



Part 5. Collecting Process

Chapter 21. International and Insular Issues

Section 1. Overview

5.21.1 Overview

- 5.21.1.1 [Introduction](#)
- 5.21.1.2 [Definition of an International Case](#)

Manual Transmittal

October 31, 2013

Purpose

(1) This transmits a revision of IRM 5.21.1, *Overview*, for collection employees.

Material Changes

(1) IRM 5.21.1 is revised to make minor grammatical corrections, update organization terms and/or titles, and correct cross references.

Effect on Other Documents

IRM 5.21.1 supersedes IRM 5.21.1, dated 2/17/2009.

Audience

The target audience is revenue officers in SB/SE Field Collection (FC).

Effective Date

(10-31-2013)

Michelle Alvarado
Acting Director, Collection Policy

5.21.1.1 (02-17-2009)

Introduction

1. This section of the Internal Revenue Manual defines matters that specifically relate to international collection issues. In today's global economy, there are an increasing number of taxpayers who travel and work overseas. United States taxpayers, residents of the U.S., and U.S. businesses are becoming more and more involved in international transactions.
2. The United States is one of a very few countries in the world that taxes its citizens and residents on their worldwide income. The role of an international revenue officer is very important in ensuring taxpayer compliance with the tax laws and reducing the tax gap.
3. This IRM provides specific procedural guidance for international revenue officers. These procedures may also have applications that domestic revenue officers may find useful.
4. This IRM does not encompass all international collection issues. International collection issues such as Mutual Collection Assistance Request (MCAR), Courtesy Investigations, International Currently Not Collectible Closing Code 06, Treasury Enforcement Communication System (TECS), Initial Contact, and special rules on mailing correspondence are covered in other parts of the IRM.

5.21.1.2 (02-17-2009)

Definition of an International Case

1. An international case is a taxpayer or business having a current address outside the United States. The primary factor that determines an international case is the address of the taxpayer.
2. Although the address of the taxpayer or business is a key factor, it is not the only factor in determining if the case is an international case. Usually, if the taxpayer has a domestic address, the case is assigned to a domestic collection group. However, there are exceptions where the case may have a domestic address but the case is an international case.
3. The following are examples of an international case where the taxpayer has a domestic address.

Example:

A taxpayer resides abroad but uses his power of attorney's (POA) domestic address as his official address. This is usually the case in countries where the mail system is unreliable. The taxpayer uses his POA's domestic address to ensure that he receives his mail from the Internal Revenue Service.

Example:

A taxpayer who uses a mail forwarding service, a mail drop box or PO Box while residing outside the United States. 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.

5.21.1.2.1 (10-31-2013)

Difference Between Domestic ATAT and International ATAT Cases

1. More and more cases are identified as abusive tax avoidance transactions (ATAT) cases with the promotion of abusive schemes by taxpayers and promoters, and these cases are making their way into revenue officers' inventories. The process of determining the difference between an ATAT domestic case and an ATAT international case depends on the address of the taxpayer.
2. A taxpayer with a current international address involved in an abusive scheme is an international ATAT case.
 - A. See IRM 5.1.8.1.4, *Account Transfers to International*, for more information on transferring cases to international.
3. Generally, domestic ATAT cases:
 - A. are identified through Issue Management Teams which identify promoters, preparers, and participants;
 - B. are developed by Examination and other Operating Divisions and functions.
4. Generally, international ATAT cases:
 - A. are identified by an international revenue officer or as a direct result of an examination function examination;
 - B. are developed on taxpayers attempting to avoid paying U.S. taxes.

Note:

Coordination between international revenue officers and ATAT revenue officers is essential in identifying domestic and foreign assets, and can provide both functions with valuable information.

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 21. International and Insular Issues

Section 2. Offshore Information Gathering Techniques

5.21.2 Offshore Information Gathering Techniques

- 5.21.2.1 [Introduction](#)
- 5.21.2.2 [Exchange of Information](#)
- 5.21.2.3 [Consent Directives](#)
- 5.21.2.4 [Letter of Request](#)

Manual Transmittal

December 17, 2013

Purpose

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

Material Changes

- (1) IRM 5.21.2.2(3)(a) is revised to clarify the role of the Exchange of Information Office.
- (2) IRM 5.21.2 is revised to make minor grammatical corrections, update organization terms and/or titles, and correct cross references.

Effect on Other Documents

IRM 5.21.2 supersedes IRM 5.21.2, dated 2/17/2009.

Audience

The target audience is revenue officers in SB/SE Field Collection (FC).

Effective Date

(12-17-2013)

Dretha Barham
Director, Collection Policy

5.21.2.1 (02-17-2009)

Introduction

1. In recent years, as our economy becomes more global, more and more U.S. taxpayers are participating in offshore activities for both legitimate and illegitimate purposes.
2. Taxpayers who participate in offshore activities for illegitimate purposes seek to shelter financial resources in foreign countries. Offshore accounts can be located in any country in the world. Useful records can be obtained from foreign countries regarding these taxpayers.
3. International cases require methods not normally used in the domestic arena. Some of these methods are:
 - Exchange of Information (EOI) requests
 - Consent Directives
 - Letters of Request

5.21.2.2 (12-17-2013)

Exchange of Information

1. The United States has tax treaties and tax information exchange agreements (TIEAs) with many countries that provide for the exchange of information on tax matters.
 - A. See IRM 5.1.8.7.7, *Incoming Mutual Collection Assistance Requests* and IRM 5.1.12.25, *Outgoing Mutual Collection Assistance Requests*, regarding mutual collection assistance requests with the five treaty countries of Canada, Denmark, France, Netherlands and Sweden.
2. The information requested may contain items that are reported or omitted on a taxpayer's return or regarding the whereabouts of the taxpayer when the taxpayer no longer resides at the last known international address of record and in a delinquent return investigation to determine income and credits of the taxpayer.

Note:

To access a list of countries that have an income tax treaty and/or a TIEA with the United States, go to the Treasury Department website at <http://www.treasury.gov>, then follow the Tax Policy link on the Resource Center page.

3. All Exchange of Information requests with a foreign country are handled by the IRS Tax Attaché, Revenue Service Representative (RSR) or Exchange of Information (EOI) group, as applicable, with the responsibility for handling requests to the country where the information is located.

A. See IRM 4.60.1, *Exchange of Information*, for more information on Exchange of Information requests between the United States and foreign countries.

Note:

Tax Attachés and Deputy Tax Attachés serve in IRS overseas posts of duty and Revenue Service Representatives (RSRs) and Assistant Revenue Service Representatives (ARSRs) serve in IRS domestic posts of duty. Tax Attachés and RSRs service all functions of the IRS in tax administration matters within their respective post jurisdictions.

Note:

The Exchange of Information Program administers the Exchange of Information provisions of U.S. tax treaties and tax information exchange agreements (TIEAs). EOI obtains foreign based information for IRS field personnel, provides U.S. based information to treaty partners, and coordinates the Mutual Collection Assistance provisions of certain treaties.

4. All Exchange of Information requests with a U.S. Territory or State are handled by the Office of Governmental Liaison.

5.21.2.2.1 (02-17-2009)

Types of Exchange of Information

1. The types of information that may be exchanged under an Exchange of Information request include but are not limited to:
 - A. Tax returns and return information such as verification of filing status, citizenship, residency, income, expenses and tax liability,
 - B. Third party information return filings,
 - C. Bank records,
 - D. Business records,
 - E. Public records such as deeds, birth, death and marriage records, and
 - F. Witness interviews.

5.21.2.2.2 (12-17-2013)

Exchange of Information Procedures - Foreign Country

1. Exhaust all domestic sources for information before requesting information from a foreign country.

Note:

In general, if the information can be obtained domestically, then a tax treaty or TIEA request is normally **not** appropriate.

2. Contact the IRS Tax Attaché, RSR or EOI group responsible for that foreign country prior to drafting a request.
 - A. See IRM 4.30.3.3 , *Post Jurisdictions and Contact Numbers* , for more information on jurisdiction and for contact numbers for the RSRs.
 - B. Go to: http://lmsb.irs.gov/international/dir_treaty/eoi_overseas/posts.asp for the current International Post Jurisdictions and Tax Attaché contact information.
 - C. Go to: http://lmsb.irs.gov/international/dir_treaty/eoi_overseas/eoi/index.asp for the current contact information on the EOI group.
3. All exchange of information requests must be transmitted via a member of the U.S. Competent Authority's office (i.e., Tax Attaché, RSR, EOI group)

Caution:

Only the Competent Authority's office is authorized to communicate directly with a foreign country's tax office under a treaty or TIEA.

5.21.2.2.2.1 (12-17-2013)

Exchange of Information - Request Memorandum

1. Prepare the Exchange of Information request in memorandum format in two parts:
 - A. The first part is for internal IRS use,
 - B. The second part will be attached to a Competent Authority letter requesting the information and forwarded to the foreign tax administration.
 - C. See IRM 4.60.1.2.4.3, *U.S. Initiated Request Procedures*, for more information on how to request the information from the foreign country.
2. Prepare the first part on the letterhead stationery **and** include the following information:
 - A. The name and address of the taxpayer under investigation,
 - B. The name and phone number of the revenue officer,
 - C. The address and fax number where the reply should be mailed/faxed,
 - D. Any background or administrative information that should **not** be provided to the foreign tax administration, and
 - E. Any statute, court, or similar dates by which the information is needed.
3. Secure approval of the memorandum from your Territory Manager through your Group Manager before sending it to the appropriate IRS Tax Attaché, RSR or EOI group.
4. Send the Exchange of Information request to the appropriate Tax Attaché, RSR or the EOI group.

5.21.2.2.3 (12-17-2013)

Exchange of Information - U.S. Territories

1. The type of information available for an Exchange of Information request with a U.S. Territory (also referred to in the Code as a U.S. Possession) is defined by the corresponding tax implementation or tax coordination agreement executed between the United States and the U.S. Territory. These agreements with the U.S. territories are similar to the Federal-State agreements for the exchange of information between the Internal Revenue Service and state tax agencies.
2. The Office of Governmental Liaison is responsible for coordinating the Exchange of Information program between the IRS and U.S. Territory.
3. Request only information actually needed so as to minimize the burden on the U.S. Territory tax office.

Example:

Consider requesting a return transcript in lieu of a copy of the actual return.

5.21.2.2.3.1 (12-17-2013)

Exchange of Information Procedures - U.S. Territories

1. Contact the local Governmental Liaison at: <http://mysbse.web.irs.gov/CLD/GLD/GL/Contacts/default.aspx> to verify if the information requested is available.
2. Use Form 8796, *Request for Return information*, to request tax return(s) or return information from the tax department of the U.S. Territory.
3. Complete Section A, B, and C of Form 8796,
4. Obtain approval/signature from the designated official Fed/State (U.S. Possession) Authorization list. The list can be obtained from your local Governmental Liaison.
 - A. Route Form 8796 to the Disclosure Officer of the tax department in possession of the information you are seeking.
 - B. Route Form 8796 to International Disclosure at the following address if you cannot secure the authorized signature locally.
Internal Revenue Service
31 Hopkins Plaza, Room 1210
Baltimore, MD 21201

Note:

Disclosure will sign and route the request to the tax department in possession of the information.

5.21.2.3 (12-17-2013)

Consent Directives

1. A Consent Directive, sometimes known as a Disclosure Directive, is a document authorizing the court to compel the taxpayer or a third party to disclose certain foreign bank records belonging to or controlled by the taxpayer.
2. Consent Directives can be obtained voluntarily directly from the taxpayer or by court order. When a Consent Directive is obtained voluntarily, some foreign countries will view this favorably and comply with the Consent Directive. On the other hand, some countries may not honor a Consent Directive that was compelled by court order.
3. A Consent Directive is used as the last resort where the court is considering denying the enforcement of a summons on Fifth Amendment grounds.

Example:

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

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

5.21.2.3.1 (12-17-2013)

Summons Procedures Prior to Requesting Consent Directive

1. Issue Form 4564, *Information Document Request*, or equivalent (such as a letter) to request from the taxpayer or third party foreign bank records which the taxpayer or third party may control.
2. If the taxpayer or third party does not adequately comply with the information document request, summons the taxpayer or third party specifying the records that must be produced. Consult with Area Counsel prior to sending the summons to determine if the summons will be enforced if the taxpayer or third party does not comply. Area Counsel will coordinate with the Office of Associate Chief Counsel (International).
3. If the taxpayer or third party does not adequately comply with the summons, refer to Area Counsel for enforcement of the summons.
4. If the taxpayer or third party does not produce the foreign bank records in court, Office of Associate Chief Counsel (International) may request that the court order the taxpayer or third party to sign one or more consent directives. Each consent directive can then be mailed to a different foreign bank, authorizing the bank to disclose to the IRS records relating to accounts that the taxpayer or third party may control.

5.21.2.4 (12-17-2013)

Letter of Request

1. A Letter of Request is mechanism for obtaining information from countries that have signed the Hague Evidence Convention. The Hague Evidence Convention is an international treaty which provides various methods and standardized procedures for securing evidence in civil and commercial matters. The Hague Evidence Convention may serve as a tool for discovery of foreign evidence, and it can only be used when there is a judicial proceeding pending or imminent in the United States.
2. A Letter of Request:
 - is initiated by the IRS through the court,
 - is worked by the Competent Authority in the receiving country, and
 - in most cases, it bypasses foreign courts and diplomatic channels of the receiving country.
3. The type of assistance from each country will be different even though that country is a signatory to the Hague Evidence Convention. Most common law countries will provide assistance in civil tax cases pending in a court within the United States. However, many civil law countries consider tax matters as "fiscal" matters (not civil matters) that are not within the scope of the Convention. In some of the present and former British Commonwealth territories such laws are known as "Evidence Acts" that serve as independent tools for responding to requests for information.
4. Consult Area Counsel, who will coordinate with the Office of Associate Chief Counsel (International), and where appropriate, the U.S. Department of Justice to determine what may be expected from any given jurisdiction.
5. Prepare an application for a Letter of Request with the assistance of Area Counsel.

[More Internal Revenue Manual](#)



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Chapter 21. International and Insular Issues

Section 3. Collection Tools for International Cases

5.21.3 Collection Tools for International Cases

- 5.21.3.1 [Introduction](#)
- 5.21.3.2 [Levy on a Domestic Branch of a Financial Institution](#)
- 5.21.3.3 [Writ Ne Exeat Republica](#)
- 5.21.3.4 [Customs Order or Prevent Departure Order](#)
- 5.21.3.5 [Appointment of a Receiver](#)
- 5.21.3.6 [Suit to Repatriate Property - Repatriation Orders](#)

Manual Transmittal

December 04, 2013

Purpose

(1) This transmits a revision of IRM 5.21.3, *Collection Tools for International Cases*, for collection employees.

Material Changes

(1) This IRM is revised to make minor grammatical corrections, update organization terms and/or titles, and correct cross references

Effect on Other Documents

IRM 5.21.3 supersedes IRM 5.21.3, dated 2/17/2009

Audience

The target audience is revenue officers in SB/SE Field Collection (FC).

Effective Date

(12-04-2013)

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Director, Collection Policy

5.21.3.1 (12-04-2013)

Introduction

1. Other collection tools are available to reach offshore assets in international cases when an offshore account is located. Some of the collection tools are:
 - Levy on a domestic branch of a financial institution (for funds held offshore),
 - Writ Ne Exeat Republica,
 - Customs Order or Prevent Departure Order,
 - Appointment of a Receiver,
 - Suit to Repatriate Property - Repatriation Orders.
2. Consult Area Counsel before using these collection tools.

5.21.3.2 (12-04-2013)

Levy on a Domestic Branch of a Financial Institution

1. There are instances where funds held offshore can be reached by a levy if the bank has a branch in the U.S. or in a possession of the U.S.
2. Treasury Regulations Section 26 C.F.R. 301.6332-1(a)(2) outlines the procedures where a bank is in business in the U.S. with deposits held in a branch outside the United States.
3. The regulations provide **two** different sets of procedures with regard to a levy on bank deposits held in offices outside the United States depending on whether or not the taxpayer is or is not within the jurisdiction of the U.S. court at the time the levy is made.
 1. If the taxpayer **is** within the jurisdiction of a U.S. court at the time the levy is made, then:

- The notice of levy **must** specify that the Area Director intends to reach such deposits, and
- That the bank is in possession of (or obligated with respect to) such deposits in an office outside the United States or a possession of the United States.

2. If the taxpayer is **not** within the jurisdiction of the U.S. court at the time the levy is made, then:

- The notice of levy **must** specify that the Area Director intends to reach such deposits,
- That the bank is in possession of (or obligated with respect to) such deposits in an office outside the United States or a possession of the United States, and
- That such deposits consist, in whole or in part, of funds transferred from the United States or a possession of the United States in order to hinder or delay collection of the tax imposed by the Code.

4. Use IDRS command code IRPTR to locate the foreign bank account.

IRPTR may indicate:

- A. foreign investments if federal taxes are withheld,
- B. transfer of funds in the taxpayer's domestic bank,
- C. the type of income/form received by the taxpayer's domestic bank in the Currency Banking and Retrieval System (CBRS).

Note:

Document thoroughly in the case history how the foreign bank account was located and verified even though an actual account number cannot be obtained.

5. Write this statement on the front of the levy: "The Area Director intends to attach funds held outside the U.S. or U.S. Territory. "

6. Serve the levy in person at the domestic branch, if possible, or send the levy via certified mail.

7. Because of the likelihood the bank will contest the levy, consult Area Counsel prior to considering Levy on a Domestic Branch of a Financial Institution. Area Counsel will coordinate as necessary with the Office of Associate Chief Counsel (International).

5.21.3.3 (12-04-2013)

Writ Ne Exeat Republica

1. Writ Ne Exeat Republica is another action authorized by IRC §7402(a) . Writ Ne Exeat Republica is the appropriate suit action when the taxpayer:

- is about to leave the U.S.,
- is unlikely to return to the U.S., and
- has conveyed or concealed property so that the property may be taken out of the U.S.

2. Writ Ne Exeat Republica is usually filed in conjunction with some other civil action against the taxpayer such as a Suit to Foreclose the Notice of Federal Tax Lien, a Repatriation Order, or a Summons Enforcement.

3. Consider these factors when determining whether or not to file a Writ Ne Exeat Republica:

- A. taxpayer has a sizeable liability,
- B. taxpayer has transferred, or is in the process of transferring, substantially all of his assets to a location outside the United States,
- C. the tax liability is valid,
- D. taxpayer established residency outside the United States or intends to do so,
- E. taxpayer's assets cannot be reached absent the issuance of the writ.

4. Develop a request for a Writ Ne Exeat Republica, as applicable.

5. Consult Area Counsel prior to considering a Writ Ne Exeat Republica. Area Counsel will coordinate as necessary with the Office of Associate Chief Counsel (International).

5.21.3.4 (12-04-2013)

Customs Order or Prevent Departure Order

1. A Customs Order or Prevent Departure Order is an administrative action similar to the Writ Ne Exeat Republica. A Customs Order can prevent a non-U.S. Citizen from exiting the United States, pending the resolution of a collection matter.

2. The authority for a Customs Order is found in 22 C.F.R. §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 §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."

3. 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).

4. Request the Treasury Enforcement Communication System (TECS) coordinator to input a Customs Order into TECS.

Note:

Close coordination must be maintained between the TECS coordinator and the revenue officer as the TECS coordinator may need to provide instructions to the Department of Homeland Security if the taxpayer is prevented from leaving the country.

Note:

See IRM 5.1.18.14, *Treasury Enforcement Communication System*, for instructions on placing a taxpayer on TECS.

5.21.3.5 (12-04-2013)

Appointment of a Receiver

1. The Appointment of a Receiver is a civil action brought in the U.S. District Court under the authority of IRC §7402(a).

2. Appointment of a Receiver is usually in conjunction with a repatriation order and/or a Writ Ne Exeat Republica. For domestic assets, a Suit to Foreclose the Notice of Federal Tax Lien may accompany the Appointment of a Receiver.
3. When considering Appointment of a Receiver, the following conditions must exist:
 - A. Assets in the U.S. are not sufficient to satisfy the liability, and
 - B. Evidence shows substantial assets exist outside the U.S.
4. Develop a request for an Appointment of a Receiver, as applicable.
5. Consult Area Counsel prior to considering the request. Area Counsel will coordinate as necessary with the Office of Associate Chief Counsel (International).

5.21.3.6 (12-04-2013)

Suit to Repatriate Property - Repatriation Orders

1. A Repatriation Order is an order issued by a federal judge, after a hearing, requiring a taxpayer who has transferred assets to a foreign country to transfer them back into the United States. If the taxpayer refuses or neglects to return the assets, the taxpayer is subject to contempt proceedings.
2. A Repatriation Order must show:
 - A. an outstanding tax liability,
 - B. a reasonable basis that the taxpayer has assets outside the U.S.,
 - C. levy on domestic assets is not sufficient to satisfy the tax liability, and
 - D. U.S. is able to get personal jurisdiction over the taxpayer. The revenue officer must show that the taxpayer is either in the U.S. or a U.S. Territory or the likelihood that the taxpayer will be returning to, or passing through, the United States.
3. Consider a Repatriation Order in concert with all other possible actions that fit the facts of the case such as Appointment of a Receivership, a Suit to Reduce the Tax to a Judgement, and a Writ Ne Exeat Republica.
4. Develop a request for a Repatriation Order, as applicable.
5. Consult Area Counsel prior to considering a Repatriation Order. Area Counsel will coordinate as necessary with the Office of Associate Chief Counsel (International).

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 21. International and Insular Issues

Section 4. Payments Made in Foreign Currency

5.21.4 Payments Made in Foreign Currency

- 5.21.4.1 [Processing Payments Made in Foreign Currency](#)
- 5.21.4.2 [Payments by Foreign Credit Cards](#)
- 5.21.4.3 [Electronic Wire Transfer from International Locations](#)

Manual Transmittal

November 27, 2013

Purpose

(1) This transmits a revision of IRM 5.21.4, *Payments Made in Foreign Currency*, for collection employees.

Material Changes

(1) This IRM is revised to make minor grammatical corrections, update organization terms and/or titles, and correct cross references.

Effect on Other Documents

IRM 5.21.4 supersedes IRM 5.21.4, dated 2/17/2009

Audience

The target audience is revenue officers in SB/SE Field Collection (FC).

Effective Date

(11-27-2013)

FDretha Barham
Director, Collection Policy

5.21.4.1 (11-27-2013)

Processing Payments Made in Foreign Currency

1. Publication 54 advises taxpayers that they must pay their taxes in U.S. dollars. However, sometimes a taxpayer will send a payment in foreign currency and is unable or unwilling to substitute the payment for one in U.S. dollars.
2. Use Form 3244, *Payments Posting Voucher*, to post a payment made in foreign currency.
3. Prepare Form 3244 as follows:
 - A. Write the applicable transaction code, amount, and type of currency in the remarks section.

Example:

Request for foreign cash conversion: 2500 Euros TC 670 DPC 10.

- B. Leave the amount line blank.

4. Attach Form 3244 and the payment to the daily Form 795.

Note:

The payment will be stripped from Form 795 and transhipped to the appropriate Campus for processing by Campus Receipt and Control.

Note:

Such payments may take in excess of 30 days to post to IDRS.

5.21.4.2 (02-17-2009)

Payments by Foreign Credit Cards

1. Taxpayers may make payment by a credit card issued by a foreign bank, provided it is a credit card accepted by IRS processors, e.g., Visa or Mastercard.

5.21.4.3 (11-27-2013)

Electronic Wire Transfer from International Locations

1. Taxpayers who reside outside the United States may pay federal tax payments by electronic transfer.
2. See IRM 5.1.2.6.4.3, *Federal Tax Application (FTA) Same-day Wire*, for guidelines on making federal tax payments by electronic transfer.



Part 5. Collecting Process

Chapter 21. International and Insular Issues

Section 5. International Field Calls

5.21.5 International Field Calls

- 5.21.5.1 [Making International Field Calls](#)

Manual Transmittal

November 25, 2013

Purpose

(1) This transmits a revision of IRM 5.21.5, *International Field Calls*, for collection employees.

Material Changes

(1) This IRM is revised to make minor grammatical corrections, update organization terms and/or titles, and correct cross references.

Effect on Other Documents

IRM 5.21.5 supersedes IRM 5.21.5, dated 2/17/2009.

Audience

The target audience is revenue officers in SB/SE Field Collection (FC).

Effective Date

(11-25-2013)

Dretha Barham
Director, Collection Policy

5.21.5.1 (11-25-2013)

Making International Field Calls

1. International field calls are field calls made to foreign countries or U.S. Territories excluding Puerto Rico and the U.S. Virgin Islands.

Note:

There are revenue officers located in Puerto Rico and the U.S. Virgin Islands.

2. Make an international field call only on an as-needed basis when there are several taxpayer cases in one location which can be addressed on the same trip.

Exception:

You may request approval for a trip to make an international field call for just one case if sufficient justification exists.

- A. See IRM 5.1.10.3, *Initial Contact*, for more information on initial contact for taxpayers located in a foreign country.

3. Consult your Group Manager when you determine an international field call is necessary.

4. Provide justification to your Group Manager if you need to make an international trip on your cases.

5. Do not make an international field visit simply to hand deliver a document that is stipulated as requiring hand delivery. Instead:

- A. Document clearly in the Integrated Collection System (ICS) history why a field call to hand deliver a letter, notice, or document cannot be made, and
- B. Send the item registered mail to the foreign country, or
- C. Send the item certified mail if in the U.S. Territories.

6. Secure an official passport. Access the LMSB International Travel Office website at:
http://lmsb.irs.gov/international/dir_treaty/eoi_overseas/intl_coordination/travel_all_irs.asp for instructions on applying for an official passport.

Note:

It takes about two to three months to process your request for an official passport.

7. Consider the need to raise the spending limit on your Government Credit Card or the need to charge the air ticket to the SB/SE Centrally Billed Account.
8. Discuss these needs with your manager, if applicable.
9. Consult with the Tax Attaché to pre-arrange office space and secure contact telephone numbers to provide to taxpayers.

Note:

The role of the Tax Attaché is to provide on-site support and assist in scheduling and coordinating your trip. See IRM 4.30.3, *Overseas Posts*.

10. Arrange scheduled meetings with taxpayers at the U.S. Embassy, U.S. Consulate's Office, or the Tax Attaché's office in the country of travel whenever possible.
11. Unannounced field calls should **not** be made while physically in a foreign country as this conduct is inconsistent with the approved purpose of your country clearance and may violate host country laws.

Note:

You may make unannounced field calls as well as appointments when traveling in U.S. Territories.

12. Pre-arrange meeting space:
 - A. through the IRS office, if there is one, or
 - B. through the Tax Attaché's office, if no IRS office exists.
13. Send appointment letters to the taxpayer(s) you will meet with on the field trip.
 - A. Secure confirmation replies before planning your itinerary.
 - B. Send an information letter if there are other taxpayers in that area that you were unable to confirm with.

Include the following in the information letter:

- State what days and times you will be in the country,
- Invite the taxpayer to contact you if able or if desired, and
- Include a tentative day and time that taxpayer can visit you at the overseas IRS office.

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 21. International and Insular Issues

Section 6. Foreign Financial Account Reporting

5.21.6 Foreign Financial Account Reporting

- 5.21.6.1 [Introduction](#)
- 5.21.6.2 [Reporting Requirements](#)
- 5.21.6.3 [Penalties](#)
- 5.21.6.4 [Delegated Authority](#)
- 5.21.6.5 [Systemic Tracking](#)
- 5.21.6.6 [IDRS](#)
- 5.21.6.7 [CSED](#)
- 5.21.6.8 [Collection of FBAR Penalties](#)
- 5.21.6.9 [Foreign Account Tax Compliance Act \(FATCA\)](#)
- Exhibit 5.21.6-1 [Comparison of Form 8938 and FBAR Requirements](#)

Manual Transmittal

November 27, 2013

Purpose

(1) This transmits a revision of IRM 5.21.6, *Foreign Bank and Financial Account Report*, for collection employees.

Material Changes

- (1) Subsection 5.21.6.2 is revised to reflect new filing requirements for the FBAR form from FinCEN .
- (2) Subsection 5.21.6.9 is added to explain the Foreign Account Tax Compliance Act (FATCA) filing requirements.
- (3) Section 5.21.6 has been renamed to reflect the inclusion of other reporting requirements besides FBAR.
- (4) Exhibit 5.21.6-1 is added to compare the filing requirements for Form 8938 and FBAR
- (5) Editorial changes made throughout the text to make minor grammatical corrections, update organization terms and/or titles, and correct cross references.

Effect on Other Documents

IRM 5.21.6 supersedes IRM 5.21.6, dated 2/17/2009

Audience

The target audience is revenue officers in SB/SE Field Collection (FC).

Effective Date

(11-27-2013)

Dretha Barham
Director, Collection Policy

5.21.6.1 (02-17-2009)

Introduction

1. Report of Foreign Bank and Financial Accounts (FBAR) is authorized by statute.
 - 31 U.S.C. §5314(a) directs the Secretary to require residents or citizens of the United States, or a person in and doing business in the United States, to keep records and/or file reports when the person makes a transaction or maintains a relationship with a foreign financial agency.
 - Section 5314(b) authorizes the Secretary of the Treasury to carry out this mandate by issuing regulations prescribing the application of the reporting requirements, including to whom the requirements apply.

5.21.6.2 (11-27-2013)

Reporting Requirements

1. Each U.S. person who has a financial interest in, or signature or other authority over, one or more foreign financial accounts that has an aggregate value greater than \$10,000 at any time during a calendar year is required to confirm the existence of the foreign account on Schedule B of Form 1040, and on similar schedules of other federal tax forms, as well as report the foreign accounts on FinCEN Form 114, *Report of Foreign Bank and Financial Accounts* (FBAR), formerly form TD F 90-22.1. The FBAR is due on or before June 30 of the year immediately following the calendar year being reported.

Note:

On October 1, 2013, FBAR form TD F 90-22.1 was replaced by FinCEN Form 114. Beginning with the filing season starting July 1, 2013, FinCEN requires that all FBAR forms be electronically filed through their website at <http://www.fincen.gov/>. This includes any late-filed forms which were due on or before June 30, 2013.

2. Each person who is required to report an interest in foreign financial accounts must also maintain certain records of any foreign accounts.

3. See 31 C.F.R. 1010.350 Reports of foreign financial accounts, and 1010.420 Records to be made and retained by persons having financial interests in foreign financial accounts, for additional information regarding records.
4. See IRM 5.1.18.16, *Foreign Bank and Financial Account Report*, for information on locating records of FBAR forms filed by the taxpayer.

5.21.6.3 (02-17-2009)

Penalties

1. Failure to file the required report or maintain adequate records is a violation of Title 31. For each violation a penalty may be asserted.
2. Violations Occurring Prior to October 23, 2004 (Willful). 31 U.S.C. §5321(a)(5) authorizes a civil monetary penalty for any person who willfully violates (or willfully causes any violation of) 31 U.S.C. §5314 not to exceed the greater of:
 - A. an amount equal to the balance in the account at the time of the violation up to \$100,000, or
 - B. \$25,000.
3. Violations Occurring on or after October 23, 2004 (Willful):

31 U.S.C. §5321(a)(5)(C) authorizes a civil monetary penalty for any person who willfully violates (or willfully causes any violation of) 31 U.S.C. §5314 not to exceed the greater of:

- A. an amount equal to 50% of the balance in the account at the time of the violation, or
- B. \$100,000.

Note:

The penalty can be for each violation.

4. Violations Occurring on or after October 23, 2004 (Non-Willful):
 - 31 U.S.C. §§ 5321(a)(5)(A) & (B) authorize a civil monetary penalty for any person who violates (or causes any violation of) 31 U.S.C. §5314 in an amount not to exceed \$10,000.
 - The penalty should not be asserted if the violation was due to reasonable cause.

Note:

The penalty can be for each violation.

5.21.6.4 (11-27-2013)

Delegated Authority

1. Even though the penalty imposed under 31 U.S.C. §5321(a)(5) for failing to report these foreign financial interests (commonly called the FBAR penalty) is not a tax debt, the IRS has been delegated the authority to assess and collect the penalty for the government. Delegation Order 4-35, revised on March 24, 2008, authorizes revenue officers grade 9 and above to investigate possible civil violations of the FBAR requirements. This delegation order also authorizes insolvency units to protect the government's interest in bankruptcy, state and federal receiverships, and other state and federal insolvency actions.

Note:

Delegation Order 4-35 was superseded by Delegation Order 25-13 (revised on April, 11, 2012).

2. Collection is not delegated any enforcement authority with respect to FBAR penalties.
3. See IRM 5.9.4.19, *Foreign Bank and Financial Account Reports (FBAR)*, for information on filing claims in a bankruptcy proceeding.

5.21.6.5 (11-27-2013)

Systemic Tracking

1. The Currency Banking and Retrieval System (WebCBRS) contains a listing of filed FBAR reports:
 - A. WebCBRS reflects all information the taxpayer included on FinCEN Form 114: bank names, account numbers, account balances, other owners, etc. Anyone with ability to query WebCBRS may obtain this information.
 - B. FBAR penalties are asserted under Title 31 as a non-tax debt and do not appear on IDRS. They are tracked on a separate database at Detroit Computing Center (DCC) and that is where payments are posted and notices generated.

5.21.6.6 (11-27-2013)

IDRS

1. The filing of FinCEN Form 114 by or for the taxpayer will generate an IDRS IRPTR transcript. IRPTR will only reflect the filing of the form and WebCBRS will still need to be queried to obtain all information available from the form.
2. See IRM 5.1.18.16, *Foreign Bank and Financial Account Report*, and IRM 2.3.35, *Command Code IRPTR*.

5.21.6.7 (11-27-2013)

CSED

1. The government has two years in which to file a civil action to recover an FBAR penalty beginning on the later of the date the penalty was assessed or the date any judgment becomes final in any criminal action under 31 U.S.C. §5322 in connection with the same transaction with respect to which the civil penalty was assessed. Currently, IRS has no procedures for soliciting a waiver of this two-year statute of limitations.
2. See IRM 5.9.4.19, *Foreign Bank and Financial Account Reports (FBAR)*, for CSED considerations in bankruptcy.

5.21.6.8 (11-27-2013)

Collection of FBAR Penalties

1. The Financial Service, formerly Financial Management Services (FMS), which is a bureau of the Department of the Treasury, is responsible for collecting all non-tax debts. This includes FBAR penalties.

2. Advise all taxpayers who have questions or need to pay an FBAR penalty to write to:
 Internal Revenue Service
 Detroit Computing Center
 P.O. Box 33115
 Detroit, MI 48232

5.21.6.9 (11-27-2013)

Foreign Account Tax Compliance Act (FATCA)

- Foreign Account Tax Compliance Act (FATCA) is a statute written subsequent to the FBAR statute. Some taxpayers who file FBAR forms have a further requirement to file Form 8938, *Statement of Specified Foreign Financial Assets*, if they have specified foreign financial assets with an aggregate value exceeding \$50,000 on the last day of the tax year or \$75,000 at any time during the tax year, with higher thresholds for married individuals filing jointly and individuals living abroad.
- The Form 8938 filing requirement does not replace or otherwise affect a taxpayer's obligation to file an FBAR form. Individuals must file each form for which they meet the relevant reporting threshold. See IRM Exhibit 5.21.6-1 for a comparison of these two foreign account reporting requirements.

Exhibit 5.21.6-1

Comparison of Form 8938 and FBAR Requirements

	Form 8938, Statement of Specified Foreign Financial Assets	FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR)
Who Must File?	Specified individuals, which include U.S. citizens, resident aliens, and certain non-resident aliens that have an interest in specified foreign financial assets and meet the reporting threshold	U.S. persons, which include U.S. citizens, resident aliens, trusts, estates, and domestic entities that have an interest in foreign financial accounts and meet the reporting threshold
Does the United States include U.S. territories?	No	Yes, resident aliens of U.S. territories and U.S. territory entities are subject to FBAR reporting
Reporting Threshold (Total Value of Assets)	\$50,000 on the last day of the tax year or \$75,000 at any time during the tax year (higher threshold amounts apply to married individuals filing jointly and individuals living abroad)	\$10,000 at any time during the calendar year
When do you have an interest in an account or asset?	If any income, gains, losses, deductions, credits, gross proceeds, or distributions from holding or disposing of the account or asset are or would be required to be reported, included, or otherwise reflected on your income tax return.	Financial interest: you are the owner of record or holder of legal title; the owner of record or holder of legal title is your agent or representative; you have a sufficient interest in the entity that is the owner of record or holder of legal title. Signature authority: you have authority to control the disposition of the assets in the account by direct communication with the financial institution maintaining the account. See instructions for further details.
What is Reported?	Maximum value of specified foreign financial assets, which include financial accounts with foreign financial institutions and certain other foreign non-account investment assets	Maximum value of financial accounts maintained by a financial institution physically located in a foreign country
How are maximum account or asset values determined and reported?	Fair market value in U.S. dollars in accord with the Form 8938 instructions for each account and asset reported. Convert to U.S. dollars using the end of the taxable year exchange rate and report in U.S. dollars.	Use periodic account statements to determine the maximum value in the currency of the account. Convert to U.S. dollars using the end of the calendar year exchange rate and report in U.S. dollars.
When Due?	By due date, including extension, if any, for income tax return	Received by June 30 (no extensions of time granted)
Where to File?	File with income tax return pursuant to instructions for filing the return	Beginning with the filing season starting July 1, 2013, FBAR forms must be electronically filed with FinCEN. See IRM 5.21.6.2(1) above.
Penalties	Up to \$10,000 for failure to disclose and an additional \$10,000 for each 30 days of non-filing after IRS notice of a failure to disclose, for a potential maximum penalty of \$60,000; criminal penalties may also apply	If non-willful, up to \$10,000; if willful, up to the greater of \$100,000 or 50 percent of account balances; criminal penalties may also apply
Types of Foreign Assets and Whether They are Reportable		
Financial (deposit and custodial) accounts held at foreign financial institutions	Yes	Yes
Financial account held at a foreign branch of a U.S. financial institution	No	Yes
Financial account held at a U.S. branch of a foreign financial institution	No	No
Foreign financial account for which you have signature authority	No, unless you otherwise have an interest in the account as described above	Yes, subject to exceptions
Foreign stock or securities held in a financial account at a foreign financial institution	The account itself is subject to reporting, but the contents of the account do not have to be separately reported	The account itself is subject to reporting, but the contents of the account do not have to be separately reported
Foreign stock or securities not held in a financial account	Yes	No
Foreign partnership interests	Yes	No
Indirect interests in foreign financial assets through an entity	No	Yes, if sufficient ownership or beneficial interest (i.e., a greater than 50 percent interest) in the entity. See instructions for further detail.
Foreign mutual funds	Yes	Yes
Domestic mutual fund investing in foreign stocks and securities	No	No
Foreign accounts and foreign non-account investment assets held by foreign or domestic grantor trust for which you are the grantor	Yes, as to both foreign accounts and foreign non-account investment assets	Yes, as to foreign accounts
Foreign-issued life		

insurance or annuity contract with a cash-value	Yes	Yes
Foreign hedge funds and foreign private equity funds	Yes	No
Foreign real estate held directly	No	No
Foreign real estate held through a foreign entity	No, but the foreign entity itself is a specified foreign financial asset and its maximum value includes the value of the real estate	No
Foreign currency held directly	No	No
Precious Metals held directly	No	No
Personal property, held directly, such as art, antiques, jewelry, cars and other collectibles	No	No
'Social Security'- type program benefits provided by a foreign government	No	No

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Part 5. Collecting Process

Chapter 21. International and Insular Issues

Section 7. Special Cases

5.21.7 Special Cases

- 5.21.7.1 [Introduction](#)
- 5.21.7.2 [Cases Controlled by the Competent Authority Office](#)
- 5.21.7.3 [Qualified Intermediary Cases](#)

Manual Transmittal

January 03, 2014

Purpose

(1) This transmits a revision of IRM 5.21.7, *Special Cases*, for collection employees.

Material Changes

- (1) IRM 5.21.7.3.1(3) is revised to add information about the use of IDRS command code IRPTRL and the E-TRAK system.
- (2) IRM 5.21.7.3.1(4) is added to clarify initial contact requirements for international cases.
- (3) IRM 5.21.7.3.1(5) is revised to improve clarity and to add information regarding Currently Not Collectible cases.
- (4) This IRM section is revised to make stylistic improvements, minor grammatical corrections, update organization terms and/or titles, and correct cross references.

Effect on Other Documents

IRM 5.21.7 supersedes IRM 5.21.7, dated 8/27/2010

Audience

The target audience is revenue officers in SB/SE Field Collection (FC).

Effective Date

(01-03-2014)

Dretha Barham
Director, Collection Policy

5.21.7.1 (08-27-2010)

Introduction

1. This IRM provides instructions and guidelines for working cases which have unusual international aspects that must be considered. The procedures are written specifically for international revenue officers since the collection cases involving these special issues will be assigned to them. Other employees in SB/SE and employees in other functions may also refer to these procedures.

5.21.7.2 (01-03-2014)

Cases Controlled by the Competent Authority Office

1. The Competent Authority office (CA) works with taxpayer cases that involve coordination between IRS and another government, and they intervene at the request of the taxpayer. The purpose of their intervention is to work with the other government to prevent an unjust double taxation situation for the taxpayer.
2. Revenue Procedure 2006-23 provides procedures for taxpayer requests for Competent Authority assistance under U.S. territory tax coordination agreements. Revenue Procedure 2006-54 provides procedures for making similar requests for assistance under tax treaties with foreign governments.
3. Rev. Proc. 2006-23 and Rev. Proc. 2006-54 both generally provide that " the IRS will postpone further administrative action with respect to the issues under Competent Authority consideration" . This postponement would include assessment or collection procedures if they impacted the issues under the Competent Authority's jurisdiction. A large majority of these cases will involve the taxpayer's request for a determination agreement between the two governments as to his legal residency status, or some other treaty issue.
4. Sometimes the cases being worked by CA are also assigned to a Revenue Officer (RO) - either status 26 or status 03. It is possible that the RO could pursue certain collection actions in these cases which would be counter-productive to the Service's interest or unfair to the taxpayer and, in fact, would violate the postponement guidelines in Rev. Proc. 2006-23.

5.21.7.2.1 (01-03-2014)

Procedures for Working Competent Authority Cases

1. The CA analyst working the case will identify Field status via IDRS. The CA analyst will send an encrypted e-mail to the Collection Policy (CP) analyst who acts as the insular area liaison.
2. The CA e-mail will be worded as follows:

COMPETENT AUTHORITY NOTE: Tax years ____ and ____ are currently under the jurisdiction of the U.S. Competent Authority (SE:LB&I:IN). Pursuant to Rev. Proc. 2006-23, section 7, [or Rev. Proc. 2006-54, if applicable] "the IRS will postpone further administrative action with respect to the issues under Competent Authority consideration" such as assessment or collection procedures. Therefore, until negotiations are complete with the other taxing jurisdiction's Competent Authority, RO should contact the U.S. Competent Authority to discuss any contemplated collection action for these years before proceeding. The U.S. Competent Authority analyst on this case is _____ and can be reached at _____. Please make contact with this analyst as soon as possible to discuss any proposed actions on the case. You will be notified when the case is completed and Competent Authority jurisdiction relinquished.

3. The CP analyst will copy the CA analyst's e-mail message, and paste it into the ICS history. It will be the obligation of the CA analyst to notify the CP analyst when the case is closed. The CP analyst will make a note about the closure in the ICS history.
4. Consult your manager if you believe that postponement of collection activity will adversely impact the government's interest. If the manager agrees, the manager will contact the CA analyst to discuss the case and resolve any conflict. The CP analyst may be included in the discussion at the request of either party.

5.21.7.3 (01-03-2014)

Qualified Intermediary Cases

1. Qualified intermediary (QI) cases are foreign entities that enter into a qualified intermediary agreement with the IRS.
2. QIs file Form 1042, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*.
3. QIs are assigned a special QI Employer Identification Number (EIN) ranging from 98-023XXXX to 98-033XXXX.

5.21.7.3.1 (01-03-2014)

Procedures for Working Qualified Intermediary Cases

1. Check IDRS command code AMDISA when there is a -L freeze on the account indicating open examination activity. If the case is assigned to a revenue agent, contact that agent before proceeding.
2. Determine if the liability is correct and not the result of an error by the QI or IRS. QIs can claim the withholding credits even though they are not the actual withholding agent.
3. Check Form 1042, line 66 to verify that the QI claimed the proper withholding credits. Also verify the credits in IRS systems by checking IDRS command code IRPTRL and / or Entellitrak (E-TRAK) system. The Accounts Management System (AMS) may contain some of the information you need.
4. When ROs request the E-TRAK information, they must put something in the ICS history indicating that they sent the request to the group's E-TRAK resource person, and include that person's name. No GM approval is requested and there is no need for the E-TRAK resource person to access the case to verify completion of the request.
5. Use internal sources such as IDRS to locate a telephone contact number for the QI or contact the QI team for assistance. If telephone contact is not successful, in order to meet your initial contact time requirement, you may send an appointment letter for a telephone meeting, and enclose Publication 1, *Your Rights as a Taxpayer*.

Note:

The RO may also enclose Letter 1058, *Final Demand*, with the appointment letter. However, the RO may not send L 1058 by itself on initial contact.

6. Take the appropriate action in the following situations:
 - A. If the QI did not have any credits, send L1058 to the QI.
 - B. If the QI claimed the credits correctly on Form 1042, line 66, and the RO has verified on E-TRAK that the credits are there, but the credit was not properly credited on IDRS, contact the QI Technical Advisor Team Manager.

Note:

Information to contact the QI manager and a list of QI Technical Advisors is located at <http://lmsb.irs.gov/hq/pftg/qi/TA/TA.asp>.

- C. If the QI mistakenly did not claim the credits, so there are no credits on line 66 of Form 1042, secure from the QI copies of Forms 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*, a letter from the QI explaining the reason for requesting an adjustment, and a corrected Form 1042. You will need these documents to prepare an adjustment. See IRM 5.21.8.4, *Adjustments on Qualified Intermediary Cases*.
 - D. Revenue Officers may not report a QI case Currently Not Collectible (CNC).
7. Contact the QI team prior to taking any further case action if no response is received from the QI. The QI team will send a letter to the QI requiring them to contact the revenue officer.
 8. Verify that the QI did not contact the QI team before pursuing collection action.
 9. Continue with normal collection actions if the QI does not contact you within 60 days, such as filing the notice of federal tax lien, issuing levies, etc.

Note:

Do not assess the trust fund recovery penalty against the Qualified Intermediaries since the QI agreement contains provisions that penalize the QI for non payment of withholding taxes.

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Part 5. Collecting Process

Chapter 21. International and Insular Issues

Section 8. Adjustments to International Cases

5.21.8 Adjustments to International Cases

- 5.21.8.1 [Overview](#)
- 5.21.8.2 [Adjusting ASFR / SFR Assessments](#)
- 5.21.8.3 [Guidelines for ASFR/SFR Adjustments](#)
- 5.21.8.4 [Obtaining an ITIN for ASFR/SFR Reconsideration](#)
- 5.21.8.5 [Adjustments on Qualified Intermediary Cases](#)
- Exhibit 5.21.8-1 [Supporting Documentation](#)

Manual Transmittal

January 02, 2014

Purpose

(1) This transmits a revision of IRM 5.21.8, *Adjustments to International Cases*, for collection employees.

Material Changes

(1) This IRM section is being revised by Editorial Update to correct a typographical error in the exhibit.

Effect on Other Documents

IRM 5.21.8 supersedes IRM 5.21.8, dated 12/02/2013.

Audience

The target audience is revenue officers in SB/SE Field Collection (FC).

Effective Date

(01-02-2014)

Dretha Barham
Director, Collection Policy

5.21.8.1 (12-02-2013)

Overview

1. This IRM provides specific procedural guidance for international revenue officers when requesting adjustments on certain documents involving international taxpayers. These procedures may also have applications that domestic revenue officers will find useful.
2. The audience for this IRM is revenue officers in SB/SE Field Collection (FC).

5.21.8.2 (12-02-2013)

Adjusting ASFR / SFR Assessments

1. Ensuring compliance with U.S. tax law in international cases can be extremely complex. As an international revenue officer (RO), you must consider a taxpayer's tax status, sources of foreign income, and applicable treaties when determining the taxpayer's filing requirements.
2. For Automated Substitute for Return or Substitute for Return (ASFR/SFR) reconsiderations on U.S. citizens and resident aliens living abroad, an original Form 1040, *U.S. Individual Income Tax Return*, must be submitted with appropriate forms and schedules (i.e. Form 2555, *Foreign Earned Income*, Form 1116, *Foreign Tax Credit*). Any Form 3870, *Request for Adjustment*, for a U.S. citizen, resident alien, or green card holder must have an original return submitted. The return must bear an official IRS date stamp and an original signature. If a joint return, both parties must sign the tax return
3. An international revenue officer must generally secure an original Form 1040NR, *U.S. Non-resident Alien Income Tax Return*, with all supporting schedules to submit for an adjustment on ASFR/SFR cases for non-resident aliens.

Note:

There may be instances where securing an original return from an international taxpayer is not possible or practical. An adjustment request can be submitted without an original return if warranted by the circumstances, but only with managerial approval on Form 3870. Before approving, the group manager will review to assure that the revenue officer received answers to pertinent questions regarding citizenship, substantial presence test, and effectively connected income.

4. All IMF international tax returns are processed at Brookhaven campus, even those with only wages. Send IMF international returns to the Brookhaven campus at the address shown below.

E-Mail Address E-Fax Number

Mailing Address

*SBSE ASFR-RECONS 855-386-1135 Internal Revenue Service ASFR Operation Stop 654 1040 Waverly Avenue Holtsville, NY 11742-9013

Overnight or Express Mail: IRS – ASFR Operations, Mail Stop 654 1040 Waverly Ave. Holtsville NY 11742-9013

5. For non-resident aliens (NRAs) with an ASFR/SFR adjustment, when no return is secured further investigation is required to determine the taxability of the income. In addition to analyzing sources of income and provisions of applicable treaties, you will have to verify a taxpayer's personal documentation or research internal and external locator sources when appropriate. **Do not request adjustment without actually communicating with the taxpayer and obtaining any needed information or applicable return.**
6. The key to recommending an adjustment on an NRA assessment is that you are not just taking the taxpayer's word for not being liable to file. It may not always be possible to determine or verify the taxpayer's status when considering an international adjustment. It will be necessary to rely on a preponderance of evidence that reasonably seems to confirm what the taxpayer indicates to you by both the taxpayer's proof and/or the use of locator sources.

5.21.8.3 (12-02-2013)

Guidelines for ASFR/SFR Adjustments

1. The following are guidelines that must be considered in adjusting ASFR/SFR assessments regarding NRAs.

Note:

Contact with the taxpayer or power of attorney is mandatory for any adjustment. If the taxpayer claims identify theft issues are present, consult IRM 5.1.12.2, *Identify Theft*, for proper actions.

2. Determine taxpayer's citizenship:
 - To determine citizenship IDRS CC MFTRAU or CC DDBKD, passport or green card may be considered.
 - A copy of a foreign passport provided by the taxpayer to justify an abatement is not sufficient, but can be submitted as part of supporting evidence if it is complete and current with all pages present.
3. Determine if there is effectively connected income:
 - Effectively connected income is determined by taxpayer involvement in a U.S. trade or business. See IRC 864(b) and (c).
 - Activities that constitute being engaged in a U.S. trade or business include personal services, self-employment, partnership income, income as a beneficiary of an estate or trust, or certain activities relating to trading in securities.
4. Determine if taxpayer meets the substantial presence test:
 - Subject to certain limited exceptions, an individual meets this test if he has been present in the U.S. for at least 183 days during a three-year period that includes at least 31 days in the current year. See IRC 7701(b)(3).
 - Confirmation must be made when taxpayers claim that they have not been in the U.S., and therefore are not liable for U.S. tax. You must document the application of the substantial presence test in all adjustment recommendations.
 - There are investigative tools that you can use to determine a person's time in the U.S., such as Treasury Enforcement Communication System (TECS) historical travel data and Department of State records of registration with a U.S. Consulate in a foreign country. Although these tools do not provide an absolutely complete record of a taxpayer's time in the U.S., it may help to indicate when a taxpayer was present in the country. It does provide both arrival and departure information on NRAs.
5. Determine if taxpayer paid the taxes to a foreign government, and
 - Taxpayer may indicate that they paid taxes to the foreign government and do not owe the U.S. taxes. Taxpayer must provide evidence of payment in the form of a cancelled check, documentation of a wire transfer, a copy of the relevant return filed in the foreign country, or other indication of taxes withheld by a foreign government, pursuant to a treaty.
6. Determine if there is an applicable treaty.
 - Taxpayer may claim that the income is not taxable based on an income tax treaty with the foreign country. The taxpayer may provide a copy of Form 8233, *Exemption from Withholding on Compensation for Independent (& Certain Dependent) Personal Service of a Non-resident Alien Individual*, or Form W-8BEN, *Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding (Individuals)*, which would show that the taxpayer claimed to be an NRA with respect to U.S. compensation or U.S. source investment income.

Note:

NRAs are generally not required to file Form 8833, *Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)*, to disclose a treaty claim that relates to withholding on U.S. source investment income or compensation from dependent personal services. See Treas. Reg. 301.6114-1(c). The burden is on the taxpayer, however, to prove that he is a resident, and not merely a national or citizen of a country with which the United States has a treaty.

Reminder:

In the absence of a filed Form 1040NR, recommending adjustment of an NRA assessment requires verification, rather than solely relying on the taxpayer's claim of not being subject to U.S. taxation.

5.21.8.4 (12-02-2013)

Obtaining an ITIN for ASFR/SFR Reconsideration

1. An Individual Taxpayer Identification Number (ITIN) is a tax processing number issued by IRS. The ITIN is only available to individuals who:
 - Are required to have a taxpayer identification number for tax purposes,
 - Do not have, and are not eligible to obtain, an SSN from the Social Security Administration (SSA), and
 - Have a valid filing requirement or are filing a U.S. Federal income tax return to claim a refund of over-withheld tax.
2. Generally a U.S. Federal income tax return must accompany the ITIN application.

Caution:

Applications for individuals who are requesting an ITIN as a spouse or a dependent of a primary taxpayer must attach a valid U.S. Federal income tax return to the Form W-7, *Application for IRS Individual Taxpayer Identification Number*.

Note:

See

Pub 1915, *Understanding Your IRS Individual Taxpayer Identification Number*, for further information on the ITIN.

3. Procedures for requesting an ITIN for cases in which ASFR/SFR reconsideration is needed have often caused delays and confusion in processing Form 3870. Both the ITIN Operation and the ASFR/SFR unit need the original return to process the corresponding requests. The ITIN unit at the Austin campus requires the original tax return and supporting documentation be attached to Form W-7 when submitted for processing. However, the original tax return must also be attached to Form 3870 in order to process the reconsideration request. Form 3870 for the reconsideration request is sent to the Brookhaven ASFR/SFR unit.

4. The following procedures should be used in all cases where a taxpayer is requesting an ASFR/SFR reconsideration and is submitting Form W-7 for an ITIN:

- Date stamp Form W-7 with the received date.
- Review the Form W-7 application and the original supporting documents to determine if the form and supporting documents meet foreign status and identity requirements. (Refer to the instructions for Form W-7). If the taxpayer provides copies of the supporting documents, the documents must be a certified copy by the issuing agency.

Note:

The ITIN unit has final approval regarding the validity of the documents provided.

- Complete the IRS-only box on Form W-7 using the document number codes for the types of documents reviewed. See *Exhibit 5.21.8-1..* You must also include your employee Standard Employee Identifier (SEID) number. Attach the original documents or certified copies from the issuing agency to the Form W-7 application.
- Mail Form W-7, supporting documents, the original return(s) and Form 3870 via overnight mail to the ITIN Operations Unit:

Internal Revenue Service

ITIN Operation

Mail Stop 6090 - AUSC

3651 South Interregional Hwy 35

Austin, TX 78741-0000

- International ROs can use the ITIN – RTS to verify that an ITIN has been assigned to the TP. The ITIN unit will process the Form W-7 application, and send the original return with the Form 3870 to the ASFR/SFR unit in Brookhaven Campus for processing. An ITIN will be assigned to the taxpayer within 30 days.
- The status of the adjustment(s) can be checked using IDRS.

5.21.8.5 (12-02-2013)

Adjustments on Qualified Intermediary Cases

1. Sometimes when filing Form 1042, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*, a qualified intermediary (QI) mistakenly does not claim credit on line 66 of the form for the withholding that was done, either by himself or someone else. QIs can claim the withholding credits, based on the Forms 1042-S issued to them, even though they are not the actual withholding agent.
2. In such cases, it will be necessary for the revenue officer to obtain copies of the Forms 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*, issued to the QI that reflect the withholding. See IRM 5.21.7.3.1, *Procedures for Working Qualified Intermediary Cases*.
3. The following substantiation must accompany Form 3870 when an adjustment is requested for Form 1042 line 66 *after* the due date of the return:
 - A signed amended Form 1042,
 - A signed letter from the QI explaining the reason for requesting the adjustment, and
 - A copy of the original, voided original, and corrected Forms 1042-S.

See IRM 21.8.2.12.10.3, *Amended Form 1042 Returns with Line 66 Changes for Qualified Intermediaries*.

4. Before submitting an adjustment, review the forms for common errors, such as entering the credit on the wrong line.
5. Forward Form 3870 with substantiation attached to Centralized Case Processing (CCP) for processing using your area mailbox. Any forms sent directly to Accounts Management (AM), without being routed through CCP, will be rejected.

Caution:

The name and TIN of the recipient on Form 1042-S must match the name and TIN on the return in which the credit is being claimed or the credit will be disallowed. See IRM 21.8.2.9.6.2(3), *BMF International Adjustments*.

6. The Entellitrak (E-TRAK) system can be used to secure information about the Forms 1042-S. When ROs request the E-TRAK information, they must put something in the Integrated Collection System (ICS) history indicating that they sent the request to the group's E-TRAK resource person, and include that person's name. No GM approval is required and there is no need for the E-TRAK resource person to access the case to verify completion of the request.
7. For purposes of adjustment requests, at the time of this revision Accounts Management (AM) will not accept E-TRAK prints in lieu of copies of Forms 1042-S. However, AM has agreed to accept the information from IDRS command code IRPTRL in lieu of copies of Forms 1042-S. Revenue officers can use the summary page on IRPTRL as verification for Form 1042 line 66 credit. The RO does not have to print all the Form 1042 credits on IRPTR. The RO must use document code 02 when obtaining IRPTRL prints. This will specifically show the Form 1042 credits.

Note:

E-TRAK sometimes has more complete information than IRPTRL so you may want to check the information from both sources.

8. The credits reflected on IRPTRL must match the credits claimed on the Form 1042.

**Exhibit 5.21.8-1
Supporting Documentation**

Type of Document	Documentation Codes	Proves Foreign Status	Proves Identity
Passport	1	X	X
National Identification Card	2	X	X
U.S. Drivers License	16	X	X
Civil Birth Certification	17	Note: Proves foreign status only if documents are foreign.	X
Medical Records (Dependent applicants under the age of 6)	20	Note: Proves foreign status only if documents are foreign.	X
Foreign Drivers License	21		X
U.S. State Identification Card	22		X
Foreign Voters Registration Card	23	X	X
U.S. Military Identification Card	24		X
Foreign Military Identification Card	25	X	X
School Records (Dependents under the age of 18)	26	Note: Proves foreign status only if documents are foreign.	X
Visa (U.S.) See IRM Exhibit 3.21.263-4 for specific visa definitions and work authorization.	32	X	X
United States Citizenship and Immigration Services (USCIS) Photo Identification	38	X	X

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