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25 November 2013

FTT newsletter

A round-up of FTT developments across Europe

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The EU financial transaction tax ("FTT") is still officially due to come into force on 1 January 2014. However, no material developments have taken place over the last few months and no domestic legislation has been drafted by the adopting Member States (due by 30 September 2013). It is therefore virtually certain that the FTT will be delayed.

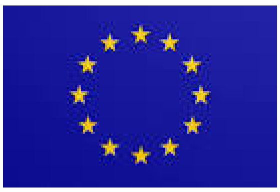
A meeting is due to be held on 27 November 2013 between the 11 FTT zone countries proceeding with the FTT under the enhanced cooperation procedure ("ECP") in order to discuss the progress of the FTT. We outline the draft meeting agenda and what these discussion items could mean for the FTT. An ECOFIN meeting and FTT working group meeting are also scheduled for 10 and 12 December 2013 respectively.

In relation to national FTTs, changes are also proposed to the FTT in Ukraine with effect from 1 January 2014.

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

Please feel free to forward this newsletter on to any of your colleagues. Please also see our **FTT website** where you can access past editions of this newsletter and find other FTT related material.

EU FTT



A meeting is scheduled for 27 November between the 11 FTT zone countries to discuss the next steps in relation to the introduction of the FTT. We understand that the following discussion items are on the agenda. Some of these items are fundamental to the design and functionality the FTT and the potential impact of tax on the financial markets. Resolving these key points is a critical step prior to the introduction of the FTT.

How to introduce the tax

Draft agenda item: The merits of introducing the FTT on a “step by step” basis or all in one go.

Deloitte Comment: This could mean that the participants will discuss whether to introduce the FTT in relation to certain instruments (such as equities) as a first stage, with the tax scheduled to come into force in relation to other instruments at a later date. We are also aware from previous comments made by the European Commission that they are considering introducing the FTT at a lower rate in relation to more controversial instruments such as sovereign debt, with the tax rate increasing in subsequent years should concerns expressed by Member States about the adverse effect of an FTT with a broad scope prove unfounded.

Application of FTT to Equities

Draft agenda items:
• The merits of the issuer principle and the residence principle.
• Whether there should be a minimum threshold (e.g. similar to that of the French FTT where the tax only applies to transfers of shares of French companies with a market capitalisation over €1bn)
• Whether a distinction should be made between listed/unlisted shares
• Whether OTC transactions should be subject to differing tax treatment

Deloitte comment: If enacted as currently drafted, the FTT would apply on both a residence and issuer basis, so tax would be due if either counterparty to the trade is established in an FTT zone country or if the security is issued in an FTT zone country. Where both apply, the country of the counterparty determines where the FTT is due (so a US pension fund purchasing German bonds from a UK branch of a Spanish company would owe FTT to Spain). This agenda item could mean that the participants will discuss whether the issuer principle should be the sole rule for scope, which we understand some countries support, or whether the issuer principle should supersede the residence principle (so the tax would instead be due to Germany in the example above). We are aware that this point has been discussed previously but has been opposed by some of the smaller participating Eastern European states. The legality of the residence principle has been called into question by the UK and Luxembourg, and more recently by European Council’s own internal legal service.

Application of FTT to Bonds

Draft agenda item: Whether there should be an exemption for sovereign bonds and/or corporate bonds.

Deloitte comment: The application of the FTT to debt (and especially sovereign debt) is a particularly controversial feature of the FTT owing to the predicted increased on the costs of borrowing. An exemption for bonds is likely to be welcomed by the capital markets industry.

Scope of the Derivatives Tax

*Draft agenda item: W*hether all derivatives or only some derivatives should be subject to the FTT.

Deloitte Comment: Under the current draft directive both parties to a derivative are subject to the tax where either (i) the derivative is issued in the FTT zone; or where (ii) at least one of the parties is established (or deemed to be established) in the FTT zone. This applies regardless of whether the derivative is traded on a recognised market or is entered into bilaterally over the counter (“OTC”). There is no suggestion in the draft agenda that a full exemption for derivatives will be discussed.

Taxable Event

Draft agenda item: For equities, whether the taxable event should be the “transfer of ownership” or “each financial transaction”. For derivatives, whether one or more of the following should be taxable events: entering into a contract; modification; and conclusion.

Deloitte Comment: Although it is not entirely clear about what is meant by the "transfer of ownership" and "each financial transaction" the equities point could prove to be particularly noteworthy. If the FTT moves towards applying to a transfer of beneficial ownership or a final purchaser basis, this could remove the "cascade effect" of the FTT and would be a substantial move, aligning the FTT with the existing French and Italian FTTs and the UK stamp duty. A tax on gross trading (like UK SDRT) has recently been mooted as a change to the French FTT, although ultimately we understand that this amendment is not proceeding. However, it demonstrates that at least one of the adopting Member States is focusing on this point as a means of improving the tax revenues obtained from net settlements.

Taxpayer definition

Draft agenda item: Whether the taxpayer should be the final investor or the financial institution. For equities specifically, whether both the buyer and seller should be chargeable, as is currently proposed, or only one of the parties should be chargeable. For derivatives, whether both parties to the contract should be chargeable.

Deloitte comment: Presently, the draft directive imposes FTT on each financial institution party to the transaction, and both parties to the transaction (whether or not financial institutions) are jointly and severally liable for the tax. A move away from this and towards the approach of charging the buyer, commonly adopted by other stamp duties and transaction taxes already in force, would again be a significant change for the FTT and could substantially reduce the impact on financial markets transactions.

European Council Service Legal Document

(Further detail on this document can be found in our newsletter of **10 September 2013**)

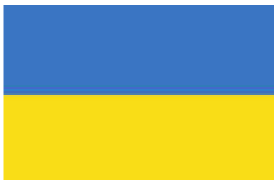
Draft agenda item: "Exchange views" on the leaked document from the legal service to the European council which opined that article 4(1)(f) of the current draft directive is illegal.

Deloitte Comment: Article 4(1)(f) of the proposed FTT directive deems a party that is not prima facie established in the FTT zone to be so established if it transacts with an entity in the FTT zone. While the document has no binding or delaying effect it is certainly of significance in terms of illustrating the potential challenges which could exist to the FTT from parties outside the FTT zone if introduced in its current form.

Concluding Thoughts

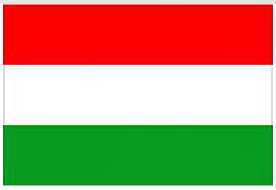
It is presently unclear what the outcome of this meeting will be or indeed whether any outcome will be shared publicly. The next ECOFIN gathering of economic and finance ministers is due to be held on 10 December 2013 where the issues raised in the meeting are likely to be discussed, with an FTT working group meeting scheduled for 12 December 2013.
While many of the issues discussed above could lead to changes which would be welcomed by the financial sector, a question which remains unanswered is the extent to which changes can be made to the current draft FTT directive under the ECP process, and at what point a new directive and new ECP vote will be required.

UKRAINIAN FTT



The Ukrainian FTT on equities, which came into force on 1 January 2013, is to be abolished with effect from 1 January 2014. This measure was approved by the Ukrainian legislature on 24 October 2013. The removal of this charge will apply to all equity transactions, regardless of whether the transaction is effected on or off exchange and whether the purchaser is Ukrainian resident or otherwise. Ukrainian FTT will however continue to apply to certain derivatives.

HUNGARIAN FTT



The Hungarian FTT is officially due to apply to securities with effect from 1 January 2014. However there has been a lack of any details as to how the FTT would apply to securities from the Hungarian authorities. It therefore unlikely to be the case that the Hungarian FTT will apply to securities from 1 January 2014.

Martin

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