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U.S. Offshore Enforcement Likely to Focus on Asia, Practitioners Say
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Summary by taxanalysts

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Full Text Published by taxanalysts

Following IRS efforts to pierce the veil of bank secrecy in Switzerland, Washington-based tax practitioners David Rosenbloom and Scott Michel have a message for financial institutions and those with hidden accounts in Asia: You're next.

Michel and Rosenbloom, both with Caplin & Drysdale, are back in the U.S. after taking their message to bankers, lawyers, and businesspeople in Singapore and Hong Kong. The main point of their presentations was that the IRS, following what it hopes will be a successful conclusion to the UBS matter, soon will set its sights on a new high-profile target, and Asia presents what military leaders might call a "target-rich environment."

Michel said that many of the bankers he spoke with on his tour had considered their financial institutions to be insulated from the controversies taking place with banks in Switzerland and Liechtenstein, but he set out to correct that misconception.

"You can't, as a matter of raw fairness, just involve one institution, one country. If we are going to get serious about compliance by individuals, the United States has to do it across the board, and our point was that notwithstanding the absence of treaties, there are a number of ways in which information about these accounts in nontreaty countries could easily come to the attention of the IRS," Rosenbloom said.

In recent years, the IRS has succeeded in obtaining large amounts of information on offshore holdings through its offshore compliance initiatives. The UBS dispute raised the profile of those activities, which helped the IRS to secure 17,000 voluntary disclosures in a reduced-penalties initiative that ended in October 2009.

As it scours the data being voluntarily disclosed, the IRS will be able to identify individuals and institutions that have aided in tax evasion, and it may choose to pursue them in much the same way that it went after UBS, Michel said. He said he believes the IRS will be "looking to repeat" the success it had in the UBS case. (For prior coverage, see *Doc 2010-7128* or *2010 WTD 62-1*.)

The sense of impenetrability of bank secrecy has been diminished by reports that employees of banks in secrecy jurisdictions are stealing information and turning it over to tax administrations that are willing to pay for the data or, in the case of the U.S., that have implemented generous whistleblower reward programs.

"One of the themes that we sounded was that the whistleblower program could be quite attractive to somebody who sees that as a way of feathering their nest," Rosenbloom said. "It doesn't necessarily have to be a disgruntled employee."



Rosenbloom said that any institution could be the victim of such a theft and that as a result, the assurance depositors once had that their information would not be turned over to tax authorities no longer exists.

But the IRS's enforcement activities have also created headaches for U.S. citizens who are fully tax compliant.

"There is some perception that the expatriate community is being targeted, that Americans who live and work

abroad are being thought of as generally and inherently noncompliant and generally and inherently sort of bad taxpayers," Michel said.

He acknowledged that there is a "fair amount of noncompliance among Americans living abroad," but he said that even the compliant taxpayers are seeing more practical difficulties in their lives as a result of U.S. enforcement efforts, with one U.S. expat reporting that recently, he was unable to open a bank account at the Hong Kong branch of a major U.S. bank.

And the situation could be getting worse for U.S. expats. While Michel and Rosenbloom were conducting their presentations, the U.S. Senate passed the Hiring Incentives to Restore Employment (HIRE) Act (P.L. 111-147), which President Obama signed into law on March 18. The bill, which is intended to improve the U.S. job market, incorporated provisions of the Foreign Account Tax Compliance Act (FATCA). Under FATCA, foreign financial institutions will be required to meet more stringent standards to ensure that U.S. taxpayers are not holding unreported accounts or else face new withholding taxes on payments from the United States. (For prior coverage, see *Doc 2010-5886*  or *2010 WTD 53-1* .)

One U.S. tax lawyer living in Hong Kong told Michel and Rosenbloom that he views FATCA as an "imperialist act" on the part of the U.S. government.

Rosenbloom said he expects the IRS to cut back on the broad sweep of the FATCA provisions. The IRS has the authority to issue regulations and may choose to combine the new provisions with the existing qualified intermediary program, said Rosenbloom, who added that he sees that as the most likely scenario.

"There is a big difference between . . . somebody maintaining a foreign account who lives abroad and somebody maintaining a foreign account who lives on Park Avenue in New York," he said.

Rosenbloom said there is a sense among U.S. citizens living abroad that they are always an afterthought. Michel added that the expat community feels as though it has been unnecessarily "tarred" by the U.S. government in its enforcement efforts.

Michel said he also has perceived concern on the part of financial institutions that they could find themselves wrapped up in the U.S. enforcement net despite what they believe to be their best efforts at compliance. He said those concerns are legitimate, given the possibility that a "rogue banker" could "look the other way" when a U.S. citizen opens an account in the name of a British Virgin Islands company.

"There is always the possibility of somebody misbehaving and creating large problems for the organization as a whole," Michel said.

The IRS does not have the resources to track down every individual who is out of compliance, Rosenbloom noted, so instead, the IRS has leveraged its resources by pursuing cases against the individuals and institutions that facilitate evasion. Rosenbloom said he expects the IRS to bring out its next "big splash prosecution" soon as it tries to maintain the momentum it has established.



Tax Analysts Information



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Cross Reference: For prior coverage of the UBS dispute, see *Doc 2010-7128*  or *2010 WTD 62-1* .

For prior coverage of the Foreign Account Tax Compliance Act, see *Doc 2010-5886*  or *2010 WTD 53-1* .

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