

French Financial Transaction Tax – further information on funds reorganisations

The French Tax Authorities have recently issued further comments on funds reorganisation in a letter sent to the “Association Française de la Gestion Financière” (AFG), the French Investment Management Association. Particular concerns had been raised because of the lack of guidance for operations involving collective investment schemes. The tax authorities have clarified the treatment of some transactions but overall their comments are rather disappointing.

Mergers

The tax authorities have confirmed that mergers of SICAVs and FCPs should be exempt from the tax.

This means that the following operations should be exempt:

- Merger between two SICAVs
- Merger between two FCPs
- Merger between one SICAV and one FCP.

No specific comments have been made on the application of this exemption to foreign collective investment schemes but it is likely that this should apply in the same manner to comparable collective investment schemes and equivalent operations carried out outside France.

Reorganisations

The tax authorities have also confirmed that reorganisations in the context of master feeder structures should be exempt, i.e. the contribution in kind of in scope shares from a feeder fund to a master fund should benefit from the reorganisation exemption.

Of course, reorganisations within a collective investment scheme (i.e. transfers between subfunds) remain out of scope since there is no legal transfer taking place.

Contributions

The tax authorities have denied the exemption to contributions in kind. The tax authorities have confirmed that subscriptions to a fund made via a contribution in kind of in scope shares should be construed as an acquisition for the purpose of the tax and as such should be taxable.

Taj
Société d'avocats
181, avenue Charles-de-Gaulle
92524 Neuilly-sur-Seine Cedex
Tel : 01 40 88 20 50
Fax : 01 40 88 22 17

Etienne Genot
Tax Partner
egenot@taj.fr
Tel : +33 1 55 61 53 66

Helene Alston
Tax Director
healston@taj.fr
Tel : +33 1 55 61 60 32

Antoine Brunetto
Tax Senior Manager
abrunetto@taj.fr
Tel : +33 1 40 88 72 63

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However the attribution of units in a fund remains outside the scope of the FTT. This is because funds units are not in-scope instruments.

The acquisition of a basket of shares by a fund in order to be transferred on to a client/unitholder cannot benefit from a market maker exemption.

In addition further exemptions and relaxations of the rules for collective investment schemes have also been refused. In particular exemption for FCPE (employee saving plans) have been denied to acquisitions made indirectly, i.e. where the acquisition is carried out through a wholly owned transparent FCP.

Conclusion

The tax authorities have taken this opportunity to apply further restrictions on funds' operations where the silence of the law may have allowed more flexibility. This is disappointing but may be in line with the wider-scope EU FTT which is to come in the relatively near future