

**Global Collection
Issues II**

Global Collection Issues II

Overview

Introduction


This course is a continuation of RO CPE 2009 Global Collection Issues I. It describes income tax withholding regimes that apply to foreign persons. It applies the tools discussed in Part I through case studies.

As international case aspects and the globalization of taxpayer activities continue to grow, you will find the tools in Global Collection Issues II useful in case investigations and resolutions.

Target Audience

All SB/SE Field Revenue Officers and Advisors

Presentation Mode

-  Blended with paper-based self-study
-

Pre Review

Access the link from the CPE website and complete the pre review activity before completing the remainder of this course.

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Overview, Continued

References

- IRC sections 1441, 1442, 1445, 1446 and 6503(c)
- IRM 5.1.8, *Courtesy Investigations*
- IRM 5.1.12, *Cases Requiring Special Handling*
- IRM 5.1.18, *Locating Taxpayers and Their Assets*
- IRM 5.1.19, *Collection Statute Expiration*
- IRM 5.21, *International and Insular Issues*
- LEM 5.1.8, *Courtesy Investigations*
- LEM 5.1.12, *Cases Requiring Special Handling*
- LEM 5.1.18, *Locating Taxpayers and Their Assets*
- TECS webpage:
<http://sbse.web.irs.gov/Collection/Programs/TECS/Default.htm>
- MCAR webpage:
<http://sbse.web.irs.gov/Collection/Programs/MCAR/Default.htm>
- Government Liaison contact by state:
<http://mysbse.web.irs.gov/CLD/GLD/GL/Contacts/default.aspx>
- Exchange of Information Treaty by country:
http://lmsb.irs.gov/international/dir_treaty/eoi_overseas/eoi/downloads/country%20List.doc
- Exchange of Information Treaty by contact:
http://lmsb.irs.gov/international/dir_treaty/eoi_overseas/eoi/contact.asp
- Passport Information:
<http://sbse.web.irs.gov/Collection/Programs/Passports/Default.htm>
- Publication 519, *U.S. Tax Guide for Aliens*
- Publication 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*

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Overview, Continued

Objectives

At the end of this topic, you will be able to:

- Describe the use of key investigative tools available when working cases involving taxpayers with international interests and assets.
 - Apply current policy on updating collection statute expiration dates (CSEDs) for taxpayers who have lived outside the United States.
 - Determine when and how to transfer a case to International.
 - Describe other types of withholding regimes such as Central Withholding Agreement, Foreign Investment in Real Property Tax, and partnership withholding with regards to foreign partners.
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In This Lesson

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Withholding Regimes

Types of Withholding Regimes

Revenue officers commonly deal with withholding issues such as employee income tax withholding and business withholding of social security and Medicare tax. As globalization of taxpayer activities continues to grow, it is important to be aware of other withholding regimes such as

- Central withholding agreements (CWA),
 - Foreign investment in real property tax (FIRPTA), and
 - Withholding on partnerships allocable to a foreign partner.
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Central Withholding Agreements

Central Withholding Agreements (CWA)

A large number of foreign entertainers and athletes come to the United States (U.S.) to work or perform. They earn a large amount of income which is normally subject to U.S. income tax. Withholding on income of nonresidents of the U.S. is usually a flat 30 percent of gross income, but nonresidents are taxed at the graduated rates. Under some circumstances, the IRS agrees to a lesser amount of withholding. This is done with a central withholding agreement (CWA).

Taxpayer Expenses

The 30 percent withholding rate is set by Internal Revenue Code (IRC) section 1441.

The 30 percent withholding is on the gross payments made to the entertainer or athlete. This can create problems for the entertainer or athlete. In many cases, they must pay significant business expenses out of the gross income they receive.

Expenses include:

- Backup singer expenses
 - Auditorium rental
 - Payments to crews who set up or maintain a facility
 - Payments for security
-

Reasons for a CWA

When a foreign entertainer or athlete files Form 1040-NR, *U.S. Nonresident Alien Income Tax Return*, they may be able to deduct these business expenses from their gross income and reduce their tax liability. It could be a hardship for the foreign entertainer to pay necessary business expenses and still have 30 percent of their gross income withheld for U.S. income tax purposes. The entertainer could be operating with negative cash flow. Even though the foreign taxpayer may eventually receive a refund of some of the withheld tax, they must first file an income tax return and claim their expenses to receive the refund. The CWA was developed to promote voluntary compliance by having the taxpayer's withholding more closely approximate their tax liability.

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Central Withholding Agreements, Continued

Securing a CWA

When a foreign entertainer or athlete comes to the United States to work, they can request a CWA. The CWA is a binding contract between the taxpayer, the IRS and the withholding agent.

The foreign entertainer or athlete applies for a CWA on Form 13930, *Instructions on How to Apply for a Central Withholding Agreement*, through the CWA program in LMSB. The CWA is worked by senior tax specialists in LMSB. The foreign taxpayer must provide complete information, including all expected income, all performance contracts and expected expenses.

Form 13930 and the CWA webpage list the items required to apply for a CWA. The webpage also provides contacts for the CWA program: <http://sbse.web.irs.gov/Collection/Programs/CentralWithholding.htm>.

Once the taxpayer submits a CWA request and a case assignment is made, a TC 971 AC 510 (Central Withholding Agreement Program Activity) is input on the taxpayer's valid SSN or ITIN. This posts on the TXMOD for the current tax year.

Impact on Revenue Officers

Collection cases on foreign taxpayers are generally worked by international revenue officers. However, domestic revenue officers may receive courtesy investigations to serve levies on income payable to foreign entertainers or athletes by the venues where they are performing.

Foreign Investment in Real Property Tax (FIRPTA) Withholding

Withholding of Tax on Dispositions of U.S. Real Property Interests

The disposition of a U.S. real property interest by a foreign person is subject to the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA) income tax withholding. FIRPTA authorized the United States to tax foreign persons on dispositions of U.S. real property interests. IRC section 1445 generally applies to the buyer or other transferee, called the withholding agent, when a U.S. real property interest is acquired from a foreign person. The withholding obligation also applies to

- foreign and domestic corporations,
- qualified investment entities, and
- fiduciaries of certain trusts and estates.

This withholding serves to collect U.S. tax that may be owed by the foreign person.

Withholding is intended to ensure U.S. taxation of gains realized on disposition of such interests. The buyer is the withholding agent. The buyer must find out if the seller is a foreign person. If the transferor is a foreign person and the buyer fails to withhold, they may be held liable for the tax. For cases in which a U.S. business entity such as a corporation or partnership disposes of a U.S. real property interest, the business entity itself is the withholding agent for gains or distributions allocable to a foreign partner, beneficiary or shareholder.

Form 8288

The purchaser of a U.S. real property interest from a foreign person must file Form 8288, *U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests*, to report and send the tax amount withheld to the IRS. Form 8288 is due 20 days from the date of transfer of the property.

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Foreign Investment in Real Property Tax (FIRPTA) Withholding, Continued

Impact on Revenue Officers

The combination of a weak U.S. dollar and low interest rates has led to a rise in the purchase of U.S. real property interests by foreign investors. This may result in an increase in future sales by foreign investors.

You may receive a Bal Due case on FIRPTA withholding. Attempt to collect the Form 8288 liability from the buyer. If the buyer is uncooperative, consider assertion of the trust fund recovery penalty (TFRP). Any TFRP involving a Form 8288 liability must be processed manually, outside the Automated Trust Fund Recovery (ATFR) program.

For additional information, refer to Publication 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*.

Partnership Withholding

Withholding Tax on Foreign Partners' Income

As cases take more international aspects you will need to recognize a partnership, either foreign or domestic, may be subject to withholding tax with regards to a foreign partner for income effectively connected with a U.S. trade or business. IRC section 1446 imposes this tax obligation.

The partnership, or a withholding agent for the partnership, must withhold and pay over the withholding tax. A partnership that must pay the withholding tax, but fails to do so, may be liable for the TFRP.

Foreign Partner

A partner that is a foreign entity should provide the appropriate Form W-8 to the partnership.

Partners who have provided Form W-8 BEN, *Beneficial Owner's Certificate of Foreign Status for U.S. Tax Withholding*, to a partnership for purposes of IRC sections 1441, *Withholding of Tax on Nonresident Aliens*, or 1442, *Withholding of Tax on Foreign Corporations*, can use the same form for purposes of section 1446 if they meet the requirements discussed under documentation for those sections. However, a foreign simple trust that has provided documentation for its beneficiaries for purposes of section 1441 must provide a Form W-8 BEN on its own behalf for purposes of section 1446.

The partnership may not rely on the certification if it has actual knowledge or has reason to know that any information on the form is incorrect or unreliable.

The partnership must keep the certification for as long as it may be relevant to the partnership's liability for IRC section 1446 tax.

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Partnership Withholding, Continued

Amount of Withholding Tax

The amount a partnership must withhold is based on its effectively connected taxable income that is allocable to its foreign partners for the partnership's tax year.

The foreign partner's share of the partnership's gross effectively connected income is reduced by the partner's

- share of partnership deductions connected to that income for the year,
- tax treaty benefits related to that income, and
- allowable prior year deductions and losses the partnership takes into consideration.

For purposes of the last bullet above, the partner must provide a certification of the information to the partnership. For information on this certification, see section 1.1446-6T, of the Treasury Regulations.

Withholding Not Required

If a nonresident alien partner's investment in the partnership is the only activity producing effectively connected income, and the IRC section 1446 tax is less than \$1,000, the partnership is not required to withhold. For information on the certification in this situation, see Treasury Regulations, section 1.1446-6T(c)(1)(iv).

Tax Rate

The withholding tax rate on a partner's share of effectively connected income is the highest rate allowed under IRC sections 1 and 11(b). This is currently 35 percent. This rate may change from time to time based on new tax legislation. However, the partnership may withhold at the highest rate applicable to a particular type of income allocated to a noncorporate partner provided the partnership received the appropriate documentation. See section 1.1446-3(a)(2)(ii) of the Treasury Regulations.

Amount of Installment Payment

A partnership must make installment payments of withholding tax on its foreign partners' share of effectively connected taxable income whether or not distributions are made during the partnership's tax year. The amount of a partnership's installment payment is the sum of the installment payments for each of its foreign partners. The amount of each installment payment can be figured by using Form 8804-W, *Installment Payments of Section 1446 Tax for Partnerships*.

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Partnership Withholding, Continued

Payment Due Dates Payments of withholding tax must be made during the partnership's tax year in which the effectively connected taxable income is derived. A partnership must pay the IRS a portion of the annual withholding tax for its foreign partners by the 15th day of the fourth, sixth, ninth and twelfth months of its tax year for U.S. income tax purposes. Any additional amounts due are paid when Form 8804, *Annual Return for Partnership Withholding Tax*, is due.

Distribution to Partner A foreign partner's share of withholding tax paid by a partnership is treated as distributed to the partner on the earliest of

- the day on which the tax was paid by the partnership,
- the last day of the partnership's tax year for which the tax was paid, or
- the last day on which the partner owned an interest in the partnership during that year.

The amount treated as distributed to the partner is generally treated as an advance or draw under section 1.731-1(a)(1)(ii) of the Treasury Regulations to the extent of the partner's share of income for the partnership year.

Impact on Revenue Officers You may receive a case where the partnership is liable for the withholding due to a foreign partner. Attempt to collect against the partnership.

If you cannot collect the withholding from the partnership, consider closing the case currently not collectible, after addressing the partner's liability for the TFRP.

Case Study 1

Directions Read each case study and complete the questions that follow. Use a separate sheet of paper or print these pages. Answers are found on the CPE website.

Facts of Case TP Nameline: Steven Bennett

IDRS/ICS Address: 206 Casper Blvd, Apt 104, Lafayette, LA 70162

Bal Due: 30 200512 TC 150 12/29/2006 \$27,150
30 200712 TC 150 04/29/2008 \$75,150
Del Ret: 30 200612

Mr. Bennett's address of record is in Lafayette, LA, which is your post of duty. While Mr. Bennett's address appears valid, you are unable to make contact or locate any assets. You learn from third parties that Mr. Bennett is presently out of the country and is often abroad. Mr. Bennett has a business in Canada and possibly a personal bank account with State Trust Savings Bank in Montreal, Canada.

Question 1 You want to secure copies of bank statements and cancelled checks from State Trust Savings Bank in Montreal, Canada. How do you accomplish this?

Answer:

Question 2 You want to get the taxpayer's name on the TECS system. How do you do this?

Answer:

Continued on next page

Case Study 1, Continued

Question 3 Ten months after you report the case unable to contact, the Department of Homeland Security advises the IRS TECS Coordinator in SB/SE that Mr. Bennett has just arrived at an airport in New York and will be traveling to New Jersey for a two-week stay. What information will you potentially be able to secure?

Answer:

Additional Case Facts Revenue Officer Larry Barton in New Jersey is assigned a courtesy investigation. He meets with Mr. Bennett and secures a financial statement. He learns Mr. Bennett is planning to move from Lafayette, LA to Redwood, NJ. RO Barton advises Mr. Bennett, based on assets revealed in the CIS and located in various U.S. cities, he has the ability to full pay.

RO Barton provides a 45-day deadline for payment. You request the case be taken out of unable to contact status and assigned to you, as the taxpayer still resides in Lafayette, LA.

Question 4 If Mr. Bennett fails to full pay the account, what additional action can be initiated?

Answer:

Case Study 2

Facts of Case

Revenue officer Larry Penbroke received a Bal Due account for 1998 Form 1040 for William Bacone from International. Mr. Bacone's total liability is \$300,000, including accruals. Mr. Bacone currently resides at 1234 Rocky Mountain Avenue in Provo, Utah. The assessment details are as follows:

TC 150 04 15 1999 \$75,000
TC 290 02 13 2001 \$150,000

RO Penbroke reviewed the revenue agent report (RAR). The additional assessment is tax on foreign source income that Mr. Bacone failed to report. Letter 1058, *Final Notice – Notice of Intent to Levy and Your Right to a Hearing*, was mailed February 21, 2003 to Mr. Bacone by registered mail to a Canadian address. Letter 1058 came back unclaimed.

IDRS research shows Letter 3164, *Third Party Notice*, was issued. IRP information for 2005 shows:

- Mr. Bacone had a Canadian address.
- Form 1099-INT from Citibank.
- Form 1099-MISC from Harvard Corp.

IMFOLI shows Mr. Bacone's last filed return was for 2002. There is no IRP information for 2003, 2004 and 2006.

A NFTL was filed with the Recorder of Deeds for the District of Columbia on June 19, 1999, because Mr. Bacone had a Canadian address in 1998 and 1999. Accurant research disclosed Mr. Bacone is an officer of Harvard Corp. of Vancouver, British Columbia.

Accurant research on Harvard Corp. shows no information. Internet research on Harvard Corp. shows an active website, www.tshirtsareus.com. It was determined from the website that Harvard Corp. sells specialty tee shirts. Visa, MasterCard and PayPal are accepted as forms of payment. The website also indicates Mr. Bacone is the president and CEO of Harvard Corp., which was established in November 2002.

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Case Study 2, Continued

Facts of Case (continued)

RO Penbroke called the toll-free number listed on the website and interviewed Mr. Bacone. RO Penbroke demanded full payment and verified Mr. Bacone received all required publications. During the interview, RO Penbroke asked Mr. Bacone why the income tax returns for 2003 and 2004 were not filed. Mr. Bacone responded he was living and working in Canada during 2003 and 2004 and filed Canadian tax returns for those years. He did not file U.S. Form 1040 tax returns for those years. RO Penbroke determined Mr. Bacone is a U.S. citizen. While securing the collection information statement, Mr. Bacone became evasive and refused to answer any further questions. However, during the conversation, RO Penbroke was able to obtain additional asset information. Mr. Bacone owns a condo on the French Riviera located at 45 Boulevard du Feriage, Cannes, France. RO Penbroke informed Mr. Bacone a NFTL would be filed immediately. RO Penbroke requested a NFTL be filed that day.

RO Penbroke made a field call to the county courthouse in Provo, Utah. Research revealed Mr. Bacone purchased the property at 1234 Rocky Mountain Avenue, Provo, Utah, a single-family residence, on May 19, 2002. No encumbrances were found against Mr. Bacone.

RO Penbroke made a field call to 1234 Rocky Mountain Avenue, Provo, UT. The woman answering the door stated she is housesitting for Mr. Bacone and that Mr. Bacone is currently in Canada. He will be arriving home next week. The property is in an upscale neighborhood. It is well-maintained and landscaped. The value in the assessor's record appears to be accurate.

Given the facts of the case, answer the following questions.

Question 1

What is the new collection statute expiration date (CSED) for Mr. Bacone?

Answer:

Continued on next page

Case Study 2, Continued

Question 2 Was Mr. Bacone provided his Collection Due Process (CDP) rights?

Answer:

Question 3 Should a MCAR referral be made to International for the balance for tax period 1998?

Answer:

Question 4 Should a referral to Examination be made regarding Mr. Bacone's unfiled income tax returns for 2003, 2004 and 2005?

Answer:

Question 5 What additional action can be initiated to obtain asset information?

Answer:

Continued on next page

Case Study 2, Continued

Question 6 Does a NFTL need to be filed in Utah?

Answer:

Case Study 3

Facts of Case John Carleton is a singer and songwriter who is currently in the U.S. performing at the Star Performing Art Center in Nashville, TN. Mr. Carleton has a Bal Due for Form 1040NR in the amount of \$125,000 for tax year 2001. You are the assigned revenue officer on this case.

Mr. Carleton's last known address is 15 Dairy Lane, Warwick, RI 02898. A field call to the address reveals the address is that of Mathew Pickens, EA. Mr. Pickens provides Form 2848, *Power of Attorney and Declaration of Representative*, confirming that he is the power of attorney (POA) for Mr. Carleton. Mr. Pickens informs you that Mr. Carleton's actual address is 2122-02 Copenhagen OE, Denmark. Mr. Carleton gives you an original signed Form 1040-NR for tax year 2008 which confirms the Denmark address. You learn Mr. Carleton had a Central Withholding Agreement (CWA).

Question 1 Can you transfer Mr. Carleton's case to International?

Answer:

Question 2 Is it necessary to contact the CWA group manager to secure copy of the CWA?

Answer:

Case Study 4

Facts of Case Sandra Smith is a nonresident alien foreign investor who was courted by a U.S. real estate agent to buy real property in the U.S. The real property is a private home in Passaic County, NJ with an assessed value of \$450,000.

Ms. Smith rented out the home for six years and then put it on the market for \$550,000. Karyn Summers, a U.S. citizen, purchased the property for the asking price of \$550,000.

Question 1 What is FIRPTA and how does it affect Ms. Summers, the buyer of U.S. real property from a foreign investor?

Answer:

Question 2 What is Ms. Summers' obligation?

Answer:

Question 3 When must Ms. Summers remit withholding tax?

Answer:

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Case Study 4, Continued

Question 4

Is there a situation when the foreign person disposing of U.S. real property may have the 10 percent withholding reduced?

Answer:

Case Study 5

Facts of Case

Access the ICS training database case on **Patrick Ventura**. Using the information on the case and the additional facts below, answer the questions that follow.

You complete your initial analysis on this case and make a field call to the ICS address. Ronda Ventura, the sister of Patrick Ventura, is at the ICS address. From her you learn that Patrick Ventura has been living in Mexico for the last four years. Ms. Ventura provides you with her brother's address in Mexico, which is Guerrero No. 20, Colonia Buenavista, C.P. 06300, Mexico, D.F. Ms. Ventura also provides a phone number for her brother and proceeds to get her brother on the phone. After speaking with Mr. Ventura, you confirm the address provided by his sister. You also confirm he has been out of the country for four years. Based on the conversation with Mr. Ventura, you determine he is unlikely to be cooperative.

Question 1

What actions would you take as a domestic revenue officer?

Answer:

Useful Websites

TECS <http://sbse.web.irs.gov/Collection/Programs/TECS/Default.htm>

MCAR <http://sbse.web.irs.gov/Collection/Programs/MCAR/Default.htm>

**Government
Liaison** <http://mysbse.web.irs.gov/CLD/GLD/GL/Contacts/default.aspx>

EOI http://lmsb.irs.gov/international/dir_treaty/eoi_overseas/eoi/downloads/country%20List.doc

**Passport
Information** <http://sbse.web.irs.gov/Collection/Programs/Passports/Default.htm>

**Global Collection
Issues II**

Appendix

Treasury Enforcement Communication System (TECS)

Treasury Enforcement Communication System (TECS)

The Treasury Enforcement Communication System (TECS) is a database maintained by the Department of Homeland Security. It can help you find and contact taxpayers. It can also lead you to assets and levy sources. TECS provides two types of information:

- Current travel information on when a taxpayer enters the country and where they are staying while in the U.S.
 - Historical information on past travels
-

Criteria

The following are criteria for entering a taxpayer on TECS.

- The taxpayer is living outside the U.S. and its territories or is about to depart.
 - The taxpayer has not resolved the case by full payment or other voluntary action, including an installment agreement.
 - Notices of Federal Tax Lien (NFTLs) have been filed on all periods.
 - The total unpaid balance of assessment exceeds the amount in LEM 5.1.12.26.3.1.
 - The taxpayer is not in bankruptcy.
 - The IRS has not accepted an offer in compromise (OIC) to settle the liabilities.
 - The taxpayer's case is in status 26 **or** the taxpayer's case is being reported currently not collectible (CNC) with closing code 06, 03, or 12.
-

Adding a Taxpayer to TECS

For information on adding a taxpayer on to the TECS system, see:

- IRM 5.1.12.26, *Treasury Enforcement Communications System*, and
 - IRM 5.1.12.26.5.2, *Procedures for Requesting Entry of a Taxpayer on TECS – Form 6668*.
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Removing a Taxpayer from TECS

For information on removing a taxpayer from the TECS system, see:

- IRM 5.1.12.26.5.4, *Criteria for Removing a Taxpayer from TECS*, and
 - IRM 5.1.12.26.5.5, *Procedures for Requesting Removal of a Taxpayer from TECS*.
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Treasury Enforcement Communication System (TECS),

Continued

Current Travel Information TECS current travel information can reveal when taxpayers travel into the U.S. for business, employment or personal reasons.

Historical Information TECS historical information on past travels can reveal:

- Possible address information to attempt taxpayer contact or identify assets.
- A taxpayer's status regarding their contention regarding their U.S. residency or nonresidency.
- The validity of information on the taxpayer's returns or collection information statement (CIS).

Requesting Historical Information For additional guidance in requesting historical travel information, see IRM 5.1.18, *Locating Taxpayers and Their Assets*, and the TECS webpage, <http://sbse.web.irs.gov/Collection/Programs/TECS/Default.htm>. Do not request this information on every case. Request historical travel records only when there is some indication the taxpayer has been traveling in and out of the U.S. and the information will help resolve the case.

Mutual Collection Assistance Requests (MCAR)

MCARs Mutual Collection Assistance Requests (MCARs) are bilateral tax treaties the United States has entered into with the five countries which contain broad provisions for assistance in collection.

Countries with Agreements The five countries with MCAR agreements are:

- Canada
- Denmark
- France
- The Netherlands
- Sweden

Be aware of taxpayers who have relocated or moved their assets abroad. If you learn a taxpayer has assets located in one of these countries, you may be able to make an outgoing MCAR request to that country. The MCAR country may then take enforcement action on those assets.

In these situations, the treaty partner may take whatever actions they would take when collecting their own country's tax assessments.

See IRM 5.1.12.25.3(4) for additional information.

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Mutual Collection Assistance Requests (MCAR), Continued

Requesting an Outgoing MCAR

Request an MCAR by completing a MCAR datasheet to send to the appropriate MCAR coordinator. The datasheet provides the information needed to consider issuing an outbound request. Specific criteria for an outgoing MCAR cases are found in LEM 5.1.12.25.3, *Outgoing Mutual Collection Assistance Requests (MCARs)*.

Do not refer Del Ret accounts. Treaty provisions prohibit the referral of Del Ret.

IRM 5.1.12, *Cases Requiring Special Handling*, and the SB/SE MCAR webpage, <http://sbse.web.irs.gov/collection/Programs/MCAR/Default.htm>, can guide you in preparing and routing the MCAR request.

Treaty Exceptions

The treaties for France, the Netherlands and Sweden provide they will not collect from their own citizens. The treaties for Denmark and Canada provide they will not collect from taxpayers who were Danish and Canadian citizens at the time the tax liability arose, regardless of what their citizenship may be now.

Suspension of the Collection Statute Expiration Date (CSED) for Overseas Taxpayers

Adjusting the CSED

Policies for adjusting the CSED apply to taxpayers who are presently abroad as well as taxpayers who are currently in the U.S., but who were abroad for at least six consecutive months after the tax assessment date. The CSED must be recalculated in these situations.

The period that the CSED is recalculated and updated is more limited with taxpayers who have cooperated with IRS's ability to collect. A taxpayer will be considered "cooperative" if the IRS determines the taxpayer has fully responded to the IRS with respect to collection of the assessment.

This policy does not apply to international taxpayers who have not resolved their liabilities and who are not cooperative. In those situations, where a taxpayer has been uncooperative or has not resolved the liability, the CSED will be recalculated and updated for the maximum time allowed by IRC section 6503(c) if the IRS determines there is significant collection potential.

Reasons for Update

The CSED can be updated based on the following sources of information:

- A signed Form 433-A by the taxpayer or power of attorney stating the dates of residence outside the United States and Commonwealth Territories.
- Any other written information signed by the taxpayer or power of attorney stating the dates of residence outside the United States and Commonwealth Territories.
- Oral statements by the taxpayer or power of attorney stating the dates of residence outside the United States and Commonwealth Territories so long as the information is clearly documented in the case history.
- Tax returns consistently filed since the year of tax assessment with a foreign address. The recalculation and update of the CSED will be up to the date the taxpayer signed the return.

When you are unable to secure the information to determine and verify the period the CSED is to be suspended, check data sources such as Accurant, Smart.Alx, IRP or third-party testimony, to determine whether a taxpayer has been outside the U.S. for a long period of time.

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Suspension of the Collection Statute Expiration Date (CSED) for Overseas Taxpayers, Continued

Maximum Recalculation Generally a maximum of five years is added to the CSED for IRC section 6503(c) suspensions. Under this policy, a taxpayer who lived outside the U.S. for 18 months would have a CSED recalculation for an additional 18 months. A taxpayer who lived outside the U.S. for six years would have a CSED recalculation for five years from the original CSED.

IA or OIC For taxpayers who are currently outside the United States and have systemically loaded or manually monitored installment agreements or periodic payment offers in compromise, for which the payment schedule is greater than 24 months, the maximum length of CSED recalculation is 16 years from the date of assessment.

Continuous Levies Continuous levies for taxpayers with international addresses are recalculated and updated for the number of years the IRC section 6503(c) provision allows, if the taxpayers involved have not cooperated with IRS to resolve their liabilities.

Collection Potential In rare instances, where a taxpayer with significant collection potential has been abroad for decades, recalculate the statute as necessary for the time anticipated to collect the liability up to the maximum time allowed under the Code. Modules which show the CSED expired on IDRS can be reversed and updated for collection action.

Currently Not Collectible International taxpayers who are being reported as currently not collectible with closing codes 03, unable to locate, 06, international, and 12, unable to contact, may be subject to ongoing recalculations and updating.

Exchange of Information (EOI)

EOI Request

As our economy becomes global, more and more U.S. taxpayers are participating in offshore activities. Taxpayers may have assets or business locations in other states, or even outside the United States, which can make securing information challenging. The information may be located in another state, in a U.S. Possession or in another country. An exchange of information (EOI) request submitted to the proper authority is used to secure important collection information, even if the information is not available locally.

Available Information

There are many types of information that may be secured through an EOI request. These include:

- Tax returns
- Tax return information
- Verification of filing status
- Citizenship
- Residency
- Income
- Expenses
- Tax liability
- Witness interviews
- Third-party information
- Bank records
- Public records
- Deeds
- Births
- Death
- Marriage
- Divorce

Issuing an EOI request is not appropriate when the information or documentation can be obtained from local sources, internal sources or the taxpayer. Before requesting an EOI, all domestic sources must be exhausted.

Submitting a Request

Different methods are used to submit an EOI request, depending on the source of information:

- Another state government
 - The government of a U.S. Territory (Possession)
 - The government of a foreign country
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Exchange of Information (EOI), Continued

State Government

A state, other than the one in which you work, may have information you need to resolve the case. You first must determine if the state actually has the information. To determine if the information is available, contact either Disclosure or the Governmental Liaison contact for the state. The Governmental Liaison Contacts website is found at <http://mysbse.web.irs.gov/CLD/GLD/GL/Contacts/default.aspx>.

U.S. Territory

When the information required might be available from the government of a U.S. Territory, consult the Governmental Liaison to determine if the required information can be obtained from the government of the U.S. Territory.

Complete Form 8796, *Request for Return/Information*, and send it to Disclosure if the information is held by the state government or U.S. Territory.

Foreign Country

When the information required is held by a foreign country, consult with the proper Tax Attaché, Revenue Service Representative (RSR) or EOI group.

- First determine if there is an EOI treaty with the foreign country. Check the following website:
http://lmsb.irs.gov/international/dir_treaty/eoi_overseas/eoi/downloads/country%20List.doc.
 - If the country is listed as having an EOI treaty, contact the appropriate person from the following website:
http://lmsb.irs.gov/international/dir_treaty/eoi_overseas/eoi/contact.asp.
 - Discuss the EOI request with the contact. The contact can help with the preparation of the memorandum.
 - Prepare the memorandum.
 - Submit the memorandum for approval to the territory manager through the group manager.
 - Forward the memorandum to the appropriate Tax Attaché, RSR or EOI group.
-

Passport Information

Introduction

Passports establish an individual's identity and are used for travel across national borders. In the past, U.S. citizens were not required to obtain passports when traveling to Canada and several other countries. Passports are now required when returning to the United States from almost all foreign locations. The need for a passport for most foreign travel has resulted in an increase in passport applications.

Available Information

The information provided on a U.S. passport application can include:

- Last known address
- Next of kin
- Contact phone
- Email address
- Emergency contact
- Certificate of expatriation

If a taxpayer travels overseas frequently, request a passport check if the case meets the requirements found in LEM 5.1.18.16.1, *Passport Checks*.

Requesting Passport Information

To request a passport check, prepare Letter 4263, *Passport Letter Request*.

Send the letter by secure email to your group manager. After approving, the group manager forwards Letter 4263 to the International Passport Coordinator. The procedures are in IRM 5.1.18.16, *United States Passport Office*.

Additional information, including the name of the coordinator, is available on the SBSE website dealing with passport information. The link for the website is: <http://sbse.web.irs.gov/Collection/Programs/Passports/Default.htm>.

Transferring Cases to International

Confirming the Address If you determine the taxpayer is now living outside the United States and you confirm the taxpayer's address, transfer the case to International.

Confirm a taxpayer's foreign address by

- contact with the taxpayer, or
 - a new address on an U.S. tax return filed by the taxpayer.
-

Criteria for Transfer

The following criteria must be met to transfer the case:

- The aggregate balance equals or exceeds the criteria found in LEM 5.1.8.1.4, *Account Transfers to International*.
 - The CSED for each module has a year or more remaining. Remember, the CSED may be updated if the taxpayer has been outside the U.S. for at least six consecutive months since the tax was assessed.
 - The accounts are not in any of the following statuses:
 - ▶ offer in compromise (OIC)
 - ▶ withhold collection
 - ▶ awaiting adjustment action
 - ▶ military deferment
 - ▶ recommendation for litigation
-

Document the Case

The case history must be documented to show how it was determined the taxpayer is living outside the U.S. and how the address outside the U.S. was verified.

All known assets or levy sources in U.S. must be documented in the case history. An actual levy or seizure determination is not required before transferring the case to International.

Continued on next page

Transferring Cases to International, Continued

Domestic Address – International Case

There are exceptions where the case may have a domestic address, but the case is an international case.

Example: A taxpayer resides abroad, but uses their power of attorney's (POA) domestic address as their official address. This is usually the case in countries where the mail system is unreliable. The taxpayer uses their POA's domestic address to ensure they receive their mail from the Internal Revenue Service.

Example: A taxpayer uses a mail forwarding service, a mail drop box or P.O. box while residing outside the U.S. Some taxpayers live on the Mexican or Canadian side of the border, but cross the border daily to pick up their mail sent to the U.S. address.

Address Not Confirmed

If the taxpayer's address cannot be confirmed, do not transfer the case to International. Send a courtesy investigation to International requesting confirmation of a taxpayer's foreign address.

Address Confirmed

IRM 5.1.8.1.4, *Account Transfers to International*, contains procedures for transferring a case to International.

The case is transferred in ICS to Area 15 (AO 35) with assignment code 3597-6900 and the taxpayer's new address as the address change.

Ship the case and attached documents on a Form 3210 to:

Internal Revenue Service
500 N. Capitol St., NW
Room 1401
Washington, DC 20001-1531
Attn: Collection Automation Coordinator

Determining Alien Status

Status Non-U.S. citizens are, for tax purposes, either resident aliens or nonresident aliens. Their status determines which tax return they file for U.S. tax purposes.

Determining Status If the alien is a resident alien for tax purposes, they will file a Form 1040, just as U.S. citizens file.

If the alien is a nonresident alien for tax purposes, they will file a Form 1040-NR.

For other questions, consult Publication 519, *U.S. Tax Guide for Aliens*, or Advisory.

**Collecting from
Domestic Taxpayers with
Offshore Bank Accounts**

Collecting from Domestic Taxpayers with Offshore Bank Accounts

Overview

Introduction This lesson provides an overview of collection tools available to help identify and collect from domestic taxpayers with offshore bank accounts.

Target Audience Abusive Tax Avoidance Transaction (ATAT) revenue officers

Presentation Mode



Paper-based self-study

References

- IRM 4.26.4, *Currency and Banking Retrieval System*
- IRM 5.1.8, *Courtesy Investigations*
- IRM 5.1.12.26, *Treasury Enforcement Communications System*
- IRM 5.1.18.17, *Locating Taxpayers and Their Assets*
- IRM 5.21.3, *Collection Tools for International Cases*
- IRM 21.2, *Systems and Research Programs*

Objectives At the end of this lesson you will be able to:

- Describe indications of offshore banking activity.
- Determine what tools are available for collection depending on the location of the taxpayer and the bank account.
- Use international research and collection tools.

Continued on next page

Overview, Continued

In This Lesson This lesson contains the following topics:

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Indications of an Offshore Bank Account

Introduction

The Offshore Voluntary Disclosure Project (OVDP), directed at taxpayers who have unreported income from offshore accounts, resulted in the receipt of over 14,000 applications within a seven-month period. These offshore accounts are used not only to hide income to reduce tax liabilities, but also to protect assets from collection. Abusive Tax Avoidance Transaction (ATAT) revenue officers need to be alert for indications these accounts exist. Indications of an offshore account are identified by:

- Examination project codes
 - Domestic bank records
 - Internal research tools
-

Examination Project Codes

Examination Project codes provide clues regarding the type of examination case and the issues that were investigated. Examination project codes are found on IDRS Command Code TXMODA. Project codes are identified as “SPCL PROJ” and generally follow Transaction Code (TC) 424R.

Example

```
424R 09292009 0.00 20094008 XXXXX-XXX-XXXXX-X SOURCE-CD>40
      SPCL-PROJ>0996
      PBC>201 SBC>08000 EGC>1403
      OR
424R 03272003 0.00 20031408 XXXXX-XXX-XXXXX-X SOURCE-CD>62
      SPCL-PROJ>0127
      PBC>203 SBC>87700 EGC>1069
```

Offshore Project Codes

Within the ATAT program, certain Examination projects have been assigned specifically to the Offshore Unit. This type of project can be identified by the specific project code. An offshore project code on an assessment is a strong indication an offshore bank account exists.

Continued on next page

Indications of an Offshore Bank Account, Continued

Relevant Codes The table below provides a list of relevant Examination project codes:

Offshore Code	Description
0020	Brokerage Initiative
0127	Credit Card Summons
0160	Offshore Transactions
0237	Foreign Trusts
0635	Amended Returns with Offshore Voluntary Compliance Issues
0671	Offshore Compliance Project
0969	Offshore Bank Project
0971	Offshore Private Banking
0972	Offshore Information/Informant Referrals
0973	Pay Pal Cases
0996	Offshore Voluntary Compliance Project (OVDP)

**Revenue
Agent's Report
(RAR)**

You should ESTAB and review the revenue agent's report (RAR). This report may provide detailed taxpayer information about related entities or bank account information of possible offshore accounts. For example, in the current OVDP, taxpayers are required to provide copies of offshore account statements to Examination. This information would be found in the RAR and is very useful to Collection.

**Domestic Bank
Account
Information**

A successful collection investigation focuses on following the money. Careful analysis of summons information from the records of U.S. banks can provide clues for possible offshore accounts. Money is often moved offshore by wire transfer, so all bank summonses should include a request for copies of all wire transfers or other means of monetary transfers of funds. It is important you become familiar with how electronic fund transfers (EFT) work and how to interpret documentation of the transfers. This is especially true in cases where the money has moved across international lines.

Continued on next page

Indications of an Offshore Bank Account, Continued

Wire Transfer Terms

The following terms are often used when discussing wire transfers

Funds Transfer – the series of transactions that moves payment from the originator to the beneficiary.

Payment Order – one segment of funds transfer in which a sender requests a receiving bank carry out the next segment.

Originator – the party who wants to make a payment to the beneficiary. This person is the sender of the payment order and originates the funds transfer.

Beneficiary – the party who is intended to receive the payment. This party usually receives credit to their bank account.

Originator's Bank – the receiving bank for the first payment order.

Beneficiary's Bank – the last bank in the chain of payment orders that is intended to make credit available to the beneficiary.

Intermediary Bank – any bank receiving a payment order that is part of the funds transfer. There may be an intermediary bank or several in a funds transfer.

Elements of Wire Transfers

In today's economy, more and more taxpayers' wealth is transferred by wire transfers. All wire payment requests are comprised of two parts:

- **Payment instructions** – instructions include the information needed to direct the money, such as
 - ▶ name and address of the payee,
 - ▶ the destination bank, and
 - ▶ any other information needed to apply the money.
 - **Settlement information** – information needed to pay the wire transfer fee. This information may be useful to identify the sender if a nominee name is used in the transfer.
-

Continued on next page

Indications of an Offshore Bank Account, Continued

How to Send a Wire Transfer

The electronic funds transfer (EFT) system is bank driven. This is what differentiates it from non-bank wire transmitters. Typically, a wire transfer over the EFT system functions much like a check. The bank customer completes the funds transfer request, the customer's account is debited, and the money amount to be wired is sent to a specified location. Licensed wire transmitters that are not banks require the customer to pay over the money before the wire is sent. This procedure works just like sending a money order through Western Union.

Major EFT Systems

There are three EFT systems that transfer wires within the U.S. and between the U.S. and offshore locations. These systems are:

- Fedwire
 - CHIPS (Clearing House Interbank Payment Systems)
 - SWIFT (Society for Worldwide Interbank Financial Telecommunication)
-

Characteristics of Fedwire

Fedwire is an integrated system owned and operated by the United States Federal Reserve System. Most all domestic wire transfers flow over the Fedwire system. Characteristics of Fedwire include:

- Highly automated, high-speed processing
 - Guaranteed payment to receiver bank
 - Nationwide network
 - Emphasis on service security, reliability, availability and resilience
 - Once posted or acknowledged, transactions are final in central bank funds and irrevocable
 - Same-day credit extended to users under specific conditions
-

Flow of Fedwire Transfer Funds

Many banks are Fedwire participants and have dedicated terminals with software furnished by Fedwire. These banks are able to process wire transfer orders online with a message to the Fedwire Central Operations Center.

Continued on next page

Indications of an Offshore Bank Account, Continued

**Example of
Fedwire Funds
Transfer
Message**

This is an example of a wire transfer showing funds moved offshore.

OMAD	(1120) 25743740NLW5792F1 53267FT01
TYPE/SUBTYPE	(1510) 1000
IMAD	152025743740NLW5792F1532672FT01
AMOUNT	(2000) 000000200,000.00*
SENDER DI**	(3100) 05200867METR0 SAN JOSE
SENDER REF	(3320) 3072
RECEIVER DI**	(3400) 057800410KEB ALBANY
BUS. FUNCTION CODE	(3600) CTR
BENEFICIARY'S FI	(4100) CRAIG BANK & TRUST CO VANNARD, GRAND HILLS, BAHAMAS
BENEFICIARY	(4200) D536789 EASTLAND WIDGET CO 3023 N. 17TH AVE SAN JOSE, CA
REF FOR BENEFICIARY ORIGINATOR	(4320) INV450 (5000) D783150 CASS WIDGET CO 2023 N. 17TH AVE SAN JOSE, CA
ORIGINATOR ORG TO BENEFICIARY	(5100) ERSKINE BK SAN JOSE PAY EASTLAND WIDGET HINDS \$200,000 INV450 10 CASES SHIPPING DOCK XYZ
FI TO FI	(6310) ISSUE CASHIERS CHK/ PHN MR. HINDS 121-555-1707
SEARCH TEXT FOR WIRE WAS:	BENEFICIARY = EASTLAND WIDGET CO COMPANY ACCOUNT 536789

***Note:** The final two zeros denote any amount(s) below a dollar. No decimal point is shown in the filed tax format. The amount shown in the example above, therefore, is \$200,000.00

****Note:** DI is an abbreviation for Depository Institution, which is used interchangeably by the Federal Reserve and throughout this report for Financial Institution (FI) and Bank

Continued on next page

Indications of an Offshore Bank Account, Continued

Offline Transfers

Some Fedwire participants are unable to communicate online with Fedwire and will initiate an offline transfer through a telephone call to their local Federal Reserve Bank. Offline transfers are sent from the local Federal Reserve Bank to the Fedwire Central Operations Center. Once the wire transfer message, either online or offline, reaches the Fedwire Central Operations Center, the appropriate debits and credits are completed and the message is forwarded to the designated receiving bank.

Definition of Correspondent Bank

A correspondent bank is a bank that sells services to another bank. When a bank needs to perform functions of a type they are not able to handle in-house, whether due to geographical limitations or simply because they are not able to handle the transaction, they turn to a correspondent bank for assistance.

Wire transfer service is a common need filled by a correspondent bank.

Correspondent Bank and Fedwire

Sometimes the sender bank and the receiver bank are Fedwire participants. However, many banks are not Fedwire participants and use the services of a correspondent bank that is a Fedwire participant. A correspondent banking relationship requires the receiver bank establish an account at the correspondent bank. Otherwise, there is not an account to debit or credit when money is wired. It is important to understand and correctly interpret wire transfer documents to follow the money.

Audit Trail

An offshore bank doing business in the U.S. must have a correspondent bank in the U.S. handling their domestic transactions. For example, it would be impossible for the Butterfield Bank, a well-known British bank without a U.S. presence, to serve many of its customers without a correspondent relationship with a U.S. bank.

Anytime there is a correspondent relationship, the flow of money is documented in the form of an audit trail, adding complexity to the documentation.

Continued on next page

Indications of an Offshore Bank Account, Continued

Caution You must be aware that some “correspondent banking” relationships are sham transactions used to disguise the flow of money. There have been literally thousands of “banks” set up in tax havens around the world in recent years for the purpose of concealing the ownership of money.

Additional Information Additional information regarding Fedwires is found in the Fedwire FinCEN Guide. Access it from the ATAT website.

Step	Action
1	Access http://abusiveshelter.web.irs.gov/ .
2	Click the link on the left titled “Offshore Compliance.”
3	Click the link titled “OCCP.”
4	Click the link titled “Wire Transfer Law Enforcement Guide.”

Clearing House Interbank Payments System (CHIPS) Clearing House Interbank Payments System (CHIPS) is the primary electronic funds transfer system for a transfer of U.S. dollars among international banks. CHIPS is a bank-owned payments system for clearing large-value payments. It processes over 285,000 payments a day with a gross value of \$1.4 trillion.

Characteristics of CHIPS Some CHIPS characteristics are:

- Real time, final payments system for U.S. dollars
- Only large-value system in the world with the capability of carrying extensive remittance information for commercial payments
- Customers represent 19 countries worldwide

Continued on next page

Indications of an Offshore Bank Account, Continued

How to Use CHIPS

To use CHIPS, both the sending bank and the receiving bank must be CHIPS participants. The CHIPS participants must have a branch office in New York. Thus, a wire transfer of U.S. dollars leaving the U.S. destined for a European account will not be transferred from the CHIPS system directly to the beneficiary bank in Europe. It will instead go to the New York branch office of the beneficiary bank or its correspondent bank. Since there are still debits and credits needed to settle the transaction, a Society for Worldwide Interbank Financial Telecommunication (SWIFT) message will be generated to initiate the completion of the transaction, debiting the New York account and crediting the European account.

Additional Information

CHIPS maintains a public website, www.chips.org/, which provides a further description of the CHIPS system under the “references” tab.

Society for Worldwide Interbank Financial Telecommunication (SWIFT)

Society for Worldwide Interbank Financial Telecommunication (SWIFT) is headquartered in Belgium and is a financial industry-owned cooperative that supplies secure, standardized messaging services to financial institutions. SWIFT is a message system and not a money transfer system. Over 70% of CHIPS transfers are initiated with SWIFT messages. Both SWIFT and CHIPS documents may be needed to fully understand the flow of money.

Be sure to include a request for SWIFT and CHIPS documents along with your wire transfer summons.

Characteristics of SWIFT

Some SWIFT characteristics are:

- Responsible for developing bank identifier codes (BIC) for all financial institutions. Bank identifier codes are used as a financial messaging system. They are an important tool in identifying institutions involved in the movement of money.
- Maintains directories used to identify financial institutions involved in the message.

It may be possible to obtain a financial institution’s name by contacting the U.S. SWIFT office, located in New York City or checking the SWIFT webpage at: www.swift.com/biconline.

Continued on next page

Indications of an Offshore Bank Account, Continued

Internal Research Tools

Many of the available standard collection research tools can provide indications of offshore accounts, but careful analysis is often needed to uncover the offshore accounts.

Credit Bureau Reports

Although it is unlikely an offshore credit card would appear on a taxpayer's credit bureau report, request a credit bureau report on an ATAT balance due account. If evidence of an offshore credit card appears on the credit report, issue a summons to the credit card company for statements and copies all payments. The statements or payments may show evidence linking the credit card to an offshore bank account.

Hint: To identify the issuer of a credit card, go to www.bindatabase.net. Click "Search." Input the first 6 digits of the credit card number to locate the bank issuer.

Treasury Enforcement Communication Systems (TECS)

Treasury Enforcement Communications Systems (TECS) is a database maintained by the Department of Homeland Security Customs and Border Protection Service (CBP). It is used extensively by the law enforcement community. TECS can help domestic revenue officers find taxpayers, assets and levy sources.

Information Required for TECS

Information required for a TECS request includes the taxpayer's name, any aliases, date of birth, social security number, last known address/country of residence and the amount of the Notice of Federal Tax Lien (NFTL). See Exhibit 1, Form 6668, *TECS Entry Request*.

A NFTL must be filed and IRM criteria met before a taxpayer can be listed on the TECS database. The request must be approved by your group manager and forwarded to *SBSE International TECS Coordinator.

Letter 4106

Send Letter 4106, *Letter to Taxpayers Advising of Homeland Security Notification*, when a TECS entry is initiated. This notifies the taxpayer they may be interviewed upon arrival in the U.S. See Exhibit 2, *Letter 4106*.

Continued on next page

Indications of an Offshore Bank Account, Continued

What a TECS Entry Does When a person whose information has been entered on TECS comes into the United States, the CBP officer at the point of entry receives notification the IRS wishes to contact that person. The taxpayer is removed from the line at the entry point and taken to a private area for an interview.

Taxpayer Will Be Questioned The taxpayer is questioned on:

- where in the U.S. they are staying, including an exact address,
- phone number where they can be reached,
- travel plans within the U.S.,
- the purpose of their visit,
- if they plan to depart the U.S., and
- when they will be leaving.

CBP Officer The CBP officer provides the information to the TECS coordinator who forwards the information to the revenue officer assigned the case on ICS or the group manager where the TECS request originated.

The information from the CBP interview provides contact information for the taxpayer. Use this to serve a summons on the taxpayer or, if a suit has been filed against the taxpayer, serve the summons and complaint.

Information will also be provided if the taxpayer is planning to board another flight from the entry point. This gives you the opportunity to go to the airport and serve a summons.

What TECS Cannot Do CBP does not detain a taxpayer at the point of entry. They can only delay a taxpayer long enough to obtain information from the taxpayer, usually no more than 30 minutes. CBP does not seize assets on behalf of the IRS. They will only seize assets in enforcing Customs regulations. Assets seized by CBP may be available for levy. Consult the IRM and Advisory before seizing assets held by CBP.

Continued on next page

Indications of an Offshore Bank Account, Continued

Historical Travel Information

You can also request historical travel information from TECS. TECS can provide information on:

- where the taxpayer traveled,
- when they traveled, and
- the carrier they used (air, sea or border crossing).

The system shows:

- the date the taxpayer left,
- the airline or other method of travel used, and
- where and when they arrived.

Request the information using Form 13191 and provide:

- the taxpayer's name,
- any aliases,
- place of birth,
- date of birth,
- social security number,
- passport number, and
- citizenship.

See Exhibit 3, Form 13931, *TECS Historical Travel Request*.

Forward the request to *SBSE International TECS Coordinator. Group manager approval is not required to request historical travel information. You can obtain the place of birth and citizenship from MFTRAU, which should be provided, if available, for the TECS request.

When dealing with taxpayers and discussing historical travel records obtained from TECS, you **must never** confirm or deny the existence of a TECS record.

TECS Guidance

TECS guidance is provided in:

- IRM 5.1.8, *Courtesy Investigation*
 - IRM 5.1.12.26, *Treasury Enforcement Communication System*
 - IRM 5.1.18.17, *Locating Taxpayers and Their Assets*
-

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Indications of an Offshore Bank Account, Continued

Example 1

John Smith has Balance Due Form 1040 liabilities for 2004, 2005 and 2006. The total liability exceeds \$150,000. The NFTL was filed. Based on evidence in the file, it is apparent Mr. Smith travels abroad frequently. John Smith's name was entered onto the TECS database. When he returned from his travels, he was stopped by Customs and Border Patrol and asked his current address. This led to real estate in Florida held in the name of a previously unknown closely held corporation. The next time he returned home, you were provided with the airline and flight number. You summoned the airline for the credit card information and found the credit card was associated with an offshore account.

Example 2

Grant Fergus has Balance Due Form 1040 liabilities for 2005 exceeding \$200,000. The NFTL was filed. Mr. Fergus travels between Florida and St. Kitts frequently. You place him on TECS. When Mr. Fergus landed in Florida, he was stopped by a Customs and Border Patrol officer. He was asked where he was going and why. The taxpayer responded he was here in regards to a lawsuit he filed against a marina for failing to properly repair his boat. The CBP officer conveyed this information to the TECS coordinator who passed the information onto you. You make a field visit to the marina. A marina employee stated the taxpayer moved his boat out of their marina and into another one. They provided the name of the marina where the boat was stored. You make a field visit to view the boat. After further research, you decide to seize the boat.

Locating Offshore Assets

Internal Research Tools

Revenue officers must be skilled in identifying assets held offshore. Many domestic taxpayers have interests outside the United States and often travel abroad. Tools you can use to locate assets offshore include:

- Currency and Banking Retrieval System (CBRS)
 - Offshore Compliance Initiatives (OCI) Database
 - Summons
-

Currency and Banking Retrieval System (CBRS)

The one database that may provide a direct link to offshore assets is the Currency Banking Retrieval System (CBRS). CBRS is an online database which contains all of the Bank Secrecy Act data. There are various reports available from CBRS. Some have direct links to offshore banking activities. CBRS contains 10 years of history and the current year. It often leads to assets located offshore.

Access to CBRS

Request access to CBRS through an OL5081 submitted to your manager.

See IRM 4.26.4, *Currency and Banking Retrieval System*, for more CBRS information. It includes instructions for obtaining access to CBRS, obtaining the CBRS User Guide and where to go with questions about the system.

Identification Number

Each document in the CBRS database is indexed and can be retrieved by any identifying number found on the document, including:

- Social security number (SSN)
 - Employer identification number (EIN)
 - Driver's license
 - Bank account
 - Passport
 - Visa
 - Any other types of numbers regularly used to identify people
-

Continued on next page

Locating Offshore Assets, Continued

Researching CBRS

Search CBRS using all possible names and identification numbers of the taxpayer and their businesses. Often the taxpayer opens accounts that have a slight variation from their name or number.

CBRS Documents

Some of the documents located in the CBRS database may be useful in finding assets offshore.

- **FinCEN Form 105**, *Report of International Transportation of Currency or Monetary Instruments (CMIR)*, is filed by anyone carrying cash or monetary instruments in excess of \$10,000 into or out of the country.
 - **Form TD F 90-22.1**, *Report of Foreign Bank and Financial Accounts (FBAR)*, is filed annually by the owner of a foreign bank account(s) that has a balance in excess of \$10,000.
 - **Form 7501**, *U.S. Customs and Border Protection Entry Summary*, is loaded to CBRS weekly from an extract of data provided by Customs and Border Protection.
-

FinCEN Form 105

FinCEN Form 105, *Report of International Transportation of Currency or Monetary Instruments (CMIR)*, is formerly Customs Form 4750. This report is required by 31 U.S.C. 5316 and Treasury Department Regulations 31 CFR 103.

Continued on next page

Locating Offshore Assets, Continued

**Who Must
File FinCEN
Form 105**

FinCEN Form 105 must be filed by any person who physically

- transports,
- mails, or
- ships currency or other monetary instruments in an aggregate amount exceeding \$10,000 at one time from the United States to any place outside of the United States or into the United States from any place outside of the United States.

It must also be filed by any person who receives in the United States currency or other monetary instruments in an aggregate amount exceeding \$10,000 at one time, which have been

- transported,
- mailed, or
- shipped to the person from any place outside of the United States.

A transfer of funds through normal banking procedures, which does not involve the physical transportation of currency or monetary instruments, is not required to be reported.

**TD F 90-22.1,
Report of
Foreign Bank
and Financial
Accounts
(FBAR)**

TD F 90-22.1, *Report of Foreign Bank and Financial Accounts (FBAR)*, is required by Treasury Department Regulations 31 CFR 103. It is an information report required when a U.S. person owns or has signature or other authority over foreign financial accounts valued over \$10,000 in any calendar year.

**Who Must File
TD F90-22.1**

Each United States person who has financial interest in or signature or other authority over any foreign financial accounts, with an aggregate value exceeding \$10,000 at any time during the calendar year, must report that relationship each calendar year by filing TD F 90-22.1 with the Department of the Treasury on or before June 30 of the succeeding year. This includes any bank account, securities or other financial account in a foreign country.

Continued on next page

Locating Offshore Assets, Continued

FBAR Penalties Congress set up FBAR penalties because some taxpayers use these foreign accounts to evade U.S. taxation. These penalties are investigated by IRS Examination and controlled by FinCEN. They are never found on IDRS. The penalties are designed to promote voluntary compliance.

Additional Information Information regarding the Bank Secrecy Act is found on the Financial Crimes Enforcement Network (FinCEN) website at: <http://www.fincen.gov>.

Form 7501, U.S. Customs and Border Protection Entry Summary Form 7501, *U.S. Customs and Border Protection Entry Summary*, is a record of what was imported that is furnished to Customs by the customs broker.

Customs brokers submit necessary information and appropriate payments to CBP on behalf of their clients and charge a fee for those services. Custom brokers are not Government employees and are licensed by the U.S. Customs and Border Protection.

Offshore Compliance Initiatives (OCI) Database The Offshore Compliance Initiative (OCI) is a law enforcement database. The database contains information from John Doe summonses issued by the Service to certain credit card companies, data processing companies and merchants for names of U.S. citizens who maintain accounts with certain foreign banks. While the cards are issued by banks in offshore secrecy jurisdictions, all records are processed and maintained in the United States.

There are currently approximately two million names in the database. Consider requesting OCI database research when the taxpayer's lifestyle exceeds their verifiable means.

Access to Database The OCI database is currently maintained by SB/SE Examination, Abusive Tax Avoidance Transactions. It is searched using either the name or credit card number of the cardholder.

Continued on next page

Locating Offshore Assets, Continued

FAS Access to the Database

Members of the Functional Automation Service (FAS) staff have access to the OCI database and will research it for SB/SE Collection. Contact information and the request macro are found on the FAS web page at: <http://fas.web.irs.gov>.

Example

The taxpayer establishes a nominee owned international business corporation (IBC) in an offshore secrecy jurisdiction. A bank account is opened in the IBC's name and funds are wired, carried or mailed to the offshore bank account. These funds represent previously untaxed income. A U.S. brokerage account is opened in IBC's name and funded with money from the offshore bank account. By searching both the taxpayer's name and the name of their closely related businesses, the OCI database revealed the offshore bank account.

Additional Information

Additional information can be found on the following websites.

Offshore Credit Card Project

<http://abusiveshelter.web.irs.gov/OffShore/OCCP/OCCP.htm>

Offshore Link

http://abusiveshelter.web.irs.gov/OffShore/Offshore_home1.htm

Summons the Taxpayer to Obtain Documents

During your investigation, you may learn the taxpayer has accounts held in a foreign country. These could be bank, brokerage or credit card accounts. Information about these accounts may help you to determine how much money is being moved from one account to another.

If you are unable to obtain the bank statements from a third party, issue a summons for the foreign records directly on the taxpayer. A U.S. District Court can enforce the summons by ordering the taxpayer to produce the documents in their custody or control.

Continued on next page

Locating Offshore Assets, Continued

External Research Tools

There are several external research tools available to assist in locating offshore assets. They include:

- Summoning third parties
 - Passports
 - Tax Information Exchange Agreement (TIEA)
 - Exchange of Information (EOI)
-

Summons for Foreign Bank Records

Serve a summons to secure bank records located in a foreign jurisdiction only in specific circumstances. The bank must have a U.S. presence upon which a summons can be served.

U.S. courts have jurisdiction over domestic banks, which are presumed to control records located with their foreign branches. Since the domestic banks control and access the foreign records in their ordinary course of business, they cannot deny control over the records for summons purposes.

Do not serve a summons if the bank does not have a U.S. presence.

Passports

Another possible source of information is a passport check. Passports are now required when returning to the United States from almost all foreign locations. The need for a passport for most foreign travel has resulted in an increase in passport applications. If a taxpayer travels overseas frequently, or if there is reason to believe the taxpayer travels overseas frequently, request a passport check if the case meets the IRM requirements.

Useful Information

Passport requests can provide:

- The taxpayer's address at the time of the application
- Emergency third party contact information
- Whether or not the taxpayer is a United States citizen
- A possible phone number for the taxpayer

Information received from the passport coordinator may lead to a new address or new assets. If you determine a taxpayer frequently travels back and forth to a particular country, a Mutual Collection Agreement Request (MCAR) or Exchange of Information (EOI) may be appropriate.

Continued on next page

Locating Offshore Assets, Continued

Request Passport Information

The procedures for requesting passport information are found in IRM 5.1.18.16, *United States Passport Office*. To request a passport check, prepare Letter 4263, *Passport Letter Request*. Send the letter by secure email to your group manager. After approving, the group manager forwards Letter 4263 to the International Passport Coordinator at *SBSE International Passport Coordinator. After the request is processed, you will receive a copy of the original application.

Passport Information Website

Additional information, including the name of the coordinator, is available on the SB/SE website dealing with passport information. The link for the website is: <http://sbse.web.irs.gov/Collection/Programs/Passports/Default.htm>.

Tax Information Exchange Agreements (TIEA)

If an investigation requires researching documents or securing testimony or records from a foreign country, a Tax Information Exchange Agreement (TIEA) is appropriate. TIEAs are mutual assistance agreements negotiated with individual countries to exchange information needed

- to arrive at accurate tax assessments,
- for aid in the collection of tax, and
- to combat fraud and evasion.

TIEAs facilitate the exchange of information with many countries, even if the U.S. does not have a bilateral tax treaty in place. They are not treaties. They are negotiated agreements to implement exchange agreements. Exhaust all means available domestically before requesting information under a TIEA.

TIEA Countries

Check the list of TIEA countries by searching LMSB website at: http://lmsb.irs.gov/international/dir_treaty/eoi_overseas/eoi/tiea.asp to find if there is a TIEA in force with a particular country. It is important to remember that once information is exchanged, it cannot be further disclosed without permission from the U.S. Competent Authority. Depending on the country, you will need to contact a particular Tax Attaché, Revenue Service Representative or the International Headquarters in Washington, D.C. These entities can provide information about using a TIEA and guide you through the request process. See Exhibit 4, *Tax Information and Exchange Agreements*.

Continued on next page

Locating Offshore Assets, Continued

Additional Information	See Exhibit 5, <i>Country and Tax Treaty Chart</i> , for a master list of Tax Treaties and Tax Information Exchange Agreements.
Exchange of Information	LMSB International administers the EOI provisions of U.S. tax treaties and TIEAs. They help field personnel obtain information from foreign countries, work with field personnel to provide information to certain foreign countries and coordinate the Mutual Collection Assistance provisions of certain treaties. Exhaust all means available domestically before requesting information under the tax treaties.
Requesting Information from a Foreign Country	Requests for foreign-based information are handled by IRS Tax Attachés (TAs), the Revenue Service Representative (RSR) in Plantation, Florida, and the two headquarters Exchange of Information Groups in Washington, D.C.
EOI Request	Before making a formal EOI request, make direct contact with the appropriate TA/RSR/EOI analyst to determine what information might be available from a specific country.
No Treaty	Even if there is no treaty or TIEA, the Tax Attaché may be able to obtain public records or information from a foreign country.

Continued on next page

Locating Offshore Assets, Continued

Information Available

The types of information available from an EOI request include:

- Tax return information such as verification of filing status, citizenship, residency
- Income, expenses and tax liability
- Witness interviews
- Business records
- Public and real estate records
- Bank and other financial records
- Accountant and attorney records
- Insurance company records
- Summonses issued

The type of information available from foreign countries varies and depends upon each country.

Caution

Under no circumstances should you contact a foreign government official in connection with an investigation without first clearing the contact with the appropriate TA/RSR or EOI group manager in Washington, D.C.

More Information

Access http://lmsb.irs.gov/intemational/dir_treaty/eoi_overseas/eoi/index.asp to find more information including

- instructions on what information needs to be in a request,
 - a list of countries and the TA/RSR or EOI group that covers that country, and
 - whether the U.S. has an Exchange of Information with the country.
-

Continued on next page

Locating Offshore Assets, Continued

Following the Money Example

The Department of Justice is pursuing an injunction against Mr. and Mrs. Cooper for illegal tax shelters. A Notice of Federal Tax Lien has been filed against the Coopers. It appears Mr. and Mrs. Cooper have fled to the Bahamas permanently. You place them on TECS and discover they have been flying in and out of Florida on average of twice a month. You request a search of the Offshore Compliance Database. A request is sent to the local FAS. The OCI database shows offshore credit card activity. See Exhibit 6, *Offshore Compliance Initiative Information Database*, for a sample copy of the information. The taxpayers are using their debit card as a credit card which linked up to funds located in an offshore account.

With this information you know when they are in this country and promptly serve them with the DOJ injunction. The information from TECS was used to determine when they were in this country in order for the courts to have jurisdiction over the Coopers related to the repatriation suit.

Collecting from Offshore Bank Accounts

Collection Tools

There are several tools available to collect upon assets located offshore. Some of them are:

- Mutual Collection Assistance Request (MCAR)
 - Levying on a domestic branch of an offshore bank
 - Repatriation
 - Receivership
 - Writ ne Exeat
 - Customs order
 - Insular countries
-

Mutual Collection Assistance Requests (MCAR)

The United States has entered into a number of bilateral tax treaties that contain broad provisions for assistance in collection. There are currently five mutual collection income tax treaty partners:

- Canada
- Denmark
- France
- The Netherlands
- Sweden

There is also an estate and gift tax treaty with France which contains provisions for collection assistance.

Continued on next page

Collecting from Offshore Bank Accounts, Continued

Collection Assistance

Treaties provide that, when requested, each country may take whatever actions are necessary and legal to collect the taxes of a treaty partner. There are certain rules and limitations. For instance, we do not collect foreign taxes from U.S. citizens and the other countries do not collect U.S. taxes from their citizens. If a taxpayer has assets in one of the five MCAR countries, that country will levy the assets for the revenue officer and turn the funds over to the IRS. They will also seize and sell property if it is a legal method to collect tax in the requested country.

For any U.S. taxpayer who owes taxes and owns assets offshore in a country that is a MCAR participant, consider making a MCAR to that country requesting collection assistance.

Outgoing and Incoming Requests

An outgoing MCAR is a request by the IRS to a treaty partner to collect taxes owed by individuals residing or having assets in the treaty country. Procedures are located in IRM 5.1.12.

An incoming MCAR is a request by a treaty partner to the IRS to collect taxes owed them by individuals residing in the United States. Procedures are located in IRM 5.1.8.7.7.

Citizenship

Many taxpayers change citizenship after an assessment is made. France, The Netherlands and Sweden will not collect tax from their own citizens. Denmark and Canada will not collect tax from a taxpayer who was a Danish and Canadian citizen at the time the tax liability arose, regardless of the taxpayer's current citizenship.

Example

An assessment is made against Steven Eaton in the U.S. Mr. Eaton moves to Canada and becomes a Canadian citizen. In this instance, Canada will collect the U.S. tax in Canada under Article XXVIA of the treaty, because Mr. Eaton was a U.S. citizen when the tax was assessed.

Continued on next page

Collecting from Offshore Bank Accounts, Continued

How to Request MCAR To request an MCAR, prepare the MCAR datasheet and send it as an attachment to the appropriate MCAR coordinator for the specific country where the assets are located. See Exhibit 7. This form can also be used to identify an asset in one of these countries if you have a reasonable expectation the taxpayer owns property or has income in that country.

Information on the specific coordinator and a link to the datasheet are found at: <http://sbse.web.irs.gov/collection/Programs/MCAR/Default.htm>.

Forwarding the Request For referrals to Canada, forward datasheet to:

Internal Revenue Service
255 East Avenue
Rochester, NY 14604
Attention: International Collection Group Manager

For all other referrals, forward datasheet to:

Internal Revenue Service
SE:S:SP:IN:T2:6:LE:4405
1111 Constitution Avenue, NW
Washington, DC 20224

Levying on a Domestic Branch Treasury Regulation 301.6332-1(a)(2) provides for levies in situations where the bank is “engaged in the banking business in the United States....with respect to any deposits held in an office of the bank outside the United States....”

The underlying authority to levy is founded in traditional lien law that considers our levy an assumption of the taxpayer’s right, title and interest in property. If the taxpayer has the ability to make a withdrawal from the domestic branch office, our levy may attach that right.

Legal Substance to the Levy The enforcement of the levy is based on the practical fact that the domestic branch places bank personnel and property under the jurisdiction of the court.

Continued on next page

Collecting from Offshore Bank Accounts, Continued

Branches vs. Subsidiary Corporations

Counsel makes an important distinction between

- banks operating through branches, and
- banks operating through subsidiary corporations.

The home office of a bank and its branches can be interrelated, while the parent corporation of a bank and its subsidiary corporations are generally considered separate entities.

Banks Operating Through Branches

The home office of a bank in a foreign country may be liable on an account opened at one of its branches, but there is no legal authority a branch is liable for an account opened at a home office.

Counsel believes the home office of a foreign bank may have to honor a levy served on a U.S. branch of a foreign bank if the account was opened at the U.S. branch.

However, the levy may not be enforceable if the account was opened at the overseas home office.

Banks Operating Through Subsidiary Corporations

Counsel has determined only the corporation at which the account was opened is subject to the levy.

If the account was opened at a U.S. bank which is a subsidiary corporation of a foreign bank, the parent corporation could probably not be held liable if funds were removed from the U.S.

Counsel approval is required for a levy in this situation.

Repatriation Suits

The Service can obtain a repatriation order by bringing suit in a U.S. District Court seeking to compel the taxpayer to transfer the property back to the United States from overseas. Once the property is back in the United States, it is subject to the court's jurisdiction.

Suit to Repatriate Assets

A suit to repatriate assets is used when the taxpayer is within the United States, but they have caused one or more of their assets to be placed outside of the country.

Continued on next page

Collecting from Offshore Bank Accounts, Continued

IRC 7402(a) No express authority exists in the Code for a repatriation suit or suit to repatriate assets. However, the broad grant of authority to U.S. District Courts contained in IRC section 7402(a) is considered to provide the authority.

**Required
Elements to a
Repatriation
Suit**

A repatriation order must show

- an outstanding tax liability,
 - a reasonable basis the taxpayer has assets outside the U.S.,
 - a levy on domestic assets is not sufficient to satisfy the tax liability, and
 - the U.S. is able to obtain personal jurisdiction over the taxpayer. You must show the taxpayer is either in the U.S. or U.S. Territory or the likelihood the taxpayer will be returning to, or passing through, the United States.
-

Receivership

A suit for appointment of a receiver may be used in conjunction with extraordinary collection measures, such as a repatriation order. In situations where a taxpayer has insufficient assets in the U.S. from which a liability can be satisfied, but does have assets located outside of the U.S., consider seeking the appointment of a receiver for the foreign assets combined with an order from the court directing the taxpayer to transfer assets to the receiver sufficient to satisfy the outstanding tax liability.

**Violation of
Foreign
Country's Laws**

One issue which may be encountered in a receivership involving offshore accounts is whether the action ordered by the U.S. court, such as transferring assets from a foreign country, violates a foreign country's laws. U.S. courts generally are unwilling to require an action which would be an infringement on a foreign country's sovereignty or a violation of its laws. It may be possible to circumvent such problems by securing a court order directing the taxpayer to apply for the necessary consents to cause the transfer of property to satisfy the local requirements.

Continued on next page

Collecting from Offshore Bank Accounts, Continued

Writ *Ne Exeat* In appropriate cases, the writ *ne exeat* may be used as a collection tool against a U.S. taxpayer who is about to depart from the territorial jurisdiction of the U.S. and has transferred or is about to transfer their assets outside of the U.S. to avoid payment of their Federal tax liabilities.

It is crucial the Service show the taxpayer is attempting to render collection impossible or unlikely by removing themselves and their assets from the U.S.

Goal The goal of the writ *ne exeat* is to prevent the assets from leaving the country. The court generally prohibits the taxpayer from leaving the country and from sending any assets out of the country. The writ *ne exeat* generally commands a marshal to commit to jail a defendant who fails to post bail or other security in a specified amount. The taxpayer can be ordered to surrender their passport.

Authority Authority for the U.S. District Courts to issue writs *ne exeat* in tax cases is found in 28 USC 1651 and IRC section 7402(a).

Factors Some of the factors which courts have found relevant in determining whether the issuance of a writ *ne exeat* is appropriate are:

- Does the taxpayer have a sizeable, outstanding liability?
- Is the taxpayer in the process or have they transferred substantially all of their assets outside of U.S.?
- Has the taxpayer established or is it likely they intend to permanently establish residence outside of the U.S.?
- Is it likely the Government will prevail on the merits with regard to the underlying liability?
- Are the taxpayer's assets reachable for collection absent the issuance of the writ?

Continued on next page

Collecting from Offshore Bank Accounts, Continued

Simultaneous Civil Action

The writ *ne exeat* will not be brought independently. Since the purpose for the issuance of a writ *ne exeat* is to protect the power of the court to give equitable relief to the injured party, it is necessary a civil action requesting relief be commenced simultaneously with the application for the writ. An appropriate civil action would be a suit to foreclose the Federal tax lien or to enforce an IRS collection summons. You must show the civil action you propose will not be enforceable unless the defendant is prevented from removing themselves or their assets from the country.

Customs Order or Prevent Departure Order

When you have reason to believe the non-U.S. citizen taxpayer is attempting to depart the U.S., seek an order from the Department of Homeland Security, U.S. Customs and Border Protection, to prevent their departure. A customs order or prevent departure order is an administrative action with similar purpose as the writ *ne exeat*. A customs order prevents a non-U.S. citizen from exiting the country pending the resolution of the collection matter.

Authority

The authority for a customs order is found in 22 C.F.R. section 46.2(a) which states in part “...No alien shall depart, or attempt to depart, from the United States if his departure would be prejudicial to the interest of the United States under the provisions of 46.3.” In addition, C.F.R section 46.3(h) applies to a collection investigation where it states, in part, “Any alien who is needed in the United States in connection with any investigation or proceeding being, or soon to be, conducted by any official executive, legislative, or judicial agency in the United States or by any governmental committee, board, bureau, commission, or body in the United States, whether national, state, or local.”

Continued on next page

Collecting from Offshore Bank Accounts, Continued

Procedures Coordinate with Area Counsel before requesting a customs order or prevent departure order. Area Counsel will coordinate as necessary with the Office of Associate Chief Counsel, International.

Request the TECS coordinator to input a customs order into TECS.

You must closely coordinate with the TECS coordinator, as they may need to provide instructions to the Department of Homeland Security if the taxpayer is prevented from leaving the country.

Inputting the taxpayer into TECS is only effective if the nonresident taxpayer attempts to leave the country by an airport or border control checkpoint. Upon attempting to leave the country, the nonresident taxpayer will be detained by U.S. Customs and Border Patrol.

See IRM 5.21.3, *Collection Tools for International Cases*, for additional information.

Insular Countries If you have an offshore collection investigation involving one or more of the insular countries, you can receive assistance from the revenue officers working in these countries. For the purposes of this topic, there are five main insular countries where revenue officer groups are in place or available to assist you with your collection needs. These territorial locations are:

- American Samoa
 - Commonwealth of Northern Mariana Islands
 - Guam
 - Puerto Rico
 - U.S. Virgin Islands
-

How to Obtain Assistance To obtain assistance, issue an other investigation (OI) through ICS to the International Revenue Officer group.

See Interim Guidance Memorandum dated 12/02/2009, SBSE 05-1209-070, Account Transfers to International.

Exercise

Question 1 Information from a wire transfer identifies the receiving bank as the:

- a. Intermediary bank
- b. Originator's bank
- c. Beneficiary's bank
- d. Fiduciary

Answer:

Question 2 Which of the following countries have Mutual Assistance Collection treaties with the United States?

- a. Germany
- b. France
- c. Mexico
- d. Italy

Answer:

Question 3 Which of the following countries have a Tax Information Exchange Agreement in force with the U.S.?

- a. Bahamas
- b. St. Lucia
- c. Grenada
- d. all of the above

Answer:

Website References

- www.abusiveshelter.web.irs.gov
 - www.abusiveshelter.web.irs.gov/Offshore/Offshore_home1.htm
 - www.abusiveshelter.web.irs.gov/offshore/occp
 - www.bindatabase.net/search/php
 - www.chips.org/
 - www.fas.web.irs.gov
 - www.fmcen.gov
 - www.lmsb.irs.gov/intemational/dir-treatv/eoi_overseas/eoi/tiea.asp
 - www.lmsb.irs.gov.intemational.dir-tregy/eoi_overseas/eoi/index.asp
 - www.sbse.web.irs.gov/collection/Programs/MCAR/Default.htm
 - www.sbsweb.irs.gov/Collection/Programs/Passports/Default.htm
 - www.wsep.ds.irs.net.gov/sites/co/dcse/sbse/collection/cp/CRA/ATAT/default.aspx
 - www.swift.com/biconline
 - www.mvsbse.web.irs.gov/exam/tip/FRar/FBARRESEARCH/10449.aspx
 - www.mysbse.web.irs.gov/Collection/Programs/IIL_Programs.htm
-

Answers to Exercise

Question 1 Information from a wire transfer identifies the receiving bank as the

c. Beneficiary's Bank

Question 2 Which of the following countries have Mutual Assistance Collection treaties with the United States?

b. France

Question 3 Which of the following countries have Tax Information Exchange Agreement in force with the U.S.?

d. all of the above

Exhibit 1, Form 6668, *TECS Entry Request*

<p>Treasury Enforcement Communications System</p> <h2 style="margin-top: 20px;">TECS Entry Request</h2>	1. Name of taxpayer	2. Aliases of taxpayer
3. Social Security Number	4. Date of Birth	
5. Unpaid balance of assessment \$	6. Last known address of taxpayer	

	Tax Return Form Number	MFT Code	Tax Period(s)
7. Balance Due Tax Return Information			
8. Notice of Lien Filing	Has a lien been filed for all periods? <input type="checkbox"/> Yes <input type="checkbox"/> No		Place Filed
	Date filed		Refiling determination date

9. Summary of Collection activity to date

10. Employee name	Assignment number	Telephone number
11. Approval	Group Manager Signature	Title
		Date

Exhibit 2, Letter 4106

Internal Revenue Service

Department of the Treasury

Date:

Taxpayer Identification Number:

Person to Contact:

Contact Telephone Number:

Employee Identification Number:

Dear

This letter is to inform you that we have notified the Department of Homeland Security that, according to our records, you still owe the federal tax indicated below as provided by law:

Form Number	Tax Period	Unpaid Amount From Prior Notices	Additional Penalty	Additional Interest	Total Amount You Owe

Note: We have computed the amount(s) above, plus penalty and interest, to 30 days from the date of this letter.

Additionally, our records show that you are not currently residing within the United States and the Commonwealth Territories, or that you travel frequently outside of them.

What This Means to You

If you should return to the United States or Commonwealth Territories and have not yet paid the total amount due, you may be interviewed by a Customs and Border Protection Officer at the time of entry. The Internal Revenue Service will then be advised of your arrival and will be provided with information enabling us to contact you in the United States or the Commonwealth Territories. A Revenue Officer may then contact you regarding payment of your outstanding liability.

Who You Can Contact

If you have any questions about your account or the notification process described above, please call me at the telephone number above or write me at the address above. If you decide to write, please make sure to address the envelope to my attention.

Sincerely,

Revenue Officer

Letter 4106 (11-2007)
Catalog Number 48442w

Exhibit 3, Form 13931, TECS Historical Travel Request

Department of the Treasury — Internal Revenue Service

TECS Historical Travel Request

To: *SBSE International TECS Coordinator

To assist in the civil investigation being conducted by the IRS employee designated below, please provide historical travel information for the past several years on all persons listed below.

Taxpayer Name* <i>(Last Name, First MI)</i>	Date of Birth* <i>(mm/dd/yyyy)</i>	Known Alias(es)	SSN <i>(if available)</i>	Place of Birth <i>(City/State or Country)</i> <i>(if available)</i>	Passport Number <i>(if available)</i>

Date Emailed*	Requestor of Information <i>(Last Name, First MI)</i>	Title of Requestor	Requestor Phone Number
Requestor Street Address		City	State
			Zip

* denotes necessary entry
Form **13931** (3-2008)

Exhibit 4, Tax Information and Exchange Agreements (TIEA) in Force as of February 2008

Country
Aruba
Bahamas
Barbados
Bermuda
British Virgin Islands
Cayman Islands
Costa Rica
Dominica
Dominican Republic
Grenada
Guyana
Honduras
Jamaica
Mexico
Netherlands Antilles
Peru
St. Lucia (in effect but not in force)
Trinidad and Tobago
Guernsey
Isle of Man
Jersey
Marshall Islands

Exhibit 5, Country and Tax Treaty Chart

This is a master list of Tax Treaties and Tax Information Exchange Agreements revised February 5, 2007.

Country	Tax Treaty	TIEA
Angulla (1)		In force
Antigua & Barbuda (6)		
Argentina		
Armenia (5)	In force	
Aruba (7)		In force
Australia	In force 12/1/83	
Austria	In force 1/1/99	
Azerbaijan (5)	In force	
Bahamas		In force
Barbados	In force 1/1/84	In force
Belarus (5)	In force	
Belgium (4)	In force 1/1/71	
Belize		
Bermuda (8)	In force 1/1/86	In force
British Virgin Islands (1)		In force
Brazil		
Bulgaria		
Canada (6) (9) (10)	In force 1/1/85	
Cayman Islands (2)		In force
Chile (6) (10)		
China	In force 1/1/87	
Colombia (6) (10)		Signed 3/31/2001
Costa Rica		In force
Cyprus	In force 1/1/86	
Czech Republic	In force 1/1/93	
Denmark (4)	In force 1/1/01	
Djibouti		
Dominica (6)		In force
Dominican Republic		In force
Egypt (United Arab Republic)	In force 1/1/82	
Ecuador (6) (10)		
El Salvador (6)		
England	See U.K.	
Estonia	In force 1/1/00	
European Union		
Falkland Islands (2)		

Continued on next page

Exhibit 5, Country and Tax Treaty Chart, Continued

Country	Tax Treaty	TIEA
Finland (4)	In force 1/1/91	
France (9)	In force 1/1/96	
French Guiana		
French Polynesia		
Germany	In force 1/1/91	
Georgia (5)	In force	
Gibraltar (2)		
Grenada (6)		In force
Greece	In three 1/1/53	
Guadeloupe		
Guatemala (6)		
Guernsey(2)		In force
Guyana		In force
Honduras		In force
Hong Kong SAR* (2)		
Hungary	In force 1/1/80	
Iceland (4)	In force 1/1/76	
India	In force 1/1/91	
Indonesia	In force 1/1/90	
Ireland	In force 1/1/98	
Isle of Man (12)		In force
Israel	In force 1/1/95	
Italy (9)	In force 1/1/86	
Jamaica	In force 1/1/82	In force
Japan	In force 3/30/04	
Jersey (2)		In force
Kazakstan	In force 1/1/96	
Korea	See So. Korea	
Kuwait		
Kyrgyz Rep. (5)	In force	
Latvia	In force 1/1/00	
Liechtenstein		
Lithuania	In force 1/1/00	
Luxembourg	In force 1/1/01	
Macao SAR*		
Malaysia		
Marshall Islands		In force
Martinique		
Mexico (9)	In force 1/1/94	In force
Moldova (5)	In force	

Continued on next page

Exhibit 5, Country and Tax Treaty Chart, Continued

Country	Tax Treaty	TIEA
Monaco		
Montserrat (1)		
Morocco	In force 1/1/81	
Netherlands (4)	In force 1/1/94	
Netherlands Antilles (7)		In force
New Zealand	In force 1/1/84	
Nigeria		
Norway (4)	In force 1/1/71	
Org. of American States (6)		
Panama (6)		
Pakistan	In force 1/1/59	
Paraguay (6) (10)		
Peru (6)		In force
Philippines	In force 1/1/83	
Poland (4)	In force 1/1/74	
Portugal	In force I /1/96	
Romania	In force 1/1/74	
Russian Federation	In force 1/1/94	
Seychelles		
Singapore		
Slovak Republic	In force 1/1/93	
Slovenia	In force 6/22/01	
South Africa	In force 12/28/97	
South Korea	In force 1/1/80	
Sovereign Base Areas of Akrotiri and Dhekelia (2)		
Spain	In force 1/1/91	
Sri Lanka	In force 7/12/04	
St. Kitts & Nevis		
St. Lucia		In force
St. Pierre & Miguelon		
St. Vincent — The Grenadines		
Sweden (4)	In force 1/1/96	
Switzerland	In force 1/1/98	
Taiwan (11)		
Tajikistan (5)	In force	
Thailand	In force 1/1/98	
Trinidad & Tobago (6)	In force 1/1/70	In force
Tunisia	In force 1/1/90	
Turkey	In force 1/1/98	

Continued on next page

Exhibit 5, Country and Tax Treaty Chart, Continued

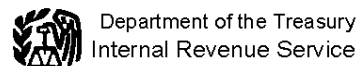
Country	Tax Treaty	TIEA
Turkmenistan (5)	In force	
Turks & Caicos (1)		
Ukraine	In force 1/1/01	
United Kingdom	In force 3/31/03	
Uruguay		
USSR (5)	In force for CIS states	
Uzbekistan (5)	In force	
Venezuela (6)	In force 1/1/00	

*SAR — Special Administrative Region

1. The U.S.-UK-Cayman Island MLAT was extended to Anguilla, the British Virgin Islands, and the Turks and Caicos Islands on November 9, 1990 and to Montserrat on April 6, 1991.
2. The Hague Evidence Convention was extended to this territory, possession or other jurisdiction by the United Kingdom.
3. The Hague Evidence Convention was extended to this territory, possession or other jurisdiction by the Netherlands.
4. E01 with these jurisdictions is also possible under the "OECD CoE Multilateral Convention on Mutual Administrative Assistance in Tax Matters."
5. The former USSR treaty is still in force for Commonwealth of Independent States.
6. The Organization of American States multilateral MLAT is in force.
7. Extension of Netherlands Convention is still in force for interest on bonds issued prior to 1/1/88 termination.
8. Treaty limited to insurance company taxation and exchange of information.
9. Simultaneous Criminal Investigation Program (SCIP) pursuant to the income tax treaties.
10. The Organization of American States multilateral MLAT allows, but does not require, E01 assistance for tax crimes. Chile, Columbia, Ecuador, Paraguay, and the United
11. States have ratified a protocol to the OAS MLAT requiring assistance for tax crimes. Due to the limited diplomatic status of Taiwan, there can be no treaty with Taiwan. Instead, there is a Mutual Legal Assistance Agreement (MLAA) which is an executive agreement rather than a treaty.
12. The United States — United Kingdom MLAT was extended to the Isle of Man by exchange of notes effective as of June 5, 2003.
13. The OECD Multilateral Convention on Mutual Assistance in Tax Matters is currently in effect for the following countries: Azerbaijan, Belgium, Denmark, Finland, France, Iceland, the Netherlands, Norway, Poland, Sweden and the United States. Italy will become the 12th member effective May 1, 2006.

Exhibit 6, Offshore Compliance Initiatives Information Database

Offshore Compliance Initiatives Information Database
Credit Card Number



DATA SOURCE SUMMARY

Primary Card Processor	Included
Credomatic	Included
Merchant Summons	No Data
Tecnicard	No Data
First Data	No Data
TSYS	No Data
PayPal	No Data

ISSUING BANK

Credit Card Number	Bank Name	Country
	Campbell Bank & Trust Company	Vannard, Grand Hills, Bahamas

CREDOMATIC SUMMARY

Credomatic Master File Card Summary

Card 1	Card 2	Date Opened	Exp Date	Credit Limit	Dep #	Last Balance	Last Payment Date	Last Payment Amount	Last Purchase Date	Last Purchase Amount
		'97	'05	\$1,000.00	0	\$0.00	'03	\$9,014.27	'03	\$36.10

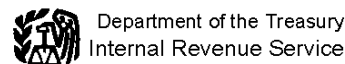
Credomatic Master File Cardholder Information

Sequence Number	1 of 2	
Cardholder Name	John Garfield	Sex M
First Name		Date of Birth /1954
Middle Name		Marital Status M
Last Name		
Maiden Name		Employer Name
Married Name		Employer Address 1
Spouse / Password		Employer Address 2
Address 1		
Address 2		Comment Line 1 John Garfield
Address 3		Comment Line 2
City		Comment Line 3
State		Comment Line 4
Zipcode		Comment Line 5
Telephone No. 1	407-	
Telephone No. 2	0-0- x0	

Continued on next page

Exhibit 6, Offshore Compliance Initiatives Information Database, Continued

Offshore Compliance Initiatives Information Database Credit Card Number



Credomatic Names and Addresses on Card

Name	Address 1	Address 2	Address 3	Address 4	Name Source
John Garfield	Freeport, Bahamas				Credomatic Statement
John Garfield	Freeport, Bahamas				Credomatic Statement
John Garfield	Freeport, Bahamas				Credomatic Master
John Garfield	Freeport, Bahamas				Credomatic Master
John Garfield	Freeport, Bahamas				Credomatic Master
John Garfield	Freeport, Bahamas				Credomatic Master

Year	Beginning Balance	Charges	Transfers to Account	Payments	Other Credits	Ending Balance
2003	(\$332.41)	\$8,968.18	\$0.00	\$0.00	\$64.17	(\$1,438.68)
2004	(\$1,438.68)	\$23,901.32	\$10,000.00	\$48,040.00	\$0.00	(\$25,577.36)
2005	(\$25,577.36)	\$26,594.41	\$22,000.00	\$0.00	\$203.46	\$813.59
2006	\$813.59	\$4,914.81	\$0.00	\$5,000.00	\$184.23	\$544.17
2007	\$544.17	\$113,187.61	\$0.00	\$112,576.72	\$510.70	\$0.00

Credomatic Monthly Account Summaries

Date	Credit Limit	Beginning Balance	Charges	Transfers to Account	Payments	Other Credits	Ending Balance
2/2003	\$1,000.00	(\$332.41)	\$954.32	\$0.00	\$0.00	\$64.17	\$557.74
3/2003	\$1,000.00	\$557.74	\$65.71	\$0.00	\$0.00	\$0.00	\$623.45
4/2003	\$1,000.00	\$623.45	\$265.28	\$0.00	\$0.00	\$0.00	\$888.73
5/2003			No Data				
6/2003	\$1,000.00	(\$9,121.55)	\$4,604.25	\$0.00	\$0.00	\$0.00	(\$4,517.30)
7/2003	\$1,000.00	(\$4,517.30)	\$130.00	\$0.00	\$0.00	\$0.00	(\$4,387.30)
8/2003	\$1,000.00	(\$4,387.30)	\$0.00	\$0.00	\$0.00	\$0.00	(\$4,387.30)
9/2003	\$1,000.00	(\$4,387.30)	\$988.20	\$0.00	\$0.00	\$0.00	(\$3,399.10)
10/2003	\$1,000.00	(\$3,399.10)	\$1,654.42	\$0.00	\$0.00	\$0.00	(\$1,744.68)
11/2003	\$1,000.00	(\$1,744.68)	\$0.00	\$0.00	\$0.00	\$0.00	(\$1,744.68)
12/2003	\$1,000.00	(\$1,744.68)	\$306.00	\$0.00	\$0.00	\$0.00	(\$1,438.68)
1/2004	\$1,000.00	(\$1,438.68)	\$0.00	\$0.00	\$0.00	\$0.00	(\$1,438.68)
2/2004	\$1,000.00	(\$1,438.68)	\$0.00	\$0.00	\$0.00	\$0.00	(\$1,438.68)
3/2004	\$1,000.00	(\$1,438.68)	\$510.00	\$0.00	\$1,000.00	\$0.00	(\$1,928.68)
4/2004	\$1,000.00	(\$1,928.68)	\$776.94	\$0.00	\$1,000.00	\$0.00	(\$2,151.74)
5/2004	\$1,000.00	(\$2,151.74)	\$0.00	\$0.00	\$3,000.00	\$0.00	(\$5,151.74)
6/2004	\$1,000.00	(\$5,151.74)	\$969.00	\$0.00	\$0.00	\$0.00	(\$4,182.74)
7/2004	\$1,000.00	(\$4,182.74)	\$130.00	\$0.00	\$3,500.00	\$0.00	(\$7,552.74)
8/2004	\$1,000.00	(\$7,552.74)	\$5,100.00	\$0.00	\$5,000.00	\$0.00	(\$7,452.74)
9/2004	\$1,000.00	(\$7,452.74)	\$0.00	\$0.00	\$3,510.00	\$0.00	(\$10,962.74)
10/2004	\$1,000.00	(\$10,962.74)	\$4,361.34	\$0.00	\$4,030.00	\$0.00	(\$10,631.40)
11/2004	\$1,000.00	(\$10,631.46)	\$601.37	\$0.00	\$27,000.00	\$0.00	(\$37,030.03)
12/2004	\$1,000.00	(\$37,030.03)	\$11,452.67	\$10,000.00	\$0.00	\$0.00	(\$25,577.36)
1/2005	\$1,000.00	(\$25,577.36)	\$10,274.59	\$10,000.00	\$0.00	\$0.00	(\$15,302.77)
2/2005	\$1,000.00	(\$15,302.77)	\$6,075.84	\$6,000.00	\$0.00	\$0.00	(\$9,266.93)
3/2005	\$1,000.00	(\$9,266.93)	\$97.47	\$0.00	\$0.00	\$155.11	(\$9,284.57)
4/2005	\$1,000.00	(\$9,284.57)	\$1,073.22	\$0.00	\$0.00	\$0.00	(\$8,211.35)
5/2005	\$1,000.00	(\$8,211.35)	\$1,429.64	\$0.00	\$0.00	\$0.00	(\$6,781.71)
6/2005	\$1,000.00	(\$6,781.71)	\$1,189.56	\$0.00	\$0.00	\$48.5	(\$5,640.50)
7/2005	\$1,000.00	(\$5,640.50)	\$181.15	\$0.00	\$0.00	\$0.00	(\$5,459.35)
8/2005	\$1,000.00	(\$5,459.35)	\$97.58	\$0.00	\$0.00	\$0.00	(\$5,361.77)
9/2005	\$1,000.00	(\$5,361.77)	\$6,053.57	\$6,000.00	\$0.00	\$0.00	\$691.80
10/2005	\$1,000.00	\$691.80	\$50.53	\$0.00	\$0.00	\$0.00	\$742.33

Continued on next page

Exhibit 6, Offshore Compliance Initiatives Information Database, Continued

OFFSHORE COMPLIANCE INITIATIVES INFORMATION DATABASE

Credit Card Number _____

Credomatic Transactions

Statement Date	Transaction Date	Merchant Name and Address	Amount
7/2007	6/20/2007	Taylor's Vannard, FL	\$377.71
7/2007	6/20/2007	Wilson's Ferris, FL	\$74.50
7/2007	6/21/2007	Barnard's Vannard, FL	\$32.10
7/2007	6/21/2007	Taylor's Vannard, FL	(\$42.80)
7/2007	6/22/2007	Grinnell Vannard, FL	\$52.17
7/2007	6/22/2007	Wingate Ferris, FL	\$21.29
7/2007	6/25/2007	Athens Nassau	\$29.79
7/2007	6/26/2007	Alpine Nassau	\$37.95
7/2007	6/26/2007	Ballard Nassau	\$604.80
7/2007	6/27/2007	Cascades Nassau	\$29.67
7/2007	6/28/2007	Mills Ohio	\$30.00
9/2007	8/25/2007	Charge for Cheque	\$50.00
9/2007	8/25/2007	Cheque Requested	\$99,446.67
9/2007	8/25/2007	RECEIVED PAYMENT	(\$81,858.68)
9/2007	8/25/2007	RECEIVED PAYMENT	(\$9,014.27)
9/2007	8/25/2007	RECEIVED PAYMENT	(\$466.15)
9/2007	8/25/2007	RECEIVED PAYMENT	(\$237.62)

PRIMARY CARD PROCESSOR SUMMARY

Last name	First	Middle	Title	Card Name	Name Source
Bryon	Stanley	Z	Mr.	Bryon/ Name	card mag strip

TRANSACTIONS

Date	Merchant	Merchant Type	City	State	Zip	Amount
11/10/2007		Financial Institutions – Automated Cash Disbursements	Shelby	FL		300.01
10/1/2007		Drug Stores Pharmacy				32.04
10/1/2007		Drug Stores Pharmacy	Shelby	FL		41.32
10/1/2007	Walker	Drug Stores Pharmacy	Shelby	FL		41.32
10/5/2007		Book Stores				62.96
10/1/2007		The Summers Book Stores	Rockford	FL		62.96
10/11/2007		Drug Stores Pharmacy				14.45
10/11/2007	Walker	Drug Stores Pharmacy	Shelby	FL		14.45
10/20/2007	Gulfstream	Air Carrier	Shelby	FL		2,380.70

Exhibit 7, MCAR Datasheet

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
Washington, D.C. 20224-0002

SMALL BUSINESS/SELF-EMPLOYED, COLLECTION, NORTH ATLANTIC AREA COLLECTION
INTERNATIONAL TERRITORY

Data Sheet for Outgoing Mutual Collection Assistance Request

(1) Treaty Partner:

(2) Date:

(3) Taxpayer Identification Number:

(4) Name of Taxpayer:

(5) Taxpayer's Address:

(6) Telephone/Fax Numbers:

(7) Date and Place of Birth (individuals):

or Place of Incorporation (corporations):

(8) Has the taxpayer been identified as potentially dangerous?

(9) Please specify any known income or assets the taxpayer may have in the treaty partner country.

(10) What is the basis for the liability? (Be specific, e.g., tax on return, SFR, unreported income, disallowed items, etc.)

(11) Notice of Federal Tax Lien Filing: When:

Where:

This information is being provided pursuant to the Income Tax Treaty in force between our two countries. The use and disclosure of this information must be governed by the provisions contained in the Income Tax Treaty.

Continued on next page

Exhibit 7, MCAR Datasheet, Continued

(12) Delinquent Account Information:

Type of of Tax Limitations Date	Period	Unpaid Balance of Assessments	Accruals To:	Total Due	Statute
--	--------	----------------------------------	-----------------	-----------	---------

Total:

(13) Is there any other information that the treaty partner should know?

(14) Originating Office:

(15) Name of Originator:

(16) Telephone Number:

(17) Group Manager Signature: _____

(18) MCAR Coordinator Signature: _____

This information is being provided pursuant to the Income Tax Treaty in force between our two countries. The use and disclosure of this information must be governed by the provisions contained in the Income Tax Treaty.

Continued on next page

Exhibit 7, MCAR Datasheet, Continued

Instructions for Data Sheet:

Item Number 1: The treaty partners and the types of tax covered are as follows:

Canada: All Taxes
Denmark: Income Tax
France: Income, Estate, & Gift Taxes
The Netherlands: Income Tax
Sweden: Income Tax

Item Number 5: Please include an address where the treaty partner can reach the taxpayer, including sending notices, even if the address is in the United States.

Item Number 7: The date of birth can be obtained from INOLES. MFTRAU gives both the date and place of birth.

Item Number 10: Please include enough information so that we can explain the assessment to the taxpayer if they raise questions when they are contacted by the treaty partner. Please identify the income items used for an SFR, or identify the items disallowed, etc., from an Exam Report. If it is a TFRP assessment (for Canada only), include information on the corporation, other officers, etc.

Item Number 11: Please file a NFTL before making a referral if appropriate, and include a copy with the referral.

Item Number 12: Please calculate accruals to 180 days from the date of preparation of the form in item 2, except that for Canadian referrals, calculate the accruals as of the date of preparation of the form.

For referrals to Canada, forward the data sheet to:

**Internal Revenue Service
255 East Ave
Rochester, NY 14604
Attention: Int'l Collection Group Manager**

For all other referrals, send to:

**Internal Revenue Service
SE:S:SP:IN:T2:6:LE:4405
1111 Constitution Ave N.W.
Washington, DC 20224**

Foreign Trusts and International Insolvency



Introduction:

In today's global economy, there are an increasing number of taxpayers who travel, work and reside overseas. United States taxpayers, residents of the United States, and nonresident aliens are becoming more and more involved in international transactions, such as investing overseas, creating a foreign trust, and filing bankruptcy overseas. We are going to talk about these issues in today's presentation.

Foreign Trusts



Objectives:

- Describe foreign trusts
- Describe the five types of foreign trusts
- Identify the foreign trust issues encountered in working Form 3520 and Form 3520-A

Introduction:

With laws favorable to foreign persons by having no or low income tax and bank secrecy laws, many U.S. taxpayers are creating trusts in countries like the Cook Islands, Liechtenstein, the Bahamas and New Zealand. In this section of our presentation, we will discuss foreign trusts and give you some information to more effectively work cases involving foreign trust issues.

Objectives:

At the end of this section, you will be able to:

- Describe foreign trusts
- Describe the five types of foreign trusts and

- Identify the foreign trust issues encountered in working Form 3520 and Form 3520-A.

Note to Instructor: Opportunity for the instructor to call on someone for a case example. Has anyone worked a foreign trust case?

Domestic Trust

- The trust is within the jurisdiction of any U.S. court, AND
- One or more persons in the U.S. have authority to control substantial decisions of the trust.

Otherwise it is treated as a “foreign” trust

A trust may be “foreign” or “domestic.” Under current laws, a domestic trust must meet two conditions:

- The trust must be within the jurisdiction of a United States court, and
- one or more persons in the United States have authority to control all substantial decisions of the trust.

If either of these conditions are not met, the trust is treated as “foreign”.

The creation of a trust may result in U.S. income tax obligation on the grantor, the trust, and/or the beneficiary. In general, foreign trusts are taxed as nonresident aliens.

Foreign Trusts



Factors in selecting a country....

- Political and economic stability
- Available banking and trust facilities
- Applicable trust laws and tax laws

Factors the grantor might consider in selecting a country in which to create a trust include:

- the political and economic stability of a country,
- available banking and trust facilities, and
- applicable trust laws and tax laws.

For example, a taxpayer may set up a foreign trust in the Bahamas for the lower income tax rates and favorable bank secrecy law.

5 Types

- Asset Protection Trust
- Foreign Non-Grantor Trust
- Foreign Grantor Trust
- Purpose Trust
- Rabbi Trust



Generally, there are five types of trusts used in offshore planning by U.S. persons. They are:

- Asset Protection Trust
- Foreign Non-Grantor Trust
- Foreign Grantor Trust
- Purpose Trust
- Rabbi Trust

Foreign trusts are one of the offshore structures used in foreign investment by U.S. taxpayers.

Asset Protection Trust

- Treated as a grantor trust for Federal tax purposes
- Grantor/owner, includes trust income/ expenses on their return
- Established by U.S. citizens or residents
- Usually includes grantor, spouse, children as beneficiaries
- Generally provides creditor protection



Let's talk first about **Asset Protection Trusts**.

The asset protection trust, or APT, is an offshore trust, which for Federal tax purposes, is treated as a grantor trust under IRC sections 671-679. The grantor, treated as the owner, includes the trust income and expenses on their return. Asset protection trusts are established by U.S. citizens or residents and usually include the grantor, the spouse and the children as the beneficiaries. The APT generally provides creditor protection, depending upon the jurisdiction chosen to settle the trust. The APT is used where the grantors want to immediately pass their assets to a younger generation. The grantors, as owners, continue to pay U.S. taxes on the income of the trust.

Foreign Non-Grantor Trust

- Generally created by U.S. person or corporations
- Used in long term planning
- Irrevocable and beneficiaries cannot be U.S. persons

Foreign not-grantor trusts are generally used to build up assets offshore without taxation

Foreign Non-Grantor Trusts

For purposes of this discussion, the foreign non-grantor trust is an offshore trust generally created by a U.S. person or corporations. It is used in long term planning to transfer assets from one generation to another and reduce estate taxes. It is irrevocable and the beneficiaries cannot be U.S. persons until at least one year after the grantor and spouse are deceased.

Foreign non-grantor trusts are designed to avoid the grantor trust provisions of IRC sections 671-679 used in APT's. They are generally used to build up assets offshore without taxation, and then pass the assets to younger generations with a minimal amount of taxes being paid, usually after the grantor has died. However, if there are any U.S. beneficiaries during the grantor's lifetime, IRC section 679 operates to make the trust a grantor trust under IRC sections 671-679, and the grantor, treated as the owner, is required to include the trust income and expenses on their tax return.

Foreign Grantor Trust

- Created by a non-U.S. grantor with U.S. beneficiaries
- Treated as a non-resident alien
- Beneficiaries are required to report income from a foreign grantor trust

Foreign Grantor Trusts

A foreign grantor trust is a trust created by a non-U.S. grantor with U.S. beneficiaries. A foreign grantor trust is generally treated as a non-resident alien for U.S. tax purposes. Before the Small Business Job Protection Act of 1996, income from such a trust was considered taxable to the foreign grantor, and not to the U.S. beneficiaries, who received the distributions from the trust. However, since the law change, with certain exceptions, beneficiaries are required to report the income from a foreign grantor trust.

Purpose Trust

- Does not have any beneficiaries or classes of beneficiaries
- Is not supposed to benefit anyone
- Exists for a specific purpose
 - to own the shares of a corporation
 - finance/lease assets
 - general purpose

Purpose Trusts

A purpose trust is a trust, which does not have any beneficiaries, or even general classes of beneficiaries. A purpose trust is not supposed to benefit anyone. Instead, a purpose trust exists for a specific purpose, such as to own the shares of a corporation, to facilitate the financing or leasing of assets with large price tags, including airplanes and ships, or for a general purpose, such as to further the creation and preservation of fine art. Most jurisdictions have a specific purpose trust statute.

A purpose trust is formed similarly to a regular trust, with an agreement between the grantor and a trustee. Unique to a purpose trust is a position called the “enforcer”. The enforcer acts much like a trust protector, and oversees the actions of the trustee to ensure those actions further the purposes stated in the agreement. A purpose trust is taxed just like an asset protection trust or grantor under IRC sections 671-679.

Rabbi Trust



- Irrevocable trust similar to a 401(k) plan for a company's top executives
- Pays compensation into plan for ultimate benefit of taxpayer/employee
- Set up both onshore and offshore
- May invest freely in variety of offshore properties and entities without suffering adverse U.S. tax consequences

A rabbi trust is an irrevocable trust that is part of a non-qualified deferred compensation plan, similar to a 401(k) plan, for a company's top executive. It provides the employer pays compensation into the plan for the ultimate benefit of the taxpayer/employee. The employee includes in their income only amounts that are distributed from the plan.

Rabbi trusts are set up both onshore and offshore. As long as neither the employer is, nor its owners, subject to U.S. tax, the trust may invest freely in a variety of offshore properties and entities without suffering adverse U.S. tax consequences. Under a rabbi trust, executives are assured that if they continue to work for the corporation for a certain length of time, usually until retirement, their employer is regularly setting aside funds to provide retirement income benefits. Rabbi trusts must take the form of the model rabbi trust described in Rev. Proc. 92-64.

Form 3520 FILED BY U.S. PERSONS WHO...

- Create or transfer money or property to a foreign trust,
- Are considered owners of a foreign trust under the grantor trust rules,
- Directly or indirectly receive any distribution from a foreign trust, or
- Receive certain gifts or bequests from foreign persons.

Form 3520 Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts

<http://core.publish.no.irs.gov/forms/public/pdf/19594y11.pdf>

Note to instructor: link to form attached. Can show form to audience – ask if anyone is familiar with form.

As international revenue officers, you may be assigned a balance due or delinquent return case for the Form 3520, *Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts*, or Form 3520-A, *Annual Information Return of Foreign Trust With A U.S. Owner*.

Form 3520 must be filed by U.S. persons who:

- Create or transfer money or property to a foreign trust,
- Are considered owners of a foreign trust under the grantor trust rules,
- Directly or indirectly receive any distribution from a foreign trust, or
- Receive certain gifts or bequests from foreign persons.

Form 3520 is filed under the TIN of the U.S. person filing the return. It is due on the same date as that of the U.S. person's income tax return, including extension. It is currently filed with the IRS at the Ogden Campus. A Form 3520 must be filed for transactions with each foreign trust.

Form 3520 has four parts:

Part I applies to a U.S. person who made a transfer to a foreign trust during the current year.

Part II applies to a U.S. owner of a foreign trust.

Part III applies to U.S. persons receiving distributions from a foreign trust during the current year.

Part IV applies to U.S. recipients of gifts or bequests received during the current tax year from foreign persons

Form 3520 INFORMATION

- Name of the U.S. person filing form and the campus where their income tax return will be filed
- Name and identifying information of the foreign trust and its U.S. agent
- Description and fair market value of assets transferred to foreign trust and related documentation

The information contained on Form 3520 is helpful in locating assets for collection and contact information on the taxpayer or related entities.

You can use IDRS command code ESTAB to request a copy of the return. This would be under an MFT 68 for Form 3520.

Form 3520 provides:

- The name of the U.S. person filing Form 3520 and the campus where that person will file their income tax return,
- The name and identifying information of the foreign trust and its U.S. agent,
- A description and fair market value of assets transferred to the foreign trust and related documentation, (continued on next slide)

Form 3520 INFORMATION

- Information on distribution received
- Name and contact information of any other person considered to be an owner under grantor trust rules

- Information on the distribution received, and
- The name and contact information of any other person who is considered to be an owner under the grantor trust rules.

When Form 3520 is filed, IDRS shows a module with MFT 68 under the TIN of the entity filing the return. This is an information return and no liability is assessed on the module.

However, if Form 3520 is not filed timely, or is incomplete or incorrect, a civil penalty is assessed under the TIN of the individual or entity responsible for filing Form 3520. The penalty shows under MFT 55 for individuals or MFT 13 for businesses.

Note: If you discover the taxpayer transferred property to, or received distributions from, a foreign trust, or received a gift or bequest from a foreign person, but did not file Form 3520 as required, refer them to Examination.

Form 3520-A INFORMATION

- Balance sheet and income statement
- Statement for each U.S. owner and beneficiary
- Foreign Grantor Trust Owner Statement
- Foreign Grantor Trust Beneficiary Statement

Form 3520-A Annual Information Return of Foreign Trust With a U.S. Owner

Form 3502-A, *Annual Information Return of Foreign Trust With a U.S. Owner*, must be filed annually by all foreign trusts with at least one U.S. owner. It provides information about the foreign trust, its U.S. beneficiary, and any U.S. person who is treated as an owner of any portion of the foreign trust.

The trustee of the foreign trust must send a copy of Form 3520-A to each U.S. owner and beneficiary. The U.S. owner and beneficiary are then required to attach the form to their income tax return.

Each U.S. person treated as an owner of a foreign trust is responsible for ensuring the foreign trust files Form 3520-A and furnishes the required statements to its U.S. owner and beneficiaries.

Information on Form 3520-A includes:

- A balance sheet and income statement documenting the trust's worldwide assets and income, as well as a statement for each U.S. owner and beneficiary,

Note: The balance sheet and income statement provide the types of assets and income that would potentially be available for collection.

- A Foreign Grantor Trust Owner Statement, which includes the trust income attributable to the U.S. owner, and
- A Foreign Grantor Trust Beneficiary Statement, which details the type and value of any assets distributed to a U.S. beneficiary.

Form 3520-A

- Fails to file timely Form 3520-A
- Does not furnish all required information
- Includes incorrect information
- **\$10,000 OR 5% Penalty**



The trust's U.S. owner is subject to a civil penalty. The penalty is the greater of \$10,000 or 5% of the gross value of the portion of the trust's assets treated as owned by the U.S. person at the close of that tax year. The penalty can be assessed if the foreign trust :

- fails to file a timely Form 3520-A,
- does not furnish all required information, or
- includes incorrect information.

Form 3520-A

- MFT 42 under the trust TIN
- This is an information return

For foreign non-grantor trust, IDRS shows a filing requirement for Form 1041, with MFT 05

When Form 3520-A is filed, IDRS shows a module with MFT 42 under the trust TIN. This is an information return and no liability is assessed on the module. However, an assessment will be made under the TIN of the U.S. owner of the trust and shows as either MFT 55 (individual) or MFT 13 (business).

For foreign non-grantor trust, IDRS shows a filing requirement for Form 1041, with MFT 05. However, a foreign non-grantor trust would actually file Form 1040NR if it had U.S. source and effectively connected income. When Form 1040NR is filed by a foreign trust, IDRS shows it as a non-master file assessment with MFT 20.

When dealing with foreign trusts, you must verify you are dealing with the person authorized to represent the trust. However, due to the location of the trust and the trustee, documenting the authorized representative of a foreign trust may be problematic. Check IDRS command code CFINK to see if a Form 2848 is on file.

POA???

- Form 2848, signed by current trustee or other authorized party
- Original Form 56
 - **TC098 or TC099 on ENMOD**
- Copy of trust instrument identifying trustee

If no power of attorney is on file, ensure you are dealing with the trustee or authorized representative of the trust. You must secure:

- Form 2848, signed by the current trustee or other authorized party,
- an original Form 56, *Notice Concerning Fiduciary Relationship*, if the trustee will authorize another person to deal with the IRS, and
- copy of the trust instrument and/or amendment identifying the current trustee.

Note: If Form 56 has been filed, the transaction code TC 098 or TC 099 will appear on the IDRS command code ENMOD. You can request a copy of Form 56 through IDRS command code ESTAB by using the document locator number of the TC 098 or TC 099.

Foreign Trusts Case Scenario

Taxpayer is Bryan Oldham

- U.S. person, currently residing in Germany
- Balance due MFT 55 12/31/2009 F3520-A
- Owner of Athens Foreign Trust in Bermuda
- No levy sources on ICS
- Owns real estate in the French Riviera



Let's take a look at a foreign trust case scenario. IT is also available in your on-line Participant Guide.

International Revenue Officer Ned Hanson receives a balance due for Bryan Oldham with an address in Germany. The balance of \$50,000 posted as an MFT 55, tax period ending 12/31/2009 for a failure to file a timely Form 3520-A.

Mr. Oldham, a U.S. person, is currently residing in Germany. He left the United States on May 1, 2007 with his wife and four children. Mr. Oldham is an owner of the Athens Foreign Trust located in Bermuda. The beneficiaries of the trust are Mrs. Oldham and the four children.

The trust filed Form 3520-A late and listed the total value of the trust's assets at the end of the year.

RO Hanson conducted his initial case analysis and sent the required correspondence by international registered mail to the last known address. There is no response from Mr. Oldham. RO Hanson searches additional locator sources through the internet. He found a German phone directory with a listing for Bryan Oldham. RO Hanson called the phone number listed. The person who answered the phone stated Mr. Oldham travels several times a month on business and is currently in the U.S. He will return next week. RO Hanson left a call back message for Mr. Oldham.

IDRS shows no levy sources. IRPTRO shows no income information.

RO Hanson requests the ESTAB to secure the Form 3520-A, and was able to obtain it. The form shows:

- A U.S. agent.
- No additional contact information for Mr. Oldham,
- The name and identifying information for the foreign trust,
- Additional information on the Foreign Trust Balance Sheet, and
- Statement of Foreign Trust Income Attributable to U.S. Owner.

The assets show the taxpayer has real estate owned offshore that he rents as vacation property. He uses a realtor as a liaison for the renters, and all rents received are deposited into a foreign bank account, Deutch Bank.

The interest from the bank account is also reported as income on the Form 3520-A. The taxpayer's children are listed beneficiaries.

The real estate property is located south of France on the French Riviera.

Further research shows Deutch Bank has a U.S. subsidiary located in New York.

CFINK shows no power of attorney on file.

Foreign Trusts Case Scenario Questions

- What type of foreign trust is Athens Foreign Trust?
- How can you determine a value on the trust?

What type of foreign trust is Athens Foreign Trust?

Answer: It is an asset protection trust.

How can you determine a value on the trust?

Answer: The civil penalty is 5% of the gross value of the trust's assets, so the value has to exceed \$1 million.

Foreign Trusts Case Scenario Questions

- What course of action should RO Hanson pursue attempting to collect on this liability?
- Can a summons be issued to the U.S. Agent if necessary? If so, what information can be requested on the summons?

What course of action should RO Hanson pursue attempting to collect on this liability?

Answer: Request the ESTAB for Form 3520-A and summons on any pertinent information obtained.

Can a summons be issued to the U.S. agent if necessary? If so, what information can be requested on the summons?

Answer: Yes, a summons can be issued to the U.S. agent. Summons the U.S. agent for details of the trust, sources of income and current assets. (U.S. agent information was received from the ESTAB of the Form 3520-A.)

Are there any questions?

The next section will cover International Insolvency.

International Insolvency

Objective:

- Identify the factors to consider when working international bankruptcy cases.



International Insolvency

Introduction:

With the global economy slowing down, there has been an increase in taxpayers filing bankruptcy. This portion of the presentation is designed to introduce you to some of the common issues you may encounter when working international bankruptcy cases.

Objective:

At the end of this section, you will be able to:

Identify the factors to consider when working international bankruptcy cases.

Factors to Consider...

Factor 1: Citizenship/Country

Factor 2: Distribution likelihood

Factor 3: Disclosure



As international revenue officers, when it comes to working international bankruptcy cases, there is generally not a “one size fits all” to bring the case to resolution. It depends on the citizenship of the debtor, where they filed bankruptcy and the facts particular to the case.

There are three factors to consider when working an international bankruptcy case. We'll be discussing each in more detail.

Factor 1: The citizenship of the debtor and the country where they filed bankruptcy.

Factor 2: The likelihood the IRS will receive a distribution during the insolvency proceeding.

Factor 3: The disclosure issue.

Factor 1

The citizenship and country where the taxpayer filed bankruptcy

- Different bankruptcy laws
- Can the IRS participate as a creditor
- Consult Counsel



Factor 1: The citizenship and country where the taxpayer filed bankruptcy.

Each country has different bankruptcy laws. In certain situations, the IRS may participate as a creditor in that foreign country during the insolvency proceeding. Consult Area Counsel when you discover a taxpayer in your inventory filed bankruptcy in a foreign country.

Foreign Governments

- Canada – business and individuals
- Netherlands – business and individuals



Let's talk a little about some specific countries.

Note to instructor: these slides are meant to familiarize the RO with the different terms that could be used in reference to information obtained by a treaty request and MCAR referrals.

Canada

Bankruptcy in Canada is governed by the Bankruptcy and Insolvency Act and is applicable to businesses and individuals. The office of the Superintendent of Bankruptcy, a federal agency, is responsible for ensuring bankruptcies are administered in a fair and orderly manner by all licensed Trustees in Canada. Trustees in bankruptcy actually administer the bankruptcy estates and are governed by the Bankruptcy and Insolvency Act of Canada.

Bankruptcy is filed when a person or a company becomes insolvent and cannot pay their debts as they become due, and if they have at least \$1,000 in debt.

The Netherlands

The Dutch bankruptcy law is governed by the Dutch Bankruptcy Code ("Faillissementswet"). The code covers three separate legal proceedings. The first is the bankruptcy ("Faillissement"). The goal of the bankruptcy is the liquidation of the assets of the company. The bankruptcy applies to individuals and companies. The second legal proceeding in the Faillissementswet is the "Surseance". The Surseance only applies to companies. Its goal is to reach an agreement with the creditors of the company. The third proceeding is the "Schuldsanering". This proceeding is designed for individuals only.

Foreign Governments

- Sweden – business and individuals
- United Kingdom – individuals which includes sole proprietors & partnerships



Sweden

In Sweden, bankruptcy (Swedish: konkurs) is a process that may involve a company or individual. A creditor or the company itself can apply for bankruptcy. An external bankruptcy manager takes over the company or the assets of the person, trying to sell as much as possible. A person or a company in bankruptcy can not access its assets, although there are some exceptions.

The formal bankruptcy process is rarely carried out for individuals. Creditors can claim money through the Enforcement Administration. Creditors do not usually benefit from the bankruptcy of individuals because there are costs of a bankruptcy manager which have priority. Unpaid debts remain after bankruptcy for individuals. People who are deeply in debt can obtain a debt arrangement procedure (Swedish: skuldsanering). On application, they obtain a payment plan under which they pay as much as they can for five years, and then all remaining debts are cancelled. Debts derived from being subjected to a ban on business operations, issued by court, commonly for tax fraud and/or fraudulent business practices or owed to a crime victim as compensation for damages, are exempted from this. These debts will remain life-long. The most common reasons for personal insolvency in Sweden are illness, unemployment, divorce or company bankruptcy.

United Kingdom

In the United Kingdom, bankruptcy in a strict legal sense relates only to individuals, which includes sole proprietors, and partnerships. Companies and other corporations enter into differently-named legal insolvency procedures: liquidation and administration (administration order and administrative receivership). However, the media and people in general use the term 'bankruptcy' referring to companies. Bankruptcy in Scotland is referred to as sequestration. To apply for your own bankruptcy in Scotland you must have more than £1500 of debt.

A trustee in bankruptcy must be either an Official Receiver, who is a civil servant, or a licensed insolvency practitioner. Current law in England and Wales derives in large part from the Insolvency Act 1986. Following the introduction of the Enterprise Act 2002, a UK bankruptcy now normally lasts no longer than 12 months and may be less, if the Official Receiver files a certificate in court stating the investigations are complete. It was expected the UK Government's liberalization of the UK bankruptcy regime would increase the number of bankruptcy cases. The Insolvency Service statistics appear to bear this out.

Note to Instructor: Opportunity for the instructor to call on students with knowledge of foreign bankruptcy laws.

Mutual Collection Assistance Request (MCAR)

- Denmark
- Sweden
- France
- Canada
- The Netherlands



MCAR

In addition, if the country is a Mutual Collection Assistance Request, or MCAR country, the IRS may request collection assistance in that country's bankruptcy proceeding. Currently, there are five countries with which the U.S. has treaties that provide for mutual collection assistance: Denmark, Sweden, France, Canada, and the Netherlands. The tax treaties between the U.S. and these countries permit the U.S. and the other country to collect taxes which have been finally determined, that is, assessed and subject to immediate collection, on behalf of each other. This includes the collection of taxes in each country's bankruptcy proceeding.

Factor 2

The likelihood the IRS will receive a distribution during the insolvency proceeding

- Consider hazards of litigation
- Taxpayer's liability verses assets
- Potential amount of distribution

Factor 2: The likelihood the IRS will receive a distribution during the insolvency proceeding.

Given the hazards of litigation by IRS participation in an insolvency proceeding, the facts and circumstances of the case must be carefully analyzed to determine whether IRS involvement is warranted, especially when a taxpayer's liability exceeds their assets. You should determine the likelihood the IRS will receive a distribution in the debtor's insolvency proceeding and the potential amount of that distribution. If you determine the likelihood of receiving a distribution and the amount of distribution warrants participation, consult Area Counsel and LB&I Competent Authority.

Factor 3

The Disclosure Issue

IRC section 6103 Disclosure

- 6103(k)(6) relative to collection
- 6103 (c) disclosure with TP consent



Factor 3: The Disclosure Issue.

When the IRS files a proof of claim in a bankruptcy proceeding overseas or confirms a taxpayer's total tax liability to an official receiver, it discloses taxpayer information. IRC section 6103 dictates the circumstances under which the taxpayer's return information can be disclosed. The amount and existence of a taxpayer's liability is return information. IRC section 6103 (k)(6) provides for disclosure of return information relating to collection activity necessary with respect to the enforcement of any provision of the Internal Revenue Code. Therefore, under this section, the IRS can participate in a foreign insolvency overseas to the extent necessary to collect the taxpayer's tax liability.

In addition, under section 6103 (c), disclosure to an official receiver is allowed when the taxpayer consents. The taxpayer can execute a consent for disclosure of information by using Forms 8821, 4506 or 4506T, depending on the information to be disclosed.

Chapter 15 – Cross Border Insolvency

- International Cooperation
- Ineligible Parties
- International Scope



For example...

*A U.S. citizen residing in France declares
bankruptcy under French law*

A primary goal of Chapter 15 bankruptcy is to increase international cooperation in cross-border cases by enabling US bankruptcy courts to recognize foreign insolvency proceedings.

Chapter 15 applies in the following circumstances:

- A foreign court or a foreign representative seeks assistance in the United States in connection with a foreign proceeding.
- Assistance is requested in a foreign country in connection with a case under 11 USC.
- A foreign proceeding and a domestic bankruptcy for the same debtor are pending concurrently. Or
- Parties of interest in a foreign country wish to commence or participate in a case under 11 USC.

When a case is identified as a cross-border filing, contact Field Insolvency for guidance. These cases are worked by the Centralized Insolvency Unit at Philadelphia Campus and the Field Insolvency Unit.

Chapter 15 – Cross Border Insolvency

Does not apply

- Railroads, banks, financial institutions
- Stock brokers and commodity brokers



Chapter 15 bankruptcy does not apply to:

- A proceeding concerning an entity, other than a foreign insurance company, identified by exclusion in 11 USC section 109(b). This include railroads, domestic insurance companies, banks, and other listed financial institutions.
- An individual, or individual and spouse, who has debts within the limits in 11 USC section 109(e) and who is a US citizen or lawful alien. The debt limits are those which qualify an individual as a debtor under Chapter 13
- Certain stockbrokers and commodity brokers.

International Insolvency Case Scenario

Edward Phillips, U.S. citizen

- IMF Combo case – balance due periods & delinquent returns
- Taxpayer files bankruptcy in Canada
- Only assets owned are located in Canada
- Taxpayer lists IRS as a creditor

Now let's look at the insolvency case scenario which is also in your Participant Guide.

International Revenue Officer Shannon Smith receives an IMF balance due case for Edward Phillips with a foreign address. The case consists of several IMF balance due periods and several years of unfiled returns.

The earliest CSED is May 15, 2017. These are old debts with extensions for the CSED on file due to the taxpayer's repeated absence from the United States.

The initial case analysis is completed and all required notices were mailed.

After initial contact is made, RO Smith is told a bankruptcy order was entered against the taxpayer as debtor in Canada on June 12, 2011.

Mr. Phillips is a U.S. citizen. He has resided in Canada for over 10 years. A Form 433-A is secured and shows the taxpayer is currently unemployed, but most recently served as a director in a Canadian company. Form 433-A shows no U.S. assets, but shows the taxpayer owns a home, rental property and a bank account in Canada.

Mr. Phillips attaches a copy of the financial records recorded in the proceeding. He submitted a form to the court listing total assets worth \$75,677 and liabilities of \$378,389. The liabilities listed by taxpayer/debtor include \$51,000 in Federal taxes owed to the IRS. The ICS case has no levy sources and the Collection Information Statement had no leads to any U.S. assets.

Mr. Phillips wants IRS's consent and participation in the proceeding of his case because the IRS is one of his creditors. He is requesting IRS involvement in his proceedings due to the Federal debt.

International Insolvency Case Scenario Questions

- Does the filing of a foreign bankruptcy prohibit further collection action?
- If the taxpayer was uncooperative, how could the IRS secure a copy of the foreign bankruptcy record, if available?

Does the filing of a foreign bankruptcy prohibit further collection action?

Answer: No. Only a petition filed with a U.S. court requires a stay of collection. The automatic stay is only imposed when a petition is filed with a U.S. court. The stay goes into effect at the time the petition is filed in the U.S. court.

If the taxpayer was uncooperative, how could the IRS secure a copy of the foreign bankruptcy record, if available?

Answer: By requesting an Exchange of Information (EOI). On behalf of the U.S. Competent Authority, the overseas posts and EOI team members administer the exchange of information provisions of U.S. tax treaties and tax information exchange agreements (TIEAs). They help IRS field personnel obtain foreign based records and other information from foreign countries.

International Insolvency Case Scenario Questions

- Can RO Smith, with the taxpayer's consent, contact the foreign court?
- With no U.S. assets to collect and the taxpayer's inability to pay, how could the IRS proceed?

Can RO Smith, with the taxpayer's consent, contact the foreign court?

Answer: No. The involvement of the U.S. Competent Authority is required.

With no U.S. assets to collect and the taxpayer's inability to pay, how could the IRS proceed?

Answer: A referral for the filing of a proof of claim could be made through the MCAR coordinator. Since Canada currently has a Mutual Collection Assistance provision of the tax treaty, it may permit the U.S. and Canada to collect assessed liabilities that have already been assessed and are open to the enforcement of collection (subject to immediate collection). You should contact the MCAR coordinator and local counsel to discuss your case. The MCAR coordinator is the liaison with the U.S. Competent Authority who will deal directly with the foreign country. The MCAR coordinator will contact the LB&I Competent Authority to discuss the facts and circumstances of the case to determine whether IRS involvement is appropriate. The IRS needs to consider the country where the taxpayer filed the bankruptcy and if IRS involvement could result in collection.

Foreign Trusts and International Insolvency



Are there any final questions before we leave you today?

Thank you for your attention. We hope we have given you some information regarding foreign trusts and insolvencies to help move your cases forward.