

## FTT newsletter

### A round-up of FTT developments across Europe



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As expected, a revised draft of the FTT directive was published today. This will be discussed by the 11 member states which are participating in the EU FTT through the enhanced co-operation procedure (“ECP”).

To discuss any aspect of FTT please contact your usual Deloitte contact or **Martin Walker** on +44 20 7303 7644.

#### EU FTT

Under the revised draft, the following changes have been made to the original draft of the directive released in September 2011:-



- **Issuer basis** - the FTT continues to arise when at least one party to a financial transaction is established (defined broadly) in an FTT zone country and at least one party is a financial institution. However, in addition, a party acting as principal or agent in relation to a financial transaction involving a financial instrument issued with the territory of an FTT zone country is deemed to be established in that participating member state.
- **Stock loans and repos/reverse repos** are in scope but, according to the preamble, the outward loan and return of securities are treated as a single transaction for FTT purposes so only one charge to FTT arises (albeit to each of the borrower and the lender if they are both financial institutions) rather than two.
- **A general anti-abuse rule** is imposed in broad terms to disregard artificial or circular arrangements designed to avoid FTT.

- **Depository receipts**, such as ADRs, over shares issued in the FTT zone are in scope and treated as being issued in the FTT zone if issued “with the essential purpose of avoiding tax on transactions in the underlying security... in case a tax benefit would otherwise arise”. The consequences of them being treated as issued in the FTT zone is that the parties trading such depository receipts are themselves deemed to be established in that FTT zone country.

No market maker exemption has been introduced, so there remains the scope for cascading FTT charges on typical capital markets trades involving multiple financial intermediaries.

The combination of the residency and issuer basis of the EU FTT extends the basis of the tax and brings into scope even more financial transactions than initially anticipated. The implementation by France and, shortly, Italy of a unilateral FTT on trades in French and Italian securities worldwide, as well as the global nature of other tax and reporting obligations such as FATCA, has no doubt laid the foundation for the EU FTT to be applied in such an extra-territorial manner, but the consequences of the EU FTT being applied in this way are far-reaching indeed.

The impact of the unilateral FTTs has been felt primarily by the financial services industry. The ramifications of the revised draft of the EU FTT, such as the fact that most derivatives, such as interest rate and currency hedges (excepting spot FX transactions) are in scope would extend beyond the financial sector to a broader range of businesses wishing to hedge economic exposure.

In terms of timing, FTT zone countries are to publish and adopt by 30 September 2013 at the latest the national laws, regulations and administrative provisions necessary to comply with the FTT directive. FTT zone countries are to introduce FTT laws in their own countries by 1 January 2014 according to the revised directive, although this is an aggressive and optimistic timetable which seems difficult to meet in practice.

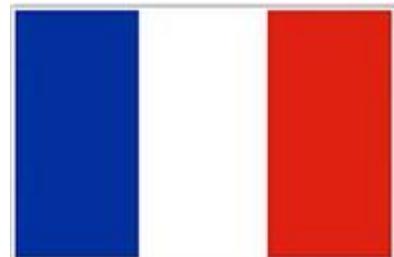
Further information is available at

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## UNILATERAL FTTs

### France

Further unofficial guidance has been released by the French tax authorities in a letter which confirms the French FTT ("FFTT") position in relation to certain fund reorganisations. This is helpful in relation to certain mergers, but otherwise interprets the scope of the FFTT more broadly than might have been expected. While this means that FFTT applies to more funds transactions than might have been expected, and so will disappoint the funds community, this may reflect the climate brought about by the broader application of the EU FTT to come.



## Italy

The revised version of the ministerial decree setting out in more detail how the Italian FTT is intended to operate has still not been released.

A list of Deloitte's FTT contacts across Europe can be found [here](#) along with a link to the [FTT website](#).



A handwritten signature in cursive script that reads "Martin".

**Martin Walker**

Director

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