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FTT Newsletter

A Round-Up of FTT developments across Europe

Since the release of the revised draft EU Financial Transaction Tax ("FTT") directive, financial institutions and other impacted businesses have focused on understanding the scope and implications of the FTT in its proposed form. Meanwhile, the EU Member States continue to discuss the draft directive. We have set out below the next steps in the process.

As discussions with respect to the EU FTT continue, we summarise below the concerns raised by the UK House of Lords EU Committee regarding the EU FTT proposal. A number of concerns, previously raised by industry, are now raised by the House of Lords.

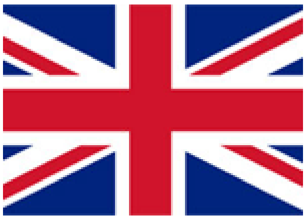
We also report on the latest Italian FTT ("IFTT") developments. A new decree has been issued by the Italian Treasury which alters a specific section of the existing Italian FTT ("IFTT") decree. This amendment alters the impact of Article 19(4) of the existing IFTT decree which treats financial intermediaries in certain markets as the final purchaser, as it could allow for more territories (such as the US) to be included on the 'white list'.

EU FTT

There have not been any material public developments with respect to the EU FTT, although discussions are continuing and further steps are expected to take place in April. There will be an informal ECOFIN meeting on 12-13 April 2013 in Dublin. Although the substantive agenda for this is not yet available, FTT is expected to be discussed. There is a formal ECOFIN meeting on 14 May 2013 in Brussels, the provisional agenda of which does include a state of play discussion about the EU FTT. The European Commission is still hopeful that the draft directive will be approved and implemented by the participating member states by the end of the year.

We have been advising financial institutions on the likely impact that the EU FTT (as presently drafted) could have on their businesses. This work, as we expected, has highlighted just how broad in scope (both in terms of transactions and geography) the EU FTT is.

UK



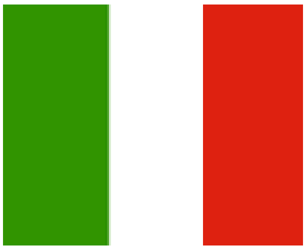
On 26 March 2013 the EU committee of the House of Lords submitted a letter to Greg Clark MP, Financial Secretary to the Treasury, expressing their views on the EU FTT. The Lords are quite critical in their assessment of the EU FTT and express a number of concerns, including:

- The lack of detail on how the tax would be collected. The proposal presently leaves this to individual Member States to decide. The House of Lords "are astonished by the paucity of thinking exhibited by the Commission. Detailed assessment of all aspects of such a tax, including the method of collection and the use of potential revenue, must be undertaken as a matter of urgency before further steps towards its implementation are taken. "
- The potential role that HM Revenue & Customs may have in collecting the tax under the EU mutual assistance provisions and UK entities in collecting the tax under joint and several liability provisions.
- The lack of detail in the Impact Assessment of the implications for non-participating member states.
- The status of UK subsidiaries. While the FTT status of subsidiaries outside the FTT zone would seem to depend on the instrument they are trading and on the counterparty and whether any economic link exists with the territory of a FTT zone state, the Lords request a clarification on this point.
- The impact the FTT would have on growth. The House of Lords note that the French FTT and Italian FTT have had a negative impact on trading, and the EU FTT could have a negative impact on EU GDP.

The House of Lords conclude that the EU FTT proposal "fails to meet the criteria for enhanced cooperation, and in particular the requirement to respect the competences, rights and obligations of those Member States which do not participate in it." The House of Lords also urge legal advice to be taken on the case for a challenge at the European Court of Justice.

The full letter can be found here.

Italy



The new decree alters Article 19(4) of the existing ministerial decree which was released in February 2013.

The new Article 19(4) states that entities located in states or territories with which Italy has no agreements in force for the purposes of the exchange of information OR (previously and) assistance in the collection of tax credits, as set out in a specific 'white list', who are "involved for any reason" in the execution of the transaction are treated "in all respects as purchasers or final counterparties". This means that a broker (whether acting in an agency or principal capacity) selling in scope Italian securities to a non-'white list' financial intermediary is obliged to treat that non-'white list' intermediary as the buyer and charge IFTT accordingly.

This change in wording potentially provides a legal mechanism for the Italian authorities to revise the 'white list' territories released on 1 March 2013. The initial list includes only certain European countries and excludes territories such as Singapore, Switzerland and the US. However, an exchange of information agreement has been entered into between Italy and the US. Meanwhile the list was expanded to include three new countries: Australia, India and the US. Intermediaries in these territories are therefore no longer required to be treated "in all respect as purchasers or final counterparties". This has particular significance in relation to the US where ADRs over Italian securities are subject to IFTT. Intermediaries which are not 'white list' entities do not enjoy such a status and are required to be treated as the final counterparties brokers selling to them (whether as a principal or agent).

We again emphasise that the 'white list' referred to here is different to other lists used by the Italian tax authorities for other purposes, and is also different from the list which is used to determine whether transactions taking place on a regulated market or multi-lateral trading facility are subject to the higher (0.22%) or lower (0.12%) rate of IFTT.

Additionally, there is now an official channel for apply for a market maker exemption from IFTT. This is available here.