

David Rosenbloom Comments on Domestic FATCA Requirements Possibly Complicating Compliance

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The *International Tax Monitor* interviewed H. David Rosenbloom and other practitioners regarding differences among intergovernmental agreements (IGAs). Practitioners disagreed on whether those differences could seriously complicate FATCA compliance for businesses. However, many agreed that a country's domestic implementation requirements could create stricter compliance obligations than FATCA. For the complete article, please click on the link above to view a PDF.

Excerpt taken from the article.

80,000 Registrations

The U.S. cannot directly impose FATCA's legal reporting obligation on non-U.S. persons with no connection to the U.S., so it imposes that obligation on U.S. withholding agents, institutions or other entities making payments to non-U.S. financial institutions.

But early objections by some jurisdictions to this unilateral U.S. approach led the U.S. to also jointly develop with France, Germany, Italy, Spain and the United Kingdom, the "Group of Five" countries, an alternative AEOI framework to implement FATCA.

Growing out of this effort, the U.S. released two model IGAs in July 2012. The effort also eventually led to development of the OECD's international common reporting standard for AEOI, which draws heavily on FATCA.

"The U.S. government is trying to get as much information about U.S. depositors and owners as it possibly can from anybody around the world," said H. David Rosenbloom at Caplin & Drysdale.

When the regime came into force July 1, some 80,000 institutions had registered to report account information directly to the IRS.

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Differences in Annex II

"Of course there are differences in the lists in Annex IIs. For example, Switzerland's Model 2 IGA deals with important Swiss institutions, such as Swiss Foundations, which may not even exist in say, China or Singapore," Rosenbloom said.

Rosenbloom, who recently negotiated a Model 1 IGA for a jurisdiction, said: "My client insisted on putting in some things that are a little divergent. But just like for tax treaties, there could be variations in the text of IGAs, depending on the particular negotiation and the specific country, but the differences are unlikely to have much cross-border impact."

"[The U.S.] is not trying to do one-off deals with countries and give them unique terms," he added.

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IGA Terms 'Lack Clarity.'

Many FATCA terms and phrases in IGAs "lack clarity," so guidance notes would clearly make compliance easier, said Rosenbloom, adding, "I think the IRS and Treasury would be inclined, in the absence of stiff resistance from the other side, to use [the U.K.] guidance notes in interpreting IGAs that don't have guidance notes."

Domestic Implementation Concerns

Rosenbloom said the degree of compliance with FATCA IGA Model 1 will depend on what local authorities require as they put in place processes for getting information that they can turn over to the U.S. "That is going to vary country-by-country, at the least," he said.

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