



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

4.60.1

FEBRUARY 23, 2023

## EFFECTIVE DATE

(02-23-2023)

## PURPOSE

- (1) This transmits revised IRM 4.60.1, International Procedures, Exchange of Information.

## MATERIAL CHANGES

- (1) Certain subsections and topics have been substantially updated, including:
  - a. IRM 4.60.1.1, Program Scope and Objectives
  - b. IRM 4.60.1.2, Specific Exchange of Information Program
  - c. IRM 4.60.1.3, Spontaneous Exchange of Information Program
  - d. IRM 4.60.1.7, Mutual Legal Assistance Treaty (MLAT) Program
  - e. IRM 4.60.1.11, Joint Audit Program
- (2) IRM Exhibit 4.60.1-2: Added exhibit for terms, definitions and acronyms.
- (3) Corrected organizational titles.
- (4) Editorial changes made throughout.

## EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 4.60.1, International Procedures, Exchange of Information, dated October 15, 2018.

## AUDIENCE

All IRS operating divisions and functions.

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4.60.1

Exchange of Information

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4.60.1.1  
(02-23-2023)  
**Program Scope and Objectives**

- (1) **Purpose:** Exchange of Information (EOI) as discussed in this section refers to the sharing of tax-related information between two or more international jurisdictions for tax administration and enforcement purposes.
- (2) **Audience:** The policies and procedures herein apply to all IRS employees from all operating divisions and functions involved with EOI requests and exchanges. Such involvement may include providing assistance to the EOI Program, Automatic Exchange of Information (AEOI) Program, or the Joint International Taskforce on Shared Intelligence and Collaboration (JITSIC) in processing EOI requests or exchanges, as well as submitting requests or exchanges to these offices for processing.
- (3) **Policy Owner:** LB&I Policy under the Strategy, Policy and Governance office in the Assistant Deputy Commissioner Compliance Integration organization.
- (4) **Program Owner:** Exchange and Offshore Strategy, Large Business and International Division.
- (5) **Primary Stakeholders:** All IRS operating divisions and functions involved with EOI requests and exchanges.

4.60.1.1.1  
(02-23-2023)  
**Background**

- (1) Exchanges of tax-related information between international jurisdictions generally occur under the provisions of international exchange agreements. Such agreements include:
  - a. **Bilateral tax treaties.** The provisions of these bilateral agreements, also known as tax conventions or double taxation conventions (DTCs), are primarily intended to eliminate double taxation with respect to certain taxes without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance. DTCs generally include articles authorizing the exchange of tax-related information between the jurisdictions.

**Note:** In addition to bilateral income tax treaties, the U.S. has entered into bilateral estate and/or gift tax treaties with certain foreign jurisdictions. Those treaties may authorize exchanges of information between the jurisdictions for estate and/or gift tax purposes. Nevertheless, the exchange of information provisions of bilateral income tax treaties may also authorize exchanges for estate and/or gift tax purposes.
  - b. **Tax Information Exchange Agreements (TIEAs).** These bilateral agreements allow only for the exchange of tax-related information, and unlike tax treaties, do not contain provisions related to double taxation. TIEAs are executive agreements, and do not require ratification by the U.S. Senate.
  - c. **Multilateral treaties and agreements.** Certain multilateral agreements to which the United States is a party also authorize EOI for tax purposes, such as the OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters (Multilateral Convention, MAAC, or MAC), the Hague Convention on the Taking of Evidence, and the Inter-American Convention on Mutual Assistance in Criminal Matters. Exchange under the Multilateral Convention may allow for exchange of tax-related information with many jurisdictions.
  - d. **Intergovernmental Agreements (IGAs) under the U.S. Foreign Account Tax Compliance Act (FATCA).** These bilateral agreements

between the United States and foreign governments implement or facilitate the implementation of FATCA through the reporting and exchange of financial account data. For more information, see IRM 4.60.1.10, Automatic Exchange of Information (AEOI) Program.

- e. **U.S. territory tax implementation or coordination agreements.** These bilateral agreements allow for exchanges of tax-related information between the United States and the U.S. territories of American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.
  - f. **Mutual legal assistance treaties (MLATs).** These bilateral agreements authorize the exchange of information for the purpose of the enforcement of criminal laws. However, not all MLATs cover tax matters or authorize the exchange of tax-related information.
- (2) Each international exchange agreement contains uniquely worded provisions, and may be amended by protocols. Therefore, the specific and most current applicable agreement should be consulted in each case. Nevertheless, EOI provisions in such agreements generally include the following components:
- a. A general obligation to exchange information as is foreseeably relevant for carrying out the provisions of the agreement or to the administration or enforcement of the domestic laws concerning the taxes covered by the agreement for exchange of information purposes;
  - b. Procedures about the use and disclosure of the exchanged information, which generally require that information received be treated as secret in the same manner as information obtained under the domestic laws of the receiving jurisdiction, and which permit disclosure of such information only to persons or authorities (such as courts and administrative bodies) specified by the agreement as concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes covered by the agreement for exchange of information purposes;
  - c. Language which prohibits imposing the following obligations on the jurisdictions party to the agreement: carrying out administrative measures at variance with the laws and administrative practice of any jurisdiction party to the agreement; supplying information which is not obtainable under the laws or in the normal course of the administration of any jurisdiction party to the agreement; or supplying information which would disclose any trade, business, industrial, commercial, or professional secret or trade process, or would disclose any other information the disclosure of which would be contrary to public policy;
  - d. An obligation on the requested jurisdiction to use its information gathering measures to obtain the requested information, even though that jurisdiction may not need the information for its own tax purposes (i.e., a lack of "domestic tax interest" should not prevent the exchange of information); and
  - e. An obligation to exchange information regardless of whether it is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity, or it relates to ownership interests in a person.
- (3) While some international exchange agreements may describe certain types of exchanges of tax-related information, they generally do not limit the form these exchanges may take. The various practical forms of these exchanges - which



include specific exchanges (also known as exchange of information on request, or EOIR), spontaneous exchanges, and automatic exchanges - are described elsewhere in this section.

4.60.1.1.2  
(02-23-2023)  
**Authority**

- (1) Procedural and legal authority for the exchange of information with foreign jurisdictions, including considerations of the confidentiality of information exchanged, is detailed below.

4.60.1.1.2.1  
(02-23-2023)  
**Authority - Disclosure,  
Confidentiality, and  
Contacts with Foreign  
Tax Officials**

- (1) Strict U.S. disclosure laws about returns, return information, and other sensitive tax data govern the exchange of such information with foreign tax officials under international exchange agreements. Procedural and legal authority for the exchange of information with foreign jurisdictions under international exchange agreements is founded primarily on:
  - a. IRS Delegation Order 4-12, Authority to Act as "Competent Authority" or "Taxation Authority" Under Certain International Agreements, Authorize the Disclosure of Tax Information Under Mutual Legal Assistance Treaties, and Disclose Certain Tax Convention Information, located in IRM 1.2.2.5.11(which delegates exclusive U.S. authority to exchange tax-related information under international exchange agreements to certain persons within the office of the delegated U.S. Competent Authority, the Commissioner, LB&I);
  - b. IRC 6103 (which governs the disclosure and confidentiality of returns and return information in general);
  - c. IRC 6105 (which governs the disclosure and confidentiality of information exchanged under international exchange agreements); and
  - d. Disclosure or secrecy provisions of the relevant international exchange agreement.

Improper disclosure of returns and return information as defined under IRC 6103(b) may result in civil or criminal penalties under IRC 7431 and IRC 7213. Moreover, the improper disclosure of returns, return information, and other sensitive data by the IRS may result in the impairment of tax administration and/or damage to intergovernmental relations. There are several situations where the IRS must make determinations about such potential "impairment" of tax administration in connection with EOI. For more information, see IRC 6103(e)(7), IRC 6105(b)(4), and IRM 11.3.25, Disclosure to Foreign Countries Pursuant to Tax Treaties. The authority to make most impairment determinations is governed by Delegation Order 4-12 (as revised).

- (2) Consistent with IRC 6103 and IRC 6105 and Delegation Order 4-12 (as revised), no IRS employee may contact, provide any information to, request any information from, or receive any information from a foreign tax official under an international exchange agreement unless authorized in Delegation Order 4-12 (as revised). This restriction applies to any information provided, requested, or received under an international exchange agreement, including, but not limited to:

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- a. Returns and return information as defined under IRC 6103(b);
- b. IRS program plans or policy initiatives, investigative techniques, draft published guidance, emerging issues, or enforcement strategies;
- c. Tolerances or grace periods relevant to IRS compliance or other procedures;
- d. IRS formulas used to select tax returns for examination (including Discriminant Index Function (DIF) scores) and related information;
- e. Reports prepared by IRS employees on technical or legal issues;
- f. Summaries of conferences or meetings held between tax administrations;
- g. IRS training materials; and
- h. Publicly available information from LexisNexis, Westlaw, <https://www.irs.gov>, or other sources.

Therefore, any IRS employee contacted by a foreign tax official, considering any contact with a foreign tax official, or considering any exchange of information under an international exchange agreement with a foreign tax official

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EOI manager or analyst will subsequently contact the employee to provide detailed guidance. The EOI Program may at that time approve such contacts in appropriate circumstances. For rules applicable to Criminal Investigation personnel outside the context of information exchanges under international exchange agreements, see IRM 9, Criminal Investigation.

- (3) Strict disclosure restrictions extend to the treatment of information received from a foreign jurisdiction under an international exchange agreement via the U.S. Competent Authority. Any IRS office in possession of such information must first contact the EOI Program for approval to disclose the information to any person outside the Internal Revenue Service, including to other U.S. government agencies where such disclosure is not expressly provided in the use and disclosure provisions of the international exchange agreement. Moreover, if any IRS office in possession of information originally received from foreign tax officials under an international exchange agreement is requested to disclose any such information and/or wishes to consult the foreign officials prior to releasing such information in response to court orders, subpoenas, or Freedom of Information Act (FOIA) requests in the U.S., that office must consult the EOI Program, which will in turn consult with the foreign tax officials as appropriate. Finally, if any IRS office discovers or suspects that an unauthorized disclosure of information received from foreign tax officials under an international exchange agreement may have occurred, that office must immediately notify the EOI Program.
- (4) Information received by the U.S. Competent Authority from foreign tax officials pursuant to an international exchange agreement 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 returns and return information) and IRC 6105. To caution against unauthorized disclosures, EOI personnel within the office of the delegated U.S. Competent Authority (the Commissioner, LB&I) include the following text on all information provided or received pursuant to an international exchange agreement: **This information is furnished under the provisions of an international exchange agreement with a foreign government. Its use and disclosure must be governed by the provisions of that agreement.**
- (5) Per IRC 6103(p)(3), Exchange of Information personnel must account for disclosures of returns and return information to third parties, including to foreign Competent Authorities, other than those parties exempt under IRC

6103(p)(3)(A). This disclosure is recorded by the completion and processing of IRS Form 5466-B, Multiple Records of Disclosure. For more information about Form 5466-B, see IRM 11.3.37, Recordkeeping and Accounting for Disclosures.

- (6) Questions about disclosure rules applicable to information secured under international exchange agreement provisions should be directed to the EOI

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4.60.1.1.2.2  
(02-23-2023)  
**Authority - Trade  
Secrets and Exchange  
of Information**

- (1) As described above, all exchanges of tax-related information pursuant to international exchange agreements are subject to strict considerations of disclosure and confidentiality, including confidentiality attached to trade and other business secrets. International exchange agreements frequently include language limiting the exchange of trade secrets, such as “are not obligated to be exchanged” or “will not be exchanged”. International exchange agreements generally refer to such materials as any trade, business, industrial, commercial, or professional secret or trade process.
- (2) In general, information may be considered a trade or other business secret protected from disclosure to a foreign Competent Authority if disclosure would cause substantial harm to the taxpayer’s competitive position. Information related to transfer pricing may not necessarily be protected from disclosure.
- (3) If a foreign request for information is resisted by a U.S. record holder on the grounds that it constitutes trade secret information which may not be disclosed, the record holder must provide a comprehensive explanation of the legal and/or factual grounds for the record holder’s objections to the EOI analyst assigned to the foreign request. The U.S. Competent Authority will then consider the record holder’s explanation and determine whether the information should be disclosed to the foreign Competent Authority.
- (4) If any information is redacted for non-disclosure to the foreign Competent Authority per the determination of the U.S. Competent Authority, an explanation of the reason(s) for redaction will generally be provided to the foreign Competent Authority.

4.60.1.1.3  
(02-23-2023)  
**Roles and  
Responsibilities**

- (1) The “Competent Authority” or “Central Authority” of each jurisdiction is responsible for all matters relating to the application and interpretation of the provisions of the international exchange agreements to which that jurisdiction is a party. The U.S. Competent Authority under most international exchange agreements is the U.S. Secretary of the Treasury, with the Commissioner, LB&I delegated this authority per Delegation Order 4-12 (as revised). All exchanges of tax-related information with foreign authorities pursuant to bilateral and multilateral tax treaties, TIEAs, FATCA IGAs, and U.S. territory tax implementation or coordination agreements involving the United States must occur through the delegated U.S. Competent Authority, the Commissioner, LB&I. With respect to MLATs and similar law enforcement agreements, the U.S. Department of Justice, Office of International Affairs, Criminal Division (DOJ OIA) is authorized to act as the U.S. Central Authority.
- (2) In certain circumstances, the authority to sign or act on behalf of the Commissioner, LB&I may be delegated to certain personnel within the Office of the Commissioner, LB&I per Delegation Order 4-12 (as revised). For example, the Director, Exchange and Offshore Strategy and the Director, Advance Pricing and Mutual Agreement (APMA) are delegated responsibility for signing certain

mutual and other agreements on behalf of the Commissioner, LB&I under bilateral and multilateral tax treaties, TIEAs, FATCA IGAs, and U.S. territory agreements.

- (3) Per Delegation Order 4-12 (as revised), all exchanges of information under bilateral and multilateral tax treaties, TIEAs, and FATCA IGAs (excluding transfer pricing and mutual agreement proceedings administered by APMA) are administered by the Program Manager, Exchange of Information (EOI Program); the Program Manager, Automatic Exchange of Information (AEOI Program); and the Program Manager, Offshore Compliance Initiatives (who oversees the Joint International Taskforce on Shared Intelligence and Collaboration (JITSIC)).
- (4) Most EOI programs described in IRM 4.60.1 are administered by the EOI Program. The AEOI Program administers the Automatic Exchange of Information program (for more information, see IRM 4.60.1.10, Automatic Exchange of Information (AEOI) Program). JITSIC administers specific requests for information where such requests:
  - a. Relate to cross-border tax avoidance schemes involving entities within JITSIC Network members' jurisdictions (for a current list of JITSIC Network member jurisdictions, see the JITSIC website <https://www.oecd.org/tax/forum-on-tax-administration/jitsic/>), and/or
  - b. Are conducted as part of a Joint Audit (for more information, see IRM 4.60.1.11, Joint Audit Program).

JITSIC, along with the EOI Program, also administers spontaneous exchanges of information.

- (5) All EOI policies and procedures described in IRM 4.60.1 are equally applicable to the EOI Program, the AEOI Program, and JITSIC, including all employees of those offices. The term "EOI office" as used herein refers to those offices. The term "EOI management" as used herein refers collectively to the frontline and senior management of those offices. The term "EOI analyst" as used herein refers to any employee of those offices assigned to cases and issues under those offices' jurisdictions.
- (6) The term "foreign partner" as used herein generally refers to any foreign tax jurisdiction with which the United States has an international exchange agreement.
- (7) IRS Criminal Investigation Country Attachés and Special Agents may be stationed in Criminal Investigation posts overseas. However, any exchange of information under bilateral and multilateral tax treaties and TIEAs involving Criminal Investigation must be conducted through the delegated U.S. Competent Authority, the Commissioner, LB&I. For rules applicable to Criminal Investigation personnel outside the context of information exchanges under international exchange agreements, see IRM 9 , Criminal Investigation.
- (8) In order to administer the exchange of information provisions of the various international exchange agreements to which the United States is a party, the IRS offices delegated EOI authority per Delegation Order 4-12 (as revised) – i.e., the Program Manager, Exchange of Information (EOI Program); the Program Manager, Automatic Exchange of Information (AEOI Program); and the Program Manager, Offshore Compliance Initiatives (who oversees the Joint International Taskforce on Shared Intelligence and Collaboration (JITSIC)) –

oversee a variety of EOI programs. The following subsections within IRM 4.60.1 describe each EOI program in detail.

4.60.1.1.4  
(02-23-2023)  
**Program Management  
and Review**

- (1) The Withholding Exchange and international Individual Compliance (WEIIC) and Treaty and Transfer Pricing Operations (TTPO) directors prepare periodic briefing reports for the Commissioner, LB&I focusing on:
  - a. Significant accomplishments and opportunities for improvement
  - b. Changes in procedures that have been implemented
  - c. Operational, technical, and staffing updates
  - d. Any other key information

4.60.1.1.5  
(02-23-2023)  
**Program Controls**

- (1) The relevant directors within WEIIC and TTPO (including the Director of Field Operations (DFO), Exchange & Offshore Strategy (EOS), the DFO, Foreign Payments Practice (FPP) and AEOL, and the Director, Advance Pricing and Mutual Agreement (APMA)) report to their respective directors on a continuous basis.
- (2) The WEIIC and TTPO directors identify goals and objectives to be achieved by their organizations based on annual commitments of LB&I priorities.

4.60.1.1.6  
(02-23-2023)  
**Terms/Definitions/  
Acronyms**

- (1) See Exhibit 4.60.1-2.

4.60.1.1.7  
(10-15-2018)  
**Related Resources**

- (1) Resources available to IRS personnel involved with EOI requests and exchanges are described where relevant in the following subsections.

4.60.1.2  
(02-23-2023)  
**Specific Exchange of  
Information (EOIR)  
Program**

- (1) Specific exchange of information (also known as exchange of information on request, or EOIR), which operates through the exchange of information provisions of international exchange agreements, involves the coordination of both foreign-initiated (i.e., initiated by a foreign partner) and United States-initiated (i.e., initiated by IRS personnel) requests for information pertaining to specific taxpayers. Typically, the information requested relates to an examination, inquiry, or investigation of a taxpayer's tax liability for a specified period. Most requests result from an 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 exchange agreement pursuant to which the request was submitted.

**Caution:** All exchanges of information under the provisions of international exchange agreements must be conducted through the U.S. Competent Authority.

- (2) All domestic means of obtaining information should be pursued before a specific request for assistance may be initiated, except those that would give rise to disproportionate difficulties (for example, where extraordinary costs would be incurred to obtain the information by domestic means).

- (3) International exchange agreements obligate Competent Authorities to employ the same measures to secure information for foreign partners as they would for their own domestic tax purposes.
- (4) A wide range of information may potentially be obtained through a specific request for information under international exchange agreements, including:
  - a. Ownership information, including information pertaining to the legal ownership and beneficial ownership of entities;
  - b. Accounting records, including entity formation records, financial statements, contracts, invoices, etc.;
  - c. Bank records, including bank and other financial account opening documents, identity records, statements, etc.;
  - d. Tax returns, which may be relevant to verify foreign tax/citizenship/residency status, reported income/expenses/liabilities, etc.;
  - e. Asset information, including about real and personal property owned;
  - f. Income, employment, and contact information;
  - g. Residency, citizenship, and travel and customs information;
  - h. Court and other public records; and
  - i. Third-party interviews.

**Note:** See also IRM 25.27.1.2, Third-Party Contact (TPC): Definition, for exceptions to third-party contact notification procedures.

- (5) According to the EOI provisions of international exchange agreements and related guidance provided by the Organisation for Economic Co-operation and Development (OECD), a jurisdiction requesting information pursuant to an international exchange agreement must demonstrate the "foreseeable relevance" of any requested information to the administration or enforcement of the domestic tax laws of the requesting jurisdiction. While the standard of foreseeable relevance is intended to provide for exchange of information in tax matters to the widest possible extent, jurisdictions are not at liberty to engage in "fishing expeditions" or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer. EOI analysts review all requests for information to ensure these standards are met, as detailed in the following subsections.
- (6) IRC 7611 provides for special restrictions on tax inquiries and examinations pertaining to churches. For more information, see IRM 25.5.8.3, Restrictions on Church Tax Inquiries and Examinations. Special rules also apply to requests relating to internet service provider records. For more information, see IRM 4.60.1.2.4, Specific Requests for Information Related to Internet Service Provider (ISP) Records.
- (7) Strict adherence to all applicable disclosure and confidentiality provisions is required of all IRS employees, including EOI analysts, involved in specific exchanges of information. For details, including the correct processing of information considered to potentially represent trade or business secrets, see IRM 4.60.1.1.2, Authority.

4.60.1.2.1  
(02-23-2023)  
**United States-Initiated  
Specific Requests for  
Information**

- (1) IRS personnel send specific requests for tax-related information located within the jurisdiction of a foreign partner to the delegated U.S. Competent Authority, the Commissioner, LB&I. Authority to review and process these requests has been assigned by Delegation Order 4-12 (as revised) to the Program Manager, Exchange of Information (EOI Program) and the Program Manager, Offshore



Compliance Initiatives (who oversees the Joint International Taskforce on Shared Intelligence and Collaboration (JITSIC)), as discussed further below.

- (2) JITSIC administers United States-initiated specific requests for information where such requests:
- a. Relate to cross-border tax avoidance schemes involving entities within JITSIC Network members' jurisdictions (for a current list of JITSIC Network member jurisdictions, see the JITSIC website, <https://www.oecd.org/tax/forum-on-tax-administration/jitsic/>), and/or
  - b. Are conducted as part of a Joint Audit (for more information, see IRM 4.60.1.11, Joint Audit Program).

All other United States-initiated specific requests are administered by the EOI Program. IRS personnel contemplating any specific request for information

guidance.

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**Note:** A specific request for information relating to the examination or investigation of an ascertainable group or class of persons not individually identified in the request is considered a "group request." (Note that a group request is different from a "bulk" request, which relates to two or more individually identified taxpayers.) Commentary to Article 26 of the OECD Model Tax Convention approved in 2012 indicates that upon submission of a group request, the requesting jurisdiction must provide a "detailed description of the group and the specific facts and circumstances that have led to the request, [and] an explanation of the applicable law and why there is reason to believe that the taxpayers in the group for whom information is requested have been non-compliant with that law supported by a clear factual basis. It further requires a showing that the requested information would assist in determining compliance by the taxpayers in the group." For any contemplated United States-initiated group request, the EOI Program Manager must be consulted for guidance.

- (3) Any information received under an international exchange agreement may only be used for the administration of a tax covered by the treaty or agreement.
- (4) All requests initiated by IRS personnel must be in writing. Each request must provide sufficient background information about the examination, investigation, or other tax administrative procedure to ensure the foreign partner may understand both the relevance of the request to the examination, investigation, or procedure and the nature of the information being requested. Moreover, each request must pertain to a single foreign jurisdiction with which the U.S. has an international exchange agreement covering exchange of information for purposes of the tax(es) and matters subject to examination, investigation, or other tax administrative procedure. Each request should include the following information:
- a. Approval of an appropriate management official (generally, first-level management) in the requesting IRS office;
  - b. Name, mail and email addresses, and telephone number of the requesting IRS personnel, as well as the address to where the response should be mailed;
  - c. A statement indicating the requesting IRS office has pursued all domestic means available to obtain the information, except those that would give

- rise to disproportionate difficulties (for example, where extraordinary costs would be incurred to obtain the information by domestic means);
- d. A statement as to whether the IRS examination, investigation, or procedure is civil or criminal in nature, whether it has been referred to IRS Criminal Investigation and/or the U.S. Department of Justice, and whether a grand jury has been used;
  - e. A statement as to whether the information requested is contemplated for use related to the application of Report of Foreign Bank and Financial Accounts (FBAR) penalties;
  - f. Name, address, date of birth (if applicable), and legal residency/citizenship status (if applicable) of the taxpayer(s) under IRS examination or investigation, as well as any other available identifying information (for example, U.S. TIN, foreign address, etc.);
  - g. Types of taxes and periods under IRS examination or investigation (the exchange of information provisions within the specific international exchange agreement must be reviewed by the assigned EOI analyst to confirm the specific types of tax and periods covered for exchange of information purposes);
  - h. Location of the information requested, including sufficient identifying information (for example, name, address, date of birth, etc.) pertaining to the individual or entity in possession or control of the information (i.e., the foreign record holder);
  - i. Background information about the IRS examination, investigation, or procedure, including a description of the specific U.S. tax matters involved;
  - j. Description of the requested information's "foreseeable relevance" to the IRS examination, investigation, or procedure, i.e., an explanation of how the requested information would be pertinent to the administration or enforcement of the U.S. taxes at issue;
  - k. Detailed description of the specific information requested; and
  - l. Any statute of limitations, court, or similar dates by which the information is required.
- (5) If information from more than one foreign jurisdiction is sought, the requesting IRS office should create several requests, with each request pertaining to a different relevant foreign jurisdiction.
  - (6) Generally, first-level management of the requesting IRS office approves each request, unless another approver is designated by the requesting operating

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**Note:** The requesting IRS office must immediately notify the assigned EOI analyst if any statute of limitations, court, or similar dates by which the information is required change; part or all of the requested information is no longer required; or any requested information (either before or after receiving the information from the EOI office) is contemplated to be used in connection with the application of Report of Foreign Bank and Financial Accounts (FBAR) penalties or for purposes other than tax purposes. In these situations, the EOI analyst will consult with the requesting IRS office and, if warranted, the foreign Competent Authority to ensure the request is processed appropriately.

- (7) Once the IRS request is received by the jurisdictional EOI office, the assigned EOI analyst reviews the request as well as the applicable international



exchange agreement to ensure the above elements are included in the request, and the request pertains to a foreign jurisdiction with which the U.S. has an international exchange agreement covering EOI for purposes of the tax(es), period(s), and matters subject to the IRS examination, investigation, or administrative procedure. The EOI analyst may contact the requesting IRS office for any additional information needed.

- (8) Once the EOI review is completed, the assigned EOI analyst submits the completed request to EOI management for review, signature, and issuance to the foreign Competent Authority no later than 30 calendar days after receipt of the IRS request. The EOI analyst subsequently requests status updates from the foreign Competent Authority and provides corresponding updates to the requesting IRS office every 90 calendar days after receipt of the request. If a status update is needed sooner, the requesting IRS office should contact the assigned EOI analyst.
- (9) Once the requested information is secured, the assigned EOI analyst reviews the response to ensure all information was provided, and issues the information to the requesting IRS office. If only a portion of the requested information is received, the EOI analyst may provide the information to the requesting IRS office as a partial response. The EOI analyst then pursues the outstanding items, and issues them to the requesting IRS office upon receipt.
- (10) The EOI office may request feedback from the requesting IRS office via an online survey, a link to which will be included in the memorandum accompanying the foreign Competent Authority's response issued by the EOI office to the requesting IRS office.

4.60.1.2.1.1  
(02-23-2023)  
**United States-Initiated  
Specific Requests for  
Information –  
Procedures for EOI  
Personnel**

- (1) The procedures described in this subsection are to be followed by all employees in the EOI Program and JITSIC assigned to process U.S.-initiated specific requests for information.
- (2) Within 30 calendar days after the EOI office's receipt of a request that has been approved by an appropriate management official (generally, first-level management) in the requesting IRS office, complete the following actions:
  - a. Create and maintain a case for the request in the EOI Inventory Management System (IMS). On each date any action is taken on the request, including the receipt or issuance of correspondence, the holding of meetings or phone calls, and the completion of research, all related actions and documents must be contemporaneously recorded in and uploaded to the IMS case (for example, in the IMS Comments and Documents screens; depending on the action, the IMS Request Details, Contacts, Work Stages, Information, and/or other screens may also require input). All records received or produced by the EOI office at any time during the processing of the request, whether as paper or in an electronic format, must be scanned (for paper records) and uploaded to the IMS case. Limited exceptions to this rule may be made on a case-by-case basis with the approval of EOI management (for example, when paper records are extremely voluminous).
  - b. If any paper documents (including paper correspondence and records and any associated mailing envelopes bearing postal stamps or other shipping marks) or other physical media (including CD-ROMs and other portable electronic storage devices) are received by the EOI office at any time during the processing of the request, create and maintain a physical

- folder for the exchange to contain these paper documents and physical media, including any passwords necessary to access the physical media. This folder must be clearly marked with the IMS Request Number, IMS Request Name, and relevant foreign jurisdiction name, and all paper documents and physical media must be marked with the date of receipt in the EOI office. If no paper documents or physical media pertinent to the request are received by the EOI office, no physical folder should be created or maintained for the request. Moreover, no documents or media originally received or produced solely in electronic format should be printed for inclusion in a physical folder.
- c. Review the request and applicable international exchange agreement to determine whether the request is accurate and meets applicable standards, as described in IRM 4.60.1.2.1, United States-Initiated Specific Requests for Information, and verify through IDRS research the entities and periods under IRS examination or investigation.
  - d. Acknowledge receipt of the request to the requesting IRS office via email. This acknowledgment must identify the request by the assigned IMS Request Number. Also, if the request does not meet the standards referenced above, consult the requesting IRS office to obtain any additional information needed.
- (3) Within 30 calendar days after the EOI office's receipt of the request, and after the request has been determined to be valid and complete, prepare and submit in IMS the following documentation to EOI management for review, approval, and signature:
- a. A cover letter to the foreign Competent Authority on LB&I Commissioner letterhead.
  - b. An attachment describing the specific information requested. To produce the attachment, the original requesting IRS office document should be edited for issuance to the foreign Competent Authority. As necessary, remove information not required by or disclosable to the foreign Competent Authority from the original request, such as the requesting IRS office location, contact name and phone number; references to other jurisdictions; U.S. TINs; or details of a related IRS examination, investigation, or administrative procedure not directly pertinent to the request.
  - c. Every page of the cover letter and attachment must include the following text: **This information is furnished under the provisions of an international exchange agreement with a foreign government. Its use and disclosure must be governed by the provisions of that agreement.**
  - d. Associated background information, including any relevant correspondence and research, and if directed by EOI management, an IRS Form 13839-A, Note to Reviewer For a Signature Package, or equivalent.
- (4) Within 30 calendar days after the EOI office's receipt of the request, and after securing managerial approval and signature of the above documentation, issue the cover letter and attachment to the foreign Competent Authority. In some cases, the EOI Program Manager will issue the cover letter and attachment to the foreign Competent Authority. If the information being requested of the foreign Competent Authority is "routine," an EOI frontline manager may review, sign, and issue the cover letter and attachment to the foreign Competent Authority, as authorized by Delegation Order 4-12 (as revised). Information deemed "routine" may include addresses of individuals and basic bank account information; other "routine" information may be identified by the EOI Program Manager.

- (5) Every 90 calendar days after issuance of the request to the foreign Competent Authority, request a status update from the foreign Competent Authority, and provide a corresponding update to the requesting IRS office. If any clarifications or additional information about the request are sought by the foreign Competent Authority, review the communication from the foreign Competent Authority, and consult separately as appropriate with the requesting IRS office, EOI management, and the foreign Competent Authority to resolve the issues.
- (6) Within 15 calendar days after the EOI office's receipt of a response from the foreign Competent Authority, review the response for completeness. This review should ensure all relevant information has been received to fulfill the request and identify any received information that is not relevant to fulfill the request (for example, foreign tax authority employee contact information, unrelated party information, etc.) and that should therefore not be included in the response to the requesting IRS office.
  - a. If the foreign response is incomplete: Prepare and provide (if possible) a partial response to the requesting IRS office as detailed below, and contact the foreign Competent Authority to acknowledge receipt of the foreign response, determine when any remaining information will be provided, and request any clarifications necessary.
  - b. If the foreign response is complete: Prepare and provide a final response to the requesting IRS office as detailed below, and contact the foreign Competent Authority to acknowledge receipt of the foreign response.
- (7) Within 15 calendar days after the EOI office's receipt of the foreign response, and after the response has been reviewed for completeness, prepare and submit in IMS the following documentation to EOI management for review, approval, and signature:
  - a. A cover memorandum to the requesting IRS office on LB&I letterhead.
  - b. An attachment(s) providing the specific information requested and received from the foreign Competent Authority. The foreign Competent Authority cover letter is not to be included in this attachment(s); exceptions to this procedure must be approved by the EOI Program Manager, and if such an exception is approved, at a minimum, all personally identifiable information pertaining to any foreign Competent Authority officials and offices must be redacted from the cover letter. If the attachment(s) transmits a partial response, note the measures planned to obtain any remaining information. If the attachment(s) transmits a final response that does not substantively fulfill all inquiries, include an explanation as to why the requested information was not provided by the foreign Competent Authority, and the efforts made to obtain it.
  - c. Every page of the cover memorandum and attachment(s) must include the following text: **This information is furnished under the provisions of an international exchange agreement with a foreign government. Its use and disclosure must be governed by the provisions of that agreement.** Information originally received from the foreign Competent Authority in paper format may be either scanned and electronically stamped with the above text for electronic issuance to the requesting IRS office, with the original paper records then maintained in the EOI request physical folder; or manually stamped with the above text, scanned, and uploaded to the IMS case, with the original stamped paper records

- prepared for postal issuance to the requesting IRS office, and the IMS case clearly updated with the date and issuance details for any such paper mailing.
- d. Associated background information, including any relevant correspondence and research, and if directed by EOI management, an IRS Form 13839-A, Note to Reviewer For a Signature Package, or equivalent.
- (8) Within 15 calendar days after the EOI office's receipt of the foreign response, and after securing managerial approval and signature of the above documentation, issue the cover memorandum and attachment(s) to the requesting IRS office.
  - (9) Within 7 calendar days after issuance of a final response to the requesting IRS office, submit the IMS case to EOI management for closure, ensuring all required IMS information is input fully and accurately, and submit the physical case folder (if present) to the location directed by EOI management for closure and archival.
  - (10) If the requesting IRS office indicates any requested information is contemplated to be used in connection with the application of Report of Foreign Bank and Financial Accounts (FBAR) penalties or for purposes other than tax purposes, consult with EOI management to ensure the request is processed appropriately.
  - (11) If the requesting IRS office withdraws a request for information before the EOI office's receipt of the foreign Competent Authority's final response, prepare, issue, and maintain a copy of a withdrawal letter to the foreign Competent Authority to promptly advise the foreign Competent Authority that their assistance is no longer required. This withdrawal letter must first be signed by the EOI Program Manager. After this letter is issued to the foreign Competent Authority, submit the IMS case to EOI management for closure as described above.

4.60.1.2.2  
(02-23-2023)

**Foreign-Initiated Specific  
Requests for Information**

- (1) Foreign partners send specific requests for tax-related information located within the jurisdiction of the United States to the delegated U.S. Competent Authority, the Commissioner, LB&I. Authority to review and process these requests has been assigned by Delegation Order 4-12 (as revised) to the Program Manager, Exchange of Information (EOI Program) and the Program Manager, Offshore Compliance Initiatives (who oversees the Joint International Taskforce on Shared Intelligence and Collaboration (JITSIC)), as discussed further below.
- (2) JITSIC administers foreign-initiated specific requests for information where such requests:
  - a. Relate to cross-border tax avoidance schemes involving entities within JITSIC Network members' jurisdictions (for a current list of JITSIC Network member jurisdictions, see the JITSIC website, <https://www.oecd.org/tax/forum-on-tax-administration/jitsic/>), and/or
  - b. Are conducted as part of a Joint Audit (for more information, see IRM 4.60.1.11, Joint Audit Program).

All other foreign-initiated specific requests are administered by the EOI Program.

**Note:** A specific request for information relating to the examination or investigation of an ascertainable group or class of persons not individually identified in the request is considered a "group request." (Note that a group request is different from a "bulk" request, which relates to two or more individually identified taxpayers.) Commentary to Article 26 of the OECD Model Tax Convention approved in 2012 indicates that upon submission of a group request, the requesting jurisdiction must provide a "detailed description of the group and the specific facts and circumstances that have led to the request, [and] an explanation of the applicable law and why there is reason to believe that the taxpayers in the group for whom information is requested have been non-compliant with that law supported by a clear factual basis. It further requires a showing that the requested information would assist in determining compliance by the taxpayers in the group." For any received foreign-initiated group request, the EOI Program Manager must be consulted for guidance. Also, if a John Doe summons must be served to obtain the requested information, the assigned EOI analyst, in consultation with EOI management, must request assistance from Associate Chief Counsel (International), Branch 7 (ACCI-Br7).

- (3) EOI analysts assigned to foreign-initiated requests for information review each request as well as the applicable international exchange agreement to ensure the following elements are included:
- a. The request pertains to a foreign jurisdiction with which the U.S. has an international exchange agreement covering EOI for purposes of the tax(es), period(s), and matters subject to foreign examination, investigation, or administrative procedure;
  - b. Designation of the Commissioner, LB&I as the U.S. Competent Authority to which the request is addressed;
  - c. Signature of the current foreign Competent Authority official;
  - d. Contact information for the foreign exchange of information representative assigned to the request;
  - e. A statement indicating the relevant international exchange agreement providing for the exchange of information;
  - f. A statement indicating the request is in conformity with the laws and administrative practices of the foreign jurisdiction, and that if the requested information was within the jurisdiction of the foreign partner, then the foreign partner would be able to obtain the information under its laws or in the normal course of its administrative practice;
  - g. A statement indicating the foreign Competent Authority has pursued all domestic means available to obtain the information, except those that would give rise to disproportionate difficulties (for example, where extraordinary costs would be incurred to obtain the information by domestic means);
  - h. Name of the taxpayer(s) under foreign examination or investigation, as well as any other available identifying information (for example, addresses, date of birth, etc.);
  - i. Types of taxes and periods under foreign examination or investigation (the exchange of information provisions within the specific international exchange agreement must be reviewed by the assigned EOI analyst to confirm the specific types of tax and periods covered for exchange of information purposes);



- j. Location of the information requested, including sufficient identifying information (for example, name, address, date of birth, etc.) pertaining to the individual or entity in possession or control of the information (i.e., the U.S. record holder);
  - k. Background information about the foreign examination, investigation, or procedure, including a description of the specific foreign tax matters involved;
  - l. Description of the requested information's "foreseeable relevance" to the foreign examination, investigation, or procedure, i.e., an explanation of how the requested information would be pertinent to the administration or enforcement of the foreign taxes at issue;
  - m. Detailed description of the specific information requested;
  - n. A statement as to whether the documents need to be certified, and if so, the purpose and nature of the requested certification (for applicable certification procedures, see IRM 4.60.1.2.2.5, Foreign-Initiated Specific Requests for Information – Apostille and "Full Faith and Credit" Letter Certifications, and IRM 4.60.1.2.2.6, Foreign-Initiated Specific Requests for Information – Tax Return Certifications and Testimony Authorizations); and
  - o. Any statute of limitations, court, or similar dates by which the information is required.
- (4) Some foreign-initiated requests, such as those soliciting information available in public record databases or internally accessible IRS sources (for example, Accurant or the Integrated Data Retrieval System (IDRS)), or documentation obtainable through correspondence, are processed by the assigned EOI analyst. In these cases, the assigned EOI analyst will conduct the relevant research, prepare the response documentation for the foreign Competent Authority, and close the request without assistance from other IRS personnel. These and other applicable procedures for EOI personnel are detailed in IRM 4.60.1.2.2.1, Foreign-Initiated Specific Requests for Information – Procedures for EOI Personnel.
- (5) In order to fulfill other foreign-initiated requests, the assigned EOI analyst may solicit the assistance of IRS civil or Criminal Investigation personnel. Applicable procedures for such requests are detailed in IRM 4.60.1.2.2.3, Foreign-Initiated Specific Requests for Information – Procedures for Cases Involving IRS Civil or Criminal Investigation Assistance.

4.60.1.2.2.1  
(02-23-2023)

**Foreign-Initiated Specific  
Requests for Information  
– Procedures for EOI  
Personnel**

- (1) The procedures described in this subsection are to be followed by all employees in the EOI Program and JITSIC assigned to process foreign-initiated specific requests for information.
- (2) Within 30 calendar days after the EOI office's receipt of the request, complete the following actions:
- a. Create and maintain a case for the request in the EOI Inventory Management System (IMS). On each date any action is taken on the request, including the receipt or issuance of correspondence, the holding of meetings or phone calls, and the completion of research, all related actions and documents must be contemporaneously recorded in and uploaded to the IMS case (for example, in the IMS Comments and Documents screens; depending on the action, the IMS Request Details, Contacts, Work Stages, Information, and/or other screens may also require input). All records received or produced by the EOI office at any time during the processing of the request, whether as paper or in an

- electronic format, must be scanned (for paper records) and uploaded to the IMS case. Limited exceptions to this rule may be made on a case-by-case basis with the approval of EOI management (for example, when paper records are extremely voluminous).
- b. If any paper documents (including paper correspondence and records and any associated mailing envelopes bearing postal stamps or other shipping marks) or other physical media (including CD-ROMs and other portable electronic storage devices) are received by the EOI office at any time during the processing of the request, create and maintain a physical folder for the exchange to contain these paper documents and physical media, including any passwords necessary to access the physical media. This folder must be clearly marked with the IMS Request Number, IMS Request Name, and relevant foreign jurisdiction name, and all paper documents and physical media must be marked with the date of receipt in the EOI office. If no paper documents or physical media pertinent to the request are received by the EOI office, no physical folder should be created or maintained for the request. Moreover, no documents or media originally received or produced solely in electronic format should be printed for inclusion in a physical folder.
  - c. Review the request and applicable international exchange agreement to determine whether the request is accurate and meets applicable standards, as described in IRM 4.60.1.2.2, Foreign-Initiated Specific Requests for Information.
  - d. Acknowledge receipt of the request to the correct current foreign Competent Authority contact, preferably via email. This acknowledgment must identify the request by the assigned IMS Request Number and Foreign Request Reference. Also, if the request does not meet the standards referenced above, consult the foreign Competent Authority to clarify the request, if possible. In some cases, after attempting to clarify the request in consultation with the foreign Competent Authority, the IRS will not be able to provide certain requested information. For example, the IRS sometimes cannot provide information because it is not in the possession or control of an individual or entity within the jurisdiction of the U.S., or because the request does not meet the requirements of the applicable international exchange agreement. In such cases, and with the approval of EOI management, the EOI analyst must inform the foreign Competent Authority at the earliest opportunity of the grounds for not being able to provide the requested information.
- (3) Within 30 calendar days after the EOI office's receipt of the request, and after the request has been determined to be valid and complete, first confirm through IDRS research whether any identified individual or entity in possession or control of the requested information (i.e., a U.S. record holder) is under IRS civil examination or criminal investigation, then determine who should gather the requested information: the assigned EOI analyst, other IRS civil personnel, or IRS Criminal Investigation personnel, pursuant to the following rules, and subject to the discretion of EOI management for each request:
- a. Requests that solicit information available in public record databases or internally accessible IRS sources (for example, IDRS, Accurant, the internet, etc.), or information obtainable through correspondence where there is no IRS civil examination or criminal investigation open for the U.S. record holder, should be processed by the assigned EOI analyst. The EOI analyst should immediately employ electronic research, issue or

- serve Information Document Requests (IDRs) and/or administrative summonses, and/or use other means as warranted to secure this information. See also IRM 4.60.1.2.2.4, Foreign-Initiated Specific Requests for Information – Procedures for Cases Involving Summonses, for requests requiring the service of an administrative summons.
- b. Requests for which there is an IRS civil examination or criminal investigation open for the U.S. record holder, the information must be obtained in person, or specialized topical knowledge is required, may be referred to the appropriate IRS office for assistance. Applicable procedures for requests involving IRS civil personnel or Criminal Investigation assistance are detailed in IRM 4.60.1.2.2.3, Foreign-Initiated Specific Requests for Information – Procedures for Cases Involving IRS Civil or Criminal Investigation Assistance.
- (4) Within 90 calendar days after the EOI office's receipt of the foreign request, if feasible, provide a full and complete response to the foreign Competent Authority through the approval and signature of EOI management as described below. If this is not possible, within 90 calendar days after the EOI office's receipt of the request, provide a partial response (if possible) or a status update (if no partial response is yet possible) to the foreign Competent Authority; subsequent regular status updates must be provided to the foreign Competent Authority every 90 calendar days until a final response is provided.
- (5) If an IDR or administrative summons must be issued or served to obtain any information, first, conduct research (using IDRS, Accurant, etc.) to ensure the correct individual or entity name and address are identified for receipt of the IDR or administrative summons. Then, follow the guidelines below to prepare and issue or serve the IDR or administrative summons:
- a. Any IDR or administrative summons should not disclose details of the foreign partner's examination or investigation beyond those necessary for the recipient of the IDR or administrative summons to obtain and provide the requested information; the Competent Authority letter and associated request for information received from the foreign Competent Authority should not be included with the IDR or administrative summons issued to the U.S. record holder or referred to an assisting IRS office.
  - b. If an IDR or administrative summons includes attachments (for example, documents explicitly approved by the foreign Competent Authority for disclosure to the recipient of the IDR or administrative summons, certification forms for the recipient's completion, etc.), all attachments must include the following text: **This information is furnished under the provisions of an international exchange agreement with a foreign government. Its use and disclosure must be governed by the provisions of that agreement.**
  - c. The IDR or administrative summons should be issued or served either by the assigned EOI analyst or by an assisting IRS office (as identified according to the guidelines provided above and in IRM 4.60.1.2.2.3, Foreign-Initiated Specific Requests for Information – Procedures for Cases Involving IRS Civil or Criminal Investigation Assistance), as follows:



For	Then
IDRs and administrative summonses issued or served directly by the EOI analyst	Once any response deadline provided in the IDR or summons has expired, review the requested information if already provided, or determine subsequent steps necessary to obtain the requested information if not already provided.
IDRs, administrative summonses, and other assistance being processed or provided by another IRS office on the EOI analyst's behalf	Every 60 calendar days after referral of the assistance request to the IRS office (or more frequently, depending on specific response deadlines provided in the IDR, summons, or other assistance request), request a status update from the IRS office.

- (6) Within 15 calendar days after obtaining the requested information, review the information for completeness. This review should ensure all relevant information has been obtained to fulfill the request, and identify any obtained information that is not relevant to fulfill the request (for example, U.S. TINs, IRS employee contact information, unrelated party information, etc.) and that should therefore not be included in the response to the foreign Competent Authority.

If	Then
The obtained information is incomplete	Prepare and provide (if possible) a partial response to the foreign Competent Authority as detailed below, continue to take appropriate actions to obtain the remaining information, and (if applicable) contact any party that provided the information (for example, assisting IRS personnel, summoned party, etc.) to acknowledge receipt of the information, determine when any remaining information will be provided, and request any clarifications necessary.
The obtained information is complete	Prepare and provide a final response to the foreign Competent Authority as detailed below, and (if applicable) contact any party that provided the information (for example, assisting IRS personnel, summoned party, etc.) to acknowledge receipt of the information.

- (7) Within 15 calendar days after obtaining the requested information, and after the information has been reviewed for completeness, prepare and submit in IMS the following documentation to EOI management for review, approval, and signature:
- a. A cover letter to the foreign Competent Authority on LB&I Commissioner letterhead.
  - b. Attachment(s) providing the specific information requested. If the attachment(s) transmits a partial response, note the measures planned to obtain any remaining information. If the attachment(s) transmits a final response that does not substantively fulfill all inquiries, include an explanation as to why the requested information was not provided, and the efforts made to obtain it.
  - c. Every page of the cover letter and attachment(s) must include the following text: **This information is furnished under the provisions of an international exchange agreement with a foreign government. Its use and disclosure must be governed by the provisions of that agreement.** Information originally obtained in paper format may be either scanned and electronically stamped with the above text for electronic issuance to the foreign Competent Authority (if the jurisdiction accepts electronic responses), with the original paper records then maintained in the EOI request physical folder; or manually stamped with the above text, scanned, and uploaded to the IMS case, with the original stamped paper records prepared for postal issuance to the foreign Competent Authority, and the IMS case clearly updated with the date and issuance details for any such paper mailing.
  - d. Associated background information, including any relevant correspondence and research, and if directed by EOI management, an IRS Form 13839-A, Note to Reviewer For a Signature Package, or equivalent.
- (8) Within 15 calendar days after obtaining the requested information, and after securing managerial approval and signature of the above documentation, issue the cover letter and attachment(s) to the foreign Competent Authority. In some cases, the EOI Program Manager will issue the cover letter and attachment(s) to the foreign Competent Authority. If the information being provided to the foreign Competent Authority is "routine," an EOI frontline manager may review, sign, and issue the cover letter and attachment(s) to the foreign Competent Authority, as authorized by Delegation Order 4-12 (as revised). Information deemed "routine" may include addresses of individuals and basic bank account information; other "routine" information may be identified by the EOI Program Manager.
- (9) Within 7 calendar days after issuance of a final response to the foreign Competent Authority, submit the IMS case to EOI management for closure, ensuring all required IMS information is input fully and accurately, and submit the physical case folder (if present) to the location directed by EOI management for closure and archival.
- (10) If the foreign Competent Authority indicates any requested information is contemplated to be used for purposes other than tax purposes, consult with EOI management to ensure the request is processed appropriately.
- (11) If the foreign Competent Authority withdraws a request for information before the EOI office's issuance of a final response, promptly advise any assisting IRS

personnel in writing that their assistance is no longer required, then submit the IMS case to EOI management for closure as described above.

- (12) If information identified through processing a request for information appears potentially relevant for IRS domestic tax compliance purposes, consult with EOI management to confirm whether a referral to an appropriate IRS office is warranted.

#### 4.60.1.2.2.2 (02-23-2023)

##### **Foreign-Initiated Specific Requests for Information – Procedures for Cases Involving U.S. Powers of Attorney**

- (1) The procedures described in this subsection are to be followed by all employees in the EOI Program and JITSIC in cases where a U.S. party in possession or control of information required to fulfill a foreign-initiated specific request for information wishes to designate a power of attorney in reference to the request.
- (2) All general instructions for the processing of IRS Form 2848, Power of Attorney and Declaration of Representative, apply to powers of attorney processed by the EOI office. However, three fields included in Form 2848, Section 3, “Acts Authorized,” may be completed as follows for powers of attorney related to EOI requests:
  - a. In the “Description of Matter” field, the exchange of information procedure should be noted (for example, “Exchange of Information”).
  - b. In the “Tax Form Number” field, the number(s) of the IRS form(s) related to the requested information referenced by the power of attorney should be noted (for example, “1040,” “1120,” etc.), or if no such specific form applies, the phrase “Not Applicable” should be entered. A general reference such as “All” should not be used in any case.
  - c. In the “Year(s) or Period(s)” field, the specific periods covered by the request should be noted.
- (3) Completed Forms 2848 related to EOI requests should generally be sent to the International Centralized Authorization File (CAF) Unit for processing. However, Forms 2848 cannot be processed by the CAF Unit for taxpayers lacking U.S. TINs.

#### 4.60.1.2.2.3 (02-23-2023)

##### **Foreign-Initiated Specific Requests for Information – Procedures for Cases Involving IRS Civil or Criminal Investigation Assistance**

- (1) The procedures described in this subsection are to be followed by IRS civil or Criminal Investigation personnel assisting the EOI Program or JITSIC with specific requests for information initiated by foreign Competent Authorities.
- (2) IRS civil or Criminal Investigation personnel assisting with a foreign request for information may not directly contact any foreign tax official about the request or any other matter. All contacts with foreign Competent Authorities are to be coordinated by the EOI analyst assigned to the request. For more information about authorized IRS contacts with foreign tax officials, see IRM 4.60.1.1.2, Authority.
- (3) If the assigned EOI analyst determines that IRS civil or Criminal Investigation assistance would be effective in fulfilling a foreign-initiated specific request for information, the EOI analyst identifies the appropriate IRS office to assist with the request, as follows:
  - a. If the specific request involves a U.S. individual or entity in possession or control of the requested information that is under IRS civil examination, the request for assistance is referred to the manager of the group conducting the examination.

- b. If the specific request involves a U.S. individual or entity in possession or control of the requested information that is under IRS criminal investigation, the request for assistance is referred to the Deputy Director, Criminal Investigation, International Operations (CI:IO). In order to evaluate whether further action is appropriate, the assigned EOI analyst, in consultation with EOI management, should provide CI:IO with sufficient information in an initial assistance request that will facilitate the steps that CI:IO might need to take. Based on the information provided by the EOI analyst, CI:IO together with the respective field office will decide whether to make contact with the individual or entity to obtain the requested information. CI:IO will notify the EOI analyst of their decision within 14 days. The EOI analyst may then provide the complete referral package to CI:IO as warranted.
  - c. If the specific request involves information that must be obtained in person or requires specialized topical knowledge, the EOI analyst will consult with EOI management to identify the appropriate IRS office to assist with the request.
- (4) The EOI analyst then provides the following documentation to the identified assisting IRS office:
  - a. A cover memorandum identifying the referral for assistance as related to a request from a foreign tax authority, and providing instructions for securing and providing the requested information.
  - b. An Information Document Request (IDR) and/or administrative summons prepared by the EOI analyst for issuance or service by the civil or Criminal Investigation office to the U.S. individual or entity in possession or control of the requested information. See also IRM 4.60.1.2.2.4, Foreign-Initiated Specific Requests for Information – Procedures for Cases Involving Summonses, for requests requiring the service of an administrative summons.
  - c. Additional documentation or instructions pertinent to the request, as necessary.
- (5) Upon receipt of the above documentation via the internal routing procedures established by each division, the IRS civil or Criminal Investigation manager designated to assist with the request confirms receipt with the EOI analyst, and provides the contact information for the IRS personnel assigned to the request.
- (6) The assisting IRS office must not alter the content of any document prepared by the EOI office for issuance to a U.S. individual or entity without the EOI analyst's explicit approval. 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 assisting IRS office. In such cases, the assisting IRS office should consult with the EOI analyst to ensure any such information is not requested in the IDR.
- (7) The assisting IRS office should obtain the requested information within 60 calendar days from the date of the EOI memorandum, or sooner, depending on applicable response deadlines. If this timeframe is not met, the EOI analyst will request a status update and the estimated date of completion from the assisting IRS office.
- (8) Once the information is secured, the assisting IRS office forwards the information to the EOI analyst through IRS civil or Criminal Investigation management. If the assisting IRS office 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.

- (9) 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 the EOI office for issuance to a U.S. individual or entity in connection with a foreign request includes the text: **This request for information is being made pursuant to the Exchange of Information article of a United States (tax treaty, TIEA, etc.). This request does not constitute an IRS examination.** However, if an IRS examination is contemplated as a result of the request, the assisting IRS office must advise the EOI analyst of this action.

4.60.1.2.2.4  
(02-23-2023)

**Foreign-Initiated Specific  
Requests for Information  
– Procedures for Cases  
Involving Summonses**

- (1) All general procedures described in IRM 25.5.3, Summons Procedures, apply to summonses prepared by the EOI office. The below subsections describe only those additional procedures and considerations unique to summonses relating to EOI requests.
- (2) Upon receiving an EOI request from a foreign partner, the EOI analyst assigned to the request will determine whether the request falls within the EOI provisions of the applicable international exchange agreement, and whether the service of a summons for the requested information satisfies the four “Powell” requirements (for more information about these requirements, see IRM 25.5, Summons).
- (3) If the request is determined to be valid under the terms of the applicable international exchange agreement, the EOI analyst will first attempt to obtain the information requested through informal means without using a summons, for example, from internally accessible sources or by issuing an Information Document Request, except where informal means are not feasible (see, for example, IRM 25.5.1.3.1, Documents from Financial Institutions in the Tenth Circuit).
- (4) If the information must be requested from a bank or other financial institution, the EOI analyst will prepare an administrative summons. See IRM 25.5.1.3.1, Documents from Financial Institutions in the Tenth Circuit, and IRM 25.5.1.3.2, Documents from Financial Institutions Located in Circuits Other than the Tenth Circuit.
- (5) If the information must be requested from a party other than a bank or other financial institution, the EOI analyst will determine whether to work the case personally or seek assistance from other IRS personnel. The EOI analyst, or other IRS personnel assisting in 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.
- (6) An EOI request may ask that the taxpayer not be notified of the request. The exceptions to notification found in IRC 7609(g) are applicable in this context. If the incoming request indicates that there is reasonable cause to believe the giving of notice may lead to attempts to conceal, destroy, or alter records relevant to the examination, to prevent the communication of information by other persons through intimidation, bribery, or collusion, or to flee to avoid prosecution, testifying, or production of records, the EOI Program may seek an

**ex parte** court order with the assistance of Associate Chief Counsel (International), Branch 7 (ACCI-Br7). In all such cases, the EOI analyst must consult with EOI management and ACCI-Br7 to ensure the request is processed appropriately. See also Chief Counsel Directives Manual (CCDM) 34.6.3.6.6, Tax Treaty and TIEA Summonses.

- (7) At times, IRS Counsel (primarily, ACCI Br-7) must assist in reviewing the EOI request. For additional information about IRS Counsel's involvement in the EOI summons process, including summons preparation, proceedings to quash, and enforcement, see below.

4.60.1.2.2.4.1  
(02-23-2023)

**Foreign-Initiated Specific  
Requests for Information  
– Summons Preparation  
and Service**

- (1) All summonses are prepared on IRS Form 2039. The EOI analyst must ensure all elements of the summons are accurate, including the foreign taxpayer's name and address, identification of the international exchange agreement and exchange of information article, taxable periods for which the information is sought, type of tax involved, description of the information sought, dates, method of service, noticee name and address, method of giving notice, etc. For a third-party summons, IRS Form 6863 must also be provided so the summoned party may request reimbursement for related expenses.
- (2) Depending on the information sought, the EOI analyst may be required to submit the prepared summons (with EOI management approval) to ACCI-Br7 for review prior to service. Certain summonses (termed "routine" summonses) do not generally require ACCI-Br7 review, including summonses to financial institutions for the production of account opening documents, signature cards, account/credit card statements, copies of cancelled checks, deposit slips, and wire transfers. ACCI-Br7 will review each summons not considered "routine". Once ACCI-Br7 has completed its review, the summons will be returned to the EOI analyst for service. See also CCDM 34.6.3.6.6, Tax Treaty and TIEA Summonses.
- (3) Some EOI requests may require the preparation and service of a John Doe summons. Such requests may include requests seeking bank account records for which the owner of the account is not specifically identified, or group requests, i.e., requests relating to the examination or investigation of an ascertainable group or class of persons not individually identified in the requests. If a John Doe summons is warranted, the EOI analyst, in consultation with EOI management, must request assistance from ACCI-Br7. The EOI analyst, EOI management, and ACCI-Br7 must closely monitor each such request at all times to ensure the scope of any information sought and obtained via the John Doe summons is appropriate to the request. For more information, see IRM 25.5.7, Special Procedures for John Doe Summonses.
- (4) The EOI analyst will generally serve or arrange the service of a summons using the rules provided in IRM 25.5, Summons. In some cases (i.e., when serving to entities defined as "third-party recordkeepers" per IRC 7603(b), which include banks), the EOI analyst may serve the summons via certified mail. Per IRM 25.5.3.2, Service of Summons, a summoned witness may also waive proper service of a summons by signing a waiver. The waiver should be in writing, and the IRS should obtain the waiver from the witness in advance of serving the summons. The waiver can authorize service of the summons by certified mail, fax, or electronic transmission. In all other cases, the EOI analyst must designate another IRS employee to serve the summons. The designated IRS employee must be local to the summoned party, and should have prior experience with the service of summonses. (If the assigned EOI analyst or



another EOI analyst is local to the summoned party, that analyst may be designated to serve the summons.) Each summons must accurately reflect the name and contact information of the IRS employee serving the summons. On a case-by-case basis, the summoned party may be afforded the option to respond to the summons directly to the EOI analyst via mail or secure electronic transfer.

- (5) If notice of a summons must be sent to an individual or entity located outside the United States, the notice must be sent using international registered mail. Any summons notice must be sent to the noticee's last known address, i.e., the address that appears on the noticee's most recently filed and properly processed U.S. federal tax return, unless the IRS is given notification of a different address (see Revenue Procedure 2010-16). In addition, notice should be sent to the address provided for the noticee within the EOI request. If the IRS does not have a last known address for the noticee, it may leave the notice with the summoned party for forwarding to the noticee.
- (6) For detailed procedures applicable to all IRS summonses, including proper assembly and routing of the various sections of Form 2039, as well as Form 6863 expense reimbursement procedures and U.S. Postal Service documentation about service, see IRM 25.5, Summons.

4.60.1.2.2.4.2  
(02-23-2023)

**Foreign-Initiated Specific  
Requests for Information  
– Summons  
Proceedings to Quash**

- (1) If a petition to quash a summons is filed, the EOI analyst must notify ACCI-Br7 as well as their first-level manager and second-level manager by telephone and email within 24 hours of receipt of the petition, and consult with ACCI-Br7 about appropriate required action. ACCI-Br7 will notify the local Field Counsel office for the area in which the summons was served, and will coordinate with that office as warranted.
- (2) Any designated IRS employee serving or otherwise assisting with a summons related to a foreign-initiated specific request for information who receives notice of a petition to quash the summons must notify the EOI analyst and EOI first-level manager assigned to the foreign request by telephone and email within 24 hours of receipt of notice.
- (3) For more information about procedures applicable to quash proceedings, see IRM 25.5.6.6.3, Compliance or Enforcement of Summons, and CCDM 34.6.3.6.6, Tax Treaty and TIEA Summonses.

4.60.1.2.2.4.3  
(02-23-2023)

**Foreign-Initiated Specific  
Requests for Information  
– Summons  
Enforcement**

- (1) If judicial enforcement of a summons is required, the EOI analyst must request assistance from ACCI-Br7. ACCI-Br7 will then refer the matter to SB/SE or LB&I Headquarters Counsel for assignment to appropriate Field Counsel. ACCI-Br7 and EOI will coordinate this process.
- (2) For more information about the civil or criminal enforcement of a summons, see IRM 25.5.10, Enforcement of Summons, and CCDM 34.6.3.6.6, Tax Treaty and TIEA Summonses.

4.60.1.2.2.5  
(02-23-2023)

**Foreign-Initiated Specific  
Requests for Information  
– Apostille and “Full  
Faith and Credit” Letter  
Certifications**

- (1) The EOI Program occasionally receives requests to provide federally certified documents to a foreign Competent Authority. If the foreign Competent Authority must present the documents for entry into evidence as part of a proceeding in a court of law in the foreign jurisdiction, one of two certification procedures may be warranted:
  - a. An “apostille” under the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents as signed on October 5, 1961 (Hague Convention - if the requesting foreign jurisdiction is a signatory to that convention); or
  - b. An authentication letter of “full faith and credit.”

The purpose of both procedures is to allow a foreign court to grant, at the request of the Secretary of State, “full faith and credit” to certified government documents in the proceedings of a foreign court of law. (For an apostille, the Secretary of State is the authority designated by the United States to certify documents under the Hague Convention. For an authentication letter of “full faith and credit,” the Department of State acts according to Rule 44 of the Federal Rules of Civil Procedure; see also Exhibit 4.60.1-1, Sample Department of State Full Faith and Credit Letter.)

- (2) When a foreign Competent Authority requests certification of documents, the receiving EOI analyst must first determine if the request is appropriate. Many requests for certification come into the EOI Program through Criminal Investigation. In some cases, particularly if the documentation was obtained through a foreign-initiated specific exchange of information request, the EOI Program Manager may receive the request for certification directly. In any case, the EOI analyst should seek the opinion of Associate Chief Counsel (International), Branch 7 (ACCI-Br7) on the appropriateness of the request. Often, a simpler procedure other than an apostille or authentication letter of “full faith and credit,” such as an IRS certification of authenticity of records, may be sufficient.
- (3) In general, document certifications (including, but not limited to, seals, ribbons, and other markings) must not be altered, damaged, or removed from certified documents. Such actions may invalidate the certification.
- (4) Because time is usually of the essence in completing requests for certifications, EOI analysts should assign high priority to any certification request received. Applicable apostille and authentication letter of “full faith and credit” processing procedures are detailed in the paragraphs below.
- (5) First, the assigned EOI analyst must review the foreign request and obtain approval to proceed with certification from the Commissioner, LB&I as the delegated U.S. Competent Authority or their delegate under Delegation Order 4-12 (as revised). Specifically, the EOI analyst must complete the following steps:
  - a. Review the foreign-initiated certification case carefully, and verify the information requested is required for submission as evidence in a foreign court proceeding. If the request does not stipulate this requirement or the intended use is unclear, contact the foreign Competent Authority for clarification.

**Note:** If the request has been received under an MLAT, obtain ACCI-Br7 approval. Normally, MLATs specifically state the types of certification necessary. For more information, see IRM 4.60.1.7, Mutual Legal Assistance Treaty (MLAT) Program.



- b. Once certification has been determined appropriate, prepare a certification request approval package for the signature of the U.S. Competent Authority or their delegate under Delegation Order 4-12 (as revised). This package should contain a memorandum summarizing the background of the request, any case-specific letters requiring the U.S. Competent Authority's signature, and a completed Treasury Department Form TD F 10-01.7, Notice of Certification. Form TD F 10-01.7 should be completed electronically, and should include the following in the "description" area: a copy of the letter from the foreign partner requesting the certification, a list/description of every document included in the certification package in the order it appears in the certification package, and a copy of Delegation Order 4-12 (as revised). Additional instructions for completing the form are found in Treasury Directive 25-01, Authentication of Department of the Treasury Documents, which is located on the Treasury Department's website.
- (6) Once the U.S. Competent Authority or their delegate under Delegation Order 4-12 (as revised) has signed the above package, the EOI analyst must obtain the Seal of the Department of the Treasury on all documents to be certified. The Deputy Assistant Secretary for Privacy and Records, Director, Office of Treasury Records is responsible for affixing this seal. Specifically, the EOI analyst must complete the following steps (detailed procedures are also found in Treasury Directive 25-01, Authentication of Department of the Treasury Documents):
- a. Make an EOI file copy of *all* documents to be certified.
  - b. Assemble the package for the Treasury Department by placing Form TD F 10-01.7 on top of all documents listed in Part A, also punching holes in the package for a two-prong document clip. Original documents are preferred to be included in the package to be certified; if the documents to be certified are not originals, the EOI analyst must explain why.
  - c. Schedule an appointment for completion of the Treasury seal process by sending an email to *RecordsManagement@treasury.gov* requesting a date and time for assistance.

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the documentation and place the ribbon and seal through the documentation with a tamper-proof permanent fixture.

- (7) Once the Seal of the Department of the Treasury has been affixed to all documents to be certified, the EOI analyst must obtain either the apostille certificate or the authentication letter of "full faith and credit" from the Department of State. Specifically, the EOI analyst must complete the following steps (detailed information is also available on the State Department's website using the search term "authentication services"):
- a. Deliver the documents to be certified in person to the State Department Office of Authentications. The Office of Authentications offers direct support to federal agencies; no prior appointment is necessary. Identify yourself as a government employee on official government business, and show your agency identification at the door to gain entry. No fee is charged for certifying documents to be used for official business.

- b. Complete State Department Form DS-4194, Request for Authentications Service. This form may be completed on the State Department's website, <https://www.state.gov/>, or at the computer terminal at the Office of Authentications.
  - c. Present the completed Form DS-4194, together with the documents to be certified, at the Office of Authentications window. State Department personnel will return the documentation with either an apostille certificate or an authentication letter of "full faith and credit," as appropriate.
- (8) Once all documents have been certified per the above procedures, the EOI analyst will issue the certified documents to the foreign Competent Authority under an appropriate cover letter, signed by the U.S. Competent Authority or their delegate under Delegation Order 4-12 (as revised). The EOI analyst will also make EOI file copies of all documentation.

4.60.1.2.2.6  
(10-15-2018)

**Foreign-Initiated Specific  
Requests for Information  
– Tax Return  
Certifications and  
Testimony  
Authorizations**

- (1) If a foreign Competent Authority indicates that a "certified true copy" of a U.S. tax return is required, the return must be separately certified as a true copy. It is not normally sufficient in such cases to provide an existing copy of the relevant return, because an appropriate IRS employee must be able to attest that the "certified true copy" has not in any way been altered.

**Note:** If the request has been received under an MLAT, obtain the approval of Associate Chief Counsel (International), Branch 7 (ACCI-Br7). Normally, MLATs specifically state the types of certification necessary. For more information, see IRM 4.60.1.7, Mutual Legal Assistance Treaty (MLAT) Program.

- (2) The EOI office will obtain the original return (in the form of an electronic record if the return was filed electronically, or via request to the IRS Campus if the return was filed on paper) and make as many copies of the return as necessary. The EOI office will then complete an appropriate certification of the authenticity of the copy(ies).
- (3) Once all return copies have been certified per the above procedures, the EOI analyst assigned to the request will issue the certified return copies to the foreign Competent Authority under an appropriate cover letter, signed by the U.S. Competent Authority or their delegate under Delegation Order 4-12 (as revised). The EOI analyst will also make EOI file copies of all documentation, and return any original returns (if the original returns were filed on paper and requested from the IRS Campus per the above procedures) to the appropriate IRS Campus or other source. IRS Form 3210 must be used to track delivery and confirm receipt by the IRS Campus.
- (4) The IRS Privacy, Governmental Liaison and Disclosure business unit's Disclosure office may issue testimony authorizations that are required before an IRS employee may testify in a foreign judicial proceeding. See IRM 11.3.35.12, Testimony Considerations.

4.60.1.2.3  
(02-23-2023)

**Specific Requests  
Related to U.S. Grand  
Jury Information**

- (1) The grand jury derives its power from the Fifth Amendment to the United States Constitution. Federal prosecutors must present evidence before a grand jury, which then determines whether there is probable cause to return a criminal indictment and charge an accused with a federal crime. The proceedings of a federal grand jury are governed by Rule 6 of the United States Federal Rules of Criminal Procedure, under which the disclosure of grand jury material or information is generally prohibited. All persons who have access to

grand jury information are subject to these grand jury secrecy rules. For more information, see IRM 9.5.2.4, Grand Jury Secrecy. For more information about grand juries and Rule 6(e) of the Federal Rules of Criminal Procedure, see IRM 9.5.2, Grand Jury Investigations, and IRM 11.3.27, Disclosure of Returns and Return Information to Grand Juries.

**Note:** To ensure the secrecy requirements of Rule 6 are met, any EOI analyst assigned to a specific request involving U.S. grand jury information must consult with the EOI Program Manager.

4.60.1.2.3.1  
(02-23-2023)  
**United States-Initiated  
Specific Requests  
Related to U.S. Grand  
Jury Investigations**

- (1) In cooperation with the United States Attorney's Office, IRS Criminal Investigation may request information from a foreign partner relative to an ongoing U.S. grand jury investigation. The procedures described in this subsection are to be followed by employees within the office of the Commissioner, LB&I assigned to United States-initiated specific requests for information related to U.S. grand jury investigations.
- (2) Disclosure of grand jury information, including to the extent necessary to solicit the information needed from a foreign Competent Authority, requires the approval of a U.S. federal prosecutor working in an official capacity on a U.S. federal criminal case (which may include the U.S. Attorney General, U.S. Assistant Attorney General, U.S. Attorney, Assistant U.S. Attorney, or U.S. Department of Justice Tax Attorney). Therefore, the Criminal Investigation Special Agent assigned to the investigation must solicit federal prosecutor approval prior to making the request, and the EOI analyst assigned to the request will confirm the existence of this approval prior to issuing the request to the foreign Competent Authority.
- (3) Foreign Competent Authorities may have different information gathering restrictions depending on whether a case is currently being criminally investigated, or has already been referred to a prosecutor for criminal indictment. Such restrictions may include an inability to provide any information whatsoever under an international exchange agreement, or an inability to develop information not already in possession of the foreign partner. The EOI analyst should consult with EOI management when an issue arises about restrictions on securing information requested for a U.S. grand jury investigation from a foreign partner.
- (4) The name of each person with access to the grand jury-related request and material must be included on the Grand Jury Access List maintained by Criminal Investigation to signify each person's awareness of grand jury secrecy provisions. The EOI analyst must return the original completed Grand Jury Access List to Criminal Investigation along with the final response from the foreign partner and retain a copy of the list with the closed EOI case. For more information, see IRM 9.5.2.4.1 , Grand Jury Access List.
- (5) Information received in response to the request may be used only to support charges related to taxes covered by the applicable international exchange agreement. Moreover, the use and disclosure of grand jury information must be consistent with the applicable international exchange agreement, IRC 6103 , and Rule 6(e) of the Federal Rules of Criminal Procedure.

4.60.1.2.3.2  
(02-23-2023)

**Foreign-Initiated Specific Requests for U.S. Grand Jury Information**

- (1) Information from a U.S. grand jury may be furnished to a requesting Competent Authority for tax administration purposes only under a Rule 6(e) court order obtained through coordination with the U.S. Department of Justice. Before such an order may be obtained, the foreign partner will be required to show a particularized need for the information that is sought preliminarily to, or in connection with, a judicial proceeding. As noted above, any EOI analyst assigned to a specific request involving U.S. grand jury information must consult with the EOI Program Manager.

4.60.1.2.4  
(02-23-2023)

**Specific Requests for Information Related to Internet Service Provider (ISP) Records**

- (1) Any EOI analyst assigned to a United States-initiated or foreign-initiated request for information involving records held by a provider of electronic communication services (for example, an internet service provider (ISP)) - including, but not limited to, email subscriber information, email transactional information, and email communications - must consult the EOI Program Manager. The EOI Program Manager will advise the EOI analyst about appropriate request processing procedures, taking into consideration the specific fact pattern of each request.
- (2) For requests for email subscriber information, in general, the IRS may obtain basic subscriber information, i.e., a customer's identity, length and type of service, and means and source of payment for the service, by serving a summons. For more information, see IRM Exhibit 25.5.2-11, Summons Procedures – Sample Wording for Drafting Form 2039, Summons, for Internet Access Providers, and 18 USC 2703(c)(2).
- (3) For requests for email transactional information, which includes all other records or information pertaining to a customer that are not considered email subscriber information or email communications, the EOI Program Manager will collaborate with ACCI-Br7, who will refer the matter to the U.S. Department of Justice to obtain a court order to access the information.
- (4) For requests for email communications, the EOI Program Manager will collaborate with ACCI-Br7, IRS Criminal Investigation, and the U.S. Department of Justice, Office of International Affairs. In Policy Statement 4-120, approved May 3, 2013, the IRS announced it will follow the holding of *United States v. Warshak*, 631 F.3d 266 (6th Cir. 2010), and obtain a search warrant in all cases when seeking from an internet service provider (ISP) the content of email communications stored by the ISP. Accordingly, such information cannot be sought from an ISP via an administrative summons or a court order.
- (5) For more information, see IRM 9.4.6.7.3.3, Judicial Process for Obtaining Stored Electronic Communications, Transactional Information, and Subscriber Information, and CCDM 34.6.3.6.6, Tax Treaty and TIEA Summonses.

4.60.1.2.5  
(02-23-2023)

**United States-Initiated and Foreign-Initiated Specific Requests for Information – Additional Administrative Procedures for EOI Personnel**

- (1) In addition to the procedures specifically pertinent to either United States-initiated or foreign-initiated specific requests for information described above under the other subsections of IRM 4.60.1.2, the following procedures are to be followed by employees within the office of the Commissioner, LB&I assigned to any specific request for information, whether initiated by an IRS office or a foreign tax authority.
- (2) All requests must be entered into the EOI Inventory Management System (IMS). All information pertinent to the request as described in IMS and as directed by EOI management must be input and maintained in IMS by the EOI analyst at all times. This information includes, but is not limited to, the Request

Name (which should represent the subject of investigation as identified by the initiating IRS office or foreign partner), Request Type (for example, specific, spontaneous, etc.), foreign jurisdiction involved, comments and uploaded documents describing and evidencing the nature and dates of all actions and records relevant to the request, categories of information requested, etc.

- (3) All exchange of information requests are to be identified by the assigned IMS Request Number and Foreign Request Reference in all correspondence with other IRS employees or foreign officials. Each request identified by a unique Foreign Request Reference must be associated with a single U.S. request with a corresponding unique IMS Request Number.
- (4) If a physical folder exists for the request, after the request is closed, the folder must be archived on the basis of the assigned IMS Request Number, and not by any other identifier (such as taxpayer name, case TIN, etc.). Each archived physical folder is retained by the EOI Program for a period of 6 years after the date the request is closed, in accordance with the "Tax Administration – Large Business and International (LB&I)" section of Document 12990, Records Control Schedules, as also referenced in IRM 1.15.2, Types of Records and Their Life Cycles.
- (5) When a request is reassigned to a different EOI analyst and/or transferred between EOI offices, the related original IMS case should be transferred in IMS rather than closed.
- (6) When corresponding with a foreign tax authority, acronyms (for example, IDRS, DOB, etc.) should not be used. Rather, the term should be written in full, and if referencing an internal IRS system or process, explained as warranted.
- (7) Per IRC 6103(p)(3), for every request for which any U.S. returns and/or return information were disclosed to third parties, including to foreign Competent Authorities, this disclosure must be recorded by the completion and processing of IRS Form 5466-B, Multiple Records of Disclosure. A copy of the processed form must be included in the closed case. This requirement applies to both United States-initiated and foreign-initiated requests: at a minimum, in the case of a United States-initiated request, the request issued to the foreign partner represents a disclosure of U.S. return information, while in the case of a foreign-initiated request, any response(s) issued to the foreign partner represent disclosures of U.S. returns and/or return information. For more information about Form 5466-B, see IRM 11.3.37, Recordkeeping and Accounting for Disclosures.

4.60.1.3  
(02-23-2023)  
**Spontaneous Exchange  
of Information Program**

- (1) Spontaneous exchange of information, which operates through the exchange of information provisions of certain international exchange agreements, involves the issuance of information that has not been specifically requested by a Competent Authority, but which in the judgment of the issuing Competent Authority may be of interest to a foreign partner for tax purposes. The exchange typically involves information discovered during a tax examination, investigation, or other administrative procedure that suggests or establishes non-compliance 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.



**Caution:** All exchanges of information under the provisions of international exchange agreements must be conducted through the U.S. Competent Authority.

- (2) Information exchanged spontaneously is generally useful, as it concerns data detected and selected by tax officials of the issuing jurisdiction during or after a tax examination, investigation, or other procedure.
- (3) Strict adherence to all applicable disclosure and confidentiality provisions is required of all IRS employees, including EOI analysts, involved in spontaneous exchanges of information. For more information, including the correct processing of information considered to potentially represent trade or business secrets, see IRM 4.60.1.1.2, Authority.
- (4) In addition to the procedures specifically pertinent to either United States-initiated or foreign-initiated spontaneous exchanges of information described below under the other subsections of IRM 4.60.1.3, all procedures described in IRM 4.60.1.2.5, United States-Initiated and Foreign-Initiated Specific Requests for Information – Additional Administrative Procedures for EOI Personnel, are to be followed by employees within the office of the Commissioner, LB&I assigned to any spontaneous exchange of information, whether initiated by an IRS office or a foreign tax authority.

4.60.1.3.1  
(02-23-2023)

**United States-Initiated  
Spontaneous Exchanges  
of Information**

- (1) IRS personnel send spontaneous exchanges of tax-related information to be issued to a foreign partner to the delegated U.S. Competent Authority, the Commissioner, LB&I. Authority to review and process these exchanges has been assigned by Delegation Order 4-12 (as revised) to the Program Manager, Exchange of Information (EOI Program) and the Program Manager, Offshore Compliance Initiatives (who oversees the Joint International Taskforce on Shared Intelligence and Collaboration (JITSIC)), as discussed further below.
- (2) JITSIC administers United States-initiated spontaneous exchanges of information where such exchanges are conducted in connection with Joint Audits, specific requests for information, JITSIC Network Projects, Aggressive Tax Planning (ATP) disclosures, or IRS Office of Tax Shelter Analysis procedures. All other United States-initiated spontaneous exchanges are administered by the EOI Program. IRS personnel contemplating any spontaneous exchange of
 

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- (3) United States-initiated spontaneous exchanges generally begin when an IRS employee discovers information suggesting non-compliance with the tax laws of a foreign partner during the course of an examination, investigation, or other administrative procedure. Examples of situations where a spontaneous exchange of information should be considered include, but are not limited to:
  - a. Grounds for suspecting a significant loss of tax revenue in another jurisdiction;
  - b. Payments made to a resident of another jurisdiction where there is a suspicion the payments have not been reported to the foreign jurisdiction;
  - c. An individual or entity liable to tax obtains a reduction in or an exemption from tax in one jurisdiction which could give rise to an increase in tax liability in another jurisdiction;
  - d. Business dealings between an individual or entity liable to tax in one jurisdiction and an individual or entity liable to tax in another jurisdiction are

- conducted through one or more jurisdictions in such a way that a saving in tax may result in one or both jurisdictions;
- e. Grounds for suspecting a reduction in tax may result from artificial transfers of profits within groups of entities;
- f. Likelihood of a particular tax avoidance or evasion scheme being used by other taxpayers; and
- g. Information related to a specific request for information deemed relevant to a foreign jurisdiction, but which was not explicitly sought in the request.

- (4) The information, which should be sent by the initiating IRS office to the EOI

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the following:

- a. The contact information of the IRS employee who discovered the information;
- b. The identity of the U.S. individual or entity from whom or which the information was obtained (including name, address(es), date of birth, and foreign tax identification number, if applicable);
- c. The identity of the foreign individual or entity to whom or which the information relates (including name, address(es), date of birth, and foreign tax identification number, if available);
- d. The periods involved;
- e. The source of the information provided (tax return, third party information, etc.);
- f. The reason (tax issue, type of violation, etc.) for providing the information to the foreign Competent Authority; and
- g. The detailed information to be exchanged.

Additional relevant information may include the following:

- a. Marital status (of individuals) and charts, diagrams, or other descriptions of the relationships among the individuals or entities involved;
- b. If the information involves a payment or transaction via an intermediary, the name, address, and banking information of the intermediary; and
- c. Whether the initiating IRS office would object if the foreign tax authority notifies the foreign individual or entity to whom or which the information relates of receipt of the information, or would object if the information is disclosed to the foreign individual or entity or to another person.

**Note:** The IRS generally may not provide to a foreign partner any information received from another foreign partner under an international exchange agreement. If such information is contemplated for exchange, the EOI Program Manager must be consulted for guidance.

- (5) Within 30 calendar days after receipt of the above information, the EOI analyst assigned to the exchange will complete the following actions:

- a. Create and maintain a case for the exchange in the EOI Inventory Management System (IMS). On each date any action is taken on the exchange, including the receipt or issuance of correspondence, the holding of meetings or phone calls, and the completion of research, all related actions and documents must be promptly recorded in and uploaded to the IMS case. All records received or produced by the EOI office at any time during the processing of the exchange, whether as paper or in an electronic format, must be scanned (for paper records)

- and uploaded to the IMS case. Exceptions to this rule may be made on a case-by-case basis with the approval of EOI management (for example, when paper records are extremely voluminous).
- b. If any paper documents (including paper correspondence and records and any associated mailing envelopes bearing postal stamps or other shipping marks) or other physical media (including CD-ROMs and other portable electronic storage devices) are received by the EOI office at any time during the processing of the exchange, create and maintain a physical folder for the exchange to contain these paper documents and physical media, including any passwords necessary to access the physical media. This folder must be clearly marked with the IMS Request Number, IMS Request Name, and relevant foreign jurisdiction name, and all paper documents and physical media must be marked with the date of receipt in the EOI office. If no paper documents or physical media pertinent to the exchange are received by the EOI office, no physical folder should be created or maintained for the exchange. Moreover, no documents or media originally received or produced solely in electronic format should be printed for inclusion in a physical folder.
  - c. Acknowledge receipt of the exchange to the initiating IRS office via email. This acknowledgment must identify the exchange by the assigned IMS Request Number.
  - d. Review the information to determine whether the information is potentially useful to the foreign tax authority. Factors considered include the materiality of the issue and the sufficiency of the information to identify the taxpayer(s) and/or transaction(s) involved. When warranted, the EOI analyst should consult the initiating IRS employee to clarify the information.
- (6) If the information is determined not to be potentially useful to the foreign partner, the EOI analyst must have a dialogue with the initiating IRS employee to explain the rationale for not issuing the information to the foreign partner.
- (7) If the information is determined to be potentially useful to the foreign partner, the EOI analyst will prepare a cover letter for issuance of the information to the foreign Competent Authority, redact information not required by or disclosable to the foreign Competent Authority from the information to be exchanged (such as the initiating IRS office's identifying information; U.S. TINs if not relevant to the exchange; or details of a related IRS examination, investigation, or administrative procedure not directly pertinent to the exchange), ensure every page of the cover letter and information to be exchanged includes the appropriate text (**This information is furnished under the provisions of an international exchange agreement with a foreign government. Its use and disclosure must be governed by the provisions of that agreement.**), and submit in IMS the cover letter and information to EOI management for approval and issuance to the foreign Competent Authority.
- (8) Within 7 calendar days after issuance of the information to the foreign Competent Authority or determination that the information is not to be issued to the foreign Competent Authority, the EOI analyst will submit the IMS case to EOI management for closure, ensuring all required IMS information is input fully and accurately, and submit the physical case folder (if present) to the location directed by EOI management for closure and archival.



- (9) The EOI office may request feedback from the foreign Competent Authority to which the information was issued about any results achieved through the use of the information, and record and maintain in IMS any feedback received for future reference.

4.60.1.3.2  
(02-23-2023)  
**Foreign-Initiated  
Spontaneous Exchanges  
of Information**

- (1) Foreign partners send spontaneous exchanges of tax-related information to the delegated U.S. Competent Authority, the Commissioner, LB&I. Authority to review and process these exchanges has been assigned by Delegation Order 4-12 (as revised) to the Program Manager, Exchange of Information (EOI Program) and the Program Manager, Offshore Compliance Initiatives (who oversees the Joint International Taskforce on Shared Intelligence and Collaboration (JITSIC)), as discussed further below.
- (2) Within 30 calendar days after receipt of the exchange, the EOI analyst assigned to the exchange will complete the following actions:
- a. Create and maintain a case for the exchange in the EOI Inventory Management System (IMS). On each date any action is taken on the exchange, including the receipt or issuance of correspondence, the holding of meetings or phone calls, and the completion of research, all related actions and documents must be promptly recorded in and uploaded to the IMS case. All records received or produced by the EOI office at any time during the processing of the exchange, whether as paper or in an electronic format, must be scanned (for paper records) and uploaded to the IMS case. Exceptions to this rule may be made on a case-by-case basis with the approval of EOI management (for example, when paper records are extremely voluminous).
  - b. If any paper documents (including paper correspondence and records and any associated mailing envelopes bearing postal stamps or other shipping marks) or other physical media (including CD-ROMs and other portable electronic storage devices) are received by the EOI office at any time during the processing of the exchange, create and maintain a physical folder for the exchange to contain these paper documents and physical media, including any passwords necessary to access the physical media. This folder must be clearly marked with the IMS Request Number, IMS Request Name, and relevant foreign jurisdiction name, and all paper documents and physical media must be marked with the date of receipt in the EOI office. If no paper documents or physical media pertinent to the exchange are received by the EOI office, no physical folder should be created or maintained for the exchange. Moreover, no documents or media originally received or produced solely in electronic format should be printed for inclusion in a physical folder.
  - c. Acknowledge receipt of the exchange to the correct current foreign Competent Authority contact, preferably via email. This acknowledgment must identify the exchange by the assigned IMS Request Number.
- (3) The EOI analyst will prepare a cover memorandum and a Spontaneous Exchange Result Sheet for issuance of the information to the appropriate IRS office for risk assessment, ensuring every page of the cover memorandum, Spontaneous Exchange Result Sheet, and information received from the foreign Competent Authority include the appropriate text (**This information is furnished under the provisions of an international exchange agreement with a foreign government. Its use and disclosure must be governed by the provisions of that agreement.**). The EOI analyst will then issue the cover

memorandum, Spontaneous Exchange Result Sheet, and information received from the foreign Competent Authority to the appropriate IRS office as follows:

<b>If the exchanged information involves</b>	<b>Then the information is referred to</b>
A U.S. individual or related issue	The LB&I International Individual Compliance (IIC) Planning and Special Programs (PSP) office for risk assessment. However, if an IRS examination of the taxpayer is underway, the information should instead be referred directly to the manager of the group conducting the examination, with the IIC PSP office notified of the referral.
A U.S. small business entity (assets of \$10 million or less) or related issue	The jurisdictional SB/SE PSP office for risk assessment. However, if an IRS examination of the taxpayer is underway, the information should instead be referred directly to the manager of the group conducting the examination, with the jurisdictional SB/SE PSP office notified of the referral.
A U.S. large business entity (assets greater than \$10 million) or related issue	The LB&I Cross Border Activities office for risk assessment. However, if an IRS examination of the taxpayer is underway, the information should instead be referred directly to the manager of the group conducting the examination.
A U.S. tax-exempt entity or related issue	The TE/GE Exempt Organizations (EO) office for risk assessment.
A U.S. taxpayer under criminal investigation	The Deputy Director, Criminal Investigation, International Operations (CI:IO) for risk assessment.
Estate and/or gift tax issues	The SB/SE Estate and Gift Tax office for risk assessment.

- (4) Within 7 calendar days after referral of the information to the appropriate IRS office for risk assessment, the EOI analyst will submit the IMS case to EOI management for closure, ensuring all required IMS information is input fully and accurately, and submit the physical case folder (if present) to the location directed by EOI management for closure and archival.

- (5) The EOI office may request feedback from the IRS office to which the information was referred for risk assessment via an online survey, a link to which will be included in the above-referenced cover memorandum issued to the IRS office.
- (6) If the IRS office to which the information was referred for risk assessment determines that the information warrants an examination or investigation, it will forward the Spontaneous Exchange Result Sheet to the field group that will conduct the examination or investigation. The field group is requested to complete the Spontaneous Exchange Result Sheet to provide feedback on the examination or investigation to the EOI Program and email the completed

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Spontaneous Exchange Result Sheet also contains a link to an online survey to be completed by the field group conducting the examination or investigation to provide additional feedback on the examination or investigation.

4.60.1.3.3  
(02-23-2023)  
**BEPS Action 5  
Spontaneous Exchanges  
of Information**

- (1) In 2015, the Organisation for Economic Co-operation and Development (OECD) and the G20 endorsed the Action Plan on Base Erosion and Profit Shifting (BEPS Action Plan), which identified 15 measures to be implemented by international tax authorities to reduce opportunities for taxpayers to inappropriately reduce taxes through BEPS activities. One of these measures introduces the BEPS Action 5 Transparency Framework.
- (2) Under the BEPS Action 5 Transparency Framework, all jurisdictions that are members of the Inclusive Framework on BEPS commit to spontaneously exchange information about certain taxpayer-specific administrative rulings that pose BEPS concerns. (For more information about the current membership and goals of the Inclusive Framework, established in January 2016 to develop and monitor standards on BEPS-related issues, see the OECD's website, <https://www.oecd.org/>.) This information is exchanged with partner jurisdictions for which a particular tax ruling is identified to be relevant (for example, jurisdictions of residence of related parties with which the taxpayer enters into a transaction covered by the ruling or which gives rise to income from related parties benefiting from a preferential treatment; the jurisdiction of residence of the immediate or ultimate parent of the taxpayer or of the ultimate beneficial owner of a conduit ruling-related payment; or the jurisdiction in which the taxpayer's head office is located).
- (3) The information exchanged is a summary template designed to assist tax administrations in risk assessment with respect to the following categories of tax rulings:
  - a. Rulings related to preferential regimes;
  - b. Cross-border unilateral advance pricing agreements (APAs) or other unilateral transfer pricing rulings;
  - c. Cross-border rulings providing for a downward adjustment of taxable profits;
  - d. Permanent establishment (PE) rulings;
  - e. Related party conduit rulings; and
  - f. Any other type of ruling that poses BEPS concerns.
- (4) BEPS Action 5 spontaneous exchanges, including those initiated by IRS offices for issuance to foreign tax authorities and those received from foreign tax authorities for issuance to IRS offices, are coordinated through the office of the Program Manager, Exchange of Information (EOI Program). Any IRS employee

considering submitting an exchange under the BEPS Action 5 framework or

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4.60.1.4  
(02-23-2023)  
**Simultaneous  
Examination Program  
(SEP)**

- (1) The Simultaneous Examination Program (SEP) operates through the exchange of information provisions of international exchange agreements. This program is coordinated through the office of the Program Manager, Exchange of Information (EOI Program). Simultaneous examinations may be conducted pursuant to written working arrangements entered into by the delegated U.S. Competent Authority (the Commissioner, LB&I) and the Competent Authorities of one or more foreign partners.
- (2) However, the absence of a working arrangement does not preclude the IRS from conducting a simultaneous examination with another tax administration. In such instances, the U.S. Competent Authority may propose to the foreign partner the conduct of a simultaneous examination in a specific case, and if requested by the foreign jurisdiction, concurrently conclude a working arrangement.
- (3) Strict adherence to all applicable disclosure and confidentiality provisions is required of all IRS employees, including EOI analysts, involved in simultaneous examinations. For more information, see IRM 4.60.1.1.2, Authority.

4.60.1.4.1  
(10-15-2018)  
**SEP Objectives and  
Benefits**

- (1) 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. During the course of the examinations and with the facilitation of an assigned EOI analyst, representatives of the IRS and the 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 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.
- (2) The compliance benefits which may result from a simultaneous examination include, but are not limited to:
  - a. The assessment of tax based on a more complete factual development of the circumstances pertaining to the tax liability;
  - b. The exchange of information about apparent tax avoidance techniques or patterns involving transfer pricing and cost-sharing arrangements, price manipulations, substance versus form transactions, controlled-financing schemes, tax shelters, inconsistent factual representations, etc.;
  - c. The exchange of information about unreported income, money laundering, kickbacks, bribes, illegal payments, embezzlement, or profits diversion;
  - d. The exchange of information about a failure to file required tax returns;
  - e. The exchange of information about transactions in low- or no-tax jurisdictions; and
  - f. The exchange of information about profit allocation methods in special fields such as global trading and new financial instruments.
- (3) A simultaneous examination may also enable examiners to build more complete factual evidence for tax adjustments for which the Mutual Agreement

Procedure (MAP) under international exchange agreements might be requested, and may enable taxpayers to make a request for Competent Authority consideration at an earlier stage than might otherwise have been the case. However, a simultaneous examination is not a substitute for the Mutual Agreement Procedure. For more information about the MAP, see Revenue Procedure 2015-40, Procedures for Requesting Competent Authority Assistance Under Tax Treaties, or its successor, and Revenue Procedure 2006-23, Tax Coordination Agreements Entered into Between the IRS and the U.S. Possessions, or its successor.

4.60.1.4.2  
(10-15-2018)  
**SEP Case Selection  
Criteria**

- (1) The U.S. and the foreign tax administrations, in accordance with their respective internal practices and procedures, independently identify cases that may be suitable for simultaneous examinations. For details about the submission and processing of simultaneous examination proposals, see IRM 4.60.1.4.3, United States-Initiated SEP Proposals, and IRM 4.60.1.4.4, Foreign-Initiated SEP Proposals.
- (2) While the taxpayers selected for simultaneous examination are often large multinational corporations, simultaneous examinations may also involve non-corporate entities, including individuals and partnerships.
- (3) Cases considered for simultaneous examination may involve, but are not limited to:
  - a. A taxpayer or related taxpayers with business or personal transactions or a business nexus in the participating jurisdictions;
  - b. A taxpayer or related taxpayers with business operations which are significant in scale, either worldwide or within the participating jurisdictions;
  - c. A taxpayer or related taxpayers reporting economic performance significantly different from what might be expected in light of other data (such as consistent reported losses, the payment of little or no tax regardless of profitability, etc.);
  - d. Activities indicating substantial noncompliance with the tax laws of the participating jurisdictions in compatible tax years (see also IRM 4.60.1.4.1, SEP Objectives and Benefits, for examples of specific activities); or
  - e. Activities indicating a potential for tax compliance which may mutually benefit the tax administrations of the participating jurisdictions.
- (4) In all cases, consideration should be given to the tax years under examination and the statutes of limitations in the participating jurisdictions.

4.60.1.4.3  
(02-23-2023)  
**United States-Initiated  
SEP Proposals**

- (1) The initiating IRS office prepares the United States' proposal for a simultaneous examination. The second-level management of the initiating IRS office reviews the proposal and forwards to the EOI Program Manager.
  - a. Within the memorandum to propose the simultaneous examination, the initiating IRS office should include the name, address, and phone number of the manager who will function as the U.S. Designated Representative should the simultaneous examination be accepted (generally the IRS examination first-level manager). For more information about the Designated Representative, see IRM 4.60.1.4.5, Conduct of Simultaneous Examinations.
  - b. The foreign Competent Authority generally considers a proposal for a simultaneous examination together with information the foreign tax

authority already possesses and the potential benefits of a simultaneous examination. It is therefore important that the narrative in the proposal gives the foreign Competent Authority a clear understanding of the basis for the proposed simultaneous examination, along with other available information that may be useful to the foreign tax authority (for example, information about the taxpayer's business organizational structure, functions, products, intangible assets, etc.).

- c. The proposal should include details concerning the potential benefits of the proposed simultaneous examination. In many instances, an examination may not be at a point where it is possible to determine or estimate specific amounts of tax or of adjustments to income. In those cases, the proposal should plainly state that no estimate can be made at this stage of the examination. However, if there is an estimate, the proposal should briefly describe how the estimate was determined.
- (2) Upon receipt from the initiating IRS office, the proposal is reviewed by the EOI Program. After the EOI Program's review of the proposal, the U.S. Competent Authority transmits the proposal to the foreign Competent Authority. The U.S. and foreign Competent Authorities may subsequently arrange an initial meeting to discuss the proposal and any additional details necessary to determine whether to accept or reject the proposal.
  - (3) When a response is received from the foreign Competent Authority, the EOI Program advises the initiating IRS office. If the foreign partner elects not to participate in the simultaneous examination, the EOI Program advises the IRS office as to why the request was declined, provides the IRS office with any spontaneously received information, and may suggest the IRS office instead consider a specific request for foreign-based information (for details, see IRM 4.60.1.2.1, United States-Initiated Specific Requests for Information).
  - (4) IRS personnel considering a simultaneous examination proposal may contact #  
 questions about a foreign partner's laws, administrative practices, statutes of limitations, or any other aspect of a potential proposal.

4.60.1.4.4  
 (10-15-2018)  
**Foreign-Initiated SEP  
 Proposals**

- (1) Upon receipt by the U.S. Competent Authority from a foreign Competent Authority, a foreign proposal for a simultaneous examination is reviewed by the EOI Program. After the EOI Program's review of the proposal, the proposal is transmitted to the second-level management of the IRS office with jurisdiction over the taxpayer.
- (2) Within 60 calendar days after the receipt of a simultaneous examination proposal, the second-level management of the jurisdictional IRS office sends a memorandum to the EOI Program Manager, advising whether the IRS office will participate in the proposed foreign-initiated simultaneous examination.
  - a. If the jurisdictional IRS office accepts the foreign-initiated proposal, the memorandum must provide the name, address, and phone number of the manager who will function as the U.S. Designated Representative (generally the IRS examination first-level manager). For more information about the Designated Representative, see IRM 4.60.1.4.5, Conduct of Simultaneous Examinations.
  - b. If the jurisdictional IRS office does not accept the proposal, the memorandum must give the reasons for declining the proposal.



- c. In addition, the memorandum should attach or include any available information which may be of use to the proposing Competent Authority, regardless of whether the jurisdictional IRS office is accepting or declining the proposal. This information may be provided to the foreign Competent Authority by the EOI Program as a spontaneous exchange of information.
  - d. The U.S. and foreign Competent Authorities may also arrange an initial meeting to discuss the proposal and any additional details necessary to determine whether to accept or reject the proposal.
- (3) The U.S. Competent Authority is responsible for the response to the foreign partner, and may send information provided by the jurisdictional IRS office to the foreign Competent Authority.

4.60.1.4.5  
(02-23-2023)  
**Conduct of  
Simultaneous  
Examinations**

- (1) When a tax authority accepts a case for simultaneous examination, that administration's Competent Authority confirms acceptance in writing and identifies a Designated Representative with functional responsibility for directing the administration's examination. After receiving this notification of acceptance, the proposing Competent Authority confirms in writing its own administration's Designated Representative.
- (2) Any communications and exchanges of information between the U.S. and foreign Designated Representatives and other officials are coordinated by the EOI analysts (in the IRS EOI Program and the foreign government), who prepare the necessary Competent Authority correspondence through which all documentation is exchanged. All information must be exchanged by the U.S. Competent Authority or another person with delegated authority to act as the Competent Authority under United States international exchange agreements per Delegation Order 4-12 (as revised). **The U.S. Designated Representative is not granted this authority, and therefore may not directly exchange any information with a foreign Competent Authority or foreign Designated Representative(s).** However, meetings or discussions relating solely to information previously exchanged between the U.S. and foreign Competent Authorities may occur without the presence of an EOI analyst or the Competent Authorities, if approved by the EOI analyst.
- (3) Meetings may take place either in the United States or in the foreign jurisdiction. Therefore, the U.S. Designated Representative and other members of the examination team who are participating in meetings must obtain United States official passports through the LB&I International Travel Office.
- a. Requests for foreign travel should be submitted far enough in advance of planned travel to allow the International Travel Office 30 days to process the request. If a visa is required, the International Travel Office will require 45 days for processing.
  - b. IRM 1.32.5, International Travel Office Procedures, describes travel outside the United States by IRS personnel.
  - c. All travel costs connected with a simultaneous examination are borne by the office to which the participants are assigned. The U.S. Competent Authority reserves the right to limit the number of U.S. participants.
- (4) Before the jurisdictions commence their examinations, the Designated Representative from the jurisdiction proposing the simultaneous examination may choose to organize an initial planning meeting. This meeting is held to:

- a. Understand how each jurisdiction proposes to conduct its examination;
  - b. Define areas of common interest to examine;
  - c. Develop examination strategies;
  - d. Discuss related technical issues;
  - e. Agree on target dates;
  - f. Agree on best practices about how information will be exchanged between the jurisdictions; and
  - g. Ascertain whether any of the examiners from one jurisdiction can participate in the examination activities of the other jurisdiction, and if so, implement agreements to that effect.
- (5) During the first examination meeting between the U.S. taxpayer and the IRS examiners, the U.S. Designated Representative must inform the taxpayer of the details of the simultaneous examination, including advice about how information will be exchanged among the relevant tax administrations and the legal basis for doing so. For more information, see IRM 4.60.1.4.7, Taxpayer Notification of Simultaneous Examinations.
- (6) Meetings held between the U.S. and foreign representatives in conjunction with the simultaneous examination consider the examination plans and approaches of the participating jurisdictions (although there is no exchange of formal examination plans), issues to be developed, target dates for the examinations, and what information might need to be requested.
- (7) The Competent Authorities conduct all information exchanges in accordance with the applicable international exchange agreement. The U.S. Designated Representative may initiate requests through the U.S. Competent Authority for specific information to the other participating jurisdiction(s) during the simultaneous examination. The U.S. Designated Representative may also need to act upon requests received by the U.S. Competent Authority from the other participating jurisdiction(s). The information requested must be obtainable under the provisions of the relevant international exchange agreement and the respective tax laws of the participating jurisdictions.
- (8) If issues arise during a simultaneous examination which may lead to double taxation, the U.S. Designated Representative must inform the U.S. Competent Authority of the details in a memorandum to the EOI Program Manager as soon as practical.
  - a. The EOI Program Manager consults with the APMA Director for transfer pricing and other allocation cases, or the TAIT Program Manager for non-allocation cases. An APMA Team Leader or TAIT Competent Authority analyst may become a member of, or a consultant to, the United States examination team.
  - b. In such instances, the APMA Team Leader or TAIT Competent Authority analyst provides direction to the examiners on the factual development necessary for any issues which could become subject to a Mutual Agreement Procedure (MAP).
  - c. United States examiners in such cases must limit themselves to development of the facts, and must not negotiate the resolution of double taxation issues with the foreign partner. The U.S. Competent Authority (or their delegate) is the only person who has this authority.
- (9) Any participating jurisdiction may discontinue participation in a simultaneous examination at any time it concludes the simultaneous examination would no longer be of benefit.

- a. The U.S. Designated Representative initiates a United States discontinuance through a memorandum to the EOI Program Manager, stating the reasons for recommending a discontinuance.
  - b. Upon receipt of the recommendation, the U.S. Competent Authority sends a notification letter to the foreign Competent Authority indicating the United States' participation in the simultaneous examination will end.
- (10) Upon conclusion of a simultaneous examination, the U.S. Designated Representative prepares a report advising of the conclusion of the simultaneous examination and providing an assessment of its results. For more information, see IRM 4.60.1.4.6, SEP Reports.

4.60.1.4.6  
(10-15-2018)  
**SEP Reports**

- (1) Within 15 calendar days after the end of each calendar quarter, the U.S. Designated Representative must send a status report to the EOI Program Manager through the second-level management of the IRS examination office. The report must include:
- a. An account of all communications during the quarter between United States examiners and representatives of the participating foreign tax administration(s) relating to the simultaneous examination process, including, but not limited to, the type and date of each such communication, who initiated the communication, the purpose of the communication, and the results of the communication (recommendations, actions, or decisions reached). As stated above, all such communications between U.S. and foreign examiners and representatives must be coordinated by the U.S. and foreign EOI analysts;
  - b. A chronological listing of requests for information made during the quarter by the other participating jurisdiction(s), and reasons for any delays in providing the requested information to the EOI Program for transmission to the foreign partner(s);
  - c. A chronological listing of requests for information made during the quarter via the EOI Program to the other participating jurisdiction(s);
  - d. An advance notice of meetings planned with the Designated Representatives of the other jurisdiction(s) in the next quarter, to include sites and dates;
  - e. A description and status of issues identified in or for the simultaneous examination; and
  - f. An explanation of any problem(s) encountered and actions taken or to be taken to resolve the problem(s).
- (2) Within 30 calendar days after the conclusion or discontinuance of a simultaneous examination, the U.S. Designated Representative must send a closing report to the EOI Program Manager through the second-level management of the IRS examination office. The report must include:
- a. Types and amounts of adjustments to the U.S. taxpayer's taxable income or tax liability expected to be proposed with respect to the issues covered by the simultaneous examination;
  - b. A brief description of the other compliance benefits obtained from participation in the simultaneous examination;
  - c. A brief description of any particular issues or circumstances encountered which might affect future simultaneous examinations with the participating jurisdiction(s); and
  - d. If the simultaneous examination reveals systematic exploitation or abuse of existing tax laws in the individual jurisdictions, the closing report must

also address transactions or acts which systematically exploit differences in the legislation and tax administration of the participating jurisdictions, as well as any undesirable or unintended exploitation of the tax conventions among the participating jurisdictions.

4.60.1.4.7  
(10-15-2018)

**Taxpayer Notification of Simultaneous Examinations**

- (1) As noted above in IRM 4.60.1.4.5, Conduct of Simultaneous Examinations, the U.S. Designated Representative responsible for the IRS examination informs the U.S. taxpayer of a simultaneous examination. Since simultaneous examinations are independent examinations conducted by each of the participating jurisdictions according to the jurisdictions' respective laws and procedures, the taxpayer's consent to a simultaneous examination is not required.
- (2) Since exchanges of information with a foreign jurisdiction may result from a simultaneous examination, taxpayers may raise issues to prevent information disclosures to a foreign Competent Authority.
  - a. While IRS managers and examiners should consider the legal bases raised by taxpayers for non-disclosure to the foreign Competent Authority (for example, attorney-client privilege, trade secrets, etc.), IRS employees must not give any assurances to taxpayers that information will not be exchanged with a foreign Competent Authority. In no instance should an IRS employee assure a taxpayer that the taxpayer will be consulted before any such exchange.
  - b. If a taxpayer resists a request for information because of its possible disclosure to a foreign Competent Authority, the IRS examination manager should notify the EOI analyst assigned to the simultaneous examination, who will consult with Associate Chief Counsel (International), Branch 7. The determination whether or not to exchange information is made by the U.S. Competent Authority.

4.60.1.5  
(02-23-2023)

**Simultaneous Criminal Investigation Program (SCIP)**

- (1) The Simultaneous Criminal Investigation Program (SCIP) operates through the exchange of information provisions of international exchange agreements. This program is coordinated through the office of the Program Manager, Exchange of Information (EOI Program). Simultaneous criminal investigations may be conducted pursuant to written working arrangements entered into by the delegated U.S. Competent Authority (the Commissioner, LB&I) and the Competent Authority of a foreign partner.
- (2) The absence of a working arrangement does not preclude the IRS from conducting a simultaneous criminal investigation with another tax administration. In such instances, the U.S. Competent Authority may propose to the foreign partner the conduct of a simultaneous criminal investigation in a specific case, and if requested by the foreign jurisdiction, concurrently conclude a working arrangement.
- (3) Strict adherence to all applicable disclosure and confidentiality provisions is required of all IRS employees, including EOI analysts, involved in simultaneous criminal investigations. For more information, see IRM 4.60.1.1.2, Authority.

4.60.1.5.1  
(02-23-2023)

**SCIP Objectives and Benefits**

- (1) Simultaneous criminal investigations involve the United States and one of its foreign partners conducting separate, independent criminal tax investigations of selected taxpayer(s) within their respective jurisdictions in which the partners have a common or related interest. During the course of the investigations and under the oversight of an assigned EOI analyst, representatives of the IRS and

the foreign partner meet to coordinate strategies and discuss technical issues developed during the investigations. There is no exchange of personnel between the IRS and the foreign partner administration during a simultaneous criminal investigation. 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.

- (2) The assigned EOI analyst works with IRS Criminal Investigation (CI) personnel:
  - a. To present SCIP proposals;
  - b. To evaluate SCIP proposals;
  - c. To facilitate the exchange of information process between tax authorities and criminal investigators;
  - d. To transmit ongoing exchanges of information (under the signature of the U.S. Competent Authority); and
  - e. To ensure the simultaneous criminal investigation is conducted pursuant to official policy and the criteria set forth in the applicable international exchange agreement and any existing simultaneous criminal investigation working arrangement.
- (3) For information about CI policies and procedures for using the SCIP to facilitate criminal investigations of global taxpayers, see IRM 9.4.2.6, Treaties, Mutual Assistance Laws, Simultaneous Investigation Programs, and Agreements.

4.60.1.5.2  
(10-15-2018)  
**SCIP Case Selection  
Criteria**

- (1) The U.S. and the foreign tax administration, in accordance with their respective internal practices and procedures, independently identify cases that may be suitable for simultaneous criminal investigations. For details about the submission and processing of simultaneous criminal investigation proposals, see IRM 4.60.1.5.3, United States-Initiated SCIP Proposals, and IRM 4.60.1.5.4, Foreign-Initiated SCIP Proposals.
- (2) Cases considered for simultaneous criminal investigation may involve, but are not limited to:
  - a. A taxpayer or related taxpayers with business or personal transactions or a business nexus in both participating jurisdictions;
  - b. A taxpayer or related taxpayers with business operations which are significant in scale, either worldwide or within the participating jurisdictions;
  - c. Activities indicating willful conduct or substantial noncompliance with the tax laws of the participating jurisdictions in compatible tax years, indicating a potential for criminal tax offenses in both participating jurisdictions; or
  - d. Activities indicating a potential for tax compliance which may mutually benefit the tax administrations of the participating jurisdictions.
- (3) In all cases, consideration should be given to the tax years under investigation and the statutes of limitations in the participating jurisdictions.

4.60.1.5.3  
(02-23-2023)  
**United States-Initiated  
SCIP Proposals**

- (1) The initiating IRS CI Special Agent in Charge (SAC) or Supervisory Special Agent (SSA) prepares the United States' proposal for a simultaneous criminal investigation. The proposal is forwarded through the appropriate Deputy Director, Criminal Investigation, Field Operations, to the Deputy Director, Criminal Investigation, International Operations (CI:IO). CI:IO reviews the



proposal and forwards to the EOI Program Manager. If a proposal is received by the EOI Program directly from a SAC or SSA, the assigned EOI analyst will direct the SAC or SSA to resubmit the proposal through the appropriate Deputy Director, Criminal Investigation, Field Operations, to CI:IO for initial review.

- a. Within the memorandum to propose the simultaneous criminal investigation, the initiating CI office should include the name, address, and phone number of the individual who will function as the U.S. Designated Representative should the simultaneous criminal investigation be accepted. For more information about the Designated Representative, see IRM 4.60.1.5.5, Conduct of Simultaneous Criminal Investigations.
  - b. The foreign Competent Authority generally considers a proposal for a simultaneous criminal investigation together with information the foreign tax authority already possesses and the potential benefits of a simultaneous investigation. It is therefore important that the narrative in the proposal gives the foreign Competent Authority a clear understanding of the basis for the proposed simultaneous criminal investigation, along with other available information that may be useful to the foreign tax authority (for example, information about the taxpayer's business organizational structure, functions, products, intangible assets, etc.).
  - c. The proposal should include details concerning the potential benefits of the proposed simultaneous criminal investigation, including potential tax understatements, indications of fraud, etc.
- (2) Upon receipt from CI:IO, the proposal is reviewed by the EOI Program. After the EOI Program's review of the proposal, the U.S. Competent Authority transmits the proposal to the foreign Competent Authority. The U.S. and foreign Competent Authorities may subsequently arrange an initial meeting to discuss the proposal and any additional details necessary to determine whether to accept or reject the proposal.
  - (3) When a response is received from the foreign Competent Authority, the EOI Program advises CI:IO. If the foreign partner elects not to participate in the simultaneous criminal investigation, the EOI Program advises CI:IO as to why the request was declined, provides CI:IO with any spontaneously received information, and may suggest the CI office instead consider a specific request for foreign-based information (for details, see IRM 4.60.1.2.1, United States-Initiated Specific Requests for Information).
  - (4) IRS personnel considering a simultaneous criminal investigation proposal may #  
tance with questions about any aspect of a potential proposal.

4.60.1.5.4  
(02-23-2023)  
**Foreign-Initiated SCIP  
Proposals**

- (1) Upon receipt by the U.S. Competent Authority from a foreign Competent Authority, a foreign proposal for a simultaneous criminal investigation is reviewed by the EOI Program. After the EOI Program's review of the proposal, the EOI Program advises the Deputy Director, Criminal Investigation, International Operations (CI:IO) of receipt of the proposal, and solicits approval and instructions for the assignment of the request to CI. Upon CI:IO approval, the proposal may be transmitted either directly to the designated CI Special Agent in Charge (SAC), or to CI:IO for forwarding to the SAC.



- (2) Within 60 calendar days after the receipt of a simultaneous criminal investigation proposal, the SAC sends a memorandum to the EOI Program Manager, advising whether the CI office will participate in the proposed foreign-initiated simultaneous investigation.
  - a. If the CI office accepts the foreign-initiated proposal, the memorandum must provide the name, address, and phone number of the individual who will function as the U.S. Designated Representative. For more information about the Designated Representative, see IRM 4.60.1.5.5, Conduct of Simultaneous Criminal Investigations.
  - b. If the CI office does not accept the proposal, the memorandum must give the reasons for declining the proposal.
  - c. In addition, the memorandum should attach or include any available information which may be of use to the proposing Competent Authority, regardless of whether the CI office is accepting or declining the proposal. This information may be provided to the foreign Competent Authority by the EOI Program as a spontaneous exchange of information.
  - d. The U.S. and foreign Competent Authorities may also arrange an initial meeting to discuss the proposal and any additional details necessary to determine whether to accept or reject the proposal.
- (3) The U.S. Competent Authority is responsible for the response to the foreign partner, and may send information provided by the CI office to the foreign Competent Authority.

4.60.1.5.5  
(02-23-2023)  
**Conduct of  
Simultaneous Criminal  
Investigations**

- (1) When a tax authority accepts a case for simultaneous criminal investigation, that administration's Competent Authority confirms acceptance in writing and identifies a Designated Representative with functional responsibility for directing the administration's investigation. After receiving this notification of acceptance, the proposing Competent Authority confirms in writing its own administration's Designated Representative.
- (2) Any communications and exchanges of information between the U.S. and foreign Designated Representatives and other officials are coordinated by the EOI analysts (in the IRS EOI Program and the foreign government), who prepare the necessary Competent Authority correspondence through which all documentation is exchanged. All information must be exchanged by the U.S. Competent Authority or another person with delegated authority to act as the Competent Authority under United States international exchange agreements per Delegation Order 4-12 (as revised). **The U.S. Designated Representative is not granted this authority, and therefore may not directly exchange any information with a foreign Competent Authority or foreign Designated Representative.** However, meetings or discussions relating solely to information previously exchanged between the U.S. and foreign Competent Authorities may occur without the presence of an EOI analyst or the Competent Authorities, if approved by the EOI analyst.
- (3) Meetings may take place either in the United States or in the foreign jurisdiction. Therefore, the U.S. Designated Representative and other members of the investigation team who are participating in meetings must obtain United States official passports through the LB&I International Travel Office. (CI agents secure official passports and visas from LB&I through coordination with CI management.)

- a. Requests for foreign travel should be submitted far enough in advance of planned travel to allow the International Travel Office 30 days to process the request. If a visa is required, the International Travel Office will require 45 days for processing.
  - b. IRM 1.32.5, International Travel Office Procedures, describes travel outside the United States by IRS personnel.
  - c. All travel costs connected with a simultaneous criminal investigation are borne by the office to which the participants are assigned. The U.S. Competent Authority reserves the right to limit the number of U.S. participants.
- (4) Before the jurisdictions commence their investigations, the Designated Representative from the jurisdiction proposing the simultaneous criminal investigation may choose to organize an initial planning meeting. This meeting is held to:
  - a. Understand how each jurisdiction proposes to conduct its investigation;
  - b. Define areas of common interest to investigate;
  - c. Develop investigation strategies;
  - d. Discuss related technical issues;
  - e. Agree on target dates; and
  - f. Agree on best practices about how information will be exchanged between the jurisdictions.
- (5) If the laws and regulations of a participating Competent Authority require or allow the disclosure of information received through the simultaneous investigation in a public court proceeding, to a taxpayer or their proxy, or to a witness, that Competent Authority will notify the other Competent Authority of the pending disclosure. The two Competent Authorities will then consult on the timing of the release and the use of the information in an effort to mitigate any negative consequences for the jurisdiction that provided the information.
- (6) Meetings held between the U.S. and foreign representatives in conjunction with the simultaneous criminal investigation consider the investigative approaches of the participating jurisdictions, issues to be developed, target dates for the investigations, and what information might need to be requested. Moreover, subject to the direction of their respective Competent Authorities, the U.S. and foreign Designated Representatives may coordinate investigative activities including, but not limited to, interviews of witnesses, surveillance, and searches and seizures.
- (7) The Competent Authorities conduct all information exchanges in accordance with the applicable international exchange agreement. The U.S. Designated Representative may initiate requests through the U.S. Competent Authority for specific information to the other participating jurisdiction during the simultaneous criminal investigation. The U.S. Designated Representative may also need to act upon requests received by the U.S. Competent Authority from the other participating jurisdiction. The information requested must be obtainable under the provisions of the relevant international exchange agreement and the respective tax laws of the participating jurisdictions.
- (8) Any participating jurisdiction may discontinue participation in a simultaneous criminal investigation at any time it concludes the simultaneous investigation would no longer be of benefit.

- a. The U.S. Designated Representative initiates a United States discontinuance through a memorandum to the EOI Program Manager, stating the reasons for recommending a discontinuance.
- b. Upon receipt of the recommendation, the U.S. Competent Authority sends a notification letter to the foreign Competent Authority indicating the United States' participation in the simultaneous criminal investigation will end.

4.60.1.6  
(02-23-2023)  
**Mutual Collection  
Assistance Request  
(MCAR) Program**

- (1) Certain tax treaties to which the United States is a party provide for mutual assistance in the collection of taxes. 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).
- (2) Delegation Order 4-12 (as revised) delegates to EOI Program frontline managers the authority to authorize the processing of requests for mutual collection assistance in accordance with the appropriate tax treaty assistance provisions and to sign on behalf of the delegated U.S. Competent Authority, the Commissioner, LB&I, with respect to matters arising under these provisions. Moreover, 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. Analysts in the office of the Program Manager, Exchange of Information (EOI Program) coordinate with these designated officers to fulfill each MCAR.
- (3) All questions about the Mutual Collection Assistance Request program should

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4.60.1.6.1  
(02-23-2023)  
**Tax Treaties with  
Collection Assistance  
Provisions**

- (1) The following United States tax treaties, identified respectively by jurisdiction, type of treaty, and treaty article, currently provide for mutual collection assistance:
  - a. Canada, Income, Article XXVIA;
  - b. Denmark, Income, Article 27;
  - c. France, Income, Article 28;
  - d. Japan, Income, Article 27;
  - e. Netherlands, Income, Article 31; and
  - f. Sweden, Income, Article 27.
- (2) In addition to the treaties listed above, certain other tax treaties contain wording to the effect that the United States will assist the foreign partners in collecting "such amounts of tax as may be necessary to ensure that relief granted by this Convention from taxation imposed by that other State does not inure to the benefit of persons not entitled thereto." Because the determination of the amount of any tax owed to a foreign jurisdiction would be affected by these so-called "limited collection" provisions, any MCAR involving a jurisdiction other than the jurisdictions listed above must be referred to the EOI Program for a determination as to the applicability of the treaty provision.
- (3) Generally, the types of taxes subject to the MCAR provisions are listed in the "Taxes Covered" articles of the respective tax treaties, unless modified by the treaties' mutual collection articles.

4.60.1.6.2  
(02-23-2023)  
**MCAR Processing  
Procedures**

- (1) There are both United States-initiated (outbound) and foreign-initiated (inbound) MCARs. SB/SE MCAR administration procedures for both outbound MCARs from the IRS seeking the assistance of foreign partners and inbound MCARs from foreign partners seeking IRS assistance in the collection of a tax debt may be found in IRM 5.21.7.4, Mutual Collection Assistance Requests (MCAR).
- (2) An outbound MCAR is initially sent by the originating IRS office to the SB/SE MCAR Coordinator, who then forwards the MCAR to the EOI authorized signatory per Delegation Order 4-12 (as revised) for review. If the outbound MCAR requires additional information, the EOI Program returns the package to the SB/SE MCAR Coordinator for completion. Once approved, the EOI authorized signatory sends the MCAR to the foreign partner, and retains a copy.
- (3) An inbound MCAR is initially sent by the foreign partner to the EOI authorized signatory. To expedite processing, foreign partners may also send courtesy copies of the MCAR directly to the SB/SE MCAR Coordinator. If the inbound MCAR requires additional information, the EOI authorized signatory contacts the requesting foreign partner. The EOI Program then sends the MCAR to the SB/SE MCAR Coordinator, and retains a copy.
- (4) The EOI analyst assigned to the MCAR must fulfill the following responsibilities:
  - a. Ensure the MCAR meets all prerequisites as outlined in IRM 4.60.1.6.3;
  - b. Ensure correspondence to a foreign jurisdiction is signed by the U.S. Competent Authority or their delegate under Delegation Order 4-12 (as revised);
  - c. Adhere to all applicable EOI case management requirements, to include entry and maintenance of the case in the EOI Inventory Management System (IMS), acknowledgement of receipt of MCAR request letters within 30 calendar days after receipt of the foreign request, and inclusion on all inbound/outbound materials of appropriate language indicating the material is exchanged under the tax treaty;
  - d. Act as liaison on mutual collection matters with the respective foreign Competent Authority offices; and
  - e. Provide guidance to the SB/SE MCAR Coordinators.

**Note:** The EOI analyst should always review the language of the tax treaty's

following subsections further describe the requirements for processing MCARs.

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4.60.1.6.3  
(10-15-2018)  
**MCAR Prerequisites**

- (1) The following conditions must be met in order for an MCAR to be considered valid. Generally, these prerequisites are satisfied by an affirmative statement to such in the request where such information is not readily able to be confirmed, absent reason to question such statement:
  - a. A tax treaty or protocol that includes a provision for mutual tax collection exists with the requesting/requested jurisdiction;
  - b. A tax must be finally determined by the requesting jurisdiction;

- c. The statute of limitations on the collection of debt must still be open in the requesting jurisdiction;
  - d. A reasonable effort to collect the debt must have been made by the requesting jurisdiction before submitting the MCAR;
  - e. All correspondence must be addressed to an official authorized to receive communications relating to mutual collection assistance;
  - f. The request meets the stipulations within the specific tax treaty article or protocol, including the specific citizenship limitation provided for in the applicable treaty;
  - g. The tax treaty or protocol covers the type of tax in question.
- (2) The request must also be accompanied by a datasheet listing the elements of the debt, as follows:
- a. Date;
  - b. Taxpayer Identification Number (IRS internal use only; not to be provided to a foreign Competent Authority);
  - c. Taxpayer's name;
  - d. Taxpayer's address;
  - e. Taxpayer's telephone and fax numbers;
  - f. Taxpayer's date of birth, place of birth, and nationality (individuals); taxpayer's place of incorporation (entities);
  - g. Whether the taxpayer has been identified as potentially dangerous;
  - h. Amounts requested for collection, with explanation of circumstances leading to the request, basis for the liabilities (tax years, disallowances, unreported income, etc.), identification of any statutes of limitations relating to the amounts requested for collection, and expiration dates of any such statutes of limitations;
  - i. Specification of any known income or assets the taxpayer may have in the partner jurisdiction;
  - j. Notice of any tax lien filing, or equivalent, including the dates and locations of all such filings;
  - k. Any other information of which the receiving partner should be aware;
  - l. Explanation and certification that the applicant state has pursued all appropriate measures to collect the revenue claim available under its laws or administrative practices;
  - m. Explanation and certification that the tax to be collected has been "Finally Determined";
  - n. Identification or referral number for the request;
  - o. MCAR Coordinator's name and contact information;
  - p. MCAR Coordinator's signature;
  - q. Group Manager's signature;
  - r. The following text: **This information is furnished under the provisions of a tax treaty with a foreign government. Its use and disclosure must be governed by the provisions of that treaty.**

4.60.1.6.4  
(10-15-2018)  
**MCAR Closing  
Procedures**

- (1) Upon completion of the requested collection action, the requested Competent Authority notifies the requesting jurisdiction of the actions taken to resolve the matter in a closing letter.
- (2) For a United States-initiated (outbound) MCAR, the foreign partner sends a closing letter to the U.S. Competent Authority. The closing letter must include or be accompanied by information supporting the reason for closure. The EOI authorized signatory per Delegation Order 4-12 (as revised) provides a copy to the SB/SE MCAR Coordinator.

- (3) For a foreign-initiated (inbound) MCAR, the SB/SE MCAR Coordinator prepares a closing letter addressed to the requesting jurisdiction's Competent Authority for the signature of the U.S. Competent Authority, and forwards such letter to the EOI authorized signatory. The EOI authorized signatory reviews and signs the letter on behalf of the U.S. Competent Authority, and sends it to the foreign partner.
- (4) Within 7 calendar days after issuance or receipt of the appropriate closing letter to or from the foreign partner, the EOI analyst assigned to the MCAR submits the IMS case to EOI management for closure, ensuring all required IMS information is input fully and accurately. (For more information about general EOI case processing procedures, see IRM 4.60.1.2.5, United States-Initiated and Foreign-Initiated Specific Requests for Information – Additional Administrative Procedures for EOI Personnel.)

## 4.60.1.7

(10-15-2018)

**Mutual Legal Assistance Treaty (MLAT) Program**

- (1) A mutual legal assistance treaty (MLAT) is a bilateral agreement authorizing a partner jurisdiction to secure evidence to be used in criminal judicial proceedings in the requesting jurisdiction. Each MLAT specifies a "Central Authority" to act on behalf of each treaty partner to make requests, receive and execute requests, and generally administer the treaty relationship. The U.S. Department of Justice, Office of International Affairs, Criminal Division (DOJ OIA) is the U.S. Central Authority for MLAT purposes. If an MLAT request seeks returns or return information from the IRS, IRS assistance is coordinated through the office of the Program Manager, Exchange of Information (EOI Program), in collaboration with IRS Criminal Investigation.
- (2) The United States currently has MLATs with a number of jurisdictions, which are identified in the Department of State's publication *Treaties in Force*. This publication is available on the Department of State website.
- (3) MLATs may provide, among other things, the power to serve process, summon witnesses, compel the production of documents, and issue search warrants. Not all MLATs authorize the same types of assistance, and some do not allow for the exchange of tax-related information.
- (4) MLAT requests received by DOJ OIA from foreign partners (foreign-initiated requests) may require IRS involvement in the form of the production of returns and/or return information, financial investigative assistance, or both. When the execution of a single foreign MLAT request entails both the production of tax information and investigative assistance, the IRS will consider these elements separately. The role of the EOI Program is limited to obtaining returns and return information, as detailed below. IRS Criminal Investigation will address all other components of the request, including any financial investigative assistance. MLAT requests sometimes seek assistance from other federal government agencies (for example, the FBI); the IRS is generally not involved with such aspects of MLAT requests.
- (5) MLAT requests made by the IRS to foreign partners (United States-initiated requests) are issued through the Deputy Director, Criminal Investigation, International Operations (CI:IO). MLAT requests pertaining to grand jury investigations are initiated by the U.S. Attorney's Office, and are issued through DOJ OIA. Such requests may be considered only if the information pertains to the investigation of one or more of the United States criminal violations listed in the MLAT. The EOI Program has no involvement in United States-initiated MLAT requests.



4.60.1.7.1

(02-23-2023)

**Foreign-Initiated MLAT Requests - Procedures for EOI Personnel**

- (1) DOJ OIA will transmit all foreign-initiated MLAT requests where DOJ OIA requires IRS assistance to CI:IO.
- (2) Upon receipt of a foreign MLAT request from DOJ OIA, CI:IO reviews the request. If the request requires the production of returns or return information, CI:IO forwards the request for this information with a cover memorandum to the EOI Program. The request is then assigned to an EOI analyst. Any other aspects of the foreign request, such as required investigative assistance, are processed by CI:IO without the involvement of the EOI Program.

**Caution:** Investigative assistance and other responsive information obtained by CI:IO and EOI may or may not be disclosed to DOJ OIA. If in doubt, CI:IO or EOI should consult with their respective counsel for disclosure advice.

- (3) The assigned EOI analyst will conduct a preliminary review of the MLAT request and the underlying treaty to confirm the following:
  - a. An MLAT exists with the requesting jurisdiction;
  - b. The MLAT was in force as of the date of the request;
  - c. The request includes a referral letter from DOJ OIA to CI:IO;
  - d. The request includes a referral memorandum from CI:IO to the EOI Program;
  - e. The deadline for obtaining the information is reasonable under the circumstances;
  - f. Whether a certification other than records authentication is requested;
  - g. Whether the request seeks return information, taxpayer return information, or both; and
  - h. There is an English translation of any request in a foreign language.

If the DOJ OIA referral letter or CI:IO referral memorandum is missing, the EOI analyst should contact CI:IO to obtain copies of these documents.

- (4) When the preliminary review is complete, the EOI analyst prepares a cover memorandum and forwards the MLAT request to Associate Chief Counsel (International), Branch 7 (ACCI-Br7) for review. The referral package for ACCI-Br7 includes the foreign-initiated request and English translation if applicable, the corresponding DOJ OIA letter, the CI:IO memorandum, and EOI's determination as to whether the request seeks return information, taxpayer return information, or both.

**Note:** If tax information is requested for **non-tax** use under an instrument other than a valid MLAT, the IRS is not authorized to release the information. The EOI analyst must consult ACCI-Br7 whenever this situation arises.

- (5) ACCI-Br7 reviews the request and the corresponding MLAT provisions to determine whether disclosure of the requested returns and/or return information to the foreign partner is appropriate under IRC 6103(k)(4), and what conditions, if any, must be satisfied before the disclosure is made.
- (6) If the MLAT request seeks tax information for use in a **foreign criminal tax administration matter**, disclosure may be appropriate under IRC 6103(k)(4). Upon review of the MLAT request to verify that the intended use is for criminal tax administration purposes and confirm that the relevant MLAT qualifies as a tax convention under IRC 6103(k)(4), ACCI-Br7 provides a **(k)(4) letter** to the EOI Program confirming that disclosure is appropriate under the statute and

summarizing any preconditions to disclosure as necessary. Precautions such as double-sealing the contents of responsive document packages should be taken when disclosures are made under IRC 6103(k)(4), as DOJ OIA is generally not to review the materials, and rather acts only to transmit them to the foreign Central Authority.

- (7) If the MLAT request seeks tax information for use in a **foreign criminal non-tax administration matter**, upon review of the request, ACCI-Br7 provides to the DOJ Tax Division a legal opinion letter confirming that disclosure is appropriate under the statute and summarizing any preconditions to disclosure as necessary. In the letter, copied to DOJ OIA, ACCI-Br7 requests that the DOJ Tax Division assist by helping secure one of the following documents:
  - a. An IRC 6103(i)(1) **court order**, where execution of the MLAT request requires the production of taxpayer return information (return information filed with or furnished to the IRS by or on behalf of the taxpayer, including a filed tax return); or
  - b. An IRC 6103(i)(2) **request** from the DOJ Assistant Attorney General, Tax Division or the U.S. Attorney, where execution of the MLAT request requires the production of return information other than taxpayer return information.
- (8) Upon receipt of the ACCI-Br7 disclosure approval letter (in the case of a (k)(4) letter), the (i)(1) court order, or the (i)(2) request, as applicable, the EOI Program obtains the original returns and return information (in the form of electronic records if the returns were filed electronically, or via request to the IRS Campus if the returns were filed on paper) and makes as many copies of the returns as necessary. The EOI Program will then complete an appropriate certification of the authenticity of the copy(ies), adhering to any certification requirements specified in the MLAT itself.
- (9) In the case of information obtained per a (k)(4) letter, after the return copies have been obtained and certified and any other requested return information has been obtained, the EOI analyst proceeds to the actions described in paragraph (10) below. In the case of information obtained per an (i)(1) court order or (i)(2) request, the EOI analyst transmits the following information to the IRS Privacy, Governmental Liaison and Disclosure business unit's Disclosure Headquarters office (Disclosure) under the approval of EOI management:
  - a. A cover memorandum requesting Disclosure's authorization to disclose the returns and return information to the foreign Central Authority under the MLAT;
  - b. A draft Competent Authority letter addressed to DOJ OIA to forward the returns and return information for release to the foreign Central Authority, which references the statutory basis for disclosure (IRC 6103(i)(1) or IRC 6103(i)(2)) and includes a summary list of the returns and return information being released to the foreign Central Authority excluding any specific return information;
  - c. A copy of the (i)(1) court order or (i)(2) request; and
  - d. The return certifications completed by the EOI Program.

After reviewing the above transmittal, Disclosure provides to the EOI analyst a memorandum authorizing disclosure of the returns and return information to the foreign Central Authority under the MLAT. (For more information about Disclosure's role pertinent to MLAT requests, see IRM 1.2.2.11.2, Delegation Order 11-2, Authority to Permit Disclosure of Tax Information and to Permit

Testimony or the Production of Documents, and IRM 1.2.2.11.5, Delegation Order 11-5, Seal of the Office of the Internal Revenue Service and Certification to the Authenticity of Official Documents.)

- (10) After obtaining and certifying the returns and return information (in the case of information obtained per a (k)(4) letter), or after obtaining the above authorization to disclose the returns and return information from Disclosure (in the case of information obtained per an (i)(1) court order or (i)(2) request), the EOI analyst submits the below information to EOI management for signature by a party authorized under Delegation Order 4-12 (as revised):
  - a. A draft Competent Authority letter addressed to DOJ OIA to forward the returns and return information for release to the foreign Central Authority, which references the statutory basis for disclosure (IRC 6103(k)(4), IRC 6103(i)(1), or IRC 6103(i)(2)) and includes a summary list of the returns and return information being released to the foreign Central Authority excluding any specific return information;
  - b. A copy of the (k)(4) letter, (i)(1) court order, or (i)(2) request; and
  - c. The responsive returns, return certifications, and return information, placed in a sealed envelope addressed to the foreign Central Authority.
- (11) After the above package has been approved by EOI management and signed by the appropriate party under Delegation Order 4-12 (as revised), the EOI analyst delivers the information to DOJ OIA for forwarding to the foreign Central Authority.
- (12) Within 7 calendar days after the information has been delivered to DOJ OIA, the EOI analyst associates a copy of the signed and dated Competent Authority letter with the case, transmits a completed IRS Form 5466-B, Multiple Records of Disclosure, to the appropriate IRS Campus, and submits the IMS case to EOI management for closure, ensuring all required IMS information is input fully and accurately. (For more information about Form 5466-B and general EOI case processing procedures, see IRM 4.60.1.2.5, United States-Initiated and Foreign-Initiated Specific Requests for Information – Additional Administrative Procedures for EOI Personnel.)

4.60.1.8  
(10-15-2018)  
**Freedom of Information Act (FOIA) Requests for Information Received from a Foreign Tax Authority**

- (1) When a taxpayer submits a request under the Freedom of Information Act to access information in the taxpayer's IRS file obtained from a foreign jurisdiction pursuant to an international exchange agreement (whether the information was obtained via a U.S.-initiated or foreign-initiated request for information), an assigned EOI analyst must review the information considered for release to the taxpayer. In conjunction with IRS Disclosure office personnel, the EOI analyst must make specific recommendations as to what, if any, of the information may be released per applicable law, EOI agreements, regulations, and policies. These requests are coordinated through the office of the Program Manager, Exchange of Information (EOI Program).
- (2) As described above in IRM 4.60.1.1.2, Authority, the improper disclosure of returns, return information, and other sensitive data by the IRS may result in the impairment of tax administration and/or damage to intergovernmental relations. EOI analysts assigned to review FOIA requests related to exchanged information, in consultation with EOI management, must therefore ensure any disclosures of such information are appropriate under IRC 6103 and IRC 6105 and the relevant international exchange agreement. For more information, see

IRC 6103(e)(7), IRC 6105(b)(4), and IRM 11.3.25, Disclosure to Foreign Countries Pursuant to Tax Treaties.

4.60.1.8.1  
(02-23-2023)  
**FOIA Referrals -  
Procedures for EOI  
Personnel**

- (1) The EOI Program's review of a FOIA request related to an international exchange of tax-related information entails evaluation of the material being considered for release to the requesting taxpayer under the standards, exemptions, and exclusions set forth under FOIA (5 USC 552), relevant case law, and administrative guidance issued by the U.S. Department of Justice. More information about these standards, exemptions, and exclusions can be obtained from the Department of Justice's Office of Information Policy.

**Note:** Strict statutory time limits apply to responses to FOIA requests. For more information, see IRM 11.3.13.6.2, Extension Letters.

- (2) Upon receipt of a FOIA referral from the IRS Privacy, Governmental Liaison and Disclosure business unit's Disclosure Headquarters office (Disclosure), forwarded through the LB&I Audit and Legislative Liaison office, the assigned EOI analyst should ensure Disclosure has provided the entirety of the responsive documentation within the scope of the FOIA request, including the complete administrative file. The EOI analyst should also request an index of all redactions and withholdings proposed by Disclosure and the originating IRS examination office (the examination area being the source of most FOIA requests referred to the EOI Program), as applicable.
- (3) Upon initial review of the referral, the EOI analyst should assert all applicable FOIA exemptions and exclusions and identify any other defects pertinent to IRC 6103 and IRC 6105. The EOI analyst should not assume the EOI Program will be afforded any additional opportunities to assert additional exemptions, exclusions, or defects in case a previous assertion is found inapplicable or otherwise invalid.

**Note:** For FOIA requests relating to foreign-initiated requests for information, the EOI analyst must contact the foreign Competent Authority to determine if any objections to disclosure exist.

- (4) The EOI analyst's review of the information referred by Disclosure must include the following items:
  - a. Information related to an exchange of information conducted pursuant to an international exchange agreement;
  - b. Any other information which references a foreign partner, international exchange of information, the EOI Program or EOI personnel, or communications therewith;
  - c. Any other information which falls within the jurisdiction of the Commissioner, LB&I. Such information should in particular include, but not necessarily be limited to, matters pertaining to transfer pricing and Advance Pricing and Mutual Agreement (APMA) issues.

The EOI analyst's review of the information may also include a review of other sensitive information, including, but not limited to, third-party personally identifiable information (PII), intellectual property, or trade secrets. In addition, where information referred to the EOI Program by Disclosure contains material, or references thereto, the release of which to the public would be inconsistent with IRS FOIA and disclosure policy, the EOI analyst should recommend redaction or withholding, as appropriate, if not already identified by Disclosure.

Such material may include, but is not necessarily limited to, databases, systems, or other documentation utilized by the IRS which contain taxpayer or other sensitive information (for example, certain reports and/or data from the Integrated Data Retrieval System (IDRS), Related Statute Memoranda, unrelated data from Accurint, etc.); information containing or referencing other sensitive, non-public federal, state, and local government data (for example, Suspicious Activity Reports (SARs), U.S. Department of the Treasury Financial Crimes Enforcement Network (FinCEN) documents, etc.); and information containing or referencing internal IRS discussions and/or references to fraud. Disclosure office guidance covering releasable and nonreleasable material is further detailed in IRM 11.3.13, Freedom of Information Act.

- (5) After reviewing the referred information, the EOI analyst should prepare and submit to EOI management for transmittal to Disclosure a memorandum listing the page and file number for all proposed redactions and withheld material, accompanied by a justification for the proposed redactions and withholdings (to include the applicable exemption, exclusion, defect, etc.). The EOI analyst will inform the LB&I Audit and Legislative Liaison office when the memorandum is forwarded to Disclosure and the FOIA matter is closed by EOI.
- (6) FOIA referrals should generally be treated as regular EOI cases for administrative and inventory tracking purposes, including entry and maintenance of the case and all pertinent documents (for example, the FOIA request, the list of redactions proposed by Disclosure and the originating IRS examination office (if available), and the EOI Program's proposed response and recommendations to Disclosure), correspondence (for example, between Disclosure and the EOI Program), notes, and related information in the EOI Inventory Management System (IMS). FOIA cases should be opened in IMS within 7 calendar days after receipt of the FOIA referral, and submitted to EOI management for closure in IMS within 7 calendar days after completion of EOI processing of the referral, ensuring all required IMS information is input fully and accurately. If a FOIA referral is submitted to the EOI Program on physical media, the EOI analyst must generally also maintain a physical case folder for the referral to contain the physical media, including any passwords necessary to access the physical media. (For more information about general EOI case processing procedures, see IRM 4.60.1.2.5, United States-Initiated and Foreign-Initiated Specific Requests for Information – Additional Administrative Procedures for EOI Personnel.)

4.60.1.9  
(10-15-2018)  
**Industry-wide  
Exchanges of  
Information**

- (1) Industry-wide exchanges of information entail meetings or discussions between the tax officials of two or more international exchange agreement partner jurisdictions that do not involve taxpayer-specific information (for example, returns or return information). Rather, these exchanges focus on issues, trends, policies, and operating practices in particular industries, economic sectors, or other areas of common interest. These exchanges are coordinated through the office of the Program Manager, Exchange of Information (EOI Program).
- (2) During an industry-wide exchange, specific taxpayers are not discussed, and no specific taxpayer information is exchanged. Any request made by a foreign partner for specific taxpayer information is instead processed pursuant to the exchange of information articles of the applicable international exchange agreements under the specific exchange of information (EOIR) program.



- (3) Any information obtained through an industry-wide exchange should only be disclosed to those persons whose official tax administration duties with respect to the industry issues discussed require such disclosure.
- (4) The objective of such exchanges is to promote international cooperation in achieving a comprehensive understanding of worldwide industry practices and operating patterns.
- (5) The scope of an industry-wide exchange is established by an exchange of letters between the Competent Authorities of the U.S. and the foreign partner(s) involved. Generally, the Commissioner, LB&I will select a Designated Representative to coordinate the exchange and to provide status reports on exchange-related activities.

4.60.1.10  
(02-23-2023)  
**Automatic Exchange of  
Information (AEOI)  
Program**

- (1) Many foreign partners agree to exchange certain tax- or financial account-related information on a regular and systematic basis, without the need for a specific request pursuant to a tax treaty or tax information exchange agreement. These exchanges are referred to as automatic exchanges of information.
- (2) The Automatic Exchange of Information (AEOI) Program administers and coordinates all automatic exchanges of information between the U.S. and host country tax authorities (HCTA).
- (3) The AEOI Program exchanges the following information, referred to in this IRM as "AEOI Data," on an automatic basis:
  - a. Foreign Account Tax Compliance Act (FATCA) financial account data exchanged between the IRS and the FATCA partner.
  - b. Certain information related to the Organisation for Economic Co-operation and Development's (OECD) Base Erosion and Profit Shifting (BEPS) project (Country-by-Country Reporting).
  - c. Information on certain U.S.-sourced FDAP payments to foreign persons and foreign-sourced FDAP payments to U.S. persons (traditional automatic exchange).
- (4) The AEOI Program also coordinates activities with internal business units and HCTAs with respect to FATCA intergovernmental agreements, confidentiality and data safeguards, and Competent Authority Arrangements relating to automatic exchange of information .
- (5) AEOI data is subject to the disclosure and confidentiality policies and procedures described in IRM 4.60.1.1.2, Authority.

4.60.1.10.1  
(10-15-2018)  
**FATCA Overview**

- (1) The AEOI Program oversees the incoming transmissions from Model 1 jurisdictions and FFIs in Model 2 jurisdictions and facilitates the reciprocal exchange of data to Model 1A jurisdictions.
- (2) Together with the FATCA CAAs, the provisions of the IGAs primarily describe the due diligence, reporting, withholding, compliance, and enforcement procedures for HCTAs and FFIs.



4.60.1.10.1.1  
(10-15-2018)  
**Model 1 IGA**

- (1) Pursuant to Model 1 IGAs, HCTAs agree to report annually to the IRS specified information about the U.S. accounts maintained by all relevant FFIs located in their jurisdictions. HCTAs must create an account with the International Data Exchange Service (IDES) to securely transmit FATCA data to the IRS.
- (2) HCTAs must transmit the specified information, relating to the previous tax year, by September 30th.
- (3) Most FFIs located in a Model 1 IGA jurisdiction must register with the IRS and obtain a Global Intermediary Identification Number (GIIN).
- (4) FFIs must identify U.S. accounts in accordance with the due diligence rules contained in Annex I of the IGA and report the specified information about the U.S. accounts to their HCTA.
- (5) The information to be obtained and exchanged includes the account holder's name, address, and U.S. TIN; the account number; the name and GIIN of the FFI; the account balance or value; and certain interest, dividends, and other income generated by the assets held in the account.
- (6) FFIs may also be required to withhold 30 percent of any "U.S. Source Withholdable Payment" (as defined in the IGA) to any Nonparticipating Financial Institution.

4.60.1.10.1.1.1  
(10-15-2018)  
**Model 1 IGA –  
Compliance**

- (1) Most FFIs will file FATCA reports (IRS Form 8966) electronically via IDES. The FATCA XML schema governs the structure and content of files for the electronic Form 8966. However, in limited cases, FFIs may file a paper Form 8966.
- (2) HCTAs should seek to ensure that FFIs identify and report all FATCA information to them so that such information is available for timely exchange. Non-compliance with the IGA may be administrative or minor in nature, or may constitute significant non-compliance.
- (3) Administrative and other minor errors include incorrect or incomplete reporting of FATCA information or other errors that result in infringements of the IGA that do not rise to the level of significant non-compliance.
- (4) The receiving partner will notify the providing partner of such administrative or other minor errors. The providing partner should then apply its domestic law (including applicable penalties) to obtain complete and correct information or to resolve the errors and exchange such information with the receiving partner.
- (5) The U.S. Competent Authority has the discretion to determine whether there is significant non-compliance with the obligations set forth in the IGA with respect to a Reporting Financial Institution in a partner jurisdiction. The U.S. Competent Authority also has the discretion to determine significant non-compliance based on failure to satisfy due diligence, reporting, withholding and other obligations with respect to an FFI.
- (6) Examples of significant non-compliance include, but are not limited to, reporting failures, failure to timely correct, failure to withhold on certain U.S. source withholdable payments, failure to provide certain information required for withholding and reporting, or failure to comply with applicable registration requirements.

- (7) The receiving partner will notify the providing partner of significant non-compliance with respect to a Reporting Financial Institution. The providing partner should then apply its domestic law (including applicable penalties) to address the significant non-compliance addressed in the notice. The Competent Authorities may consult on the steps needed to address such non-compliance.
- (8) The HCTA should notify the relevant Reporting Financial Institution of the significant non-compliance determination, including the date the U.S. Competent Authority provided notice to the HCTA. The notice will indicate that if significant non-compliance is not cured within a period of 18 months after the date the U.S. Competent Authority provided notice to the HCTA, the relevant Reporting Financial Institution may be treated as a Nonparticipating Financial Institution and may be removed from the FFI list, and may therefore be subject to withholding under IRC 1471(a).

4.60.1.10.1.2  
(10-15-2018)

**Reciprocal Information  
Exchange – Conditions  
to Exchange**

- (1) The Model 1A IGA provides for reciprocal information exchange between the U.S. Competent Authority and the HCTA.
- (2) Prior to exchanging information with an HCTA, the AEOI Program will confirm that several required conditions have been met. The obligation to exchange information does not commence until all of the following conditions are met:
  - a. The foreign partner provides written notification that its internal procedures have been completed for the IGA's entry into force.
  - b. The U.S. Competent Authority and the foreign partner have executed a Competent Authority Arrangement to implement the IGA provisions.
  - c. All data safeguards and infrastructure elements have been evaluated and each Competent Authority has provided written notification to the other Competent Authority that it is satisfied that the jurisdiction of the other Competent Authority has in place the appropriate safeguards.
  - d. The HCTA has confirmed registration on IDES to exchange information and provide notices pursuant to the IGA.
  - e. The jurisdiction is included in the current list published by the Department of the Treasury and the IRS (commonly referred to as the "bank deposit interest" or "BDI" list) identifying the jurisdictions with which it has been determined appropriate to have an automatic exchange relationship with respect to the information collected under 26 CFR 1.6049-4(b)(5) and 26 CFR 1.6049-8(a). See Revenue Procedure 2017-46.

4.60.1.10.1.2.1  
(10-15-2018)

**Reciprocal Information  
Exchange – Procedures  
for AEOI Personnel**

- (1) Prior to the filing deadline, request reciprocal data from Data Solutions to review files for any minor or administrative errors.
- (2) Confirm the jurisdiction is eligible to receive reciprocal data.
- (3) For eligible jurisdictions, notify the HCTA of the impending transmission and provide instructions to download the files within 7 days. After 7 days, the data will expire.
- (4) Following transmission of the files, verify the HCTA has downloaded the file(s) via the International Compliance Management Model (ICMM) Web Application.
- (5) Resolve other transmission issues as applicable.

4.60.1.10.1.3  
(10-15-2018)  
**Model 2 IGA**

- (1) Pursuant to Model 2 IGAs, all relevant FFIs located in the partner jurisdiction must report specified information about their U.S. accounts directly to the IRS. Such FFIs must create an account with IDES and obtain a GIIN to securely transmit FATCA data to the IRS. FFIs must agree to comply with the terms of the FFI agreement, which includes due diligence, reporting, and withholding requirements.
- (2) Generally, reporting Model 2 FFIs must transmit the specified information, relating to the previous calendar year, by March 15th (Switzerland and Chile must file by January 31st).
- (3) Reporting Model 2 FFIs also report to the IRS aggregate information with respect to holders of preexisting accounts who do not consent to have their account information reported, on the basis of which the IRS may make a “group request” (Competent Authority Request (CAR)) to the HCTA for more specific account information. For more information on such requests, see IRM 4.60.1.10.2.3, Aggregate Account Information and Competent Authority Requests (CARs).
- (4) FFIs may also be required to withhold 30 percent of any “U.S. Source Withholdable Payment” (as defined in the IGA) to any Nonparticipating Financial Institution.

4.60.1.10.1.3.1  
(10-15-2018)  
**Model 2 IGA –  
Compliance**

- (1) The U.S. Competent Authority may make an inquiry directly to an FFI about administrative errors or other minor errors that may have led to incorrect or incomplete information reporting.
- (2) The Competent Authority Arrangement may provide that the U.S. Competent Authority notifies the HCTA when the U.S. Competent Authority makes such an inquiry of an FFI about the FFI’s compliance with the conditions set forth in the IGA.
- (3) The U.S. Competent Authority will notify the HCTA when the U.S. Competent Authority has determined the FFI is significantly non-compliant with the requirements of an FFI agreement or the IGA. If the significant non-compliance is not cured within a period of 12 months after the date the U.S. Competent Authority provided notice to the HCTA, the relevant Reporting Financial Institution may be treated as a Nonparticipating Financial Institution and may be removed from the FFI list, and may therefore be subject to withholding under IRC 1471(a).
- (4) Generally, the United States will not require a Model 2 FFI to withhold tax under IRC 1471 or IRC 1472 with respect to an account held by a recalcitrant account holder or close such account if the Model 2 FFI complies with the terms of the IGA (including, but not limited to, reporting the accounts, as applicable). However, if after 6 months (or 8 months, as prescribed in the applicable IGA) from the date of a request for information about a non-consenting account, a Model 2 FFI has not exchanged the relevant information, the FFI will be required to withhold tax with respect to such account.

4.60.1.10.1.4  
(10-15-2018)  
**Non-IGA Jurisdictions**

- (1) An FFI located in a jurisdiction that is not treated as having in effect an IGA, to avoid being withheld upon under Chapter 4, must register and agree to comply with the terms of an FFI agreement and obtain a GIIN, unless it is able to qualify as a certified deemed-compliant FFI or exempt beneficial owner.

- (2) The FFI agreement (Revenue Procedure 2014-38, as amended) provides guidance on the FATCA requirements for participating FFIs and reporting Model 2 FFIs. This agreement sets forth the FFI's due diligence, withholding, information reporting, tax return filing, and other obligations as a participating FFI.
- (3) Under IRC 1471(c) and 26 CFR 1.1471-4(d), a participating FFI is required to report to the IRS annually certain specific payee information with respect to U.S. accounts that it maintains. A participating FFI is also required to report certain aggregate account information with respect to specified Chapter 4 reporting pools (as described in 26 CFR 1.1471-4(d)(6)(i)) of its recalcitrant account holders.
- (4) In the future, the AEOI Program may make group requests to foreign non-IGA jurisdictions with which the United States has a tax treaty or tax information exchange agreement for more specific account information.

4.60.1.10.2  
(10-15-2018)

**Administration of FATCA**

- (1) With respect to the implementation of FATCA with Model 1 and Model 2 IGA jurisdictions, the AEOI Program coordinates with internal business units and foreign tax authorities to ensure compliance with the applicable FATCA provisions.
- (2) The procedures described in this subsection relate to the administration of FATCA information exchanged annually by Model 1 IGA jurisdictions and Model 2 IGA FFIs.

4.60.1.10.2.1  
(10-15-2018)

**Error Notifications**

- (1) The IRS transmits notifications to acknowledge the status of received files and records of account report data from FFIs, NFFEs, and HCTAs. The notifications can be either acknowledgements that files and records have been successfully received and processed, or error messages from the IRS to the filer (sender) indicating the type of error encountered.
- (2) ICMM generates notifications from the IRS to filers, and such notifications are issued at the file or record level. All notification data is prepared in XML format, using notification schemas developed by the IRS.
- (3) ICMM will attempt to download and process FATCA files in two stages, file-level processing and record-level processing.
  - a. File-level processing error notifications, which consist of notifications N1 - N4.3, refer to transmission download, file decryption, file decompression, digital signature check, threat scanning, virus scanning, schema validation, and specific schema field value validation errors. If a file failed at any of these stages, ICMM sends a file-level processing error notification to the sender.
  - b. Once a file passes all interim file processing checks (decryption, decompression, threat detections, virus scan, etc.), a valid file notification (NVF), or N5 notification, is transmitted to the filer. An N5 notification indicates the file passed validation and informs the filer whether there are record-level errors that require further action. These record-level errors generally include data or formatting errors, for example, TIN not populated.
- (4) A FATCA transmission file may consist of one or many FATCA records (IRS Form 8966). ICMM generates one N5 notification for each FATCA transmis-

sion. The N5 notification will contain details of the errors, if any. The notification requests correction of these errors within 120 days.

- (5) Notifications to the filer are sent through ICMM within 15 days of successful receipt of a file. Filers must download a notification within 7 days or the notification will be deleted by the IDES platform.
- (6) To support the implementation of the IGAs, the AEOI Program monitors error notifications sent electronically to Model 1 IGA HCTAs to ensure accurate and timely corrections of minor and administrative errors.

#### 4.60.1.10.2.1.1

(02-23-2023)

#### **Error Notifications – Procedures for AEOI Personnel**

- (1) Review reports for expired error notifications. Error notifications not downloaded within 7 days of upload to IDES are automatically deleted. Generally, ICMM will automatically regenerate and retransmit the expired error notification every 30 days, limited to 3 attempts. Draft an official letter to the HCTA in the event that a notification is not downloaded by the HCTA after three failed attempts to transmit the notification.
- (2) Review reports for record-level error notifications and complete the following actions:
  - a. Create and maintain a case in the EOI Inventory Management System (IMS) to track the record-level error notifications. On each date any action is taken, including, but not limited to, the receipt or issuance of email correspondence and the holding of meetings or phone calls, all related actions and documents must be promptly recorded in and uploaded to the IMS case.
  - b. Prepare and issue a follow-up letter to the HCTA on LB&I Commissioner letterhead addressing the applicable record-level error notification(s) 60 days from the date the notification was made available for download. Letters sent via email must be password-protected.
  - c. Every 30 days after issuance of the follow-up letter, request a status update from the HCTA, including a description of any issues encountered in correcting the errors.
  - d. Once the corrections have been submitted and confirmed, send a final closing letter to the HCTA on LB&I Commissioner letterhead, update IMS, and submit the case to AEOI management for closure.
  - e. If after 120 days, the HCTA is nonresponsive to correspondence or shows a lack of good faith in correcting the errors, the U.S. Competent Authority may consult with the HCTA to discuss further enforcement, which could include a finding of significant non-compliance.

#### 4.60.1.10.2.2

(10-15-2018)

#### **Foreign Financial Institutions Registration Data**

- (1) FFIs registered with the IRS are issued a GIIN and will appear on the Foreign Financial Institution list (FFI list).
- (2) As set forth in the FATCA CAAs, the U.S. Competent Authority intends to annually provide the information necessary to identify each registered FFI in its jurisdiction on the FFI list.
- (3) The FFI registration information includes the names of registered FFIs, GIINs, responsible officers, and contact information.
- (4) The information is self-reported by the FFIs through the FATCA registration portal during the registration process.

4.60.1.10.2.2.1  
(10-15-2018)

**Foreign Financial  
Institutions Registration  
Data – Eligibility**

- (1) AEOI analysts will confirm a foreign partner's eligibility to receive registration data under Paragraph 2 of the FATCA CAA prior to sending FFI registration data. The following requirements must be met to receive the registration data:
  - a. The foreign partner's IGA has entered into force.
  - b. The U.S. Competent Authority and the foreign partner have executed a Competent Authority Arrangement to implement the IGA provisions.
- (2) Jurisdictions not meeting either of these eligibility requirements can make a specific request under an applicable exchange agreement to obtain the registration data.

4.60.1.10.2.2.2  
(02-23-2023)

**Foreign Financial  
Institutions Registration  
Data – Procedures for  
AEOI Personnel**

- (1) Complete the following actions in the fourth quarter of each calendar year with respect to jurisdictions eligible to receive registration data:
  - a. Create and maintain one case per jurisdiction for spontaneously exchanging registration data in IMS.
  - b. Prepare a cover letter to the HCTA on LB&I Commissioner letterhead.
  - c. AEOI management will request registration data from the registration team, which is then delivered to a secure shared network drive. Based on the HCTA's preference, either download the data onto a CD-ROM with password protection, or SecureZIP the data file together with the cover letter using password protection.
  - d. Include the following text on each page of the cover letter and any files sent together with the cover letter: **This information is furnished under the provisions of an international exchange agreement with a foreign government. Its use and disclosure must be governed by the provisions of that agreement.**
  - e. If directed by AEOI management, prepare an IRS Form 13839-A, Note to Reviewer For a Signature Package, or equivalent, to complete a signature package.
- (2) Once the HCTA acknowledges receipt and the password has been provided to the HCTA, update IMS and submit the case to AEOI management for closure.

4.60.1.10.2.3  
(10-15-2018)

**Aggregate Account  
Information and  
Competent Authority  
Requests (CARs)**

- (1) Model 2 FFIs that are prohibited under the laws of the jurisdiction of residence from reporting a preexisting U.S. account as required by FATCA must request consent from the account holder to report such account. If consent is not provided, the Model 2 FFI must report to the IRS aggregate information for all non-consenting account holders (pooled reporting). This pooled reporting requirement extends to nonparticipating financial institutions for 2015 and 2016.
- (2) The U.S. Competent Authority may request additional information from the HCTA with respect to the unidentified accounts underlying the pooled reporting. Such requests will take the form of Competent Authority Requests (CARs). CARs are "group requests" relating to an ascertainable group or class of persons which do not specifically identify any individual taxpayer(s). Pursuant to a CAR, the HCTA is expected to obtain and exchange the information the reporting FFI would have reported to the IRS had the FFI obtained consent from the account holder.
- (3) In response to a CAR, the HCTA will transmit to the IRS the requested information in the same format in which the information would have been reported if it had been reported directly to the IRS by the FFI.



- (4) The HCTA must provide the requested information within a defined period, within either 6 or 8 months of the receipt of the group request, as prescribed in the applicable IGA. If there will be a delay in the exchange of the requested information, the HCTA must notify the U.S. Competent Authority as soon as possible.
- (5) If the requested information is not exchanged within the prescribed time, the reporting Model 2 FFI must treat the account as held by a recalcitrant account holder, and must withhold tax where required by U.S. Treasury Regulations. The FFI must continue such treatment until the HCTA exchanges the requested information with the U.S. Competent Authority.
- (6) Prior to making a CAR, the AEOI Program confirms the following conditions:
  - a. The foreign partner's IGA has entered into force; and
  - b. The underlying agreement authorizing the U.S. Competent Authority to make group requests, i.e., a tax treaty or TIEA, has entered into force. If there is no such underlying exchange agreement, the IGA will authorize the exchange of information per such group requests.

4.60.1.10.2.3.1  
(10-15-2018)  
**Pooled Reporting**

- (1) Reporting Model 2 FFIs use Part V of IRS Form 8966, FATCA Report, to report aggregate account information. The reporting Model 2 FFI must file a separate Form 8966 annually for each class of account holders described in 26 CFR 1.471-4(d)(6), the number of accounts included in each reporting pool, and the aggregate account balance or value of such accounts.
- (2) Pooled reporting forms the basis for follow-up action between the U.S. Competent Authority and the HCTA to obtain the specific account information underlying the pooled reporting.
- (3) ICMG generates CARs for each electronic and paper pooled report and any subsequent amended or voided pooled report received from a reporting Model 2 FFI. The generated CAR contains the information reported on Part V of Form 8966.
  - a. ICMG will generate a New Amended CAR if a valid amended pooled report is transmitted by a reporting Model 2 FFI after an initial submission.
  - b. ICMG will generate a CAR Withdrawal if a valid void pooled report is transmitted by a reporting Model 2 FFI after an initial submission.

4.60.1.10.2.3.2  
(10-15-2018)  
**CARs – Procedures for  
AEOI Personnel**

- (1) Review reports for CARs generated as a result of the pooled reporting received from reporting Model 2 FFIs, and complete the following actions for each jurisdiction with a Model 2 IGA that has entered into force:
  - a. Create and maintain a case in the EOI Inventory Management System (IMS) to track the review and transmittal of CARs. All related actions and documents must be promptly recorded in and uploaded to the IMS case, including, but not limited to, email correspondence, the holding of meetings or phone calls, other activities related to the CAR, and the corresponding response from the HCTA.
  - b. Review each CAR for accuracy and notate for each report: number of account holders; aggregate payment; currency reported; FFI name and GIIN; tax year for which the information relates; Alert ID; CAR ID; and DocRefID.

- c. Submit the CAR details to AEOI management for review, approval, and transmission via IDES to the HCTA.
  - d. After AEOI management transmits the CAR, notify the HCTA to download the CAR(s) within 7 days. Expired CARs will require retransmission.
  - e. Every 30 days after issuance of the CAR, request a status update from the HCTA, including a description of any issues encountered in obtaining the requested information.
- (2) Monitor HCTA responses using ICMM and Business Objects Enterprise (BOE) reports, and complete the following actions for each CAR submitted:
- a. Review the ICMM CAR status, which will indicate: no response; partial response; response complete; or more responses than accounts.
  - b. Review the BOE CAR reports, which contain the information on the specific accounts reported and corresponds to Form 8966 Parts I through IV. Such information includes the account owner name, account value, the amount and character of income, and the reporting FFI name and GIIN.
  - c. Reconcile the aggregate information from the pooled reporting to the specific account information contained in the BOE CAR reports.
  - d. Follow up on any material discrepancies.
- (3) After obtaining all requested information, review the information for completeness and prepare and submit in IMS the following documentation to the AEOI Program Manager, who will review, sign, and issue the final closing letter to the HCTA on behalf of the Commissioner, LB&I per Delegation Order 4-12 (as revised):
- a. A final closing letter to the HCTA on LB&I Commissioner letterhead.
  - b. Associated background information, including any relevant correspondence, and if directed by AEOI management, an IRS Form 13839-A, Note to Reviewer For a Signature Package, or equivalent.
- (4) Once the letter is sent to the HCTA, submit the IMS case to AEOI management for closure, ensuring all required IMS information is input fully and accurately.
- (5) If the requested information is not exchanged within the prescribed time, or the HCTA has not notified the U.S. Competent Authority of any delays, the U.S. Competent Authority may consult with the HCTA to discuss further enforcement, which could include a finding of significant non-compliance.

4.60.1.10.3  
(02-23-2023)

#### Access to AEOI Data

- (1) Strict adherence to all applicable disclosure and confidentiality provisions is required of all IRS employees, including AEOI analysts, accessing AEOI data received from a foreign partner. For details, see IRM 4.60.1.1.2, Authority.
- (2) Information received by the U.S. Competent Authority from foreign tax officials pursuant to an international exchange agreement is to be used and safeguarded by the IRS in accordance with the disclosure and confidentiality provisions of the relevant agreement and IRC 6103 and IRC 6105. To caution against unauthorized disclosures, AEOI personnel within the office of the delegated U.S. Competent Authority (the Commissioner, LB&I) include the following text on all information provided or received pursuant to an international exchange agreement: **This information is furnished under the**

**provisions of an international exchange agreement with a foreign government. Its use and disclosure must be governed by the provisions of that agreement.**

- (3) Questions about disclosure rules applicable to automatic exchange of informa-

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4.60.1.10.3.1  
(10-15-2018)  
**Access to FATCA Data**

- (1) All requests initiated by IRS personnel for access to FATCA data must be in writing. Each request must provide sufficient background information about the examination, investigation or other tax administrative procedure to ensure the relevance of the request to the examination, investigation, or procedure and the nature of the information being requested.
- (2) A request is initiated by emailing the AEOI Program Manager or the general
- (3) The requester should complete a FATCA Information Request Form and attach the form to the request email.

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4.60.1.10.3.1.1  
(02-23-2023)  
**Access by IRS  
Personnel to FATCA  
Data Based on  
Memorandum –  
Procedures for AEOI  
Personnel**

- (1) Within 7 calendar days after receipt of a request, create and maintain a case for the request in IMS. On each date any action is taken on the request, including, but not limited to, the receipt or issuance of correspondence, the completion of research, and other activities related to the request, all related actions and documents must be promptly recorded in and uploaded to the IMS case.
- (2) Within 7 calendar days after receipt of a request, send an acknowledgement to the requester. This acknowledgement must identify the request by the assigned IMS Request Number. Send the requester the FATCA Information Request Form if not included in the original request.
- (3) Within 30 calendar days after receipt of a request, review the request and applicable treaty or agreement to determine whether the request is valid. If necessary, consult the initiator to clarify the request.
- (4) If the information requested relates to an ongoing grand jury investigation or other judicial proceeding in a criminal case, the AEOI analyst assigned to the request will confirm that the litigating Department of Justice attorney has approved the request and discuss with AEOI management any applicable restrictions on the use of information exchanged pursuant to FATCA. Such limitations may arise from the confidentiality and use provisions of the applicable treaty or agreement. For other procedures concerning requests for information related to U.S. grand jury investigations, see IRM 4.60.1.2.3.1, United States-Initiated Specific Requests Related to U.S. Grand Jury Investigations.
- (5) Within 30 calendar days after receipt of the request, and once the request is determined to be valid and to meet the applicable standards, the AEOI Program will oversee the retrieval of the requested data by IRS Data Solutions (DS) or Foreign Payments Practice (FPP) using the Business Objects Enterprise (BOE) Web Intelligence database or any other resources applicable. The AEOI analyst prepares a memo addressed to the ICMM or FPP Senior Manager from the AEOI Program Manager. The AEOI analyst will forward the FATCA Information Request Form with the memo.

- (6) Once the requested information is retrieved by DS and/or FPP, review the information to determine if the information is relevant to the specified subject(s).
- (7) Within 15 calendar days after DS or FPP retrieves the requested information, prepare and submit in IMS for managerial approval the following documentation:
  - a. IRS Form 13839-A, Note to Reviewer For a Signature Package, or equivalent.
  - b. A cover memorandum addressed to the requester on LB&I letterhead with the information retrieved (referenced as an attachment) or a statement to the effect that the information requested was not found.
  - c. An attachment consisting of the information retrieved. Ensure the following watermark label is included on every page of the attachment:  
**This information is furnished under the provisions of an international exchange agreement with a foreign government. Its use and disclosure must be governed by the provisions of that agreement.**
  - d. The original request for AEOI data from the requesting IRS personnel.
  - e. Any other relevant documents for AEOI management's reference.
- (8) Within 15 calendar days after the information is retrieved by DS or FPP, and after securing managerial approval of the preceding signature package, issue the response to the requester.
- (9) Once acknowledgement of receipt of the response by the requesting IRS office is received, submit the IMS case to AEOI management for closure, ensuring all required IMS information is input fully and accurately.

4.60.1.10.3.1.2  
(10-15-2018)  
**Direct Access to FATCA Data**

- (1) The AEOI Program is currently developing additional procedures for accessing FATCA data. This IRM subsection will be updated accordingly as this procedure is implemented.

4.60.1.10.3.2  
(10-15-2018)  
**Access to Country-by-Country Reports**

- (1) The IRS, in coordination with its foreign partners, is currently developing a global standard for the secure electronic transmission of country-by-country reports. This IRM subsection will be updated accordingly as this standard is adopted.

4.60.1.10.3.3  
(10-15-2018)  
**Access to Traditional AEOI Data**

- (1) IRS personnel may access traditional automatic data by completing the web-based orientation, "Automatic Exchange of Information Data Security & Governance Orientation."
- (2) Once the IRS employee certifies completion of the orientation, a Business Entitlement Access Request System (BEARS) application must be submitted to request access to the "Easy Search" traditional AEOI database. Detailed instructions will be provided at the end of the orientation.
- (3) After the BEARS application has been approved, the database administrator will send an email to the IRS employee with instructions for accessing the traditional AEOI database.

4.60.1.10.3.3.1  
(10-15-2018)**Incoming Traditional  
AEOI Data – Procedures  
for AEOI Personnel**

- (1) Information subject to automatic exchange may be received by the U.S. Competent Authority from foreign partners at any time during the year, based on each jurisdiction's internal information processing schedule. The type of information provided by the foreign partner is subject to that jurisdiction's internal laws. The information generally consists of data relating to FDAP ("fixed, determinable, annual or periodical") income. Automatic exchange transmissions usually consist of information pertaining to the providing jurisdiction's domestic tax year, which may correspond to a calendar year, fiscal year, or other period.
- (2) Information exchanged automatically is usually received in encrypted electronic format. A cover letter from the HCTA identifying the nature, tax year(s) or other period(s), and number of records transmitted generally accompanies the transmission.
- (3) Upon receipt of a traditional AEOI transmission (usually by mail via secure CD-ROM), date and treaty stamp the cover letter accompanying the transmission.
- (4) Create and maintain a case for the exchange in IMS. All related actions and documents must be promptly recorded in and uploaded to the IMS case, including, but not limited to, dates of the receipt and issuance of correspondence, record counts, encryption passwords, tax years or other periods to which the information relates, and other pertinent information readily available from the cover letter, such as income types included in the transmitted records.
- (5) Email the appropriate foreign jurisdiction contact to:
  - a. Acknowledge the receipt of the cover letter and transmission;
  - b. Request the encryption password to open the transmission; and
  - c. Request a record count (if needed).
- (6) Upon receipt of the encryption password from the foreign jurisdiction:
  - a. Ensure the password opens the CD-ROM or other data transmission;
  - b. Keep a hard copy of the password in the "password" folder in the secure traditional AEOI filing cabinet; and
  - c. Save an unencrypted copy of the data transmission to the secure shared network drive under "inbound yyyy."
- (7) Update the electronic "Traditional AEOI Incoming Records" workbook located on the AEOI SharePoint, including the sending jurisdiction, dates the information was sent and received, tax year(s) or other period(s), number of records (indicated in the cover letter, observed in the file and successfully uploaded to the electronic database), and the password to the encrypted data. In the workbook:
  - a. Highlight a row in yellow when the related data is waiting to be delivered to the assigned IRS data processing business unit; and
  - b. Highlight a row in red when the related data is being processed by the data processing business unit.
- (8) Place the original CD-ROM or other data transmission and cover letter into a physical case folder maintained by the AEOI analyst, and place a copy of the CD-ROM and cover letter in another envelope in preparation to deliver to the data processing business unit.

- (9) Deliver received transmissions with IRS Form 3210 to the data processing business unit on a quarterly basis, separately emailing all relevant transmission encryption passwords to the data processing business unit.
- (10) The data processing business unit will analyze each data transmission and upload resulting information into the Easy Search database and Tableau, including row counts, unmatched records, unloaded records, and null values.
- (11) Retrieve processed data transmissions with signed Forms 3210 from the data processing business unit on a quarterly basis.
- (12) Update the “Traditional AEOI Incoming Records” workbook for all processed data transmissions to reflect information confirmed by the data processing business unit and to remove any previous highlighting from all rows reflecting processed data transmissions, and include each processed transmission and signed Form 3210 in the associated AEOI physical case folder.
- (13) Check the Easy Search database to ensure the new records are available to Easy Search users and related Tableau reports are updated.
- (14) Prepare and submit to AEOI management a final closing letter to the HCTA on LB&I Commissioner letterhead (if applicable), submit the case to AEOI management for closure in IMS, and submit the physical case folder to AEOI management for closure and archival in the secure traditional AEOI filing cabinet.

4.60.1.10.3.3.2  
(02-23-2023)

**Outgoing Traditional  
AEOI Data – Procedures  
for AEOI Personnel**

- (1) At present, the AEOI information regularly provided by the United States to its foreign partners consists of bulk FDAP income data for taxpayers reporting residence in a foreign jurisdiction. The data is drawn from information reported annually by United States withholding agents on IRS Form 1042-S, Foreign Person’s U.S. Source Income Subject to Withholding.
- (2) The IRS Information Technology (IT) department segregates the Form 1042-S data by jurisdiction for possible exchange with foreign partners as determined by the U.S. Competent Authority. The AEOI Program initiates the process with a Uniform Work Request (UWR) which is maintained in the Work Request Management System (WRMS).
- (3) Prior to initiating a UWR, create and maintain a case for the exchange in IMS. All related actions and documents must be promptly recorded in and uploaded to the IMS case, including correspondence, UWR, and other activities related to the production of the bulk data.
- (4) Prepare and submit the UWR to request IT to convert the Form 1042-S data to the OECD’s automatic exchange standard format.
- (5) Once IT has prepared the data, check the data for accuracy, and prepare and submit in IMS the following documentation to the AEOI Program Manager, who will review, sign, and issue the following cover letter and enclosures to the HCTA on behalf of the Commissioner, LB&I per Delegation Order 4-12 (as revised):
  - a. A cover letter to the HCTA on LB&I Commissioner letterhead.
  - b. An encrypted electronic file containing the Form 1042-S records.
  - c. An attachment providing details of the structure of each record contained in the file.



- d. Every page of the cover letter, attachment, and information must include the following text: **This information is furnished under the provisions of an international exchange agreement with a foreign government. Its use and disclosure must be governed by the provisions of that agreement.**
  - e. Associated background information, including any relevant correspondence, and if directed by AEOI management, an IRS Form 13839-A, Note to Reviewer For a Signature Package, or equivalent.
- (6) Once the letter and enclosures are sent to the HCTA, submit the IMS case to AEOI management for closure, ensuring all required IMS information is input fully and accurately, and submit the physical case folder (if present) to AEOI management for closure and archival.

4.60.1.11  
(02-23-2023)  
**Joint Audit Program**

- (1) The Joint Audit Program operates through the exchange of information provisions of international exchange agreements. For Joint Audits that include a transfer pricing issue, the Joint Audit Program is generally facilitated and coordinated by Joint International Taskforce on Shared Intelligence and Collaboration (JITSIC) personnel or Advance Pricing and Mutual Agreement (APMA) personnel in accordance with authorities and delegations set forth in Delegation Order 4-12 (as revised). See IRM 4.60.1.11.1(3).
- (2) Strict adherence to all applicable disclosure and confidentiality provisions is required of all IRS employees, including Exchange of Information (EOI) analysts, involved in the Joint Audit Program. For more information, see IRM 4.60.1.1.2.1, Authority – Disclosure, Confidentiality, and Contacts with Foreign Tax Officials and IRM 4.60.1.1.2.2, Authority – Trade Secrets and Exchange of Information.

4.60.1.11.1  
(02-23-2023)  
**Joint Audit Program  
Scope**

- (1) In a Joint Audit:
  - a. Two or more tax administrations join together to form a single audit team to examine issue(s) or transaction(s) of one or more related U.S. persons (as defined under IRC 7701(a)(30)) with cross-border business activities, involving one or more foreign affiliated companies in which the Joint Audit Parties have a common or complementary interest;
  - b. The taxpayer jointly makes presentations and shares information with the Joint Audit Parties; and
  - c. The legal authority for conducting a Joint Audit is found in the participating jurisdictions' network of international exchange agreements, specifically, the provision for exchange of information and the provision for Mutual Agreement Procedure (MAP).
- (2) A Joint Audit is a fully coordinated examination with the tax administration of a "foreign partner" (as defined in IRM 4.60.1.1.3, Roles and Responsibilities) from start to finish, which includes all compliance activity potentially subject to MAP (see IRM 4.60.2, Mutual Agreement Procedures and Report Guidelines). The compliance activity is accomplished through the Joint Audit Team, operating within the legal authority of the applicable international exchange agreements.
- (3) Background information on Joint Audits can be found in documents published by the Forum on Tax Administration (FTA), and are available on the OECD's website, <https://www.oecd.org/>. These documents include the Joint Audit Re-

port and the Joint Audit Participant Guide. The information in these documents may be referenced by other tax administrations.

4.60.1.11.1.1  
(02-23-2023)

**Authority to Conduct a  
Joint Audit**

- (1) The Exchange of Information (EOI) article under the relevant international exchange agreement (as described in IRM 4.60.1.1, Program Scope and Objectives) with a foreign government provides the legal framework for exchanging information with foreign partners involved in a Joint Audit.
- (2) With respect to double taxation issues, the relevant international exchange agreement should also contain a MAP article.
- (3) IRM 4.60.1.1.3, Roles and Responsibilities, discusses the role of the U.S. Competent Authority in the EOI process. Under Delegation Order 4-12 (as revised), JITSIC and APMA are delegated authority to transmit and request information in accordance with the exchange of information provisions of international exchange agreements, and the Director of APMA is authorized to sign on behalf of the Commissioner, LB&I (the U.S. Competent Authority) with respect to matters arising under international exchange agreements including signing mutual and other agreements on behalf of the Competent Authority. Also under Delegation Order 4-12 (as revised), IRS officials and personnel within JITSIC and APMA are delegated authority to disclose information to a foreign Competent Authority in accordance with the exchange of information provisions of international exchange agreements, to the extent necessary to perform their official duties. Accordingly, where the Joint Audit includes a transfer pricing issue, a JITSIC or APMA representative should be present during all Joint Audit discussions with the tax administration of a foreign partner.
- (4) The role of the Competent Authority in Joint Audits includes:
  - a. Exchanging relevant information as authorized by applicable international exchange agreements;
  - b. Facilitating discussions between tax administrations (i.e., organizing conference calls, meetings, etc.);
  - c. Determining what information can be exchanged and discussed between the tax administrations pursuant to the legal framework of the relevant international exchange agreement; and
  - d. In certain cases where APMA is involved as the Competent Authority, resolving potential MAPs or APAs.
- (5) The U.S. Competent Authority will initiate discussions with the foreign Competent Authority in order to facilitate the proposal of a Joint Audit.

4.60.1.11.1.2  
(02-23-2023)

**Joint Audit Objectives  
and Benefits**

- (1) The objectives of a Joint Audit include:
  - a. Reducing audit timeframes for international issues having tax implications in multiple jurisdictions, particularly by eliminating double tax issues or reducing the MAP process time by incorporating the MAP discussions into the examination process for earlier resolution;
  - b. Gaining a global understanding of the taxpayer's operations and tax positions;
  - c. Enhancing the factual development of an audit through the sharing of relevant tax information between Joint Audit Parties; and
  - d. Ensuring the correct amount of tax is assessed on international business transactions.

- (2) The benefits of a Joint Audit may include:
- a. Reducing the taxpayer's burden and expenditures for administrative resources by consolidating responses to multiple audits with common factual issues;
  - b. Potentially eliminating or accelerating the MAP process, by involving the Competent Authorities in the examination where the potential exists for double taxation, thus eliminating or reducing the timeframe for MAP resolution;
  - c. Providing certainty for taxpayers through a reduced audit timeframe;
  - d. Gaining a more global perspective of the legal differences in tax legislation;
  - e. Developing enhanced relationships between national revenue bodies and taxpayers;
  - f. Harnessing the strengths and expertise of a global audit team; and
  - g. Effectively managing tax issues in real time.

4.60.1.11.1.3  
(02-23-2023)  
**Overview of the Joint  
Audit Process and  
Principles**

- (1) It is important to ensure the Joint Audit is properly structured by the Joint Audit Team. In general, the steps to be followed in the Joint Audit process include:
- a. Risk analysis;
  - b. Audit planning;
  - c. Jointly requesting and gathering audit information;
  - d. Conducting audit work; and
  - e. Conclusion and resolution.
- (2) Following the risk assessment and acceptance of cross-border cases proposed for a Joint Audit, the Joint Audit Team will develop and agree on a Joint Audit Examination Plan. Consistent with the Joint Audit Examination Plan, the Joint Audit Parties should allocate adequate resources to staff the Joint Audit Team and work the Joint Audit Issues. Sufficient consideration in the Joint Audit Examination Plan should be given to each Joint Audit Party's estimated closing date, and to the completion of the Joint Audit within the statute of limitations (including extensions). An orientation meeting about the Joint Audit process may be conducted by the Joint Audit Parties, as deemed necessary, to familiarize the Joint Audit Team members with the steps of the Joint Audit process.
- (3) Principles of collaboration and communication are critical to the success of a Joint Audit. Throughout the Joint Audit, the members of the Joint Audit Team should have continuous contact with one another to update each other on steps taken, progress achieved, and the occurrence of significant events to ensure that the Joint Audit is progressing according to the agreed upon time schedule.
- (4) The efficient flow of information is vital for a successful Joint Audit. Information should be exchanged, in accordance with international exchange agreements, through a variety of means (e-mail, face-to-face, and via teleconference) as agreed at the Joint Audit Planning Meeting, provided that all means of transmitting such information must be secure. It is advisable to strive for routine dialogue between the Joint Audit Team members in order to exchange information more efficiently and to prevent misunderstandings.
- (5) Throughout the Joint Audit process, it may be beneficial to have all Joint Audit Parties present for discussions related to the Joint Audit Issues and activities. Joint Audit meetings can be in-person, via telephone conference calls, or via

video conferencing. These meetings and discussions can be administrative, presentational, or in a Q&A format to address Joint Audit Issues and activities.

- (6) Meetings with the taxpayer should be scheduled as deemed necessary. It is important to keep open channels of communication with the taxpayer throughout the Joint Audit process. The Joint Audit Team should keep the taxpayer informed of the audit status throughout the process and input from the taxpayer on the Joint Audit Issues should be encouraged. In conducting a Joint Audit, consult with the taxpayer and its representatives and seek their cooperation during the Joint Audit process. However, taxpayer cooperation and participation are not required, and the absence of such should not preclude the Joint Audit process.
- (7) If more than two Joint Audit Parties will participate in a Joint Audit, there may be disclosure restrictions with respect to the flows or exchanges of information to be conducted during the Joint Audit process. Any such restrictions may vary significantly from case to case, depending on the particular participating jurisdictions and the treaties or other exchange agreements involved. In such multilateral Joint Audits, the potential applicable disclosure restrictions should be identified as part of the risk assessment. See IRM 4.60.1.11.2.1(5).

4.60.1.11.2  
(02-23-2023)  
**Initiating a Joint Audit**

- (1) Prerequisites for a Joint Audit between two or more tax administrations include:
  - a. Taxpayer (including foreign affiliates) with common tax years or periods under examination in the jurisdictions of the relevant tax administrations;
  - b. Common or complementary tax issues relevant to the tax administrations; and
  - c. Transactions that pose significant compliance risk to one or more tax administrations relative to the resources employed.
- (2) A Joint Audit may be proposed by IRS personnel, a taxpayer, or foreign tax administration.
- (3) Steps to initiate a Joint Audit are described in the following sections.

4.60.1.11.2.1  
(02-23-2023)  
**United States-Initiated Joint Audit**

- (1) When the audit team identifies significant cross-border audit issues and determines a Joint Audit could be beneficial, the audit team should notify its case manager.
- (2) After the case manager agrees the case should be considered for Joint Audit, the audit team should prepare a Joint Audit Referral. The Joint Audit Referral should comprise the following:
  - a. A detailed description of the relevant taxpayer, audit timeline, and cross-border audit issues,
  - b. A brief statement explaining how the proposed case meets the objectives of the Joint Audit Program (see IRM 4.60.1.11.1.2), and
  - c. Any organizational charts, transactional flow charts, or other supplemental information that might aid in evaluation of the proposed case.
- (3) The audit team should submit the Joint Audit Referral to a JITSIC Senior Revenue Agent or the APMA Director where the case includes a transfer pricing issue.
- (4) Taxpayers can request a Joint Audit to resolve issues of double taxation between tax administrations and be engaged in the process from the beginning

of the examination. A taxpayer-initiated request for Joint Audit should be discussed with the Team Manager or Team Coordinator responsible for the IRS examination. If the case manager agrees the case should be considered for Joint Audit, a Joint Audit Referral, as described above, should be completed and submitted to a JITSIC Senior Revenue Agent. In the case of a taxpayer-initiated request for a Joint Audit involving a transfer pricing issue, the TPP Manager should complete and submit the Joint Audit Referral to the APMA Director. Where a taxpayer requests a Joint Audit through APMA, the relevant APMA Team Leader should prepare the Joint Audit Referral to be submitted to the APMA Director.

- (5) Risk Assessment: In evaluating the Joint Audit Referral, JITSIC or TTPO will coordinate with relevant subject matter practice areas to consider the facts and circumstances of the referral, including the following:
  - a. Whether the applicable international exchange agreement provides for the requisite exchange of information between the tax administrations;
  - b. Whether the proposed audit issue(s) rise to a level of significance that justifies the use of resources necessary to engage in and complete a Joint Audit;
  - c. Whether there is a high probability that by engaging with our international exchange agreement partner(s), the audit process will be significantly enhanced; and
  - d. Whether there is a potential for a Joint Audit to impact prior and future tax year or period compliance.
  - e. In the case of a proposed multilateral Joint Audit, the extent to which disclosure restrictions may constrain communications among the parties. See IRM 4.60.1.11.1.3(7).
- (6) Transfer Pricing Risk Assessment: Where the proposed Joint Audit has been referred to the APMA Director, APMA should coordinate discussions among appropriate TTPO personnel and consider the following:
  - a. The recommendation of the TPRA, based on a detailed risk assessment of the relevant issues described in the Joint Audit Referral, which should consider materiality of the transactions.
  - b. The recommendation of the TPP, which should consider availability of resources to perform the proposed Joint Audit, TPP's experience with the issues, potential benefits from factual developments, any level of overlap for the proposed Joint Audit years and the status of U.S. statute of limitations; and
  - c. The recommendation of APMA, which should consider any difficulty presented if the case enters MAP inventory, the relationship with the relevant treaty partner's Competent Authority office, and whether the U.S. entity has an APA in place with any other member(s) of its multinational group.
- (7) Based on the risk assessment performed by the relevant subject matter practice area, the appropriate practice area director should determine whether to proceed with the Joint Audit. A JITSIC Senior Revenue Agent or APMA representative should document considerations made during the Risk Assessment and the decision whether to proceed with the Joint Audit in the taxpayer's file. If a decision is made to proceed with the Joint Audit, a U.S. Joint Audit Coordinator (JAC) should be appointed by the JITSIC Team Manager or APMA Director.

- (8) The audit team will prepare the Joint Audit Proposal. The Joint Audit Proposal should include a description of the taxpayer, relevant transactional and organizational information, audit timeline, and issues described in the Joint Audit Referral. The JAC will transmit the Joint Audit Proposal to the foreign Competent Authority with a formal invitation letter requesting a Joint Audit. All such exchanges of information must be in accordance with the applicable international exchange agreement.
- (9) Joint Audit Proposal Meeting: It is the U.S. audit team's responsibility to facilitate a discussion of the proposed Joint Audit in a formal meeting (via conference call, using video technology, face-to-face, etc.) with the respective foreign Competent Authority(s). In general, the Joint Audit Proposal Meeting should cover the information included in the Joint Audit Proposal. The agenda for the Joint Audit Proposal Meeting should include an overview from each jurisdiction of the taxpayer's background, audit history, organization structure, and specific details to include the following:
- a. Taxpayer name;
  - b. Years or periods to examine (including the potential for rollback to open years or an APA to cover continuing issues in further years);
  - c. Proposed audit issues (contemplated to be the Joint Audit Issues) to examine;
  - d. Timeframes for the examination; and
  - e. Risk analysis prepared by the audit team describing the areas of cross-border tax risk.
- (10) In general, the Joint Audit Proposal Meeting should be scheduled to allow time for the foreign Competent Authority to provide, in advance, reciprocal information and feedback on the Joint Audit Proposal. A timeframe should be established as an outcome of the Joint Audit Proposal Meeting for a decision to be made on the acceptance or rejection of the Joint Audit Proposal. It is the sole decision of the foreign tax administration to accept or reject participation in a proposed Joint Audit of a taxpayer.
- (11) Foreign Partner Accepts: If the foreign tax administration accepts a Joint Audit of a U.S. taxpayer, the U.S. JAC should notify the case manager in order to assure appropriate audit personnel are assigned to the Joint Audit Team as described in IRM 4.60.1.11.3. The U.S. JAC should also begin preparing for the Joint Audit Planning Meeting. The output of the Joint Audit Planning Meeting among all the participating Competent Authorities will be an agreed Joint Audit Examination Plan. For more information about the Joint Audit Planning Meeting and the Joint Audit Examination Plan, see IRM 4.60.1.11.4, Planning a Joint Audit.
- (12) Foreign Partner Rejects: If the foreign partner declines to participate in a proposed Joint Audit of a taxpayer, consideration should be given to conducting a Joint Collaboration (described in IRM 4.60.1.11.8.5) with the tax administration of the foreign partner. The audit team should continue to work the audit issue and utilize the exchange of information process with the foreign Competent Authority to request information relevant to the examination that is not available domestically; for more information, see IRM 4.60.1.2.1, United States-Initiated Specific Requests for Information. The U.S. JAC should ensure documentation of the foreign partner's decision to decline participation in the Joint Audit and the reason(s), if given, for doing so are stored in the taxpayer's file.



## 4.60.1.11.2.2

(02-23-2023)

**Foreign-Initiated Joint Audit**

- (1) A foreign tax administration can propose a Joint Audit of a U.S. taxpayer through the U.S. Competent Authority. Joint Audit Proposals that include a transfer pricing issue should be referred to the APMA Director. All other proposals should be referred to the JITSIC Team Manager.
- (2) The Risk Assessment for considering a foreign-initiated Joint Audit Proposal should be similar to that described in IRM 4.60.1.11.2.1(5) through (7).
- (3) If the taxpayer which is the subject of the proposed Joint Audit is not under examination in the United States, JITSIC or APMA may request that the foreign Competent Authority lead a Joint Audit Proposal Meeting (see IRM 4.60.1.11.2.1(9)) or provide specific facts or other documentary evidence, such as a Transfer Pricing Report and risk analysis, to demonstrate potential U.S. tax risk.
- (4) It is the sole decision of the IRS to accept or reject participation in a Joint Audit proposed by a foreign Competent Authority.
- (5) If after the Risk Assessment, a decision is made to not participate in a Joint Audit, the JAC will contact the foreign Competent Authority to decline the invitation. However, consideration may be given to conducting a Joint Collaboration as described in IRM 4.60.1.11.8.5. If a decision is made to proceed with a Joint Audit, the JAC will contact the foreign Competent Authority to accept the Joint Audit invitation. The U.S. JAC should also contact the appropriate audit case manager to assign audit personnel to the Joint Audit Team as described in IRM 4.60.1.11.3.
- (6) An agreement to conduct a Joint Audit should be formalized in a Joint Audit Examination Plan signed by the responsible examination Program Manager for the IRS.

## 4.60.1.11.3

(02-23-2023)

**Joint Audit Team Roles & Responsibilities**

- (1) The Joint Audit Team will be comprised of representatives from each Joint Audit Party, who will work jointly in the performance of an audit to reach a resolution on the Joint Audit Issues. The primary point of contact for each Joint Audit Party will be its JAC. The JACs will work closely with the Joint Audit Team members.
- (2) The U.S. JAC will be the JITSIC Senior Revenue Agent assigned to the Joint Audit or APMA representative assigned to the Joint Audit where the Joint Audit includes a transfer pricing issue. The U.S. JAC will have primary responsibility for the coordination, facilitation, and general guidance of the Joint Audit process. The JAC will facilitate the following:
  - a. The exchanges of information;
  - b. Status meetings with the foreign Joint Audit Party(ies);
  - c. Joint planning session(s) and meetings;
  - d. Multi-party meetings (i.e., representatives from the Joint Audit Parties, and representatives of the taxpayer(s));
  - e. Conferences with the taxpayer(s), particularly the opening and closing Joint Audit conferences and any interim meetings with the taxpayer(s); and
  - f. Conferences to determine resolution of the Joint Audit Issues.
- (3) The IRS Joint Audit Team Leader will generally be the Issue Manager responsible for the IRS examination, or in some cases, the Revenue Agent assigned primary responsibility for the issues related to the Joint Audit. The IRS Joint

Audit Team Leader will primarily work the Joint Audit Issues and lead work on the Joint Audit Issues by the IRS members of the Joint Audit Team. The IRS Joint Audit Team Leader will be responsible for the following:

- a. Drafting and facilitation of the Joint Audit Examination Plan;
- b. Addressing the technical issues based on U.S. tax laws; and
- c. Preparation and coordination of the Notice of Proposed Adjustment or position paper.

- (4) A representative from APMA should be assigned to each Joint Audit Team for the purpose of resolving any double taxation issues as early as possible in the audit process and also to ensure that APMA's prior positions as to those issues with respect to a particular foreign partner are taken into account by the Joint Audit Team. The APMA representative may also act as the U.S. JAC where the Joint Audit includes a transfer pricing issue.
- (5) The remaining IRS members of the Joint Audit Team could include Revenue Agents, Tax Law Specialists, Financial Products Specialists, Economists, Engineers, and Counsel as deemed necessary with respect to the issues to be examined.

4.60.1.11.3.1  
(02-23-2023)

#### Skills and Expertise of a Joint Audit Team

- (1) The Joint Audit Issues will determine the skills and expertise required by the Joint Audit Team members. All Joint Audit Team members should have good communication skills, both verbal and written, and a good understanding of the global business of the taxpayer under audit. The audit team manager will be instrumental in allocating resources necessary to staff the Joint Audit Team with the necessary members to work the issues selected.
- (2) IRS policy requires one person from APMA to be assigned to the Joint Audit Team. In the event the Joint Audit Issues relate to matters other than transfer pricing and profit attribution, the U.S. Competent Authority may use other personnel.
- (3) If the Joint Audit Issues involve Transfer Pricing under IRC 482, consider some of the following skills and expertise:
  - a. **Transfer Pricing:** The Joint Audit Team should include TPP personnel with expertise relevant to the type of the transactions, and a thorough understanding of IRC 482 and the Treasury Regulations thereunder.
  - b. **Economist:** Considering the size, complexity and risk analysis of the Joint Audit Issues, the Joint Audit Team may include an Economist familiar with the issues being examined and able to analyze the various transfer pricing methodologies and evaluate Transfer Pricing studies.

4.60.1.11.3.2  
(02-23-2023)

#### Competent Authority Requirement

- (1) Every Joint Audit Team must include an IRS employee assigned to JITSIC or APMA who is authorized to disclose information pursuant to Delegation Order 4-12 (as revised) under the provisions of international exchange agreements, whether a JITSIC Senior Revenue Agent or an APMA representative. This would typically be the JAC.

4.60.1.11.4  
(02-23-2023)  
**Planning a Joint Audit**

- (1) Once a proposal for a Joint Audit has been accepted for examination, the JAC from each tax administration will help facilitate the preparation of the Joint Audit Examination Plan in a timely manner. A Joint Audit Planning Meeting should be scheduled as soon as possible to develop the Joint Audit Examination Plan.

4.60.1.11.4.1  
(02-23-2023)  
**Joint Audit Planning Meeting**

- (1) The Joint Audit Planning Meeting establishes the framework for the operations of the Joint Audit. The primary goal of the Joint Audit Planning Meeting will be to discuss and develop a Joint Audit Examination Plan.
- (2) The Joint Audit Planning Meeting should be coordinated by the JAC of the tax administration proposing the Joint Audit. The JAC should extend an invitation to the participating foreign tax administration(s) and include a proposed Agenda and a draft Joint Audit Examination Plan. A member of the Joint Audit Team will record the minutes of the Joint Audit Planning Meeting. The JAC will exchange the minutes between Competent Authorities for review.
- (3) The Joint Audit Planning Meeting should include a discussion of the following:
  - a. Introduction to the individuals who will be part of the Joint Audit Team;
  - b. Review of the legal framework for discussions between tax administrations, including the rules relating to confidentiality and the exchange of information under international exchange agreements;
  - c. Background on the taxpayer;
  - d. Overview of the taxpayer's organizational structure;
  - e. Review of relevant internal and external information available;
  - f. Discussion of the relevant tax compliance risk and potential Joint Audit Issues;
  - g. Discussion of various audit techniques;
  - h. Agreement on the audit timeline; and
  - i. Finalization of the Joint Audit Examination Plan.
- (4) The Joint Audit process should not only include steps and processes for examining the specific Joint Audit Issues, but should also outline administrative processes for the Joint Audit including:
  - a. Status meetings;
  - b. Coordinated issuance of Information Document Requests;
  - c. Exchanging information; and
  - d. Escalation procedures for dispute resolution should the Joint Audit Team reach an impasse.
- (5) Administratively, the Joint Audit process should provide a practical approach for sharing the workload, addressing processes and procedures, and creating an environment for consensus of an efficient and effective resolution.

4.60.1.11.4.2  
(02-23-2023)  
**Identification of the Joint Audit Issues**

- (1) Joint Audit Issues are the potential tax issues agreed upon by participating tax administrations that will be examined by the Joint Audit Team to determine tax compliance in one or more jurisdictions.
- (2) Joint Audit Parties should work together to identify the Joint Audit Issues to be examined as part of the Joint Audit. Joint Audit Parties should identify and discuss the audit years open, or able to be open, to compare the ability to jointly audit the issues identified. This step will enable participants to set expectations on contributions that each jurisdiction will be able to make.

- (3) Appropriate timeframes should be established for the participating tax administrations to identify the Joint Audit Issues. The Joint Audit Issues must be material, relevant to one or more Joint Audit Parties, and/or the subject of a potential request for MAP assistance.
- (4) Where a Joint Audit is precipitated by an International Compliance Assurance Programme (ICAP) risk assessment outcome, the ICAP issues should be included as Joint Audit Issues in the Joint Audit Examination Plan. In such case, the information and factual development already accomplished and exchanged through the ICAP process should serve as the basis for an efficient and potentially expedited Joint Audit Examination Plan timeline.
- (5) The Joint Audit Issues should be mutually agreed upon by all Joint Audit Parties, specifically articulated as Joint Audit Issues, and included in the Joint Audit Examination Plan. It is recommended that only two or three primary Joint Audit Issues be selected. It should be feasible to complete the examination of the Joint Audit Issues during the agreed upon timeframes for the Joint Audit.
- (6) Since one of the objectives of a Joint Audit is to reduce taxpayer burden and reduce the timeline for resolution of tax issues, all potential MAP issues should be included in the Joint Audit Examination Plan as Joint Audit Issues; however, the potential MAP issues can be secondary issues.

4.60.1.11.4.3  
(02-23-2023)

**Joint Audit Examination  
Plan**

- (1) General agreement to the Joint Audit framework and the Joint Audit Issue(s) of a specific taxpayer audit is formalized in a Joint Audit Examination Plan. For U.S.-initiated Joint Audits, the IRS Joint Audit Team Leader is primarily responsible for preparing, drafting and reviewing the Joint Audit Examination Plan and facilitating its approval.
- (2) At a minimum, items to include in the Joint Audit Examination Plan are:
  - a. Background;
  - b. Joint Audit objectives;
  - c. Scope;
  - d. Timeline;
  - e. Communication and exchange of information process;
  - f. Listing of Joint Audit Team members and their roles;
  - g. Operational risk and mitigation strategies;
  - h. Escalation procedures; and
  - i. Agreement to make modifications (variations), as needed.
- (3) Input from the Joint Audit Team on the Joint Audit Examination Plan is critical to the Joint Audit process. A draft Joint Audit Examination Plan should be prepared by the proposing tax administration. Once exchanged, a joint discussion should be held to provide comments and revisions. Emphasis should be placed on integrating the Joint Audit Examination Plan with the LB&I Examination Plan particularly as to resources and timeframes.
- (4) The Joint Audit Examination Plan should be entered into (i.e., signed) by the Joint Audit Parties. It is the responsibility of the JAC of each Joint Audit Party to secure approval of the Joint Audit Examination Plan. The Joint Audit Examination Plan must be approved and signed by the responsible examination Program Manager for the IRS, and an equivalent level of signature by the foreign Joint Audit Party. In the case of a Joint Audit involving a transfer pricing issue, the Joint Audit Examination Plan should be approved and signed by the appropriate TPP Territory Manager. The JACs should oversee adherence to

the Joint Audit Examination Plan, paying particular attention to the timeline. Any extensions to the timeline should be documented.

- (5) The Joint Audit Examination Plan is an agreement between the Joint Audit Parties. The taxpayer(s) are not party to the Joint Audit Examination Plan. The Joint Audit Examination Plan may be shared with the taxpayer, but taxpayer concurrence with the Joint Audit Examination Plan is not required. Either Joint Audit Party can withdraw from the Joint Audit Examination Plan and the Joint Audit process at any time.

4.60.1.11.4.4  
(10-15-2018)  
**Communication**

- (1) The JACs are responsible for keeping open lines of communication between the Joint Audit Parties and distributing information relevant to the Joint Audit.

4.60.1.11.4.5  
(02-23-2023)  
**Agreements**

- (1) During the course of the Joint Audit, signed agreements must be reached between the Joint Audit Parties as to the:
  - a. Joint Audit Examination Plan, as described in IRM 4.60.1.11.4.3; and
  - b. Joint statement of proposed adjustments or joint position papers, as described in IRM 4.60.1.11.7.1(5).
- (2) Throughout the Joint Audit process, each tax administration should timely exchange information relevant to the Joint Audit Issues through their respective Competent Authorities in accordance with the applicable international exchange agreement.

4.60.1.11.5  
(02-23-2023)  
**Notification to U.S.  
Taxpayer of Joint Audit**

- (1) The Joint Audit Parties should notify their respective taxpayers of the decision to conduct a Joint Audit. Notification of the taxpayers in the participating jurisdictions should be coordinated and should include the identification of the Joint Audit Issues to be examined as part of the Joint Audit.
- (2) Notification of the Joint Audit should be provided to the taxpayer subject to joint examination at the earliest possible date to ensure transparency. This notification should generally be provided at the opening conference, by an IRS management official (Team Manager, Program Manager, or Executive such as the Director of Field Operations) responsible for the IRS examination. The notification to perform a Joint Audit may be delivered to the taxpayer orally or in a written communication. Documentation of the notification for the case file should be maintained regardless of the method of notification. Each Joint Audit Party, including the IRS, is responsible for their method of delivery of the Joint Audit Notification to its respective taxpayer.
- (3) The U.S. JAC is responsible for organizing a meeting with the U.S. taxpayer. The JAC from the foreign Joint Audit Party is responsible for organizing a meeting with its respective taxpayer. In each case, the notification process should be coordinated with and between the members of the Joint Audit Team to ensure the taxpayer in each of the respective jurisdictions is notified timely.
- (4) Consideration should be given to having a pre-notification call with the foreign members of the Joint Audit Team to ensure a consistent message is being conveyed, and to coordinate the notification date and time.
- (5) The notification to the parent entity of the taxpayer should occur before the notification to subsidiaries when possible. For example, if the taxpayer is a U.S.-owned multinational enterprise, the U.S. taxpayer should receive notification

tion before a foreign subsidiary is notified. The notification to the subsidiaries should occur within 48 hours of the notification to the parent entity.

- (6) Whether notification of a Joint Audit is performed orally or in writing, the IRS audit team is responsible for sharing the following Joint Audit information with the taxpayer:
  - a. Benefits of a Joint Audit;
  - b. Reasons for the decision to conduct a Joint Audit;
  - c. General identification of the Joint Audit Issues;
  - d. General process of a Joint Audit; and
  - e. Other items as deemed necessary.
- (7) Joint Audits will utilize the exchange of information provisions of the applicable international exchange agreement to share tax-related information.
- (8) The IRS audit team should notify the taxpayer of any potential MAP issues in order for the taxpayer to protect against the expiration of foreign statute of limitation periods.
- (9) The taxpayer should be informed by the Joint Audit Team that the Joint Audit is an examination between two or more tax administrations. The Joint Audit Team should solicit the cooperation and participation of the taxpayer in the Joint Audit process. However, taxpayer cooperation and participation are not required, and the absence of such should not preclude the Joint Audit process.

4.60.1.11.6  
(02-23-2023)  
**Executing the Joint Audit**

- (1) Execution of the Joint Audit is described in the following subsections.

4.60.1.11.6.1  
(02-23-2023)  
**Overview of the Execution Phase**

- (1) Stages of issue development should include determining the facts, applying the law to those facts, and understanding the various tax implications of the issue. The Joint Audit Team should use the IDR process and collaborate in conducting joint meetings with the taxpayer when necessary to develop the facts. Every effort should be made to resolve any factual differences with the taxpayer. Regularly scheduled meetings should be held by the Joint Audit Team to ensure that open communication and reassessment continues throughout the execution phase. The IRS Joint Audit Team Leader should determine who should participate in the respective meetings and interviews throughout the Joint Audit execution phase. Exchanges of information relevant to the Joint Audit Issues by the Joint Audit Parties should be conducted in accordance with the applicable international exchange agreement and as allowed under Delegation Order 4-12 (as revised). Where the Joint Audit includes a transfer pricing issue, the IRS Joint Audit Team Leader is required to provide the TPP and APMA directors with a briefing on case development at least once during the execution phase (and as often as necessary) to ensure they are in agreement with the U.S. approach and position on the relevant issues. Where the Joint Audit includes a non-transfer pricing issue, the IRS Joint Audit Team Leader is required to provide the relevant subject matter Director of Field Operations and the Exchange and Offshore Strategy Director with a briefing on case development at least once during the execution phase to ensure they are in agreement with the U.S. approach and position on the relevant issues.



4.60.1.11.6.2

(02-23-2023)

**Information Document Requests**

- (1) The Joint Audit Team should jointly request and gather audit information.
- (2) Although the Joint Audit Parties may request information from their respective taxpayer at any time in accordance with each jurisdiction's domestic laws and applicable international exchange agreement, it is expected that the Joint Audit Parties will consult and collaborate with each other before requesting information necessary to develop the Joint Audit Issue(s) from their respective taxpayers. The Joint Audit Parties, however, are not precluded from making other information requests and may do so at their discretion. The Joint Audit Parties may exchange, through the JACs, information received from their taxpayers spontaneously or in response to a specific request, in accordance with the applicable international exchange agreement. It is suggested that the Joint Audit Parties share with one another the relevant responses received from their respective taxpayers immediately upon receiving such information. The Joint Audit Team should request their respective taxpayers to voluntarily share responses to any Information Document Request (IDR) with the Joint Audit Parties simultaneously.
- (3) Information request procedures should adhere to each jurisdiction's domestic procedures and laws and applicable international exchange agreement. Discussions about IDR response times should be held with members of the foreign Joint Audit Team.
- (4) It is expected that the information requests or IDRs prepared by the Joint Audit Team will be delivered to and discussed with each respective taxpayer concurrently. The Joint Audit Parties should inform one another upon issuing an information request. The Joint Audit Parties should inform one another through the JACs upon receiving responses to an information request or IDR. Any delays in a taxpayer's response should be communicated between the Joint Audit Parties through the JACs. Exchange of the information received should occur as soon as feasible in accordance with the applicable international exchange agreement.

4.60.1.11.6.3

(02-23-2023)

**Interviews**

- (1) It is expected that the Joint Audit Parties will consult and collaborate with each other before requesting interviews of taxpayer personnel. To the extent permitted under the applicable international exchange agreement, the Joint Audit Parties are expected to jointly participate in interviews of personnel. The Joint Audit Parties will arrange interviews at the taxpayer's physical location or at the tax administration's local office. To the extent permitted, the hosting Joint Audit Party should invite the other Joint Audit Party to participate at the designated interview location. To the extent permitted, each Joint Audit Party should have the opportunity to ask questions and follow-up questions to permit each to gather the facts necessary to complete the Joint Audit Issue.
- (2) Coordination with the LB&I International Travel Office should be performed as soon as it is determined international travel will be performed or international travelers will be visiting the United States. Refer to IRM 1.32.5, International Travel Office Procedures, for applicable travel procedures.

4.60.1.11.6.4

(02-23-2023)

**Meetings  
(Teleconferences or  
Videoconferences)**

- (1) It is recommended that the lines of communication with the Joint Audit Parties be kept open through regularly scheduled status meetings. The Joint Audit Party proposing a Joint Audit should host the initial meeting, whether by video-conference or call, with hosting responsibilities alternating among the other Joint Audit Parties thereafter. JITSIC and APMA officials and employees autho-

alized to exchange information under international exchange agreements should attend all Joint Audit meetings and conference calls. Prior to hosting a joint meeting, an agreed agenda should be prepared by the hosting Joint Audit Party.

- (2) The hosting Joint Audit Party is required to take minutes during Joint Audit meetings and document action items resulting from the meetings. The JACs will facilitate exchange of the minutes with the Joint Audit Party(ies). Each Joint Audit Party should review the meeting minutes to cross-check and finalize the minutes of the meeting. Since there may be differences in methods and procedures in each jurisdiction, it is necessary to clarify and conclude in writing in the minutes all discussions agreed upon at a meeting.
- (3) It is also recommended that regular Joint Audit status meetings be held with the U.S. taxpayer and foreign taxpayer. Significant issues creating delays should be discussed between Joint Audit Team members.
- (4) Items to consider when participating in a meeting with a Joint Audit Party include:
  - a. Protocol for discussions;
  - b. Nexus to the transaction; and
  - c. Information to be shared must be in accordance with the applicable international exchange agreement.

4.60.1.11.6.5  
(02-23-2023)

**Exchanging Information  
Related to Joint Audits**

- (1) The IRS recognizes that the ability to efficiently communicate and share information with the foreign Joint Audit Party(ies) is critical to the success of the Joint Audit. Each Joint Audit Party should adhere to obligations under the applicable international exchange agreement and Delegation Order 4-12 (as revised). It is imperative that the Joint Audit process protects the taxpayer's information from unauthorized disclosure and use.
- (2) Throughout the Joint Audit process, the audit team from each jurisdiction should timely exchange information relevant to the Joint Audit Issues through their respective JACs, in accordance with the applicable international exchange agreement. The process of handling exchanges should be discussed and agreed upon between the Joint Audit Team members. To the extent permitted by the applicable exchange agreement, documents that are relevant to the Joint Audit Issues should be exchanged spontaneously by each Joint Audit Party in order to avoid delays in the Joint Audit process. If a document in the IRS's possession is discussed during a conference call, and it is foreseeably relevant to the foreign Joint Audit Party, the IRS JAC should exchange the document spontaneously with the foreign Joint Audit Party (rather than wait for a specific request), in accordance with the applicable international exchange agreement. The same practice is expected from the foreign Joint Audit Party.
- (3) In communicating and exchanging information, the IRS should adhere to the following exchange procedures:
  - a. Information disclosed must be in accordance with the applicable international exchange agreement and must be made by an authorized official or employee assigned to JITSIC or APMA, as applicable, to address compliance or non-compliance issues relevant to the Joint Audit Issue(s) (including the formulation of the Joint Audit Issue(s)).
  - b. When the IRS references tax information of a person other than the taxpayer whose tax liability is at issue in the Joint Audit, the information

must directly relate to a transactional relationship between the third person and the taxpayer, which transactional relationship directly affects the resolution of the Joint Audit Issue(s).

- c. Taxpayer information may only be shared between the designated JACs under the applicable international exchange agreement, and should be marked as exchanged information with the appropriate stamp.
- (4) The U.S. JAC has the responsibility for making sure the information exchanged by the IRS is in accordance with the applicable international exchange agreement.
- (5) The U.S. Competent Authority will need input from the IRS audit team, particularly, as to sensitive information, trade secrets, competitive advantage, foreign partner use of the information, and the potential tax impact in the foreign jurisdiction.
- (6) Specific information requested by a foreign Joint Audit Party should be provided by the IRS Joint Audit Team to the U.S. JAC, as allowed by the applicable international exchange agreement and Delegation Order 4-12 (as revised). Once the information request is received, the authorized JITSIC or APMA officer or employee will make a decision about the foreseeable relevance of the information requested to the foreign Joint Audit Party. If the information is not considered foreseeably relevant, the U.S. JAC, acting as U.S. Competent Authority, and in consultation with reviewers in the U.S. Competent Authority, will seek clarification from the foreign Joint Audit Party to determine whether foreseeable relevance has been established.

4.60.1.11.6.6  
(02-23-2023)  
**Disclosure Form 5466-B**

- (1) IRS Form 5466-B, Multiple Record of Disclosure, should be filed by the U.S. JAC for each U.S. taxpayer for which returns and/or return information (as defined under IRC 6103) has been disclosed to a foreign Competent Authority under the applicable international exchange agreement(s). IRM 11.3.37, Recordkeeping and Accounting for Disclosures, provides the procedures for filing Form 5466-B.

4.60.1.11.7  
(02-23-2023)  
**Resolving the Joint Audit**

- (1) Steps to complete a Joint Audit are described in the following sections.

4.60.1.11.7.1  
(02-23-2023)  
**Joint Audit Findings**

- (1) The IRS members of the Joint Audit Team should document the facts, law, and conclusion with respect to any proposed Joint Audit adjustments. Appropriate levels of review and approval (by Counsel, Transfer Pricing Subject Matter Expert, Economist, or management official) should be sought, if required.
- (2) Each Joint Audit Party should provide the other(s) with a copy of the relevant portions of their statement of proposed adjustments, in accordance with the applicable international exchange agreement.
- (3) The JACs should schedule a call or Joint Audit Team meeting to have each jurisdiction present its proposed adjustments with respect to the Joint Audit Issues. This Joint Audit Team meeting or call is a prerequisite to the Joint Audit closing conference with the taxpayer.

- (4) It is recommended the IRS members of the Joint Audit Team hold an internal pre-call prior to the call with the foreign Joint Audit Team to discuss the position paper which will describe the resolution of the IRS audit. The pre-call should be performed to:
  - a. Discuss the completed position paper(s), ensuring the IRS Joint Audit Team has secured the necessary management and Counsel approvals,
  - b. Receive input from the APMA personnel with respect to the proposed results, and
  - c. Prepare for discussing the issues with the foreign Joint Audit Team.

Once the IRS Joint Audit Team has finalized their discussions and obtained the necessary approvals about the proposed adjustments, the U.S. JAC should request a Joint Audit meeting to review the proposals with the foreign Joint Audit Team.

- (5) The Joint Audit Team should hold a joint meeting to discuss the proposed adjustments. The primary purpose of this meeting is to decide jointly on the appropriate course of action pertaining to the resolution of the Joint Audit Issues. The Joint Audit meeting scheduled to discuss the proposed adjustments should conclude with a mutual understanding between the Joint Audit Parties (or a conclusion that an understanding is not possible) as to the recommended course of action, which should be memorialized in a joint statement of proposed adjustments or joint position papers.
- (6) The final resolution of the Joint Audit Issues should be exchanged as position papers between the Joint Audit Parties. The U.S. Joint Audit position paper should be approved by the APMA Director where a transfer pricing issue is involved.

4.60.1.11.7.2  
(10-15-2018)  
**Joint Audit Closing  
Conference**

- (1) The purpose of the Joint Audit closing conference is for the Joint Audit Parties to each present their proposed adjustments to their respective taxpayer(s). The conference should include all parties: the IRS members of the Joint Audit Team, the foreign members of the Joint Audit Team, and the taxpayer(s) from each jurisdiction, if possible. During the conference, the Joint Audit Parties should present their positions on the Joint Audit Issue(s) relative to their respective taxpayer(s). Each Joint Audit Party should address taxpayer questions accordingly.
- (2) A written response from the taxpayer addressing each jurisdiction's proposed adjustments (similar to a Protest Letter) should be solicited. The IRS should request the taxpayer's declaration of agreement or disagreement with each proposed adjustment.

4.60.1.11.7.2.1  
(10-15-2018)  
**Joint Audit Agreed Case**

- (1) Each Joint Audit Party should advise their respective taxpayer(s), in writing, of its position on each of the Joint Audit Issues. Each Joint Audit Party should hold a final closure meeting with their respective taxpayer(s) to discuss the proposed adjustments; this meeting may include the other Joint Audit Party. If all taxpayers agree to the proposed adjustments, the Joint Audit Parties will exchange final letters signed and dated by their respective Competent Authority similar to those exchanged to conclude MAP cases (see IRM 4.60.2, Mutual Agreement Procedures and Report Guidelines).

## 4.60.1.11.7.2.2

(02-23-2023)

**Joint Audit Unagreed Case Disputes**

- (1) Different types of disputed cases may arise. A Joint Audit does not alter the taxpayer's rights on the unagreed positions.
  - a. The Joint Audit Parties agree, but the taxpayer does not agree to resolution. In this situation, each jurisdiction may propose adjustments within its taxing jurisdiction; however, it is unlikely that a negative adjustment to taxable income will be made prior to a MAP proceeding (see Revenue Procedure 2015-40, Procedures for Requesting Competent Authority Assistance under Tax Treaties, or its successor).
  - b. One Joint Audit Party and the taxpayer agree but another Joint Audit Party disagrees. In this situation, the Joint Audit Parties retain the right to make adjustments independently, and the taxpayers may have the right to invoke MAP, subject to the terms of the applicable international exchange agreement.
  - c. The Joint Audit Parties and the taxpayer cannot reach a resolution. In this situation, the Joint Audit Parties retain the right to make adjustments independently and the taxpayer may invoke mutual agreement procedures.

## 4.60.1.11.7.3

(02-23-2023)

**Joint Audit Closing Actions**

- (1) If the Joint Audit Parties and taxpayer agree to the proposed adjustments, the Joint Audit Parties will exchange final letters signed and dated by their respective Competent Authority similar to those exchanged to conclude MAP cases. See Section 9.04 of Revenue Procedure 2015-40, Procedures for Requesting Competent Authority Assistance under Tax Treaties (or its successor), and IRM 4.60.3.2, Competent Authority and the Mutual Agreement Procedure (MAP).
- (2) During the course of a Joint Audit, APMA personnel on the Joint Audit Team will determine the best course of action in efforts to avoid double taxation. If the taxpayer does not agree with the proposed Joint Audit adjustments, Appeals and MAP are alternate processes which may be pursued by the U.S. taxpayer and, in certain cases, may be conducted simultaneously. The Joint Audit does not alter the taxpayer's rights on these processes. Such a case should be flagged for Appeals as a "Joint Audit Examination with (insert name of foreign jurisdiction)." If an Appeals settlement cannot be reached, the U.S. taxpayer has the option of litigating the Joint Audit Issue(s). If the taxpayer initiates a MAP proceeding, Revenue Procedure 2015-40, Procedures for Requesting Competent Authority Assistance under Tax Treaties, Section 6.04(2), or its successor, provides for the coordination between Appeals and APMA on MAP issues. If a MAP resolution cannot be reached, APMA may utilize arbitration where available under the applicable international exchange agreement.

## 4.60.1.11.7.4

(02-23-2023)

**Joint Audit Critique**

- (1) At the completion of a Joint Audit, all IRS members of the Joint Audit Team should participate in a Joint Audit critique. It is recommended that the foreign members of the Joint Audit Team also be invited to participate in the Joint Audit critique. The Joint Audit Team should note significant items of success as well as significant items of concern identified throughout the Joint Audit process. The Joint Audit Team should consider, when possible, involving the taxpayer in the Joint Audit critique. The results of the Joint Audit critique should be documented and provided to the Withholding Exchange and International Individual Compliance (WEIIC) Director or TPPO Director where the proposed Joint Audit involved transfer pricing issues.



- 4.60.1.11.8  
(10-15-2018)  
**Joint Audit Other Considerations**
- (1) Certain other considerations pertinent to the Joint Audit process are described in the following sections.
- 4.60.1.11.8.1  
(02-23-2023)  
**Multilateral Joint Audit**
- (1) A multilateral international exchange agreement or multiple bilateral international exchange agreements may also provide the framework for the joint examination of taxpayers' cross-border transactions. Consideration should be given as to whether a multilateral Joint Audit would be beneficial.
- (2) A multilateral Joint Audit is an audit in which three or more Joint Audit Parties join together to form a single audit team to examine an issue or issues of one or more related taxpayers with cross-border activities involving related taxpayers in the respective jurisdictions. The Parties to a multilateral Joint Audit will employ procedures consistent with those generally applicable to Joint Audits under IRM 4.60.1.11. The basis for cooperation can be found in the network of bilateral and multilateral international exchange agreements (as defined in IRM 4.60.1.1, Program Scope and Objectives) which provide for mutual assistance in tax matters.
- (3) In initiating a multilateral Joint Audit, potential disclosure restrictions on communications among the Joint Audit Parties should be considered. See IRM 4.60.1.11.1.3(7) and IRM 4.60.1.11.2.1(5).
- 4.60.1.11.8.2  
(10-15-2018)  
**Joint Audit Program vs. Simultaneous Examination Program**
- (1) Joint Audits are not simultaneous examinations. There are distinctions between the two programs. A Joint Audit involves two or more jurisdictions joining together to form a single audit team to examine a transaction(s) of related taxpayers (for example, affiliated companies) with cross-border activities, in which the Joint Audit Parties attempt to reach a joint resolution on the Joint Audit Issues; a Joint Audit includes the involvement of IRS APMA personnel to address double taxation issues. In contrast, a simultaneous examination, which is coordinated by the EOI Program, is an arrangement between two or more tax administrations to examine simultaneously, each in its own jurisdiction, the tax affairs of two or more taxpayers in which the tax administrations have a common or related interest, with a view to exchanging under the applicable international exchange agreement(s) any relevant information obtained. For more information, see IRM 4.60.1.4, Simultaneous Examination Program (SEP).
- 4.60.1.11.8.3  
(02-23-2023)  
**Joint Audit Advance Pricing Agreement Application**
- (1) If an agreement between the Joint Audit Parties on the Joint Audit Issues has been reached, APMA will consider, given the facts of the issues examined, the possibility of pursuing an Advanced Pricing Agreement (APA). The Joint Audit Parties, having advised their respective taxpayers in writing of the position on each of the Joint Audit Issues, should recommend to their respective taxpayers the APA opportunities.
- (2) The taxpayer may request consideration of a bilateral APA under Revenue Procedure 2015-41, Procedures for Advance Pricing Agreements, or its successor. If this occurs, the IRS Joint Audit Team APMA member should organize the parties to investigate and pursue the APA process, including:
- Organizing a pre-filing conference(s),
  - Notifying the applicable foreign Competent Authority(ies), and



- c. Receiving, evaluating, and developing a position about, and pursuing conclusion of an agreement covering, the issues and methods arising out of the Joint Audit that would be appropriate to cover in an APA, utilizing facts developed during the Joint Audit and obtaining other information in accordance with the applicable international exchange agreement.

4.60.1.11.8.4  
(02-23-2023)

**Joint Audit Findings and  
Resolution of MAP  
Cases**

- (1) Joint Audit findings may be used as a basis for relief from double taxation.
- (2) The U.S. Competent Authority endeavors to resolve double taxation under the MAP articles of international exchange agreements. Revenue Procedure 2015-40, Procedures for Requesting Competent Authority Assistance under Tax Treaties, or its successor, sets forth the procedures that taxpayers should follow to request assistance under international exchange agreements.
- (3) During a Joint Audit, consideration should be given to resolving all open tax years, including applying the Joint Audit resolution(s) to open MAP cases, if applicable.

4.60.1.11.8.5  
(02-23-2023)

**Joint Collaboration**

- (1) If a Joint Audit is not appropriate, consideration should be given to conducting a joint collaboration with the foreign partner.
- (2) A joint collaboration comprises specific exchange(s) of information with the foreign partner conducted on the basis of discussions between the U.S. and foreign audit teams facilitated by JITSIC or APMA where the case includes a transfer pricing issue. Formal approval of such a collaboration under Joint Audit procedures is not required, as the information is exchanged according to the international exchange agreements in place and by officials or employees assigned to JITSIC or APMA pursuant to Delegation Order 4-12 (as revised). For more information, see IRM 4.60.1.2, Specific Exchange of Information (EOIR) Program.
- (3) JITSIC or APMA will include in the initial specific exchange request a request to engage in a joint collaboration with the foreign partner. If the foreign partner agrees to the joint collaboration, JITSIC or APMA will coordinate discussions between the U.S. and foreign audit teams. The discussions should include the IRS examination manager and specialist managers.
  - a. JITSIC or APMA will facilitate the discussions. The JITSIC Senior Revenue Agent or APMA will act as the U.S. Competent Authority for the discussions.
  - b. The audit team must be involved to discuss the tax issues, and the information requested and/or exchanged.
  - c. Multiple joint discussions and specific exchanges of information may occur throughout the collaboration.
- (4) If there are discussions that could result in an agreement between the participating jurisdictions on the tax treatment in each jurisdiction, the appropriate IRS Practice Areas should be included in the discussion (WEIIC, CBA, TTPO).

4.60.1.12  
(02-23-2023)

**International Travel for  
Tax Authority Personnel**

- (1) IRS personnel interested in traveling to a foreign partner jurisdiction in connection with an EOI request or exchange or other EOI-related matters should  
  
possible in advance of any such contemplated travel. If necessary, EOI management will coordinate the proposed travel with the foreign partner.
- (2) Foreign Competent Authorities with personnel interested in traveling to the United States in connection with an EOI request or exchange or other EOI-related matters should contact the EOI Program Manager, providing in writing details about the purpose of the proposed travel, identities of all travelers, and identities of all persons to be contacted in the United States. As part of the travel planning and approval process, the EOI Program will contact and coordinate with any IRS personnel responsible for the examination or investigation of any United States taxpayer to be contacted by the foreign partner personnel.

#

**Exhibit 4.60.1-1 (10-15-2018)**

**Sample Department of State Full Faith and Credit Letter**

**UNITED STATES OF AMERICA**

**DEPARTMENT OF STATE**

***To all whom these presents shall come, Greetings:***

I certify that the document hereunto annexed is under the Seal of the Department of the Treasury, United States of America, and that such Seal is entitled to full faith and credit.\*

In the testimony whereof, I, [insert name of Current Secretary], Secretary of State, have hereunto caused the seal of the Department of State to be affixed and my name subscribed by the Assistant Authentication Officer, of the said Department, at the city of Washington, in the District of Columbia, this XXXX day of XX, 20XX.

Signature --- Secretary of State

By: Signature --- Assistant Authentication Officer, Department of State

*Issued pursuant to CHXIV, State of Sept. 15, 1789, 1 Stat 68-69; 22 USC 2657; 22 USC 2651a; 5 USC 301; 28 USC 1733 et seq.; 8 USC 1443(f); RULE 44 Federal Rules of Civil Procedure.*

***\*For the contents of the annexed document, the Department assumes no Responsibility.***

*This certificate is not valid if it is removed or altered in any way whatsoever.*

**Exhibit 4.60.1-2 (02-23-2023)****Terms/Definitions/Acronyms**

<b>Term</b>	<b>Definition</b>
Advance Pricing and Mutual Agreement (APMA)	The APMA Program operates within the Office of Transfer Pricing and Treaty Operations (TTPO) and includes the Treaty Assistance and Interpretation (TAIT).
Competent Authority Arrangement (CAA)	CAAs are non-binding bilateral arrangements concluded under the mutual agreement procedure (MAP) article of a treaty, TIEA, or IGA for the purpose of clarifying or interpreting such agreements. CAAs relating to AEOI provide procedures and guidelines to administer automatic exchange, including the confidentiality and use of the information exchanged.
Country-by-Country (CbC) Reporting	An implementation of the OECD/G20 Base Erosion and Profit Shifting (BEPS) project, CbC requires multinational enterprise (MNE) groups with revenues over \$850 million to submit country-by-country reports (CbC Reports) annually. 26 CFR 1.6038-4 sets forth CbC reporting requirements. CbC Reports will generally be filed with the tax authority in the residence jurisdiction of the group's ultimate parent entity. That tax authority will exchange the CbC Report with the tax authorities in other jurisdictions where the group has constituent entities if the tax authorities have a Competent Authority Arrangement in place permitting such exchanges, subject to several conditions.
Foreign Account Tax Compliance Act (FATCA)	Chapter 4 of the Internal Revenue Code (IRC 1471-1474), commonly referred to as FATCA, was enacted as part of the HIRE Act of 2010 and generally requires that foreign financial institutions (FFIs) report the foreign accounts held by their U.S. account holders and that certain non-financial foreign entities (NFFE) either provide information relating to their substantial U.S. owners or report such information directly to the IRS. FFIs or NFFEs not meeting these requirements are subject to withholding on withholdable payments made to the FFI or NFFE. 26 CFR 1.1471- 1.1474 set forth the due diligence, reporting and withholding requirements for FFIs and withholding agents.

## Exhibit 4.60.1-2 (Cont. 1) (02-23-2023)

## Terms/Definitions/Acronyms

Term	Definition
Foreseeable relevance	While the standard of foreseeable relevance is intended to provide for exchange of information in tax matters to the widest possible extent, jurisdictions are not at liberty to engage in “fishing expeditions” or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer. The international standard requires that at the time a request is made, there is a reasonable possibility that the requested information will be relevant.
Intergovernmental agreement (IGA)	An IGA is an agreement or arrangement between the United States or the Treasury Department and a foreign government or one or more agencies thereof (FATCA partner) to either implement or facilitate the implementation of FATCA through reporting by financial institutions. An IGA may be either Model 1 or Model 2. The Treasury Department publishes a list identifying all jurisdictions that are treated as having in effect an IGA.
IRS Joint Audit Team Leader	The IRS Joint Audit Team Leader is the IRS member of the Joint Audit Team with primary responsibility for the issues related to the Joint Audit. The IRS Joint Audit Team Leader will generally be the Issue Manager responsible for the IRS examination, or in some cases, the Revenue Agent assigned primary responsibility for the relevant issues. The IRS Joint Audit Team Leader will lead work on the Joint Audit Issues by the IRS members of the Joint Audit Team.
Joint Audit Coordinator (JAC)	The Joint Audit Coordinator is the jurisdiction point of contact for coordinating the Joint Audit between the Joint Audit Parties. The U.S. JAC will be the JITSIC Senior Revenue Agent assigned to the Joint Audit or APMA representative assigned to the Joint Audit where the Joint Audit includes a transfer pricing issue.
Joint Audit Examination Plan	A formalized agreement between the Joint Audit Parties to conduct a Joint Audit. The agreement outlines the objectives, scope, and timeline for the Joint Audit. The Joint Audit Examination Plan should include information concerning the communication and exchange of information, Joint Audit participants and roles, operational risks and mitigation strategies, as well as escalation procedures, if necessary.

**Exhibit 4.60.1-2 (Cont. 2) (02-23-2023)****Terms/Definitions/Acronyms**

<b>Term</b>	<b>Definition</b>
Joint Audit Issues	The potential tax issues agreed upon in the Joint Audit Examination Plan by the participating tax administrations that will be examined by the Joint Audit Team to determine tax compliance in the relevant jurisdictions.
Joint Audit Notification	Notification of the commencement of a Joint Audit delivered to the taxpayers by their respective Joint Audit Party. Notification should be provided to taxpayers subject to joint examination at the earliest possible date. Delivery of the notification to perform a Joint Audit may be performed orally or in a written communication.
Joint Audit Parties	The Joint Audit Parties are all tax administrations that are signatories to the Joint Audit Examination Plan, or individually as a “Joint Audit Party” to the Joint Audit Examination Plan.
Joint Audit Referral	A formal request by an IRS audit team for a case to be considered for a Joint Audit. The referral describes the relevant taxpayer, audit timeline, and cross-border audit issues. In addition, it includes a brief statement explaining how the case would satisfy the objectives of the Joint Audit Program. The Joint Audit Referral is submitted to a JITSIC Senior Revenue Agent or the APMA Director where the case includes a transfer pricing issue.
Joint Audit Team	The team comprised of representatives from each Joint Audit Party, who will work jointly in the performance of an audit to reach a resolution on the Joint Audit Issues. The primary point of contact for each Joint Audit Party will be its JAC. The JACs will work closely with the Joint Audit Team members.
Joint International Taskforce on Shared Intelligence and Collaboration (JITSIC)	The IRS JITSIC Program operates under the Office of Offshore Compliance Initiatives in LB&I as part of the FTA’s global network which works to achieve systematic and enhanced cooperation between member tax administrations.
Model 1 IGA	A Model 1 IGA implements FATCA through reporting by financial institutions to the FATCA partner, followed by automatic exchange of the reported information with the IRS. There are two types of Model 1 IGA (Model 1A IGA and Model 1B IGA).



## Exhibit 4.60.1-2 (Cont. 3) (02-23-2023)

## Terms/Definitions/Acronyms

Term	Definition
Model 1A IGA	Model 1A IGAs are reciprocal, requiring the IRS to provide specified information with regards to residents of the FATCA partner to the host country tax authority (HCTA) on an automatic basis. FATCA partners signing a reciprocal Model 1A IGA with the United States are evaluated on data safeguards, infrastructure and provisions about confidentiality and use prior to exchanging data.
Model 1B IGA	Model 1B IGAs are non-reciprocal agreements in which the IRS does not report FATCA information to the FATCA partner.
Model 2 IGA	A Model 2 IGA facilitates the implementation of FATCA through reporting by financial institutions directly to the IRS in accordance with the requirements of an FFI agreement, supplemented by the exchange of information between such foreign government or agency thereof and the IRS. Model 2 IGAs are non-reciprocal agreements.
Mutual Agreement Procedure (MAP)	A procedure pursuant to the mutual agreement article in tax treaties through which the contracting states agree to resolve cases involving double taxation or taxation not in accordance with the convention and other problems arising from the interpretation and operation of the tax treaty. For more information, see Revenue Procedure 2015-40, Procedures for Requesting Competent Authority Assistance under Tax Treaties, or its successor.
Organisation for Economic Co-operation and Development (OECD), Forum on Tax Administration (FTA)	Cooperation between tax administrations is at the Commissioner level. The FTA brings together the leaders of advanced tax administrations from around the world to work collectively to identify, discuss and influence relevant global trends and develop new ideas to enhance tax administration globally. For more information, see <a href="https://www.oecd.org/tax/forum-on-tax-administration/">https://www.oecd.org/tax/forum-on-tax-administration/</a> .
Tax administration	The administration, management, conduct, direction, and supervision of the execution and application of the revenue laws (or related statutes) of the Contracting State that is party to the international exchange agreements.

**Exhibit 4.60.1-2 (Cont. 4) (02-23-2023)****Terms/Definitions/Acronyms**

<b>Term</b>	<b>Definition</b>
Traditional Automatic Exchange of Information (Traditional AEOI)	Traditional AEOI data generally includes fixed, determinable, annual or periodical (FDAP) income data routinely reported by payers in one partner jurisdiction for payees reporting to be residents of the other partner jurisdiction. The payer's reporting may be routinely and automatically exchanged with the tax authority of the jurisdiction where the payee is reporting as resident. 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.
Transfer Pricing Practice (TPP)	TPP operates within TTPO and comprises the Transfer Pricing Practice Network, Transfer Pricing Risk Assessment Team, and various field teams.
Transfer Pricing Risk Assessment (TPRA)	The TPRA Team operates within TTPO and works to identify and prioritize transfer pricing issues with high compliance risk using data analytics.
Treaty and Transfer Pricing Operations (TTPO)	The TTPO Practice Area, within LB&I, comprises the Treaty Administration Program, APMA Program, TPP Program, and TTPO Practice Network Program.