

## Tax Analysts Speaks to Scott Michel: FBAR Penalty Guidance Reflects Sensitivity to U.S. Constitutional Concerns

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*Tax Analysts*

Scott D. Michel spoke with *Tax Analysts* regarding recent guidance from the IRS on the civil penalties for failure to file foreign bank account reports, which could reflect a concern that penalties up to the statutory limit might run afoul of the Eighth Amendment to the U.S. Constitution. For more on the story, please see *Tax Analysts'* website (subscription required).

*Excerpt taken from the article "FBAR Penalty Cap Reflects Sensitivity to U.S. Constitutional Concerns" by Andrew Velarde for Worldwide Tax Daily.*

"The IRS's position looks quite reasonable and is to be commended," Scott D. Michel of Caplin & Drysdale Chtd. told *Tax Analysts*. It appears to reflect sensitivities over the argument in the Eighth Amendment against excessive fines and penalties and may make it more likely that non-offshore voluntary disclosure program penalty cases will settle before the court action necessary for the government to collect the Title 31 penalty, he said.

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"The guidance is important and obviously may change the 'risk calculus' for a few taxpayers still on the fence about entering OVDP, especially if they are at a '50 percent bank,' but OVDP, and certainly the streamlined programs, still represent a pretty good deal in most cases compared even to the new parameters," Michel said.

### **Attorneys**

Scott D. Michel

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