REGULATORY MATTERS

As summer comes to an end, there is plenty on the regulatory agenda to keep corporate treasurers busy. Many think that the Foreign Account Tax Compliance Act is just for banks, but treasury centres and holding companies can also get caught (see below). Also, European corporate treasurers are affected by the European Market Infrastructure Regulation, which requires an agreed derivative portfolio reconciliation process to be ready by 15 September. See the article on page 11.

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{ IN DEPTH }

FEELING THE FORCE OF FATCA

Have you identified the impact of the Foreign Account Tax Compliance Act (FATCA) on your organisation? While the deadline has been extended, the clock is still ticking.

What is FATCA?

FATCA is legislation that was written to address US taxpayers suspected of hiding their money offshore in foreign financial institutions (FFIs). The purpose of FATCA is thus to ensure that the US Internal Revenue Service (IRS) can identify and collect the appropriate tax from these US persons.

The IRS has recently extended the deadline for the implementation of FATCA to 1 July 2014. From this date, unless otherwise exempt, FFIs that do not both register and agree to report information regarding their US account holders face a 30% withholding tax on US source payments made to them.

Treasury centres and holding companies

It is important to be aware that FFIs are not just banks. Brokerage firms, life insurance companies, custodial institutions and anybody that takes deposits in the ordinary course of business (a depository institution) will be caught. Treasury centres and some holding companies also fall within the definition of an FFI, but only if there is a 'real' FFI (that is, not a treasury centre or holding company) elsewhere in the group.

HM Revenue & Customs' draft guidance on FATCA provides that entities that solely offer asset finance services, or accept deposits only as collateral or security pursuant to property or property financing transactions, will not be depository institutions. This might, for example, cover a factoring or invoice-discounting business. Furthermore, entities that complete money transfers by instructing agents to transmit funds will not be seen as accepting deposits.

Registration, etc

Groups must determine whether treasury centres, or other legal entities in the group, are FFIs. Any FFIs can then be registered on the IRS's new online FATCA registration system. FFIs can now create online accounts and begin submitting their information and, from January 2014, will need to submit their registration for approval.

Payments made and received

Any company that makes a payment of US source income must consider whether it is subject to FATCA. Therefore, any non-US entity that receives US source income could be affected.

US entities that make payments of US source income to non-US persons will also be affected. This could include, for example, interest payments by a US company on its debt or bank loans, or payments made by a US treasury centre. The US entity will be required to maintain documentation on the non-US persons, to track how they are classified under FATCA and to report this information to the IRS. If the recipient fails to provide proper documentation, FATCA withholding tax may apply.

Other FATCA implications for corporates

Corporates should assess the effect on non-US subsidiaries or branches located in countries where FATCA compliance conflicts with banking secrecy laws or other local law (for example, on disclosure of personal information to foreign governments).

A more detailed article on FATCA will appear in the November issue of *The Treasurer*.

YOUR SHOUT

The UK Department for Business, Innovation & Skills is proposing changes around corporate transparency. It wants views on a central registry of company beneficial ownership information. To provide feedback, complete the survey at www.surveymonkey.com/s/transparencyandtrust

{ INTERNATIONAL }

RENMINBI GATHERS SPEED

It is hard to believe that it is only four years (July 2009) since the pilot renminbi cross-border settlement scheme was announced. The renminbi has come a long way since then, with the renminbi cross-border settlement scheme extended, corporates now allowed to have renminbi accounts, bond issuance controls relaxed, renminbi bonds issued and renminbi currency futures introduced. In May 2013, 13 multinational corporates were granted approval to shift 30% of invested capital in China across border.

In November 2012, Standard Chartered introduced the Renminbi Globalisation Index with a base value of 100 at 31 December 2010. This monthly index covers the top three markets in offshore renminbi business: Hong Kong, London and Singapore. It also measures business growth in four key areas: deposits, dim sum bonds and certificates of deposit, trade settlement and other international payments, and FX turnover. In May 2013, the index broke the 1,000 mark and reached a new height of 1,002. This represented a 10-fold increase since the index started two and a half years ago. The main driver has been the growth in cross-border renminbi payments, with one major Chinese bank reporting that 11% of its cross-border trades at the end of May 2013 were made in renminbi. In early July 2013, the Bank of China issued a white paper on its cross-border renminbi business. A survey of the bank's domestic and foreign clients found that 77% of its Chinese domestic clients and 61% of its foreign clients plan to use renminbi in cross-border trade or to further improve their renminbi settlement ratio.

View the following technical updates, blogs and policy submissions at www.treasurers.org

ACT response to European Commission financing green paper

EACT position paper on financial transaction tax

Blog: Disappearing corporate cash

{ WATCH THIS SPACE }

DERIVATIVE RECONCILIATIONS ARE NEEDED NOW

If your company deals derivatives in Europe, then the new European Market Infrastructure Regulation (EMIR) requires you to have reconciliation processes agreed with your counterparty from 15 September. Specifically, the relevant regulatory technical standard says: "Financial and non-financial counterparties to an over-the-counter (OTC) derivative contract shall agree in writing or other equivalent electronic means with each of their counterparties on the arrangements under which portfolios shall be reconciled. Such agreement shall be reached before entering into the OTC derivative contract." (Article 13.1.) This obligation will trigger a massive re-documentation exercise across the market, but it can be significantly streamlined via the protocol process set up by the International Swaps and Derivatives Association with its ISDA 2013 EMIR Portfolio Reconciliation, Dispute Resolution and Disclosure Protocol.

Even if you are not using the protocol, it could still be a useful starting point for tailoring your own agreement on reconciliation procedures. The protocol includes choices as to whether one side or both sides provide the data to be reconciled. Companies may want to consider carefully if the principle of one-sided data provision and a presumed acceptance after five days is really acceptable.

For more on derivatives, see the events section on page 12

{ TECHNICAL ROUND-UP }

CREDIT, CNH AND CORPORATE RATINGS

Standard & Poor's (S&P) Ratings Services has launched a Mid-Market Evaluation (MME) credit benchmark specifically aimed at mid-sized companies. These are defined as those with revenues less than €1.5bn and debt below €500m. The MME is based on S&P's corporate credit rating methodology, although the analysis is adjusted to take into account the different characteristics of mid-market companies. The MME scale will be calibrated from MM1 down to MM8 and MMD. More information can be found at https://ratings.standardandpoors.com/corporates/MidMarket.html

The Treasury Markets Association (TMA) of the Hong Kong Monetary Authority (HKMA) has launched the new CNH Hong Kong Interbank Offered Rate fixing (CNH HIBOR fixing) for offshore renminbi. Eight tenors will be covered: overnight, one week, two weeks, one month, two months, three months, six months and 12 months. The CNH HIBOR fixing will provide a benchmark for loan facilities and will be published on the TMA's website at 11.15am Hong Kong time every business day.

The pension liability arising from a financial support direction (FSD) issued by the UK Pensions Regulator will not rank ahead of other creditors, following a ruling by the Supreme Court in the Nortel/Lehman case. This reverses an earlier decision by the Court of Appeal (reported on page 4 of *The Treasurer*, December 2011/January 2012). This removes the problems that would have arisen on restructuring and refinancing an insolvent company subject to an FSD and clarifies the position for ordinary lenders to a company.

Standard & Poor's Ratings Services has issued a request for comment on its new Framework for Corporate Ratings. The redesigned corporate ratings criteria will include country risk, along with a country risk and industry risk combination. These criteria, together with the corporate's competitive position, will be used to assess the business risk profile. S&P has estimated that approximately 10% of its corporate ratings will change, with an even balance of upgrades and downgrades. The request for comment closes on 16 September and can be found on the S&P website.