

IRS/DOJ Summons Seeks to Break Singapore Bank Secrecy on Non-Resident's Account

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In late February 2016, the Justice Department filed an action in federal court to compel UBS's branch in Miami to produce bank records of a Singapore account purportedly owned by a taxpayer who lives in China and is under IRS audit. With a tactic not used in several years, this heralds the opening of a new front in the U.S. enforcement effort against unreported foreign assets. Much of the activity in the last eight years has been aimed at Switzerland, where the U.S. can declare victory. The Miami summons action reflects that the government will pursue money transferred out of Switzerland, particularly into Singapore, and that the IRS and DOJ have additional ways to overcome foreign bank secrecy laws, whether or not the taxpayer under scrutiny lives in the U.S.

The new case, *United States v. UBS AG (S.D.Fla.)*, seeks to enforce a "Bank of Nova Scotia" summons, a summons type named after an important 1982 appellate decision, where a court compelled the Miami branch of Scotiabank to produce records from the Bank's Cayman branch notwithstanding Cayman secrecy laws. The Bank complied; had it not, the court could have imposed substantial fines on the Miami bank until the Cayman records were delivered to the IRS.

During the past eight years of aggressive U.S. enforcement in the foreign account area, the Justice Department has not resorted to this method of obtaining foreign bank records. Instead, the IRS/DOJ issued "John Doe" summonses, treaty requests, and "required record" summonses to taxpayers under audit or criminal investigation, among other tactics. Now, the DOJ and IRS want records from Singapore, a bank secrecy jurisdiction long thought to have attracted money flowing out of Switzerland once the U.S. crackdown began. Because the taxpayer lives in China, the IRS cannot serve a summons directly on him, and as the U.S. and Singapore have no tax treaty, the government issued a "Bank of Nova Scotia" summons. The IRS is demanding that the Miami branch of UBS retrieve from Singapore the sought-after bank statements, irrespective of Singapore law.

The case is significant for many reasons, but three stand out. First, it is a tangible example of the vigorous U.S. enforcement effort to "follow the money" out of Switzerland to Singapore and other bank secrecy countries. This effort is enhanced by voluminous data provided by Swiss banks to the DOJ regarding "leaver" accounts -- those that closed when the U.S. started to push against secret Swiss accounts. Second, to the extent the IRS or DOJ cannot otherwise easily obtain records, they will now implement a powerful tactic to attempt to override foreign secrecy laws; in most reported cases in this area, federal judges have ruled that U.S. law prevails over foreign bank secrecy laws. Third, the U.S. shows no sign of relaxing enforcement efforts simply because a taxpayer may live outside the reach of U.S. legal jurisdiction.

All interested constituents -- individual taxpayers, financial institutions, and third parties who help manage assets for Americans outside the U.S. -- should take immediate note of this. The IRS and DOJ will welcome any party who comes forward to report conduct that may have violated U.S. law, and in general, those who make a voluntary

disclosure prior to discovery by the government will get far more lenient treatment. Otherwise, we will likely see many more such actions aimed at unreported foreign accounts and assets, even in the face of local bank secrecy laws.

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