

Banks battle over US tax law

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Banks and foreign governments are mounting an increasingly desperate push against a sweeping US tax law that will force overseas institutions to report their American clients to the Internal Revenue Service.

The Foreign Account Tax Compliance Act was passed by Congress last year and comes into force in 2013. Last week, senior bank executives implored Tim Geithner, US Treasury secretary, to modify the law, according to people familiar with the meetings.

Banks say they are already racking up significant costs. Eventually, they say, the task of scouring records for US citizens and then reporting them could run into billions of dollars and conflict with domestic privacy laws. Disclosure records show groups including Switzerland's Credit Suisse, Barclays of the UK and TD Bank of Canada have together spent millions of dollars lobbying on the issue.

Terry Campbell, Canadian Bankers Association head, said the act was "conscripting financial institutions around the world to be arms of US tax authorities". Algirdas Semeta, the European tax commissioner, told the Financial Times that he shared the concerns of the financial sector and expected more meetings with US counterparts. "We can find alternatives that would ensure all necessary information on their taxpayers without imposing additional burdens on financial institutions in the EU," he said.

People involved in meetings on the subject say the Obama administration has indicated it will look to reduce the burden on banks, which have to identify US citizens with accounts of more than \$50,000.

"We have had more meetings on this issue than probably any other regulatory matter," said Manal Corwin, a senior Treasury official. "The message here is we are working directly with the stakeholders. We want to know what it's really like on the ground."

But she added that the core of the law was in line with the administration's policy objectives and suggested the burdens were overstated.

"The US interest is to have reporting on accounts to stem the tide of offshore tax evasion," she said. "With respect to existing accounts, we're not, for example, asking them to make contact with every account holder they have but to do an electronic search of their files to look at indications of US status – an address, a birthplace or other US connection."

If banks do not comply they face a 30 per cent withholding tax on payments to the institutions from the US – a threat that some believe will lead to foreign groups trying to remove themselves from US capital markets.

“There’s a big loophole in Fatca,” said Dirk Suringa, a tax lawyer at Covington & Burling and a former Treasury official. “It does not prevent US taxpayers from opening a hidden foreign account at a complicit foreign bank that holds only foreign investments. It leaves open the possibility of continued cheating if people sell their US direct and indirect assets, which is another thing we do not want.”

Officials are sceptical that the burden of Fatca will outweigh the benefit of access to the US and have stressed that even indirect contact with US markets will incur the withholding tax.

But the provision has caused US groups to join their international counterparts in fighting the law. Disclosure records and public comments show that BlackRock, the fund manager, and Citadel, the hedge fund, have been active in calling for relief. Some US groups fear that their products will be shunned by overseas companies looking to escape the crackdown.

Most of the concerns are from overseas. DWPBank, a German processor of securities transactions for 1,600 German client banks, said Fatca implementation costs could rise to up to €10bn in Germany alone if all banks and institutions were to seek to comply. Karl-Martin im Brahm, a member of DWPBank’s board, said German insurance companies could find Fatca compliance even more difficult than banks, according to DWPBank. “Strict laws [for insurers] make it illegal to reveal some customer data. They are in a very difficult position,” Mr im Brahm said.

The legislation is part of a global push against tax evasion that has caused unease among US citizens overseas. UBS, the Swiss bank, paid \$780m in 2009 to settle criminal charges that it helped Americans evade tax and handed over client details.

Steven Miller, deputy commissioner for services and enforcement at the IRS told a conference last week: “The IRS plans to move against one or more banks in the next month or so.”

In their international search for revenue, officials have rejected the sort of bilateral deals that Germany and the UK are negotiating with Switzerland, which would see Swiss authorities levy taxes on behalf of the country that is owed revenue, but not provide customer information.

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