

PRESS RELEASE

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HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS COMMITTEE



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GAO REPORT DISCLOSES MIXED RECORD ON USE OF TAX TREATIES TO COMBAT OFFSHORE TAX ABUSE

WASHINGTON—Today, the U.S. Senate Permanent Subcommittee on Investigations released tax data in a [report](#) it commissioned from the U.S. Government Accountability Office (GAO) disclosing a mixed record on the use of tax treaties to combat offshore tax abuse.

“In response to 2009 and 2011 tax amnesty programs with reduced penalties, 30,000 U.S. taxpayers admitted hiding assets offshore and agreed to pay billions in back taxes – a volume of tax cheating that shows how big the offshore problem is,” said Senator Carl Levin, D-Mich., Subcommittee chairman. “The good news in the GAO report is that the IRS has set up automatic information exchange arrangements with 25 countries and is getting a stream of 2.1 million data items per year on U.S. taxpayers with offshore income. The bad news is that, aside from the automatic information, the IRS initiates only a couple hundred specific requests for taxpayer information per year from other countries. I don’t know if the IRS has been hardened by a historical lack of cooperation from other countries, but it needs to either rev up its requests or revamp our tax treaty network to get more taxpayer information and make more headway against rampant offshore tax abuse that disadvantages honest taxpayers.”

“This report is another example of the kind of ground-breaking work put out by GAO,” said Sen. Tom Coburn, M.D., R-Okla., Ranking Minority Member on the Subcommittee. “Congress has never had information of this type and breadth on tax treaties, which is vitally important to help us make decisions. Short-sighted budget cuts at GAO are not the answer when there are plenty of other places to cut first.”

143 Agreements with 90 Countries. GAO reported that, as of April 2011, the United States had tax treaties, tax information exchange agreements (TIEAs), or mutual legal assistance treaties (MLATs) that include tax matters, with 90 foreign jurisdictions. Of those jurisdictions, 37 are in Europe; 18 in the Asia-Pacific region; 16 in the Caribbean; 12 in North or South America; and 7 in Africa or the Middle East. Because the United States has more than one type of agreement with some jurisdictions, GAO identified a total of 143 agreements authorizing tax information exchanges. A GAO chart details the varying features of those agreements.

Five Years of Exchange Data. To analyze the information exchanges under those agreements, GAO reviewed five years of data supplied by the Internal Revenue Service (IRS) division of Exchange of Information and Overseas Operations on tax information requests initiated and completed between January 1, 2006 and December 31, 2010. GAO also interviewed 27 IRS and U.S. Department of Justice officials involved in exchanging tax information with other countries. The GAO analysis is the first extensive review of tax information exchange data under the U.S. network of 143 international agreements.

Automatic Data Exchanges. Tax information exchange partners may choose to provide information to each other on a regular or routine basis, through what is referred to as an automatic exchange of information. The GAO report found that in 2010 alone, as a result of automatic data exchange arrangements with 25 foreign jurisdictions, the IRS received about 2.1 million data items from those countries, while providing about 2.5 million data items to them. Automatic information exchanges typically provide data on wages, interest, dividends, or other forms of income paid to persons from a specified country.

Specific Data Requests. GAO also reviewed one-time only tax information requests made by either the IRS to another country, referred to as outgoing requests, or by a foreign country to the IRS, referred to as incoming requests. The number of these outgoing and incoming requests was relatively small compared to the number of data exchanges taking place on an automated basis. Over the five year period from 2006 to 2010, GAO found that the IRS initiated a total of about 900 tax information requests to other countries, ranging from a low of 165 to a high of 236 requests made in a single year. Each request can refer to one or multiple taxpayers. GAO's figures indicate that, on average over the five years, the IRS sent less than one specific request for taxpayer information per day to a foreign country.

During the same five-year period, GAO found that, outside of the automated process, foreign jurisdictions made a total of about 4,200 specific tax information requests to the IRS, resulting in more than four times as many incoming as outgoing requests. GAO's figures indicate that, on average over the five-year period, the 90 jurisdictions collectively made about 840 requests per year, or less than 3 requests per day to the United States.

GAO reported that, of the 900 outgoing requests and 4,200 incoming requests, 711 involved a single foreign jurisdiction, which was not named in the report due to IRS confidentiality rules. GAO also noted that the request activity was concentrated among a small group of countries, with the ten most active countries making roughly 68% of the outgoing and incoming requests. The ten countries were also not named due to IRS confidentiality rules.

Spontaneous Tax Information Exchanges. GAO determined that, over the five-year period, foreign jurisdictions made about 300 spontaneous disclosures of taxpayer information to the IRS per year, meaning the information was provided outside of any automatic or specific request process. GAO reported that the IRS made about 10 spontaneous disclosures of taxpayer information per year to other countries. GAO stated those numbers fluctuated widely by year.

Responding to Requests. In addition to analyzing the number of requests, GAO examined how long it took to complete work on the incoming and outgoing requests. Overall,

GAO found that most requests took between 50 and 200 days to complete, although some took much less time and others much longer. GAO also found that, on average, the IRS was 17% faster than other countries in completing requests.

GAO also analyzed the types of information requested. It found that corporate records, tax return data, bank records, public records, and third-party interviews were the most frequent types of information requested.

Taxpayer Names. One key issue that the Subcommittee asked GAO to examine was the extent to which international requests for tax information were required to include the names of specific taxpayers. GAO reported that, as a general rule, the IRS and its tax information exchange partners do not make or respond to information requests lacking specific taxpayer names or other specific taxpayer identifiers, such as account numbers. GAO also reported that the United States had made a recent policy change to support information requests that identify a specific group of persons under investigation, even when those persons' names are unknown.

This issue has become a matter of controversy between the United States and Switzerland which has resisted allowing its banks to respond to U.S. requests for the names of U.S. persons with Swiss bank accounts that have not been disclosed to the IRS. In 2009, in connection with a deferred criminal prosecution agreement, Switzerland's largest bank, UBS AG, paid a \$780 million fine and admitted helping U.S. taxpayers evade U.S. taxes by opening undisclosed Swiss accounts. In a related civil proceeding to enforce a John Doe summons, the United States asked UBS for the names of an estimated 52,000 U.S. persons with undisclosed Swiss accounts. After extended negotiations, the Swiss allowed UBS to disclose about 4,400 names of U.S. taxpayers whose Swiss accounts met certain criteria. Switzerland also amended its tax treaty with the United States to allow some tax information requests without taxpayer names. Despite those actions, U.S. requests for the names of U.S. persons with undisclosed accounts at other Swiss banks have stalled, due to an ongoing refusal by Switzerland to allow its banks to provide the names.

GAO reported that the U.S. Treasury Department and IRS now take the position that "a valid request for information will not always require the name of particular taxpayers." GAO observed that, in January 2011, the United States changed its standard TIEA agreement to provide that an information request is adequate if it contains "the identity of the person or [an] ascertainable group or category of persons under examination or investigation." GAO noted that the United States is working with other nations to adopt a similar approach in the internationally-accepted model tax information exchange agreement.

"The Subcommittee's work has exposed how bankers, financial advisors, attorneys, accountants, and others deliberately help taxpayers hide assets in foreign jurisdictions to evade taxes," said Levin. "It is a global problem, and tax officials need to be able to get the client lists of the institutions and professionals facilitating offshore tax evasion. Limiting tax information exchange to instances where taxpayer names are already known is not enough. International tax agreements need to assist, rather than create obstacles to, the exchange of tax information critical in combating offshore tax abuse."

GAO Conclusions. GAO concluded that the IRS did not assemble or make use of key performance data that could be used to improve its tax information exchange system. GAO recommended that the IRS identify, collect, and analyze needed data, and the IRS concurred.

Additional Background. In its work to detect and stop offshore tax evasion, the IRS makes use of a number of tools to obtain needed information. In addition to making requests under international tax information exchange agreements, for example, the IRS requests information directly from U.S. taxpayers and from other third parties in the United States. The IRS also uses a variety of enforcement tools to recover unpaid taxes.

The Subcommittee request for the GAO report is part of its ongoing examination of issues related to offshore tax abuse, which by the Subcommittee's estimate costs the U.S. Treasury an estimated \$100 billion per year in lost revenue. In 2008 and 2009, the Subcommittee held hearings on how some offshore banks, including UBS, had facilitated tax evasion by U.S. taxpayers by providing them with accounts that were not disclosed to the IRS.

In 2009 and 2011, the IRS conducted two Offshore Voluntary Disclosure Initiatives with reduced penalties to encourage U.S. taxpayers to disclose offshore accounts with unreported income. About 18,000 taxpayers made disclosures in response to the 2009 program, and an additional 12,000 persons took action under the 2011 program which closed on September 9th. The IRS has announced that it has already collected over \$2.7 billion in back taxes, interest, and penalties under the two programs and expects to collect significant additional revenues.

Based on the Subcommittee's work, Levin has introduced S. 1346, the Stop Tax Haven Abuse Act, to combat offshore tax abuse.

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