



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

5.21.2

AUGUST 15, 2023

## EFFECTIVE DATE

(08-15-2023)

## PURPOSE

- (1) This transmits a revision of IRM 5.21.2, *Offshore Information Gathering Techniques*.

## MATERIAL CHANGES

- (1) This manual has been substantially revised with some subsections removed, added and renumbered. The manual incorporates new text, reissues existing information, and reflects editorial and/or numbering changes throughout the subsections. Web addresses, links and IRM references have been updated (where necessary) and incorporating IGM SBSE-05-0821-0015, *Foreign Account Tax Compliance Act (FATCA) research and use in Field and Specialty Collection programs*.
- (2) See the table below for significant changes to this IRM:

IRM Reference	Description of Change
5.21.2.1	Updated Program Scope and Objectives
5.21.2.1	Updated citations in Authorities
5.21.2.1	Deleted reference to International reports
5.21.2.1.1	Updated table with Acronyms
5.21.2.3	Added in FATCA research section from IGM SBSE-05-0821-0015, <i>Foreign Account Tax Compliance Act (FATCA) research and use in Field and Specialty Collection programs</i> dated 8-16-2021
5.21.2.4	Updated IRM 5.21.7.4.7 to new IRM 5.21.7.4.8
5.21.2.4	Updated point of contact for EOI regarding U.S. territories
5.21.2.4.2.1	Added Part 1 and what to include for EOI request
5.21.2.4.2.1	Added Part 2 and what to include for EOI request
5.21.2.4.3	Updated EOI from territories to reflect current procedures
5.21.2.4.3	Updated EOI from territories to reflect current procedures

IRM Reference	Description of Change
5.21.2.5.1	Provided clarification on obtaining third party records prior to consent directives.

#### **EFFECT ON OTHER DOCUMENTS**

This revision supersedes IRM 5.21.2, dated December 17th, 2013. This IRM incorporates Interim Guidance Memorandum SBSE-05-0821-0015, *Foreign Account Tax Compliance Act (FATCA) Research and Use in Field and Specialty Collection Programs* , dated 08-16-2021

#### **AUDIENCE**

The target audience is ROs in SB/SE Field Collection (FC)

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5.21.2

Offshore Information Gathering Techniques

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5.21.2.1  
(08-15-2023)  
**Program Scope and Objectives**

- (1) **Purpose.** This IRM section provides guidance to revenue officers (ROs) on offshore information gathering techniques.
- (2) **Audience.** The audience is ROs in Small Business/Self-Employed (SB/SE) Field Collection.
- (3) **Background.**
  - As our economy becomes more global, more U.S. taxpayers are participating in offshore activities for both legitimate and illegitimate purposes.
  - Taxpayers who participate in offshore activities for illegitimate purposes seek to shelter financial resources in foreign countries. Offshore accounts can be located in any country in the world. This IRM provides guidance on the records that can be obtained for taxpayers whose assets are located in foreign countries.
- (4) **Authority.** Congress has delegated to the IRS the responsibility of administering the tax laws, known as the Internal Revenue Code, found in Title 26 of the United States Code. Congress enacts these tax laws, and the IRS enforces them
- (5) **Policy Owner.** The Director of Collection Policy is responsible for issuing policy for the International Program.
- (6) **Program Owner.** The program owner is Collection Policy, Global Strategic Compliance, an organization within the SB/SE Division.
- (7) **Primary Stakeholders.** The primary stakeholders are SB/SE Field Collection and Large Business & International.
- (8) **Responsibilities.**
  - The Director, Collection Policy is the executive responsible for the policy and procedures to be employed by Field Collection (FC) personnel.
  - FC RO Group Managers (RO GM) and Field Collection Territory Managers are responsible for ensuring compliance with the guidance and procedures described in this IRM.
- (9) **Program Management and Review.**
  - Collection Policy will conduct ad hoc International program reviews as necessary to verify compliance with IRM requirements and to address Treasury Inspector General for Tax Administration/U.S. Government Accountability Office findings.
  - Case reviews are conducted by FC RO GMs to ensure compliance with this IRM.
  - Operational reviews are conducted by the Territory Manager and Area Director annually to evaluate program delivery and conformance to administrative and compliance requirements.
- (10) **Program Controls.** Group Managers, as well as Territory Managers and Area Directors, are required to approve certain RO case actions. The IRM outlines when approval is required and the level of approval necessary.
- (11) **Program Goals.** In working a Collection case, revenue officers may find indications the taxpayer owns assets that are located outside the borders of the U.S. ("offshore"). Gathering information about these assets can present unique chal-

allenges. The goal of this program is to enable ROs to effectively use law and treaty agreements to get this information, when required.

5.21.2.1.1  
(08-15-2023)

#### Acronyms

- (1) This table lists commonly used acronyms and their definitions:

Acronym	Definition
EOI	Exchange of Information
FATCA	Foreign Account Tax Compliance Act
LB&I	Large Business & International
MCAR	Mutual Collection Assistance Request
SB/SE	Small Business/Self-Employed
TBOR	Taxpayer Bill of Rights
TIEA	Tax Information Exchange Agreement

5.21.2.1.2  
(08-15-2023)

#### Related Resources

- (1) Additional information and guidance on international collection issues can be found in the following IRM sections:
- See IRM 5.21.1, *Overview* through IRM 5.21.8, *Adjustments to International Cases* for additional information on international collection issues.
  - See IRM Part 5, *Collecting Process* for additional information on general FC issues such as initial contact, courtesy investigations, special rules on mailing correspondence, TECS (formerly known as the Treasury Enforcement Communication System) and international currently not collectible closing code 06.
- (2) More information on Exchange of Information (EOI) can be found in *IRM 4.60.1, International Procedures - Exchange of Information (irs.gov)*.
- (3) Additional information can also be found at Knowledge Management, Collection Floor, International Tools and Actions & Examination Floor, International pages.

5.21.2.2  
(08-15-2023)

#### Types of Offshore Information Gathering Techniques

- (1) International cases can require methods not normally used in the domestic arena for gathering information. The offshore information gathering techniques discussed in this IRM section are as follows:
- FATCA research
  - EOI requests
  - Consent directives
  - Letters of Request

5.21.2.3  
(08-15-2023)  
**FATCA research**

- (1) FATCA research must be conducted on all international cases assigned to FC.
- (2) An international case is defined for purposes of this section as:
  - A taxpayer or business having a current address out of the U.S.
  - A taxpayer who resides abroad or an entity located outside of the U.S. but uses a power of attorney's (POA) domestic address as their official address.
  - A taxpayer who resides or entity located outside the U.S. and who uses a mail forwarding service, a mail drop box, or PO Box.

**Note:** An international address is any address that is not in one of the 50 states, District of Columbia or U.S. Territories. All taxpayer cases within the U.S. Territories are handled as if they were domestic taxpayers.

  - Refer to IRM 5.1.18.21, *FATCA Research*, for procedures to research if a taxpayer filed Form 8938, *Statement of Specified Foreign Financial Assets* and to request Form 8966, *FATCA Report*.

5.21.2.4  
(08-15-2023)  
**Exchange of Information**

- (1) The United States has tax treaties and TIEAs with many countries that provide for the exchange of information on tax matters.
  - a. See IRM 5.21.7, *International and Insular Issues - Special Cases*, IRM 5.21.7.4.1, *Inbound Mutual Collection Assistance Request*, and IRM 5.21.7.4.8, *Outbound Mutual Collection Assistance Request* regarding mutual collection assistance requests with the six treaty countries of Canada, Denmark, France, Japan, the Netherlands and Sweden.
- (2) In general any information relevant to the correct determination of a taxpayer's income tax liability, or the collection of that liability, can be requested under a U.S. tax treaty or TIEA. This includes the taxpayer's contact information, banking records and foreign tax returns. Information related to the determination and collect ability of taxes other than income tax may also be available depending on the EOI provisions of the applicable treaty.

**Note:** To access a list of countries that have an income tax treaty and/or a TIEA with the United States, go to the Treasury Department website at *Treaties / U.S. Department of the Treasury*.
- (3) All EOI requests with a foreign country are handled by U.S. Competent Authority.
  - a. See *IRM 4.60.1, International Procedures - Exchange of Information (irs.gov)* for more information on EOI requests between the United States and foreign countries.

**Note:** U.S. Competent Authority administers all U.S. tax treaties and TIEAs, including the EOI and Mutual Collection Assistance programs. As the EOI Program Office, U.S. Competent Authority obtains foreign based information for IRS field personnel, and provides U.S. based information to treaty partners.
- (4) All EOI requests with a U.S. Territory or state are handled by the Office of Privacy- Governmental Liaison & Disclosure.

5.21.2.4.1  
(08-15-2023)

**Types of Exchange of Information**

- (1) The types of information that may be exchanged under an EOI request include but are not limited to:
  - a. Tax returns and return information such as verification of filing status, citizenship, residency, income, expenses and tax liability,
  - b. Third party information return filings,
  - c. Bank records,
  - d. Business records,
  - e. Public records such as deeds, birth, death and marriage records, and
  - f. Witness interviews.

5.21.2.4.2  
(08-15-2023)

**Exchange of Information Procedures - Foreign Country**

- (1) Exhaust all domestic sources for information before requesting information from a foreign country.  
**Note:** In general, if the information can be obtained domestically, then a tax treaty or TIEA request is normally **not** appropriate.
- (2) Contact the EOI team responsible for that foreign country prior to drafting a request. EOI contact information can be found at: *Global - EOI (irs.gov)*.
- (3) All EOI requests must be transmitted via a member of the EOI team assigned to the treaty country receiving the EOI request.

**Caution:** Only EOI team members are authorized to communicate directly with a foreign country regarding EOI requests.

5.21.2.4.2.1  
(08-15-2023)

**Exchange of Information - Request Memorandum**

- (1) Prepare the EOI request in memorandum format with two parts:
  - a. Part 1 of the EOI request is for internal use, is written on official stationery, and is addressed to the Competent Authority. It should include the name and address of the taxpayer; the name, the address, and the phone and fax number of the RO requesting the EOI; any background or administrative information that should **not** be shared with the foreign tax administration, and any important statute or court dates related to the case.
  - b. Part 2 of the EOI request is a statement of pertinent facts of the case; it is incorporated into the Competent Authority letter that is prepared by the assigned EOI team and is forwarded to the foreign tax administration. The statement of facts should include the taxpayer information, any tax related information, case background, the specific information being requested, and the relevance of the requested information on the collection investigation.
- (2) Secure approval of the EOI request from your Territory Manager, through your Group Manager.
- (3) Send the full Exchange of Information request to the appropriate EOI group found on the following website *Global - EOI (irs.gov)* as discussed above.
- (4) See *IRM 4.60.1, International Procedures - Exchange of Information (irs.gov)* and *IRM 4.60.1.2.1, United States - Initiated Specific Requests for Information*, for more information on how to request the information from the foreign country.



- (5) Additional information and an example can be found on Knowledge Management, Collection Floor, International Tools and Actions

5.21.2.4.3  
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**Exchange of Information  
- U.S. Territories**

- (1) Information available from a U.S. territory (also referred to in the Internal Revenue Code as a U.S. possession) is defined by the corresponding tax implementation or tax coordination agreement executed between the United States and each of the U.S. territories (i.e., American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and the U.S. Virgin Islands). These tax agreements (available through the link at 5.21.2.3.3.1(8)) are like the agreements between the U.S. federal government and the states of the U.S. when conducting exchange of information between the IRS and individual state tax agencies.
- (2) The Office of Governmental Liaison and the Large Business and International (LB&I), U.S. Territory Program, are responsible for coordinating EOI between the IRS and each of the U.S. territories.
- (3) Annually, the Disclosure Office updates our Authorization List that can be reviewed at the LB&I U.S. Territory website. IRS personnel included on this list are authorized to sign a *Form 8796, Request for Return/Information* and to request and receive tax information from a U.S. territory tax agency. Only personnel who sign the Form 8796 are included on the Authorization List. Once the responsive information is received by the Service, that information can be shared internally with others who have “need and use” for the information.
- (4) Point of contacts for the Governmental Liaison, the Disclosure Office manager and the LB&I, U.S. Territory Program liaisons, who are charged with supporting the territories, are found on the Authorization List, in their respective sections.
- (5) Changes to the Authorization List may be sent to the Disclosure Office or to LB&I, U.S. Territory Program. Updates to the list are made annually.
- (6) This Authorization List is solely for internal use. Information contained on the authorization list must not be shared outside the IRS.

5.21.2.4.3.1  
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**Exchange of Information  
Procedures - U.S.  
Territories**

- (1) Complete Form 8796, *Request for Return Information*, to request tax return(s) or return information from the U.S. territory tax agency.
  - Section A – See the link below for the U.S. Territory Disclosure Manager contact information.
  - Section B – Complete a separate Form 8796 for each taxpayer that information is needed.

**Note:** For multiple entities, the requestor may attach a list of entities, tax years, and TINs. When information for multiple entities is sought, the requestor will receive responsive information only after research for **all** requested entities is complete.

  - Section C – Legibly provide the requestor and the requestor’s manager information. In Block 3, obtain a signature of someone on the current Authorization List.
- (2) Consider ways to minimize the administrative burden on the U.S. territory tax agency.

**Note:** Example: Request transcripts in lieu of copies of filed returns if that is sufficient for your case . Generally, a territory transcript showing income and tax that match IDRS income information, is sufficient to close an IRS delinquent return.

- (3) If requesting a territory transcript, specify an Account transcript or Return transcript in Section B, Block 2.
- (4) Send the completed Form 8796 to the Disclosure Officer that handles that applicable territory.
- (5) If your office/division has no one on the current Authorization List to sign in Section C, Block 3 of Form 8796, forward it to the LB&I, U.S. Territory Program, or contact the Disclosure Help Desk for a signature.
- (6) Allow at least 30 days for a reply. After 30 - 60 days, if no response is received, resend the Form 8796 and note "second request" on the second submission. After two unresponsive requests, contact the LB&I, U.S. Territory Program liaisons for support.
- (7) For urgent or sensitive Form 8796 requests, or for questions, contact Collection Policy, Global Strategic Compliance Analyst, then the LB&I, U.S. Territory Program, for assistance .
- (8) See *Treaties / U.S. Department of the Treasury* for links related to this process.

#### 5.21.2.5 (08-15-2023)

##### Consent Directives

- (1) A consent directive, also known as a disclosure directive, is a document signed by the taxpayer that authorizes a third party to release to a U.S. court information regarding that taxpayer that is held by a foreign bank or a third party custodian. Consent directives are used when the law of the country in which the records are located prevents disclosure to persons other than the taxpayer unless the taxpayer consents to the disclosure.
- (2) Consent directives can be voluntarily obtained directly from the taxpayer or by court order. When a consent directive is obtained voluntarily, some foreign countries will view this favorably and comply with the consent directive. On the other hand, some countries may not honor a consent directive that was compelled by court order.
- (3) A consent directive is used as the last resort where the court is considering denying the enforcement of a summons on Fifth Amendment grounds.

**Example:** A situation where a consent directive is useful is when the IRS summonses a U.S. branch of a foreign bank or a U.S. bank with a foreign subsidiary. The bank will claim that it cannot produce records without violating the bank secrecy laws of the foreign jurisdiction. The consent directive, when signed by the taxpayer, gives the bank assurance to comply with the summons without violating their bank secrecy laws.

- (4) Consult with Area Counsel prior to considering a consent directive. Area Counsel will coordinate as necessary with the Office of Associate Chief Counsel (International).

- (5) Further information and an example of a consent directive can be found on Knowledge Management, Collection Floor, International Tools and Actions.

5.21.2.5.1  
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**Summons Procedures  
Prior to Requesting  
Consent Directive**

- (1) Issue Form 4564, *Information Document Request*, or equivalent (such as a letter) to request foreign bank records from the taxpayer or other person with authority to access the records (such as the foreign bank).

**Note:** Any correspondence sent to request foreign bank records should only be sent to domestic recipients. If records are needed from a foreign source, an exchange of information is needed.

- (2) If the taxpayer or other person does not adequately comply with the information document request, confirm with Counsel that a summons is enforceable by a U.S. court.
- (3) Issue a summons that specifies the records that must be produced.

**Note:** A summons should only be issued to entities within the United States.

- (4) If the person does not comply adequately with the summons, refer to the local office of Chief Counsel for enforcement.
- (5) If the summoned person does not produce the foreign bank records pursuant to the summons enforcement proceeding, Counsel may ask the Department of Justice to request that the court order the taxpayer or summoned party to sign one or more consent directives. Each consent directive can then be mailed to a different foreign bank, authorizing the bank to disclose to the IRS records relating to accounts that the taxpayer or third party may control. When the decision is made to pursue a consent directive, the IRS should ask the court that the taxpayer not be released from producing the records until the IRS has received the records from the foreign bank. Otherwise, if the foreign bank does not comply with the consent directive and the taxpayer is released from their obligation to produce the records, the IRS may not have an avenue to obtain the records in that proceeding.

5.21.2.6  
(08-15-2023)  
**Letter of Request**

- (1) A Letter of Request is a mechanism for obtaining information from countries that have signed the Hague Evidence Convention. The Hague Evidence Convention is an international treaty which provides various methods and standardized procedures for securing evidence in civil and commercial matters. The Hague Evidence Convention may serve as a tool for discovery of foreign evidence, and it can only be used when there is a judicial proceeding pending or imminent in the United States.
- (2) A Letter of Request:
  - is initiated by the IRS through the court,
  - is worked by a competent authority in the receiving country, and
  - in most cases, it bypasses foreign courts and diplomatic channels of the receiving country.
- (3) The type of assistance from each country will be different even though that country is a signatory to the Hague Evidence Convention. Most common law countries will provide assistance in civil tax cases pending in a court within the

United States. However, some civil law countries consider tax matters as “fiscal” matters (not civil matters) that are not within the scope of the Convention.

- (4) Consult Area Counsel, who will coordinate with the Office of Associate Chief Counsel (International), and where appropriate, the U.S. Department of Justice to determine what may be expected from any given jurisdiction.
- (5) Prepare an application for a Letter of Request with the assistance of Area Counsel.