Enhance Confidentiality & Disclosure Protections

#36 AUTHORIZE THE TREASURY DEPARTMENT TO ISSUE GUIDANCE SPECIFIC TO IRC § 6713 REGARDING THE DISCLOSURE OR USE OF TAX RETURN INFORMATION BY PREPARERS

Present Law

Internal Revenue Code (IRC) §§ 7216 and 6713 impose criminal and civil sanctions, respectively, on preparers who, with the requisite level of intent,[147] disclose or use tax return information for any purpose other than preparing or assisting in the preparation of a tax return, except as expressly permitted by statute or regulation.

Exceptions to the broad prohibition in IRC § 6713 are provided in IRC § 6713(c), which states that the rules of IRC § 7216(b) apply. IRC § 7216(b) authorizes the Secretary to create regulatory exceptions to the criminal penalty statute. Thus, the current statutory framework seemingly requires that exceptions be made either to both the criminal and civil statutes or to neither.

Reasons for Change

IRC § 6713 has historically been identified as the civil counterpart to the criminal penalty imposed on tax return preparers under IRC § 7216. As one would expect, the criminal penalty regime under IRC § 7216 is substantially harsher than the civil penalty regime under IRC § 6713.[148] For that reason, the Treasury Department is understandably reluctant to subject preparers to criminal sanctions except for egregious conduct, so it has used its regulatory authority to carve out broad exceptions from the general prohibition on the disclosure or use of tax return information set forth in IRC § 7216.[149]

Because the exceptions under IRC § 7216 (criminal statute) are deemed to apply to IRC § 6713 (civil statute), there is no room for the Treasury Department and the IRS to designate the disclosure or use of tax return information for certain questionable business practices or the sale of certain products with high abuse potential as civil violations without also making them criminal violations. Therefore, disclosures and uses with high abuse potential are generally permitted. The Treasury Department and the IRS would be more likely to strengthen taxpayer protections against the improper disclosure or use of taxpayer return information by return preparers if they are given the flexibility to promulgate separate regulations applicable to the civil penalty, without concern that the criminal penalty would also apply.[150]

Recommendation

- Amend IRC § 6713 to authorize the Secretary to prescribe regulations under IRC § 6713.

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147 Unlike Internal Revenue Code (IRC) § 7216, IRC § 6713 does not require that the disclosure or use be knowing or reckless.

148 IRC § 6713 imposes a $250 penalty for each improper disclosure or use, with total penalties not to exceed $10,000. The penalty amount increases to $1,000 for each disclosure and use related to identity theft, with total penalties not to exceed $50,000. In contrast, IRC § 7216 makes the preparer guilty of a misdemeanor, and upon conviction, the preparer will be fined not more than $1000 ($100,000 if the disclosure or use is related to identity theft) or imprisoned not more than one year, or both, and liable for the costs of prosecution.

149 *See* Treas. Reg. § 301.7216-2.

150 As a general matter, IRC § 7805(a) grants the Secretary the broad authority to promulgate regulations under the Internal Revenue Code. However, because IRC § 6713(c) provides that exceptions to IRC § 6713 are governed by the rules of IRC § 7216(b), it is not clear the IRS may establish separate sets of exceptions for the two Code provisions.

#37 ALLOW A PERIOD OF NOTICE AND COMMENT ON NEW INTERGOVERNMENTAL AGREEMENTS AND REQUIRE THAT THE IRS NOTIFY TAXPAYERS BEFORE THEIR DATA IS TRANSFERRED TO A FOREIGN JURISDICTION

Present Law

Present law does not require a period for notice and comment before the U.S. government enters into new intergovernmental agreements (IGAs) and does not provide for the notification of taxpayers before their data is transferred to foreign jurisdictions.

Reasons for Change

The Foreign Account Tax Compliance Act generally requires foreign financial institutions (FFIs) to provide the U.S. with information regarding foreign accounts held by U.S. taxpayers. Typically, this information exchange occurs via IGAs, under which FFIs furnish the information to their local tax authority, which in turn transfers it to the U.S. These IGAs also generally incorporate reciprocity, pursuant to which the U.S. agrees to provide the foreign jurisdiction with information regarding accounts maintained in the U.S. by its citizens.

We are concerned that the IRS cannot ensure the data on U.S. taxpayers transferred by FFIs is used properly by IGA partners. We are also concerned that the data transfers to foreign recipients do not conform to cybersecurity standards established by the National Institute of Standards and Technology.

The IRS has identified the risks inherent in its data transfers to IGA partners, but has determined that these risks are acceptable. The data being disclosed and potentially breached, however, relate to taxpayers, not to the IRS. Taxpayers, rather than the IRS, are exposed to the consequences of data theft or misuse potentially arising during or after information transfers to foreign partners pursuant to IGAs. These taxpayers could, among other things, become the victims of identity theft or the targets of persecution within foreign jurisdictions, with outcomes ranging from substantial inconvenience to serious economic damage to harassment, and even physical danger. Currently, taxpayers have no voice in these IGAs and receive no specific notification that their personal information is being transferred outside of U.S. jurisdiction. If informed that IGA negotiations or data transfers were pending, taxpayers would have an opportunity to provide the U.S. government with potentially important information to minimize risks to their property and physical safety.

Recommendation

- Amend Internal Revenue Code § 1474 to add (i) a new subsection (g)(1) to require the public announcement of IGAs for notice and comment by taxpayers; (ii) a new subsection (g)(2) to require that, as part of this announcement, the IRS specify the extent to which the proposed IGA partner jurisdiction complies with the cybersecurity standards to which U.S. federal agencies are held and the taxpayer privacy standards that govern the IRS; and (iii) a new subsection (g)(3) to require that, barring unique and compelling circumstances, taxpayers be informed prior to the transfer of their individual information pursuant to the terms of an IGA.