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IRS Obtains Data from Spanish Bank for Spanish Tax Authority

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US tax treaty exchange of information provisions, such as that with Spain, can enable foreign tax authorities to obtain, from their own country's banks' US branches, information that may otherwise be practically unavailable to them due to US bank confidentiality laws, say Alan S. Lederman of Gunster, Yoakley & Stewart, P.A. and professor Mercedes Fuster Gómez of the University of Valencia.

In Rabassa v. United States (11th Cir. Apr. 23, 2024), affirming the Southern District of Florida (2023), the Spanish tax administration ("Agencia Tributaria") apparently found itself unable, as a practical matter, to obtain, from the Spanish home office of Banco de Sabadell, the fourth largest Spanish bank, information concerning bank accounts in the unincorporated, Florida-licensed, Miami branch of Banco de Sabadell. Agencia Tributaria apparently believed the accounts were owned by a Spanish corporation controlled by an individual whom the authorities believed was a Spanish tax resident.

According to an IRS affidavit, Agencia Tributaria's exchange of information request to the IRS, issued pursuant to the US-Spain tax treaty, recited that Agencia Tributaria had pursued and exhausted all means available in Spain to obtain the requested information, except means that would give rise to disproportionate difficulty. Favorably for Agencia Tributaria, the IRS was able to obtain from the District Court for the Southern District of Florida, affirmed by the Eleventh Circuit Court of Appeals, enforcement of a summons against the Miami branch of Banco de Sabadell to obtain that deposit information for Agencia Tributaria.

While the barriers Agencia Tributaria faced in seeking enforcement through Banco de Sabadell's Spanish home office were not described in the IRS affidavit, a likely potential concern that Banco de Sabadell's home office may well have raised with Agencia Tributaria in resisting disclosure is Florida Statutes §655.059. Section 655.059 generally requires Florida-licensed branches of non-US banks, like Banco de Sabadell's Miami branch, to maintain confidentiality of depositor information. Disclosures made in violation of §655.059 are characterized as criminal felonies and can trigger a prison sentence and fines for Miami branch personnel involved in the disclosure.

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Under §655.059, permissible disclosure of depositor information is limited to certain enumerated circumstances, such as compliance with certain orders by US federal and state governmental agencies and courts. For example, §655.059 permits a Florida-licensed branch of a non-U.S. bank to comply with a US federal court order enforcing an IRS summons (*See Hill v. US*, Case No. 6:11-mc-104-Orl-28KRS (Dec. 17, 2011)).

Section 655.059 does permit certain other Florida branch data to be disclosed to the governmental authority of the home office country that supervises financial soundness of banks (in Banco de Sabadell's case, the Spanish Central Bank). However, supplying information about specific customer deposits to that foreign supervisory authority is prohibited by §655.059.

US Procedure

While Agencia Tributaria's use of a tax information exchange agreement with another country to obtain data from one of Spain's largest banks may seem odd, it is not inconsistent with the IRS approach. Consider the converse situation, where the IRS seeks depositor data from a non-US branch of a multinational US bank.

The IRS LB&I training manual on Exchange of Information Programs instructs agents to "first exhaust all domestic means to access the requested information prior to making a specific exchange of information request, except those that would give rise to disproportionate difficulties." However, when IRS summonses have been issued to the US head office of major multinational banks, for records of deposits at a non-US branch, and such non-US branch is governed by a local criminal statute that prohibits such disclosure, US courts have been reluctant to exercise their powers to require the US head office to have their non-US branch comply with such summonses. *See United States v. First Nat'l Bank of Chicago,* 699 F.2d 341 (7th Cir. 1983); *Application of Chase Manhattan Bank*, 297 F.2d 611 (2d Cir. 1962). Where enforcing a summons to the home office would give rise to disproportionate difficulties, the training manual instructs agents to consider seeking, through the IRS Exchange of Information Office, an exchange of information request to the foreign government.

Conclusion

Rabassa illustrates how a US tax information exchange treaty provision or agreement can effectively side-step obstacles that a non-US tax authority, such as the Spanish Agencia Tributaria, may face in obtaining US branch deposit information, relating to even its own citizens, residents and corporations, from banks headquartered in its own country.