



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

11.3.25

AUGUST 11, 2023

## EFFECTIVE DATE

(08-11-2023)

## PURPOSE

- (1) This transmits revised IRM 11.3.25, Disclosure of Official Information, Disclosure to Foreign Countries Pursuant to Tax Treaties.

## MATERIAL CHANGES

- (1) IRM 11.3.25.1(3) and (4), Updated Program Scope and Objectives, to align the Program and Policy owner sections to be in line with all other Disclosure IRMs.
- (2) IRM 11.3.25.1.4, Program Controls, were added in order to incorporate relevant internal controls. These items identify information about the program and procedures covered within this section.
- (3) Reviewed and updated the IRM where necessary for the following types of editorial changes: legal citations, published forms and documents and web addresses.

## EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 11.3.25, Disclosure of Official Information, Disclosure to Foreign Countries Pursuant to Tax Treaties, dated March 01, 2018.

## AUDIENCE

All Operating Divisions and Functions.

## RELATED RESOURCES

- (1) The Disclosure and Privacy Knowledge Base can be found at: <https://portal.ds.irsnet.gov/sites/vl003/pages/default.aspx>.

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11.3.25

Disclosure to Foreign Countries Pursuant to Tax Treaties

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11.3.25.1  
(03-01-2018)  
**Program Scope and Objectives**

- (1) Purpose: Disclosures of information to, or received from, foreign tax authorities are governed by tax treaties, tax information exchange agreements (TIEAs), provisions of the Internal Revenue Code (IRC), and in some cases, Foreign Account Tax Compliance Act (FATCA) intergovernmental agreements. This IRM section provides instructions concerning Disclosure to Foreign Countries Pursuant to Tax Treaties, TIEAs and the IRC.
- (2) Audience: These procedures apply to all IRS employees and contractors.
- (3) Policy Owner: The Director of Governmental Liaison, Disclosure and Safeguards (GLDS) is responsible for oversight of Disclosure policy.
- (4) Program Owner: The Disclosure office, under GLDS, is responsible for the Disclosure program and guidance. Each IRS organization is responsible for ensuring its employees are aware of and follow Servicewide Disclosure policy.
- (5) Primary Stakeholders: The following offices within LB&I have responsibility for Disclosures to foreign countries pursuant to tax treaties and TIEAs:
  - Director, Treaty Administration under the Director, Treaty & Transfer Pricing Operations (TTPO)
  - Assistant Deputy Commissioner (International)
  - In addition, legal issues arising with respect to disclosure of information to, or received from, foreign tax authorities are within the subject-matter jurisdiction of Associate Chief Counsel (International), Branch 7.

11.3.25.1.1  
(03-01-2018)  
**Background**

- (1) Most tax treaties entered into by the United States include provisions governing the exchange of information with the treaty partner. The information may relate to income, estate and gift, excise, and other taxes, depending on the terms of the particular treaty. TIEAs may also be in effect between the United States and other jurisdictions to authorize the exchange of tax information.
- (2) Returns and return information (referred to in this section collectively as “tax information”), as defined in IRC 6103, are confidential under the statute and cannot be disclosed unless authorized by the IRC.
- (3) IRC 6103(k)(4) provides an exception for disclosure of tax information to foreign tax authorities pursuant to a treaty or bilateral agreement. Specifically, IRC 6103(k)(4) provides:

A return or return information may be disclosed to a competent authority of a foreign government which has an income tax or gift and estate tax convention, or other convention or bilateral agreement relating to the exchange of tax information, with the United States but only to the extent provided in, and subject to the terms and conditions of, such convention or bilateral agreement.

- (4) IRC 6105 provides that “tax convention information,” or tax treaty information, is confidential and may not be disclosed unless an exception applies. Tax treaty information generally includes information that the IRS receives from a foreign tax authority pursuant to a tax treaty or TIEA. It can also include information that reflects information received from a foreign tax authority, e.g., an

outbound communication that references an inbound communication or from which a specific issue or matter can be associated with the particular treaty partner.

- (5) IRC 6105(b) provides the following exceptions to the prohibition on disclosure of tax treaty information:

- a. Information may be disclosed to persons or authorities (including courts and administrative bodies) that are entitled to such disclosures under the relevant treaty or agreement.

**Note:** Tax treaties typically impose two conditions for disclosure. First, the disclosure must not be prohibited under domestic law such as IRC 6103. Second, the person to whom the information is disclosed must be involved in the assessment, collection or administration of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the treaty.

- b. Information may be disclosed as provided under applicable procedures relating to applications for relief under a tax treaty. See *Rev.Proc. 2015-40, Procedures for Requesting Competent Authority Assistance Under Tax Treaties*.
- c. With the consent of the foreign tax authority, information may be disclosed to Federal, state, and local enforcement officers and employees who are directly involved in responding to or investigating any terrorist incident, threat, or activity.
- d. The Secretary may disclose information that does not relate to a particular taxpayer if the Secretary determines, after consultation with the relevant treaty partner, that the disclosure would not impair tax administration.

- (6) Tax treaties and TIEAs provide that the exchange of information between countries be made through each country's designated Competent Authority. The U.S. Competent Authority under tax treaties and TIEAs is the LB&I Commissioner. See Delegation Order 4-12, published at IRM 1.2.2.5.11.
- (7) The United States also has entered into various agreements with its territories (the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands) that include provisions for the exchange of information. Such agreements (e.g., Tax Implementation Agreements, Tax Coordination Agreements, Memorandums of Understanding (MOUs)) with the U.S. territories are among the "FedState" agreements authorized under IRC 6103(d). Exchange of information under these FedState agreements with U.S. territories also must be made through the LB&I Commissioner. See Delegation Order 4-12, published at IRM 1.2.2.5.11 .
- (8) Although U.S. territories are considered "states" for purposes of disclosure pursuant to FedState agreements under IRC 6103(d), such agreements with U.S. territories are "tax conventions," or tax treaties, within the meaning of IRC 6105. As a result, information received by the IRS under FedState agreements with U.S. territories may only be disclosed to the extent provided for in the agreements or in the circumstances described in IRC 6105 and this section.

11.3.25.1.2  
(03-01-2018)

## Authority

- (1) The following items govern the authority pertaining to disclosures to foreign countries pursuant to tax treaties and TIEAs:

- IRC 6103(k)(4)
- IRC 6105

11.3.25.1.3  
(03-01-2018)

## Roles and Responsibilities

- (1) This IRM is used by all IRS employees to comply with the provisions of IRC 6103(k)(4) and IRC 6105 when disclosing tax information to foreign countries pursuant to tax treaties, and TIEAs.

11.3.25.1.4  
(08-11-2023)

## Program Controls

- (1) Business Units are responsible for establishing and documenting the program controls developed to oversee their program as well as ensuring employee compliance with all applicable elements of this IRM.

11.3.25.1.5  
(03-01-2018)

## Definitions/Acronyms

- (1) The following is a list of the acronyms that are used in this IRM section:

### Acronyms

Acronym	Definition
EOI	Exchange of Information
FATCA	Foreign Account Tax Compliance Act
GLDS	Governmental Liaison, Disclosure and Safeguards
IRC	Internal Revenue Code
JITSIC	Joint International Taskforce on Shared Intelligence and Collaboration
LB&I	Large Business and International
MCAP	Mutual Collection Assistance Program
MLAT	Mutual legal assistance treaty
MOU	Memorandum of Understanding
PGLD	Privacy, Governmental Liaison and Disclosure
TIEA	Tax information exchange agreement
TTPO	Treaty & Transfer Pricing Operations

11.3.25.2  
(03-01-2018)  
**Information Received  
from Foreign Tax  
Authorities**

- (1) If the IRS needs information from a country with which the United States has a tax treaty or TIEA, a request is submitted in accordance with established procedures.
- (2) IRS employees are to be guided by the provisions of IRM 4.60.1, International Procedures - Exchange of Information, in requesting information from foreign countries. LB&I staff (Exchange of Information Teams or Joint International Taskforce on Shared Intelligence and Collaboration (JITSIC)) generally reviews the request and, as appropriate, prepares a letter of request for the signature of the LB&I Commissioner, to be sent to the foreign tax authority.
- (3) For spontaneous exchanges of information, LB&I Commissioner, LB&I staff (Exchange of Information Teams or JITSIC), will forward information received from the treaty partner to the field office with jurisdiction over the taxpayer.
- (4) For automatic exchanges of information, LB&I Commissioner, LB&I staff (Exchange of Information Teams or JITSIC), will make information received from the treaty partner available to the field office with jurisdiction over the taxpayer under procedures established by the LB&I Commissioner.
- (5) Under tax treaties and TIEAs, in conjunction with IRC 6105(a), tax treaty information received by the IRS from a foreign tax authority must be kept confidential unless an exception applies. See IRM 11.3.25.1.1.
- (6) Because of the requirement to keep tax treaty information confidential, tax treaty information generally may not be disclosed to:
  - State tax agencies;
  - The Department of Justice for purposes other than Federal tax administration; or
  - Other Federal agencies for purposes other than Federal tax administration, even where such disclosure would be authorized for purpose of IRC 6103.
- (7) The U.S.-Mexico and U.S.-Canada tax treaties provide that information exchanged under the treaties may be shared with state and local authorities.
  - a. Pursuant to these treaties, States may be permitted access to tax treaty information received from the relevant foreign tax authority.
  - b. Information received by the LB&I Commissioner, or from the foreign tax authority of these countries may be sent directly to State tax agencies under IRC 6103(d).

**Note:** This information is considered Federal tax information and its use is governed by the terms of the tax treaty and Basic Agreement. See IRM 11.3.32, Disclosure to State and Local Governments, for a discussion on Basic Agreements between the States and IRS.

- (8) Disclosure staff should ensure that information disclosed for purposes other than Federal tax administration purposes is reviewed and tax treaty information is removed prior to disclosure.

**Note:** Information obtained under a tax treaty is stamped to indicate that it is tax treaty information.

- (9) Information obtained from a foreign tax authority pursuant to a tax treaty or TIEA may be disclosed to the U.S. taxpayer to whom it relates, upon written



request from the taxpayer, under IRC 6103(e), (see IRM 11.3.2, Disclosure to Persons with a Material Interest). In this situation, the taxpayer is considered to be concerned with assessment, collection, enforcement, or prosecution with respect to the taxes that are the subject of the tax treaty or TIEA.

- a. In a case that is not in litigation, the office of Treaty Administration under the Director, Treaty and Transfer Pricing Operations (TTPO), must be contacted prior to disclosure of this information.
- b. In a case in litigation, disclosure of such information must be coordinated with Associate Chief Counsel (International), Branch 7.

**Note:** The office of Treaty Administration under the Director, TTPO, has the final authority to approve disclosure of information exchanged under a tax treaty or TIEA.

**Exception:** Disclosure generally will not be made to the taxpayer if the foreign tax authority providing the information objects to disclosure or if the IRS determines that disclosure would seriously impair Federal tax administration. See IRC 6103(e)(7) and IRM 11.3.2, Disclosure to Persons with a Material Interest.

- (10) If a Freedom of Information Act request for tax treaty information is received, follow procedures in IRM 11.3.13, Freedom of Information Act.

## 11.3.25.3 (07-23-2015) Disclosure of Information to Foreign Tax Authorities

- (1) If information is needed by a foreign country with which the United States has a tax treaty or TIEA, a request is submitted by the foreign competent authority to the LB&I Commissioner as the U.S. Competent Authority.
- (2) Disclosure of information by the IRS to foreign tax authorities must be authorized by the LB&I Commissioner.
- (3) Certain automatic or “routine” exchanges (such as transmission of reports of taxes withheld from income paid to nonresident aliens) are handled through the LB&I Staff (Automatic Exchange of Information Teams).
- (4) The LB&I Commissioner, generally forwards requests for information to the LB&I Program Manager, Exchange of Information or JITSIC.
- (5) When the requested information is received from the IRS offices, the LB&I Commissioner, LB&I staff (Exchange of Information Teams, or JITSIC) prepares a document for the transmittal of the information to the foreign competent authority. For requests pertaining to the Simultaneous Criminal Investigation Program, the LB&I Commissioner, has the authority to authorize any disclosures.
- (6) For treaty partner requests pertaining to the Simultaneous Examination Program or Industry-wide Exchange of Information, the LB&I Commissioner will:
  - a. Forward the request to the manager with jurisdiction over the examination or the relevant International Referral Recipient for action; and
  - b. When the information is received, transmit it to the treaty partner competent authority.

- (7) For Spontaneous Exchanges of Information, the LB&I Commissioner, LB&I staff, (Exchange of Information Teams, or JITSIC), will transmit U.S.-based information to the treaty partner competent authority.
- (8) Generally, complete tax returns are not furnished to foreign tax authorities pursuant to tax treaties.
- (9) If it should become necessary to issue a summons to obtain the requested information, the summons will be prepared for the staff of the LB&I Commissioner, and forwarded to Associate Chief Counsel (International), Branch 7, for review prior to issuance, if necessary.
- (10) Return information that may potentially identify a confidential informant or otherwise seriously impair an IRS tax investigation is generally not disclosed to foreign tax authorities.
- (11) Information which would reveal business or trade secrets is excepted from the exchange of information provisions of the treaties. See IRM 4.60.1.1.2.5, Limitations on Exchange of Information-Trade Secrets, for further procedures.
- (12) Disclosures to foreign tax authorities made pursuant to tax treaties must be accounted for in accordance with IRC 6103(p)(3) and the Privacy Act of 1974. See IRM 11.3.25.7, Accounting for Disclosures, for further information.
- (13) Information disclosed to U.S. territories under FedState agreements is governed by IRC 6105. Tax information disclosed pursuant to these agreements under IRC 6103(d) is also subject to the administrative provisions of IRC 6103(p)(3) and IRC 6103(p)(4). Unauthorized disclosures and inspections of tax information exchanged pursuant to FedState agreements with U.S. territories may result in criminal sanctions under IRC 7213 and IRC 7213A and civil damages under IRC 7431.

11.3.25.4  
(06-19-2009)

#### **Nontreaty Disclosures to Foreign Countries**

- (1) Although IRC 6103(k)(4) generally provides the authority for disclosure of tax information to foreign tax authorities, other provisions of IRC 6103 permit limited disclosures to foreign countries or individuals of foreign countries in certain situations. These disclosures can be made regardless of whether the United States has a tax treaty or TIEA with the country. However, when a tax treaty or TIEA is in force, information must be exchanged under the tax treaty or TIEA to the extent possible.
- (2) Return information may be disclosed by IRS employees to individuals of foreign countries in accordance with IRC 6103(k)(6). See IRM 11.3.21, Investigative Disclosure.
- (3) Returns and return information may also be disclosed to individuals of foreign countries designated in writing by a U. S. taxpayer to receive such information under IRC 6103(c) and (e). (See IRM 11.3.2, Disclosure to Persons with a Material Interest, and IRM 11.3.3, Disclosure to Designees and Practitioners).

**Example:** Pursuant to a written taxpayer request and consent for disclosure, IRS may certify to a tax treaty partner that taxes were paid in the United States to enable the taxpayer to receive a credit for the taxes on a foreign return.

11.3.25.5  
(07-23-2015)

**Disclosures to Foreign Countries in Collection Matters**

- (1) The United States and five of its treaty partners assist each other in the collection of taxes covered by their respective tax treaties. This program is referred to as the Mutual Collection Assistance Program (MCAP) and falls within the scope of the Mutual Assistance Article of the tax treaties in question. The five countries that participate in the MCAP with the U.S. are:
  - Canada
  - France
  - Denmark
  - Sweden
  - The Netherlands
- (2) Under MCAP, a requested country will endeavor to collect taxes owed to the requesting country by a citizen of the requesting country who is residing in the requested country. Such data as name, address, identification number, type of tax, amount of tax and any other information deemed necessary to assist the collection process is exchanged with the participating treaty partner.
- (3) The authority to sign for matters relating to MCAP has been delegated to the Exchange of Information (EOI) Program Manager and those officially acting for the EOI Program Manager. See Delegation Order 4-12, published at IRM 1.2.2.5.11. The same disclosure provisions apply to exchanges made pursuant to MCAP as apply to other exchanges of information made under the tax treaties.

11.3.25.6  
(06-19-2009)

**Mutual Legal Assistance Treaty Requests**

- (1) For a summary of the procedures for processing the requests for assistance (e.g., providing tax returns and tax return information) under the various treaties on mutual legal assistance in criminal matters (MLATs), see IRM 11.3.28.3.1, Disclosures Based on a Mutual Legal Assistance Treaty (MLAT) Request in Criminal Matters.

11.3.25.7  
(07-23-2015)

**Accounting for Disclosures**

- (1) All disclosures of returns or return information to foreign governments under IRC 6103(k)(4) must be accounted for under IRC 6103(p)(3) using Form 5466-B, Multiple Records of Disclosure. The business unit or function making the disclosure of tax information is responsible for completing the form and forwarding it to the appropriate Campus for input. Treaty disclosures made by the Philadelphia Campus are handled in accordance with the specific program procedures. See IRM 11.3.37, Recordkeeping and Accounting for Disclosures, for the information required to be included on Form 5466-B.

