HOW THE IRS SHARES TAXPAYER INFO WITH OTHER GOVERNMENTS

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The Internal Revenue Service is ready, willing and able to help authorities worldwide with tax enforcement – especially with the sharing of taxpayers' information.

In Zhang v. United States , taxpayers recently appealed a decision from the U.S. District Court for the Northern District of California that denied their petition against an IRS summons for information. The summons was at the request of the Canadian tax authority; the U.S. and Canada have a bilateral tax treaty.

The Ninth Circuit Court sided with the IRS, saying the agency can seek information for a foreign government if the request satisfies accepted guidelines.

The appellants in the case didn't dispute that the IRS satisfied its burden (as set by the precedent 1964 case U.S. v. Powell) by establishing a prima facie case of good faith. Instead, they argued, the district court should have considered evidence of Canada's bad faith relevant to whether issuing the summons would constitute an abuse of the court's process.

> ***"We have recently considered and rejected nearly identical arguments," the Circuit Court replied. "We do so again today."***

How and why sharing info happens

Nations share tax information primarily in three ways:

- **Automatic exchanges (e.g., BEPS Action 5 OECD minimum standard and the FACTA) are routine and usually associated with standardized financial/bank transactions.**
- **Spontaneous exchanges, when one country alerts another about a potential tax issue (usually facilitated by bilateral tax treaties); and**
- **Targeted requests, typically initiated by one country to seek information in an investigation of a resident or citizen (as in Zhang).**

If a U.S. taxpayer fails to comply with the IRS request for information made by the foreign government, the IRS can use administrative summons power to enforce the summons in court (also in Zhang).

Exchanges of this information occur under such international agreements as: bilateral tax treaties; Tax Information Exchange Agreements (TIEAs); multilateral treaties and agreements to which the U.S. is a party, such as the OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters, among others; intergovernmental agreements under FATCA; U.S. territory tax implementation or coordination agreements between the U.S. and its territories of American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Puerto Rico and the U.S. Virgin Islands; and mutual legal assistance treaties.

The United States and five of its treaty partners assist each other in the collection of taxes covered by their respective tax treaties (the Mutual Collection Assistance Program: Canada, France, Denmark, Sweden and The Netherlands. Info exchanged can include names, addresses, ID numbers, types and amounts of tax and any other information necessary for tax collection.

Taxpayers with international holdings need to realize that information flows through borders more freely than ever today.

Your tax specialist needs to be able to handle these and many other complex cross-border issues of wealth, income and tax enforcement or the consequences could be severe. If we can help, please let us know.