

## On the Eve of IFA-Mumbai, Bloomberg Interviews Scott Michel and David Rosenbloom: FATCA Strengthens U.S. Tax Enforcement Hand in India

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*Bloomberg's Daily Tax Report and International Tax Monitor* recently interviewed Caplin & Drysdale's Scott D. Michel and H. David Rosenbloom concerning the potential problems India's implementation of the Foreign Account Tax Compliance Act (FATCA) will pose for U.S. citizens with unreported accounts in India. Messrs. Michel, and Rosenbloom are appearing at next week's conference of the International Fiscal Association ("IFA") in Mumbai to discuss recent U.S. enforcement efforts against banks, account holders, and third parties in connection with unreported foreign financial assets. For the complete article, please click on the link above to view a PDF.

*Excerpt taken from the article.*

Once it takes effect, India's IGA will enhance the IRS's ability to get current-year reporting information about U.S. persons' accounts in India, and it will also give the IRS leads useful in checking on unreported accounts from previous years, said Scott Michel, at Caplin & Drysdale [Chartered] in Washington.

Consequently, as India and the Treasury tweak the fine print of the IGA for "India-specific issues," financial institutions and other impacted parties in India are already preparing for FATCA. However, it will take some time for the IRS to process the information and to move forward with an enforcement template to address circumstances where the data being provided does not match U.S. filings, Michel said.

Among Biggest Jurisdictions for Hiding Money

Michel and his Caplin & Drysdale colleague H. David Rosenbloom said India is one of the biggest jurisdictions where Americans have been caught hiding money.

Rosenbloom said FATCA is definitely going to be part of U.S. enforcement, but there aren't yet any consequences of FATCA other than that the IGAs signed so far worldwide have rooted out people who have come forward to make voluntary disclosures.

"The actual operation is coming in the future," Rosenbloom said.

Meanwhile, "In terms of practical consequences, there are things going on right now that are a lot more important, particularly in the Department of Justice, civil and criminal audits and investigations, and various U.S. tax treaties around the world," he said.

For example, on Sept. 15 the DOJ's program targeted at Swiss banks and Switzerland produced a first wave of submissions of information on U.S.-held accounts.

"What the DOJ does with that information is going to be interesting," he said.

Stemmed From HSBC Case

India was among the countries that leavers went to. In addition, in 2011, the IRS's investigation into HSBC led it to seek information on HSBC India accounts of U.S. residents. That inquiry "started to pry the lid off of the whole Indian subset of the notion of Americans maintaining unreported foreign assets," Michel said.

Said Rosenbloom, "Switzerland is much more front and center [of the DOJ program] but India is definitely on the radar screen because there have been rumblings of certain financial institutions that set up units to take money from Indian Americans."

"I think the IRS and the Justice Department have concluded that there is a fairly significant pocket of American citizens and green card holders with a material amount of assets held in India and that has not been reported," Michel said.

No 'Autopilot' FATCA Reporting

FATCA is complicated and expensive for affected entities. "It's not just setting up this reporting regime and then letting it run on autopilot," Michel said.

Some local and regional Indian banks may have to play "catch up" to implement the information technology necessary for FATCA compliance, he said.

Practitioners have said countries' domestic implementation and enforcement of their FATCA IGAs could create an extra layer of compliance issues for institutions. Under any IGA, initial review and enforcement is left to the domestic regulator.

"To the extent that India involves itself in auditing FATCA compliance and regulating it, I think you'll see some transference into the FATCA world of whatever culture there is to tax administration in India," he said.

Back Door Enforcement

Under Switzerland's tax treaty with the U.S., banks aren't allowed to name leaver account holders in their reports to the U.S., but the U.S. has a much "more robust" information exchange arrangement under its tax treaty with India.

So once the DOJ obtains "raw data" from Switzerland, it "will be able to go through the back door in India and figure out who made that transfer, where the money came from and then be able to ascertain whether those individuals have properly reported their Indian accounts and assets," Michel said.

And although FATCA is technically not retroactive, "it will enhance the IRS's ability not only to get obvious reporting information for the current year but also to look back whether someone previously had an account," he said.

In 2015, if the IRS gets information from India that a U.S. individual had an unreported account in 2014, it can send a "soft enquiry" letter notifying the U.S. taxpayer of that information, and asking if that person has such an account, when it was opened and how long the person has had it.

"When a U.S. taxpayer gets that kind of a notification from the IRS in a situation where there is a material amount of retrospective noncompliance, you're sort of off to the races. If you answer 'yes,' you confess, and if you answer 'no,' you're lying, and that's a crime."

"So, I wouldn't take much comfort in the nonretroactivity aspect of FATCA," Michel said.

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