



IRS Tax Audits: The Wealth Squad

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Gary S. Wolfe has over 34 years of experience, specializing in IRS Tax Audits and International Tax Matters including: International Tax Planning/Tax Compliance, and International Asset Protection.

As of July 2016, Gary Wolfe has internationally published 15 books and 28 articles. Gary has received 14 international tax awards from five different Global expert societies in LONDON/UK including being voted one of the 100 leading world's law firms with votes from over 150,000 voters in over 160 countries with the following award: Global 100 (2016) (KMH Media Group) - CA/US International Tax Planning Law Firm of the Year.

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IRS Tax Audits: The Wealth Squad

For wealthy taxpayers with over \$10m in income, the IRS has a special tax audit division, the Global High Wealth Industry Group (the "Wealth Squad"). The IRS Wealth Squad falls under the IRS Large Business and International Division (formerly Large and Midsize Business Division). The Wealth Squad was formed in 2010 to audit "high wealth individuals" who make use of sophisticated business and investment arrangements with both complicated legal structures and tax consequences.

As stated by the Eleventh Circuit in *Ballard v. Commr.* 522 F.3d 1229 (11th Cir. 2008): "It is no surprise that a knowledgeable tax attorney would use numerous legal entities to accomplish different objectives. This does not make them illegitimate. Unfortunately such maneuvering is apparently encouraged by our present tax laws and codes."

In response the IRS created the Wealth Squad in 2010 to "take a holistic approach in addressing the high wealth taxpayer population; to look at the complete financial picture of high wealth individuals and the enterprises they control," according to the IRS Revenue Manual.

The Wealth Squad cases involve an individual's tax return and related income tax returns where the individual has a controlling interest. An individual's ownership interest in partnerships, trusts, corporations and private foundations may be examined. Gifts and distributions from trusts may also be subject to the IRS tax audit.

The IRS is seeking to take a unified view of the entire web of interrelated entities controlled by a high-wealth individual to discover the entire economic taxpayer picture and to assess the overall tax compliance. The IRS Wealth Squad looks at taxpayers with tens of millions of dollars in assets or income to confirm whether they are in tax compliance. In egregious cases, the IRS civil tax audit division may refer either the taxpayers or the advisors or both to the IRS Criminal Investigation Division.

Under IRC 7602, the IRS has general authority to request evidence and information during an audit. The IRS will gather the evidence by submitting an Information Document Request Form 4564 (known as an IDR). If the taxpayer fails to respond the IRS may issue a summons for books and records (from either the taxpayer or their custodian of records). Under IRC 7602, the IRS summons may be used to ascertain the correctness of the taxpayer's return, to make a return, or to determine the liability of a taxpayer (see *US v. Powell*, 379 US 48, 57-58 (1964)).

If the taxpayer does not respond to the summons, the IRS may seek a court order from the US District Court for the district in which the person subject to the summons resides. If the taxpayer still does not respond to the summons the District Court judge may imprison the party required to respond to a summons.

The IRS has other "weapons" to gather evidence under an audit including:

- 1 . Taxpayer interviews;
- 2 . IRS tours of Taxpayer business operations; and

3. Examination of underlying taxpayer books and records including balance sheets, gross receipts or sales, and cost of goods sold.

In addition, the IRS team of experts may include specialized auditors with issue-specialized tax expertise, which includes IRS audit specialists flow-thru entities, estate and gifts, international examiners, and valuation experts. In response, taxpayer representatives should at the outset seek to limit the IRS tax audit to non-privileged records so as to avoid the waiver of any attorney-client privileges.

Under Treasury Dept. Circular 230 (which governs Tax Advisors who represent taxpayers before the IRS) tax counsel must promptly submit non-privileged records and requested information to the IRS. Tax counsel must notify the IRS of the location of requested records, information in third party possession and may not unreasonably delay the prompt disposition of any matter before the IRS (Circular 230, 10.23).

However, if any evidence or information is privileged it should be objected to at the outset of the IRS tax audit. If records are missing or are otherwise unavailable the IRS should be notified immediately. If information or records are purported to be in the possession of third parties who no longer have the records or are no longer accessible (i.e. they are no longer in the jurisdiction, are pre-deceased or otherwise) the IRS should be notified immediately.

A key audit strategy is to agree to reasonable audit expectations, time frames, and responses but at the outset narrow the scope and breadth

of the audit by alerting the IRS to privilege objections, missing or otherwise unavailable records and non-responsive third party record keepers.

