



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

September 21, 2001

Number: **200143032**

Release Date: 10/26/2001

CC:INTL:BR1

TL-N-1955-01

UILC: 7603.00-00

7701.24-00

9114.09-00

INTERNAL REVENUE SERVICE NATIONAL OFFICE CHIEF COUNSEL ADVICE

MEMORANDUM FOR

FROM: Ricardo A. Cadenas, Senior Technical Reviewer
Associate Chief Counsel (Intl)
CC:INTL:Br1

SUBJECT: Service of Administrative Summons on US Citizen Residing
in the United Kingdom

This Chief Counsel Advice responds to your memorandum dated May 30, 2001. In accordance with IRC § 6110(k)(3), this Advice should not be cited as precedent.

ISSUES:

1. Does the Hague Service Convention permit service of an IRS administrative summons in the United Kingdom that would be enforceable through the courts of the United States?
2. If so:
 - a. How does the Hague Service Convention permit an IRS administrative summons to be served in the United Kingdom?
 - b. What are the procedures that examination teams should follow to submit administrative summonses for service in the United Kingdom pursuant to the Hague Service Convention?
 - c. Where should the summons require a US citizen who resides in the United Kingdom to appear to be interviewed?

CONCLUSION:

1. The Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, 20 U.S.T. 1361; 658 U.N.T.S. 163; T.I.A.S. No. 6638; 28 U.S.C.A.; 16 I.L.M. 1339 (1977) (the "Service Convention") provides for service of an IRS administrative summons on a US citizen residing in the United Kingdom, because such summons is considered an extrajudicial document under the Convention. A properly served summons may be enforceable in the US District Court for the District of Columbia pursuant to IRC §§ 7604 and 7701(a)(39) .

2.a. The summons may be personally served by the Revenue Service Representative (the "RSR") or the Assistant Revenue Service Representative (the "ARSR") stationed at London, after being authorized by the Central Authority of the United Kingdom under the Service Convention.

2.b. The requesting office would forward the request in the form prescribed by the Service Convention, and annexed to Articles 3, 5, 6, and 7, along with the Summons, Form 2039, and a brief description of the nature of investigation, and the proposed line of inquiry to this office. The service of the summons in the United Kingdom will be processed by the London RSR of the Office of Director, International (LMSB), and coordinated by this office and the office of Assistant Chief Counsel (Collection, Bankruptcy and Summonses).

2.c. The office of the Revenue Service Representative in London is an appropriate place for requiring the witness to appear for the summons interview.

FACTS:

We have been requested to determine if a US citizen or resident residing in the United Kingdom, who is believed to have information relevant to IRS audits, may be served with an IRS administrative summons in the United Kingdom.

LAW AND ANALYSIS:

1. SCOPE OF APPLICATION OF THE HAGUE SERVICE CONVENTION

Background

The most efficient means for gathering information from any country is through the Exchange of Information article in the tax treaty the United States has signed with that country. The US-UK income tax treaty, as currently in force, is interpreted not to require either party to provide formal assistance to the other in exchange of

information if that party does not have a “tax interest” in the matter. In cases where the United Kingdom does not have a tax interest, it will not use compulsive measures to require testimony or the production of documents. In such situations, the IRS may have to look to other means for obtaining information, such as the Internal Revenue Code, other statutes, and the Service Convention¹.

Authority for Administrative Summons and District Court Jurisdiction

IRC § 7602 authorizes the Service to summon any “person the Secretary may deem proper” for ascertaining the correctness of any return and for determining the tax liability of any person. Such summons can be issued to examine any records and to take testimony of any person. This power to summon any person to pursue a legitimate inquiry is subject only to the criteria established by *United States v. Powell* 379 U.S. 48, (1964) and specific statutory provisions, such as IRC § 7602(d), which forbids issuance of the summons where a Justice Department referral is in effect. The Code does not restrict the application of this section to the geographic boundaries of the United States. Your questions raise the issue of serving in the United Kingdom a summons under IRC § 7603(a) by delivery in hand to a summoned party. As discussed below, the Service Convention provides procedures for personal service of documents abroad.

Jurisdiction for enforcement of administrative summons is generally vested in the United States district court for the district in which the summoned person resides or is found. IRC § 7604. For purposes of enforcing an administrative summons, US citizens and residents residing abroad are deemed to be residing in the District of Columbia under IRC § 7701(a)(39). Although the legislative history of IRC § 7701(a)(39) is scanty, Congress was concerned that there was no provision to enforce an administrative summons when a US citizen or resident was not found in any US judicial district. The Senate amendment “extended the jurisdiction and the summons power of the United States District Court of the District of Columbia to reach US citizens and residents not present in the United States”. The Conference agreement generally followed the Senate amendment, but added other provisions such as the formal document request procedure found in IRC § 982, which was also enacted under TEFRA in 1982. See Conf. Rep. No. 97-760 (1982), reproduced at 1982-2 C.B. 600, at 657-658. Thus the US District Court for the District of Columbia is vested with jurisdiction to enforce administrative summonses issued to US citizens and residents abroad.

¹ Article 27 of the new US-UK income tax treaty which is pending ratification eliminates “tax interest” as a condition for providing assistance in exchange of information.

We are not aware of any case that has construed IRC § 7701(a)(39). If an IRS summons could be served upon a US citizen or resident overseas under a treaty or as otherwise recognized by international law, then the US District Court for the District of Columbia would be properly vested with jurisdiction over summons enforcement proceedings by virtue of IRC § 7701(a)(39).

The Hague Service Convention

We are not aware of any federal statute that prohibits, or otherwise explicitly addresses the subject of personal service of an IRS summons on individuals who reside abroad. But certain legal doctrines that have evolved over time in the practice of international law proscribe such actions because they sometimes impinge on the sovereignty of other nations. Under international law, a state may determine the conditions for service of process in its territory in aid of litigation in another state. *Restatement of Law, Third, Foreign Relations Law of the United States, The American Law Institute 1987 (“Restatement”), § 471(1) (Service of Process in Foreign State)*. Extraterritorial service of investigative summonses by any country without proper authority may be viewed as an exercise of its sovereign power in the other country. The need to recognize foreign sensibilities while serving summonses is best explained in *FTC. v. Compagnie De Saint-Gobain-Pont-A-Mousson*, 636 F.2d 1300 (D.C. Cir. 1980). Generally, this extraordinary step may be taken by a US Agency only when explicitly authorized by statute².

The Service Convention complements the Federal Rules of Civil Procedure for service of documents abroad. This Convention is a multilateral treaty that has been ratified by approximately twenty-three countries. The United States and the United Kingdom became signatories to this agreement in February 1969. 28 U.S.C.A. (Appendix following Rule 4 Fed.R.Civ.P.); 16 I.L.M. 1339 (1977). As a ratified, self-executing treaty, the Service Convention is a “supreme law of the land”. *Ackermann v. Levine*, 788 F.2d 830 (2d Cir. 1986).

The Service Convention governs the service of judicial and extrajudicial documents. The term “extrajudicial documents” in the title, and in Article 1, of the Service Convention refers to documents not directly connected with a lawsuit but which require formal service under the law of the state of origin. *Restatement § 471, (Service of Process in Foreign State), Reporters Notes 3*. Congress acknowledged that Article 17 of the Service Convention, (which renders the provisions of the Convention applicable to extrajudicial documents), was intended to include documents emanating “from administrative agencies and commissions or other quasi-judicial tribunals in our own system”. Report of the Senate Committee

² 28 U.S.C. § 1783, known as the Walsh Act of 1923, is an example of a statute by which Congress expressly approved service of documents abroad.

on Foreign Relations on the Convention on the Service Abroad of Judicial and Extrajudicial Documents, S.Exec.Rep. No. 6, 90th Cong., 1st Sess. p. 2 (also see p. 14) (April 12, 1967). Based on these authorities, it is our view that the IRS administrative summons is covered by the definition of the term “extrajudicial documents” in the Service Convention.

The Service Convention applies only to “civil or commercial matters”, but these terms are not defined in the Convention. The UK Central Authority, like its US counterpart, has taken an expansive view of the term, “civil or commercial matters” in serving documents issued by US Agencies. *Restatement, § 471 (Service of Process in Foreign State), Comments & Illustrations f.* The UK courts have also adopted a cooperative approach in the matter in the recent past. In *In Re State of Norway*, (1989) 1 All ER 746, 28 I.L.M. 693 (1989), where Norway was seeking the assistance of the English court to compel testimony from witnesses in England in connection with certain tax collection proceedings, the highest court of the United Kingdom, affirmed the order to compel testimony, and instructed that the words, “civil or commercial matter” should be given their ordinary meaning and would include all matters not criminal³. Thus, tax and other fiscal matters are within the scope of both the Hague Service and Evidence Conventions. This is consistent with the US practice to apply both Conventions broadly to all non-criminal matters. See statement of US representative at the meetings of the Special Commission on the Operation of the Hague Convention (June 1978), reprinted in 17 I.L.M. 1417 (1979).

Enforcement Provisions

A summons served in the United Kingdom in accordance with the Service Convention would be backed by statutory enforcement provisions. As stated above, IRC § 7701(a)(39) confers jurisdiction in the US District Court for the District of Columbia, in summons enforcement proceedings.

It is worth noting that the court in *FTC v. Compagnie De Saint-Gobain-Pont-A-Mousson*, which disapproved of the service by mail of the subpoena by the Federal Trade Commission, endorsed the use of the Service Convention under certain circumstances. See 636 F.2d 1313, 1314. The situation where the IRS seeks to serve a summons abroad can also be distinguished from the one in *FTC*. The court in *FTC* observed that the provision pursuant to which the Commission served the impugned subpoena (Section 9 of the Federal Trade Commission Act, 15 USC § 49), empowered the Commission to require the attendance of witnesses and the production of evidence only “from any place in the United States”. In contrast, IRC

³ The Hague Service Convention parallels the Hague Evidence Convention; and it is the latter Convention that was applied in *In Re State of Norway*.

§ 7602, under which service would be attempted to summon an individual in the United Kingdom, authorizes the summoning of any person for ascertaining the correctness of any return without geographic limitations. The court found the Commission's action in *FTC* objectionable also because it served the subpoena on a foreign citizen on foreign soil. The discussion in this memorandum, however, addresses the question of serving a summons on a US citizen or resident in the United Kingdom.

In summary, the Service Convention provides for service of documents by an agent, and through the Central Authority of the United Kingdom. The Service Convention applies to all civil matters which require service of judicial and extrajudicial documents. (Article 1). We believe that an IRS administrative summons constitutes an "extrajudicial document" for this purpose. Therefore, the service of an IRS administrative summons under the Service Convention does not impinge on the sovereignty of the United Kingdom. The US District Court for the District of Columbia has the jurisdiction to enforce a summons properly served upon a US citizen or resident who resides abroad.

2.a. HOW THE SUMMONS SHOULD BE SERVED ABROAD USING THE HAGUE SERVICE CONVENTION

The Code and the case law generally require that an administrative summons be served in person. The persons authorized to personally serve an IRS summons are specific IRS employees, including revenue agents, RSRs and ARSRs. Treas. Reg. §§ 301.7603-1(b), Treas. Reg. 301.7602-1(b), and Delegation Order No. 4 (Rev. 22) (paragraphs 7, 8, 10, and 11).

Under Article 2 of the Service Convention, each contracting state designates a Central Authority to process transnational service of documents. Under Article 5, the Central Authority of the state of destination arranges to have the document served in accordance with its own law, or by any particular method requested by the applicant, unless such a method is incompatible with its own laws. Under this provision, the IRS can request that the summons be served by delivery in hand to the person summoned. Personal service of documents is not incompatible with the UK laws. Rules 6.2 and 6.4 of Civil Procedure Rules Part 34 (UK). Under Article 6, the Central Authority or the delegate, after service, completes a certificate in the form annexed to the Service Convention. The certificate states that the document has been served and includes the method, the place and the date of service and the person to whom the document was delivered. Under Article 9, each contracting state is free to use consular and diplomatic channels to forward the documents to the authorities designated by the other state for service.

In order to serve a summons on a US citizen or resident in the United Kingdom, the IRS should seek the assistance of the UK Central Authority under the Service Convention and should request that it be served in person as required by IRC § 7603(a). But under the treasury regulations the only persons authorized to serve an IRS summons are specific IRS employees, including revenue agents, RSRs and ARSRs. Treas. Reg. §§ 301.7603-1(b) and Delegation Order No. 4 (Rev. 22) (paras 7, 8, 10, and 11). In order to comply with this requirement, we recommend that the RSR or the ARSR in London be designated by the UK Central Authority to serve the summons.

2.b. RECOMMENDED PROCEDURES FOR THE SERVICE OF SUMMONS

Under Article 3 of the Service Convention, the request for service of a document should be forwarded to the Central Authority of the receiving state in the form prescribed in the Convention and annexed to it, without any requirement of legalization or equivalent formality. (See Recommendation adopted by the Fourteenth Session (Oct. 25, 1980) of the Convention, and annexed to Articles 3, 5, 6 and 7 of the Convention.) The UK Central Authority for the Service Convention is: Her Majesty's Principal Secretary of State for Foreign and Commonwealth Affairs, London SW1A 2AL.

The document to be served or a copy of it should be attached to the request; and both the request and the document should be furnished in duplicate. IRC § 7603(a) describes how a summons may be served by an attested copy delivered in hand to the person to whom it is directed.

As with any IRS Courtesy Investigation request, the requesting office is expected to provide the receiving office with all of the essential information on the Summons, Form 2039. At a minimum, the following should be included in the summons or in the attachments: (i) The name(s) and address(es) of the taxpayer(s) under examination (information that is also necessary to provide the taxpayer proper notice of the summons under IRC § 7609(a)(1), and an opportunity to file a petition to quash); (ii) The tax period(s) involved; (iii) The IRS office examining the US taxpayer(s); (iv) The name and address of the third party witness to be served with the summons; and, (v) The list of specific books, records, papers and other data the witness is expected to bring with him to the summons interview.

The RSR's office may fill in the other required information on the Summons, Form 2039: (i) The name, the business address and telephone number of the IRS officer before whom the witness is to appear (the RSR or Assistant RSR, in this case); (ii) The place and time for appearance of the witness (generally, at least 24 days after the summons is served on the witness and the taxpayer(s) has been given notice and the required opportunity to quash; see IRC §§ 7609(a) and (b)(2), and IRM

109.1.3.4(2)a; (iii) Details regarding the required manner of service upon the witness (i.e., hand delivery in person); and, (iv) Details regarding how notice of the summons was given to the taxpayer.

We expect that the revenue agent(s) investigating the case would take part in the interview. In the event it is not practicable, along with the basic information described above, the requesting office will also need to devise some means of outlining the matters to be covered during the witness interview, including the follow-up type questions that the RSR/ARSR may have to ask.

In addition, as provided in the Recommendation adopted by the Fourteenth Session (Oct. 25, 1980), and annexed to Articles 3, 5, 6 and 7 of the Service Convention, additional information has to be provided in the prescribed form entitled Request for Service Abroad of Judicial or Extrajudicial Documents (copy attached). A request that the documents be served in person in accordance with the provisions of subparagraph (b) of the first paragraph of Article 5 of the Service Convention should be clearly stated in the form. To ensure proper procedures and coordination, any summons that is to be served under the Service Convention should be sent to this office for review before it is sent to the RSR. If necessary, we will also coordinate matters with the US Department of Justice Office of Foreign Litigation, which is the Central Authority for the United States under the Service Convention.

Under *Restatement § 442(1)(c) (Request for Disclosure: Law of the United States)*, the authority issuing the summons is required to take into account the following factors while preparing it: the importance to the investigation of information sought; the degree of specificity of the request; the availability of alternative means of securing the information; the extent to which noncompliance with the request would undermine important interests of the United States; and how compliance would affect the important interests of the country whence the information is sought.

2.c. PLACE TO BE DESIGNATED FOR APPEARANCE

We agree with you that a witness residing in the United Kingdom should be requested to appear for the interview at the office of the RSR in London. Pursuant to IRM 109.1.3.4(1)c and d, the IRS generally makes a summons returnable at a place that suits the witness's convenience if he is cooperative, and at the IRS officer's or employee's office if he is not. Since the interview of a witness residing in the United Kingdom is likely to be conducted by the RSR or his delegate, their office is the natural choice for this purpose. In summoning a witness who resides abroad, the convenience of the witness should also be taken into account.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS:

In the last paragraph of your analysis of Issue 2.a. on page 9 of your memorandum, you have concluded that an IRS administrative summons may be served in the United Kingdom pursuant to the Service Convention by any of the following means: (1) forwarding the summons to the UK Central Authority for service by the Central Authority, or a (private) agency arranged by the Central Authority; or (2) serving the summons directly through US diplomatic or consular agents such as the Service's Revenue Service Representative in the United Kingdom". Pursuant to Treas. Reg. §§ 301.7603-1(b)(1) and 301.7602-1(b), only "designated officer(s) or employee(s) of the Internal Revenue Service" are authorized to serve an IRS administrative summons, to be persons before whom the summoned person must appear, or to take testimony under oath from the summoned persons. Under Delegation Order Number 4 (Rev. 22), RSRs and ARSRs have been designated to perform these duties. (See paras 7, 8,10, 11, and 13). The revenue agents, however, are prohibited from serving the summons outside of the United States by international law and the manual. See CCDM 42.2.1.1(12). In these circumstances, only the RSRs and ARSRs may serve the summonses and take testimony from the summoned persons.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

If you have any further questions, please call Vijay Rajan at (202) 874-1490.

Ricardo A. Cadenas
Senior Technical Reviewer, Branch 1
Office of Associate Chief
Counsel (International)

Attachment to TL-N-1955-01

REQUEST, CERTIFICATE AND
SUMMARY OF THE DOCUMENTS TO BE SERVED

Annexes Provided for Articles 3, 5, 6 and 7 of the
Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in
Civil and Commercial Matters

On 25 October 1980, the Fourteenth Session adopted a *Recommendation on information to accompany judicial and extrajudicial documents to be sent or served abroad in civil or commercial matters; Practical Handbook on the Operation of the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* .

ANNEX TO THE CONVENTION

Forms

REQUEST FOR SERVICE ABROAD OF JUDICIAL OR EXTRAJUDICIAL DOCUMENTS

Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, signed at The Hague, the 15th of November 1965.

Table with 2 columns: Identity and address of the applicant, Address of receiving authority

The undersigned applicant has the honour to transmit - in duplicate - the documents listed below and, in conformity with Article 5 of the above-mentioned Convention, requests prompt service of one copy thereof on the addressee, i.e., (identity and address)

.....

a) in accordance with the provisions of sub-paragraph (a) of the first paragraph of Article 5 of the Convention*.

b) in accordance with the following particular method (sub-paragraph (b) of the first paragraph of Article 5)*:

.....

c) by delivery to the addressee, if he accepts it voluntarily (second paragraph of Article 5)*. The authority is requested to return or to have returned to the applicant a copy of the documents - and of the annexes* - with a certificate as provided on the reverse side.

List of documents

.....

.....
.....
.....
.....
.....
.....
.....

Done at , the
Signature and/or stamp.

* Delete if inappropriate.

Reverse of the request
CERTIFICATE

The undersigned authority has the honour to certify, in conformity with Article 6 of the Convention,

1) that the document has been served*

● the (date)
.....
.....

● at (place, street, number)
.....
.....

- in one of the following methods authorised by Article 5:

a) in accordance with the provisions of sub-paragraph (a) of the first paragraph of Article 5 of the Convention*.

b) in accordance with the following particular method*:
.....
.....

c) by delivery to the addressee, who accepted it voluntarily* .

The documents referred to in the request have been delivered to:

● (identity and description of person)
●
.....

● relationship to the addressee (family, business or other):

●
.....
.....

.....
.....

2) that the document has not been served, by reason of the following facts*:

.....
.....
.....
.....
.....

In conformity with the second paragraph of Article 12 of the Convention, the applicant is requested to pay or reimburse the expenses detailed in the attached statement*.

Annexes

Documents returned:

.....
.....
.....
.....
.....

In appropriate cases, documents establishing the service:

.....
.....
.....

Done at , the
Signature and/or stamp.

* Delete if inappropriate.

SUMMARY OF THE DOCUMENT TO BE SERVED
Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or
Commercial Matters,
signed at The Hague, the 15th of November 1965.
(Article 5, fourth paragraph)

Name and address of the requesting authority:

.....
.....
.....

Particulars of the parties*:

.....
.....
.....

JUDICIAL DOCUMENT**

Nature and purpose of the document:

.....
...

.....Nature and purpose of the proceedings
and, where appropriate, the amount in dispute:

.....
.....

Date and place for entering appearance**:

.....
.....

Court which has given judgment**:

.....
.....
.....

Date of judgment**:

.....
.....

Time-limits stated in the document**:

.....
..

EXTRAJUDICIAL DOCUMENT**

Nature and purpose of the document:

.....
...

.....
.....

Time-limits stated in the document**:

.....
...

.....
.....

* If appropriate, identity and address of the person interested in the transmission of the document.

** Delete if inappropriate.