

The Financial Transactions Tax introduced in France

The legislation on French Financial Transactions Tax (FTT) included in the First Amending Finance Bill for 2012 was definitely adopted by the French Parliament on 29 February.

Three different taxes are introduced as from 1 August 2012. These relate to (i) the acquisition of listed shares issued by large French companies, (ii) high frequency trading and (iii) certain credit default swaps (CDS) on sovereign debt.

The FTT on acquisition of listed shares issued by large French companies is due irrespective of the tax residence of the parties involved (French or foreign seller or purchaser).

The FTTs on high frequency trading and sovereign CDS aim at penalizing what is considered harmful behavior by frequency trading operators and speculation on sovereign debt. These taxes apply only when the activities are performed in France.

Tax on acquisition of listed shares issued by large French companies

- Taxable securities/transactions covered

The transactions subject to the FTT are acquisitions made against payment of consideration (*à titre onéreux*) of shares admitted to trading on a regulated market in France or the

European Economic Area or on some limited non-EU regulated markets, issued by a company whose head office is in France and whose market capitalization exceeds € 1 billion on 1 January of the year when the acquisition takes place. Roughly, 110 French companies are expected to meet these criteria, i.e. the French companies listed on compartment A (Large Caps) of Paris-Euronext. The list of the companies involved will be published by a ministerial order of the economic and budget ministers.

Shares only listed on a multilateral trading system are outside the scope of the tax.

The scope of the tax includes shares and securities giving access or likely to give access to the share capital or the voting rights (and securities assimilated to such shares as being equivalent instruments issued pursuant to foreign laws within the meaning of article L. 211-41 of the French Monetary and Financial code). However, bonds convertible or exchangeable into shares are expressly exempt from the tax.

Key issues

- Tax on acquisition of listed shares issued by large French companies
- Tax on high frequency trading
- Tax on CDS on sovereign debt

For the tax to be due, the transaction must give rise to a transfer of legal ownership. A taxable acquisition may arise from a straight acquisition of shares but also, for example, from the exercise of an option, a forward sale with a physical delivery or an exchange of shares further to a contribution.

The acquisition of a derivative which references equities which themselves would be within the scope of the tax is not, per se, subject to the FTT. However, physical delivery of shares pursuant to such a derivative contract will trigger the FTT.

■ Territorial scope

The tax is due irrespective of the tax residence of the parties involved. Taxation therefore applies even if the transaction is executed outside France.

■ Exemptions

Certain acquisitions are exempt, such as:

- Acquisitions made in relation to the issuance of shares including through underwriting or placing on a firm commitment basis;
- Acquisitions made between companies which are part of the same economic group or members of the same tax consolidation group;
- Acquisitions realized within the French favorable tax regime applicable to reorganisations;
- Transactions which are listed by art. 2.10 of the Regulation 1287/2006 of the EU Commission, i.e. securities lending transactions and repurchase agreements;
- Acquisitions of bonds convertible or exchangeable into shares;
- Acquisitions realized by market makers, clearing houses and central depositories to the extent these transactions are undertaken in the context of their regulated activities.

■ Tax rate: 0.10% of the acquisition price.

■ Collection of the tax

The tax is due by the buyer on the first day of the month

following the acquisition of the shares. It is collected by the financial intermediary or the custodian if there is no financial intermediary wherever they are established.

It must be declared and paid to the French tax administration by the 25th of the month following the acquisition of the shares. The text provides for who is responsible for the declaration and payment in the various occurrences. In most cases, it is the central depository for the securities subject to the control of the French Financial Market Authority (*Autorité des marchés financiers*), i.e. Euroclear France.

■ Date of implementation

Acquisitions made as of 1 August 2012 will be subject to the tax.

■ Alignment of the registration tax rate

As a consequence of the introduction of the FTT, the new provisions regarding registration taxes introduced by the Finance Act for 2012 as from 1 January 2012 will be amended as of 1 August 2012 in order to align the rate of taxation. The rate of registration taxes applicable to the transfer of shares will be reduced to the flat rate of 0.10% instead of the scale of rates applicable since 1 January 2012 (i.e., 3% for the portion of the value below € 200,000, 0.5% for the portion of the value between € 200,000 and € 500 million, 0.25% for the portion of the value above € 500 million).

In order to avoid double taxation, transactions subject to the FTT are exempt from registration taxes.

The territoriality scope of registration taxes remains unchanged, which means that when a sale of listed shares of a French company is documented by a written deed executed overseas and is not subject to the FTT, it is subject to the registration taxes in France at the rate of 0.10% (as from 1 August 2012).

Tax on high frequency trading

■ Taxable transactions

High frequency trading transactions carried out by an enterprise exercising its activity in France are subject to the FTT when the following conditions are met:

- The firm is trading for its own account;
- The securities traded are equities (without consideration of whether the issuer is a French or a foreign company);
- The rate of cancelled or modified orders during a trading day exceeds a percentage threshold (to be determined by a decree but not less than two-third of orders).

High frequency transactions on shares are defined as transactions consisting in entering trading orders using an automated trading system characterized by the sending, amending and cancellation of successive orders on a given share over a very brief period of time (to be determined by a

decree but not more than 1 second). An automated traded system is defined as a system with an algorithm initiating orders and deciding automatically on aspects of the orders such as timing, price and quantity of the orders.

A further decree is required in order to clarify certain practical aspects as to which transactions are within the scope of the tax.

■ Territorial scope

This tax is due only by companies carrying out their activity in France (i.e. companies which are subject to corporation tax in France including French branches of foreign entities) which are a party to the transactions.

■ Exemptions

Market makers benefit from an exemption for transactions undertaken in the context of their regulated activities.

- Tax rate: 0.01% of the value of the cancelled or modified orders by the automated mechanism which exceed the threshold mentioned above.

■ Collection of the tax

The tax must be declared and paid by the enterprise carrying out the activity in France. It is due on the first day of the month following the operation and must be declared and paid before the 10th of that month.

Tax on CDS on sovereign debt

■ Taxable transactions

Acquisition of a CDS on sovereign debt by a company carrying out an activity in France, an individual domiciled in France or a legal entity established or set up in France is subject to FTT when (i) the CDS does not hedge a long position on the sovereign debt (naked sovereign CDS) or (ii) the acquirer of the CDS does not hold assets or commitments whose value is correlated to the value of the sovereign debt.

■ Exemptions

Market makers benefit from an exemption when the transactions are undertaken in the context of regulated activities.

- Tax rate: 0.01% of the notional value of the CDS (defined as the

nominal or face value used to compute the payments).

■ Date of implementation

The tax applies to CDS entered into as of 1 August 2012.

■ Collection of the tax

The tax must be declared and paid at the same time as for VAT.

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