International Tax Collection

The ABA Section of Taxation’s 2020 Midyear Meeting
Presented at the Boca Raton Resort and Club
Friday, January 31, 2020

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1 This outline was prepared by Lawrence A. Sannicandro. It is provided as supplemental material for the panel, Collection of Foreign Judgments: When Your Other Problems Come Home. Mr. Sannicandro will present on this topic, along with: Mark D. Allison of Caplin & Drysdale Chartered in New York, NY; Nathaniel B. Parker of the IRS Office of Associate Chief Counsel (Int’l) in Washington, DC; and Zhanna Ziering of Caplin & Drysdale Chartered in New York, NY. The views in this outline are Mr. Sannicandro’s, and those views do not necessarily reflect the position of the Internal Revenue Service or any of the panelists or the organizations with which they are affiliated.
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I. Introduction

Many taxpayers mistakenly believe that the Internal Revenue Service (“Service” or “IRS”) and the Tax Division of the U.S. Department of Justice (“DOJ-Tax”) do not cooperate with treaty partners to collect tax judgments across borders. This belief may have been palatable pre-2014, but in the modern era of tax enforcement, taxpayers should expect the IRS and DOJ-Tax to take steps to collect U.S. and foreign tax liabilities wherever the taxpayer or his or her assets are located.

The IRS and DOJ-Tax have been particularly active in collecting U.S. tax liabilities from taxpayers who no longer live in the United States or who keep their assets offshore. This emphasis on international collection, may be at least partially attributable to recent criticisms of the Treasury Inspector General for Tax Administration (“TIGTA”). In September 2014, the TIGTA released a report urging the IRS to enhance its international collection efforts. See TIGTA, The Internal Revenue Service Needs to Enhance Its International Collection Efforts, Reference No. 2014-30-054 (Sept. 12, 2014). TIGTA recommended that the IRS: (1) develop a formal international collection strategic plan; (2) update international collection guidance to provide specific policies and procedure to international revenue officers; (3) develop a formal international collection training plan using subject matters experts to develop and teach international collection; and (4) continue to pursue direct access to customs hold information. The IRS, for its part, agreed with all of TIGTA’s recommendations and has taken, or plans to take, corrective actions.

There are several administrative and judicial collection tools available to the IRS and DOJ-Tax to enforce tax collection internationally – either on behalf of the United States or its treaty partners. The available devices include: inbound and outbound mutual collection assistance requests under applicable treaties; writ ne exeat republica actions and customs or prevent departure orders (and their foreign equivalents); levies on domestic branches of a financial institution; and repatriation orders (and their foreign equivalents). Practitioners who represent taxpayers with outstanding tax liabilities must be aware of the U.S. government’s enforcement devices and available defenses. This outline provides a survey of those collection devices and defenses.

II. Mutual Collection Assistance Requests Under Treaties

A. Generally: “Of the more than 60 bilateral income tax treaties to which the United States is a signatory, 24 have some form of limited collection assistance provision.” Robert E. Ward, How Will They Catch Me? Let Me Count the Ways

2 Moreover, on December 4, 2015, Congress granted to the IRS authority to deny, revoke, or limit the passport of any person who the Service certifies has a seriously delinquent tax debt (i.e., an assessed tax greater than $50,000 with respect to which formal collection action has been taken). In early-2018, the IRS has begun certifying seriously delinquent tax debts to the U.S. Department of State, which is a testament to the IRS’s commitment to enhance its international collection efforts. This outline does not discuss passport revocation.
1. **What is a Mutual Collection Assistance Request?** A mutual collection assistance request, also referred to as an “MCAR,” is:

   an agreement between the United States and the treaty partner to combat international tax avoidance and evasion. It is a mutual obligation to collect taxes on behalf of another country. The treaties provide that each contracting country can take whatever actions it would take to collect its own taxes in order to collect the taxes of a treaty partner. Each country uses its own unique collection tools to collect the tax of a treaty partner. [Internal Revenue Manual (“I.R.M.”), pt. 5.21.7.4(2) (Nov. 13, 2015).]

2. **Inbound v. Outbound Mutual Collection Assistance Requests:** The mutual collection assistance request provisions can be inbound, in which a treaty partner asks assistance from the United States in collecting taxes owed to the treaty partner, or outbound, in which the IRS may request assistance from the treaty partner in collecting taxes owed to the United States. Compare I.R.M., pt. 5.21.7.4.1 (Nov. 13, 2015) (inbound requests), with I.R.M., pt. 5.21.7.4.7 (Nov. 13, 2015) (outbound requests).

3. **Governing Bodies of a Mutual Collection Assistance Request:** The mutual collection assistance request program is administered by the LB&I Competent Authority with assistance provided by the IRS’s Small Business/Self-Employed Field Collection Area Operations. I.R.M., pt. 5.21.7.4(4) (Nov. 13, 2015).

**B. Mutual Collection Assistance Countries:** There are currently five mutual collection assistance request countries which have income treaties with the United States that provide for mutual collection assistance of income taxes and other taxes specified in the respective treaties. The five countries (and the types of taxes to which they relate are:

1. Canada (all taxes, including individual and business taxes);
2. Denmark (income taxes);
3. France (income tax and estate taxes);
4. The Netherlands (income taxes); and

C. Inbound Mutual Collection Assistance Request:

1. Generally: Inbound mutual collection assistance requests provide that the treaty partner may request assistance from the United States in collecting taxes owed to the treaty partner by its own citizens or residents, or other persons owing taxes to the treaty partner. I.R.M., pt. 5.21.7.4.1(1) (Nov. 13, 2015).

   a. Limits on Inbound Mutual Collection Assistance Requests: The IRS will not pursue collection on behalf of a treaty partner if the individual subject to collection is a citizen of the United States.

2. Procedures for Collection Assistance:

   a. Referral Letter: All requests for collection assistance by a treaty partner to the United States are made through the Large Business & International (“LB&I”) Competent Authority in the form of letters from the treaty partner. I.R.M., pt. 5.21.7.4.1(3) (Nov. 13, 2015).

      i. Finally Determined Taxes: The referral letter includes a statement to the effect that the tax has been “finally determined” as required by each treaty.

   b. Assignment to MCAR Coordinator: The request for collection assistance is assigned to LB&I Competent Authority, see I.R.M., pt. 5.21.7.4.1(5) (Nov. 13, 2015), who then assigns the request to: (1) an MCAR coordinator, see I.R.M., pt. 5.21.7.4.1(5) (Nov. 13, 2015), and (2) SBSE for collection action, see I.R.M., pt. 5.21.7.4.1(5)(f) (Nov. 13, 2015). The MCAR coordinator received the inbound mutual collection assistance request, which contains the following information:

      i. Name;
      ii. Address;
      iii. Type of tax and tax period(s);
      iv. Amounts due in the currency of the treaty partner;
      v. The date on which the period of limitations on collection expires (i.e., the collection statute expiration date); and
      vi. Any known levy sourced or assets located within the United States.

3 On January 24, 2013, the United States and Japan signed a new Protocol to their existing tax treaty which contains a provision to permit the United States and Japan to collect taxes on behalf of each other. I.R.M., pt. 5.21.7.4 (Nov. 13, 2015). However, collection assistance will not occur until this new Protocol is ratified by both the United States and Japan. Id.
c. **Assessment Required (and Made):** Before enforced collection may occur, an assessment of the tax is required. See, e.g., I.R.C. §§ 6203, 6303. Thus, before the IRS can take any enforcement action, the IRS must first prepare an Assessment Certificate under the authority provided by the tax treaty. I.R.M., pt. 5.21.7.4.1(6) (Nov. 13, 2015). The Assessment Certificate is prepared by the MCAR Coordinator and includes the following:

i. The amount of the foreign tax liability, in U.S. dollars, using the exchange rate as of the date the Assessment Certificate is prepared;

ii. A taxpayer control number (TCN) created as a taxpayer identifying number for the case; and

iii. The signature of the MCAR coordinator and the date of the Assessment Certificate.

d. **Internal Tracking of Case Within IRS:** A case is created on the IRS’s Inventory Control System (ICS), which is used to track inventory, maintain case histories, and charge time. I.R.M., pt. 5.21.7.4.1(7) (Nov. 13, 2015). Assessments under a mutual collection assistance request will not show on the IRS’s Integrated Data Retrieval System (IDRS). Id.

e. **Collection Sources Researched:** SBSE conducts research using various sources to locate the following information:

i. A U.S. Social Security number;

ii. The taxpayer’s citizenship;

iii. The taxpayer’s address and/or contact information;

iv. The latest U.S. tax return filed;

v. Levy sources; and


*Note:* The IRS will always give priority to collecting taxes owed by the taxpayer to the United States before collecting foreign taxes owed. Id.

3. **IRS Notices and Appeal Rights:**

a. **IRS Notices:** The IRS sends two notices to the person owing taxes to the treaty partner: the MCAR First Notice; and the MCAR Final Notice. I.R.M., pt. 5.21.7.4.1(10) (Nov. 13, 2015).

i. **MCAR First Notice:** The MCAR coordinator first prepares and sends to the person owing taxes to the treaty partner the
MCAR First Notice, a copy of the Assessment Certificate, a copy of Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals, and IRS publications concerning the collection process and collection appeal rights. I.R.M., pt. 5.21.7.4.1(10)(a) (Nov. 13, 2015). The MCAR First Notice informs the taxpayer that the IRS is collecting the foreign tax liability on behalf of the treaty partner in accordance with the treaty. Id.

ii. **MCAR Final Notice:** If no response, or an adequate response, is received in reply to the MCAR First Notice, the IRS then sends the MCAR Final Notice, a copy of the Assessment Certificate, and IRS publications concerning the collection process and collection appeal rights. I.R.M., pt. 5.21.7.4.1(10)(b) (Nov. 13, 2015).

**b. Taxpayer Appeal Rights:**

i. **IRS Position:** The IRS takes the position that taxpayers on inbound mutual collection assistance request cases are not entitled to a collection due process hearing. I.R.M., pt. 5.21.7.4.1(10) (Nov. 13, 2015).

ii. **Contra Argument:** Despite the IRS’s position, I.R.C. § 6330 may provide the right to a pre-levy hearing. Section 6330 of the Internal Revenue Code (“Code”) confers pre-levy rights on “any person,” not just a “taxpayer.” Thus, I.R.C. § 6330 may confer upon the person owing taxes to the treaty partner pre-levy Appeal rights.

4. **Collection Alternatives:** The person owing taxes to the treaty partner has various collection alternatives available, including:

a. Full payment, with payments made payable to the treaty partner, received by the United States Treasury, and forwarded to the treaty partner, see I.R.M., pt. 5.21.7.4.1(11)(a) (Nov. 13, 2015);

b. Installment agreement, with installment payments made within the first 90 days payable to the United States Treasury and any additional payments made directly to the treaty partner, see I.R.M., pt. 5.21.7.4.1(11)(b) (Nov. 13, 2015);

c. Disputed tax liability, under which the person owing taxes to the treaty partner may dispute the tax liability with the treaty partner, see I.R.M., pt. 5.21.7.4.1(11)(c) (Nov. 13, 2015);

d. Not collectible, under which the mutual collection assistance request is closed if the taxpayer does not have the ability to pay or
set-up an installment agreement, see I.R.M., pt. 5.21.7.4.1(11)(e) (Nov. 13, 2015); and

e. File for bankruptcy, under which the IRS may file a proof of claim to collect on behalf of the treaty partner, see I.R.M., pt. 5.21.7.4.1(11)(f) (Nov. 13, 2015).

Note – U.S. Citizenship: If the person owing taxes to the treaty partner provides evidence of U.S. citizenship, the IRS should close the mutual collection assistance request and cease collection action under the mutual collection request procedures. I.R.M., pt. 5.21.7.4.1(11)(d) (Nov. 13, 2015).

Note – Offers in Compromise: The IRS does not have the statutory authority to accept an offer to compromise a foreign tax liability. I.R.M., pt. 5.21.7.4.1(11)(g) (Nov. 13, 2015). Therefore, an offer in compromise is not an option for the person owing tax to the treaty partner. Id.

5. Closing Letter: Once a case is ready to be closed, the MCAR coordinator drafts official correspondence for the signature of the LB&I Competent Authority to close the case back to the treaty partner. I.R.M., pt. 5.21.7.4.2(1) (Nov. 13, 2015).

6. Enforcement Actions: After the MCAR Final Notice is sent to the person owing tax to the treaty partner, and there is no response, or insufficient response from the person, the MCAR Coordinator will, if possible, utilize internal and external locator sources to find levy sources and/or locate taxpayers. I.R.M., pt. 5.21.7.4.3(1) (Nov. 13, 2015). The enforced collection devices available to the IRS include:

a. Issuing a levy;

b. Filing a Notice of Federal Tax Lien; and

c. Seizure and sale. See generally I.R.M., pts. 5.21.7.4.4 (Nov. 13, 2015), 5.21.7.4.5 (Nov. 13, 2015), and 5.21.7.4.6 (Nov. 13, 2015).

D. Outbound Mutual Collection Assistance Request Procedures: The procedures to request an outbound mutual collection assistance request are as follows:

1. The revenue officer must complete (and the manager must approve) Form 14424, Mutual Collection Assistance Request Treaty Referral, and provide personal information and information about known income or assets in the treaty partner country;

2. The request is sent to a mutual collection assistance request coordinator, who can accept or deny the request. If the case is denied, the ICS history
will be updated accordingly. If the case is accepted, the coordinator will open a Collection Initiative Program (CIP) Case and document the ICS history;

a) **Requirements for an Mutual Collection Assistance Request to Be Accepted**: The following conditions must be met for a mutual collection assistance request to be considered valid:

1. A tax treaty or protocol that includes a provision for mutual tax collection exists with the requesting/requested country;
2. A tax must be finally determined by the requesting country;
3. The statute of limitations on the collection of debt must still be open in the requesting country;
4. A reasonable effort to collect the debt must have been made by the requesting country before submitting the mutual collection assistance request;
5. All correspondence must be addressed to an official authorized to receive communications relating to mutual collection assistance;
6. The request meets the stipulations within the specific tax treaty article or protocol, including the specific citizenship limitation provided for in the applicable treaty;
7. The tax treaty or protocol covers the type of tax in question; and
8. The request is accompanied by a datasheet listing certain information about the debt. I.R.M., pt. 4.60.1.7.3 (Sept. 19, 2014).

3. The mutual collection assistance request is forwarded to the Office of Competent Authority in the LB&I division and that competent coordinates the request with the foreign government. I.R.M., pts. 5.21.7.4.7 (Nov. 13, 2015) and 5.21.7.4 (Nov. 13, 2015). The Small Business/Self-Employed Western Field Collection assists the Competent Authority in carrying out all the collection activities for mutual collection assistance request designated revenue officers in the Small Business/Self-Employed International Field Collection act as mutual collection assistance request coordinators to process and work all mutual collection assistance requests. I.R.M., pt. 5.21.7.4(3) (Nov. 13, 2015).

E. **Scope of Assistance Under Treaty**: Treaties in which mutual collection assistance has been agreed generally provide that each country, upon the United States’
request, may take whatever actions it would take to collect its own taxes in order to collect on behalf of a treaty partner. I.R.M., pt. 5.21.3.7 (Jan. 7, 2016).

F. Reported Cases of Collection Assistance Requests Under Treaties:

1. Inbound MCAR: Retfalvi v. United States: In Retfalvi v. United States, 930 F.3d 600 (4th Cir. 2019), the United States Court of Appeals for the Fourth Circuit upheld a decision of the United States District Court for the Eastern District of North Carolina concluding that the IRS was authorized by the U.S.-Canada Income Tax Treaty to collect outstanding Canadian income taxes payable by a U.S. resident and citizen.

2. Outbound MCAR: Dewees v. United States: In Dewees v. United States, 272 F. Supp. 3d 96 (D.D.C. 2017), the taxpayer was a U.S. citizen living in Canada where he operated a consulting business. For more than a decade, the taxpayer was required to file Form 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations, but failed to do so. The IRS assessed $10,000 failure to file penalties under I.R.C. § 6038(b) and sought to collect a total of $120,000 in penalties. The taxpayer challenged the penalties before the IRS, lost, and refused to pay. Pursuant to the U.S.-Canada tax treaty, and ostensibly at the request of the United States, the Canadian tax authority held the taxpayer’s Canadian income tax refund until the failure to file penalty was paid-in-full to the United States. The taxpayer brought suit on the ground that the treaty was unconstitutional under the excessive fines clause of the Eighth and Amendment and both the due process and equal protection clauses of the Fifth Amendment. The United States moved to dismiss for failure to state a claim, and the United States District Court for the District of Columbia granted the United States’ motion and upheld the mutual collection assistance request under the U.S.-Canada tax treaty.

III. Customs Orders and Prevent Departure Orders

A. Overview: A customs order or a prevent departure order is an administrative action similar to the writ ne exeat republica action. A customs order can prevent a non-U.S. citizen from exiting the United States, pending the resolution of a collection matter. Non-U.S. countries may also have provisions comparable to the customs order and prevent departure order, but this outline uses the American laws as a guide.

B. Authority:

1. Prejudice to the United States’ Interests: The authority for a customs order is 22 C.F.R. § 46.2(a), which is entitled “Authority of departure-control officer to prevent alien’s departure from the United States.” That section provides:
No alien shall depart, or attempt to depart, from the United States if his departure would be prejudicial to the interests of the United States under the provisions of § 46.3. Any departure-control officer who knows or has reason to believe that the case of an alien in the United States comes within the provisions of § 46.3 shall temporarily prevent the departure of such alien from the United States and shall serve him with a written temporary order directing him not to depart, or attempt to depart, from the United States until notified of the revocation of the order. [22 C.F.R. § 46.2(a)]

2. **Collection Investigation:** Additionally, 22 C.F.R. § 46.3, which is entitled “Aliens whose departure is deemed prejudicial to the interests of the United States,” provides:

The departure from the United States of any alien within one or more of the following categories shall be deemed prejudicial to the interest of the United States:

* * * * * * *

(h) Any alien who is needed in the United States in connection with any investigation or proceeding being, or soon to be, conducted by any official executive, legislative, or judicial agency in the United States or by any governmental committee, board, bureau, commission, or body in the United States, whether national, state, or local.

C. **Procedure for Customs Order:**

1. **Generally:** Revenue officers must coordinate with Area Counsel before requesting a customs order or a prevent departure order. I.R.M., pt. 5.21.3.4 (Jan. 7, 2016). Area Counsel, in turn, is required to coordinate with the Office of Associate Chief Counsel (International). Id.

2. **TECS:** The U.S. Department of Homeland Security’s Treasury Enforcement Communications System (TECS) is used extensively by the law enforcement community. I.R.M., pt. 5.1.18.1.14 (June 10, 2015). TECS contains information about individuals and businesses suspected of, or involved in, violations of federal law. Id. Revenue officers can request that taxpayers with delinquent accounts be entered into TECS, and the Department of Homeland Security will then advise the IRS when those taxpayers travel to the United States for business, employment, or personal reasons. Id. In addition, revenue officers may request through TECS

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4 This outline generally refers to revenue officers as performing collection. In international collection, however, these revenue officers may have the title “international revenue officer.” For ease of convenience, this outline generally refers to “international revenue officers” as “revenue officers.”
available information on (1) past travel of delinquent taxpayers to and from the United States, and (2) information about international forms filed with the Financial Crimes Enforcement Network (FinCEN).

3. Coding for TECS: The revenue officer should also request the coordinator for TECS to input a customs order into that system. *Id.*

D. Action to Detain: If the alien is found attempting to exit the United States, he or she should be detained and the revenue officer should be notified and requested to provide instructions to the Customs officer. *Id.*

IV. Levies on Domestic Branches of a Financial Institution

A. Levies Generally: The Code authorizes the Commissioner to levy upon all property or property rights of any taxpayer who is liable for any tax and neglects or refuses to pay that liability within 10 days after notice and demand for payment was made. *I.R.C. § 6331.*

B. Levies of Bank Accounts Held in Offices Outside the United States: Section 6331 of the Code imposes no territorial limits on the IRS’s ability to levy a foreign bank account, though international law principles may impose restrictions. Treas. Reg. § 301.6332-1(a)(2) outlines the procedures IRS must follow to levy a bank account with a foreign financial institution that has a U.S. branch. The regulations provide two different sets of procedures with regard to a levy on bank deposits held in offices outside of the United States depending upon whether or not the taxpayer is or is not within the jurisdiction of a U.S. court when the levy is made.

1. Option 1: Taxpayer Is Within Jurisdiction: If the taxpayer is within the jurisdiction of a U.S. court when the levy is made, then the notice of levy must specify that:

   a) The Area Director intends to reach such deposits; and

   b) The bank is in possession of, or obligated with respect to, deposits of the taxpayer in an office of the bank outside the United States or a possession of the United States. Treas. Reg. § 301.6332-1(a)(2)(i).

2. Option 2: Taxpayer Is Not Within Jurisdiction: If the taxpayer is not within the jurisdiction of a U.S. court when the levy is made, then the notice of levy must specify that:

   a) The Area Director intends to reach such deposits;

   b) The bank is in possession of, or obligated with respect to, deposits of the taxpayer in an office of the bank outside the United States or a possession of the United States; and
c) Such deposit consists, in whole or in part, of funds transferred from the United States or a territory of the United States in order to hinder or delay collection of tax imposed by the Code. Treas. Reg. § 301.6332-1(a)(2)(ii).

C. IRS Methods to Determine Assets Held in Foreign Financial Institutions: The IRS has many tools available to it for locating foreign bank accounts. These tools include:

1. **IRPTR Command Codes:** IDRS command code IRPTR provides details of various information reports issued to a recipient. IRPTR transcripts may provide information about:
   a) Foreign investments if federal taxes are withheld;
   b) Transfer of funds from the taxpayer’s domestic account; and
   c) The type of income received by the taxpayer’s domestic bank in the Financial Crimes Enforcement Network Query System. I.R.M., pt. 5.21.3.2 (Jan. 7, 2016).

2. **Information Reported Under FATCA:** The IRS is receiving information from third-party payers pursuant to reporting obligations under the Foreign Account Tax Compliance Act (“FATCA”), Pub. L. 111-147, 124 Stat. 71, § 501, et seq. (2010). This information includes information about U.S. persons, including U.S. individuals, corporations, partnerships, and disregarded entities, that own bank accounts in certain foreign financial institutions.

3. **Information Reported on International Information Returns:** The IRS is receiving information about foreign bank accounts on various international information returns, such as Form 8938, Statement of Specified Foreign Financial Assets, and FinCEN Form 114, Report of Foreign Bank and Financial Accounts. These forms, to the extent they are filed as required, contain information about foreign financial accounts held overseas.

4. **Information Reported Under the OVDI:** Through the Offshore Voluntary Disclosure Initiative ("OVDI"), the IRS has received information about individuals who had offshore assets and income. In some offshore voluntary disclosures, the IRS learned information about not only the taxpayer making the voluntary disclosure, but in some cases also learned information about persons affiliated with the taxpayer (e.g., other trust beneficiaries, other shareholders, relatives).

5. **Information From Whistleblowers:** The IRS is also receiving information about unreported assets and income through whistleblowers, which the IRS can use to identify bank accounts held outside the United States which
are subject to levy because the foreign bank maintains a branch within the United States.

D. Procedure for Levy of a Domestic Branch of a Foreign Financial Institution: The procedures for levying a domestic branch of a foreign financial institution depend upon whether the foreign financial institution has entered into a mutual collection assistance protocol with the United States.

1. Foreign Financial Institutions In a Mutual Collection Assistance Country: If the foreign bank is located in a country which has agreed to provide collection assistance under the mutual collection assistance request procedures of a particular protocol, then the revenue officer should prepare an outgoing mutual collection assistance request asking the treaty partner to serve a levy under their domestic authority to collect from the bank located in their country. I.R.M., pt. 5.21.7.4(5) (Nov. 13, 2015).

2. Foreign Financial Institutions Not In a Mutual Collection Assistance Country: If the foreign bank is located in a country which has not agreed to provide collection assistance, then the notice of levy should be submitted to Area Counsel for approval, and assuming approval is obtained, serve the levy in-person or via certified mail. I.R.M., pt. 5.21.7.4(7), (8) (Nov. 13, 2015).

V. Writ Ne Exeat Republica Actions

A. Overview: A writ of ne exeat republica is a form of injunctive relief ordering the person to whom it is addressed not to leave the jurisdiction of the court or the state, for example, to aid the sovereign to compel a citizen to pay his taxes. United States v. Barrett, No. 1:10-cv-02130 (D. Colo. Jan. 29, 2014). A writ ne exeat republica can be requested by the government and issued by a United States district court to temporarily detain taxpayers from entering or leaving the United States in certain circumstances. Non-U.S. countries may also have provisions comparable to the writ ne exeat republica action, but this outline uses the American laws as a guide.

1. Purpose of the Writ Ne Exeat Republica: The purpose of a writ ne exeat republica is to preserve the court’s power to provide a means of protecting the government’s ability to collect the tax by another means. I.R.M., pt. 5.21.3.3(2) (Jan. 7, 2016).

2. Additional Background: For an excellent discussion of the history of the writ ne exeat republica, see Keith Fogg, Posting of Holding People Hostage for the Payment of Tax – Writ Ne Exeat Republica to the Procedurally Taxing blog (Feb. 11, 2014),

5 The term “write ne exeat republica” is Latin for “let him not go out of the republic.”

B. Authority for Action: I.R.C. § 7402(a) confers subject matter jurisdiction on the district courts to “make and issue in civil actions, writs and orders of injunctions, and of ne exeat republica…, and such other orders and processes…as may be necessary or appropriate for the enforcement of the internal revenue laws.”

C. IRS Enforcement Protocol in Connection With Writ Ne Exeat Republica Actions:

1. When Is the Writ Ne Exeat Republica Pursued? The IRS may request that DOJ-Tax bring a writ ne exeat republica action when the taxpayer:

   a) Is about to leave the U.S. and is unlikely to return to the United States; or

   b) Has left the United States but is likely to return and may be subject to detention by the writ, and has conveyed or concealed cash or other property so that it may be taken out of the United States. I.R.M., pt. 5.21.3.3(1) (Jan. 7, 2016).

   (1) Note: The writ ne exeat republica is not appropriate if the taxpayer is returning to the United States permanently. I.R.M., pt. 5.21.3.3(5) (Jan. 7, 2016).

2. Factors in Determining Whether or Not to Pursue the Writ Ne Exeat Republica Action: The following factors should be considered in determining whether or not to initiate a writ ne exeat republica:

   a) The taxpayer has a “large” valid tax liability;

   b) The taxpayer has transferred, or is in the process of transferring, substantially all of his assets to a location outside the United States;

   c) The taxpayer’s distrainable domestic property and other property reachable without the writ are insufficient to satisfy the tax liability;

   d) Other proposed civil actions will not be enforceable unless the taxpayer is prevented from removing himself or herself or his or her assets from the United States;

   e) The taxpayer established residency outside the United States or intends to do so; and

   f) The taxpayer’s assets cannot be reached absent the issuance of the writ. I.R.M., pt. 5.21.3.3(3) (Jan. 7, 2016).
3. **Case Development:** Before a revenue officer recommends seeking a writ ne exeat republica action, the agent must generally:

   a) Exhaust meaningful collection enforcement against U.S.-based property;
   
   b) Document the taxpayer’s location;
   
   c) Document the taxpayer’s attempts to conceal or gather property in anticipation of transfer; and
   
   d) Document time and location of likely return if the taxpayer is out of the United States.  
   

D. **DOJ-Tax and Court Procedures for Writ Ne Exeat Republica Actions:**

1. **Generally:** A writ ne exeat republica is typically requested in connection with a suit to reduce a tax assessment to judgment, a suit to foreclose a federal tax lien, a summons enforcement proceeding, and/or a request for a repatriation order.

   a) **When Issuable:** The writ ne exeat republica and the corresponding order can be: (1) issued before judgment, if necessary, due to time constraints; (2) provided for in a final decree; or (3) issued after judgment is established. I.R.M., pt. 5.21.23.3(8) (Jan. 7, 2016).

2. **Standard for Review:** In *United States v. Mathewson*, No. 92-1054, 1993 WL 113434, at *2 (S.D. Fla. Feb. 25, 1993), the United States District Court for the Southern District of Florida articulated the standard for a writ ne exeat republica as follows:

   To receive issuance of the Writ, at a minimum, the Government must meet the burden of proof associated with a preliminary injunction. In turn, preliminary injunctive relief stems from four factors: (1) a substantial likelihood the movant will succeed on the merits; (2) the movant will suffer an irreparable injury if the injunction is not issued; (3) the potential injury to the movant outweighs the potential harm to the opposing party; and (4) the injunction would not disserve the public interest. The movant bears the burden on each of these issues. Because the collection of taxes certainly serves the public interest, only the first three elements are at issue here. [Internal citations omitted.]

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6 Sources for this information include a response to a TECS request to be notified if the taxpayer submits documents relating to a return to the United States, court records of pending required appearances in ongoing cases, and third-parties. I.R.M., pt. 5.21.3.3(5) (Jan. 7, 2016).
3. **Outcome if Order Granted:** If the writ ne exeat republica is granted, the court will typically include provisions providing that the taxpayer is:

   a) To be detained and taken into custody unless they post adequate security for the outstanding tax liability;

   b) To remain in custody pending a final evidentiary hearing on the writ;

   c) Required to provide testimony and documentation as to the value and extent of all assets; and/or

   d) Prohibited from transferring or encumbering assets. I.R.M., pt. 5.21.23.3(9) (Jan. 7, 2016).

   (1) Examples of a writ ne exeat republica and order for a writ of ne exeat are included in I.R.M., pt. 34.12.1 (Apr. 5, 2016) (Exs. 34.12.1-17 and 34.12.1-18, respectively).

4. **Coordinating With Customs:** After a writ ne exeat republica is issued, appropriate notice is given to law enforcement officials, typically through TECS. I.R.M., pt. 5.21.3.3(10) (Jan. 7, 2016). If the taxpayer is still in the United States, then the taxpayer is detained and served with the writ. *Id.* If the taxpayer has left the country, then the detention and service of the writ occurs when the taxpayer reenters the country. *Id.* The taxpayer remains in the custody of the United States Marshall’s Service until the matters addressed in the order is resolved. *Id.*

E. **Examples of Recent Writ Ne Exeat Republica Actions:**

1. **United States v. Barrett:** In *United States v. Barrett*, No. 1:10-cv-02130 (D. Colo. Jan. 29, 2014), the taxpayers filed a fraudulent tax return for the 2007 tax year that resulted in a $217,615 refund to which they were not entitled. The taxpayers acknowledged the fraud, refused to return the refund, and removed certain funds from the United States. The government, in turn, filed suit to recover the refund, repatriate the funds, and have the funds applied to the taxpayer’s tax debt. The government subsequently moved the court for the issuance of a writ of ne exeat republica against the taxpayers. The court granted the motion and ordered: (1) that a writ be issued to restrain the taxpayers from departing the jurisdiction of the Court until further court order; (2) that the taxpayers be required to post security for their tax obligation, penalties and interest either in the amount of $351,196.97 or in the amount of the value of their net equity in their worldwide assets; (3) that they be kept in the custody of the United States Marshal pending a final evidentiary hearing; (4) that they produce all books and records of their assets; and (5) that they may not assign, encumber or otherwise alienate any property belonging to them.
The taxpayers, however, had absconded to Ecuador before the writ was issued. The taxpayers subsequently returned to the United States to attend their daughter’s wedding, and the United States Marshals detained them pursuant to the writ. The taxpayers were then ordered to surrender their international travel documents and remain within the United States.

VI. Repatriation Orders and Appointment of Receivers

A. Overview: In a suit to repatriate property, the United States may petition a court for an order requiring a taxpayer who has either transferred assets from the U.S. to a foreign country or acquired assets in a foreign country to transfer them back into the United States. Sometimes, courts will not only grant an order to repatriate certain property, but also appoint a receiver to repatriate the taxpayer’s assets and pay the taxpayer’s taxes. Non-U.S. countries may also have provisions comparable to the repatriation orders and appointment of receivers, but this outline uses the American laws as a guide.

B. Authority for Action:

1. Civil Context: I.R.C. § 7402: I.R.C. § 7402(a) confers subject matter jurisdiction on the district courts to “make and issue in civil actions, writs and orders of injunctions, and of ne exeat republica, orders appointing receivers, and such other orders and processes...as may be necessary or appropriate for the enforcement of the internal revenue laws.” Pursuant to I.R.C. § 7402, DOJ-Tax has successfully been granted a repatriation order and/or had receivers appointed to repatriate assets of the taxpayer and then pay the taxes owed.


   (4) Order to repatriate and deposit.—

   (A) In general.—

   Pursuant to its authority to enter a pretrial restraining order under this section, the court may order a defendant to repatriate any property that may be seized and forfeited, and to deposit that property pending trial in the registry of the court, or with the United States Marshals Service or the Secretary of the Treasury, in an interest-bearing account, if appropriate.

   (B) Failure to comply.—

   Failure to comply with an order under this subsection, or an order to repatriate property under subsection (p), shall be
punishable as a civil or criminal contempt of court, and may also result in an enhancement of the sentence of the defendant under the obstruction of justice provision of the Federal Sentencing Guidelines.

C. Orders to Repatriate Property:

1. **Overview:** The IRS instructs revenue officers to consider a repatriation order in connection with all other international collectivity. I.R.M., pt. pt. 5.21.3.6(6) (Jan. 7, 2016).

2. **Standards for Receiving Order:** For the United States to receive a repatriation order, it must generally show:

   a) An outstanding tax liability;
   
   b) A reasonable basis that the taxpayer has assets outside the U.S.;
   
   c) Levy on domestic assets is not sufficient to satisfy the tax liability; and
   
   d) The United States has (or can get) personal jurisdiction over the taxpayer-defendant (e.g., the revenue officer must show that the taxpayer is either in the United States or a United States territory or the likelihood that the taxpayer will be returning to, or passing through, the United States). I.R.M., pt. 5.21.3.6(2) (Jan. 7, 2016).

3. **IRS Enforcement Protocol in Connection With Repatriation Suits:**

   a) **Case Development:** Before a revenue officer recommends a suit seeking a repatriation order, the agent must take the following steps (all the while documenting the file):

      (1) Exhaust meaningful collection enforcement against U.S.-based property;
      
      (2) Determine the nature, value and location of the foreign property;
      
      (3) Consider making an Exchange of Information (EOI) request to a foreign country pursuant to a U.S. tax treaty or tax information exchange agreement (TIEA), to confirm the existence and value of property located in that country. These requests are to be made through the U.S. Competent Authority;
(4) Serve a levy on the domestic bank branch if the property is held in a foreign banking institution with a United States branch and enforce the levy as needed; and

(5) Check to determine the availability of mutual collection assistance request procedures (discussed supra Section II), and initiate such requests following the procedure detailed elsewhere in this outline. I.R.M., pt. 5.21.3.6(3) (Jan. 7, 2016).

4. DOJ-Tax and Court Procedures for Repatriation Suits: A repatriation order is typically requested in connection with a suit to reduce a tax assessment to judgment, a suit to foreclose a federal tax lien, a summons enforcement proceeding, and/or a request for a writ ne exeat republica. In such suits, the United States will specifically request (1) an injunction or order directing the taxpayer to repatriate the property, or (2) appointment of a receiver to repatriate the taxpayer’s assets and pay the taxpayer’s taxes. The court should hold a hearing to satisfy due process concerns.

5. Outcome if Order Granted: If the repatriation suit is successful, the court will order the taxpayer to return the property to the United States. The next step typically depends upon whether or not the taxpayer complies with the order.

a) Compliant Taxpayer: If the taxpayer returns the property to the United States, then the property is (1) generally deposited with the court according to the order and disbursed appropriately, or (2) handles otherwise if so specified. I.R.M., pt. 5.21.3.6(5) (Jan. 7, 2016).

b) Noncompliant Taxpayer (Pre-Contempt): If the taxpayer does not return the property to the United States, then DOJ-Tax may request initiation of contempt proceedings. Id.

c) Noncompliant Taxpayer (Contempt): If the taxpayer is found in contempt and still refuses to repatriate the property, then the judge can order the taxpayer jailed until the property is returned. Id.

D. Appointment of a Receiver:

1. Overview: 26 U.S.C. § 7402(a) allows the United States district courts to order the appointment of a receiver to take control of a delinquent taxpayer’s assets in connection with other collection actions. An action to appoint a receiver is most typically requested in connection with a writ ne exeat republica or a repatriation order. I.R.M., pt. 5.21.3.5(3) (Jan. 7, 2016).
2. **What is a Receiver?** A receivership places a responsible individual, known as the receiver, who works under the direction of the court in control of the taxpayer’s assets. I.R.M., pt. 5.21.3.5(2) (Jan. 7, 2016). The receiver controls and conserves the assets or liquidates the assets in an orderly and efficient manner. *Id.*

3. **When is a Receiver Appropriate?** In order for the IRS to petition for the appointment of a receiver, the taxpayer’s U.S.-based assets must be insufficient to fully satisfy the tax liability and evidence must exist to confirm the existence of substantial assets outside the United States. I.R.M., pt. 5.21.3.6(4) (Jan. 7, 2016).