information – Procedures for Cases Involving IRS Civil or Criminal Investigation Assistance</li> <li>▪ IRC §6103- Confidentiality and disclosure of returns and return information</li> </ul>	

# Step 3: Use of Summons to Fulfill an EOI Request

## Field Procedures for Handling Foreign Initiated “Specific” Requests under EOI Agreements

### Step 3

The procedures described in this section discuss foreign initiated specific requests for information involving summonses.

Considerations	Resources	6103 Protected Resources
<p>Summonses may be issued by IRS personnel pursuant to EOI requests on behalf of foreign tax treaty and TIEA partners, even if the U.S. has no tax interest and even if no claim for U.S. taxes is potentially due and owing (see Chief Counsel Directives Manual (CCDM) 34.6.3.6.6, Tax Treaty and TIEA Summonses).</p> <p>Upon receiving a foreign initiated specific request from a treaty or TIEA partner, only EOI program personnel may prepare any related summons to obtain the information sought by the foreign initiated specific request.</p>	<ul style="list-style-type: none"> <li>▪ IRM 4.60.1.2.2.4 - Foreign-Initiated Specific Requests for Information – Procedures for Cases Involving Summonses</li> <li>▪ Chief Counsel Directives Manual (CCDM) 34.6.3.6.6- Tax Treaty and TIEA Summonses</li> </ul>	

# Step 3: Use of Summons to Fulfill an EOI Request (cont'd)

## Field Procedures for Handling Foreign Initiated “Specific” Requests under EOI Agreements

### Step 3

The procedures described in this section discuss foreign initiated specific requests for information involving summonses.

Considerations	Resources	6103 Protected Resources
<p>If the information must be requested from a bank or other financial institution, the EOI analyst will prepare an administrative summons.</p> <p>If the information must be requested from a party other than a bank or other financial institution, the EOI analyst or other IRS personnel working the case will generally attempt first to obtain the information without using an administrative summons. If the information requested in this manner is not voluntarily provided, and the information cannot be obtained elsewhere, the EOI analyst will prepare an administrative summons.</p>	<ul style="list-style-type: none"> <li>▪ IRM 4.60.1.2.2.4.1 - Foreign-Initiated Specific Requests for Information – Summons Case Procedures for EOI Personnel</li> <li>▪ Chief Counsel Directives Manual (CCDM) 34.6.3.6.6- Tax Treaty and TIEA Summonses</li> </ul>	

# Step 3: Use of Summons to Fulfill an EOI Request (cont'd)

## Field Procedures for Handling Foreign Initiated “Specific” Requests under EOI Agreements

### Step 3

The procedures described in this section discuss foreign initiated specific requests for information involving summonses.

Considerations	Resources	6103 Protected Resources
<p>IRS civil or CI personnel assisting EOI representatives with specific requests for information initiated by foreign Competent Authorities may be called upon to serve a summons; however, it is the responsibility of the EOI Analyst to prepare the respective summons with the coordination of IRS Counsel.</p>	<ul style="list-style-type: none"> <li>▪ IRM 4.60.1.2.2.4 - Foreign-Initiated Specific Requests for Information – Procedures for Cases Involving Summonses</li> <li>▪ Chief Counsel Directives Manual (CCDM) 34.6.3.6.6- Tax Treaty and TIEA Summonses</li> </ul>	

# Exceptions

## Field Procedures for Handling Foreign Initiated “Specific” Requests under EOI Agreements

### Description

All exchanges of information pursuant to tax information sharing agreements (i.e., of taxpayer-specific and/or sensitive information as defined in IRM 4.60.1.1.2.1 - Taxpayer-Specific Information and IRM 4.60.1.1.2.2 - Sensitive Information) are subject to strict considerations of disclosure and confidentiality, including confidentiality attached to trade and other business secrets. See IRM 4.60.1.1.2.5 - Limitations on Exchange of Information – Trade Secrets.

Tax information sharing agreements limit the exchange of trade secrets with language such as “are not obligated to be exchanged” or “will not be exchanged”. Tax information sharing agreements generally refer to such materials as any trade, business, industrial, commercial, or professional secret or process.

In general, information may be considered a trade or other business secret that is protected from disclosure to a foreign Competent Authority if a disclosure would cause substantial harm to the taxpayer’s competitive position. Information related to transfer pricing may not necessarily be protected from disclosure.



**CONSULTATION:** If a taxpayer asserts a specific argument against providing the requested information, consult with the EOI analyst.

# Examples of the Process

## Field Procedures for Handling Foreign Initiated “Specific” Requests under EOI Agreements

### Description

#### Scenario:

Country A is examining tax years 2009 through 2011 of Country A corporation. Country A corporation underwent a corporate reorganization to restructure Country A entity’s finances and obtained a loan from a related US subsidiary. The Country A entity is owned 100% by a US corporation, which files a US consolidated tax return. Country A is requesting the following:

1. Loan documentation regarding the reorganization in 2010.
2. Interest Income declared by the US parent corporation for the loan.

*Note: Per research the EOI analyst conducted in IDRS, the US parent corporation is under examination in the US for tax years 2010 through 2012.*

#### Result:

The EOI analyst prepared a cover memorandum and attached guidance describing the nature of the request from Country A, instructions for securing the requested information and the EOI analyst’s contact information. The analyst then sent the prepared package to the IRS examination team manager. In this particular example, the EOI analyst also prepared and sent to the exam team a cover letter and a Form 4564- Information Document Request (IDR) to be issued by the assigned IRS examination team agent to the US parent company. The assigned IRS agent issued the letter and IDR to the US parent company and advised it that the requested information would be provided to a foreign government. The US taxpayer provided a complete IDR response to the IRS agent within 30 days. The IRS agent returned the completed response to the EOI analyst in the format requested within 60 days.

# Training and Additional Resources

## Field Procedures for Handling Foreign Initiated “Specific” Requests under EOI Agreements

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

# Glossary of Terms and Acronyms

Acronym	Definition
CCDM	Chief Counsel Directives Manual
CI	Criminal Investigation
CI:IO	Criminal Investigation: International Operations
EOI	Exchange of Information
EOI Analyst	Refers to any employee of the following offices assigned to process a specific exchange of information: Exchange of Information in Washington, DC (EOI HQ); RSR in Plantation, FL; Tax Attachés stationed at the various overseas IRS posts (Attachés); JITSIC in Washington, DC .
IDR	Information Document Request
IDRS	Information Document Retrieval System
IPS	Issue Practice Service
IRM	Internal Revenue Manual
JITSIC	Joint International Tax Shelter Information and Collaboration (fka Joint International Tax Shelter Information Centre)
LB&I	Large Business & International
MLAT	Mutual Legal Assistance Treaty
RSR	Revenue Service Representative
SB/SE	Small Business/Self-Employed
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	