

IRS Uses New Tactic to Expand Efforts to Combat Offshore Tax Evasion

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In a search for financial records of a U.S. taxpayer who allegedly parked undeclared income offshore, the Internal Revenue Service (IRS) and the U.S. Department of Justice (DoJ) are seeking to enforce a summons against a U.S. branch of a foreign bank for records held by a foreign branch of that bank. This heightened enforcement evidences the resolve of the IRS and the DoJ to use the huge store of information about offshore accounts—and about the financial institutions that hold them—disclosed over the past half-decade of their enforcement efforts.

On February 23, 2016, the U.S. Government sued UBS AG's Miami branch to enforce an IRS administrative summons seeking records held by UBS AG's Singapore branch and relating to a U.S. taxpayer who allegedly has not paid his U.S. federal income taxes. United States of America's Petition to Enforce IRS Administrative Summons, *United States v. UBS AG*, No. 1:16-mc-20653 (S.D. Fla. Feb 23, 2016). The court filings assert that the U.S. taxpayer was educated in the United States and previously worked in the tech industry in California. It is alleged that he now lives in China. For background, see [US taxman going after UBS account in Singapore](#) (*Straits Times*).

This move is worth exploring both for its history and its implications:

- The IRS has a problem obtaining tax-related financial information from Singapore because of its bank secrecy laws, compounded by the fact that the United States has no income tax treaty or tax information exchange agreements with Singapore.
- The summons is a *Bank of Nova Scotia* summons, so named because of the leading authority empowering a U.S. court to enforce a subpoena compelling a U.S. branch of a bank to produce records held by a non-U.S. branch of the same bank, even where production would violate the bank secrecy laws governing the non-U.S. branch. See *In Re Grand Jury Proceedings (Bank of Nova Scotia)*, 740 F.2d 817 (11th Cir.), cert. denied, 469 U.S. 1106 (1985); *In Re Grand Jury Proceedings (Bank of Nova Scotia)*, 691 F.2d 1384 (11th Cir. 1982), cert. denied, 462 U.S. 1119 (1983).

- After the conclusion of the DoJ's Swiss bank non-prosecution program at the end of 2015 (which resulted in non-prosecution agreements with over 80 Swiss banks, raising over \$1 billion for the U.S. Treasury), the use of the summons is widely interpreted as the beginning of a shift of enforcement to other offshore jurisdictions, including Singapore. As a result of information produced in criminal prosecutions, in the Swiss bank program and in the IRS's voluntary disclosure programs for individuals, the DoJ and the IRS have collected huge amounts of information about patterns of offshore evasion. They now want to use that information.
- The summons should also concern U.S. taxpayers who work in industries characterized by high mobility in employment. The DoJ and the IRS appear to be signaling that they have a wealth of information about tax avoidance involving offshore accounts, a significant amount of which may have been gathered from the DoJ's Swiss bank program, and have the will and the tools to police it.
- The court filings suggest that the U.S. taxpayer opened his account with UBS AG's Singapore branch (and possibly also closed it) prior to the passage of the Foreign Account Tax Compliance Act (FATCA) and the effective date of the Agreement between the Government of the United States of America and the Government of the Republic of Singapore to Improve International Tax Compliance and to Implement FATCA (IGA), which effectively impose due diligence and reporting obligations on Singapore financial institutions that open accounts for U.S. persons.
- The summons evidences the effort by the DoJ and the IRS to investigate U.S. persons who moved funds from Swiss banks to other jurisdiction accounts in an effort to avoid detection under the Swiss Bank Program. It can be anticipated that similar summonses will be issued to other "destination" jurisdictions as a consequence of the information obtained from Swiss banks and from voluntary disclosures, among other sources. The DoJ and the IRS view the closing of a Swiss account and the moving of funds to another non-U.S. jurisdiction account as facts consistent with willful failures and thus could lead to criminal prosecution. Taxpayers in such situations are thus well advised to come forward under the Voluntary Disclosure Program. Going forward, FACTA compliance will provide additional information for the IRS to use in pursuing U.S. persons holding undeclared foreign accounts, particularly through non-U.S. holding entities and foreign trusts. Also, going forward, FACTA financial institution due diligence requirements and the increasing use of information exchange agreements will significantly aid the enforcement efforts of the IRS and foreign jurisdiction tax authorities.

The information presented is only of a general nature, intended simply as background material, is current only as of its indicated date, omits many details and special rules, and accordingly cannot be regarded as legal or tax advice.

If you have any questions about the content of this alert please contact the Pillsbury attorney with whom you regularly work, or the authors below.

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