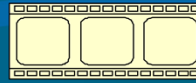


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Matrix Application Training International Individual Compliance

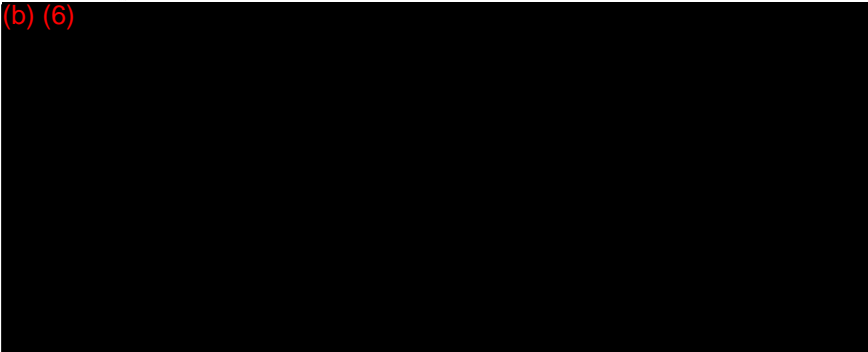
Basic Structures Part II: **Pre-Audit, Investigative Techniques & Statutes**



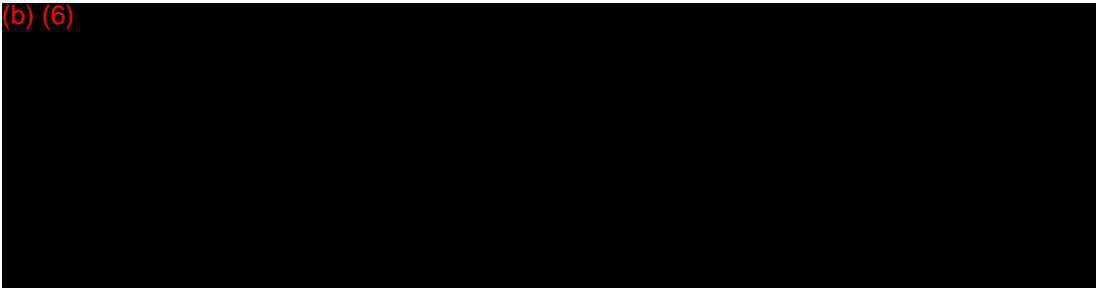
Welcome to Part II in a series of three related sessions about Basic Offshore Structures. This session identifies the various pre-audit and investigative techniques that are available to examiners, particularly when dealing with examinations of taxpayers with undisclosed offshore assets, offshore accounts and offshore entities. We will also discuss how to effectively use statute exceptions as a tool to keep open years that may be expiring or have already expired.

Presenters

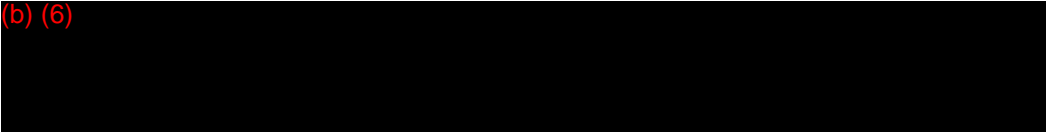
- ❖ This presentation was prepared by the Offshore Arrangements International Practice Network Team
- ❖ Your presenters for this session are:



The team members for this presentation are:



and



Disclaimer

- ❖ There are legitimate or non-tax motivated reasons a U.S. Taxpayer would engage in offshore transactions, including, but not limited to:
 - Asset Protection (Malpractice, Ex-Spouses)
 - Diversification Investments
 - Active International Business Operation
 - Living Overseas/Family Connections

- ❖ This presentation makes the assumption that the taxpayer's involvement in an offshore arrangement is for tax avoidance or evasion purposes. We will focus on tax motivations.

This slide is a disclaimer. We would like to reiterate that there are legitimate reasons a U.S. Taxpayer would engage in offshore transactions, including, but not limited to:

Asset Protection and Diversification
Active International Business
Family Connections

However, this presentation makes the assumption that the taxpayer's involvement in offshore transactions is for tax avoidance or evasion purposes.

Objectives

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

- Identify pre-audit steps for an offshore case
- Identify investigative tools and techniques to obtain foreign records
- Identify several exceptions to the three year statute
- Explain FATCA's impact on statutes
- Identify key elements of an Alpha Statute Memorandum
- Identify three commonly used alpha statutes in OA cases

At the end of the session:

- you will be able to identify pre-audit steps for an offshore case.
- you will be able to identify investigative tools and techniques to obtain foreign records.
- you will be able to identify several exceptions to the three year statute
- you will be able to *explain* FATCA's impact on statutes.
- you will be able to identify key elements of an Alpha Statute Memorandum
- you will be able to identify three commonly used alpha statutes in OA cases

In offshore cases, we try to do as much of the leg work up front as possible. We recognize, because of the abusive nature of these cases, that some of the pre-audit techniques might not be successful in the pre-audit stage and might need to be conducted later in the examination. Sometimes you might even need to repeat some of these pre-audit techniques again later in the examination to make sure that you have up to date information.

The pre-audit steps required will depend on how much information your file has related to the offshore scheme. You may have more leads in some cases and can get a good head start. Regardless of the amount of specific information provided, the more preparation you do up front, the most successful and productive your interview will be. We will be discussing interviewing techniques in the next session.

In this session, we will spend a good deal of time on statutes. Many times, these offshore cases require more time for development because you have to peel back the onion and the layers may

be scattered all around the world. Statutes exceptions are an invaluable tool to hold open current years for additional development and also to open prior years that appear to be barred. It is important that we examine the whole taxpayer and not just the return assigned.

- ❖ Treaty/Informant/Whistleblower/John Doe Summons cases may include:
 - Guidance Paper
 - Case Building Data
 - Bank Information
 - Classification Sheet
 - Information from Whistleblower's Office
 - Suspension of SOL Memorandum – John Doe Summons
- ❖ Other Cases:
 - No indicators of offshore activities
 - Some indicators but with no supporting documents

So, you are assigned a brand new case. The information provided inside the case file is not always going to be the same. The documentation included in the case file will depend on the project. Sometimes the documentation may just have a taxpayer name linking him to a foreign asset or account. Other times, the documentation may include bank statements, correspondence, banker notes, etc.

Project cases are developed through the Service's Offshore Compliance Initiatives function (OCI). OCI uses information received from John Doe Summons, Whistleblower information or possibly Criminal Investigation cases on foreign banks, which provide some sort of evidence linking the taxpayer to foreign accounts, assets, and/or entities to build cases for the field.

Some of the information that may be included in the file are:

A Guidance Paper

Case Building data

Bank Information

A Classification Sheet

Information from the Whistleblower's Office

A Suspension of SOL Memorandum related to a John Doe Summons

You might get a case with indicators of offshore activities, but very little or no supporting documentation for assessment or penalties.

On the other hand, there are times you might get assigned a case that contains absolutely no indicators of offshore activities. There will be no evidence within the case file linking the taxpayer to foreign accounts, assets or entities.

Whether a treaty/informant/whistleblower/John Doe summons case or any other case, you should utilize the resources and tools that are available as early as possible during the examination. If the case building data is not included in the case file, you should take necessary steps to obtain it.

- ❖ Contact Information
- ❖ Background Information
- ❖ Technical Instructions
 - Case Controls
 - e-trak
 - Contacting the Taxpayer
 - FBARs and Information Returns
 - Scope of Examination
 - Fraud and Penalties
 - Statute of Limitations Information

As mentioned in the prior slide, some of these cases may include a guidance paper. The guidance paper contains among other things:

- The name and contact information of the technical specialist assigned to the specific initiative or project.
- Background information about the project.
- Generally, the guidance paper may include instructions and explanations on:
 - case controls such as the project code and the ERCS tracking code
 - how to enter the case information on the e-trak database
 - how to contact the taxpayer
 - FBARs and Information Returns
 - applicable code sections, regs and common law
 - the scope of the examination
 - fraud and the applicable penalties, and
 - any statute of limitations issues applicable to the case. For example, John Doe Summons information about the suspension of the SOL under section 7609(e)(2).

Know Your Customer Rules (KYC)

- ❖ Due diligence required by Bank to know:
 - Customers: Individuals and Entities
 - Sources of funds

- ❖ Rules vary from country to country
 - Link to guide:
<http://www.pwc.com/gx/en/financial-services/publications/anti-money-laundering-know-your-customer-quick-reference-guide.jhtml>

- We mentioned earlier that some of the cases might have bank information, so let's talk a little bit about the Know Your Customer Rules. Know your Customer Rules generally refer to the due diligence activities that financial institutions and other regulated companies must perform on their customers and potential customers in regards to opening and maintaining their accounts. Banks need to know who the customer is and, more importantly, the source of the funds in order to prevent facilitating money laundering. The KYC policies are applicable to both individuals and entities.

- Foreign countries have similar requirements. The KYC rules vary from country to country. This slide includes a link to a guide that was found when preparing for this presentation. It was compiled by PricewaterhouseCoopers, which is an external resource. It contains the KYC rules of various countries. This guide might assist you in identifying specific documentation required by certain foreign banks that you will be able to request or summons from the taxpayer.

KYC - Customer Identification– Individuals

- ❖ Account Application Form/Statement Mailing Instructions
 - Proof of Current Income/Assets
 - Proof of Identity/Residency
- ❖ Beneficiary/POA Information
- ❖ Description of the Expected Uses of the Money
- ❖ Prior Banking Relationships

Remember, every country operates a little differently and the available documents may vary from one country to another. What may available also varies from bank to bank.

We have learned about the existence the type of document available from prior cases worked. If the documents are not provided in the case building material and you have exhausted all domestic venues such as asking the taxpayer or correspondent banks, you may need to make a treaty request through EOI. EOI refers to the Exchange of Information Program Office and we are covering later in this lesson.

Lets talk about some of the documents we are aware of.

- An application form. This application form usually requests proof of identity and proof of residency. The prospective client may have to provide source documents such as a Passport, a Driver's License, and other information including: name, tax identification number, address, telephone number, date of birth, employment status, and a utility bill.
- This application form also may require a description of the expected sources and uses of the deposited funds. Supporting documentation may be earnings statements from a current job, bank statements from domestic banks, and documents related to entities owned by the prospective customer.
- The client or prospective client may provide mailing instructions for the bank statements and correspondence. Sometimes these mailing instructions include a mail hold, which stops all mailings to the taxpayer and eliminates a paper trail.
- Another form may be for Beneficiary Information, identifying the name, address, tax identification number, date of birth, etc. of the account beneficiary or beneficiaries. This form might have supporting documentation such as the beneficiary's passport and driver's license.

- KYC may include power of attorney forms for persons authorized to act on behalf of the account owner.

- Financial statements from the taxpayer's current bank are used to prove a satisfactory relationship.

These documents will be instrumental in identifying the beneficial owner of the account. This evidence will provide a very strong association with the foreign bank account which will be very difficult or impossible for the taxpayer to deny. This is valuable information for the pre-audit stage of the exam. If it has not been obtained, you should consider requesting it.

KYC - Customer Identification - Entities

- ❖ Entity's Organizational Documents
- ❖ Board of Director Minutes
- ❖ Prior Banking Relationships
- ❖ Identification Number and Address of the Entity

The KYC Customer Identification Procedures, which are a little different for entities, may include the following documents:

The Entity's organizational documents

Board Minutes and resolutions stating authority to open accounts and designating persons having signature authority

Bank statements from the entity's current bank to prove a satisfactory relationship.

Identification number and address of the entity

We have discussed in these last four slides some of the KYC due diligence activities performed by banks on accounts held by individuals and entities.

The Foreign Account Tax Compliance Act, or FATCA, has further enhanced the KYC rules that banks must perform to identify U.S. taxpayers with foreign accounts or they may be subject to withholding requirements. When fully implemented, the FATCA requirements will hopefully assist examiners in identifying foreign accounts of U.S. persons.

External Sources of Information

- ❖ General Search Engines
- ❖ Locator Sites
- ❖ State-Specific Sites
- ❖ Banking Data
- ❖ Public Record Searches
- ❖ Offshore Information Sites
- ❖ Court Cases, Statutes and Regulations
- ❖ Proprietary Sites
- ❖ Credit Report Agencies

You might have to update or supplement the information already included in the case building material. There are numerous sources of information, both externally and internally, at the your disposal. We are going to go through several of these sources.

Again, this presentation is not an exhaustive discussion. It is important for you to know that even though all these sources of information are at your disposal, you do not have to use every single source of information cited in this session for every single examination. Every examination is different and the facts and circumstances of each case will dictate which source of information is relevant.

Lets talk about the external sources of information first.

There are many websites we could use to gather relevant information before and during an examination.

We will talk about some of the common types of external source of information available, including:

- General Search Engines
- Locator Sites
- State-Specific Sites
- Banking Data
- Public Record Searches

Offshore Information Sites
Court Cases, Statutes and Regulations
Proprietary Sites and
Credit Report Agencies

External Sources of Information

<u>General Search Engines</u> <ul style="list-style-type: none">▪ Google▪ Bing	<u>Locator Sites</u> <ul style="list-style-type: none">▪ anywho.com▪ bop.gov
<u>State-Specific Sites</u> <ul style="list-style-type: none">▪ bankruptcydata.com▪ statelocalgov.net	<u>Banking Data</u> <ul style="list-style-type: none">▪ fdic.gov▪ nafcu.org

All the sites mentioned today and reflected in this PowerPoint are also found in the Offshore Arrangements Investigative Techniques Desk Guide. The desk guides are not all inclusive but are a wealth of information.

So, going back to the external sources of information, remember that these resources evolve over time; some evolve and new ones are added.

First there are Search Engines, which are general Internet research sites. Google and Bing are two of those search engines that we are familiar with.

Locator Sites tell you where people are located, like a phone book. If you are not familiar with Bop, it stands for bureau of prisons.

State Specific Sites are focused on state records such as bankruptcy, property records, permits, licenses and entity creation or registration.

Banking Data provides information and addresses for banks and national credit unions. This may be helpful when issuing summonses.

External Sources of Information

<u>Public Records</u> <ul style="list-style-type: none">▪ crimetime.com	<u>Offshore Information Sites</u> <ul style="list-style-type: none">▪ offshorebusiness.com▪ ffiec.gov
<u>Proprietary Sites</u> <ul style="list-style-type: none">▪ lexis.com▪ westlaw.com▪ accurint.com	<u>Credit Report Agencies</u> <ul style="list-style-type: none">▪ Equifax, Experian, TransUnion▪ ChexSystems (CHEX)

These slides has more external source of information.

- Most Public Records are accessible to anyone. In this slide we have Crimetime, which is a private investigator site that provides links to many federal, state and local databases of public records. You can also access online public records directly with the websites of the relevant federal, state or local databases.
- Offshore Information sites contain investigative news with a search section for suspicious activities and scams. Also, in ffiec.gov you can find domestic branches of international banks.
- We are all familiar with the Proprietary sites listed, lexis.com, westlaw.com and [Accurint](http://accurint.com), where we can perform legal research – use of propriety sites entails a fee or subscription. There is a plethora of information on [Accurint](http://accurint.com), which is technically a proprietary site but most of us actually think of it as an internal site. [Accurint](http://accurint.com) should be pulled at the pre-audit stage of the exam. It can help you find hard to locate taxpayers, as it shows current and previous addresses. It will show any businesses owned. Related parties are not only blood relatives but spouses and possibly business associates. It will tell you if the taxpayer holds any professional licenses and drivers licenses and it will provide some public records such as houses, cars and boats owned. [Accurint](http://accurint.com) not only can help you find the taxpayer, but you can find other related sources that can be tapped into for additional third-party information.
- Credit Report sites are very useful sources to locate taxpayer and asset information. The reports contain local, employment, financial and payment information. It is permissible to summons credit report agencies if we are having trouble locating a taxpayer or domestic bank accounts. But remember that credit report agencies are third party record-keepers, thus, it is necessary to give notice to the taxpayer when a summons is issued to a credit agency.
 - CHEX Systems Inc. is a consumer-reporting agency that provides account verification services to its

financial institution members to aid them in identifying account applicants who may have a history of account mishandling (for example, people whose accounts were overdrawn and then closed by them or their bank). So, basically, unlike the other three credit reporting agencies, CHEX only has information on accounts with problems and violations, and another drawback is that the records are only available for the last five years. Chex may not be applicable for all cases and there are known limitations to the information. If an individual has had absolutely no problems with his accounts, a summons to CHEX will not yield any information. So, discretion should be used when summoning CHEX. Specific Counsel approved language for the summonses to CHEX is located in the Desk Guide for Investigate Techniques and Interviews.

External Sources of Information

❖ Internet research

- Disclosure - may impact taxpayer's right to privacy
 - I.R.M. 11.3.21.8
 - I.R.C. § 6103(k)(6)
 - Treas. Reg. § 301.6103(k)(6) -1

Internet research for compliance purposes can involve disclosure of tax return information. It is important to ensure that such investigative disclosure comply with the requirements of [IRC § 6103\(k\)\(6\)](#) and Treas. Reg. 301.6103(k)(6)-1. You should also refer to IRM 11.3.21.8 for specific guidelines on Internet research.

Searching by taxpayer's name or address is considered a disclosure. However, the IRM states that a "disclosure of return information to the extent necessary " may be made in order to obtain "information not otherwise reasonably available."

The Regs define a disclosure of return information to the extent necessary as a disclosure of return information which an employee, based on the facts and circumstances at the time of the disclosure, reasonably believes is necessary to obtain information to perform properly the official duties described by this section, or to accomplish properly the activities connected with carrying out those official duties. The term "necessary" in this context does not mean essential or indispensable, but rather appropriate and helpful in obtaining the information sought.

Internal Sources of Information

- ❖ IDRS
- ❖ CBRS
- ❖ YK1
- ❖ e-trak
- ❖ TECS

Now we will focus on some of the internal sources of information such as:
IDRS, CBRS, YK1, e-trak and TECS

Internal Sources: IDRS (Integrated Data Retrieval System)

- ❖ Research taxpayer account information
- ❖ Determine filing of Forms 3520 and 3520A
 - All Forms 3520 filed after 12/31/96 are on Master File with MFT Code 68
 - All Forms 3520A filed after 12/31/2000 are on Master File with MFT Code 42
- ❖ Determine if foreign information return penalties assessed for prior years
 - Reference I.R.M. Exhibits 20.1.1-5 and 20.1.1-6

• You can research taxpayers' account information through IDRS. IDRS, which stands for Integrated Data Retrieval System, allows you to locate taxpayers, identify returns filed, reconcile payments and the assessed tax, interest and penalties with the returns.

• Through IDRS, you can also obtain account information related to Forms 3520 and 3520A filings. These forms were discussed in prior training sessions.

• If penalties were assessed in prior years for failure to file information returns or OVDI, you can research using IDRS under MFT 55 (for 1040s). The penalty reference number will identify the foreign information return for which the penalty is being assessed. For example, let's say that you look at MFT 55 and see that the penalty reference number is 700. Reference numbers 700 and 710 are used for the failure to file Form 8938 Statement of Specified Foreign Financial Assets.

Again, just because these forms may not have been filed in the current year does not mean that the taxpayer did not have a reportable transaction. If penalties were assessed in prior years for failure to report those transactions, it could give us a lead as to whether those transactions and/or accounts are still in existence.

Internal Sources: FinCEN Query (Formerly WebCBRS)

- ❖ CBRS to transition FinCEN Query effective on March 31, 2014
- ❖ Some FinCEN Form Numbers
 - FinCEN Form 114 - (FBAR)
 - FinCEN Form 112 - (CTR)
 - FinCEN Form 8300 - (Cash Over 10K Received in Trade/Business)
 - FinCEN Form 111 - (SARS)
 - FinCEN Form 105 - (CMIR)



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• We are all familiar with CBRS, which stands for Currency and Banking Retrieval System. CBRS is an on-line database that contains Bank Secrecy Act (Title 31) information and Title 26 data. IRS field agents in Small Business Self Employed (SB/SE), Large Business and International (LB&I), and Criminal Investigations Division (CID) as well as Local, State and Federal law enforcement agencies access the database for research in tax cases, tracking money-laundering activities, investigative leads, intelligence for the tracking of currency flows, corroborating information, and probative evidence. Federal Regulatory agencies also use CBRS for general examination, compliance and enforcement efforts.

• The CBRS portal was transitioned on March 31, 2014 to FinCEN Query. FinCEN Query will be the only search application available for authorized users to access FinCEN data.

• What is FinCEN? FinCEN, which stands for Financial Crimes Enforcement Network, is a bureau of the United States Department of the Treasury that collects and analyzes information about financial transactions in order to combat money laundering, terrorist financiers, and other financial crimes.

• Some of the forms we used to secure through CBRS will have been renamed. For example:

- FinCEN Form 114 formerly TD 90-22.1 (FBAR) – “Report of Foreign Bank and Financial Accounts” – must be filed electronically beginning 7/1/13.
- FinCEN Form 112, “Currency Transaction Report,” or “CTR”, formerly Form 4789, must be filed by a financial institution for each deposit, withdrawal, exchange of currency, or other payment or transfer, by, through, or to the financial institution which involves a transaction in currency of more than \$10,000 during any one business day. “Financial institutions” are defined as banks, other types of depository institutions, casinos and card clubs, brokers or dealers in securities, money transmitters, currency exchangers, check cashers, and issuers/sellers/payers of money orders and traveler’s checks.
- FinCEN Form 8300 - Report of Cash Payments Over \$10,000 Received in a Trade or Business.
- FinCEN Form 111, “Suspicious Activity Report” or “SAR” (formerly FinCEN Forms 101, 102, and 109) is used by a financial institution to report any suspicious or unusual activity, regardless of amount. (b) (7)(E)

(b) (7)(E)

- If a transaction is suspicious and in excess of \$10,000 in currency, then both a FinCEN CTR and a FinCEN SAR must be filed.
- FinCEN Form 105, formerly Customs Form 4790 (CMIR) – is “Report of International Transportation of Currency or Monetary Instruments” and is filed with the United States Bureau of Customs and Border Protection.

Some of these forms I just mentioned could show domestic information that could provide you with good leads. For example, a CTR might reflect domestic deposits of cash over \$10,000 for accounts which we otherwise have no other information about and which could be the accounts used by the taxpayer to transfer the funds offshore. The CMIR (now FinCen Form 105) will provide information as whether the taxpayer transported cash in and out of the country. This would tell you about a country the taxpayer is traveling to and from and possibly lead to foreign accounts and assets. The FBARS could also be good leads. Perhaps the taxpayer filed an FBAR for an account different to the one you have information on; this would tell you that the taxpayer was aware of his filing requirements when considering penalty application.

What is most important to take away from this lesson what is that CBRS will transition to FinCEN Query. As information becomes available on how to access the information it will be shared with the field.

❖ Graphic representation of taxpayer's relationships to other entities

- YK-1 data shows income/loss flows between payers and payees

Resource: <http://k1.soi.irs.gov/>

YK1 is an analytical tool specifically designed to help IRS explore the relationships between your taxpayer and domestic

- Partnerships,
- Trusts, and
- Subchapter-S Corporations, as well as
- Parent/sub relationships of Corporations.

Even though the YK1 graph only reflects the relationships with domestic entities, it may provide leads to other entities that might have been used to shift the funds offshore. We saw in the first lesson how the taxpayer's domestic entities were involved in the false invoicing and re-invoicing structures.

The link you see that the slide contains a lot of useful information such as:

A link to a YK1 Training PowerPoint

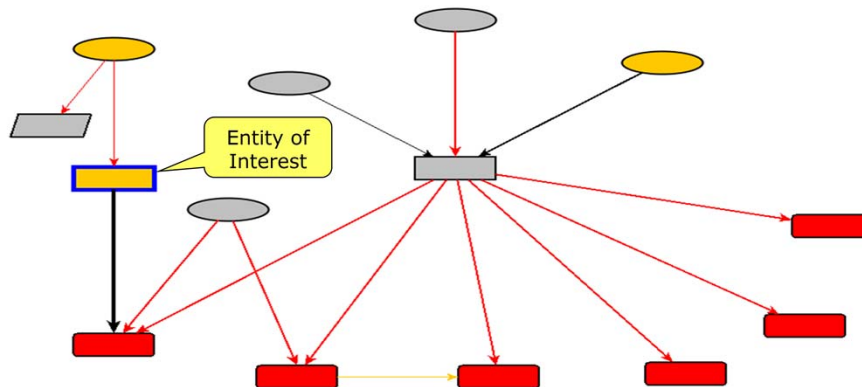
Contact information for coordinators and for employees that can unlock your YK1 account

Tips and tricks

Revision Notes

Information on how to become a YK1 user

Internal Sources: YK1



This is just a quick snapshot of a sample YK1 graph. You can visualize the relationships with YK1. Look at the orange rectangle, our entity of interest, and then it will link to other entities. Again, the YK1 will only show the relationships between domestic entities and the taxpayer. You must also be aware that YK1 is not perfect and it might have inconsistencies.

YK1 is an important pre-audit tool and can also help you in preparing for your interview.

Internal Sources: e-trak

- ❖ Examiner Assigned to Case
- ❖ POA
- ❖ Promoters
- ❖ Source of Funds
- ❖ Foreign Accounts
- ❖ Foreign Assets
- ❖ Taxes, Interest & Penalties

Etrak is a fairly new internal database. It is being populated every day with information gathered from Offshore Projects. Searching the database by taxpayer name or SSN may reveal past offshore compliance issues and will be valuable to establish TP intent and knowledge, if continued noncompliance exists, especially when considering penalty application.

Some of the information etrak will contain is offshore bank account information, the name of the examiner assigned to the case, dates accounts opened and closed, high balances, plus any professionals or promoters the TP has worked with, if there are foreign assets or entities and the tax, interest and penalties assessed in the past.

You may even want to contact the prior examiner to see if there is any information that he can share to assist in your case development.

Internal Sources: TECS (Treasury Enforcement Communication Systems)

- ❖ I.R.M. 5.1.18.14.11 – Procedures for Requesting Information
 - Prepare Form 13931, *TECS Historical Travel Request*
 - Send via **secure** e-mail to *SBSE International TECS Coordinator
 - Title email "Request For TECS Historical Travel Information"
- ❖ I.R.M. 5.1.18.14.10 - Using TECS Historical Travel Information
 - Do not discuss TECS with taxpayers
 - **Neither confirm nor deny existence of TECS**
 - Taxpayer may request information under FOIA
 - Keep in a separate "Confidential" envelope
 - Stamp documents as "OFFICIAL USE ONLY"



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The Treasury Enforcement Communications System (TECS) is a database maintained by the Department of Homeland Security (DHS), and it is used extensively by the law enforcement community. TECS contains historical travel information such as records of commercial airline flights, border crossings, and specific dates that individuals have traveled to and from the United States.

All this information could provide you with potential leads to pursue.

For example, the discovery of where the taxpayer may hold assets or accounts or where the taxpayer conducts business. It may also assist in determining taxpayer's residency and the credibility of taxpayer testimony. TECS may have gaps in the information captured, caution is advised. For example, it might contain incomplete information about border crossings, private plane and private boat information. It does not contain enough stand alone data to determine residency. It should be used together with other sources of information.

- IRM 5.1.18.14.11 – contains the procedures for Requesting Historical Travel Information from TECS

The examiner prepares [Form 13931](#), *TECS Historical Travel Request* and then sends it via **secure** e-mail to the TECS Coordinator at "*SBSE International TECS Coordinator". The e-mail message should be titled "Request For TECS Historical Travel Information".

- IRM 5.1.18.14.10 – Covers using TECS Historical Travel Information

First and foremost, do not discuss the existence of TECS with the taxpayers. We must neither confirm nor deny the existence of TECS data.

If taxpayer believes you may have some information, he can make a request under FOIA.

Use secure files and folders to store any TECS travel information.

Stamp all historical travel information received from TECS as "OFFICIAL USE ONLY".

Up until now, We have been discussing the research of both external and internal sources of information as steps to follow during the pre-audit part of the examination. However, you must keep in mind that research is something that will continue throughout the exam as new leads come up and new information is discovered.

Additional Investigative Tools and Techniques

- ❖ Information Document Requests
- ❖ Formal Document Requests
- ❖ Summons
- ❖ Taxpayer Interviews
- ❖ Third-Party Interviews
- ❖ Third-Party Contacts
- ❖ EOI
- ❖ Multi-Year Comparisons
- ❖ Examine Prior Returns

In working cases involving offshore transactions, you must understand the tools and techniques which are available to investigate offshore activity and to secure foreign based records. Among the tools and techniques available to secure foreign evidence are:

Information Document requests

Formal document requests

Summons

Taxpayer interviews

Third party interviews

Third party contacts

Exchange of Information Requests

Multi Year Comparisons

And the examination of prior, subsequent and related returns which we just discussed.

This list is not exhaustive, but may help you in identifying undisclosed accounts and assets and securing foreign based records that will provide leads in determining the beneficial owner of the accounts, determining the flow of the money and determining how the funds are being repatriated.

We will now look at some of these items but note that in Part 3 we will be discussing the taxpayer interviews, third party interviews and issuance of summonses in detail.

Information Document Requests

❖ Tailor to Your Taxpayer

❖ Request:

- Copies of all filed returns in the taxpayer's sphere of influence
- Bank accounts, including:
 - “signature or other authority over all domestic and foreign accounts”
 - “private banking” department records
- Promotional material/payments to promoter
- Translated copies of foreign documents

You need to adapt the IDR to the taxpayer and give consideration to the scope of the examination, the issues that need to be developed and the records that the taxpayer should have or is required to maintain relevant to those issues.

- You should request copies of the tax returns such as prior, subsequent and related returns.
- The IDR should be drafted taking particular care in describing the records, and identifying the specific tax years.
- IDRs should specify due date for information and the examiner should prepare to follow up, issuing a summons if necessary.
- The IDR should ask for copies of all promotional materials from the taxpayer, plus all cancelled checks used to pay the promoter. If not available from the taxpayer, you may be able to get the material directly from the promoter. These promotion documents might shed some light on what the taxpayer's purpose was in entering into the offshore transactions.
- It is important to specifically ask for records from the bank's private banking department, which usually cater to the needs of the bank's largest depositors. These private banker records usually include notes, correspondence files, meeting documents and other documents kept by the private bankers. This information will provide us with information related to the beneficial ownership of the accounts and information which might not be kept with the normal financing records of the bank.
- You can request translated copies of foreign documents. However, if the foreign documents are voluminous, first request production of un-translated copies, review these documents, and finally identify specific

documents that need to be translated.

- Keep in mind that additional subsequent IDRs might be needed throughout the examination.

Formal Document Requests (I.R.C. § 982)

- ❖ I.R.M. Exhibit 4.61.4-1
- ❖ Only applicable to documents located outside the U.S.
- ❖ Must first request documents through IDR
- ❖ May only be served on a taxpayer
- ❖ Counsel's assistance required

- IRM Exhibit 4.61.4-1 contains the information related to the issuance for formal documents requests, which is governed by IRC Section 982. Generally, a taxpayer served with a formal document request must produce the foreign records requested within 90 days of the formal document request or he will not be able to use the records in a subsequent civil litigation. Pursuant to section 982, the formal document request must contain the following information:
 - The time and place for production of foreign documents
 - A statement of reason previously produced documents are not sufficient
 - Description of the requested documents
 - Consequences to taxpayer for failure to produce requested documents
- A formal document request must be mailed by certified or registered mail to the taxpayer's last known address.
- Formal document requests are only applicable to records that are located outside the United States. If the records needed are located inside the US, you should request the records through a summons. If you are not sure where the records are located, then request them both in a summons and in a formal document request.
- You must first informally request the records through an IDR. If the taxpayer does not produce all the foreign records requested in the IDR, then you can issue a formal document request.
- A formal document request may only be served on a taxpayer. If the desired records are in the possession or control of third parties, issue a summons instead.
- Administrative review procedures should be established for the preparation of the formal document request.

Get counsel involved during this review process.

Third Party Contacts I.R.C. § 7602

- Customers
- Suppliers
- Competitors
- Business associates
- Accountants
- Bankers
- Brokers
- Promoters
- Financial advisors
- Current and former employees
- Tax return preparers
- Family members
- Prior examiners
- Ex-spouses
- Drivers
- Pilots
- Associations
- UPS, shippers, etc.
- Government agencies
- Realtors

In addition to requesting documents from the taxpayer, you should also request pertinent documents from third parties. This slide contains a list of some potential third party contacts. It is not all inclusive, nor does each one apply in every case.

You will make third party contacts based on the pertinent and necessary documentation related to your case. There is not a specific time when you would make these third party contacts. The facts and circumstances of the case will tell you when to make them. Some might be done right away during the pre-audit stages of the case and some might be requested later on during the examination, it will depend on the taxpayers level of cooperation and credibility.

An example of a third party contact would be the promoter. Promoter material might be provided by the taxpayer after the issuance of the IDR. Even though you have obtained the promotion material from the taxpayer and might have asked pertinent questions from the taxpayer about the promotion, you might want to also request it directly from the promoter, if possible. The promoters, might have additional information related to the arrangement.

Another example, is contacting the ex spouse. Ex spouses always interesting sources of information. Assets may have been disclosed, concealed or negotiated in divorce proceedings.

Taxpayers staff, both current and former employees, are always a valuable source of information. Sometimes they are loyal and sometimes they are not.

When examining participants involved in multilevel schemes, the examiner must treat each entity in the scheme as a third party. Also, remember that third party contacts are governed by section 7602 and that third party contact procedures should be followed.

Exchange of Information (EOI)

- ❖ Income Tax Treaties
- ❖ Tax Information Exchange Agreements (TIEAs)
- ❖ Administered by the Exchange of Information Program Office
- ❖ Tax Attachés/Revenue Service Representative (RSR)
- ❖ JITSIC

The United States has negotiated bilateral income tax treaties and Tax Information Tax Agreements (TIEAs) with different countries. These income tax treaties and TIEAs provide for exchanges of information between tax administrations.

The Exchange of Information Program Office, which is in the Competent Authority and International Coordination Division in the Office of the LB&I Deputy Commissioner, International, administers the Exchange of Information provisions of U.S. tax treaties and tax information exchange agreements (TIEAs).

Requests for foreign-based information are handled by IRS Tax Attachés (TAs), the Revenue Service Representative (RSR) in Plantation, Florida and the two Exchange of Information (EOI) Groups in Washington DC. The Tax Attachés, which are stationed in various parts of the world, handle the requests for different countries. A current listing of the tax Attachés, their assignments and a list of the countries each covers is in the EOI website. The link to EOI website is reflected in a later slide.

The purpose of JITSIC is to identify, develop and share information and expertise about abusive tax transactions, in particular, those that cross international borders or that may be transportable to other countries. JITSIC is designated competent authority for purposes of exchange of information. You may only request information related to member countries.

Exchange of Information (EOI)

- ❖ Specific Requests
- ❖ Spontaneous Exchanges
- ❖ Automatic Exchanges
- ❖ Industry-wide Exchanges
- ❖ Simultaneous Examinations
- ❖ Joint Audits
- ❖ Simultaneous Criminal Investigations

The exchange of information contains different programs.

Specific Requests – request for information for specific taxpayer, group of taxpayers, or tax entity under examination or investigation in the requesting country

Spontaneous Exchanges and Automatic Exchanges are bulk exchanges of information for many taxpayers

Industry-wide Exchanges – this is a discussion of industry issues by both countries.

Simultaneous Examinations – taxpayer is under exam or investigation by two or more authorities

Joint Audits – This is not a simultaneous exam. It means that two or more countries conduct a single exam.

Simultaneous Criminal Investigations – this is similar to simultaneous examination but in Criminal Investigation.

Exchange of Information (EOI)

For Specific Requests:

- ❖ Exhaust all domestic means
- ❖ Direct contact by examiners with foreign tax officials is not allowed
- ❖ Make direct contact with Tax Attachés to determine what is available
- ❖ Managerial approval is required
- ❖ Prepare treaty/TIEA request with counsel's assistance

▪ We briefly described all the different exchange of information programs in the prior slides. Let's concentrate on the "specific requests" exchange. Before making a specific request, you should exhaust all domestic means of obtaining the information.

▪ Under no circumstances should IRS employees contact a foreign government official in connection with an examination or investigation without first clearing the contact with the appropriate Tax Attaché / RSR or Exchange of Information Group Manager in Washington, DC.

▪ Before making a formal request, an informal contact is made with the appropriate Tax Attaché, Revenue Service Representative or EOI Manager. They should be involved up front to identify what kind of information may be available for the specific country the taxpayer is involved with. They may even know of additional information that may be helpful.

▪ Counsel's assistance should be requested for writing the memorandum setting forth the treaty/TIEA request. Again, the request is sent to the Tax Attaché that has tax jurisdiction where the country is located.

▪ The tax attaché may still be able to secure public information in non

Treaty or TIEA countries.

Exchange of Information (EOI)

❖ Potential Information Available:

- Foreign tax returns and return information
- Bank, brokerage and business records
- Interviews with taxpayers/other witnesses
- Public records
- Entity creation information
- Associations with other entities

❖ EOI website

http://lmsb.irs.gov/international/dir_treaty/eoi_overseas/index.asp



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- The information that may be available through EOI includes
 - Copies of foreign tax returns and tax return information
 - Bank, brokerage and business records
 - Conducting the Interviews with the taxpayer or other witnesses
 - Public record information such as deeds, birth, death, or marriage certificates and company registries
 - And associations with other entities such as Registered agents who were involved in creating the companies
- As mentioned earlier, this slide provides the link to website for the Exchange of Information Program Office where you can find more detailed information.

Multi-Year Comparisons

- ❖ How were transactions reported in prior years?
- ❖ Was income in prior years commensurate with the deposits to the foreign accounts?
- ❖ Were there unexplained changes in assets and/or income?

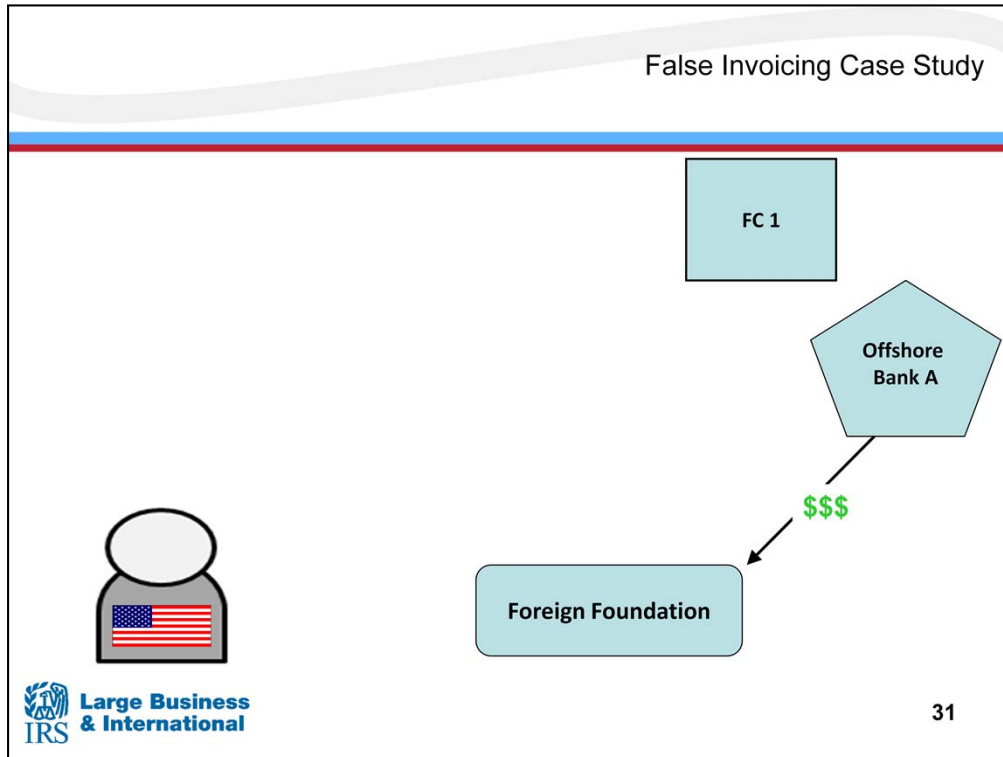
Comparing and contrasting multiple year returns and even related party returns may reveal trends or inconsistencies.

For example, the analysis of prior years' returns, supplemented with pre-audit research, might reflect the taxpayer as the sole shareholder of a domestic flow through entity. You may notice that the current year's flow thru income to the taxpayer from that specific domestic entity is considerably lower. You would ask why? In an offshore transaction it might be due to management fees paid by the flow thru entity. What are those management fees for? Who are they paid to? Who is the owner of the entity receiving the management fees? This might be an indicator of a multi tiered scheme entered into by the taxpayer.

- Or maybe the prior year return might reflect a large amount of interest received from several domestic entities while the current year return reflects a small amount of interest income. Where did the funds from the accounts go?
- A multi year comparison could also show how the domestic gross income from a related entity had decreased from one year to the next. Could this possibly be the result of redirected sales, re-invoicing or another scheme? Sometimes the change may be subtle from one year the next, but when viewed over several years you would see a downward trend. In redirected sales, the taxpayer could have set up an offshore entity with the same name as their active domestic business, and they simply redirect a portion of their receipts offshore, they usually select a few customers to participate without their knowledge but it is easier for them to track internally. This arrangement is sometimes referred to as the use of a "mirror" or "cloned" entity because the offshore entity that receives the redirected sales opens a bank account that the TP controls in the same or very similar name as the U.S. business.

- Multi year comparisons of balance sheets may identify assets reflected in prior years' returns that are not reflected in the current year returns. But the asset disposal is never recorded on the return. This comparison could provide us leads as to possible transfer of assets to offshore accounts or offshore entities.

At this point in the lesson we have covered pre-audit steps for an offshore case and investigative tools and techniques to obtain foreign records. Now let's see what we have learned and how it applies to our case study



The taxpayer was identified as part of an Offshore Banking project. The information provided with the case file included the:

Taxpayer's Name

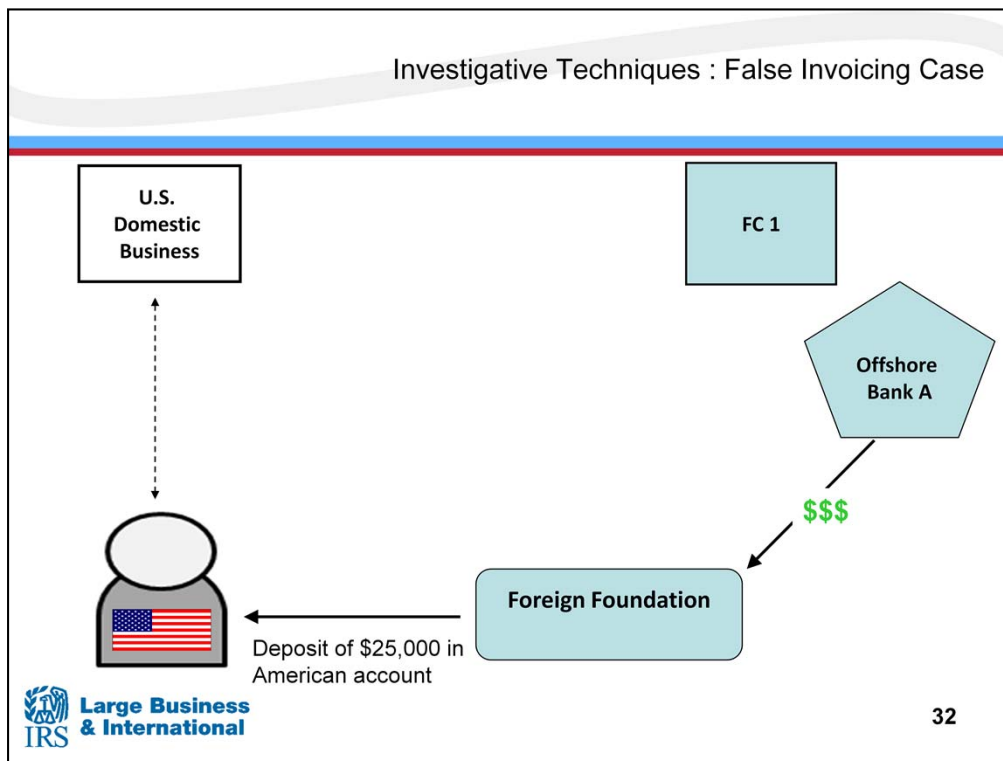
The name of the Foreign Corp

The existence of the Offshore Bank A

The Foreign Foundation in country A,

that a \$100,000 withdrawal had been made in 2008 from Bank A and

That a Power of Attorney had been executed for the Foreign Foundation.




During the Pre-Audit phase of the case several investigative techniques were used to develop the facts of the False Invoicing Structure. First, the taxpayer's return was reviewed. From this, the U.S. Corporation was identified as the entity from which the taxpayer had a W-2 from the business and his occupation was listed as Corporate COB (Chairman of the Board).

A Google search was conducted on the U.S. business. Research indicated that the U.S. Business was operated by the taxpayer and his 3 sons. Based upon the names of the three sons, the Revenue Agent realized that the name of the Foreign Corporation was the first two letters of each son's name. The agent assumed an association. An interview found in a trade publication revealed that the U.S. Corporation secured most of its manufacturing parts from Asia, hence the Asian connection.


Since the Taxpayer was deceased, the Revenue Agent requested TECS records for the taxpayer and his three sons. These records revealed regular travel to Asia for all parties. They also revealed concurrent travel for the father and the sons in 2008 to a foreign Country A, and then in 2009 concurrent travel to foreign country A and B for the three sons shortly after the death of their Father.

Initially, CBRS records were requested for the taxpayer to determine if the taxpayer had identified ownership of an offshore account. All fields were queried, not just the FBAR field. A record of a cash deposit for \$25,000.00 was identified. This deposit was the day after the taxpayer returned from his 2008 trip to Country A. CBRS records were then requested for each of the sons. Similar cash deposits were identified for each son within one week of the Country A trip. Finally, IDRS was queried to determine if any International Information returns had been filed by the taxpayer. No information was identified.

Based upon this information an IDR was prepared which requested all foreign financial records, entity documents, and a copy of the Taxpayer's passport. The case then moved into the next phase of development.

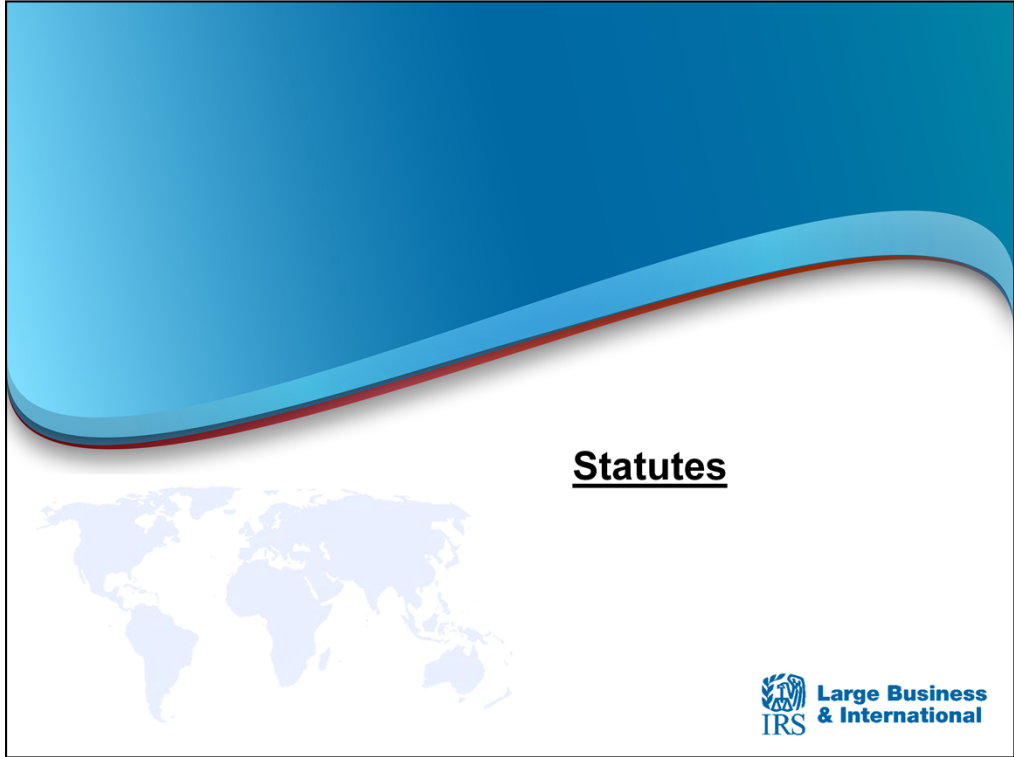


5 Minute Stretch Break



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Put white board up noting time that they need to return.



Statutes

 **Large Business
& International**

Examine the TP, not the Return

❖ Why are statutes important?

- Needed to make an assessment

❖ Generally, Project Cases are assigned for current year, but need to consider:

- Prior Years
- Subsequent Years
- Related Returns

In this next section, we are going to discuss statutes.

OA has created a desk guide which has lots of valuable information, above and beyond what we are going to touch upon today. It is posted to the Best Practices section of the OA IPN site. It covers, tax law, court cases, extending statutes, and some scenarios that walk through various facts patterns.

But the first question we need to ask is “why are statutes important?” Well, the answer is simple. We must have an open statute to make an assessment. I only know of one exception to this rule, which is the issuance of a F906 closing agreement, which we will talk about later.

So you may be looking at your cases and thinking, the years assigned to me have open statutes, I’m good and move on with the exam.

However, in OA project-based work, we generally are not looking at one year. It is very important to examine the entire taxpayer, not the return, since, in many cases, offshore arrangements typically are not recorded on the face of the return, and what we are looking for is concealed.

You may need to open prior year returns, subsequent year returns and related parties. Typically, OA work is more involved than just examining the one year assigned by PSP. But, we find that PSP is kind enough to assign only the most recent year with the longest statute.

So, it is up to the examiner to confirm the statutes and consider expanding the audit, including exam years barred before assignment, or years where the statutes are close to expiring.

Since we haven’t found a way to stop time from ticking, our conversation today is going to focus on the problem returns that either have short statutes or barred statutes. We will be looking at exceptions to hold open the normal three year statute since many OA cases take time to develop and generally they are not a quick in and out. Also, offshore transactions usually involve multiple years, meaning the money is not always moved offshore and then repatriated in the same year. Many times these arrangements are long term.

As an examiners, we know that our number one responsibility is protecting the statute. I remember from my very first day of new hire orientation, we were told and it was emphasized, what ever you do, don’t blow a statute!! So hopefully by the end of this session, you will learn how to protect the statute and also how to open up years that you may have thought were barred.

Generally, a statute starts when...

- ❖ I.R.C. § 6501(b) – if a return is mailed and received before the due date, the statute begins to run on the due date
- ❖ I.R.C. § 7502 – If any return is postmarked before the due date and received after the due date, the postmark date is the date of delivery and the statute starts to run on the due date
- ❖ I.R.C. § 6501(a) – if a return is mailed after the due date, the statute begins to run from the date the return is received

This slide has some very basic information on statutes, but let's make sure we are all starting with the same base understanding on the normal three year statute.

In general, under IRC § 6501(b) it states– if a return is mailed and received before the due date, the statute begins to run on the due date.

IRC § 7502 says– If any return is postmarked before the due date and received after the due date, the postmark date is the date of delivery and the statute starts to run on the due date.

IRC § 6501(a) says if a return is mailed after the due date, the statute begins to run from the date the return is received.

It is very important for you to know when the statute starts to run....Once confirmed, you will then be able to determine how much time is available for making the assessment, as well as allowing sufficient time for administrative processing.

Generally, when there are less than 210 days remaining on your statute, you must take action to protect the statute. You may even want to consider before the 210 day mark.

Exceptions to the 3 Year Statute

- Form 872 – Consent to Extend
- I.R.C. § 6501(e) – Substantial Omission of Items
- I.R.C. § 6501(c)(8) – Failure to File Foreign Information Returns
- FATCA impact on I.R.C. §§ 6501(e) and (c)(8)
- I.R.C. § 7609(e)(2) – John Doe Summons
- I.R.C. § 6501(c)(1) and (2) – Fraud
- Alpha statutes YY*
- Form 906 Closing Agreement*

* Does not extend the statute, nor does filing an amended return I.R.M. 25.6.1.9.4.2)



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We just talked about when the normal three year statute starts to run but you will need to develop a strategy when you have less than 210 days left on your statute.

This slide shows several options for extending and protecting your statute beyond the normal three years.

Before we talk about the exceptions, it is very important to point out that filing an amended return does not extend the statute. If you have amended returns where the statute is expiring, you will need to assess the tax using quick or prompt assessment procedures. Many of you are aware of this from OVDI. But I don't want you to be confused with the 60-day extension referenced in IRM [25.6.1.9.4.2](#), which says if an amended return is received within 60 days from when the Assessment Statute Expiration Date would otherwise expire, a period of 60 days from the received date is allowed for the assessment of the additional amount of tax on that return. For example, if an amended income tax return for a timely 2003 tax year was received on April 9, 2007, you would have 60 days from April 9th to assess the additional amount of tax on that income tax return.

We will now discuss each one of the exceptions separately.

I.R.C. § 6501(c)(4) and I.R.M. 25.6.22

- ❖ Obtain manager approval
- ❖ Solicit 210 days prior to expiration
- ❖ Extended SOL date should be no longer than necessary to complete the required actions.
- ❖ In order to be valid, the consent must be executed by both the taxpayer and the Service before the statutory period for assessment expires.

First let's quickly talk about the Consent Form 872.

If you have a cooperative TP, the easiest way to extend your statute is to request an extension using Form 872. Also, before you can use many of the exceptions we will talk about, it is required that you at least attempt to secure a Form 872 consent from the taxpayer. Sometimes this is easier said than done.

But before you can issue a consent to the TP, an examiner must:

- Obtain manager's approval to solicit consent, where the need for an extension should be clearly identified – a few things to remember are:
 - Every attempt should be made to resolve the case before the SOL expires, however, due to the abusive nature of OA cases, this is often times nearly impossible.
 - The extension request should be no longer than necessary to complete the required actions, which include determining the adjustments as well as the administrative processing of the return.
 - And, in order to be valid, the consent must be executed by both the taxpayer and the Service before the statutory period for assessment expires.

Remember, you can ask for more than one consent, meaning that you can extend a previous extension.

Requesting Consent

Form 10949 Statute Extension Check Sheet

This Job Aid provides step by step instructions to:

- Part 1 – Prepare and Issue Consent
- Part 2 – Examiner Actions Upon Receipt
- Part 3 – Group Manager Actions
- Part 4 – Final Examiner Actions

PROF READ – PRUF READ – PROOF READ



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When requesting a consent, the Form 10949 Statute Extension Check Sheet is an excellent tool and should be used. It provides step by step guidance on how to complete each line of the F872, as well as how to execute the F872. It cites IRM sections for easy reference, which are very helpful if you have nuances that you need to investigate further, such as deceased or divorced taxpayers, or changes of address.

The job aid has four parts that cover:

- Part 1 – Prepare and Issue Consent
- Part 2 – Examiner Actions Upon Receipt
- Part 3 – Group Manager Actions
- Part 4 – Final Examiner Actions

A few General Tips when preparing an 872 are that:

- It must be typed
- do not make corrections on the originals – for example don't use a pen to enter additional info or white out to revise or remove information,
- It should be prepared by Service not the TP (with the exception of the new OVDI guidelines),
- The Consent should be prepared in duplicate and both originals should be signed and returned by TP (if the TP only sends one back counsel may accept one original – so I usually highlight in the cover letter that two originals must be returned),
- Original signatures are preferred but faxes are now sometimes acceptable...check with your local counsel
- If alterations are made by the TP to the original consent consult with local counsel to see if it is acceptable or if it needs to be perfected.

Finally, I can not emphasize enough how important it is to proof read before issuing. If you have a concerns about its correctness ask your manager, tech services or counsel to review before sending it out.

You must apply Due Diligence to avoid errors but sometimes they happen. All errors are not fatal. Consents that contain errors (such as spelling, addresses, years, identification numbers) may not necessarily render the consent invalid. Courts have sometimes found that where the intent of the parties was to extend the period for assessment, the errors did not invalidate the extension. However, the execution of consents with errors are not to be made without consulting Counsel.

- ❖ Taxpayer omits >25% of gross income, the SOL is extended from 3 years to 6 years
- ❖ A fractional computation:
 - total unreported income over total reported income must be more than 25%
- ❖ I.R.M. 25.1.4.3.7.1 Gross income for the I.R.C. § 6501(e) computation

Our next exception falls under IRC Sec 6501(e) relating to the substantial omission of income....we used to refer to this as the 25% omission of income.

If a TP has failed to report 25% of their income, which is computed by dividing omitted income by total income reported on the return, then the statute is extended from three years to six years.

A quick example would be, TP A's 2009 Form 1040 reports only \$100k of wages on an originally filed return but on examination the Revenue Agent finds \$30k of additional dividend income, there would be a 30% omission of income computed by dividing the \$30k of divided income by the reported \$100k. If the return was timely filed the 3 year statute would have been April 15, 2013, so now the six year statute is April 15, 2016.

If you come across this issue, it most likely will not be as simple as the example just mentioned, know that IRM 25.1.4.3.7.1 is an excellent resource to aid in computing the gross income for purposes of determining the 25% omission. Some common problems are found when using gross receipts for a trade or business, the net amount of capital gains and the taxable portion of a pension.

FATCA Impact on I.R.C. § 6501(e)

- ❖ The amendment to I.R.C. § 6501(e) applies to all returns whose SOL was open on March 18, 2010
- ❖ more than \$5,000 was omitted from gross income that is attributable to “specified foreign financial assets”
- ❖ the statute remains open under I.R.C. § 6501(e) for a total of six years from the date the original return was filed

We just covered the 25% omission of income under IRC sec 6501(e)....but now we have to take into consideration FATCA provisions, especially since the FATCA provisions are usually relevant in Offshore Arrangement Cases.

FATCA was enacted on March 18, 2010. This is a very important date to remember when computing statutes because in order for the FATCA provisions to apply, the tax return must have had an open statute on that date.

What FATCA says is, if it is found that TP omitted more than \$5k of income related to a “specified foreign financial asset,” then we will have a six year statute. The Service does not need to meet the burden of computing 25% omission. This is a much easier requirement to satisfy with a flat dollar threshold of \$5k, especially for OA cases. Remember from our Basic Structures Part I session, we talked about OA taxpayers’ motives. They are usually hiding large amounts of money in financial secrecy jurisdictions to avoid or evade tax, plus all the earnings on those assets will also escape taxation. Money moved offshore is typically a rather large rainy day fund that can sit without being touched, but most TPs are still interested in getting a return on their investments.

Overall, it is pretty easy to accumulate \$5k in income each year on an account when the balance is as little as \$500k. Think about it \$500k times a 1% interest rate results in \$5k of interest income.

“Specified Foreign Financial Asset” – I.R.C. § 6038D(b)

(b) For purposes of this section, the term “specified foreign financial asset” means—

(1) any financial account (as defined in section [1471 \(d\)\(2\)](#)) maintained by a foreign financial institution (as defined in section [1471 \(d\)\(4\)](#)), and

(2) any of the following assets which are not held in an account maintained by a financial institution (as defined in section [1471 \(d\)\(5\)](#))—

(A) any stock or security issued by a person other than a United States person,

(B) any financial instrument or contract held for investment that has an issuer or counterparty which is other than a United States person, and

(C) any interest in a foreign entity (as defined in section [1473](#)).

It is important to understand what is meant by a “specified foreign financial asset”, sometimes referred to as SFFA’s

FATCA is found under IRC sec 6038 cap D. These assets are specifically defined under IRC 6038D paren (b), as shown on this slide.

Specified Foreign Financial assets are foreign financial bank accounts, which can be checking, savings, managed investment accounts that are maintained by a foreign financial institution.

Plus, some assets that are not held in an account, such as stocks, instruments held for investments and interests in a foreign entity.

However, just because it is a foreign asset does not mean that it is an Specified FFA for purposes of computing the \$5k omission of income for the 6 year statute.

Let’s do a few class exercises for a practical application of FATCA’s impact on 6501(e).

Class Exercise #1

- ❖ TP applies and is accepted into 2011 OVDI. During the certification, TP decides to opt out thinking they qualify for a more favorable penalty application than the Misc Offshore Penalty.
- ❖ Original returns were timely filed and 2009-2011 correctly reported all foreign income.
- ❖ TP had over \$10k in interest and dividends each year from a foreign investment account.
- ❖ What are the statutes for 2003-2008?
- ❖ Assume there is no JDS exception, no 25% omission of income, nor foreign information returns required.

Here are the facts.

TP is in the 2011 OVDI but wants to opt out for a reduced penalty structure. The 2003-2008 returns were timely filed. And TP correctly reported all foreign income on their subsequent 2009-2011 originally filed returns.

Earnings on the managed foreign investment account are in excess of \$10k each year, made up of interest and dividend income.

The question is, what are the statutes for 2003-2008 assuming there are no other known exceptions to the three year statute, like john doe summons 25% omission of income or failure to file foreign information returns or a valid consent.

Answer Class Exercise #1

	<u>Normal 3 yr Statute</u>	<u>FATCA</u>
❖ 2003	4-15-2007	n/a
❖ 2004	4-15-2008	n/a
❖ 2005	4-15-2009	n/a
❖ 2006	4-15-2010	4-15-2013 expired
❖ 2007	4-15-2011	4-15-2014 expired
❖ 2008	4-15-2012	4-15-2015

** FATCA effective for any return with an open statute on 3-18-2010.
Years prior to 2006 may be affected if:
statute extension was secured,
other exception applied (i.e. I.R.C. § 7609(e)(2))
original return was late filed.

Remember, we said the key date for FATCA implementation is March 18, 2010. The return had to have an open statute on this date for the FATCA provisions to apply and we are told that we have no other exceptions holding the 3 year statute open.

As you can see on the slide, 6501(e) FATCA provisions will not apply to tax years 2003-2005 on a timely filed return with only a normal three year statute because the statute was not open on March 18, 2010

Tax years 2006 and 2007 are affected, however the 6 year statute expired on April 15, 2013 and 2014 to make an assessment.

In this example, we still have a live six year statute for 2008. So if you think that you can not make your assessment before the six year statute expires, you still have the ability to request a Form 872 Consent for these years, make a quick assessment if an amended return was provided or issue a stat notice.

I want to emphasize that if the return was not timely filed, or the normal three year statute was held open on March 18, 2010 because of some other exception, the six year statute may be applicable.

For example, if tax year 2007 was a delinquent return filed on April 15, 2009, the three year statute would be 4-15-2012. Since the statute was open as of March 18, 2010 and there is more than \$5k of omitted income from and SFFA the six year statute would be 4-15-2015.

Remember, computing the six year statute under 6501(e) is tied to the original filing date.

Class Exercise #2

Are the following considered Specified Foreign Financial Assets under I.R.C. § 6038D(b):

- | | | |
|---|-----------------------------|---|
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | Checking account held at a foreign bank |
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | Rental Property in a foreign country |
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | 500 Shares of foreign corporation |
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | Mutual funds held in a foreign investment account |
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | Vacation home on a foreign seacoast |
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | 60% Ownership in a CFC |

This class exercise requires you to select either the green check mark or the red x.

We have a bunch of assets listed and you will need to tell me if it is a Specified Foreign Financial Asset.

Checking Account held at foreign bank – YES

Rental Property in a foreign country – NO, even though it may be income producing, it is not defined as an SFFA under 6038D(b)

500 Shares of a foreign corporation – YES, these are securities, they can be held inside or outside of an investment account

Mutual Funds held in a foreign investment account – YES

Vacation Home on a foreign seacoast – NO, typically this would not be income producing and it does not meet the definition.

60% Ownership in a CFC – YES this is an ownership interest in a foreign entity. The entity does not necessarily have to be part of an abusive transaction. It may very well be an interest in legitimate operating entity.

Failure to File Foreign Information Returns

- ❖ The statute for information return items starts when the information required to be reported to IRS is furnished, plus 3 years!
- ❖ SOL remains open only for items related to the failure to file the information return.

Effective for information due after August 5, 1997

Next lets talk about IRC Sec 6501(c)(8), with respect to the failure to file foreign information returns, such as Forms 5471, 3520, 3520A to name a few.

In many offshore arrangements, the taxpayers deliberately fail to file the information returns. Why? Well they don't want us to know about them number one. Two, Taxpayers engaged in an OA like to claim that the entity is truly a foreign entity with foreign sourced income. They would like you to believe that they have no beneficial ownership in the entity as they have trustees and board members that are in control and make all the decisions. It is unlikely that that TPs name will ever be associated with the first layer of documentation. You need to dig deep to get down to the side agreements that lay out the true beneficial ownership. Once beneficial owner is associated to your taxpayers, they have a filing requirement. The information returns basically tell the government information about the ownership and activities of the foreign entities.

The goal of an Offshore Arrangement is for the TP to keep the relationship to the foreign entities a secret and apart from themselves. If they file the returns it won't be so secret, will it? The Service has established Failure to File Penalties when the TP fails to file the foreign information returns. There are separate IPS units under the Foreign Entities IPN that discuss the penalties in detail.

What we want to talk about is how the failure to file impacts the statute. Traditionally, under IRC 6501(c)(8), if a TP failed to file an information return, the income tax statute would not start to run with respect to any items that should have been reported on those information returns. The statute for the information return items is three years from the date the delinquent information returns were filed.

So even if the normal 3 year statute had expired on the Form 1040, the Service could make an assessment, but only for items related to those information returns.

Also, the Service has three years from the date the delinquent information returns are filed to assess any potential penalties for failure to file the information return.

If the TP continues to fail to provide the delinquent information returns, the statute will not start

run until they are filed.

FATCA Impact on I.R.C. § 6501(c)(8)

- ❖ Amended to clarify that this statutory exception to the period of time for assessment, if applicable, applies to the entire return, not just those tax liabilities associated with the information not reported.
- ❖ As long as the period of time for assessment of taxes has not expired as of March 18, 2010.
- ❖ If, however, the failure to furnish information required to be reported is due to reasonable cause and not willful neglect, the I.R.C. § 6501(c)(8) extended time for assessment applies only to the item or items associated with such failure.

Again, we come back to March 18, 2010, when FATCA was amended.

The FATCA amendments say that if the statute for the return was open on March 18th, then not only can the Service make assessments for the items related to the delinquent foreign information returns, but now the Service can make an assessment on the entire return, meaning any items on the 1040 plus the information returns.

So in essence, the statute for the entire return is held open for three years from the filing of the delinquent return, for any assessment related to either foreign or domestic matters regardless of whether they are identified on an information return.

However, yup, you guessed it...there is always an exception...if the TP can support reasonable cause for the failure to file, the entire return will not be held open. Instead, we revert back to pre-FATCA rules which says we can only assess items directly related to the foreign information return.

I.R.C. § 7609(e)(2) - John Doe Summons

- ❖ A court approved third party summons issued on unidentified taxpayers
- ❖ Statute suspends when third party summons remains unresolved for more than 6 months
 - Starting from 6 month anniversary of the service of the summons
 - Until the final resolution of the response to the summons.
- ❖ Applies to each member of the John Doe class
- ❖ Only applies to years specifically addressed in summons
- ❖ Applies to years with an open statute after JDS suspension began. Other exceptions to three year statute may hold the normal three year statute open

Resources: I.R.M. 25.5.7.4.5 and Treas. Reg. § 301.7609-5(e)(3)



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John Doe Summonses have been and will continue to be a very successful and effective tool for the government to identify individuals participating in Abusive Offshore Arrangements.

With a normal summons, the IRS seeks information about a specific taxpayer whose identity it knows. However, a John Doe summons allows the IRS to get the names of **all** taxpayers in a certain group. But it can only be served after approval by a Federal court. And the purpose of a John Doe summons must be to investigate the tax liability of a specific unidentified taxpayer (or a group of such taxpayers), even if a secondary purpose is to gather information for research purposes.

Preparing and Issuing the JDS is beyond the scope of this presentation, but what we do want to focus on is the guidance **under IRM 25.5.7.4.5** related to the **Suspension of Period of Limitations**.

Pursuant to IRC 7609(e)(2), if the summoned party's response to the John Doe summons is not resolved six months after the date the summons is served, the period of limitations under IRC 6501 and 6531 with respect to any person whose identity is sought, will be suspended in relation to the tax period or periods that are the subject of the summons, for the period:

Beginning on the date which is six months after the service of the summons, and

Ending with the final resolution of the summons response.

In making the computations under 7609(e)(2), examiners will need to consult with the coordinators supporting the specific JDS project as they will have the dates needed to make that computations as well as the years involves.

Class Exercise #3

- ❖ UBS JDS sought records of all U.S. taxpayers who had undisclosed UBS accounts at any time during 2002-2007
- ❖ JDS was issued on July 21, 2008
- ❖ Withdrawal of summons occurred on November 16, 2010

- What years are covered under the JDS?
- What is the suspension period?
- How many days is the suspension?
- What is the new statute for timely filed 2007 return?
- What is the new statute for timely filed 2004 return?

Let's do a class exercise....

Here are the facts

UBS JDS sought records of all US taxpayers who had undisclosed UBS accounts at any time during 2002-2007.

JDS was issued on July 21, 2008

Withdrawal of summons occurred on November 16, 2010.

Now the questions you need to answer are:

What years are affected?

What is the suspension period?

How many days is the suspension?

What is the new statute for timely filed 2007 return?

What is the new statute for timely filed 2004 return?

Since we are running short on time, we will work through these together.

Class Exercise #3 Answers

- What years are covered under the JDS?
2002-2007
- What is the suspension period?
Starts on January 21, 2009
Ends on November 16, 2010
- How many days is the suspension?
814 days
- What is the new statute for timely filed 2007 return?
February 7, 2013
- What is the new statute for timely filed 2004 return?
Not applicable since 3 year statute expired
Unless six year statute applies or some other exception

What years are covered under the JDS?

2002-2007 these are the only years specifically identified in the JDS

What is the suspension period?

Starts on January 21, 2009 which is the six month anniversary after the issuance of the summons and we were told the summons was issued on July 21, 2009.

The suspension period ends on November 16, 2010, the date the summons was withdrawn

Let's go to the next slide to answer the remaining three questions.

Class Exercise #3 Answer (Cont'd)

What is the new statute for timely filed 2007 return?

- ❖ 2007 timely filed – 3 year statute 4/15/2011
- ❖ **STEP 1:** Compute number of days remaining on the statute, starting from the beginning of the suspension date of January 21, 2009
 - from Jan 21, 2009 to April 15, 2011
 - Unexpired portion of the statute was 814 days

344	2009 (365 days less 21 for January)
365	All 2010
31	January 2011
28	February 2011
31	March 2011
15	April 2011
814	Total Days
- ❖ **STEP 2:** JDS Suspension ended on November 16, 2010, plus the 814 days, new statute under I.R.C. § 7609(e)(2) becomes February 7, 2013

14	November 2010
31	December 2010
365	All of 2011
366	All of 2012 (leap year)
31	January 2013
7	February 2013
814	Total Days

OK lets walk through the 2007 statute under 7609(e)(2)

We have a timely filed return with a three year statute of 4-15-11.

The first step is o find out the number of days remaining on the statute starting from the suspension period. We just determined our suspension period starts Jan 21, 2009 compared to our statute date of 4-15-11...as you can see from the slide it adds up to 814 days

So in reality, each year or return can have a different number of suspension days depending on when the returns are filed.

For the second step, once you have determined the number of days the statute was suspended, in our case 814 days, you need to add that to the date the suspension period ends, so in this case the JDS was resolved on Nov 16 2010, ...we are not adding to the original statute date. Looking at the slide we can see that for 2007 we will add 814 days to Nov 16 and our new statute date under 7609(e)(2) is Feb 7, 2013.

After you walk through an example it seems simple enough. Yes??

Class Exercise #3 Answer (Cont'd)
What is the new statute for timely filed 2004 return?

- ❖ 2004 timely filed – 3 year statute 4/15/2008
- ❖ 3 Year statute expired before JDS suspension began on Jan. 21, 2009
- ❖ No affect on normal 3 year statute

Our next question was how does 7609(e)(2) affect the 2004 year. So again, the first thing we need to compute is the number of days remaining on the statute starting from the suspension date, which again is six months after the JDS was issued.

So a timely filed 2004 return has a normal three year statute of 4/15/2008, but the suspension period doesn't begin until 1/21/2009. So there is no time remaining on the statute to suspend.

If for some reason the 2004 was impacted by some other exception that held open the normal three year statute, the John Doe Summons suspension may have an impact.

I.R.C. § 6501(c)(1)-(3)

There is no statute when:

- No return is filed or
- Return is False/Fraudulent

We are not going to discuss 6501(c)(1)-(3) in detail. I think we are all aware of the general premise that there is no statute for returns when a Taxpayer files a return which is false or fraudulent with “intent to evade tax”

and

also, when no return is filed there is no statute date. This also applies to a document which is not considered to be a return.

Effect of a Form 906 Closing Agreement on SOL

I.R.M. 8.13.1

- ❖ Determination on only those specific matters listed
- ❖ All unstated items are left open for future review
- ❖ Final determination
- ❖ The actual Tax Liability is not specifically stated



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The next alternative we have is a closing agreement. A closing agreement does not extend the statute, but does allow us to make an assessment.

Under IRC § 7121, a closing agreement provides for the disposal of tax matters by agreement of the parties with finality.

This is done using the Form 906. The Form 906 only agrees to specific matters, not actual tax liability.

Proper drafting of a Form 906 is a must. Because of the finality of these agreements, a closing agreement binds both the taxpayer and the IRS. As with contracts generally, ambiguities in a closing agreement are resolved against the drafter of the agreement, which in our case would be the Service.

In addition to boilerplate language printed on Form 906, a closing agreement generally consists of 4 parts: (1) identification of the parties; (2) the Whereas section, which introduces the subject matter and premises of the agreement; (3) the Determination section, which sets forth the matters agreed to; and (4) the dating and execution section, which binds the parties.

IRC § 7121 provides that closing agreements may not be reopened or modified by any officer, employee, or agent of the United States in the absence of fraud, malfeasance or misrepresentation of a material fact. Closing agreements cannot be annulled, modified, set aside, or disregarded in any suit, action, or proceeding unless an exception applies.

Per Treas. Reg. 301.7121-1(a): "A closing agreement may be entered into in any case in which there appears to be an advantage in having the case permanently and conclusively closed, or if good and sufficient reasons are shown by the taxpayer for desiring a closing agreement and it is determined by the Commissioner that the United States will sustain no disadvantage through consummation of such an agreement." All closing agreements are at the discretion of the Commissioner or his delegates. In practice, if the taxpayer shows good reasons for requesting the agreement and furnishes necessary facts and documentation, and the government will sustain no disadvantage, a closing agreement will ordinarily be entered into so long as the content of the agreement can be agreed upon.

The Form 906 makes a determination only for those items specifically listed on the form. All other items may still be adjusted by the IRS in subsequent actions. In other words, all unstated items are left open for future review.

Closing agreements are an invaluable tool for compliance initiatives, such as OVDI, as well as, project based work because the Service and the Taxpayer can agree to just about anything, including the assessment of tax on barred years and penalties that are not supported by code. But, once signed and executed, according to the regulations, taxpayers don't have the right to challenge any item listed on the form. Another benefit, the agreement can be entered into with various parties, which can be helpful with deceased taxpayers, or divorced taxpayers.

Alpha Statutes

Generally, alpha statutes should only be used after the taxpayer has refused or not responded to a request to extend the statute of limitations.

Update with Form 5348

Format MMDDYYYY

example: To update for YY alpha code where statute expires on 04/15/2012, you would enter 04/YY/2012

Remark Section of Form 895 is required.

Related Statute Memorandum is required for some alpha statutes, but is recommended for **all** Alpha Statutes

So what do we do when we don't have a definite exception under the code to extend the statute? We rely on alpha statutes to continue our investigations and examinations.

Alpha statutes should only be used after the taxpayer has refused or not responded to a request to extend the statute of limitations.

An alpha statute is not equivalent to a statute extension, the Form 872 Consent that we talked about earlier.

An alpha statute does not remove the return from the short statute listing on AIMS - what it does is creates a message indicating that a special condition exists which affects the statute date. The ASER will be updated on AIMS, but not on Masterfile.

Generally, AIMS should not be updated with an alpha statute prior to 180 days before the statute expiration.

It is also important that you know the tax law supporting your alpha statute. There may be more than one alpha statute that is applicable. You should choose the statute control that best suits your facts and circumstances.

Do not update the statute date with an alpha code until it has been determined with certainty, it is clear that all essential elements of the applicable law are present.

AIMS/ERCS is updated using Form 5348. The format is MMDDYYYY. For example, a return where the statute expires on 04/15/2012 would be updated for YY alpha code by entering 04/YY/2012.

You will need to enter a comment on the remarks section of your Form 895, as well.

An Alpha Statute Memorandum is mandatory for some alpha statutes but is recommended for ALL. This is for protection for the examiner...remember what we said earlier, the golden rule...don't blow a statute!

Alpha Statute Memorandum

- ❖ Taxpayer Identification
- ❖ Tax years involved
- ❖ Summary of Facts
- ❖ Signatures of Examiner, GM, TM

Relate Statute Memorandum Request should include the following statement:

“As part of XXX Project, it has been determined that there is a likelihood that at least one exception to the 3-year statute of limitations (IRC § 6501(a)) applies to this case, e.g.: (1) IRC § 6501(c)(1)-(3) – the tax return is false/fraudulent; (2) IRC § 6501(e) – there is a substantial omission of income for the 6-year assessment statute to apply; or, (3) IRC § 6501(c)(8) – failure to notify the Secretary of Foreign transfers.”

In an Alpha Statute Memorandum, you will need to identify the TP, years involved and a summary of the facts, then secure concurrence from management that you are allowing the regular statute to expire. This is all done after an unsuccessful attempt to secure TP consent to extend.

Alpha Statute Memorandums protect the examiner if at the end of the examination it is determined that an assessment cannot be made. It shows that it was a deliberate act and you did not let the statute expire unintentionally.

You have been provided a handout with a sample of an Offshore Compliance Initiative or OCI YY Alpha Statute Memorandum.

In offshore arrangements when using the YY alpha code, the IRM requires the following statement be included:

“As part of XXX Project, it has been determined that there is a likelihood that at least one exception to the 3-year statute of limitations (IRC § 6501(a)) applies to this case, e.g.: (1) IRC § 6501(c)(1)-(3) – the tax return is false/fraudulent; (2) IRC § 6501(e) – there is a substantial omission of income for the 6-year assessment statute to apply; or, (3) IRC § 6501(c)(8) – failure to notify the Secretary of Foreign transfers.”

Common Alpha Statutes for IIC

It is important that the persons making the alpha code determination understand how the tax law impacts the period of limitations applied to each situation.

“NN”	Substantial Omission of Items I.R.C. § 6501(e)
“UU”	Failure to Notify Secretary of Foreign Transfers I.R.C. § 6501(c)(8)
“YY”	Participation in Abusive Offshore Arrangements
“AB”	Form 906 Closing Agreements

Reference I.R.M. 25.6.23-3 – Listing of alpha statute codes



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As I mentioned earlier, it is important that you understand how the tax law impacts the period of limitations when applying an alpha code.

There are many other alpha statutes that are not listed on this slide, for example, EE for non-filers and AA claim for refund. They can be found at IRM 25.6.23-3.

Some of the common alpha codes for IIC as they related to Offshore Arrangements inventory, are:

“NN” Substantial Omission of Items 6501(e) “NN” used is when there is a substantial omission of items. We talked earlier about the 6 year statutes and the FATCA implications. In practical application, if your taxpayer falls under this exception, and you can determine the six year statute based upon the return filing date, you would use the actual six year statute date.

“UU” is the alpha code used when there is a Failure to Notify Secretary of Foreign Transfers 6501(c)(8) Again, if delinquent returns have been filed and you can compute the actual statute date you would use that. If the actual statute date can not be determined you would use the UU. For example, you know that the taxpayer needs to file a form 5471 but it hasn't been filed yet, you would use 04/UU/plus three years.

Let skip over YY and first talk about “AB” used Form 906 Closing Agreements. AB is used only by Tech Services after they have executed the closing agreement.

The most important alpha code for Offshore Arrangements is the “YY”

“YY” Participation in Abusive Offshore Arrangements I.R.M. 25.6.23.6.6.2 and Exhibit 25.6.23-3

- ❖ A deliberate decision to allow the normal statute to expire
 - Must be timely and properly documented and approved by the Territory Manager
- ❖ May be used when the normal 3-year statute has expired before the commencement of an examination
- ❖ If and when it is determined that a statutory exception applies, the YY alpha statute should be replaced by the appropriate alpha statute (i.e. NN, UU)
- ❖ If it is ultimately determined that there is no exception to the normal statute and the assessment cannot be made, update the YY alpha code with the actual ASED and prepare statute expiration report (Form 3999)



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YY is the most common alpha code for Offshore Arrangements. It is not codified like NN or UU and should be used as a last resort alpha code.

YY does not extend the statute. Rather, YY is a deliberate act or statement where the examiner is documenting that they are intentionally allowing the statute to expire because additional time is needed to develop the case.

When using YY alpha code, it is mandatory that you secure a memo which is signed by your manager and territory manager before the actual live statute expires.

YY is also used to establish prior years where the statute is already barred, where we may anticipate there will be fraud or a when a Form 906 closing agreement will be used to support an assessment.

In years prior to inclusion in the IRM 25.6.23, the director would send a memorandum to provide additional guidance to the field on the authority to allow the three-year statute of limitations to expire on returns under examination as part of offshore projects.

I want to read you the memo from IIC Director Rosemary Sereti in 2012 which stated: This guidance applies to all tax periods where the statute of limitations has not yet expired. The principles contained in this memorandum also apply when examination activity is warranted due to understatements which occur in a year where the three year statute has already expired.

As a result of the increased number of examinations being conducted for taxpayers involved in offshore transactions and the high level of public attention these cases receive, examiners should take all appropriate steps to properly develop the facts, law, argument and appropriate penalties for all cases prior to the issuance of a statutory notice of deficiency. Often times in cases that are ultimately determined to involve intent to evade or avoid taxes, it is customary to include as many taxable periods as possible to demonstrate patterns of conduct.

To ensure cases are properly developed and not forced prematurely into court, the courts have recognized that it is entirely appropriate for the Service to continue an investigation after the three year period has expired when the purpose is to determine the existence of fraud or substantial unreported income.

In some instances, examiners will receive cases with limited time remaining on the statute of limitations. In these instances, it will be difficult to accurately document a case-specific basis for the decision to continue the examination of the year beyond the statute date, as required by current standard procedures. Cases selected for examination in offshore projects share many common challenges, namely:

Examinations are complex and include the review of large volumes of documents to review as well as the need to secure documents located outside the United States;

Examinations often involve multiple entities to include partnerships, trusts, and international business corporations; and

There is the likelihood that in many instances, one or more of the exceptions to the general three-year statute of limitations applies.

IRM 25.6.23.6.6.2 and Exhibit 25.6.23-3 provide the authority for a Team Manager to allow the normal assessment statute to expire, in other than joint investigation situations, if he/she has made a determination that special conditions exist that extend the normal assessment statute. The IRM further instructs that the decision on each case should be documented, discussed, and approved, in writing, by the Territory Manager. If additional examination activity is warranted, the statute should be allowed to expire. In those instances, the following provisions apply:

The examiner must timely and properly make a request to the taxpayer to extend the normal assessment statute of limitations and document the file accordingly with the request and the taxpayer's response (or lack of response).

Prior to the expiration of the normal assessment statute, the examiner must discuss the decision to allow the normal statute of limitations to expire with the Team Manager and obtain their approval in writing. The case file will be documented accordingly to include a memorandum signed by the Team Manager, concurred with, in writing, by the Territory Manager. The memorandum should fully set forth the rationale and risk calculus to support the conclusion to allow the normal assessment statute to expire.

In those instances where special conditions exist that would require the examiner to allow the normal statute of limitations to expire, the file should

Summary

- ❖ Offshore Project cases typically include case building information, including guidance papers detailing the offshore arrangement.
- ❖ External and Internal resources are available to gather data on a taxpayer, starting during the pre-audit stage continuing to the close of the examination.
- ❖ There are several exceptions to extend the normal three year statute.
- ❖ YY Alpha Statute does not extend the statute, rather signifies the Service is intentionally allowing the statute to expire to continue developing the case facts.
- ❖ Effective March 18, 2010, FATCA provisions may extend the statute to six years when the taxpayer fails to report more than \$5,000 of income related to Specified Foreign Financial Assets or hold the entire return open for three years upon filing delinquent foreign information returns.

In summary,

Offshore Project cases typically include case building information, including guidance papers detailing the offshore arrangement.

External and Internal resources are available to gather data on a taxpayer, starting during the pre-audit stage continuing to the close of the examination.

There are several exceptions to extend the normal three year statutes.

YY Alpha Statute does not extend the statute, rather signifies the Service is intentionally allowing the statute to expire to continue developing the case facts.

Effective March 18, 2010, FATCA provisions may extend the statute to six years when the taxpayer fails to report more than \$5,000 of income related to Specified Foreign Financial Assets or hold the entire return open for three years upon filing delinquent foreign information returns.

Objectives

You are now able to:

- Identify pre-audit steps for an offshore case
- Identify investigative tools and techniques to obtain foreign records
- Identify several exceptions to the three year statute
- **Explain** FATCA's impact on statutes
- Identify key elements of an Alpha Statute Memorandum
- Identify three commonly used alpha statutes in OA cases
- Identify investigative tools and techniques to obtain foreign records

You are now able to:

- Identify the steps to be taken during the pre-audit of an offshore case.
- Identify investigative tools and techniques that examiners can use to obtain foreign records.
- *Explain* FATCA's impact on statutes
- Identify key elements of an Alpha Statute Memorandum
- Identify three commonly used alpha statutes in OA cases and
- Identify investigative tools and techniques to obtain foreign records.

In offshore cases, we try to do as much leg work up front as possible. We recognize because of the abusive nature of these cases, some of the pre-audit steps may not be successful in the preaudit stage and will need to be conducted later in the examination and sometimes you may want to redo the pre-audit techniques again later in the exam to make sure you have the best and most current information.

The preaudit steps depend on how much information is available related to the offshore scheme, but more preparation up front will yield the most productive interview and we will discuss interviewing in the next session.

We will spend a good deal of time on statutes. Many times offshore cases require more time for development because you have to peel back the onion and the layers may be scattered all around the world. Statute exceptions are an invaluable tool to

hold open current statutes while additional development is required and also to open prior years that appear to be barred. It is important that we examine the whole taxpayer not just the return assigned.

Contact

IPN Contact List

<input type="checkbox"/>	First Name	Last Name	Area of Specialization	E-mail Address
	OA	IPN	Send your comments & questions regarding emerging issues, new trends, new twists on existing issues & feedback to the IPN	lbi.iic.offshore.arrng.ipn@irs.gov

(b) (6)

CPE Question #1

Do you want CPA/CPE Credit for participating in this Lesson?

- a) **Yes**
- b) No

CPE Question #2

True or **False**

All Whistleblower cases include banking information.

This is CPE Question #2

True or False

All Whistleblower cases include banking information.

The answer is False. Whistleblower information comes in all shapes and sizes. Sometimes it may have banking records, correspondence, and banker notes. Other times it may just have a taxpayer's name linking them to an offshore transaction.

CPE Question #3

Which of the following documents may be contained in a bank's KYC file?

- a) Copy of Passport/Drivers License
- b) Proof of residency
- c) Beneficiary Information
- d) Mailing Instructions
- e) **All of the above**

CPE Question #3

Which of the following documents may be contained in a bank's KYC file?

- a) Copy of Passport/Drivers License
- b) Proof of residency
- c) Beneficiary Information
- d) Mailing Instructions
- e) **All of the above**

The answer is E. All of the above plus more may be contained in a bank's KYC file.

CPE Question #4

True or **False**

e-trak is an external website.

CPE Question #4

True or False

e-trak is an external website.

False. e-trak is actually an internal database populated with information secured from cases worked. Many offshore projects require that the examiner update e-trak records.

CPE Question #5

True or **False**

A Formal Document Request (FDR) may be issued to either the taxpayer or to a third party.

CPE Question #5

True of False

False. The Formal Document is issued only to the taxpayer. A summons would be issued to a third party.

CPE Question #6

True or False

The FATCA amendments to the statute provisions are effective for returns with an open statute on March 18, 2010.

True

The FATCA amendments to the statute provisions are effective for returns that have an open statute on March 18, 2010.

The statute must be open under the normal three year statute or any exception on March 18, 2010 for the FATCA provisions to apply.

CPE Question #7

True or **False**

A taxpayer timely files Form 1040 for 2008. If the taxpayer subsequently files TD 90-22.1 (FBAR) for 2008 on March 1, 2010, the 3-year statute of limitations on his 2008 Form 1040 expires on Friday, March 1, 2013 under I.R.C. § 6501(c)(8).

(Effective Sept 2014, TD 90-22.1 was replaced by new Form 114 and is required to be filed electronically.)



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True or False?

A taxpayer timely files Form 1040 for 2008. If the taxpayer subsequently files TD 90-22.1 (FBAR) for 2008 on March 1, 2010, the 3-year statute of limitations on his 2008 Form 1040 expires on Friday, March 1, 2013 under IRC § 6501(c)(8).

This was sort of a trick question. The answer is **False**

Even though the FBAR form is an information return, it falls under Title 31 filing requirement. It does not have any impact on the statute of limitations on assessment of tax on a Form 1040 under Title 26. FBAR is not one of the information returns listed under 6501(c)(8).

FBAR has a flat 6 year statute starting on its due date of June 30th of the following calendar year.

If the question had instead referenced a Form 5471, the statute for the entire return would be March 1, 2013, three years from the filing of the delinquent information return. The FATCA provisions would apply since the normal three year statute would have been open on March 18, 2010. If the TP can show reasonable cause only for the items related to the delinquent information return, the SOL would be open until March 1, 2013. And, if there are no other exceptions, the other items reported on a timely filed Form 1040 return would expire on April 15, 2012.

CPE Question #8

Which of the following items is not included in a YY alpha statute memorandum?

- a) Taxpayer Identification
- b) Tax years involved
- c) Copy of tax return**
- d) Summary of Facts
- e) Signature of Examiner, GM, TM

The answer is C. A copy of the tax return is not required to secure a YY Alpha Statute memo, however the actual memo must present the TP Name, ID, years involved and it must be signed before the statute expires by the examiner, group manager and territory manager.

CPE Question #9

True or **False**

Securing a YY memo extends the statute of limitations.

False, the YY memo does not extend the statute. What it does is provides additional time if necessary to continue developing a case if a statute consent cannot be secured or no other exceptions apply. The Service is deliberately allowing the statute to expire or may open a year where the statute has already expired before assignment to fully develop the case.