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IRS Will Find Your Offshore Account

That headline may be an attention grabber, but it seems increasingly true. I tell clients they should not count on bank secrecy and should disclose and report. Yet some may not follow that advice. For them, there is a nagging question about what might happen if they keep silent.

Can't they run the IRS gauntlet? After all, how likely is it that the IRS will find out? That is a difficult question, and there may be no clear answer I can point to in a book.

Yet it seems plain the IRS is winnowing its way into the halls of foreign governments and foreign banks. See [Justice Department Asks Court to Allow IRS to Seek HSBC India Bank Account Records](#). The government can even grab suitcases full of bank records, as has occurred when foreign bankers are in the U.S. visiting clients. Of course, this seems less and less likely now compared with the past.

Another avenue of disclosure is data the government is getting under the IRS [whistleblower program](#). Exactly what the IRS is getting there is top secret. That's what makes the fear of who is saying what about whom so effective.

Even if we don't know all the details, there's no question bankers, former employees, trust company officers and others are trying to cash in. Some are also trying to save their own necks. Between all the avenues, the likelihood of failing to disclose foreign accounts and keeping the account secret forever seems remote.

Some of the questions are more legal than practical. There are interesting procedural and constitutional questions about whether a person or company can be forced to sign a form consenting to a foreign bank's release of records. There is, of course, a constitutional privilege against self-incrimination.

Yet in [*Doe v. United States*](#), the U.S. Supreme Court considered whether a court order compelling the target of a grand jury investigation to authorize foreign banks to disclose records of his accounts—without identifying the documents or acknowledging their existence—violated his constitutional right against self-incrimination. You might think this would have an obvious answer—surely you can't be required to incriminate yourself. Yet the Supreme Court ruled there was no constitutional violation if a person was compelled to sign the form.

However, this was only a Fifth Amendment case. It did not consider other bases on which a person might not consent to reveal information. One key area involves privacy concerns. Even if maintaining an undisclosed foreign bank account is criminal, the Fourth Amendment protections against unreasonable search and seizure clearly apply to criminal conduct.

Indeed, the scope of the Fourth Amendment is routinely litigated in many criminal cases. Fourth Amendment jurisprudence is full of drugs and weapons—presumably far more dangerous than a foreign account. These facts may suggest someone could stonewall the government if they demand that you cough up your account.

Still, does anyone want to go to the mat over these issues? Few do and few should want to. Indeed, the assumption today that one can keep secret a foreign bank account—even with what used to be the vaunted bank secrecy of many foreign jurisdictions—is dangerous.

For more, see:

[Can A Prosecutor Make You Cough Up Your Offshore Account?](#)

[IRS On What Is A "Foreign Account"](#)

[IRS Says What To Do About Foreign Accounts On 2010 Returns](#)

[IRS Foreign Account Disclosure: What About The States?](#)

[Beware Foreign Trust Reporting to IRS](#)

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