

Tough US laws hit local firms

John Kehoe

Local financial institutions undertaking business in the United States face being slapped with a new 30 per cent tax unless they hand over previously secret information about their US clients.

Australian banks, insurers, managed funds, private equity funds and trusts will be among the targets of the US Treasury crackdown that aims to unearth American citizens and companies who are sheltering assets and investments offshore to avoid tax.

Institutions affected by the new laws will extend far beyond those with close ties to the US, such as Macquarie Group, National Australia Bank, Citigroup and QBE Insurance.

Most institutions have a "nostro" relationship with a US bank, to deal with foreign counterparties, facilitate payments, mergers and acquisitions and trading of securities and commodities in US dollars. They will all be affected.

The Foreign Account Tax Compliance Act (FATCA) is a new chapter in the US Internal Revenue Code. It seeks to identify US taxpayers with accounts at foreign financial institutions and attempts to enforce reporting of those accounts.

Denise Hintzke, a US Deloitte global leader for FATCA, this week briefed institutions in Australia on the tough new reporting obligations. "It's going to have huge impacts on



The US Treasury is targeting American citizens and companies that are sheltering assets and investments offshore to avoid tax.

Photo: BLOOMBERG

operations, technology, legal, compliance and customer issues," she said. US authorities will demand information on people who are US citizens or residents, were born in the US, have a US postal address or PO box or have a US power of attorney.

While identifying individual account holders will be challenging, the real difficulty will be finding corporate clients who use a web of companies and trusts, which have underlying shareholders.

"For companies, this new legislation is going to require looking through them to see if there's any US owner behind them," she said. "That's not something most institutions in Australia have focused on."

Institutions will be subject to audit once they sign up to ensure they are complying.

While in theory US lawmakers do not have the power to force foreign institutions to comply, the US Treasury is using the threat of a 30 per cent withholding tax as leverage.

If an institution does not comply, any business dealings it conducts in the US, such as foreign exchange and securities trading, would be hit with

the tax. "They'd have to tell their clients that they couldn't invest in US assets," Ms Hintzke said. "So there would be a competitive disadvantage to not doing it."

The rules will have a retrospective effect.

"We're talking about having to go back through millions of existing files to identify if they were US citizens," she said.

Australian, European and Asian banks object to the US incursion. Banks have concerns about conflicts of interest between the new laws and upholding their clients' privacy.

The major local banks have appointed US advisers to deal with the rules, due to take effect in 2013, and have raised the issue with the Australian government.

Australian Bankers Association chief executive Steven Münchenberg said local banks should be carved out of the rules, due to the significant compliance burden and because Australia was not a tax haven.

A spokesman for Treasurer Wayne Swan said the government was aware of the issue and it was in discussions with the US government.

ASX rejects LICs' trading policies

Gillian Tan

Rules associated with compulsory share trading policies have caused confusion among the managers of listed investment companies, forcing some to revise their stance on so-called blackout periods.

By now, trading policies have been submitted by all active listed entities on the stock exchange.

At least two listed investment companies (LICs) have been forced to backflip after lodging trading policies that did not specify blackout periods.

Under the listing rules, an entity must specify how long its key management personnel are prohibited from trading in a company's securities.

Karl Siegling, portfolio manager of Cadence Capital, said he would be more than happy to comply with the requirement but had not included a blackout period because of the provision of considerable transparency and calculable asset value.

"We actually report our top 20 positions, which usually represent around 80 per cent of our portfolio, once a month and interested investors would be able to work out intra-month movements fairly easily," he said.

Wilson Asset Management principal Geoff Wilson, who has been in discussions with the ASX, believes LICs are transparent

enough to allow directors to trade any day of the year.

"My belief is that the market is always fully informed, as each month we announce our [net tangible assets] and our portfolio can be modelled at any other time, so there's no reason not to be able to trade unless there's something specific, for example a takeover bid or management resignation, which is deemed insider information anyway and prohibited," he said.

Mr Wilson said the ASX had asked for updates on the policies of the company's three LICs, which had not stipulated blackout trading windows.

To appease the market operator, each had instigated blackouts five days before the announcement of a dividend or other capital management initiatives.

Australian Foundation Investment Company managing director Ross Barker said while he did not disagree with Mr Wilson's view, it was reasonable to impose blackouts from the end of the month to when NTAs were announced, and from between the dates balance sheets were ruled off and reporting dates.

"We've always been fairly conservative in our approach but our directors don't have a problem with having blackout periods as they're not long ... we tend to be one of the earlier profit reporters so it's not a big imposition."