

# **Offshore Collection Techniques for ATAT Revenue Officers**

## About the Course

In today's global economy, U.S. taxpayers continue to establish and maintain financial interests outside the United States. Taxpayers often use offshore locations to shelter money, assets, and income.

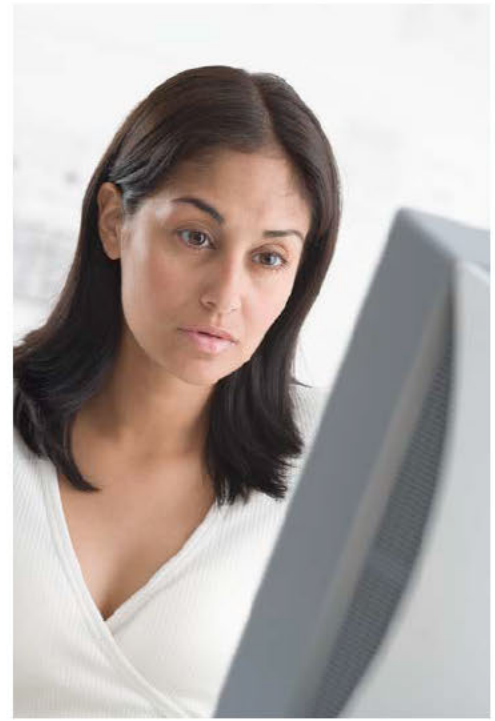
In order to develop an effective collection strategy in these cases, ATAT revenue officers need to have a working knowledge of available tools for collecting from assets or income discovered offshore.



## About the Course (continued)

This course contains the following lessons:

- Introduction
- Foreign Wire Transfer Procedures
- Understanding Alien Status
- IRC 6503 CSED Suspension
- Office of Exchange of Information
- Treasury Enforcement Communications System (TECS)
- Mutual Collection Assistance Requests (MCAR)
- Complex Offshore Collection Tools
- Closing Comments



## About the Course (continued)

This course contains the following navigational features:

**Exit Topic** - Closes the lesson

**Home** - Takes you back to the first page of the lesson

**References** - Contains links to reference documents and websites. You may print the files under the Reference tab.

**Help** - Provides additional navigation information

**Page Display** - Allows you to track your progress through the lesson

**Previous Page** - Takes you backward one page at a time

**Next Page** - Advances you one page at a time

As an added feature, IRS employees share their knowledge and experiences in video and audio segments. The use of a headset is recommended. When the video or recording has finished playing, close the window by clicking the **X** in the upper right corner of the screen. Click **Next Page** to continue with the course.

**Click the link below to view the video.**



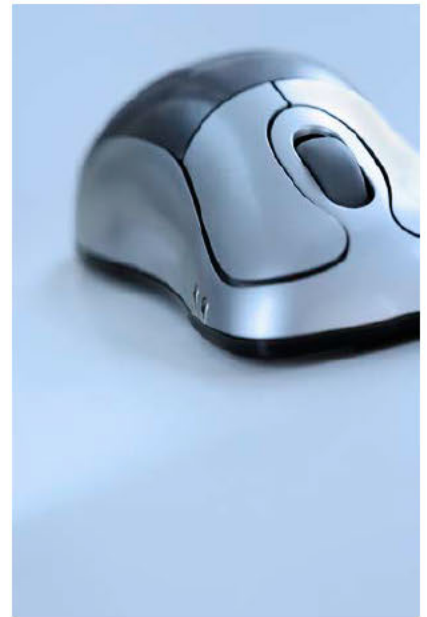
Note: If closed captioning is required, click the launch button then click this symbol



## Summary

This concludes the Introduction.

Click **Exit Topic** then Return to Content Structure to



# **Foreign Wire Transfer Procedures**

## Objective

At the end of this lesson you will be able to describe the steps necessary to wire transfer payments from offshore/foreign accounts to the IRS.



# Summary

This concludes the Foreign Wire Transfer Procedures lesson.

The questions on the following screens will reinforce what you learned in this lesson.



## Question 1

To send an electronic payment from a foreign financial institution, the taxpayer must:

- ✓  a Have an open U.S. bank account
- ✓  b Complete the same day worksheet
- ✓  c Enroll in EFTPS
- ✓  d Be a U.S. citizen

## Question 2

All foreign financial institutions can make electronic payments to the US.

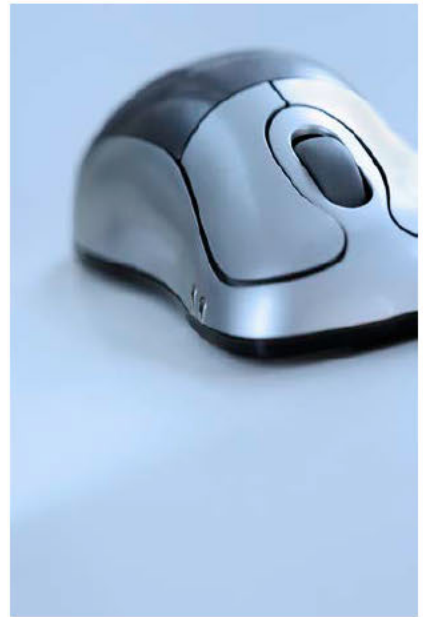
TRUE

FALSE

## Resources

- [Same-Day Taxpayer Worksheet](#)
- [International Electronic Federal Tax Payment/Deposit Instruction Booklet](#)

Click **Exit Topic** then Return to Content Structure to continue.



# **ALIEN STATUS**

## **Objective**

At the end of this lesson, you will be able to determine a taxpayer's alien status based on VISA classification.

# Citizenship Status

In order to identify assets and income that may be located in other countries, it is important to know:

- A person's citizenship status
- A business' country of origin
- Questions to ask to locate assets and income

A person's citizenship status - as resident or alien - determines whether and how they must file an income tax return along with what collection actions may be taken.



# U.S. Citizens

U.S. citizens are people who are:

- Born in the U.S.,
- Born abroad to U.S. parents, or
- Naturalized as citizens by a court proceeding.

All others are considered aliens.





## Categories of Aliens

There are three different categories of aliens. Click the boxes below for the definition and filing requirements for each category.

**Resident**

**Nonresident**

**Dual-status**

## Substantial Presence Test

An individual will be considered a U.S. resident for tax purposes if they meet the substantial presence test. To meet this test, they must be physically present in the U.S. on at least:

- 31 days during the current year and
- 183 days during a 3-year consecutive period that includes the current year.

The 183 days during a 3-year period are calculated as follows:

- All the days the individual was present in the current year,
- 1/3 of the days they were present in the previous year, and
- 1/6 of the days they were present in the third year.

Individuals are treated as present in the U.S. on any day they are physically present in the country at any time during the day. Click [here](#) for an example of a substantial presence calculation.

See [Publication 519](#), *U.S. Tax Guide for Aliens*, for details on substantial presence and exceptions.

## Visa Information

A visa is assigned to an individual by the U.S. Citizenship and Immigration Service (USCIS) based on the individual's U.S. immigrant status. For immigration purposes, aliens may be grouped into four categories:

- Category 1 - Immigrants
- Category 2 - Non immigrants
- Category 3 - Parolees
- Category 4 - Illegal Entrants

Click the boxes below for specific information on each category.

**Category 1**

**Category 2**

**Category 3**

**Category 4**

## Category 2 Class P-1 Visa

Understanding the type of visa under which an alien entered the U.S. is important for determining what questions to ask. For example:

**Category 2 Class P-1** visas are issued to Internationally recognized athletes or entertainers in an internationally recognized group.

If a taxpayer shows you a visa with the classification P-1, ask:

- What is the name of your group?
- Where you are playing?
- What are the U.S. play dates?
- What is the name of the employing business or individual?

If the individual has prior tax liabilities then chances are they have been in the U.S. previously and are non-compliant.

**Note:** Depending on the country, some people can visit the U.S. for up to 90 days without a visa.



# Questions for Taxpayer

To determine the taxpayer's citizenship status and location of income and assets, ask the following questions:

- Are you a U.S. citizen?
- Are you naturalized citizen?
- Where are you from?
- How long have you been in the U.S.?
- What is your citizenship?
- What type of VISA do you have?
- What proof did you provide that allowed your visa?

While these questions are not all-inclusive, they will provide you with a starting place. The number and types of questions you ask will vary with the taxpayer. Be sure to ask questions about assets and income. Certain types of visas do not allow employment but do require proof of the taxpayer's ability to

## Helpful Tools

There are several on-line tools available to assist you in determining citizenship status. Command Code **MFTRAU** requests entity information from the Social Security Administration (SSA). It allows you to obtain a hard copy transcript of the information. Command Code **DDBKD** allows a user to display a variety of information about the SSN that comes from SSA, Health & Human Services, and IRS. In addition to other information, both command codes may provide:

- Date of birth
- Names of parents
- Citizenship information

Individuals who do not have and are not eligible for a social security number (SSN), complete [Form W-7, Application for IRS Individual Taxpayer Identification Number](#), to obtain an ITIN. The taxpayer's Form W-7 can be viewed on-line by completing a 5081 and requesting access to the ITIN real time system (**ITIN RTS**).

Click the boxes below for additional information on each of these tools.

**MFTRAU**

**DDBKD**

**ITIN RTS**

# Summary

This concludes the Alien Status lesson.

The questions on the following screens will reinforce what you learned in this lesson.





## Question 1

A non resident alien is an individual who is not a U.S. citizen but has a "green card".

TRUE

FALSE

## Question 2

A visa is assigned to an individual by:

- ✓  a U.S. Citizenship and Immigration Service (USCIS)
- ✓  b IRS
- ✓  c U.S. State Department

### Question 3

What IDRS command code may provide citizenship information?

✓  a ENMOD

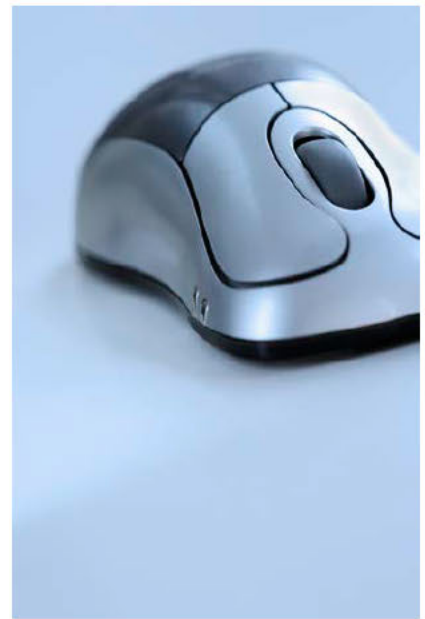
✓  b INOLE

✓  c MFTRAU

## Resources

- [Publication 519, U.S. Tax Guide for Aliens](#)
- [U.S. Department of State Website](#)
- [ATAT Sharepoint Site](#)

Click **Exit Topic** then Return to Content Structure to continue.



# **IRC 6503(c) CSED Suspension**

## **Objective**

At the end of this lesson, you will be able to determine when and how to suspend the CSED if a taxpayer is out of the country.

## IRC 6503(c)

If the taxpayer is outside the United States continuously for a minimum of 6 months, the statute of limitations on collection after assessment is suspended for the amount of time the taxpayer is abroad.



## Recalculating the CSED

Recalculating the CSED under IRC 6503(c) applies to taxpayers who are presently abroad or are currently in the United States, but were abroad for at least six consecutive months after the tax assessment date.





## IRM 5.1.19.3.7 Policies

The policies for recalculating the CSED are impacted by:

- Level of TP cooperation
- Collection potential

Always consult [IRM 5.1.19.3.7, Taxpayer Living Outside the U.S.](#), when considering recalculating the CSED under IRC 6503(c).

For taxpayers who are currently abroad with **installment agreements** or **periodic payment OICs**, the maximum length of CSED recalculation is 16 years from the date of assessment. However, **continuous levies** for taxpayers with international addresses will be recalculated and updated for the maximum number of years allowed under IRC 6503(c) if the taxpayers have not cooperated with the IRS to resolve their liabilities.

## **IRM 5.1.19.3.7 Policies (continued)**

Taxpayers who are currently in the U.S. but have previously been abroad for at least six consecutive months since the date of assessment will generally have a maximum of five years added to their CSED due to prior suspensions.

In rare instances when the taxpayer has significant collection potential but has been abroad for decades, you will recalculate the CSED as necessary for the time anticipated to collect the liability up to the **maximum** time allowed under the code.

## Basis for Recalculating the

Reasons for recalculating the CSED for IRC 6503(c) include the following:

- Form 433A signed by the taxpayer or power of attorney stating the dates of residence abroad.
- Other written information from the taxpayer or power of attorney stating the taxpayer was abroad.
- Oral statements by the taxpayer or power of attorney stating the dates the taxpayer was abroad. This information **must be** clearly documented in the case history. Remember to ask!
- Tax returns consistently filed since the year of tax assessment with a foreign address. Recalculate and update the CSED up to the date the taxpayer signed the return.

When you are not able to use one of the methods above to determine and verify the period the CSED is to be suspended, use data sources such as Accurint, Smart.Alx, IRP, and third party testimony in taxpayer or POA discussions to confirm dates of foreign travel/residence. Do not rely solely on these sources, however, to justify updating the CSED.

## Unable to Confirm

If you are unable to communicate with the taxpayer or POA, you may be able to confirm that the taxpayer has been abroad with government-based travel or residency sources of information such as TECS Historical Travel Records (see [IRM 5.1.18.14.3](#), *Using TECS Historical Travel Information*) or Department of State records of registration with a US Consulate in a foreign country.

When a case has significant collection potential and the preponderance of information indicates the taxpayer has been abroad for the time period in question, you can update the statute for



## Recalculating the CSED

Since IRC 6503(c) automatically suspends the statute, managerial approval is required for all CSED adjustments but taxpayer signature is not.

### When the module is not on ICS:

1. Complete [Form 8620, Statute Recalculation: IRC 6503\(c\)](#)
2. Forward to CCP with managerial approval

### When the module is on ICS:

1. Go into the module to be updated
2. Select "Module Detail" tab
3. Update "Module Date" by entering the new CSED
4. Put calculation details in history

See [IRM 5.1.19.3.7.3, Procedures for Adjusting the CSED](#).

# Summary

This concludes the IRC 6503(c)CSED Suspension lesson.

The questions on the following screens will reinforce what you learned in this lesson.



## Question 1

Fill in the blank in the following statement.

A taxpayer who was abroad for three years after the assessment was made, and then returned to the U.S., would have a CSED recalculation and update of  ✓ ✕ years.

## Question 2

Fill in the blank in the following statement.

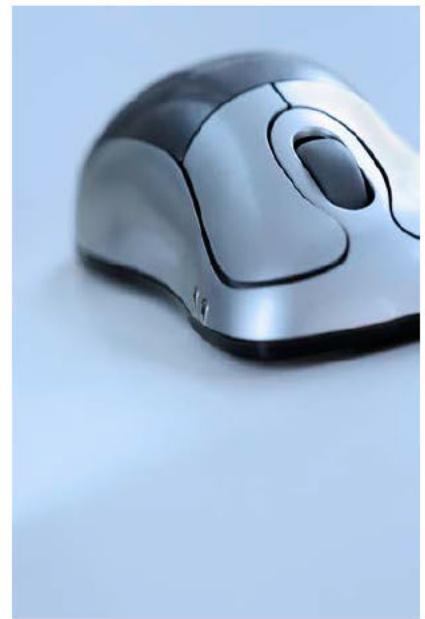
A cooperative taxpayer who was abroad for seven years after the assessment was made then returned to the U.S. would have a CSED recalculation and update of  ✓ ✕ years.



## Resources

- [IRM 5.1.19.3.7, Taxpayer Living Outside the U.S.](#)
- [Form 8620, Statute Recalculation: IRC 6503\(c\)](#)

Click **Exit Topic** then Return to Content Structure to



# **Office of Exchange of Information**

## Objective

At the end of this lesson you will know who to contact in the the Exchange of Information office in order to request information from a foreign country.

## Office of Exchange of Information

**Click the link below to view the video.**



Note: If closed captioning is required, click the launch button then click this symbol



# Summary

This concludes the Office of Exchange of Information lesson.

The questions on the following screens will reinforce what you learned in this lesson.



## Question 1

When making an EOI request, your tax information exchange is:

- ✓  a Spontaneous
- ✓  b Specific
- ✓  c Automatic
- ✓  d All of the above

## Question 2

What type of information can you request through EOI? (*choose all that apply*)

- ✓  a Tax return information
- ✓  b Taxpayer records
- ✓  c Tax shelters
- ✓  d Swiss bank accounts records

### Question 3

Where can you get a detailed list of post jurisdictions?

- ✓  a SERP
- ✓  b LB&I Homepage
- ✓  c Internal Revenue Manual
- ✓  d SB/SE Homepage



## Resources

- [Overseas Posts](#)
  
- [Overseas Posts Contact Information](#)

Click **Exit Topic** then Return to Content Structure to continue.



# **Treasury Enforcement Communications System (TECS)**

# Objective

At the end of this lesson you will know:

- How and when to request a TECS input.
- How to request a TECS travel record .

# Treasury Enforcement Communications System

**Click the link below to view the video.**



Note: If closed captioning is required, click the launch button then click this symbol



## Summary

This concludes the Treasury Enforcement Communications System (TECS) lesson.

The questions on the following screens will reinforce what you learned in this lesson.



# Question 1

TECS input requests are used to:

- ✓  a Determine tax liability
- ✓  b Stop a taxpayer from leaving U.S.
- ✓  c Submit a FOIA request
- ✓  d Locate taxpayers

## Question 2

Which form is used to request TECS Historical travel records?

- ✓  a Form 4844
- ✓  b Form 13931
- ✓  c Form 4106
- ✓  d Form 6668

### Question 3

The basic requirements for placing someone on TECS are: *(Select all that apply.)*

- ✓  a There must be a liability on IDRS
- ✓  b There must be a Notice of Federal Lien filed
- ✓  c The person must not be a U.S. citizen
- ✓  d The person must meet IRM requirements



## Question 4

Letter 4106 informs the taxpayer that he has been placed on the Department of Homeland Security (DHS) watch list.

TRUE

FALSE

## Resources

- [Form 6668, TECS Entry Request](#)
  
- [Letter 4106](#)
  
- [Form 13931, TECS Historical Travel Request](#)

Click **Exit Topic** then Return to Content Structure to continue.



# **Mutual Collection Assistance Requests (MCAR)**

## Objective

At the end of this lesson you will know how and when to submit a Mutual Collection Assistance Request.





# Summary

This concludes the Mutual Collection Assistance Requests lesson.

The questions on the following screens will reinforce what you learned in this lesson.



## Question 1

What does the acronym MCAR stand for?

- ✓  a Mutual Collection Assurance Request
- ✓  b Mutual Collection Assistance Request
- ✓  c Mutual Collateral Assistance Request
- ✓  d Mutual Collection Assistance Report



## Question 2

The purpose of the MCAR Data Sheet is to:

- ✓  a Process payments received
- ✓  b Stop collection actions
- ✓  c Provide details about the taxpayer and the tax assessment
- ✓  d Determine if taxes are currently collectible

### Question 3

When completing the MCAR data sheet, outstanding balances, including accruals, should be at least OJO per IRM 5.1.12.25.3.

TRUE

FALSE

## Question 4

Which country will accept a MCAR for all types of tax?

- ✓  a Germany
- ✓  b Canada
- ✓  c Sweden
- ✓  d France

## Question 5

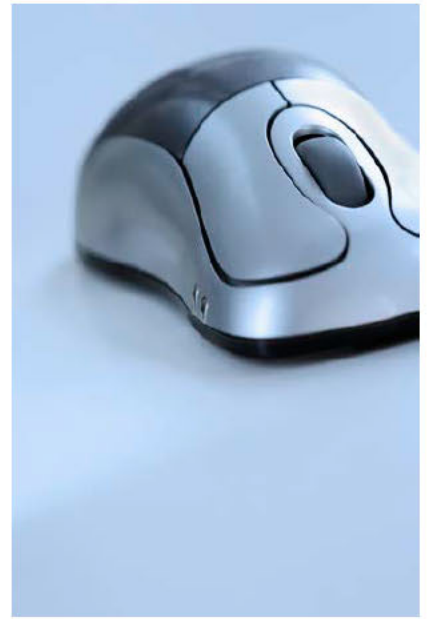
What IDRS command codes will display the date and country of birth?

- ✓  a INOLES
- ✓  b ENMOD
- ✓  c NAMES
- ✓  d MFTRAU

## Resources

- [Data Sheet for Outgoing Mutual Collection Assistance Request \(MCAR\)](#)
- [IRM 5.1.12.25.4, Procedures for Preparing an Outgoing MCAR Request](#)

Click **Exit Topic** then Return to Content Structure to continue.



# **Complex Offshore Collection Tools**

# Objective

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

- Define "repatriation suit".
- Explain what basic requirements must be met by the government when applying to the court for a repatriation order.
- Explain what a Writ Ne Exeat Republica is.
- Explain under what circumstance a Writ Ne Exeat Republica should be requested.
- Determine when to levy upon a domestic branch of a foreign bank.

## Complex Offshore Collection

**Click the link below to view the video.**



Note: If closed captioning is required, click the launch button then click this symbol





# Summary

This concludes the Complex Offshore Collection Tools lesson.

The questions on the following screens will reinforce what you learned in this lesson.



## Question 1

Which significant collection tools are used to obtain control over property? (*Choose all that apply*)

- ✓  a Writ Ne Exeat Republica
- ✓  b Repatriation Order
- ✓  c Customs Order
- ✓  d Appointment of a receiver

## Question 2

If the taxpayer is within the jurisdiction of a U.S. court at the time of the levy is made, the IRS cannot levy assets located outside of the U.S.

TRUE

FALSE

### Question 3

Which order can prevent a non-U.S. citizen from exiting the country?

- ✓  a Appointment of a Receiver
- ✓  b Repatriation Order
- ✓  c Customs Order

## Question 4

A *Writ of Ne Exeat Republica* bars a person from leaving the country.

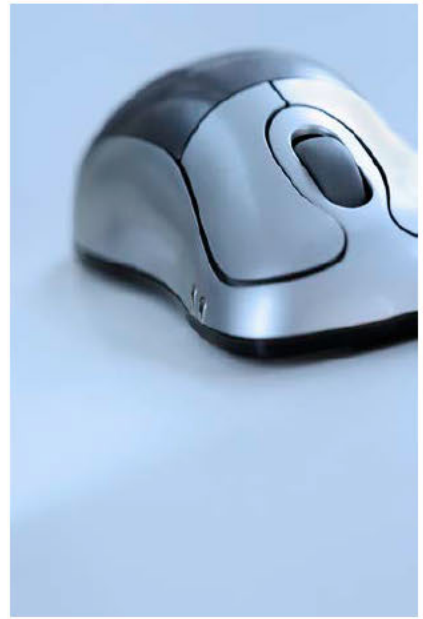
TRUE

FALSE

## Resources

- [IRM 5.21.3.3, Writ Ne Exeat Republica](#)
  
- [IRM 5.21.3.6, Suit to Repatriate Property - Repatriation Orders](#)

Click **Exit Topic** then Return to Content Structure to continue.



## Closing Comments

**Click the link below to view the video.**



Note: If closed captioning is required, click the launch button then click this symbol



# Congratulations!

You have completed the Offshore Collection Techniques for ATAT Revenue Officers course.

You can submit questions related to this material by posting the questions on the Offshore training Discussion Board in the ATAT SharePoint site. Please include your name, in case clarification of the question is needed.

Click Exit Topic then Return to Content Structure to finish.





## Foreign Electronic Payments

*(Picture of Statue of Liberty with New York City in the background is shown followed by a picture of different types of foreign money.)*

When we contact taxpayers who have money offshore, they may be willing to pay their taxes with the funds held in a foreign account. An electronic payment from a foreign financial institution can be used to repatriate offshore funds to the United States to pay taxes due.

*(Picture of Federal Reserve Bank with the following bullet points is shown.)*

A U.S. bank account is **not** required to make an electronic payment from a foreign financial institution.

However, the foreign financial institution must have a relationship with a US-based financial institution, **though** it does not have to be an affiliate of a US-based financial institution.

*(Picture of Same-Day Taxpayer Worksheet is shown.)*

The taxpayer must complete the **Same-Day Taxpayer Worksheet**. The worksheet can be retrieved from the EFTPS web site, a link to it can be found on the ATAT Sharepoint site.

It is recommended that you, the Revenue Officer, complete the worksheet and send it to the taxpayer – or review the completed copy if prepared by the taxpayer.

Provide the taxpayer the tax type code for the payment being made to complete the worksheet. For example, the code for subsequent payment for Form 1040 is 10408.

*(Picture of the Frequently Asked Questions page of the International Electronic Federal Tax Payment/Deposit Instruction Booklet is shown.)*

A comprehensive list of tax type codes for all tax forms may be found in the booklet: “International Electronic Federal Tax Payment/Deposit Instruction Booklet”.

*(Picture of the ATA sharepoint site home page is shown.)*

A link to this booklet and a list of common tax type codes may be found in the ATAT SharePoint site.

The taxpayer need **not** be enrolled in EFTPS to make an electronic payment from a foreign source.

*(Slide with the following information shown.)*

The foreign financial institution must use:

- An American Banking Association - or ABA – number;
- The IRS account name 091036164 FRB MPLS ETA; and
- The IRS account number 20092900.

This information can be found on the ATAT SharePoint site in the folder “Foreign Electronic Payments.”

*(Slide with the following information shown.)*

Should the foreign financial institution need assistance, they may contact the Minneapolis Federal Reserve Bank – at 1-800-382-0045, or by email at [Mpls.ETACBAF@mpls.frb.org](mailto:Mpls.ETACBAF@mpls.frb.org). This information is **also** posted in the ATAT SharePoint site.

*(Picture of a man with reminder notes fastened to his clothing is shown.)*

Please note the following when assisting the taxpayer with a foreign electronic payment: The financial institution will charge a fee for the transfer.

The payment will not be credited if the worksheet is inaccurate or missing information. Again it is recommended that the RO complete or review the worksheet prior to the taxpayer taking it to the foreign financial institution

The taxpayer should keep a copy of the worksheet, and any documentation from the bank for their records. The financial institution should provide a statement identifying the payment.

*(Slide with EFTPS customer service is shown.)*

The taxpayer may call EFTPS customer service at 1-800-382-0045 the day after the payment transaction is completed by the financial institution to receive an EFT – Electronic Funds Transfer - acknowledgement number.

*(Slide with the following bullet points is shown.)*

To summarize:

- A taxpayer may make an electronic payment from a foreign financial institution that has a relationship with a US-based financial institution.
- The taxpayer must complete and provide to the foreign financial institution an accurate and complete same-day payment worksheet to authorize the transaction.
- The transaction may be confirmed through EFTPS customer service.

*(Slide stating “Scenario Completed: Please close this window to return to the course” is shown.)*

## MCAR Example

*(Picture of (b) (6) is shown.)*

Hello everyone, my name is (b) (6). I am a senior program analyst with Collection Policy. As a policy analyst for the ATAT program, I am sometimes contacted by CI when they need civil collection assistance. I would like to tell you about one such case which involved a mutual collection assistance request.

*(Pictures of a CSR on the phone, a Secret Service agent, and a check are shown.)*

A Canadian Bank's fraud department contacted Secret Service stating a large questionable IRS refund check was deposited into an account at one of their branch locations.

*(Pictures of a Secret Service agent, two business professionals, and a letter being signed are shown.)*

The Secret Service contacted IRS Criminal Investigation, who in turn researched the return, realized it was an erroneous refund and sent the foreign bank a letter stating the refund was fraudulent.

*(Pictures of two business professionals and Tracy Rypien are shown.)*

The bank froze the funds in the account and CI contacted Collection Policy for civil assistance in recovering the refund.

*(Picture of a business man is shown followed by the top portion of Form 1041 are shown.)*

In this case, the executor of an estate had filed an inaccurate 1041 return claiming false withholding. The estate was not a US entity and it was verified that the withholding had not been paid to the US Treasury. The estate was not entitled to the refund.

*(Picture of a man working on a computer while talking on the phone and a picture of a business man on the phone are shown.)*

The case was assigned to an International ATAT RO who contacted the Executor. The Executor eluded to cooperation but ultimately neglected to return the erroneous refund. He insisted he was entitled to the money, stating that he filled out the estate tax return claiming the refund based on a dollar amount that he believes the US Government was paid by US banks when his father died. He also stated the withholding amount included theft from family members who had stolen from the estate. This was his way of making restitution.

*(Picture of a business man on the phone along with pictures of France's and Canada's flags are shown.)*

The Executor would not provide proof of citizenship to the RO. He claimed to be both a French and a Canadian citizen. At that point MCAR seemed a viable option.

*(Picture of the Bank of Canada along with the words, "Letter of Indemnity" is shown.)*

A letter of indemnity was issued to the bank holding the funds but the bank's counsel stated the only way the funds would be released to the US was through an order from the Canada Revenue Agency. The RO needed a levy served on our behalf in Canada.

*(Picture of a man working on a computer followed by a picture of a brick wall with the words, "Nominee/Alter Ego".)*

One of the barriers facing the RO was the bank had examined the account of the Estate and determined that there wasn't a valid trust account under Canadian laws. Accordingly, the bank changed the name on the account to the name of the executor.

*(Composite picture of tax items is shown. This is followed by pictures of someone signing a tax form, the Federal Reserve Bank, and Ottawa are shown.)*

Because the check was issued to the estate listing the executor on the second name line and the bank account being in the name of the executor alone, the RO secured counsel approval for nominee alter/ego also preparing two mutual collection assistance requests; one in the name of the estate and one in the name of the executor.

*(Composite picture of tax items is shown. This is followed by pictures of someone signing a tax form, the Federal Reserve Bank, and Ottawa are shown.)*

The MCAR Coordinator verified these liabilities were finally determined and expedited the request through the Competent Authority in DC and Ottawa.

*(Pictures of Ottawa, a letter being signed, a bank, and two business people seated at a table are shown.)*

Ottawa quickly issued a requirement to pay which is the Canadian version of a notice of levy, to the foreign bank and the funds were wire transferred to the IRS via the MCAR coordinators guidance. The amount recovered was more than 10 million dollars

This was definitely a successful MCAR case where we recovered an erroneous refund in full.

*(Slide stating "Scenario Completed: Please close this window to return to the course" is shown.)*

## MCAR

(Picture of (b) (6) is shown.)

Hello, my name is (b) (6). I'm an International Revenue Officer from Buffalo, N.Y. I am also the Mutual Collection Coordinator for the Canadian Treaty.

(Slide with the following bullet points is shown.)

Today I would like to familiarize you with

- The MCAR program,
- The five countries we have an MCAR treaty with,
- The type of tax that can be referred for assistance, and
- How the program may assist you with collection when assets may be located out of the country.

(Pictures of an American flag and a handshake are shown along with the words, "Treaty partner takes whatever actions it would take to collect its own taxes.")

First, I would like to introduce you to the program with a general background and history. The United States has entered into a number of bi-lateral tax treaties that contain broad provisions for assistance with Collection.

Almost all treaties contain some narrow provisions that provide for collection. However, there are currently only five collection income tax treaties and one estate and gift tax treaty that have broader provisions for assistance. Essentially, these five treaties provide that each contracting partner may take whatever actions it would take to collect its own taxes to assist with collection of the taxes owed the other treaty partners.

(Pictures of the flags of the United States, Sweden, Denmark, France, The Netherlands, and Canada are shown.)

The first such mutual collection treaty was the income tax treaty with Sweden in 1939, followed by Denmark and France in 1948, and The Netherlands in 1949. The French Estate and Gift Tax provision was also negotiated with collection assistance provisions at the same time.

By 1990 the world had changed significantly. Our universe of taxpayers was far more mobile; tax havens abroad had become commonplace; and non compliance by U.S. citizens abroad was skyrocketing. Consequently, we decided to test the waters with new treaty provisions. We settled on a Canadian treaty due to the fact that we had a large volume of work in Canada and the similarity of our tax administration. In November 1995, the Canadian treaty covered all taxes collected by the two countries, not just the income or estate and gift taxes covered by the existing European treaties.

*(Picture of a globe with silhouettes of people standing on it along with the words, “Coordination through Competent Authorities” is shown.)*

The growing use of these treaties for international collection efforts required centralized coordination between partners. Coordination is accomplished through the use of competent authorities. U.S. income tax treaties designate the Secretary of Treasury as the U.S. competent authority but this role has been delegated to the L.B.N.I. deputy commissioner for international.

*(Slide showing the following points is displayed.)*

The MCAR Coordinators' role is to review all cases being referred to treaty partners for collection assistance to assure all guidelines are followed appropriately before referral.

The MCAR coordinator also works closely with the Competent Authority of the foreign country throughout the collection process. All liabilities must be finally determined before the referral is sent to the receiving country. None of the referred liabilities should be in the appeal process.

*(Picture of a man working on a laptop is shown.)*

Upon receipt of an acceptable referral, the MCAR Coordinator creates a CIP on ICS to monitor the progress of the collection in the treaty country. All collection avenues do not have to be exhausted to refer to the treaty partner and you can continue working the case while it is referred.

*(Slide with the following information is shown.)*

The RO should advise the Coordinator of any progress on the case that might affect the collection status in the foreign country. For example, if the case is determined currently not collectible due to hardship or an installment agreement is established, you should contact the appropriate MCAR coordinator in order to stop collection actions in the foreign country. The coordinator responds to inquiries from the treaty partner as deemed necessary.

*(Picture of a man working on a computer while talking on the phone is shown along with a picture of a calendar.)*

If taxpayer contact is made, the MCAR Coordinator may need to work the case to resolution.

MCAR Coordinators also monitor statute dates to assure extensions are filed properly and take responsibility for collection actions in the U.S. for incoming cases on behalf of the treaty country.

*(Picture of different types of foreign money is shown.)*

Payments received from the treaty countries are processed by MCAR Coordinators using ICS and processed through normal procedures. Often payments are received in foreign funds or electronically.

*(Picture of the MCAR data sheet is shown.)*

The MCAR data sheet provides the detail about the taxpayer and the tax assessment to assure the treaty partner will have adequate information to collect the tax on our behalf.

*(Pictures of a return being signed, the Federal Reserve Bank, and a globe are shown.)*

Once completed, the MCAR Coordinator forwards the form to the Competent Authority in Washington DC, who in turn forwards it to the Competent Authority in the Treaty country to begin collection action.

*(Screen shot of the My SB/SE website showing the Mutual Collection Assistance Request Job Aids is shown.)*

The link for the data sheet is available on the MY SBSE website on the intranet. (<http://mysbse.web.irs.gov/Collection/international/mcar/jobaids/default.aspx>) The template is in Microsoft WORD and it is only necessary to fill in the blanks.

*(Slides of the following points are displayed.)*

Consider the following tips as you complete the MCAR Data Sheet:

- Canada will accept any type of tax. If referring a corporate tax, please include place of incorporation as they will not collect on their own country's entities. Generally Canada can take any enforcement action the IRS can take as the tax systems almost mirror each other. As for the other countries, only income tax liabilities can be referred to Denmark, France, The Netherlands and Sweden. However, Estate and Gift tax liabilities can be referred to France.
- Please include an address on the form where the treaty partner can reach the taxpayer.
- Try to determine citizenship of the taxpayer before referral. To do this, use IDRS command code MFTRA-U which, displays date and country of birth. INOLE "S" can also be used when determining date of birth of the taxpayer. When in doubt about citizenship, proceed with the referral and advise the treaty partner citizenship is unknown.
- Treaties with France, The Netherlands, and Sweden provide that they will not collect from their own citizens.
- The treaties of Denmark and Canada provide they will not collect from taxpayers who were Danish or Canadian at the time the tax liability arose, regardless of current citizenship. For example, if the taxpayer is currently Canadian, but was a US citizen or a citizen of another country at the time the liability was due, Canada will accept the referral.
- Generally the outstanding balance, including accruals, should be at least (b) (7)(E) per IRM 5.1.12.25.3. However, smaller liabilities, especially for Denmark and Sweden, are acceptable on a case by case basis where circumstances warrant.
- The description of the liability should include the basis of the assessment, such as tax on return as filed by the taxpayer, substitute for return, or exam assessment. If the case is a 1099-OID erroneous refund, that should also be identified on the form.

- The section listing the tax liabilities should include accruals computed for at least 180 days so that the treaty partner will be able to make demand immediately upon receipt of the referral from us.
- It is very important to identify any known assets or income sources in the treaty partner country to facilitate collection by the treaty partner. For example bank accounts, property addresses and income information would help expedite resolution of the case.
- Delinquent returns will not be pursued by the foreign country.
- If the taxpayer has been identified as potentially dangerous, this fact should be clearly noted.
- The Data sheet should include the SBSE letterhead and must be signed by group manager, the requesting revenue officer, the MCAR coordinator and the Competent Authority in Washington DC. This is necessary in case there is court action.
- The Coordinators for each treaty country are listed on the referral form. Secure email is sufficient to send the treaty request forward. Any questions regarding the referral should be directed to the appropriate Coordinator listed on the form.
- The Data Sheet is forwarded by the MCAR Coordinator to Competent Authority in Washington DC for processing and your form ultimately ends up at the Competent Authority in the treaty country. The receiving treaty country generally begins taking enforcement actions allowable under that country's tax law guidelines. This may include filing liens, levies and seizures as deemed appropriate
- Refer to IRM 5.1.12.25.4 for procedures for preparing an outgoing MCAR request. MCAR coordinators work closely with competent authorities of the mutual treaty partners. If you are unsure or have questions about whether MCAR could be an effective collection tool in your case, contact the appropriate MCAR coordinator for that treaty partner.

*(Slide stating “Scenario Completed: Please close this window to return to the course” is shown.)*



## Offshore TECS Success Story

*(Title slide followed by picture of Colorado mountains is shown.)*

Hello, my name is (b) (6) and I am an ATAT group manager in Colorado.

*(Diagram of relationship between Brian O'Neill, Cindy Bouldin, and Homeland Security is shown.)*

My group had an interesting experience with TECS that I would like to tell you about. We were contacted by (b) (6), the TECS Coordinator advising that he had been informed by Homeland Security, that a taxpayer placed on the DHS watch list was arriving at Denver International Airport sometime that same day. The only information given was the taxpayer's name, social security number, and which airline she was traveling on.

*(Picture of woman working on a computer is shown.)*

I immediately researched ICS for the case assignment. This taxpayer owed a very large sum of money for multiple years. The case was assigned to an international revenue officer who was out of the office that day. I assigned one of my Revenue Officers to review the case file, recommend a plan of action and prepare a summons to the taxpayer.

*(Picture of airline ticket counter is shown.)*

I met the Revenue Officer at the airport where we spoke with an airline representative at the ticket counter. We learned what flight the taxpayer was on, when it was arriving in Denver, and what seat the taxpayer was in. We also learned the name of the man she was traveling with. Security passes were requested to allow us past airport security checkpoints and to enable us to wait at the arrival gate for the taxpayer.

*(Picture of airplane landing is shown.)*

Since the flight was not arriving until 8:30 that evening, we contacted a co-worker to search the internet for a picture of the taxpayer and her traveling companion. We learned both taxpayers were involved in several anti-tax forums.

*(Picture of hands exchanging an envelope with a Summons sticking out of the envelope is shown.)*

We were unable to obtain a picture of the taxpayer so we placed the summons in an envelope with the taxpayer's name and address on it. The Revenue Officer stood by the arrival gate with the taxpayer's last name written in bold letters on the back of the envelope. The man traveling with the taxpayer noticed the envelope and alerted her to it.

*(Picture of a woman accepting a large envelope is shown.)*

When the Revenue Officer handed the envelope to the taxpayer and advised he was serving a summons that required the taxpayer to bring records to the IRS on a specific date and place, the man traveling with her became upset and threw the envelope onto the floor. The taxpayer picked up the envelope and took it with her.

*(Picture of a man working on a computer is shown.)*

The next day we learned that the man traveling with the taxpayer had the same address as the taxpayer and also owed taxes. Since his case was also assigned to a revenue officer, we contacted the RO to let him know his taxpayer was in Colorado for the next two weeks.

*(Picture of an IRS building is shown.)*

The taxpayer hired a power of attorney who accompanied her to the summons appointment. We secured a Collection Information Statement and requested additional information from the taxpayer. We advised we would release the DHS watch upon receipt of all requested information.

*(Picture of a Form 433-1, Collection Information Statement for Wage Earners and Self-Employed Individuals, is shown.)*

Because of the DHS watch list, we were able to secure an updated financial statement along with supporting documentation.

*(Slide stating "Scenario Completed: Please close this window to return to the course" is shown.)*

## Repatriation and Writ of Ne Exeat Republica

*(Title slide followed by a picture of Colorado is shown.)*

Hello, my name is (b) (6). I am an ATAT Revenue Officer working out of Grand Junction, Colorado.

*(Picture of Form 1099-OID, Original Issue Discount, is shown.)*

My case involved a Form 1099, Original Issue Discount Refund Recovery where the taxpayer was issued a refund by using the OID redemption scheme.

*(Picture of Form 668-A, Notice of Levy, is shown.)*

I served jeopardy levies but was unsuccessful in recovering the refund.

*(Picture of a globe with a magnifying glass followed by pictures of a bank building and foreign money are shown.)*

I then followed the money by issuing summonses and secured evidence showing the money had been wired offshore to a bank in Uruguay.

After locating a New York branch of the Uruguay bank, a levy was issued but the bank did not honor the levy. Next, Area Counsel was consulted to discuss available options such as a civil suit for failure to honor a levy and repatriation.

*(Picture of a key with the following information is shown.)*

Key facts included the taxpayer's blatant actions to defeat collection, along with the taxpayer's remaining assets in the United States, which were insufficient to collect the liability.

*(Picture of "Department of Justice" sign along with the words "Repatriation Order filed – TP believed to be within US" is shown.)*

Since Counsel felt repatriation would be the most effective collection avenue, a recommendation for a repatriation suit was forwarded to the Department of Justice.

This required me to work closely with the DOJ attorney throughout the suit process. At the time the Repatriation suit was filed in District Court, the taxpayer was believed to be in the jurisdiction of the United States.

*(Picture of Ecuador's flag with the words, "Letters Rogatory – Formal written request by a court to a court in a foreign jurisdiction" is shown.)*

It was later discovered the taxpayer had moved his family and household goods to Ecuador and he had significant property holdings there. Additionally, the taxpayer was operating several businesses abroad. One business website even detailed his preparation and process of moving to

Ecuador and provided a physical address in Ecuador that the Department of Justice used for serving the taxpayer with letters rogatory.

Once we knew the taxpayer was not in the jurisdiction of the United States, we realized that *just* having the repatriation order would not be effective.

*(Diagram showing parties involved in a Writ Ne Exeat Republica is shown.)*

The DOJ attorney felt we had a strong case for obtaining a Writ of Ne Exeat Republica. Since this avenue had not been pursued in quite some time, no one was sure how the Writ would work. I researched procedures in the IRM, but didn't find my answers. I then proceeded by contacting Collection Policy and the International TECS Coordinator, (b) (6), while the DOJ attorney contacted National Office and other DOJ attorneys. Working together, we determined how the writ functions.

*(Slide displaying the following points is shown.)*

When the taxpayer returns to the United States, the Writ authorizes Homeland Security to hold the taxpayer in custody and notify the Department of Justice.

The Department of Justice contacts the U.S. Attorney in the area the taxpayer is being held, and arranges for the U.S. Marshall to take him into custody.

Once in custody, the U.S. Marshall transports the taxpayer to the same District Court that issued the writ.

The taxpayer is ordered to either surrender his passport and all international travel documents or post a cash bond in the amount of the tax liability. If the taxpayer refuses to surrender his passport or post bond, he remains in custody.

*(Picture of a courtroom with the words "Writ Ne Exeat Republica" is shown.)*

In my case, the Department of Justice filed an emergency motion for Writ Ne Exeat Republica and it was approved by the judge 29 days later. This was something new and different for the judge too!

Once the Writ was approved, the International TECS Coordinator was notified and the TECS system was updated with the Writ information.

*(Picture of slide with the following information is shown.)*

Unfortunately, the taxpayer has yet to return to the United States, but we are ready for him when he does. The Writ is our guarantee the taxpayer will be required to honor the repatriation order. Procedures for Repatriation Orders are found in IRM 5.21.3.6, and Writ of Ne Exeat Republica in IRM 5.21.3.3.

*(Slide stating "Scenario Completed: Please close this window to return to the course" is shown.)*

## Introduction Script

Hello, I am (b) (6). As Director of Field Collection I want to welcome you to this first Offshore Collection Techniques for ATAT revenue officers course. This class is intended for revenue officers who are faced with the challenges of collecting from taxpayers with financial interests held outside of U.S. borders. As is pointed out in the Internal Revenue Service Strategic Plan, the IRS “must invest to meet the challenges of international tax administration “by training employees “to identify and understand issues in a complex and cross-border international environment”. By attending this class you will be taking steps toward developing those skills needed to ensure that taxpayers with income and assets abroad “pay their fair share of taxes.”

In our global economy, U.S. taxpayers often establish and maintain financial interests outside the United States. This in itself is not an abusive scheme, but taxpayers may be using offshore locations to shelter money, assets, and income. In recent years, numerous offshore schemes have been devised and marketed to U.S. residents which allow income streams to go unreported and undetected and to keep assets out of the reach of creditors. In this fashion, substantial amounts of financial activity have been improperly shielded from the U.S. tax system.

As you may already be seeing, the nature of collection inventory, especially ATAT inventory, includes more and more cases with offshore components. Many of you played an important supportive role in the success of the 2009 Offshore Voluntary Disclosure Initiative by ensuring appropriate payment was made by the participants of the initiative.

Some of these cases provided you with your first experiences with offshore assets. As Exam expands its efforts to combat these offshore abusive schemes, more and more of field collection inventory also includes offshore issues.

In order to develop an effective collection strategy in these cases, revenue officers need to have a working knowledge of the tools that are available for gathering information and collecting from assets or income discovered offshore. Different rules and collection techniques may apply when venturing offshore. As Counsel points out in this training, steps that are routine within the country can have significant implications outside U.S. borders. As a result, all revenue officers, but particularly ATAT revenue officers, must be familiar with global collection techniques and investigative tools for case investigation and resolution.

This course will cover some basic information and delve into some complex offshore collection techniques. You will hear from subject matter experts with “Exchange of Information” office, TECS and MCAR programs. Counsel is also here to discuss more complex offshore tools. It is important to remember, though, that this training is a starting point. The world of collection is constantly evolving. As ATAT field revenue officers working closely with Counsel, Collection Policy and Exam, you continue to develop new and innovative ways to resolve collection problems.

Working Offshore cases can be really difficult.

What if you have an offer in compromise and learn the person has a bank account in the Caymans? Or you learn the taxpayer owned a company in another country and you need information about the business' assets?

What if someone declares bankruptcy but you think they own property in Canada and did not list it? How could you find this information if the taxpayer is not cooperating?

If the United States has a tax treaty or a tax information exchange agreement with the country, the answer may be Exchange of Information.

Hello, I'm (b) (6), Program Manager for Exchange of Information – or EOI. EOI is a tool in your foreign information gathering tool kit. What this tool essentially does is put foreign tax administration to work for the IRS and have them gather information in their country for us.

EOI's legal basis is a bi-lateral treaty or a tax information exchange agreement (TIEA). From agreement to agreement the language varies, but all have the following elements:

- Competent authorities exchange information.

- In order to carry out the convention or laws pertaining to the taxes covered.

The process can only work legally through these “competent authorities.”

You, as a revenue officer, cannot legally request information from, or disclose information to a person in a foreign tax administration. There are three kinds of exchange: specific, spontaneous and automatic. When you make a request to use EOI, yours will be a specific exchange.

You can get all kinds of data through EOI. Let me give you an idea.

An EOI request can result in obtaining tax return information which includes filing status, income & expenses, declarations, last known address and information returns.

You can also get various kinds of taxpayer records, such as banking, brokerage, the taxpayer’s accountant, attorney and insurance records as well as their business records including invoices, contracts and loan agreements. And this isn’t the end! You might also be able to get records of interviews with the taxpayer or other witnesses, public records, information about assets, tax shelters or transfer pricing transactions as well as information about a company’s creation or associations with other



companies. You can even get bank account information from countries formerly known as bank secrecy jurisdictions such as the Cayman Islands, the Bahamas, the Channel Islands, and Panama. Right now a new tax treaty with Switzerland is pending with the Senate that may allow the same access to Swiss Bank accounts in the future.

The EOI Program operates out of several locations around the world, each with its own jurisdiction. Washington DC is the Headquarters. London, Paris, Frankfurt and Beijing are our overseas posts. Plantation, Florida is a domestic post.

- The HQ cover Australia, New Zealand, Canada and France.
- London has the United Kingdom, Northern Europe, the Channel Islands and Southern and Eastern Africa.
- Paris covers Southern Europe (except France), and Northern and Western Africa.
- Frankfurt has Central and Eastern Europe and the former Soviet Union.
- Beijing, our newest post, has South East Asia, the South Pacific, Japan and other countries of the Pacific Rim except for Australia and New Zealand.

- Finally there is Plantation Florida which covers Central and South America, the Caribbean and Mexico.

To get a detailed list of post jurisdictions, go to the LB&I home page and search on “Post Jurisdictions”. You will see a link that will take you to the most current Post Jurisdictions chart.

If I’ve succeeded in selling you on EOI, you probably want to know, “How do I do it?” The process is reasonably simple:

1. Make a call to the Attaché or EOI manager with jurisdiction over the country from which you need information. This is a good idea to be certain what you are looking for might actually be available. You may need to input a MITS ticket to get international dialing on your phone because most IRS offices do not have this capability. This initial contact is critical as not all countries maintain the same type of records that are required in the U.S. We want to be sure what you are looking for is going to be available and advise you appropriately.

2. It is also critical to make this contact as early as possible as this is not an overnight process. Because it may take time to get the information, let your manager know about your request.
3. Once we know what you want is or may be obtainable in the other country, we will need for you to send a written request by fax, email, or memo through your Group Manager to the Tax Attaché or EOI manager with jurisdiction.

The written request has two components:

1. Basic Information which we do not share with the foreign tax administration and
2. The EOI Request which we do share with the foreign tax administration.

First, of course, is the name of the taxpayer under exam or investigation.

Next provide your name, phone and the address or FAX to which we should send the response.

Include any information you think we should know about -- but which we should not share with the foreign tax administration.

The EOI request will take some time and it's important to provide a lot of detail because this is what we will send to the foreign tax administration.

Taxpayer and intermediary identification is very important.

- You will need to include the name and date of birth. For decedents, the date of death might be helpful.
- Also include the taxpayer's latest address along with any e-mail or other internet addresses.
- This section should not include any U.S. Taxpayer Identification Numbers due to PII concerns.

Provide the same kind of information for any other relevant foreign taxpayers or entities and their relationship to your taxpayer.

If your request involves a payment by an intermediary, mention its name, address and TIN as well as the name and address of the bank branch and the bank account numbers.

You need to provide background information to help the foreign tax administration understand **what** you want, **why** you want it and **how** you are going to use it.

Be sure to make your tax administration purpose clear. It is helpful to briefly describe any relevant U.S. domestic law because the foreign Competent Authority may not be familiar with our domestic law.

Make sure you identify that this is for collection activity, describe the stage of the case and any statute issue that may be involved.

Clearly describe what information you want, for example, invoices, contracts, etc. and how these things are relevant to your case.

Specify the types of taxes and the tax periods involved. If you have any hard due dates because of statutes or court dates, be sure to make those clear.

If you have special format requirements because of a court proceeding, describe it and specify any other needs such as certification.

Finally, if notifying the taxpayer could jeopardize your investigation, ask the foreign tax administration not to perform the notification.

In an ideal world, the turnaround would be a week or so. But because this involves a foreign tax administration, sometimes getting a response can take a while. Every 60 days you will get a status report. You may also get

a partial reply. When this happens, the EOI analyst follows up and gives you a status report until we can close the case.

Because we are always trying to improve our processes, we will send you a feedback questionnaire with the response. We'd really appreciate it if you would complete it and send it back to us within 30 days. After that amount of time, you may no longer remember particular details that would make our service better.

Tell us what we're doing right so we can be sure to keep on doing that.

And tell us where you think we need to improve.

That's about it. If you need to get in touch, just go to the LB&I home page and search on "Exchange of Information" for links to our site.

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## **Offshore Collection Techniques - Counsel Script**

(# Contains Official Use Only material)

**Scott:** Hello. My name is Scott Hovey, and this is Han Huang. We are attorneys from SBSE Area Counsel in Washington D.C. We are here today to give you an overview of collection tools that may be of use to you in the international collection area.

**Han:** When collecting taxes from assets overseas, you should first consider normal collection tools. For instance, properly assessed taxes are subject to the federal tax lien, so filing a notice of federal tax lien will generally be a preliminary step in offshore cases. Likewise, a revenue officer can summon domestic sources to obtain information and can issue routine levies to collect on domestic assets.

**Scott:** Although you will generally start international collection against domestic sources with routine collection tools, you must be cautious before applying any routine technique outside of the United States. Steps that are routine within the country can have significant implications outside of U.S. borders. For instance, in some countries, it is a criminal action to act on behalf of a foreign government without prior permission, and thus you should never contact a party overseas without first coordinating with either the Office of Chief Counsel, or the tax attaché in that country.

**Han:** The tools we want to focus on today should be used only when your normal tools are ineffective. Again, these do not replace your normal collection techniques; they supplement them when routine collection techniques are not enough. They are the Repatriation Order, Appointment of a Receiver, a *Writ Ne Exeat Republica* and a levy on a domestic branch of a foreign bank. We are also going to mention some more creative solutions we have utilized in specific situations.

**Scott:** A Repatriation Order, Appointment of a Receiver, and a *Writ Ne Exeat Republica* all require judicial involvement. While a levy on a domestic branch of a foreign bank does not require judicial approval before issuing the levy, there is a good chance the levy will be challenged. Similarly, although we may be able to develop more creative solutions to specific problems, these will likely be challenged in some way in a court of law. As soon as you start considering any of the tools we are going to discuss today, you should anticipate litigation. There are two guidelines to keep in mind - document and coordinate.

**Han:** You cannot over document the file. The government will have to explain your actions to a judge and convince the Court that extraordinary relief is appropriate. We will have to show the judge that we did everything we were required to do before coming to the Court. The better the file is documented, the easier it is to present our case.

**Scott:** Coordination in these cases is essential because affirmative law suits require approval by at least three stakeholders: the Office of Chief Counsel, someone within your



command chain, and International Advisory. Because each office's perspective is slightly different, each will be looking for something else in the file. By coordinating during case development, you will be able to ensure that your file has addressed all the critical items that the approving official requires, and, hopefully, avoid delaying your case because you need to obtain additional information. And, of course, coordination will keep you out of trouble. With these preliminary issues in mind, let's get down to it.

**Scott:** Since a Repatriation Order, Appointment of a Receiver, and a *Writ Ne Exeat Republica* all require judicial involvement, we would like to start with a few comments about federal courts. A United States District Court judge has very broad authority to issue orders necessary to enforce federal tax laws. A federal judge also has broad authority to force people to comply with the Court's orders. You have all heard the term contempt of court. Although there are different types of contempt, for our purposes we are discussing a person's failure to comply with a direct order from the Court. In this situation, a judge is authorized to punish that person in order to secure compliance. If the Court finds the failure to comply warrants it, the Court has the power to order the Federal Marshals to take custody of the taxpayer and hold him until he complies. Thus, while the IRS lacks authority to incarcerate a taxpayer for failing to pay taxes, the Court can put a taxpayer in jail.

**Han:** Although the Court can incarcerate a person for failure to comply, you should never view this as the IRS using the process to put a taxpayer in jail. The only proper purpose for any civil collection is to collect the tax. If through this process the taxpayer

refuses to cooperate with a court order, it is the Court's prerogative to sanction a taxpayer by putting him in jail or fining him until he complies.

**Scott:** Now that you understand the court's basic authority, there is one more concept you should understand about courts; personal jurisdiction. In order to pursue a Repatriation Order, Appointment of a Receiver, or a *Writ Ne Exeat Republica* the IRS must file affirmative litigation. This means the IRS must sue the taxpayer directly. In order to sue an individual in federal court, the Court needs jurisdiction and the individual needs to be personally served with the complaint. Personal service means someone must personally hand the paperwork to the person. Thus, as a practical matter, you cannot initiate a proceeding unless you know where the person is. Personal jurisdiction means the taxpayer must either reside in the United States, be found in the United States or have sufficient contact with the United States. If one of these things is present, the Court will have the authority to subject that person to the Court's orders. With the current pace of globalization, personal jurisdiction in the international context is an evolving concept.

**Han:** Although service and personal jurisdiction is simple enough for a U.S. resident, it can be tricky if the taxpayer lives overseas. Personal jurisdiction has to exist in order to initiate the case. If you are able to find the taxpayer within the Court's territorial jurisdiction, you may bring the suit even though the presence is temporary. For instance, let's say the taxpayer is a member of a Board of Directors, and you discover that the taxpayer will be at an annual board meeting in D.C. on August 5<sup>th</sup>. Since the taxpayer will be found in D.C. on that date, you can serve the taxpayer at the board meeting, thus

securing the Court's jurisdiction over the taxpayer. Alternatively, as discussed in another presentation, in certain situations, the taxpayer can be placed on a watch list and the IRS will be notified when the taxpayer enters the U.S.

**Scott:** If a suit referral is based on either a belief that the taxpayer will likely be returning to, or passing through the United States in the near future, or the taxpayer has sufficient contact with the United States to establish personal jurisdiction, the basis for such a belief should be well documented in the file. Also, it will take some time to actually initiate a suit. If you are basing jurisdiction on a belief that the taxpayer will be temporarily in the US, you should coordinate with counsel as soon as possible. This way we can ensure that all of the procedural hurdles are out of the way before the person enters the Court's jurisdiction.

**Han:** Now that we have covered two of the fundamental concepts that apply in all affirmative litigation, let's turn to the specific types of relief we can request in Federal Court. Generally, affirmative suits are not mutually exclusive, and can be combined to fulfill your particular needs. What you seek will depend on what you are trying to accomplish, whether you are trying to obtain documentary information, secure assets, or actually secure access to a particular person. There are numerous tools that are available to obtain information on foreign assets which will be covered elsewhere. What we would like to focus on are options for securing assets as well as access to individuals. In short, a Repatriation Order or an Appointment of a Receiver are used to obtain control over

property. A *Writ Ne Exeat Republica*, however, is designed to ensure the Court's access to a particular person.

**Scott:** A repatriation order is an order issued by the Court requiring the taxpayer to transfer his assets back to the United States. After establishing personal jurisdiction, the government will have to show that there is an outstanding tax liability, an asset exists offshore that can be used to satisfy the tax liability, and insufficient domestic assets exist to satisfy the tax liability.

**Han:** You should also remember all of the remedies discussed today are complementary, not exclusive. In the event that you believe that the assets sought in the repatriation order are complex, the government can also request that the Court appoint a receiver to help administer the assets. Similar to the requirements for a repatriation order, to get a receiver appointed, the government will generally have to show that the assets in the United States are not sufficient to satisfy an assessed liability and that assets exist outside the United States. The government will also have to demonstrate the assets are significant or complex. The Court will also weigh factors such as the type of assets being repatriated, whether the assets need liquidation, and whether the taxpayer has been dissipating assets.

**Scott:** While a repatriation order and a receiver may help you with assets that are offshore, a writ of *ne exeat republica* may allow you to stop a taxpayer from leaving the country with the assets in the first place. A writ of *ne exeat republica* is a court order

barring a person from leaving the country, usually accomplished by the Court by seizing the person's passport. The only proper purpose of a writ ne exeat republica is to preserve the Court's power over the individual. It should only be used when the taxpayer is about to leave the United States, they are unlikely to return to the United States, and they have transferred their property or concealed cash or other property so that it may be taken out of the United States. If you are considering a writ ne exeat republica, you must develop the following factors which will be weighed by the Court:

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

**Han:** We mentioned earlier that a court can assert personal jurisdiction over a person passing through the United States. You may want to know if the government can obtain a writ ne exeat republica against a foreign citizen visiting the United States.

**Scott:** A writ ne exeat republica is the Court securing its authority over an individual, and the Court could order a foreign citizen to stay in the country. However, an RO should not attempt to secure such a remedy without very high level coordination.

Remember, a *writ ne exeat republica* will only be used for significant liabilities when significant assets exist, but are not easily subject to domestic collection techniques. Since the result is that a foreign citizen cannot leave the U.S. until they transfer sizable assets to the U.S., this is a sensitive matter that could have international implications. While it is legally permissible and may be appropriate in the right situation, think carefully and coordinate extensively.

**Han:** In addition to direct judicial involvement, the Service has several administrative tools to obtain overseas assets. Some of these tools you are familiar with from your domestic work. Most notably, the IRS can issue an administrative levy on a domestic branch for funds held overseas. Although this action is taken under the IRS's general levy authority, there are special requirements that must be documented before the levy on the U.S. branch of a foreign bank can be enforced. It is very important that the U.S. office be a branch of the foreign home office, as opposed to a subsidiary of a foreign parent. This can generally be verified from the company's web site or the National Information Center (NIC) website. The levy must also specify that the IRS intends to reach overseas deposits.

**Scott:** In addition to these requirements, there are also requirements that change based on the location of the taxpayer. If the taxpayer is within the jurisdiction of a U.S. court at the time the levy is made, the IRS can levy assets located outside of the U.S. If the taxpayer is not within the jurisdiction of a U.S. court at the time the levy is made, the IRS can levy on funds transferred from the U.S. in order to hinder or delay the collection of a

tax imposed by the Internal Revenue Code, as well as any funds actually held within the U.S.

**Han:** You may have heard that in some countries it is a crime for a foreign bank to honor an IRS levy. One would think that in these countries, the IRS is just out of luck. However, the IRS's levy authority derives from U.S. law, and it is U.S. law that governs subsidiaries within the United States. Although the IRS can levy the funds, enforcing such a levy has significant policy aspects that the Service would consider before taking any action. Regardless, since it is legal to issue such a levy, there may be advantages to serving the levy even though it may not be enforced for policy reasons. There is a good chance the foreign institution will freeze the account until they figure out what to do. The IRS can then pursue a repatriation order, and has some assurance that the money will be available. Further, if the account is frozen, the taxpayer may be willing to cooperate with the IRS or agree to a settlement because they no longer have access to the funds. Such settlements would be negotiated and approved through Counsel.

**# Scott:** The IRS may also pursue Customs Orders, an administrative action which can prevent a non-U.S. citizen from exiting the country, pending the resolution of a collection matter. To do so, the RO makes a request to the Treasury Enforcement Communication System coordinator to input a Customs Order into TECS. Close coordination must be maintained between the TECS coordinator and the revenue officer as the TECS coordinator may need to provide instructions to the Department of Homeland Security if the taxpayer is prevented from leaving the country.

**Han** - Although we have discussed the main extraordinary tools available to an RO, we would like to remind you that the world is constantly evolving, and Chief Counsel is always willing to analyze creative solutions to the IRS' problems. For example, the IRS is currently dealing with the fallout from a promoter who was recently indicted for promoting a bogus OID scheme in Canada. During the scheme, several banks contacted the IRS regarding very large treasury checks presented to them by Canadian citizens. In some cases, the IRS was able to get the bank to file an interpleader action. In this type of case, the banks deposited the money in the Canadian Court, and the U.S. went to the Court arguing that the Canadian citizen stole the money from the United States.

**Han:** Scott - Now that we have had an overview of the rules, let's discuss a few hypothetical examples.

**Scott:** Certainly

**Han:** Let's say we have a U.S. taxpayer that started a successful business. She has generated one million dollars in income tax liability. She is now engaged to be married to a successful Lichtenstein banker. You find out her business was recently sold netting 2.5 million in cash. A summons on her bank account reveals that she closed her checking and savings accounts and transferred the balance of fifty thousand dollars to Lichtenstein, but you do not know where she has deposited the 2.5 million she received from her business. What can you do?



**Scott:** That is a very interesting scenario, Han. In this situation, the priority for me would be making sure the Court secures jurisdiction over the taxpayer until her liabilities are paid. As we discussed, a writ *ne exiat republica* requires the IRS to establish that the taxpayer is about to leave the United States, is unlikely to return, and they are taking their property with them. Since the taxpayer has sold her business and is marrying a person successfully employed outside of the United States, we can likely show that the taxpayer is leaving the country not to return. We can also show that she has transferred money out of the country, and that there are 2.5 million dollars in funds unaccounted for. However, because the writ *ne exiate* will only prevent the taxpayer from leaving the jurisdiction, I would also pursue a repatriation order. As we discussed earlier, a repatriation order requires the government to show that there is an outstanding tax liability, and assets exist offshore that can be used to satisfy the tax liability, and there are insufficient domestic assets to satisfy the tax liability. Although the 2.5 million dollars is unaccounted for, the taxpayer has transferred other assets offshore. The 2.5 million dollars may in fact be in the U.S. and thus obtainable through normal procedures. However, because of the totality of the situation, it is reasonable to assume it is not. As part of the judicial process for the repatriation order, the Court can ask the taxpayer where the money is and hold her in contempt if she refuses to disclose.

**Scott:** Han – Let me ask you one, Let's say you are trying to collect \$200,000 in assessed liabilities against a U.S. citizen, sixty-five years in age. The taxpayer has worked with the same U.S. company for 25 years. The taxpayer raised three children in

the same home in upstate New York. The children are now fully grown and all live with their own children in the same general area. The taxpayer is retirement eligible. About four years ago, the taxpayer's company was purchased by a British company. At that time, the taxpayer took a position with the British company and moved to London. The liability arose as part of the taxpayer exercising options that vested when the company was sold. The taxpayer frequently returns to the U.S. to visit his family. He has retained his U.S. house as a rental, but it is mortgaged and the collection value is \$50,000.

Although you suspect there are additional U.S. assets, you have been unable to locate them. The taxpayer banks at a foreign bank, which happens to have a U.S. branch. If you were able to obtain bank records from this bank, you suspect you will be able to identify where his assets are stored. What can you do?

# **Han** – Intriguing. I think in this case, I would start with really exploring my routine collection tools. Since there is U.S. real estate, I would want to make sure that the Notice of Federal Tax Lien is properly filed to protect our interest in the house. I would also contact the current tenant to determine where they send their rent check, and I may summon copies of the canceled checks in order to determine if their money is going into a U.S. bank account. There should also be a person in the U.S. that effectuates repairs to the property that may have banking information. A summons to whoever is servicing the mortgage may also lead to a U.S. bank account. After exhausting the domestic information sources, I would contact the attaché in London for assistance in securing information from the employer to attempt to identify retirement accounts. Since the foreign bank has a U.S. branch, I would levy the U.S. branch for any property held in the

United States. I would also start the process for a repatriation order. Although the taxpayer is not within the U.S., I could have the taxpayer flagged by the Treasury Enforcement Communications System or TECS, and serve them once they enter the country. Once the Court secures jurisdiction for the repatriation order, you can use discovery to locate assets.

**Scott** – How about a writ ne exeat republica?

**Han** – I do not think the Court would grant one. As stated above, it must be likely that the taxpayer will not return to the United States in order to obtain such a writ. In this case, the taxpayer has family ties, retained his house, and is nearing retirement. So I think it is doubtful the Court would find that the taxpayer is unlikely to return.

**Scott** – Good point.

Well, this brings our presentation to a close. What we presented today was an overview of significant collection tools you should be aware of in international collection. As we stated previously, counsel is here to help facilitate your collection efforts. If you have questions, do not hesitate to contact your local counsel office.

Collection Policy Director Comments –

Hello, I'm (b) (6), Director, Collection Policy. I hope you have found this training useful. This is the first of many courses being developed by Collection Policy to help ATAT revenue officers expand their knowledge of international tax and offshore collection techniques.

When taxpayers utilize offshore abusive transactions, they do so to underreport their income and avoid or evade U.S. taxes. It is important to have an understanding of how an offshore transaction works and the challenges it presents. Collection Policy is committed to providing ATAT revenue officers with information on current offshore schemes and the skills to resolve them.

As you know, in 2009, Commissioner Shulman announced the first offshore voluntary disclosure program stating the Service's overall goal was "to get those taxpayers hiding assets offshore back into the system." The response was overwhelming with over 15,000 taxpayers taking advantage of the program.

In addition to encouraging compliance with offshore tax laws, the 2009 initiative also required the disclosure of the identities of the banks and promoters who encouraged this non compliance. This information identifies other promoters who have engaged in marketing offshore schemes to U.S. taxpayers and is sure to result in future promoter investigations and participant examinations for some time to come. In fact, the IRS Commissioner recently announced the 2011 offshore initiative as another opportunity for taxpayers to voluntarily come forward and resolve their tax matters.

As Bobby pointed out at the beginning of this course, this is just a starting point. This training was an opportunity to develop the necessary skills for working collection cases that are complex and present challenges when information and assets are held offshore.

In closing, I would like to thank you for remaining steadfast in pursuing those that hide money offshore and in support of the IRS mission.