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It's Official - America Now Enforces Capital Controls

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It couldn't have happened to a nicer country. On March 18, with very little pomp and circumstance, president Obama passed the most recent stimulus act, the $17.5 billion Hiring Incentives to Restore Employment Act (H.R. 2487), brilliantly goalseeked by the administration's millionaire cronies to abbreviate as HIRE. As it was merely the latest in an endless stream of acts destined to expand the government payroll to infinity, nobody cared about it, or actually read it. Because if anyone **had** read it, the act would have been known as the **Capital Controls Act**, as one of the lesser, but infinitely more important provisions on page 27, known as *Offset Provisions - Subtitle A—Foreign Account Tax Compliance*, institutes just that. In brief, the **Provision requires that foreign banks not only withhold 30% of all outgoing capital flows (likely remitting the collection promptly back to the US Treasury) but also disclose the full details of non-exempt account-holders to the US and the IRS.** And should this provision be deemed illegal by a given foreign nation's domestic laws (think Switzerland), well the foreign financial institution is **required to close the account**. It's the law. If you thought you could move your capital to the non-sequestration safety of non-US financial institutions, sorry you lose - the law now says so. **Capital Controls are now here and are now fully enforced by the law**.

Let's parse through the just passed law, which has been mentioned by exactly zero mainstream media outlets.

Here is the default new state of capital outflows:

> **(a) IN GENERAL.—The Internal Revenue Code of 1986 is amended by inserting after chapter 3 the following new chapter:**
>
> ‘‘CHAPTER 4—TAXES TO ENFORCE REPORTING ON CERTAIN FOREIGN ACCOUNTS
> ‘‘Sec. 1471. Withholdable payments to foreign financial institutions.
> ‘‘Sec. 1472. Withholdable payments to other foreign entities.
> ‘‘Sec. 1473. Definitions.
> ‘‘Sec. 1474. Special rules.
> ‘‘SEC. 1471. WITHHOLDABLE PAYMENTS TO FOREIGN FINANCIAL INSTITUTIONS.
>
> ‘‘(a) IN GENERAL.—In the case of any withholdable payment to a foreign financial institution which does not meet the requirements of subsection (b), **the withholding agent with respect to such payment shall deduct and withhold from such payment a tax equal to 30 percent of the amount of such payment.**

Clarifying who this law applies to:

‘‘(C) in the case of any United States account maintained by such institution, to report on an annual basis the information described in subsection (c) with respect to such account,
‘‘(D) to deduct and withhold a tax equal to 30 percent of—

‘‘(i) any passthru payment which is made by such institution to a ***recalcitrant*** account holder or another foreign financial institution which does not meet the requirements of this subsection, and

‘‘(ii) in the case of any passthru payment which is made by such institution to a foreign financial institution which has in effect an election under paragraph (3) with respect to such payment, so much of such payment as is allocable to accounts held by recalcitrant account holders or foreign financial institutions which do not meet the requirements of this subsection.

What happens if this brand new law impinges and/or is in blatant contradiction with existing foreign laws?

‘‘(F) in any case in which any foreign law would (but for a waiver described in clause (i)) prevent the reporting of any information referred to in this subsection or subsection (c) with respect to any United States account maintained by such institution—

‘‘(i) to attempt to obtain a valid and effective waiver of such law from each holder of such account, and
‘‘(ii) if a waiver described in clause (i) is not obtained from each such holder within a reasonable period of time, to close such account.

Not only are capital flows now to be overseen and controlled by the government and the IRS, but holders of foreign accounts can kiss any semblance of privacy goodbye:

‘‘(c) INFORMATION REQUIRED TO BE REPORTED ON UNITED STATES ACCOUNTS.—
‘‘(1) IN GENERAL.—The agreement described in subsection (b) shall require the foreign financial institution to report the following with respect to each United States account maintained by such institution:
‘‘(A) The name, address, and TIN of each account holder which is a specified United States person and, in the case of any account holder which is a United States owned foreign entity, the name, address, and TIN of each substantial United States owner of such entity.
‘‘(B) The account number.
‘‘(C) The account balance or value (determined at such time and in such manner as the Secretary may provide).
‘‘(D) Except to the extent provided by the Secretary, the gross receipts and gross withdrawals or payments from the account (determined for such period and in such manner as the Secretary may provide).

The only exemption to the rule? If you hold the meager sum of $50,000 or less in foreign accounts.

> ‘‘(B) EXCEPTION FOR CERTAIN ACCOUNTS HELD BY INDIVIDUALS.—Unless the foreign financial institution elects to not have this subparagraph apply, such term shall not include any depository account maintained by such financial institution if—
> ‘‘(i) each holder of such account is a natural person,and
> **‘‘(ii) with respect to each holder of such account, the aggregate value of all depository accounts held (in whole or in part) by such holder and maintained by the same financial institution which maintains such account does not exceed $50,000.**

And, while we are on the topic of definitions, here is how "financial account" is defined by the US:

> ‘‘(2) FINANCIAL ACCOUNT.—Except as otherwise provided by the Secretary, the term ‘financial account’ means, with respect to any financial institution—
> **‘‘(A) any depository account maintained by such financial institution,**
> **‘‘(B) any custodial account maintained by such financial institution, and**
> **‘‘(C) any equity or debt interest in such financial institution (other than interests which are regularly traded on an established securities market). Any equity or debt interest which constitutes a financial account under subparagraph (C) with respect to any financial institution shall be treated for purposes of this section as maintained by such financial institution.**

In case you find you do not like to be subject to capital controls, you are now deemed a "Recalcitrant Account Holder."

> ‘‘(6) **RECALCITRANT ACCOUNT HOLDER.—The term ‘recalcitrant account holder’ means any account holder which—**
> **‘‘(A) fails to comply with reasonable requests for the information referred to in subsection (b)(1)(A) or (c)(1)(A),**
> **or ‘‘(B) fails to provide a waiver described in subsection (b)(1)(F) upon request.**

But guess what - if you are a foreign Central Bank, or if the Secretary determined that you are "a low risk for tax evasion" (unlike the Secretary himself) you still can do whatever the hell you want:

> ‘‘(f) EXCEPTION FOR CERTAIN PAYMENTS.—Subsection (a) shall not apply to any payment to the extent that the beneficial owner
> of such payment is—
> ‘‘(1) any foreign government, any political subdivision of a foreign government, or any wholly owned agency or instrumentality of any one or more of the foregoing,
> ‘‘(2) any international organization or any wholly owned agency or instrumentality thereof,
> **‘‘(3) any foreign central bank of issue, or**
> **‘‘(4) any other class of persons identified by the Secretary for purposes of this subsection as posing a low risk of tax evasion.**

One thing we are confused about is whether this law is a preamble, or already incorporates, the flow of non-cash assets, such as commodities, and, thus, gold. If an account transfers, via physical or paper delivery, gold from a domestic account to a foreign one, we are not sure if the language deems this a 30% taxable transaction, although preliminary discussions with lawyers indicates this is likely the case.

And so the noose on capital mobility tightens, as very soon the only option US citizens have when it comes to investing their money, will be in government mandated retirement annuities, which will likely be the next step in the capital control escalation, which will culminate with every single free dollar required to be reinvested into the US, likely in the form of purchasing US Treasury emissions such as Treasuries, TIPS and other worthless pieces of paper.

Congratulations bankrupt America - you are now one step closer to a thoroughly **non**-free market.

Full HIRE Act text:

h/t Jørgen and Panama Investor Blog