

# The IRS' Powers and Practices in Collecting International Records and Evidence in Civil and Criminal Investigations

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# Summonses

Legal authority – I.R.C. § 7602

## Authority

- Demand books, papers, records, or other data which may be relevant or material to the IRS inquiry
- Demand that a person appear before the IRS and bring books, papers, records, or other data, and to give testimony under oath

## Summonses (cont'd)

*United States v. Powell*, 379 U.S. 48, 57 (1964)

- i. Legitimate purpose
- ii. Not already in IRS' possession
- iii. Followed all administrative steps
- iv. Books, paper, records, and other data

# Summonses (cont'd)

- How and why summonses are used by the IRS
- Judicial enforcement process
  - Warning letter (called a “last chance letter”) to taxpayer from IRS Chief Counsel
  - Filing suit in United States District Court
  - Taxpayer challenges rarely succeed

# Summonses (cont'd)

## Defenses

- The four factors set out in *Powell* have not been satisfied
- The summons is unreasonable as to place or time
- The summons is overbroad or unduly burdensome
- Lack of proper service
- The summons was issued in bad faith. *U.S. v. Clarke*, 134 S. Ct. 2361 (2014)
- The summons calls for privileged information. *U.S. v. Zolin*, 491 U.S. 554, 562 (1989)
- A DOJ referral was made *prior to the issuance* of the summons. IRC 7602(d)

# Orders for Entry

- The IRS may demand to enter and inspect real property
- Referral to from IRS to US Attorney's Office
  - Government will request court order to permit access to real property
  - Legal Authority –
    - I.R.C. § 7402 – “make and issue in civil actions, writs and orders of injunction, and of ne exeat republica, orders appointing receivers, and such other orders and processes”
    - 28 U.S.C. § 1345

# John Doe Summonses

- Legal Authority - § 7609(f)
- Court approval to issue in an *ex parte* proceeding and IRS must show
  - i. the summons relates to the investigation of a particular person or ascertainable group or class of persons
  - ii. there is a reasonable basis for believing that such person or group or class of persons may fail or may have failed to comply with any provision of any internal revenue law
  - iii. the information sought to be obtained from the examination of the records or testimony (and the identity of the person or persons with respect to whose liability the summons is issued) is not readily available from other sources
  - iv. the information sought in the summons should be narrowly tailored to information pertaining to the failure or potential failure of the group or class of persons that have failed to comply with one or more provisions of the internal revenue laws which have been identified

# John Doe Summonses (cont'd)

- A foreign country that has an income tax treaty with the IRS may request the IRS to issue a JDS
- A third-party recipient of a John Doe summons does not have a route to refute a court's findings that the IRS met the Section 7609(f) requirements
- If the third-party recipient does not comply with the summons, the IRS can bring an enforcement action against them, at which point they will have the same defenses as a recipient of a traditional IRS summons



# John Doe Summonses (cont'd)

## Examples

- Law Firms (Taylor Lohmeyer)
- Banks (UBS)
- Crypto Exchanges (Coinbase, Kraken, Circle)
- FedEx/UPS to offshore service providers

## Review of produced records

- Today data is generally produced to IRS, not boxes of documents
- IRS reviews production with technology such as litigation support software

# Income Tax Treaties

- Income tax treaties provide for “exchange of information and administrative assistance”
- Article 26 of the current model treaty provides in part for exchange of:
  - “information relating to the assessment or collection, or administration of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, such taxes... .”

# Criminal Information Collection

- Informal sharing among enforcement personnel
- Personnel in foreign countries and tax attaches
- Informants and cooperation by domestic law enforcement
- MLAT Process
- EGMOT Group data sharing

# Other Potential U.S. Government Data Sources

- FinCEN reports: Suspicious Activity Reports (SARs) and Currency Transaction Reports (CTRs)
- Treasury Enforcement Communications Systems (TECS) requests
- Postal traces
- DOJ Swiss Bank Program database
- Future FinCEN beneficial owner database for entities in the U.S.

# Other non-Government Data Sources

- Whistleblower Program (IRC § 7623) and Form 211
- Internet (Google)
- Social Media Research (LinkedIn, Facebook, etc.)
- News database research including international newspapers (CC librarian)
- Accurint (real property ownership, vehicle registration, voter registration, address history, lawsuits)
- Y2k analysis by LexisNexis to show entity affiliation

Questions?