

## **US demands tax tolerance of foreign financial groups**

By Gillian Tett

This summer, the senior management of one of Asia's largest financial groups is quietly mulling a potentially explosive question: could it organise some of its subsidiaries so that they could stop handling all US Treasury bonds?

Their motive has nothing to do with the outlook for the dollar. Nor does it reflect fears about the US debt ceiling (or the risk that the US will soon default if it fails to raise the legal limit on bond issuance).

Instead, what is worrying this particular Asian financial group is tax. **In January 2013, the US will implement a new law called the Foreign Account Tax Compliance Act (Fatca), that forces all global financial companies to report details to the IRS, the US tax authority, of any clients linked to the US with more than \$50,000 in an account.** These rules, quietly passed by Congress last year, would partly put the responsibility on the bank or asset manager – not just the individual – to make this filing.

The IRS insists that these measures are simple for banks and asset managers to implement; they just need to perform an electronic “sweep” of their clients to track those with more than \$50,000 in an account and obvious connections with the US, such as an address, Treasury officials argue.

**“The US interest is to have reporting on accounts to stem the tide of offshore tax evasion,”** says Manal Corwin, a senior official at the US Treasury, which hopes the measures could net billions of dollars of badly needed new revenues.

While this logic might sound sensible, the new rules leave some financial officials fuming in places such as Australia, Canada, Germany, Hong Kong and Singapore. Little wonder. Never mind the fact that implementing these measures is likely to be costly; in jurisdictions such as Singapore or Hong Kong, the IRS rules appear to contravene local privacy laws. After all, as Terry Campbell, head of Canada's banking association, points out, the rules are essentially akin to “conscripting financial institutions around the world to be arms of US tax authorities”.

What has left some financiers doubly angry is that Congress introduced the law with little overseas consultation – but the IRS is now threatening heavy penalties for non-compliance.

**More specifically, the IRS is threatening to impose a withholding tax of up to 30 per cent on sales of US assets by groups that it deems to be “non-compliant” – and the assets could include US shares or US Treasury bonds.**

Hence the fact that some non-US asset managers and banking groups are debating whether they could simply ignore Fatca by creating subsidiaries that never touch US assets at all.

“This is complete madness for the US – America needs global investors to buy its bonds,” fumes one bank manager. “But not holding US assets might turn out to be the easiest thing for us to do.”

Whether anybody follows through on this threat remains doubtful. In practice, banks in places such as Canada, Australia and Germany say that it would probably be impossible for them to not handle US Treasuries or stocks. Some are consequently considering whether they should shun US citizens as clients instead.

But others now hope that the US government itself will backtrack: although individual banks are reluctant to take a public lead (for fear of attracting more IRS scrutiny), groups such as Credit Suisse, Barclays and TD Bank of Canada have been actively lobbying to shape the bill via trade groups and their governments.

Faced with this, Tim Geithner, US Treasury secretary, is trying to strike a conciliatory tone. Last week in Atlanta he told senior global bankers that the Treasury was “absolutely aware of the concerns” about Fatca and was trying to translate the law into “workable” rules. “My sense from talking to our tax people [is] there are things we can do that will achieve the objectives of the law without too much risk of unintended consequences or too much collateral damage.”

Mr Geithner’s problem is that he has no direct power to revoke the law; that lies with Congress. The last thing any American politician wants to do right now is to help non-US banks; at least not in the current populist climate.

That, in turn, leaves some non-American financiers fearful, not just about the specific details of Fatca, but also about the wider patterns it reveals about Washington policy-making. After all, they mutter, if Washington could produce Fatca – and then impose it in an imperial manner on businesses across the world – what other capricious surprises loom next?

“Right now my board is probably as concerned about political risk in America as Indonesia, from a business perspective – perhaps more so,” says the head of one large global bank. It is a complaint that American politicians ignore at their peril.