

## WHISTLEBLOWER PROTECTION PROGRAMS COMPROMISE THE REPORTED TAXPAYER'S PRIVACY

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### ABSTRACT

*The United States Whistleblower Program's inadequate protections have placed the privacy and confidentiality rights of United States taxpayers in a vulnerable state. By using the United States Whistleblower Program as an example, this paper seeks to illustrate the risk of eroding the confidentiality and privacy rights of the taxpayer, which is a risk that other national and international governments should likewise attempt to mitigate in their own whistleblower protection programs.*

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## I. INTRODUCTION

Much discussion related to whistleblower programs focus on the importance of protecting the identity and interests of the whistleblower, as he is emblematically the hero who jeopardizes himself personally and professionally to report tax noncompliance. However, little discussion contemplates the privacy interests of the reported taxpayer who is the subject of the whistleblower claim and potentially resulting investigation. The taxpayer, whom the whistleblower reports, may or may not be actually noncompliant. Yet, the reported taxpayer's name, address, tax returns, and return information may become exposed—not only to the whistleblower—but also to the public, due to inadequate legislative safeguards. In 2014, the Internal Revenue Service (“IRS”) adopted the Taxpayer Bill of Rights to inform taxpayers of their fundamental rights when dealing with the IRS. The Right to Privacy and the Right to Confidentiality are two of these ten rights, which are the same rights Congress codified in the Internal Revenue Code (“IRC”) in 2015.<sup>1</sup> With the push for compliance, these rights are at risk.

This topic becomes increasingly relevant in 2017, as Australia and the European Union have recently announced intentions to institute comprehensive whistleblower protection programs. While their proposed programs will be more expansive in scope than the United States IRS program in that they will cover corporate and other types of whistleblowing in addition to tax, this paper will focus on tax whistleblowing specifically. Other governments should scrutinize the United States IRS Whistleblower Program when instituting their own programs, so that they may learn from its shortcomings and institute legislative safeguards from the onset. Increased compliance should not come at the cost of taxpayer privacy.

## II. THE UNITED STATES IRS WHISTLEBLOWER PROGRAM

### A. Background

When Congress added IRC §7623(b) in 2006, the United States IRS Whistleblower Program (“Whistleblower Program”) expanded into a fully-fledged program by taking three measures: 1) instituting its own office, the Whistleblower Office, 2) paying mandatory awards to certain whistleblowers, instead of only discretionary rewards, and 3) allowing whistleblowers unsatisfied with their reward determinations to appeal to the Tax Court. Where previously the IRS had the discretion to decide whether to issue awards, now, in general, whistleblower claims that are determined to “substantially contribute”

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<sup>1</sup> IRS, Taxpayer Bill of Rights: #8, The Right to Confidentiality, Fact Sheet FS-2016-17, March 2016, *see*: <https://www.irs.gov/taxpayer-bill-of-rights/taxpayer-bill-of-rights-the-right-to-confidentiality>; IRS, Taxpayer Bill of Rights: #7, The Right to Privacy, Fact Sheet FS-2016-15, March 2016, *see*: <https://www.irs.gov/uac/newsroom/fact-sheets-2016>.

to the IRS secretary's decision to proceed on administrative or judicial action must receive an award if the statutory threshold amounts are met and if it resulted in collection of tax, penalties, or other amounts.<sup>2</sup> Where the maximum reward was previously a maximum of 15% of the collected proceeds and the reward could not exceed \$10 million, now whistleblowers can receive a higher reward ranging between 15% and 30% of the collected proceeds resulting from the action and at an unlimited dollar amount.<sup>3</sup> With the higher potential for payouts, the program offers greater financial incentives, explaining the rise in whistleblower claims. "Indeed, since 2007, information submitted by whistleblowers has assisted the IRS in collecting \$3.4 billion in revenue, and, in turn, the IRS has approved more than \$465 million in monetary awards to whistleblowers," said the Director of the IRS Whistleblower Office in the 2016 IRS Whistleblower Program report.<sup>4</sup>

## B. Problem

As the IRS Whistleblower Program incentivizes more whistleblowers to file claims, taxpayer information becomes continually more exposed. A whistleblower is often conceptualized as the conscientious employee that reports the tax fraud of his corporate employer. However, anyone can blow the whistle on anyone: a nosey neighbor, or a revengeful lover—with or without good faith.

The taxpayer's information—which may range from name, address, or Social Security Numbers on a tax return, to whether the taxpayer owes taxes and in what amount—may become exposed at multiple points.<sup>5</sup> Although there is a general rule against disclosure under IRC §6103, as part of an investigation, the IRS officer might disclose information to a whistleblower, whether illegitimately or through one of the permissible exceptions to the general rule against disclosure.<sup>6</sup> The whistleblower might then intentionally or inadvertently disclose that information to a third party, or to the public. If the whistleblower does not receive an award when he contends he deserves one, or is unsatisfied with the amount of his award, he may bring a claim to the Tax Court for review of the IRS decision, at which point, the whistleblower might again disclose sensi-

<sup>2</sup> IRC 7623(b).

<sup>3</sup> IRC §7623(b)(1); Internal Revenue Manual (IRM) 1.2.13.1.12, Policy Statement 4-27, August 13, 2004, *see*: [https://www.irs.gov/irm/part1/irm\\_01-002-013.html](https://www.irs.gov/irm/part1/irm_01-002-013.html).

<sup>4</sup> Internal Revenue Service, IRS Whistleblower Program: Fiscal Year 2016, Annual Report to the Congress at 3, *see*: [https://www.irs.gov/pub/whistleblower/fy16\\_wo\\_annual\\_report\\_final.pdf](https://www.irs.gov/pub/whistleblower/fy16_wo_annual_report_final.pdf).

<sup>5</sup> IRC §6103(b)(2)(A) defines "return information" broadly to include the taxpayer's identity, source of his income, whether there is outstanding liability, whether the return is subject to investigation, etc.

<sup>6</sup> *Whistleblower Program Does Not Meet Whistleblower's Need for Information During Lengthy Processing Times and Does Not Sufficiently Protect Taxpayer's Confidential Information from Re-Disclosure by Whistleblowers*, National Taxpayer Advocate, Internal Revenue Service, 2015 Annual Report to Congress, Vol. 1, *The Most Serious Problems Encountered By Taxpayers*, #13, at 152–53 (2016) [hereinafter *Most Serious Problems #13*] (explaining the general non-disclosure rule has exceptions under IRC §§ 6103(n) and 6103(k)(6), which though not specifically addressing disclosures to whistleblowers, could apply in such a context), *see*: [http://www.taxpayeradvocate.irs.gov/Media/Default/Documents/2015ARC/ARC15\\_Volmer.pdf](http://www.taxpayeradvocate.irs.gov/Media/Default/Documents/2015ARC/ARC15_Volmer.pdf).

tive information. The Tax Court records are public, meaning the taxpayer's information would be published, even if the Court determined he owed nothing in taxes.<sup>7</sup> The taxpayer would not be party to the case, so he may never become aware his name has been sullied.<sup>8</sup> Even if he does become aware, he cannot practically seek redress given he is not a party to the case.

Thus, as will be discussed below, the taxpayer confidentiality and privacy rights become increasingly compromised due to a lack of four protections:

- sanctions if the whistleblower reveals information to third parties through an unauthorized disclosure;
- safeguards to protect the information in the first place;
- remedies to compensate the taxpayer for his loss of privacy; and
- procedural rules in the Tax Court's judicial proceedings.

### C. Lack of Sanctions

Whistleblowers who disclose a reported taxpayer's information to the public or to third parties should be subject to sanctions to deter future unauthorized disclosures. Under IRC §6103's general rule against disclosure, IRS employees are subject to a general prohibition against disclosing a taxpayer's returns or return information.<sup>9</sup> They cannot, for example disclose to a whistleblower that the claim he submitted led to an audit.<sup>10</sup> If the IRS employee violates this provision, the employee is subject to sanctions under IRC §§7431, 7213, and 7213A.<sup>11</sup> Problematically, the whistleblower is not subject to these sanctions.<sup>12</sup>

To bypass the general rule against disclosure, IRS officers disclose information to whis-

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<sup>7</sup> *Lampert v. United States*, 854 F.2d 335, 337 (9th Cir. 1988) (listing cases in which district courts found that once tax return information is disclosed in court, "such information is no longer confidential, the taxpayer loses any privacy interests in that information, and there is no violation of section 6103 for subsequent disclosures").

<sup>8</sup> *Whistleblower Program Does Not Meet Whistleblower's Need for Information During Lengthy Processing Times and Does Not Sufficiently Protect Taxpayer's Confidential Information from Re-Disclosure by Whistleblowers*, National Taxpayer Advocate, Internal Revenue Service, 2015 Annual Report to Congress, Vol. 1, The Most Serious Problems Encountered By Taxpayers, #13, supra note 6, at 156, see: [http://www.taxpayeradvocate.irs.gov/Media/Default/Documents/2015ARC/ARC15\\_Vol1.pdf](http://www.taxpayeradvocate.irs.gov/Media/Default/Documents/2015ARC/ARC15_Vol1.pdf).

<sup>9</sup> IRC §6103(a).

<sup>10</sup> Internal Revenue Service, Confidentiality and Disclosure for Whistleblowers (March 21, 2017), see: <https://www.irs.gov/uac/confidentiality-and-disclosure-for-whistleblowers>.

<sup>11</sup> IRC §§7431(a)(2), 7431(c); 7213(a)(1); 7213A(a)(1)(B), 7213A(b)(1).

<sup>12</sup> *Whistleblower Program: Make Unauthorized Disclosures of Return Information by Whistleblowers Subject to the Penalties of IRC §§ 7431, 7213, and 7213A, Substantially Increase the Amount of Such Penalties, and Make Whistleblowers Subject to the Safeguarding Requirement of IRC §6103(p)*, National Taxpayer Advocate, Internal Revenue Service, 2015 Annual Report to Congress, Vol. 1, Legislative Recommendations #14, at 413 (2016), [hereinafter *Legislative Recommendations #14*], see: [http://www.taxpayeradvocate.irs.gov/Media/Default/Documents/2015ARC/ARC15\\_Vol1.pdf](http://www.taxpayeradvocate.irs.gov/Media/Default/Documents/2015ARC/ARC15_Vol1.pdf).

tleblowers as part of an investigation under the exceptions afforded by IRC §6103(h)(4) through confidentiality agreements and IRC §6103(k)(6) for investigative purposes.<sup>13</sup> Sometimes, the whistleblower can only continue to be helpful to the IRS investigation, if he knows an important piece of information, which is part of the taxpayer's confidential information.

Under IRC §6103(h)(4), the whistleblower enters into a confidentiality agreement with the IRS, allowing the IRS to share taxpayer information with the whistleblower, which the whistleblower agrees not to disclose.<sup>14</sup> However, these confidentiality protections are largely ineffective, because the punishment the IRS imposes on the whistleblower is considering his violation as a negative factor when computing his final award.<sup>15</sup> Because such a negative factor would do nothing to dissuade the whistleblower from disclosing the information when the award has already been paid, the National Taxpayer Advocate suggests the reported taxpayer should be allowed to receive damages for the whistleblower's subsequent unauthorized disclosures.<sup>16</sup> If the IRS officer revealed the information under one of the exceptions to the general non-disclosure rule, i.e. under §6103(h)(4) or §6103(k)(6), then the whistleblower would not be subject to the sanctions. The Whistleblower Office admits that there is no effective sanction if the whistleblower violates the confidentiality agreement.<sup>17</sup>

However, a whistleblower would be subject to IRC §7213 sanctions if he obtained the information illegitimately, (such as if the IRS officer wrongly provided him the information), and the whistleblower then willfully prints or publishes the information.<sup>18</sup> The whistleblower would also be subject to the sanctions if he entered into a tax administration contract with the IRS under an IRC §6103(n) contract.<sup>19</sup> However, this remains an unused sanction as the IRS has never entered into a contract under IRC §6103(n).<sup>20</sup>

The question remains whether the sanctions would significantly deter wrongdoing, given that the amounts have never been adjusted for inflation since enactment. Established more than forty years ago in 1976, the statutory damages under IRC §7431 cap at

<sup>13</sup> IRC §6103(k)(6); Treasury Regulations § 301.6103(h)(4)-1.

<sup>14</sup> Treasury Regulations §§ 301.7623-3(c)(3)(iii), 301.7623-3(c)(4).

<sup>15</sup> Treasury Regulations § 301.6103(h)(4)-1.

<sup>16</sup> *Protect Taxpayer Privacy in Whistleblower Cases*, National Taxpayer Advocate, Internal Revenue Service, 2010 Annual Report to Congress, Vol. 1, Legislative Recommendations #7, at 396-97 (2011), *see*: [https://www.irs.gov/pub/tas/legislativerecommendations\\_2010arc.pdf](https://www.irs.gov/pub/tas/legislativerecommendations_2010arc.pdf).

<sup>17</sup> Internal Revenue Service, IRS Whistleblower Program, Fiscal Year 2015, Annual Report to the Congress, at 9, *see*: [https://www.irs.gov/pub/whistleblower/WB\\_Annual\\_Report\\_FY\\_15\\_Final%20Ready%20for%20Commissioner%20Feb%2008.pdf](https://www.irs.gov/pub/whistleblower/WB_Annual_Report_FY_15_Final%20Ready%20for%20Commissioner%20Feb%2008.pdf).

<sup>18</sup> IRC § 7213(a)(3).

<sup>19</sup> IRC § 7213(a)(1), (2); *see also* Treasury Regulation § 301.6103(n)-2(c).

<sup>20</sup> Internal Revenue Service, IRS Whistleblower Program, Fiscal Year 2016, Annual Report to the Congress, at 8, *see*: [https://www.irs.gov/pub/whistleblower/fy16\\_wo\\_annual\\_report\\_final.pdf](https://www.irs.gov/pub/whistleblower/fy16_wo_annual_report_final.pdf).

\$1,000 and the fines under IRC §7213 cap at \$5,000.<sup>21</sup> Adjusted for inflation, these amounts would be \$4,000 and \$21,000 in 2015 dollars.<sup>22</sup> Instituted in 1997, the \$1,000 maximum fine under §7213 is slightly less outdated, but would also be greater at \$1,500 in 2015 dollars.<sup>23</sup>

#### D. Lack of Safeguards

Safeguards are one of the methods of ensuring that information is not disclosed and that it is kept physically safe to prevent inadvertent or negligent disclosure. IRC §6103(p)(4) has a list of safeguards that the listed government agencies must abide by, such as maintaining “a secure area or place in which such returns or return information shall be stored,” to the satisfaction of the IRS Secretary.<sup>24</sup> However, these requirements apply only to the IRS officer—not to the whistleblower.<sup>25</sup> Therefore, regardless of whether the whistleblower acquired the information himself or through the IRS, that information would not have a physical information protection when it is in the whistleblower’s hands. One can imagine a situation in which the whistleblower leaves a copy of the return information visible or accessible to passing eyes. Thus, the National Tax Payer Advocate recommends requiring that the whistleblower enter into confidentiality agreements with the IRS that impose a safekeeping requirement.<sup>26</sup> However, even if the safeguards applied to whistleblowers, the safekeeping requirement would be significantly more difficult to enforce than to the officers, as the IRS Secretary cannot as easily oversee a whistleblower as he can an IRS agent.

An existing rule does impose safeguard requirements on the whistleblower: IRC

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<sup>21</sup> *Whistleblower Program: Make Unauthorized Disclosures of Return Information by Whistleblowers Subject to the Penalties of IRC §§ 7431, 7213, and 7213A, Substantially Increase the Amount of Such Penalties, and Make Whistleblowers Subject to the Safeguarding Requirement of IRC §6103(p)*, National Taxpayer Advocate, Internal Revenue Service, 2015 Annual Report to Congress, Vol. 1, Legislative Recommendations #14, supra note 12, at 416 (2016), see: [http://www.taxpayeradvocate.irs.gov/Media/Default/Documents/2015ARC/ARCI5\\_Volume1.pdf](http://www.taxpayeradvocate.irs.gov/Media/Default/Documents/2015ARC/ARCI5_Volume1.pdf).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> IRC §6103(p)(4).

<sup>25</sup> *Whistleblower Program: Make Unauthorized Disclosures of Return Information by Whistleblowers Subject to the Penalties of IRC §§ 7431, 7213, and 7213A, Substantially Increase the Amount of Such Penalties, and Make Whistleblowers Subject to the Safeguarding Requirement of IRC §6103(p)*, National Taxpayer Advocate, Internal Revenue Service, 2015 Annual Report to Congress, Vol. 1, Legislative Recommendations #14, supra note 12, at 416 (2016), see: [http://www.taxpayeradvocate.irs.gov/Media/Default/Documents/2015ARC/ARCI5\\_Volume1.pdf](http://www.taxpayeradvocate.irs.gov/Media/Default/Documents/2015ARC/ARCI5_Volume1.pdf).

<sup>26</sup> *Whistleblower Program: The IRS Whistleblower Program Does Not Meet Whistleblowers’ Need for Information During Lengthy Processing Times and Does Not Sufficiently Protect Taxpayers’ Confidential Information From Re-Disclosure by Whistleblowers*, National Taxpayer Advocate, Internal Revenue Service, Objectives Report to Congress Fiscal Year 2017, Vol. 2, IRS Responses and National Taxpayer Advocate’s Comments: Regarding Most Serious Problems Identified in the 2015 Annual Report to Congress, at 83 (2017) (providing IRS’ response to the Tax Advocate Service’s recommendation), see: [https://taxpayeradvocate.irs.gov/Media/Default/Documents/2017-JRC/Volume\\_2.pdf](https://taxpayeradvocate.irs.gov/Media/Default/Documents/2017-JRC/Volume_2.pdf)

§6103(n). Still, the situation that would allow for the application of this rule has never arisen.<sup>27</sup> This provision allows the IRS to enter the premises of the whistleblower (or his legal representative) and ensure that the return information is secure.<sup>28</sup> However, this provision only applies when the IRS enters into what is known as a “tax administration” contract with the whistleblower. Because the IRS has never entered into a §6103(n) contract with a whistleblower, this safeguard remains but an empty protection.

#### E. Lack of Remedies

The remedy that is available under current code provisions is significantly outdated. Even seeking the remedy may prove difficult, as the taxpayer would not be a party to the case to be able to have a claim for damages.<sup>29</sup> To make matters worse, if the Tax Court found that the reported taxpayer was noncompliant as the whistleblower insists he is, it is likely the nonparty taxpayer will have even more difficulty in winning damages because there would be a prejudice against him. Even if the Tax Court determines that the taxpayer was indeed compliant, the nonparty taxpayer has had his information disclosed publicly for no reason. The reported taxpayer would still face the burden of showing damages for ruining a name, which is difficult to quantify. This scenario assumes that the taxpayer was aware that he was mentioned in the claim. However, because there is no notice requirement, the taxpayer may have never known that the whistleblower mentioned his information, which is itself a disturbing matter.<sup>30</sup>

#### F. Lack of Judicial Procedural Rules

In 2012, the Tax Court amended its procedural rules to require that the whistleblower who appeals an IRS award decision must exclude or redact the reported taxpayer’s identifying information. Previously, whistleblower pleadings and court decisions regularly included the reported taxpayer information as a matter of practice.<sup>31</sup> An area when taxpayer information may become inappropriately disclosed is in discovery. As the IRS admitted, “[t]here appears to be no effective sanction, and no effective restraint, when a whistleblower obtains confidential taxpayer information in discovery and chooses to

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<sup>27</sup> Fiscal Year 2016, Annual Report to Congress, *supra* note 20.

<sup>28</sup> IRC § 6103(n).

<sup>29</sup> Internal Revenue Service, Whistleblower Program (Internal Revenue Code 7623), Fiscal Year 2014, Report to the Congress, at 7, *see*:  
[https://www.irs.gov/pub/whistleblower/WB\\_Annual\\_Report\\_FY\\_14\\_Final\\_Signature\\_June\\_11-signed%20corrected.pdf](https://www.irs.gov/pub/whistleblower/WB_Annual_Report_FY_14_Final_Signature_June_11-signed%20corrected.pdf).

<sup>30</sup> Most Serious Problems #13, *supra* note 6, at 156.

<sup>31</sup> See, e.g., *Cooper v. Commissioner of Internal Revenue*, 135 T.C. 70, 71 (T.C. 2010) (in which a whistleblower appealed to the Tax Court when his claim had not resulted in a reward and unfairly disclosed the reported taxpayer’s name. The Court determined the taxpayer owed nothing in taxes.).

release that information to the public.”<sup>32</sup> In the 2016 Annual Report, the IRS stated “there is no restraint on whistleblowers redisclosing return information following the completion of the administrative and judicial processes.”<sup>33</sup> Such a lack of protective judicial measures is particularly unsettling given the simultaneous lack of statutory protections discussed above.

While the United States IRS Whistleblower Program has taken laudable strides to improve the protection of taxpayer information, there remains a need for reinforced protections, as other governments should take note.

### III. EUROPE

As the European Parliament announced it would “study best practices from whistleblower programmes already in place in other countries around the world,”<sup>34</sup> it is likely that the EP will look to the United States IRS Whistleblower Program. However, it is unlikely that they prioritize the taxpayer right to privacy given their broad and media-driven agenda. With the media pressures that have accompanied the recent LuxLeaks scandal—whereby Luxembourg strives to convict high-profile whistleblowers to uphold its legislative protection of business secrets, much to the dismay of the European Parliament—it is likely that the public and the parliament will align with the interests of the whistleblower, forgetting those of the taxpayer civilians.

The European Parliament voted to institute a whistleblower protection program in the February 14, 2017 plenary session.<sup>35</sup> The European Parliament requested that the Commission submit a legislative proposal before the end of 2017, and called upon those Member States that do not have existing principles in their domestic law that protect whistle-blowers to introduce these as soon as possible.<sup>36</sup> Indeed, after the LuxLeaks verdict, which German MEP, Sven Giegold calls one that reduces “heroes to criminals,” Members of the European Parliament demand a new and comprehensive whistleblower program.<sup>37 38</sup>

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<sup>32</sup> Report to the Congress, *supra* note 29.

<sup>33</sup> Annual Report to the Congress, *supra* note 4.

<sup>34</sup> European Parliament Resolution on the role of whistleblowers in the protection of EU’s financial interests (Feb. 2 2017), 2016/2055(INI), P8\_TA-PROV(2017)0022, *see*: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2017-0022+0+DOC+PDF+Vo//EN>.

<sup>35</sup> Teri Sprackland, *European Parliament Votes for EU-Wide Whistleblower Protection*, taxnotes, Worldwide Tax Daily (Feb. 15, 2017), *see*: <http://www.taxnotes.com/worldwide-tax-daily/2017-02-15>.

<sup>36</sup> *Id.*

<sup>37</sup> Teri Sprackland, *Appeals Court Reduces Sentence of LuxLeaks Whistleblower*, taxnotes, Worldwide Tax Daily (Mar. 16, 2017), *see*: <http://www.taxnotes.com/worldwide-tax-daily/2017-03-16>.

<sup>38</sup> *EU Parliamentary Group Criticizes LuxLeaks Appeal Verdict*, Tax Analysts, Transfer Pricing Expert, (Mar. 16, 2017), *see*: <http://www.taxnotes.com/transfer-pricing-expert>.

The program goals seem overambitious in scope. It seeks to protect whistleblowers that “disclose their information on possible irregularities affecting the financial interests of the Union.”<sup>39</sup> The definition of “possible irregularities” has yet to be limited. A U.K. MEP, Molly Scott Cato advocated for protection in “all areas of EU competence,” mentioning “environmental crimes, human rights violations, and any other wrongdoing.”<sup>40</sup> If the final proposals do indeed reflect such a broad vision, the implementation may prove unwieldy, given the complexity inherent in each area. The United States boasts its own independent office for purely tax whistleblowing and despite this dedicated resource; the complexity of the problem proves there are no easy answers.

With the European Parliament’s broad ambitions, it is likely that the privacy rights of the taxpayer will be neglected. The text adopted by the European Parliament focuses exclusively on the confidentiality of the whistleblower and does not mention protecting the interests of the reported taxpayer. Thankfully, the European Parliament does mention inclusion of a good faith requirement (albeit a relatively lenient one), which would aim to bar ill-intentioned whistleblowers, by requiring a reasonable belief that the information is true at the time the whistleblower reports it, with an allowance for honest errors.<sup>41</sup> Barring bad faith whistleblowers is a preventative measure in minimizing whistleblowers from intentionally disclosing taxpayer information.

The European Commission is expected to provide an anti-tax-evasion directive, which would include some whistleblower protections in 2017.<sup>42</sup> However, unless there are specific safeguards to protect taxpayer privacy, such a directive could serve to erode taxpayer privacy rights instead of protect them.

With the difficulty of implementing a whistleblower program and the circumstances that glorify the protection of the whistleblowers, European taxpayers have reason to be fear for their privacy rights.

#### IV. AUSTRALIA

The Australian Government of the Treasury issued a consultation paper, called *Review of Tax and Corporate Whistleblower Protections in Australia*, which is not law, but is a discussion paper that solicited comments from the public by February 10, 2017. The consultation paper is much more detailed than Europe’s published plans, and does explicitly contemplate the importance of protecting the taxpayer. It specifically refers to

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<sup>39</sup> *EU Parliament Issues Motion for Resolution on Whistleblower Protection*, Tax Analysts, Worldwide Tax Daily, Other Administrative Documents (Feb. 15, 2017), *see*: <http://www.taxnotes.com/worldwide-tax-daily/2017-02-15>.

<sup>40</sup> *Teri Sprackland, European Parliament Votes for EU-Wide Whistleblower Protection*, Worldwide Tax Daily (Feb. 15, 2017), *see*: <http://www.taxnotes.com/worldwide-tax-daily/2017-02-15>.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

the regimes in place in the US, New Zealand, and Canada, and announces that like the laws in these jurisdictions, the Australian Tax Office will be prohibited from releasing “any information pertaining to the progress of the investigation.”<sup>43</sup> While these statements may not become law, the fact that the consultation paper at least contemplates the privacy of the taxpayer should be reassuring to Australian taxpayers. As part of the comments it sought from the public, it explicitly asked commenters whether they agree “that the proposed tax whistleblower protections should include provisions preventing the disclosure of taxpayer information to the informant.”<sup>44</sup> A commenter, Kenneth H. Ryesky, Esq. wisely observed that “[i]n processing the whistleblower report, there needs to be an evenhanded balance between the whistleblower and the taxpayer who is the subject of the whistleblowing.”<sup>45</sup> The Australian government shows admirable clairvoyance in contemplating the risks to taxpayer privacy rights even at such an early stage in the implementation of its whistleblower program.

## V. CONCLUSION

The global push towards increased compliance is a worthy one, but as the United States IRS Whistleblower Program shows, without the proper safeguards, compliance endangers taxpayer privacy. Perhaps this is a compromise taxpayers are willing to make. But such a compromise should be the result of a conscious choice as opposed to an ignored side effect. The IRS Whistleblower Program has made great progress since it was first instituted, and the Tax Court has amended its procedural rules to provide more protection for taxpayer privacy thanks to advocates of taxpayer privacy. With this knowledge, the United States and other jurisdictions may optimistically journey towards a future of increased compliance while valiantly striving to protect taxpayer privacy.

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<sup>43</sup> The Australian Government, Review of Tax and Corporate Whistleblower Protections in Australia, THE AUSTRALIAN GOVERNMENT THE TREASURY, (Dec. 20, 2016), see: <http://www.treasury.gov.au/~media/Treasury/Consultations%20and%20Reviews/Consultations/2016/Whistleblower%20protections/Key%20Documents/PDF/CP-whistleblowing.ashx>

<sup>44</sup> *Id.*

<sup>45</sup> Commentary Submission by *Kenneth H. Ryesky, Esq., Practitioner Responds to Australian Whistleblower Protections Consultation*, WORLDWIDE TAX DAILY (Feb. 7, 2017). See: <http://www.taxnotes.com/worldwide-tax-daily/2017-02-07>.