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Prepare to be smacked open like a piñata if hiding your money in the USA. John Doe summonses assisting foreign governments to be used with CTA BOI



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Introduction

- US case law strongly supports the Internal Revenue Code that the IRS can get courts to quickly approve the issue of John Doe summonses to FIs under an investigation of a specific, unidentified person or ascertainable group or class of persons.
- The IRS assisting foreign governments to pursue foreign tax liability of non-residents is integrated into US law if a ratified tax agreement exists. All that the foreign government has to show is that it is reasonable that the target investigation is persons who are likely avoiding the foreign government's tax liabilities.
- Once a FI is issued a summons it must investigate who the UBO is, even if they do not have the relevant information at the moment, which is unlikely due to developing anti-terrorist financing and AML laws.
- Critically, there is no protection behind the Right to Privacy Act in the USA regarding a John Doe summons.

John Doe Summons used for non-residents of USA?

- My recent article on Finland's use of John Doe Summons to obtain information on Finnish residents with accounts in the USA led to panic-stricken queries on what type of requests can be covered, e.g. can they include trusts, insurance policies, US LLCs, BVI entities, etc.
- Some taunted that requests would be useless regarding States where information on entity UBOs (hello Delaware) is for practical purposes non-existent, or where banks only identify trustees, not the beneficiaries or settlor, etc.
- Of course, we know the weaknesses of FINCENs useless customer due diligence and its many exemptions... but let's see if John Doe can

break open the piñata to discover the goodies inside.

OECD practically guaranteed assets would flee to the US to avoid the automatic exchange of info. And then they congratulate themselves that deposits in tax havens fell 25%. Duh.

- US is the world's ideal stable country that doesn't tax foreigners on investment profits, doesn't participate in the CRS and the kicker is its FATCA reciprocal reporting is as useless as a screen door on a submarine.
- The OECD seems oblivious that over 90% of assets avoiding the CRS have been herded into the USA, thanks to the OECD pretending this issue doesn't exist. They even stated 'we do not see a flow of assets into the US'.
- Wow, I didn't know Mr. Magoo is now working at the OECD. The footnote from 2014 in the OECD list of participating jurisdictions that *the United States acknowledges the need to achieve equivalent levels of reciprocal automatic information exchange with partner jurisdictions, and also includes a political commitment to pursue the adoption of regulations and to advocate and support relevant legislation to achieve such equivalent levels of reciprocal automatic exchange*, must be the most pointless statement by an organisation since Noah landed his boat.

The corporate transparency act will allow 51 countries to get info on corporations owned by their tax residents

- This will further add to reasons for countries to use John Doe summonses to get more details
- Read "[Why the US will tell Switzerland to f*ckoff when they request Beneficial Ownership Information from the Corporate Transparency Act](#)"



Foreign request for BOI behalf of:

- a law enforcement agency, or
- prosecutor, or
- judge of another country, or
- a foreign central authority or foreign competent authority; **and:**

i. for assistance in a law enforcement investigation or prosecution, or a national security or intelligence activity, authorized under the laws of the foreign country; **and**

ii. either be made under an **international treaty**, agreement, or convention, or

iii. when **no such instrument is available**: be an official request by a law enforcement, judicial, or prosecutorial authority

- or a **trusted** foreign country
- as "determined by FinCEN, with the concurrence of the Secretary of State and in consultation with the Attorney General as necessary and appropriate."
- What does "trusted" foreign country mean: "meet the IRS's stringent safeguard, privacy, and technical standards"
- We get the list of trusted foreign countries from FATCA reciprocal reporting countries

Be aware the US is not a tax haven despite assurances from ignoramuses

- You've been duped by your lawyer, insurance broker, trustee, wealth manager or bank relationship manager that you can hide your money with a FI in the USA.
- Plus, they add excitedly, that if you use an entity or arrangement to hold the assets it won't be reported back via FATCA because there is no UBO register, or FINCEN's customer due diligence is not retroactive and banks don't identify owners of companies for accounts opened before 2018, etc... Oh dear, prepare to be smacked open like a piñata, revealing all the candies to your tax authorities.

Piñata - decorated container often made of paper mache, pottery or cloth filled with small toys and candy, and then broken as part of a celebration

- Generally unknown, but fast being published in the global press, is that your tax authority can ask the USA, no make that *demand*, the IRS to hand over the information regarding their residents stashing loot in the USA.
- As long as it can be shown the purpose of the request is to find people using the USA to avoid tax back home, then the USA must fork over the names... But why? Where did this exchange on demand come from?

IRS can issue John Doe summons on behalf of foreign government if a ratified tax treaty exists

- Under the US Internal Revenue Code 7609, a John Doe Summons does not identify the person concerning whose liability the summons is issued. The IRC authorizes the IRS to issue a John Doe summons under an investigation of a specific, unidentified person or ascertainable group or class of persons.
- With a normal summons, the IRS seeks information about a specific taxpayer whose identity is known. In contrast, a John Doe summons allows the IRS to get the names and requested information and documents concerning all taxpayers in a certain group. A John Doe summons can be a useful tool when trying to obtain information like a list of investors in a certain tax shelter, owners of tax-exempt bonds, or account holders at a financial institution.
- A John Doe summons can only be served after approval by a Federal court. Therefore, the Service must never serve a "friendly" John Doe summons even though a prospective summoned party may request one as a condition to provide information to the Service. Serving a John Doe summons without court approval violates the statute and will jeopardize the investigation.

Necessary Purpose

1. The purpose of a John Doe summons must be to investigate the tax liability of a specific unidentified taxpayer (or a group of such taxpayers), even if a secondary purpose is to gather information for

taxpayers), even if a secondary purpose is to gather information for research purposes.

2. The Service should no longer be in the information-gathering or research stage of a project when it decides to seek court authorization to serve a John Doe summons. The project research should be sufficiently developed to enable the Service to identify a specific tax compliance problem. The Service should be prepared to investigate the tax liabilities of specific taxpayers based on the information received from the John Doe summons. A John Doe summons cannot be used to conduct a "fishing expedition."
3. The summons must relate to the investigation of a particular person or ascertainable group or class of persons.
4. The Service must have 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 the tax laws.
5. The information and identities sought to be obtained from summoned records must not be readily available from other sources.
6. The Service must establish a reasonable basis for suspecting noncompliance with the tax laws by the unidentified person or the entire group or class of unidentified persons that are the subject of the investigation. The Service need not establish probable cause for suspecting noncompliance or meet any other evidentiary standard greater than a reasonable basis for suspecting noncompliance. The Service can establish per IRC 7609 that it has a reasonable basis for believing that an individual or a group or class may have or will fail to comply with the tax laws by showing:
 7. The unidentified person or group has engaged in or is engaging in a transaction or transactions that the Service has determined to be noncompliant with the tax laws, or
 8. The unidentified person or group has engaged in or is engaging in an activity or course of action that is of such a nature that there is a likelihood of underreporting or other type of noncompliance with the tax laws.
9. Common Financial Transaction or Activity Related to Tax Law Compliance. A John Doe summons will usually not be appropriate unless the unidentified group or class of persons has engaged in a common financial transaction or an activity directly related to compliance with the tax laws. For example, a group that participates in financial activities not susceptible to detection, or designed to avoid detection, or to defeat the payment of taxes may be a candidate for a John Doe summons. On the other hand, members of a group whose only common characteristics relate to non-tax factors, such as political or ideological beliefs, or memberships in trade or professional organizations, should not normally be the subject of a John Doe investigation.
10. A John Doe summons is appropriate because the common activity of the group members (e.g. sales of metal to Dealer X) is not reportable to the IRS on an information return and therefore not susceptible to detection, indicating a likelihood of noncompliance with the tax laws. In addition, investigations of known taxpayers in the group show a very high degree of underreporting. The Service must gather statistical data from identified group members to meet the reasonable basis test because the common financial transaction, while not susceptible to detection, is not contrary to any of the Service's announced positions.

United States v. Bisceglia, U.S. (1975)

In *United States v. Bisceglia*, the Supreme Court authorized the IRS to issue a summons on a bank where it had reason to believe an unidentified bank customer was not complying with his tax obligations. Congress codified *Bisceglia's* holding at §7609 of the Internal Revenue Code, which authorizes the IRS to issue so-called John Doe summonses where it can show (1) that the summons relates to "a particular person or ascertainable group or class of persons," (2) that there is "a reasonable basis for believing" that the

persons may have failed to comply with “any internal revenue law,” and (3) that the information sought and the identities of the persons are not readily available from another source.

John Doe summons for non-US residence by Finland May 2019

While §7609 does not expressly authorize the issuance of John Doe summonses to aid foreign governments, in its application the government asserted that Congress’s inclusion of the requirement that such summonses seek information regarding persons who failed to comply with “any internal revenue law” permits their use to assist other countries. Because the government’s submission in *John Does* was made ex parte and granted in a summary order with no opposition briefing, this issue was not contested, and there does not appear to be any case law addressing it. In its application, however, the government identified a series of John Doe summonses obtained on behalf of Norway in 2013 and another John Doe summons obtained on behalf of the Netherlands in 2017. Each of those prior matters involved similar allegations that foreign individuals were storing money in the United States and using bank cards to make purchases abroad as a way to avoid foreign taxes. Unfortunately, the only reported order to come out of the prior applications did not address any legal obstacles to the summonses, and targets of John Doe summonses have little ability to challenge their issuance.

United States v. A.L. Burbank & Co., U.S. 1975

Circuit Courts of Appeals have consistently concluded that IRS summonses apply equally to a foreign tax investigation even where no U.S. audit exists. In *United States v. A.L. Burbank & Co.*, the U.S. Court of Appeals for the Second Circuit found that a narrower interpretation would frustrate the purpose of the various tax conventions to which the United States is party.

Lidas v. United States, U.S. 2001

In *Lidas v. United States*, the 9th Circuit observed that limiting the IRS summons power to domestic tax liabilities would conflict with the fact that tax treaties, upon ratification, become part of the law of the United States and thereby impose obligations on the IRS. Thus, even though courts have not specifically addressed the use of John Doe summonses to gather information on behalf of tax treaty partners, the practice appears to rest on solid legal ground.

Hohman v. United States - Forget about arguing about Right to Privacy

In September 2015, the Internal Revenue Service served two so-called “John Doe” summonses on JP Morgan Chase Bank. The Internal Revenue Code requires the IRS to obtain federal court approval before serving such summonses, but the IRS did not do so here. The summonses directed Chase Bank to deliver to the IRS records related to three accounts, which were identified only by account number. The three accounts belonged

to three Plaintiffs In this action, these three Plaintiffs allege that the IRS's efforts to obtain their financial records through the use of the John Doe summonses violated the federal Right to Financial Privacy Act (the "RFPA"). Plaintiffs seek damages from the United States under that Act. The United States contends that its sovereign immunity bars Plaintiffs' RFPA claims. The Court agreed with the IRS, and it therefore dismissed the Plaintiffs' claims.

And so the piñata beatings begin...

Court Authorizes Service of John Doe Summonses Seeking...

A federal court in North Carolina authorized the Internal Revenue Service (IRS) to serve John Doe summonses on Bank of America, Charles Schwab, a...

[justice.gov](#)

Court Authorizes Service of John Doe Summons Seeking Informatio...

A federal court in Texas authorized the Internal Revenue Service (IRS) to serve a John Doe Summons on American Express Travel Related Services...

[justice.gov](#)

Federal Courts Authorize Service of John Doe Summonses Seeking...

The Justice Department announced that federal courts in Minnesota, Texas, Pennsylvania, Oklahoma, Virginia and California have entered orders over the...

[justice.gov](#)

Coming soon "Ninety countries and counting" R-rated

- Jurisdictions listed in [revenue procedure 2023-36](#) can ask the IRS to issue a John Doe summons on US FIs maintaining accounts for their tax residents
- Ninety six countries are listed in the IRS Revenue Procedure, updated once or twice a year, the last being in June 2023.
- It details the jurisdictions of residence concerning which the reporting requirement applies.
- If your country has a tax agreement with the US but it's not on the list, eg the Bahamas, then the tax agreement has not been ratified by the US (yet?). The following are the jurisdictions with which the United States has in effect an income tax or other convention or bilateral agreement relating to the exchange of tax information under which the United States agrees to provide, as well as receive, information and under which the competent authority is the Secretary of the Treasury or his delegate:

	Hungary	Sri Lanka
	Iceland	Sweden
Jurisdiction	India	Switzerland
Antigua & Barbuda	Indonesia	Thailand
Argentina	Ireland	Trinidad and Tobago
Aruba	Isle of Man	Tunisia
Australia	Israel	Turkey
Austria	Italy	Ukraine
Azerbaijan	Jamaica	United Kingdom
Bangladesh	Japan	Venezuela
Barbados	Jersey	
Belgium	Kazakhstan	
Bermuda	Korea, Republic of	

Brazil	Latvia
British Virgin Islands	Liechtenstein
Bulgaria	Lithuania
Canada	Luxembourg
Cayman Islands	Malta
Chile	Marshall Islands
China	Mauritius
Colombia	Mexico
Costa Rica	Moldova
Croatia	Monaco
Curaçao	Morocco
Cyprus	Netherlands
Czech Republic	Netherlands special municipalities: Bonaire, Sint Eustatius, and Saba
Denmark	New Zealand
Dominica	Norway
Dominican Republic	Pakistan
Ecuador	Panama
Egypt	Peru
Estonia	Philippines
Faroe Islands	Poland
Finland	Portugal
France	Romania
Georgia	Russian Federation
Germany	Saint Lucia
Gibraltar	Singapore
Greece	Sint Maarten
Greenland	Slovak Republic
Grenada	Slovenia
Guernsey	South Africa
Guyana	Spain
Honduras	
Hong Kong	

The above list must not to be confused with 51 jurisdictions the USA considers safe to automatically exchange FATCA IGA information

- Do not confuse the list of 96 jurisdictions having income tax or other convention or bilateral agreements with the secondary list of 51 countries that treasury department and the IRS have determined *are appropriate* for automatic exchange of deposit interest information.
- Although USA has signed well over 100 FATCA agreements, the USA only exchanges information automatically with the following 51 countries...

Australia, Argentina, Azerbaijan, Belgium, Brazil, Canada, Colombia, Croatia, Curaçao, Cyprus, Czech, Denmark, Dominican Republic, Estonia, Finland, France, Germany, Gibraltar, Greece, Guernsey, Hungary, Iceland, India, Ireland, Isle of Man, Israel, Italy, Jamaica, Jersey, Kazakhstan, Republic of Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mauritius, Mexico, Netherlands, New Zealand, Norway, Panama, Poland, Portugal, Saint, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Turkey, United Kingdom.

What type of requests can John Doe summonses be requested?

No fishing expeditions... but, let's face it, it's reasonable to assume a non-resident opening an account with a US FI (Depository institution, Custodial institution, specified insurer and investment entity), especially since July 2014 is to avoid the CRS. Of special interest would be:

1. US credit card issuers, such as Master, Visa and American Express.
2. Depository institution accounts held by an entity, with a focus on a pass-through tax transparent entity. Individual accounts are subject to FATCA reciprocal reporting unless banks offer non-interest-bearing deposits to avoid FATCA.
3. Cash value insurance
4. Investment entity - mostly trusts, especially with trust companies established since July 2014, when CRS was announced. Also, trust companies with head offices in CRS participating jurisdictions. See trusts opened in Nevada and South Dakota.
5. **Custodial** institutions, such as Pershing which CRS-based wealth managers openly promote on their websites

managers openly promote on their websites

6. Collective investments managed by fund managers based in CRS jurisdictions
7. Work in progress. Check back...

Summary

- US case law strongly supports that the IRS can get courts to sanction the issue of John Doe summonses to FIs under an investigation of a specific, unidentified person or ascertainable group or class of persons.
- The IRS assisting foreign governments to pursue foreign tax liability of non-residents is integrated into US law if a ratified tax agreement exists. All that the foreign government has to show is that it is reasonable that the target investigation is persons who are likely avoiding the foreign government's tax liabilities.
- Once a FI is issued a summons it must investigate who the UBO is, even if they do not have the info at the moment, which is unlikely due to anti-terrorist financing and AML laws. There is no protection behind the Right to Privacy Act in the USA.
- The corporate transparency act is open to foreign requestors. BOI received from request will be main reason to use John Doe Summons
- This confirms the USA is not the ultimate tax haven everyone is being advised so...

=====END=====

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