VIEWPOINTS tax notes.

More 'Eyes' in the IRS - Enforcement Beyond OVDI 2011

By Betty J. Williams

Betty J. Williams is the managing partner at Mopsick & Williams LLP in Sacramento, Calif. Williams describes how the IRS's next wave of investigations of foreign financial institutions, intermediaries, and taxpayers will use new laws, increased international information exchange agreements, and administrative and judicial discovery processes in the agency's attempts to identify unreported offshore assets.

A funny thing happened on the way to the bank: The world got a whole lot smaller. The IRS's priorities for fiscal 2012 include the vigorous pursuit of those who evade their responsibility to pay the taxes they owe.1

For the first time in history, a bank secrecy jurisdiction consented to turn over thousands of names and account numbers: In 2010 UBS agreed to provide the IRS the names of approximately 4,000 U.S. taxpayers as part of UBS's resolution of a civil lawsuit filed by the Justice Department.2

1IRS, FY 2012 Budget Request, Congressional Budget Submission, Feb. 14, 2011. 2The DOJ's Tax Division issued a press release on April 7, 2010, regarding the litigation between the United States and UBS, Doc 2010-7673, 2010 TNT 67-24: UBS AG, Switzerland's largest bank, entered into a groundbreaking deferred prosecution agreement, admitting guilt on charges of conspiring to defraud the United States by impeding the IRS. As part of the agreement, UBS agreed to immediately provide the United States with the identities and account information for certain United States customers of UBS's cross-border business. UBS also agreed to exit the business of providing banking services to United States customers with undeclared accounts, and pay $780 million in fines, penalties, interest and restitution. Immediately following on the heels of the deferred prosecution agreement, the division brought a civil action against UBS, seeking the names of more U.S. taxpayers. After approximately six months, the U.S., UBS and the Swiss government entered into an historic agreement that has put a large chink in the armor of Swiss bank secrecy. Under the settlement, the IRS is to receive account information for thousands of the most significant tax cheats among the U.S. taxpayers who maintain undeclared Swiss bank accounts. 3IR-2011-55, Doc 2011-10752, 2011 TNT 97-11.

At the same time, the IRS was busy administering the first of two voluntary disclosure initiatives intended to give fair notice to taxpayers with secret offshore accounts and provide them an opportunity to disclose the accounts, file the requisite tax returns, and pay fixed penalties in exchange for a guarantee of no criminal prosecution. The first initiative was announced in 2009. Before then, only about 100 taxpayers came forward voluntarily each year. An astounding 15,000 taxpayers came forward when the IRS announced the 2009 program; the IRS anticipated only 1,000 admissions. Before the Service announced the second initiative in February, another 4,000 taxpayers came forward through the long-standing IRS voluntary disclosure process.3

Even before all the cases opened in the first voluntary disclosure program were closed, the IRS announced a second program, the 2011 offshore voluntary disclosure initiative (OVDI). The second program has less favorable penalty relief and stricter rules but still promises qualified taxpayers a stay-out-of-jail-free card.

The IRS's efforts to uncover hidden assets doesn't end here. It will use new laws, international discovery tools, and judicial enforcement to discover information from foreign financial institutions (FFIs), intermediaries, and taxpayers.

A. The Next Wave of Investigations

The IRS has already launched its next wave of investigations of FFIs, intermediaries, and taxpay-investigations of FFIs, intermediaries, and taxpayers with new international information exchange agreements and the use of judicial powers.

According to IRS Commissioner Douglas Shulman, there is a general agreement both in the United States and around the globe that withholding and third-party information reporting are powerful tools to improve and maintain taxpayer compliance. Income subject to IRS reporting or withholding, such as wages, interest, and dividends, is accurately reported 96 percent of the time on tax returns. Contrast that with the estimated 50 percent of income accurately reported when there is little or no information reporting.4 Clearly, the IRS wants to close the gap. The IRS collected $57.6 billion in revenue in FY 2010, $8.7 billion, or 18 percent, more than FY 2009. The IRS attributes this increase in enforcement revenue to investment over the past two years in tracking down taxpayers who would otherwise be tax evaders. 5

B. Beyond Taxpayer Self-Reporting

In the past, a taxpayer could place money in an offshore account and conveniently forget about those funds when it came time to file his federal income tax return. After all, in our system of self-reporting for income tax purposes, there comes a point at which ''remembering'' to write a larger check to Treasury feels like voluntarily having a molar pulled without Novocain.

The more time that passes, the easier it is to continue to ''forget,'' and most taxpayers mistakenly believe that if they get caught, a bill with a reasonable late payment fee will remedy the ''oversight.'' For many, the notion that criminal prosecution is a potential hazard is startling news. Crimes such as criminal tax fraud, tax evasion, and money laundering are headlines other people face.

Taxpayers can no longer bury their heads in the sand. The IRS is taking far more action than merely inviting taxpayers to identify themselves. The OVDI is a final opportunity for taxpayers to come in voluntarily, before the IRS finds them.6 Each year, the Service is able to obtain more data, and make better use of that data, than ever before. It has pledged to use its resources to find taxpayers who are hiding income in other countries, and this is not a short-term plan. To say that the IRS is multitasking is an understatement.

In addition to obtaining information domestically through administrative or judicial processes, the IRS can also gather information voluntarily from other countries through tax treaties, tax information exchange agreements, and mutual legal assistance treaties and laws (MLATs).

Judicial subpoenas can be issued to order a U.S. citizen or resident to appear as a witness, or to produce specified documents, if he is abroad. If a bilateral treaty or judicial assistance is not in force with the United States, letters rogatory may be used by a U.S. court or judge to request a foreign jurisdiction court or judge to summon and cause a specific witness to be examined within that jurisdiction.

It is even possible to use both formal and informal discovery in the U.S. Tax Court to obtain information or documentation from other countries, and cases governed by chapter 15 of the Bankruptcy Code also provide the court a way to obtain information regarding foreign accounts.

1. Foreign account tax compliance.

New laws will come into effect that give the IRS more information on offshore holdings. The Foreign Account Tax Compliance Act was included in the provisions of the Hiring Incentives to Restore

Employment Act of (HIRE Act).7 FATCA was enacted to create transparency in determining U.S. ownership interests in foreign accounts and to help fight tax evasion by U.S. taxpayers with offshore accounts. U.S. taxpayers will be required to report offshore assets to the IRS on Form 8938, ''Statement of Specific Foreign Financial Assets,'' if their offshore assets exceed $50,000. The penalty for the first failure to report offshore accounts is $10,000 and it goes up to $50,000 if the taxpayer is notified by the IRS but still fails to report the offshore assets each year. There are additional 40 percent underpayment penalties that may apply to the account as well. Under proposed sections 1471 through 1474, all FFIs will be required to enter into disclosure compliance agreements with Treasury, and all nonfinancial foreign entities must report or certify their ownership or be subject to the same 30 percent withholding for payments after December 31, 2012.

FFIs will have additional reporting, documentation, and withholding requirements regarding certain U.S. accounts. The new requirements under FATCA regarding U.S. taxpayers with foreign financial assets and FFIs go into effect in 2011 and 2013, respectively.8 The legislative intent of proposed FATCA regulations are anticipated by the end of 2011 and release of final FATCA regulations will be in 2012 for an effective date of January 1, 2013.

In addition to FATCA, IRS attorneys and other enforcement personnel are being educated on all available resources to discover the expanding world of foreign account information gathering.

2. Sources of information. The IRS has a variety of sources from which to gain information regarding a taxpayer. Information filed with the IRS such as tax returns and information returns are one source.

4Id. 5IRS, FY 2012 Budget Request, supra note 1, at 1. 6IR-2011-14, Doc 2011-2718, 2011 TNT 27-10.

7P.L. 111-147, section 501(a). 8See ''Foreign Account Tax Compliance Act (FATCA)'' on the IRS website at http://www.irs/gov/businesses/corporations/ article/0,,id=236667,00.html.

Foreign entities doing business in the United States and U.S. persons with specified ownership interests in foreign corporations or partnerships, for example, must follow special record-keeping requirements and file information returns.9

The taxpayer's books and records are another important source of information. A taxpayer who possesses or has custody or control of records located outside the United States must produce the records for examination in the United States, and if the taxpayer is unable or unwilling to do so, the examination could take place at the foreign site.

Testimony obtained through summonses or deposition is another source of information for the IRS, as are filings with the SEC or other sources of public information.

3. Administrative options to obtain information from outside the United States. Information document requests are a common enforcement tool used domestically to obtain records and information from a taxpayer.10 If the taxpayer does not comply, the IRS may issue a summons under section 7602 (or section 7609 for a third-party record keeper) or a formal document request (FDR) under section 982.

An administrative summons issued to the taxpayer or a third party for documents or testimony is enforceable against individuals or entities that possess or control the documents if they fall within the jurisdiction of a U.S. district court and specified requirements are met.11 A summons may be used to obtain documents located outside the United States in some cases, such as if a U.S. entity has effective

custody and control of them12 or if the foreign entity possessing the documents can be found in the United States.13

9IRS Form 5471, ''Information Return of U.S. Persons With Respect to Certain Foreign Corporations'' (generally for 10 percent or more shareholders); Form 8865, ''Return of U.S. Person With Respect to Foreign Partnerships'' (holders of 10 percent or more interest), which is required under section 6038 and is generally filed by a U.S. parent company for foreign subsidiaries it controls; Form 5472, ''Information Return of a 25 Percent Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business,'' which is required under section 6038A(a) and (b) and section 6038C. 10IRS Form 4564, ''Information Document Request,'' is used, and the taxpayer typically has 60 days to provide the requested information. 11In summons enforcement proceedings, the IRS must show that the investigation is for a legitimate purpose, that the inquiry may be relevant to that purpose, that the IRS does not already possess the information, and that other administrative steps have been followed. United States v. Powell, 379 U.S. 48 (1964). 12First Nat'l City Bank of N.Y. v. IRS, 271 F.2d 616 (2d Cir. 1959); United States v. Hayes, 722 F.2d 723 (11th Cir. 1984). 13See United States v. Toyota Motor Corp., 561 F. Supp. 354 (C.D. Cal. 1983). A foreign corporation is ''found in the United States'' when it actively engages in U.S. business or otherwise purposefully avails itself of U.S. business opportunities. 14IRS, FY 2012 Budget Request, supra note 1, at 26.

Bank records may be summoned either through a third-party summons on a U.S. branch of a bank (regardless of whether the bank has headquarters in the United States or abroad) to obtain records from a foreign branch, and the summons may be enforceable even if compliance would violate the law of the foreign country. A U.S. court would determine whether to enforce the summons. If the foreign bank requires that the taxpayer sign a consent, the IRS can seek an order under section 7402(a) compelling the taxpayer to sign the consent; however, many foreign courts and banks will not recognize a compelled consent as valid. An FDR may be issued to request the production of foreign-based documentation as defined in sec tion 982(d) if documents produced following the issuance of an information document request are inadequate.

An FDR can be issued only to the taxpayer, not a third party, and the taxpayer has 90 days to substantially comply, or on the IRS's motion, a court may prohibit the taxpayer's introduction of any foreign-based documentation covered by the FDR.

The Treasury enforcement communications system (TECS) is another useful tool for the IRS. The TECS is a Department of Homeland Security database used extensively by the law enforcement community. It has information about individuals and businesses suspected of or involved in violations of federal law. IRS employees may use the TECS to locate asset information and information about individuals traveling abroad, and to monitor the movement of people in and out of the United States — including notification if a particular taxpayer enters the United States.

4. International information exchange.

a. IRS Large Business and International Division. In 2009 the IRS created a Global High Wealth Industry Group to better monitor tax compliance by high-income individuals and their related enterprises. The IRS expects to produce annual enforcement revenue of $234 million in 2012 and approximately $500 million by 2014.14 In October 2010 the IRS Large and Midsize Business Division was renamed the Large Business and International Division to place a greater emphasis on international compliance for U.S. businesses.

In the announcement of this realignment, Shulman said:

Executing our international strategy is a top priority, and our work continues to intensify in this area. Every day, we are moving forward in our international compliance efforts. Bringing together our top international personnel in this new group will help us advance our global tax administration efforts and ensure focus and fairness in a critical area for our nation.15

LB&I serves the same segment of U.S. taxpayers as did LMSB, which includes corporations, subchapter S corporations, partnerships with assets greater than $10 million, and some high-wealth individuals. The new organization was designed to enhance the IRS's international program by adding about 875 employees to the existing staff of almost 600. Most of the additional examiners, economists, and technical staff were current employees who specialized in international issues within other parts of LMSB. LB&I includes a transfer pricing director and a chief economist who oversees the IRS's economic positions on transfer pricing. LB&I is also charged with overseeing the implementation of FATCA.16

The IRS claimed that the realignment would strengthen international tax compliance for individuals and corporations in several ways, including identifying compliance issues more quickly and increasing international specialization among IRS staff by creating economies of scale and improving IRS international coordination. ''The realigned organization will let us focus on high-risk international compliance issues and handle these cases with greater consistency and efficiency as we continue to increase our work in this area,'' Shulman said.17

b. Tax treaties, TIEAs, and MLATs. The IRS and Treasury have also worked to revise tax treaties and TIEAs to increase transparency and make it more difficult for taxpayers to evade taxes by merely crossing international borders.

The United States has income tax treaties with many foreign countries. The treaty describes the steps that must be followed to get information and documents from that country. The U.S. competent authority (deputy commissioner (international), LB&I) has exclusive authority to make and receive exchange of information requests under all tax treaties.

Under the tax treaties, residents (not necessarily citizens) of foreign countries are taxed at a reduced rate — or are exempt from U.S. taxes — on some items of income they receive from sources within the United States. These reduced rates and exemptions vary among countries and specific items of income. Under these same treaties, residents or citizens of the United States are taxed at a reduced rate — or are exempt from foreign taxes — on some items of income they receive from sources within foreign countries. Most income tax treaties contain a saving clause that prevents a U.S. citizen or resident from using the treaty provisions to avoid taxation of U.S.-source income.

The United States also has agreements in place with many foreign countries governing the exchange of tax information. The purpose of TIEAs is to help each country be sure taxes are accurately assessed and collected, to prevent fraud or tax evasion, and to improve information sources for tax matters. TIEAs are distinct from tax treaties. They are primarily designed to implement information exchange programs, whereas tax treaties are designed to alleviate double taxation. TIEAs are executive agreements authorized and negotiated by the secretary of the Treasury; tax treaties are ratified by the Senate. Tax treaties and TIEAs operate in a similar manner and may be used to obtain documents held by foreign taxing authorities, persons, or entities possessing documents within the foreign country. Information may also be requested by deposition of witnesses.

In criminal cases, the MLAT may be used to obtain information from a foreign country. MLATs are used only for U.S. criminal violations enumerated in the MLAT (which includes tax and nontax crimes). They provide a way to obtain testimony and tangible evidence from countries that have an MLAT with the United States.

In the case of MLATs, the attorney general is designated as the competent authority for the United States, who approves and handles MLAT requests.

5. Information exchange officials. Newly named LB&I division is the U.S. competent authority for the administration of tax treaties, TIEAs, and other bilateral agreements relating to the exchange of information; however, the authority may be delegated to certain officials or offices: Specifically tax attaches, revenue service representatives, and Joint International Tax Shelter Information Centre (JITSIC) technical advisers and delegates.

Tax attaches are IRS employees within LB&I. Presently there are four tax attaches stationed in Frankfurt, Germany; London; Paris; and Beijing. Each tax attache is responsible for IRS tax administration matters within his geographical area consisting of several countries. In general, tax attaches help the IRS obtain foreign documents and testimony of witness from abroad. They assist with requests made pursuant to a tax treaty or TIEA.

15IR-2010-88, Doc 2010-17403, 2010 TNT 150-11. 16Id. 17Id.

They may also help gather foreign public information and identify types of information and records maintained by foreign agencies and courts.

The latitude granted to the tax attache can vary depending on whether the person to be interviewed is a U.S. citizen or a citizen from another country, and whether the investigation has criminal aspects.

Tax attaches were formerly called revenue service representatives; there is currently one IRS employee within LB&I who serves as a revenue service representative in a domestic post of duty: Plantation, Fla.

JITSIC has technical advisers and delegates who act as the competent authority under the bilateral income tax treaties with other member countries.

The IRS and the national taxing authorities of the United Kingdom, Canada, Australia, and Japan created JITSIC to identify, develop and share information and expertise regarding abusive tax avoidance transactions, particularly those that cross borders.

Delegates from each country, except Japan, are stationed in Washington. A second JITSIC office opened in London in 2010.

6. Obtaining information from outside the United States through the judicial process. Judicial subpoenas can be issued to order a U.S. citizen or resident who is abroad to appear as a witness if he is abroad, or to produce specified documents in civil or criminal litigation and in connection with grand jury investigations. A subpoena will generally be issued if the court finds the appearance of the witness or production of documents is necessary, and there is no alternative way to obtain the requested information or testimony. As mentioned earlier, when no bilateral treaty or judicial assistance is in force with the United States, letters rogatory may be used by a U.S. court or judge to request a foreign jurisdiction court or judge to summon and cause a specific witness to be examined within the foreign jurisdiction. The testimony or documents are then transmitted for use in the pending action. The execution of letters rogatory is time-consuming, and they must be drafted narrowly.

Many countries find our standard of relevance for subpoenas and discovery requests to be overly broad; therefore, the usefulness of letters rogatory broad; therefore, the usefulness of letters rogatory may depend on the foreign country involved and the type of judicial assistance requested. Some countries won't honor requests issued for pretrial discovery purposes and foreign courts may refuse to cooperate if the request involves enforcement of what the jurisdiction deems to be fiscal matters depending on the policy of the foreign government, for example, if bank secrecy laws are involved.

a. Letters of request. The Convention of the Taking of Evidence Abroad in Civil or Commercial Matters (Hague Evidence Convention) is an international treaty designed to bridge the difference between the common law and civil law approaches to the taking of evidence in civil and commercial transnational disputes. The process is similar to letters rogatory and is used to obtain depositions or documents from countries that are signatories to the convention.

Most common law countries will provide assistance under the Hague Evidence Convention in civil tax cases pending in a U.S. court, but many civil law countries consider tax matters to be fiscal matters that are not within the scope of the convention.

There are several foreign jurisdictions that have not signed the Hague Evidence Convention, such as the Bahamas or the British Virgin Islands, but instead have enacted laws that provide for similar assistance to other foreign countries.

b. Chapter 15 bankruptcies. U.S. Bankruptcy Court is another means by which information may be sought under chapter 15 of the U.S. Bankruptcy Code. A foreign debtor, through his representative, may file a petition for recognition of the debtor's foreign bankruptcy proceeding. The bankruptcy court may grant a stay of execution against the foreign debtor's assets in the United States. If the court grants the chapter 15 petition, the information regarding the foreign debtor can be ordered under Bankruptcy Rule 2004 and a production of records can be requested.

c. Tax Court discovery. Formal and informal discovery in the Tax Court can be used to obtain information or documentation from other countries. Under Tax Court Rule 81(e), a deposition may be taken in a foreign country if the rule is carefully followed.

C. Conclusion

Regardless of its means of investigation, the IRS continues to close in on taxpayer assets held abroad. With improved information exchange agreements between the United States and other countries, the opportunity to obtain and make better use of data collected domestically, and the variety of available judicial tools, the world in which taxpayers can hide offshore assets gets smaller every year. It is clear that Congress has empowered the IRS with a full range of new weapons to expose the identity of taxpayers who are attempting to hide assets offshore.

The following is a list of important foreign information gathering cases:

U.S. Supreme Court

• Doe v. United States, 487 U.S. 201 (1988) (compelling the target of a grand jury investigation to sign ''consent directives'' that authorized foreign banks to disclose records of his accounts but did not

identify the documents or acknowledge their existence did not violate the target's privilege against self-incrimination).
• SocieteNationaleIndustrielle Aerospatiale v. U.S. District Court for S.D. Iowa, 482 U.S. 522 (1987) (the Hague convention on taking evidence abroad does not provide exclusive or mandatory procedures for obtaining documents and information located abroad; comity does not require U.S. litigants to make first use of convention procedures before initiating discovery under federal rules).

Second Circuit

• Matter of Marc Rich & Co. AG v. United States, 707 F.2d 663 (2d Cir. 1983), later proceeding, 731 F.2d 1032 (2d Cir. 1984), later proceeding, 736 F.2d 864 (2d Cir. 1984), later proceeding, 739 F.2d 834 (2d Cir. 1984) (court has jurisdiction over a Swiss corporation with U.S. subsidiary and shared officers, all involved in an alleged U.S. tax evasion scheme; $50,000 civil fine per day imposed on Swiss corporation for 18 months for noncompliance with grand jury subpoena; Swiss government blocking order did not excuse the Swiss company's contempt; apparent fraudulent conveyance by the Swiss company of its U.S. subsidiary to prevent U.S. collection of a civil fine).
• United States v. First Nat'l City Bank, 396 F.2d 897 (2d Cir. 1968) (contempt upheld for U.S.- based bank's failure to comply with a grand jury subpoena, in an antitrust investigation of customers, for records possessed by the bank's German branch).
• First Nat'l City Bank of N.Y. v. IRS, 271 F.2d 616 (2d Cir. 1959) (U.S.-based bank ordered to comply with IRS summons for records possessed by Panamanian branch of bank).
• So-called Gucci or Garpeg summons enforcement decisions in the Southern District of New York:
• Garpeg Ltd. v. United States, 583 F. Supp. 789 (S.D.N.Y. 1984); 583 F. Supp. 799 (S.D.N.Y. 1984); 588 F. Supp. 1237 (S.D.N.Y. 1984); 588 F. Supp. 1239 (S.D.N.Y. 1984); 588 F. Supp. 1240 (S.D.N.Y. 1984).
• United States v. Chase Manhattan Bank NA, 584 F. Supp. 1080 (S.D.N.Y. 1984); 590 F. Supp. 1160 (S.D.N.Y. 1984) (two U.S.-based banks ordered to comply with five IRS Criminal Investigation summonses for records of taxpayer and related parties (suspected nominees with bank's Hong Kong branch); banks hit with daily contempt fines for noncompliance despite Hong Kong court's preliminary injunction against disclosing records).
• Vanguard Intern. Mfg. Inc. v. United States, 588 F. Supp. 1229 (S.D.N.Y. 1984); 588 F. Supp. 1234 (S.D.N.Y. 1984).
• SEC v. Banca Della SvizzeraItaliana, 92 F.R.D. 111 (S.D.N.Y. 1981) (Swiss bank with U.S. subsidiary apparently facilitated insider trading violations in United States and must answer SEC interrogatories under the balancing test criteria in this case despite Swiss bank secrecy restrictions).

Third Circuit

• Gerling Int'l Ins. Co. v. Commissioner, 839 F.2d 131 (3d Cir. 1988), rev'g 87 T.C. 679 (1986) (U.S. corporation with a contract right to inspect a Swiss corporation's records may not be sanctioned by the Tax Court for not obtaining Swiss corporate records the IRS requested or for not answering IRS discovery about ownership interests of U.S. corporation's president in the Swiss corporation, for which he was also chairman of the board).
• United States v. Gippetti, 96 AFTR2d 6978 (3d Cir. 2005) (unpublished), Doc 2005-22808, 2005 TNT 216-17, after remand, 100 AFTR2d 6086 (3d Cir. 2007) (unpublished), Doc 2007-21485, 2007 TNT 184-13 (Fifth Amendment and a voluntary consent directive from a person the IRS found to have a Cayman bank account were not valid defenses to summons enforcement; on remand, the court's explicit finding of the taxpayer's ''possession'' of summoned the taxpayer's ''possession'' of summoned Cayman bank records did not require an evidentiary hearing; the Third Circuit deferred to the potential contempt

stage, considering whether the taxpayer could establish a present inability to comply with the summons because Cayman law does not allow a bank to give a customer his own records when the customer requests them after a court order).

Fifth Circuit

• Eulich v. United States, 2003-2 USTC 50,668 (5th Cir. 2003) (unpublished), Doc 2003-19407, 2003 TNT 168-4, later proceeding, 93 AFTR2d 2466 (N.D. Tex. 2004), Doc 2004-11711, 2004 TNT 109-24, modified by, 94 AFTR2d 5550 (N.D. Tex. 2004), Doc 2004-17002, 2004 TNT 164-18, later proceeding, 2006 U.S. Dist. LEXIS 2227 (N.D. Tex. 2006), Doc 2006-4044, 2006 TNT 45-11 (in combined section 982 proceeding to quash a formal document request for foreign records and for summons enforcement, taxpayer is found in ''control'' of Bahamian trust documents; fine for contempt set at $135,000 for 27 days of noncompliance before the taxpayer ultimately produces Bahamian bank records regarding the trust).
• In re Grand Jury Proceedings (United States v. Field), 532 F.2d 404 (5th Cir. 1976) (under balancing test, managing director of Cayman bank served with grand jury subpoena in Miami airport must provide testimony in a criminal tax investigation, although testimony will violate Cayman criminal law).
• United States v. Diefenthal, 71-2 USTC 9768 (E.D. La. 1971) (revenue agent's summons for records, now in Panama, of a third party closely related to the taxpayer is ordered enforced when the records were moved from the United States after the IRS agent requested them).

Sixth Circuit

• In re Grand Jury 81-2, 550 F. Supp. 24 (W.D. Mich. 1982) (grand jury subpoena served on a New York branch of a German bank for customer records in Germany is enforced; injunction by a German court against the bank and a possible letters rogatory alternative to the subpoena does not tip the balancing test in favor of the bank).

Seventh Circuit

• United States v. First Nat'l Bank, 699 F.2d 341 (7th Cir. 1983) (balancing test not met for an IRS collection purpose summons regarding taxpayers' bank statements with a Greek branch of a U.S. bank when the bank balance was reportedly in the range of $1,100, the money in Greece could not be levied on by the IRS, providing the information to the IRS would violate Greek criminal laws, and a Greek-U.S. tax treaty may have been an alternative to a summons).

Eighth Circuit

• United States v. Norwood, 420 F.3d 888 (8th Cir. 2005), Doc 2005-17896, 2005 TNT 166-15 (for an individual taxpayer the IRS already knew had at least two charge cards and one account in the Bahamas as a result of John Doe summonses, the taxpayer's records for these known Bahamian accounts was a ''foregone conclusion,'' so the taxpayer had no Fifth Amendment grounds for refusing to produce those records; the taxpayer was required to sign a consent directive for any other yet unknown foreign charge or bank accounts).

Ninth Circuit

• United States v. Bright, 596 F.3d 683 (9th Cir. 2010), Doc 2010-4303, 2010 TNT 39-26 (rejecting Fifth Amendment defense for individual taxpayers that the IRS already knew had charge cards through two

foreign banks, making taxpayers' records for these known foreign accounts a ''foregone conclusion''; upholding compensatory and contempt sanctions of $500 per day for noncompliance with foreign records part of summonses).
• United States v. Kao, 81 F.3d 114 (9th Cir. 1996), Doc 96-11183, 96 TNT 74-62, acq. in result only, 1997 AOD LEXIS 2 (taxpayers may not be required by summons enforcement to sign consent directives that on their face waive the taxpayers' section 7609 rights regarding domestic bank records).
• United States v. Vetco Inc., 644 F.2d 1324 (9th Cir. 1981), amended on reh'g, 691 F.2d 1281 (1981) (balancing test satisfied for enforcing IRS CI summonses for records of Swiss subsidiary of U.S. taxpayer and of Swiss affiliate of U.S. accounting firm; no substantially equivalent alternative means exists). • In re Tax Liabilities: John Does, 1991 U.S. Dist. LEXIS 9704 (N.D. Cal. 1991), vacated by (N.D. Cal. 1992) No. C-88-0137, Doc 91-20378, 92 TNI 26-24 (John Doe summons seeking all wire transfers for two years for at least $9,500 to or from any of the worldwide branches of a U.S. bank, and to or from five specific tax haven countries, including Hong Kong, is first ordered enforced, then 10 months later the enforcement order was vacated).
• United States v. Toyota Motor Corp., 561 F. Supp. 354 (C.D. Cal. 1983), later proceeding, 569 F. Supp. 1158 (1983) (Japanese parent corporation used a U.S. subsidiary as a marketing conduit for its products, so U.S. court had jurisdiction and venue to enforce summons on Japanese parent as part of a civil section 482 examination of the U.S. subsidiary; the summons was properly served on an officer of the U.S. subsidiary, as a managing agent for the Japanese parent; balancing test met for specific requests in summons).

Eleventh Circuit

• United States v. Hayes, 722 F.2d 723 (11th Cir. 1984) (promoter of foreign grantor trust schemes served with John Doe summonses did not make ''all reasonable efforts to comply'' with enforcement order by merely asking a Swiss agent to provide documents and not using all contractual and legal leverage at his disposal).
• In re Grand Jury Proceedings (Bank of Nova Scotia), 722 F.2d 657 (11th Cir. 1983), appeal following remand, 740 F.2d 817 (1984) (civil fine for contempt of $1.82 million, $25,000 per day, upheld for multinational bank's delayed and piecemeal response to grand jury subpoena for Cayman and Bahamian bank records of five customers under investigation for narcotics and tax violations; amici filings of the Canadian, Cayman, and U.K. governments for the bank did not sway the court's application of the balancing test).
• In re Grand Jury Proceedings (Bank of Nova Scotia), 691 F.2d 1384 (11th Cir. 1982) (Miami agency of Canadian bank held in contempt for not producing Bahamian branch bank records of a customer in response to a grand jury subpoena for a criminal tax and narcotics investigation; balancing test met; bank's status as mere stakeholder was not controlling).
• United States v. UBS AG, government's 47-page Memo of Law in Support of Petition to Enforce ''John Doe Summons'' (S.D. Fla. June 30, 2009), Doc 2009-14969, 2009 TNT 124-49 (explaining why international comity favored enforcement of the John Doe summons and that the tax treaty does not preempt the IRS summons powers).
• Cayman Nat'l Bank v. United States, 99 AFTR2d 1285 (M.D. Fla. 2007), Doc 2007-6661, 2007 TNT 53-17, rev'g 98 AFTR2d 7434 (M.D. Fla. 2006), Doc 2006-21683, 2006 TNT 206-23 (dismisses for lack of subject matter jurisdiction a case to enforce an IRS summons for collection purposes on a Cayman Bank with no branches, offices, or agents for service of process within the United States; summons served by mail on a law firm hired to collect in Florida on a Cayman judgment against the taxpayer who also owed the U.S. taxes). • Chris-Marine USA Inc. v. United States, 82 AFTR2d 5638 (M.D. Fla. 1998), Doc 98-24595, 98 TNT 159-10 (details court's efforts to evaluate whether taxpayer exercised all reasonable

efforts to comply with an order enforcing formal document request under section 982 for foreign-based records; the magistrate recommended sanctions for the taxpayer's failure to purge its contempt of the order; the taxpayer later filed bankruptcy).

D.C. Circuit

• In re Sealed Case, 825 F.2d 494 (D.C. Cir. 1987) (comity concerns led the appellate court to reverse a lower court's finding of contempt against a multinational bank of an undisclosed country for refusing to provide foreign-based bank records in response to a grand jury subpoena in a money laundering investigation, because disclosing records would require the bank's foreign branch to violate its nation's bank secrecy laws and the bank is a stakeholder, not itself suspected of any wrongdoing).
• In re Sealed Case (Iran Contra Investigation), 832 F.2d 1268 (D.C. Cir. 1987) (personal jurisdiction over a U.S. citizen who is an alleged records custodian for eight foreign companies is insufficient to require the custodian to be ordered to produce the foreign-based records of the company in response to a grand jury subpoena; personal jurisdiction over the companies themselves must be shown either by actions foreign companies took in the United States or actions whose effects were felt in the United States).
• United States v. Deloitte & Touche USA LLP, 623 F. Supp.2d 39 (D.D.C. 2009), Doc 2009-13580, 2009 TNT 113-24 (government failed to show that Deloitte USA had the legal right, authority, or ability to obtain documents on demand from Deloitte Switzerland; close cooperation between the two accounting firm offices on the specific project at issue was insufficient).