
TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION

Office of Inspections and Evaluations



*Inspection of the Exchange of Information
Process at the Plantation, Florida, Office*

July 25, 2012

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TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

July 25, 2012

MEMORANDUM FOR COMMISSIONER, LARGE BUSINESS AND INTERNATIONAL
DIVISION

R. David Holmgren

FROM:

R. David Holmgren
Deputy Inspector General for Inspections and Evaluations

SUBJECT:

Final Inspection Report – Inspection of the Exchange of Information
Process at the Plantation, Florida, Office (#IE-12-007)

This report presents the results of our inspection to ensure that the Internal Revenue Service's (IRS) interaction with treaty partners through the international Exchange of Information (EOI) Program is conducted with the consistent application of relevant policies and procedures. The EOI Program is an important tool for effective tax administration in the global environment. International agreements, such as tax treaties and Tax Information Exchange Agreements (TIEA), are administered to avoid double taxation and to enforce the tax laws.

Synopsis

This review determined that the EOI Program, Plantation, Florida, office is largely operating in compliance with applicable Internal Revenue Manual (IRM)¹ requirements. The inspection covered all 190 cases in the Plantation office EOI Program inventory that were closed from April 1, 2011, through March 31, 2012. Each case file was reviewed for documentation to verify that as many as 15 specific controls detailed in the IRM were appropriately followed.

The results of two of the inspection items generated recommendations for improvement to the EOI Program operating procedures, as follows:

¹ The IRM is the IRS's primary official source of instructions to staff relating to the administration and operations of the IRS. It contains the directions employees need to carry out their operational responsibilities.



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- **2nd Level Managerial Approval (Specific Exchanges)** – The IRM requires that all requests to foreign tax authorities be approved by second-level management.² Our review determined that only 39 percent of the EOI cases involving an outgoing request to a foreign tax authority were approved by second-level management as required.
- **60-Day Status Reports** – The IRM requires that EOI Program offices provide 60-day status reports to the IRS field offices that have submitted a request for information from a foreign tax authority.³ Our review determined that, while most of the EOI cases involving a U.S.-initiated request pursuant to a tax treaty or a TIEA contained evidence of the required status report, 37 percent did not.

The results of four of the inspection items revealed that the Plantation office is largely in compliance with IRM regulations:

- **Competent Authority Delegation** – The IRM requires that all exchanges of information with foreign tax administrations must occur through the U.S. Competent Authority.⁴ Our review determined that 100 percent of these exchanges were processed through the U.S. Competent Authority delegate.
- **IRS Criteria Checklist** – The IRM requires that each case “include a checklist that is to be completed on each incoming request to ensure that the foreign request meets IRS criteria.”⁵ Our review determined that checklists were completed in 98 percent of the cases involving a foreign-initiated request.
- **Receipt Confirmation** – The IRM requires that, upon receipt by a field office of a foreign-initiated request, the manager will confirm receipt with the EOI Program office and provide the assignment information.⁶ Our review determined that the field office confirmed receipt of the request in 96 percent of the cases in which foreign-initiated requests were referred to a field office.
- **Field Office 60-Day Response/Status** – Regarding foreign-initiated requests that are referred to a field office, the IRM requires that the revenue agent or international examiner obtain the requested information within 60 days from the date of the transmitting memorandum or provide a status report and the estimated completion date.⁷ Our review determined that the field office provided the requested information or a status report within 60 days in 91 percent of the cases.

² IRM 4.60.1.2.4.2(3), *Written Request Format* (Jan. 1, 2002).

³ IRM 4.60.1.2.4.3(4), *U.S. Initiated Specific Requests* (Jan. 1, 2002).

⁴ IRM 4.60.1.2(3), *Specific Exchange Program* (Jan. 1, 2002).

⁵ IRM 4.60.1.2.5(2), *Foreign Initiated Specific Requests* (Jan. 1, 2002).

⁶ IRM 4.60.1.2.5.1.1(3), *Procedures for SBSE and LMSB Cases* (Jan. 1, 2002).

⁷ IRM 4.60.1.2.5.1.1(3), *Procedures for SBSE and LMSB Cases* (Jan. 1, 2002).



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The remaining nine inspection items were not applicable since the Plantation office did not process and close during the time frame under inspection any of the applicable types of cases. Our review determined that none of the requests from foreign competent authorities were seeking Grand Jury information, there were no cases involving Simultaneous Examinations, and there were no industry-wide exchanges with foreign tax authorities. Additionally, although the inspection reviewed 32 Spontaneous Exchange cases, none of the cases were initiated by a U.S. examiner requiring that the exchange be processed through a second-level manager (*i.e.*, all of the cases were initiated by foreign tax authorities).

Recommendations

We recommended that the Assistant Deputy Commissioner, International, evaluate whether the following IRM requirements beneficially contribute to the effective administration of the EOI Program:

- The IRM requires that all requests to foreign tax authorities be approved by second-level management.
- The IRM requires that EOI Program offices provide 60-day status reports to the IRS field offices that have submitted a request for information from a foreign tax authority.⁸

We further recommended that the Assistant Deputy Commissioner, International, ensure that the IRM and any other local procedural guidance for EOI Program operations be revised as necessary to be consistent with the evaluation described above and that effective managerial oversight procedures are established to ensure compliance with those regulations.

Response

IRS management agreed with our recommendations. The IRS has evaluated the value of requiring second-level managerial approval for EOI requests to foreign tax authorities and will revise relevant regulatory guidance to allow for approval by front-line managers. Additionally, the IRS has determined that the requirement will remain for EOI Program offices to provide 60-day status reports to the IRS field offices and will ensure compliance through operational reviews and training workshops.

Please contact me at (202) 927-7048 if you have questions or Scott Sanders, International Programs, Office of Inspections and Evaluations, at (202) 215-5796.

⁸ IRM 4.60.1.2.4.3(4), *U.S. Initiated Specific Requests* (Jan. 1, 2002).



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Abbreviations

EOI	Exchange of Information
IE	International Examiner
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
RA	Revenue Agent
SBSE	Small Business/Self-Employed Division
SCIP	Simultaneous Criminal Investigation Program
SEP	Simultaneous Examination Program
TIEA	Tax Information Exchange Agreement
TIGTA	Treasury Inspector General for Tax Administration
U.S.	United States



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Background

The Exchange of Information (EOI) Program is an important tool for effective tax administration in the global environment. International agreements, such as tax treaties and Tax Information Exchange Agreements (TIEA), are administered to avoid double taxation and to enforce the tax laws.

Treaties generally obligate the competent authority to utilize the same measures to secure information for a treaty partner as they would for their own tax purposes.

This review determined that the EOI Program, Plantation, Florida, office is largely operating in compliance with applicable Internal Revenue Manual (IRM)¹ requirements. The inspection covered all 190 cases in the Plantation office EOI Program inventory that were closed from April 1, 2011, through March 31, 2012. Each case file was reviewed for documentation to verify that as many as 15 specific controls detailed in the IRM were appropriately followed.

This review was performed at the EOI Program Plantation, Florida, office during the period April 9 through 13, 2012. We conducted this inspection in accordance with the Council of the Inspectors General for Integrity and Efficiency Quality Standards for Inspections. The EOI cases under inspection were all cases in the inventory of the Plantation office that were closed from April 1, 2011, through March 31, 2012. Detailed information on our objectives, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II. A listing of the countries within the jurisdiction of the Plantation office is provided in Appendix V.

¹ The IRM is the Internal Revenue Service's (IRS) primary official source of instructions to staff relating to the administration and operations of the IRS. It contains the directions employees need to carry out their operational responsibilities.



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Results of Review

A review of statutes and the IRM regulations identified the following guidance relevant to the EOI process that was used in this inspection:

- IRM 4.60.1, *International Procedures Handbook — Exchange of Information* (Jan. 1, 2002);
- IRM 1.2.43.13, *Delegation Order 4-12 (Rev. 2)* (July 1, 2010);
- Title 26 United States Code Section 6103(k)(4);
- United States Model Tax Convention of November 15, 2006; and
- *Treasury Order 150-10* (Apr. 22, 1982).

The local EOI procedural guidance for the Plantation office that was provided to the Treasury Inspector General for Tax Administration (TIGTA) is in the form of three documents, detailing procedures for three types of EOI cases.² *Chapter 1* provides guidance for cases “where the IRS field office personnel request information that is publicly available in a foreign country.” *Chapter 2* provides guidance for outgoing cases “where field personnel request information, pertaining to a specific taxpayer, and the request must [... be] sent to a competent authority of the country to obtain the information.” *Chapter 3* provides guidance for those cases involving an incoming request from a foreign tax authority “for information for a ‘specific’ taxpayer or tax entity that is under examination or investigation in the requesting country.”

The TIGTA reviewed a total of 190 EOI case files. Ninety-one of the cases involved a foreign-initiated request from a tax treaty or TIEA partner for tax information regarding specific taxpayers (two of which were rejected without further processing). The remaining 99 cases did not contain a foreign-initiated request. Specific exchanges of information constituted the bulk of these cases (148 cases). The majority of the specific exchanges, 91 cases, were incoming requests from foreign tax authorities; 57 of the requests were outgoing requests initiated by IRS field offices. There were no industry-wide exchanges or exchanges pursuant to the Simultaneous Examination Program (SEP). There were 32 cases involving Spontaneous Exchanges, all of which were initiated by a foreign tax authority. Additionally, there were 10 cases requesting international assistance that did not require an exchange of information through the competent authority of a foreign tax administration.

² This reference material does not have a title as a single manual. The separate sections provided to the TIGTA are entitled *Chapter 1*, *Chapter 2*, and *Chapter 3*.



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Figure 1: EOI Program Office Case Inventory

EOI Case Inventory Summary Plantation, Florida	Total
EOI Program Office Inventory (Closed 4/1/2011 through 3/31/3012)	190
Specific Exchanges of Information	148
U.S.-Initiated Specific Exchange of Information	57
Foreign-Initiated Specific Exchange of Information	91
Foreign-Initiated Requests for Grand Jury Information	0
Foreign-Initiated Requests Rejected	2
Simultaneous Examination Program Exchanges	0
Industry-Wide Exchange of Information	0
Spontaneous Exchange of Information	32
U.S.-Initiated Spontaneous Exchange of Information	0
Foreign-Initiated Spontaneous Exchange of Information	32
Non-EOI Requests for International Assistance	10

Source: TIGTA inspection of EOI case files, Plantation, Florida, April 2012.

Exchanges of Information With Foreign Tax Administrations Were Transmitted Through the U.S. Competent Authority Delegate

Exchanges of tax information with foreign tax administrations must be accomplished through the U.S. Competent Authority. This exchange of information is governed by the IRM, the disclosure prohibitions of the Internal Revenue Code, and the provisions of the tax treaty or the TIEA with the foreign tax administration.

The IRM states the following regarding exchanges of information through the U.S. Competent Authority:



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Some foreign governments restrict investigative activities within their borders by other tax administrations. Hence, all exchanges of information with foreign tax administrations must occur through the U.S. Competent Authority.³

The Internal Revenue Code allows for the disclosure of returns or return information:

...to a competent authority of a foreign government which has an income tax or gift and estate tax convention, or other convention or bilateral agreement relating to the exchange of tax information, with the United States but only to the extent provided in, and subject to the terms and conditions of, such convention or bilateral agreement.⁴

Tax treaties and TIEAs contain similar provisions regarding competent authorities. The U.S. Model Tax Treaty specifies the responsibilities of the competent authorities as follows:

The competent authorities of the Contracting States shall exchange such information as may be relevant for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes of every kind imposed by a Contracting State to the extent that the taxation thereunder is not contrary to the Convention, including information relating to the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, such taxes.⁵

The U.S. Model Tax Treaty further defines the competent authority in the United States as “the Secretary of the Treasury or his delegate.”⁶ The Secretary of the Treasury has ordered that the Commissioner of the Internal Revenue Service will be responsible for the administration and enforcement of the internal revenue laws.⁷ The IRS has delegated the authority to act as the competent authority to the Deputy Commissioner (International), Large Business and International Division, and further authorizes the following officials to sign on behalf of the competent authority delegate for matters arising under tax treaties, tax information exchange agreements, tax coordination agreements, tax implementation agreements, and mutual legal assistance treaties or agreements:⁸

- Director, Treaty Administration and International Coordination;
- Senior International Advisors;
- Program Manager, Exchange of Information and Overseas Operations;

³ IRM 4.60.1.2(3), *Specific Exchange Program* (Jan. 1, 2002).

⁴ Title 26 United States Code Section 6103(k)(4).

⁵ United States Model Tax Convention of November 15, 2006, Article 26, *Exchange of Information and Administrative Assistance*.

⁶ United States Model Tax Convention of November 15, 2006, Article 3 *General Definitions*.

⁷ *Treasury Order 150-10*, (Apr. 22, 1982).

⁸ IRM 1.2.43.13, *Delegation Order 4-12 (rev 2)* (July 1, 2010).



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- Program Manager, United States Territories;
- Group Managers, Treaty Administration;
- Internal Revenue Service Tax Attachés; and
- Revenue Service Representatives.

Our inspection found that 176 EOI cases involved the exchange of tax information with foreign tax administrations. In the remaining cases, 10 were U.S.-initiated requests for international assistance that did not require an exchange of information pursuant to a tax treaty or a TIEA with a foreign tax authority and four involved a request from a foreign tax authority that did not result in an outgoing exchange of information. Our review determined that all of these 176 exchanges (100 percent) were processed through the U.S. Competent Authority delegate, either incoming or outgoing. In four of the cases (2 percent), the revenue service representative delegated the authority to another official and there was a properly executed memorandum from the revenue service representative on file in the EOI Program office to support this delegation of authority to “act as the RSR [revenue service representative] and to sign outgoing replies for the U.S. Competent Authority.”⁹

Not All Requests to Foreign Tax Authorities Were Approved by Second-Level Management

The IRM requires that all requests to foreign tax authorities be in writing if it is complex in nature, the gathering of information will require a significant investment of time to obtain, or a Tax Treaty/TIEA partner will be gathering the information.¹⁰ This regulation includes a requirement that all requests be approved by second-level management.¹¹

Chapter 2 of the local EOI procedural guidance for the Plantation office specifies that all requests from IRS offices should be reviewed to determine if the request has been properly made. That guidance states the following:

The proper official should have signed the request. This is generally a manager at the second-level above the initiator.

Our review determined that 57 of the EOI cases involved a request to a foreign tax authority for tax information. The remaining 133 cases did not include an outgoing request to a foreign tax authority. Of the 57 outgoing requests, 22 requests (39 percent) were approved by second-level management, 27 requests (47 percent) were approved by first-level management, seven requests (12 percent) did not have any managerial approval documented in the case file, and one request (2 percent) came from the Department of Justice.

⁹ Delegation of Authority Memorandum (Mar. 8, 2012).

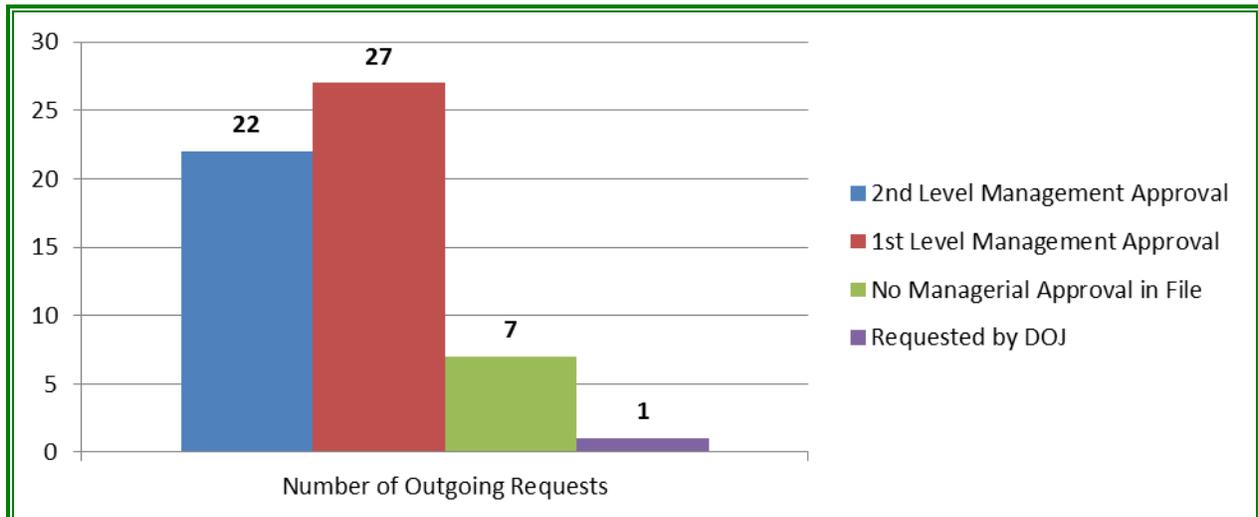
¹⁰ IRM Section 4.60.1.2.4.2 (1), *Written Request Format* (Jan. 1, 2002).

¹¹ IRM Section 4.60.1.2.4.2 (3), *Written Request Format* (Jan. 1, 2002).



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Figure 2: Level of Managerial Approval for Outgoing EOI Requests



Source: TIGTA inspection of EOI case files, Plantation, Florida, April 2012.

Recommendations

Recommendation 1: The Assistant Deputy Commissioner, International, should evaluate the relative value added to the EOI process of having requests to foreign tax authorities approved by second-level management. This evaluation should consider both the benefits to the program and the potential processing delays and other potential hindrances to the effectiveness of the program resulting from second-level managerial approval.

Management's Response: The IRS agreed with this recommendation. The IRS evaluated the existing IRM 4.60.1 and compared it to the existing IRM 25.5.1 with respect to the issuance of Administrative Summonses by various IRS functions. IRM 25.5.1.3.2 provides for front-line manager approval of an Administrative Summons. The relevant IRM 4.60.1.2.4.2(3) with respect to requests to foreign tax authorities will be amended to allow for approval by front-line managers.

Recommendation 2: The Assistant Deputy Commissioner, International, should ensure that the IRM and other related guidance be revised, if necessary, to reflect the conclusions of the evaluation referenced in Recommendation 1.

Management's Response: The IRS agreed with this recommendation. IRM 4.60.1.2.4.2(3) with respect to requests to foreign tax authorities will be amended to allow for approval by front-line managers.



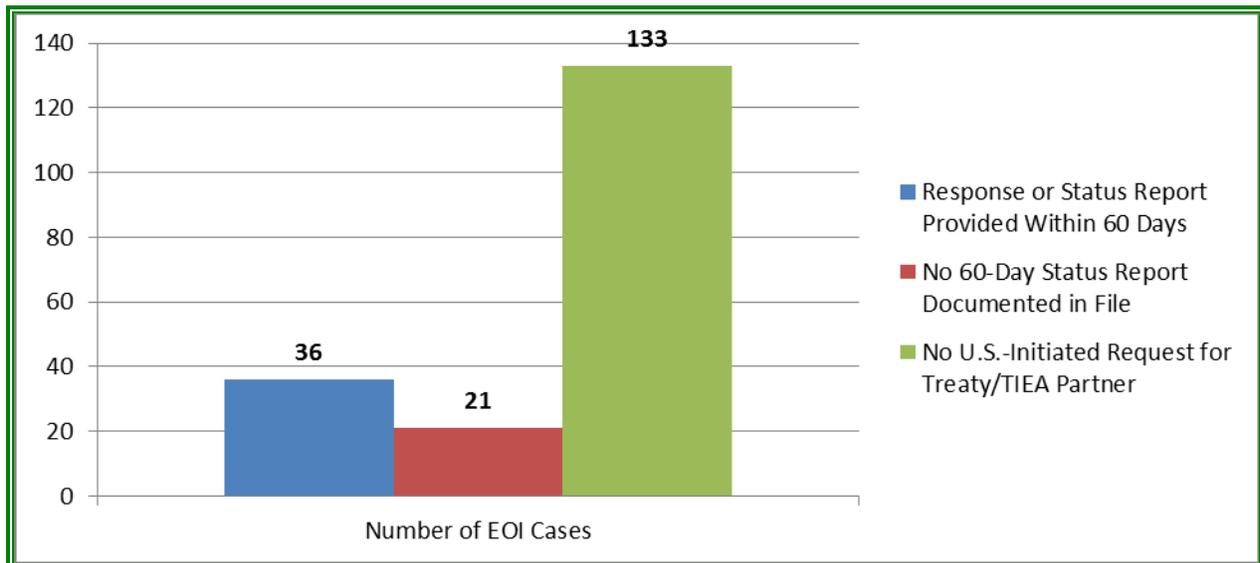
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The Exchange of Information Program Office Did Not Always Provide 60-Day Status Reports

The IRM requires that, for all U.S.-initiated requests pursuant to a tax treaty or a TIEA, “the IRS Tax Attaché or EOI program analyst assigned to the case will provide a status report on the case every 60 days.”¹² Chapter 2 of the local EOI procedural guidance for the Plantation office does not contain a requirement for status reports to the IRS field office.

Our review determined that 57 of the EOI cases involved a U.S.-initiated request pursuant to a tax treaty or a TIEA. The remaining 133 cases did not include a U.S.-initiated request for information from a treaty/TIEA partner. In 36 of the 57 cases that contained a U.S.-initiated request (63 percent), the EOI program office provided and documented in the case file a response or a status report within 60 days. In the remaining 21 cases (37 percent), no response or status report within 60-days was documented in the file.

Figure 3: 60-Day Status Reports Provided by EOI Program Office



Source: TIGTA inspection of EOI case files, Plantation, Florida, April 2012.

Recommendations

Recommendation 3: The Assistant Deputy Commissioner, International, should evaluate the relative value added to the EOI process of requiring the EOI Program offices to provide 60-day

¹² IRM 4.60.1.2.4.3(4), *U.S. Initiated Specific Requests* (Jan. 1, 2002).



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status reports to the IRS field office. This evaluation should consider both the benefits to the program and the potential administrative burden that this requirement places on the EOI Program offices.

Management's Response: The IRS agreed with this recommendation. The IRS has determined that the requirement for EOI Program offices to provide 60-day status reports to the IRS field offices will remain to ensure a sense of urgency and maintain a line of communication.

Recommendation 4: The Assistant Deputy Commissioner, International, should establish adequate managerial oversight procedures to ensure compliance with this requirement, if applicable, based on the evaluation referenced in Recommendation 3.

Management's Response: The IRS agreed with this recommendation. The Assistant Deputy Commissioner, International, will ensure compliance through annual operational reviews and by delivering workshops focused on both procedural and technical aspects of the EOI Program.

Recommendation 5: As the IRM and the local EOI procedural guidance for the Plantation office do not contain the same requirement for 60-day status reports, the Assistant Deputy Commissioner, International, should ensure that the IRM and other procedural guidance throughout the Service-wide EOI Program consistently reflect the results of the evaluation referenced in Recommendation 3.

Management's Response: The IRS agreed with this recommendation. The Plantation EOI procedural guidance will be amended to adhere to IRM 4.60.1.2.4.3(4) regarding the requirements for 60-day status reports.

Checklists Were Completed to Ensure That Foreign-Initiated Requests Meet IRS Criteria

Foreign-initiated requests from a tax treaty or TIEA partner for tax information regarding specific taxpayers are considered on a case-by-case basis.¹³ The IRM requires that each case “include a checklist that is to be completed on each incoming request to ensure that the foreign request meets IRS criteria.”

The inspection found that 91 of the EOI cases involved a foreign-initiated request from a tax treaty or TIEA partner for tax information regarding specific taxpayers. The review determined that checklists were completed in 89 (98 percent) of the cases involving a foreign-initiated request. In two of the cases (2 percent), the foreign request was rejected without further need for completion of the checklist.

¹³ IRM 4.60.1.2.5 (2), *Foreign Initiated Specific Requests* (Jan. 1, 2002).



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Field Offices Confirmed Receipt of 96 Percent of Foreign-Initiated Requests

The IRM states the following regarding foreign-initiated requests that are referred to a field office:

Upon receipt by the Field Office, the manager will confirm receipt with the IRS Tax Attaché or the EOI program analyst and provide the assignment information, including contact numbers and the name of the RA [revenue agent] or IE [international examiner] assigned to the case.¹⁴

The review determined that there were 57 cases in which a foreign-initiated request was referred to a field office. In 32 cases, the EOI Program office processed the request independently without referring the request to a field office, and two cases involved foreign-initiated requests that were rejected without further processing.

Of the 57 cases in which foreign-initiated requests were referred to a field office, the field office confirmed receipt of the request in 55 of the cases (96 percent). In two of the cases (4 percent), there was no contemporaneous receipt confirmation provided by the field office.

Field Offices Provided the Requested Information or a Status Report Within 60 Days in 91 Percent of the Cases

The IRM states the following regarding foreign-initiated requests that are referred to a field office:

The RA or IE will obtain the requested information within 60 days from the date of the transmitting memorandum. If unable to meet this deadline, the RA or IE will contact the IRS Tax Attaché or EOI program analyst to provide a status report and the estimated completion date.¹⁵

Our review determined that there were 57 cases in which a foreign-initiated request was referred to a field office. The field office provided the requested information or a status report within 60 days in 52 of the cases (91 percent). In five of the cases (9 percent), there was no response or status report provided by the field office within 60 days.

¹⁴ IRM 4.60.1.2.5.1.1(3), *Procedures for SBSE and LMSB Cases*, (January 1, 2002).

¹⁵ *Ibid.*



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Grand Jury Information Was Not Requested by Foreign Tax Authorities

Information from a U.S. Grand Jury may be furnished to a foreign competent authority for tax administration purposes; however, the IRM specifies that the “tax treaty partner will be required to meet the requirements of showing a particularized need for the information that is sought preliminarily to or in connection with a judicial proceeding.”¹⁶ Our review determined that none of the requests from foreign competent authorities were seeking Grand Jury information.

The Exchange of Information Program Office Processed No Simultaneous Examination or Industry-Wide Exchange Cases

As described in Appendix I, the inspection objectives included a review of Simultaneous Examination Program cases for compliance with IRM requirements. However, our review determined that no cases involving Simultaneous Examinations were processed in the EOI Program Plantation, Florida, office. Similarly, the objectives of this inspection included reviewing industry-wide exchanges with foreign tax authorities; however, no exchanges of this type were processed and closed in the EOI Program office during the time frame under review.

No Outgoing Spontaneous Exchanges Were Processed Through the Plantation Office

A spontaneous exchange of information is furnished to a tax treaty/TIEA partner without a previous specific request. It typically involves information discovered during a tax examination, investigation, or other procedure which suggests or establishes noncompliance with the tax laws of a Tax Treaty/TIEA partner. The information may pertain to nonresident aliens, foreign corporations, U.S. citizens and domestic corporations, or other taxpayers.¹⁷

Regarding spontaneous exchanges of information, the IRM states:

The examiner securing the information will forward it to the second-level manager. The second-level manager will forward the information to the IRS Tax Attaché who has jurisdiction over the country to which the information pertains.

The inspection determined that 32 cases of spontaneous exchanges were processed through the EOI program office; however, none of the cases were initiated by a U.S. examiner requiring that the exchange be processed through a second-level manager (*i.e.*, all of the cases were initiated by foreign tax authorities).

¹⁶ IRM 4.60.1.2.6(1), *Grand Jury Cases* (Jan. 1, 2002).

¹⁷ IRM 4.60.1.5(2), *Spontaneous Exchanges of Information* (Jan. 1, 2002).



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Appendix I

Detailed Objective, Scope, and Methodology

The overall objective was to ensure that the IRS's interaction with treaty partners through the international EOI Program is conducted with the consistent application of relevant policies and procedures. Specifically, the inspection was designed to determine if the EOI operations in the Plantation, Florida, office comply with IRM¹ guidance, as follows:

- **Competent Authority Delegation** – Determined if the exchanges of information with foreign tax administrations were processed through the U.S. Competent Authority or their designate. References: IRM 4.60.1.2(3), *Specific Exchange Program* (Jan. 1, 2002); IRM 4.60.1.3.7(2), (5), & (6), *Conduct of Simultaneous Examinations* (Jan. 1, 2002); IRM 1.2.43.13, *Delegation Order 4-12 (Rev. 2)* (July 1, 2010).
- **2nd Level Managerial Approval (Specific Exchanges)** – Determined if requests to a foreign tax authority were approved by second-level management. Reference: IRM 4.60.1.2.4.2(3), *Written Request Format* (Jan. 1, 2002).
- **60-Day Status Reports** – Determined if the EOI Program office provided status reports on the cases every 60 days. Reference: IRM 4.60.1.2.4.3(4), *U.S. Initiated Specific Requests* (Jan. 1, 2002).
- **IRS Criteria Checklist** – Determined if the cases included a completed checklist to ensure that the foreign request meets IRS criteria. Reference: IRM 4.60.1.2.5(2), *Foreign Initiated Specific Requests* (Jan. 1, 2002).
- **Receipt Confirmation** – Determined if the field office submitted receipt confirmation and assignment information to the EOI Program office. Reference: IRM 4.60.1.2.5.1.1(3), *Procedures for SBSE and LMSB Cases* (Jan. 1, 2002).
- **Field Office 60-Day Response/Status** – Determined if the field offices provided the requested information or a status report to the EOI Program office within 60 days of the date of the transmitting memorandum. Reference: IRM 4.60.1.2.5.1.1(4), *Procedures for SBSE and LMSB Cases* (Jan. 1, 2002).
- **Grand Jury Information** – Determined if the treaty partners showed a particularized need for Grand Jury information that was sought. Reference: IRM 4.60.1.2.6(1), *Grand Jury Cases* (Jan. 1, 2002).

¹ The IRM is the IRS's primary official source of instructions to staff relating to the administration and operations of the IRS. It contains the directions employees need to carry out their operational responsibilities.



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- **SEP U.S. Proposal Format** – Determined if the U.S.-initiated recommendations for simultaneous examination were prepared in the appropriate format. Reference: IRM 4.60.1.3.5(1), *U.S. Initiated Proposals* (Jan. 1, 2002).
- **SEP 2nd Level Managerial Approval** – Determined if U.S.-initiated recommendations for simultaneous examination were approved by second-level management. Reference: IRM 4.60.1.3.5(1), *U.S. Initiated Proposals* (Jan. 1, 2002).
- **SEP Acceptance Confirmation** – Determined if the acceptance and/or designated representative for simultaneous examinations was confirmed in writing. Reference: IRM 4.60.1.3.7(1), *Conduct of Simultaneous Examinations* (Jan. 1, 2002).
- **SEP Quarterly Status Report** – Determined if a status report was provided for ongoing simultaneous examinations within 10 working days of the end of each calendar quarter. Reference: IRM 4.60.1.3.8(1), *SEP Reports* (Jan. 1, 2002).
- **SEP Conclusion/Discontinuance Report** – Determined if a report was provided within 30 calendar days of the conclusion or discontinuance of simultaneous examinations. Reference: IRM 4.60.1.3.8(2), *SEP Reports* (Jan. 1, 2002).
- **Taxpayer Notice of SEP** – Determined if the U.S. taxpayer was informed that he or she had been accepted for a simultaneous examination. Reference: IRM 4.60.1.3.9(1), *SEP Reports* (Jan. 1, 2002).
- **Industry-wide Exchange Status Report** – Determined if a status report was prepared on the activities of industry-wide exchanges. Reference: IRM 4.60.1.4(8), *Industry-wide Exchanges of Information* (Jan. 1, 2002).
- **2nd Level Managerial Processing (Spontaneous Exchanges)** – Determine if U.S.-initiated spontaneous exchanges of information were processed through the second-level manager. Reference: IRM 4.60.1.5(2), *Spontaneous Exchanges of Information* (Jan. 1, 2002).

To accomplish these objectives, the TIGTA conducted the following inspection activities:

- I. Identified and reviewed the IRM sections and other statutory and regulatory guidance relevant to the EOI process.
- II. Obtained and reviewed local procedural guidance used at the EOI Program Plantation, Florida, office.
- III. Reviewed the inventory of EOI case files in the EOI Program, Plantation, Florida, office that were closed between April 1, 2011, and March 31, 2012.
- IV. Interviewed the revenue service representative, EOI Program, Plantation, Florida, office.



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Appendix II

Major Contributors to This Report

Scott Sanders, Inspections & Evaluations/International



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Appendix III

Report Distribution List

Commissioner C
Office of the Commissioner – Attention: Chief of Staff C
Deputy Commissioner, Services and Enforcement SE
Deputy Commissioner (International) SE:LB:IN
Assistant Deputy Commissioner, International SE:LB:IN
Acting Executive Assistant, International SE:LB:IN
Chief Counsel CC
National Taxpayer Advocate TA
Director, Office of Legislative Affairs CL:LA
Director, Office of Program Evaluation and Risk Analysis RAS:O
Office of Internal Control OS:CFO:CPIC:IC



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Appendix IV

Internal Revenue Manual Descriptions of the Exchange of Information Program

The IRM¹ describes the IRS EOI Program as follows:²

Routine Exchange of Information

This is essentially a spontaneous exchange of information insofar as the information is not specifically requested by the receiving country. When a treaty or TIEA enters into force, it is generally agreed that information will be exchanged on a routine basis. It is sometimes also called Automatic Exchange of Information. In terms of the information the U.S. provides to treaty partners through this program, it currently includes information from Forms 1042S [Foreign Person's U.S. Source Income Subject to Withholding], relating to U.S. source fixed or determinable income paid to persons claiming to be residents of the receiving treaty country. Generally, the information IRS provides, and the information which IRS receives, consists of hundreds of thousands of records exchanged by way of magnetic media (tapes or disks). These records are processed at the Philadelphia Service Center and/or the Martinsburg Computing Center (depending on whether incoming or outgoing). The primary applications of the program are in the area of Returns Processing.

Specific Exchange of Information Program

Also known as Exchange of Information upon Request, this program involves the coordination of both incoming and outgoing requests for information about specific taxpayers. Most requests result from Examination of a particular tax return, although requests may also arise from Collection activities or Criminal Investigations. Most requests, incoming and outgoing, are handled by the IRS Tax Attachés (formerly Revenue Service Representatives). See IRM 4.30.3. However, Exchange of Information Team program analysts in the Office of Director, International (LMSB) handle incoming and outgoing requests involving Canada and France, and cases where a summons needs to be prepared to secure the information requested by a treaty partner. (Treaties generally obligate the Competent Authority to utilize the same measures to secure information for a treaty partner as they would for their own tax purposes. As a result, it is not uncommon to summon information on behalf of a treaty partner.) Most of the work done to obtain information for a treaty partner is done in IRS field offices. Information secured is transmitted to either the Exchange of Information Team or to the IRS Tax Attachés as the case

¹ The IRM is the IRS's primary official source of instructions to staff relating to the administration and operations of the IRS. It contains the directions employees need to carry out their operational responsibilities.

² IRM 4.60.1.1(6), *Exchange of Information Overview* (Jan. 1, 2002).



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may be, who then prepares the necessary Competent Authority correspondence to legally disclose and transmit the information to the treaty partner.

Spontaneous Exchange of Information

This program involves the exchange of information that has not been specifically requested, but which in the judgment of the providing Competent Authority may be indicative of noncompliance with a treaty partner's tax laws and requirements. Outgoing (U.S.-initiated) spontaneous exchanges generally begin when a Revenue Agent or International Examiner comes across information during the course of an audit. This information concerns the treaty partner's taxpayer that may be indicative of noncompliance with the treaty partner's tax laws.

Spontaneous exchanges may also be generated by other IRS investigation functions including Criminal Investigation and SBSE [Small Business/Self-Employed Division] Compliance. The information is forwarded through the appropriate field officials to the Director, International (LMSB), where it is evaluated. If appropriate for exchange, the necessary Competent Authority correspondence is prepared and the information is sent to the foreign competent authority for evaluation. Exchange of Information Team program analysts and IRS Tax Attachés also evaluate incoming (foreign-initiated) spontaneous exchange items and forward appropriate cases to IRS field offices for action. The program analysts and Tax Attachés also follow up on the outcome of all spontaneous exchanges.

Industry-wide Exchanges of Information Program

These exchanges involve meetings between U.S. and treaty partner Examination or Criminal Investigation personnel. Industry-wide Exchanges of Information do not involve specific taxpayer information. Instead they are exchanges of information about trends, operating practices, pricing policies, know-how or experience, *etc.*, in particular industries or economic sectors. Exchange of Information Team program analysts work with field personnel, IRS Tax Attachés and foreign officials in arranging these meetings.

Simultaneous Examination and Simultaneous Criminal Investigation (SCIP) Programs

These programs involve cases where the U.S. and a treaty partner are examining (or investigating) a taxpayer or related taxpayers, with common issues. In a simultaneous or SCIP meeting, the examiners or investigators are afforded the opportunity to discuss issues, audit plans, and information needs. Exchange of Information Team program analysts work with field personnel, IRS Tax Attachés and foreign officials to present proposals to foreign competent authorities, to evaluate proposals from foreign competent authorities, and to facilitate any exchanges of information between governments which may be appropriate for each country to complete its examination or investigation.



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Appendix V

*Exchange of Information Program Office,
Plantation, Florida, Post Jurisdiction
(as of June 2010)¹*

Country	Tax Treaty in Force	TIEA in Force
Anguilla		
Antigua & Barbuda		✓
Argentina		
Aruba		✓
Bahamas		✓
Barbados	✓	✓
Belize		
Bermuda	✓	✓
Bolivia		
Brazil		✓
British Virgin Islands		✓
Cayman Islands		✓
Chile	✓	
Colombia		✓
Costa Rica		✓
Dominica		✓
Dominican Republic		✓
Ecuador		
El Salvador		
French Guiana		
Grenada		✓

¹ Interview with Raul Pertierra, revenue service representative, in Plantation, Florida (May 10, 2012).



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Country	Tax Treaty in Force	TIEA in Force
Guadeloupe		
Guatemala		
Guyana		✓
Haiti		
Honduras		✓
Jamaica	✓	✓
Martinique		
Mexico	✓	✓
Montserrat		
Netherland Antilles (Curacao, Bonaire, St. Maarten & Saba)		✓
Nicaragua		
Panama		✓
Paraguay		
Peru		✓
St. Barthelemy (St. Barts)		
St. Christopher (St. Kitts) and Nevis		
St. Lucia		✓
St. Martin		
St. Vincent and Grenadines		
Surinam		
Trinidad & Tobago	✓	✓
Turks & Caicos		
Uruguay		
Venezuela	✓	



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Appendix VI

Management's Response to the Draft Report



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

Jul 08 2012

MEMORANDUM FOR DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Heather C. Maloy  for HCP
Commissioner, Large and Mid-Size Business Division

SUBJECT: Draft Inspection Report – Inspection of the Exchange of
Information Process at the Plantation, Florida Office (#IE-12-007)

Thank you for the Treasury Inspector General for Tax Administration (TIGTA) draft report entitled, *Inspection of the Exchange of Information Process at the Plantation, Florida Office* (#IE-12-007). Information Exchange is essential to combating tax evasion. Ensuring timely and effective exchanges is the responsibility of the Internal Revenue Service (IRS). IRS's interaction with treaty partners through the Exchange of Information (EOI) Program must be conducted with consistent application of relevant policies and procedures. We recognize the importance of the EOI Program and the impact it has upon voluntary compliance.

The IRS and tax authorities around the world exchange information to administer and enforce compliance with the tax laws of our respective countries. The legal instruments allowing these exchanges to occur provide us with an important enforcement tool. We continually consider process changes to improve the effectiveness of our EOI Program. Therefore, we will implement the recommendations as described in the attached Corrective Actions Plan.

If you have any questions, please contact me at (202) 283-8710, or a member of your staff may contact Douglas W. O'Donnell, Assistant Deputy Commissioner, International, Large Business and International Division at (202) 435-5055.

Attachment



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Attachment

RECOMMENDATION 1:

The Assistant Deputy Commissioner, International, should evaluate the relative value added to the EOI process of having requests to foreign tax authorities approved by second level management. This evaluation should consider both the benefits to the program and the potential processing delays and other potential hindrances to the effectiveness of the program resulting from second level managerial approval.

CORRECTIVE ACTIONS:

We agree with this recommendation. We have evaluated the existing IRM 4.60.1 and compared it to the existing IRM 25.5.1 with respect to the issuance of Administrative Summonses by various IRS functions. IRM 25.5.1.3.2 provides for front-line manager approval of an Administrative Summons. The relevant IRM 4.60.1.2.4.2(3) with respect to requests to foreign tax authorities will be amended to allow for approval by front-line managers.

IMPLEMENTATION DATE:

Estimated: December 31, 2012

RESPONSIBLE OFFICIAL(S):

Assistant Deputy Commissioner, International, Large Business & International (LB&I) Division

CORRECTIVE ACTION(S) MONITORING PLAN:

The LB&I Internal Control Coordinator will monitor the implementation date for the corrective actions through the Joint Audit Management Enterprise System that tracks implementation of corrective actions addressing recommendations.

RECOMMENDATION 2:

The Assistant Deputy Commissioner, International, should ensure that the IRM 4.60.1.2.4.2.(3) and other related guidance be revised, if necessary, to reflect the conclusions of the evaluation referenced in Recommendation 1.

CORRECTIVE ACTIONS:

We agree with this recommendation. Necessary changes to IRM 4.60.1.2.4.2(3) are underway.

IMPLEMENTATION DATE:



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Estimated: December 31, 2012

RESPONSIBLE OFFICIAL(S):

Assistant Deputy Commissioner, International, LB&I Division

CORRECTIVE ACTION(S) MONITORING PLAN:

The LB&I Internal Control Coordinator will monitor the implementation date for the corrective actions through the Joint Audit Management Enterprise System that tracks implementation of corrective actions addressing recommendations.

RECOMMENDATION 3:

The Assistant Deputy Commissioner, International, should evaluate the relative value added to the EOI process of requiring the EOI Program offices to provide 60-day status reports to the IRS office. This evaluation should consider both the benefits to the program and the potential administrative burden that this requirement places on the EOI Program offices.

CORRECTIVE ACTIONS:

We agree with this recommendation. The Assistant Deputy Commissioner, International, evaluated the relative value of the 60-day status reports and has determined the requirement should remain. Our goals for the requirement are to ensure a sense of urgency and maintain a line of communication.

IMPLEMENTATION DATE:

Completed: May 18, 2012

RESPONSIBLE OFFICIAL(S):

Assistant Deputy Commissioner, International, LB&I Division

RECOMMENDATION 4:

The Assistant Deputy Commissioner, International, should establish adequate managerial oversight procedures to ensure compliance with this requirement, if applicable based on the evaluation referenced in Recommendation 3.

CORRECTIVE ACTIONS:

The Assistant Deputy Commissioner, International does have oversight over Recommendation 3, and he will ensure compliance through annual operational reviews.



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Moreover, we agree with this recommendation, and we are delivering workshops focused on both procedural and technical aspects of the EOI Program.

IMPLEMENTATION DATE:

Estimated: December 31, 2012

RESPONSIBLE OFFICIAL(S):

Assistant Deputy Commissioner, International, LB&I Division

CORRECTIVE ACTION(S) MONITORING PLAN:

The LB&I Internal Control Coordinator will monitor the implementation date for the corrective actions through the Joint Audit Management Enterprise System that tracks implementation of corrective actions addressing recommendations.

RECOMMENDATION 5:

As the IRM and the local EOI procedural guidance for the Plantation office do not contain the same requirement for 60-day status reports, the Assistant Deputy Commissioner, International should ensure that the IRM 4.60.1.2.4.3.(4) and other procedural guidance throughout the Service-wide EOI Program consistently reflect the results of the evaluation referenced in Recommendation 3.

CORRECTIVE ACTIONS:

We agree with this recommendation, and we will adhere to the IRM 4.60.1.2.4.3(4) provisions. As previously mentioned under the Corrective Action for Recommendation 4, the Assistant Deputy Commissioner, International, has oversight for Recommendation 3, and he will ensure compliance through annual operational reviews of the service-wide EOI Program offices. Furthermore, the Plantation EOI procedural guidance will be amended to adhere to IRM 4.60.1.2.4.3(4) regarding the requirements for 60-day status reports.

IMPLEMENTATION DATE:

Estimated: June 30, 2012

RESPONSIBLE OFFICIAL(S):

Assistant Deputy Commissioner, International, LB&I Division

CORRECTIVE ACTION(S) MONITORING PLAN:



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The LB&I Internal Control Coordinator will monitor the implementation date for the corrective actions through the Joint Audit Management Enterprise System that tracks implementation of corrective actions addressing recommendations.