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European Union Financial Transaction Tax

1 Situation

The European Union was unable to agree on the introduction of a financial transaction tax (FTT) for all 27 member countries. Subsequently 11 governments decided to establish their own framework, supported by the European Commission (EC) and valid for those "EU-11" countries only. Within the framework local legislation is required.

Germany and Austria are part of the EU-11. Also France and Italy do belong this group, but they already started an FTT on their own, following the first ideas in the EU from 2010.

The purpose of the tax is stated to be not only fiscal, but also to curb the volatility of financial markets. Basically the FTT is a revenant of stamp duties as abolished in Germany 1991 – or still existing in Switzerland and the UK today. Nevertheless todays FTT will be enriched with plenty of details, both to tax the „right" subjects and to prevent tax avoidance – this will complicate implementation for banks.

The French FTT is already in force and implemented throughout many banks. The Italian FTT was decreed in February 2013 while detailed guidelines are still fragmentary. In contrast the EU-11 framework is still in consultation – a final assessment is not yet possible.

2 Triggers of Taxation

All legislators know about legal tax avoidance. Therefore the place of transaction is no longer causative for taxation; new listings or even new exchanges (e.g. virt-x) avoid taxes and cause only few and manageable costs. Instead the following approaches are now in use:

2.1 France

Subject to FTT are all acquisitions in French shares (incl. those resulting from corporate actions). The liability to pay taxes does not depend on traders domicile or the domicile of the stock exchange. The taxation of trades in French shares abroad cannot be enforced today. Banks outside France paying FTT are voluntary participants, whether in Switzerland, Germany or UK.

2.2 Italy

Aforementioned description is valid for Italy too. In addition, Italy wants to tax transactions in derivatives too, if the underlying of the traded derivative is directly or indirectly Italian. If e.g. a Swiss issuer releases a warrant on the „MIB", traded by an Austrian Bank for a private client at Euwax, this transaction is subject to FTT - for obvious reasons enforcement of such a tax today is impossible.

2.3 EU-11

France and Italy follow the main principle of issuer's domicile (for shares) which cannot be enforced. Banks e.g. domiciled in Russia or Brazil might not wire money to the Italian tax authority for trading e.g. Fiat shares. Therefore the EC has published two countervailing approaches.

First of all the domicile of the bank will cause taxation. Whenever at least one counterpart of a trade is domiciled within EU-11, full FTT is due. If e.g. a Swiss bank buys Apple shares from a German Bank, the German Bank owes German tax authorities the full FTT. If the buying bank is domiciled within EU-11 (e.g. Austria), both parties take 50% of the tax. This means for banks inside EU-11, that trades with partners outside EU-11 would double the tax.

If both traders are domiciled outside EU-11, the principle of securities domicile as implemented today in France and Italy is considered again. If for example a Russian bank buys German government bonds from a Chinese bank, FTT in favor of the German tax authority will arise. Unlike France and Italy the EC at least has brought forward some ideas to enforce the tax. Bilateral agreements governing exchange of information on transaction data of banks are one idea. We think it to be more obvious, that listed companies within EU-11 will be advised to choose domestic depositories (CSD). FTT then will occur as withholding tax where CSDs will act as withholding agents.

3 Schedule

Italy introduced FTT on 1st of March 2013, requiring reporting and payment starting in the 4th quarter of 2013. The details are still fragmentary.

For EU-11 the number of stakeholders will delay a mutual consent and even then the localization can start. Especially in Germany further delay will occur, if several already announced complaints of unconstitutionality will be submitted to court.

On the other hand regulators and ministers of finance call for fast adoption. Foreseeable the conflict will be "solved" with reducing the timeframe of implementation for banks.

4 Action

The limited timelines are just one challenge. Additionally the heterogeneity will cause complexity. Possibly FTT is introduced for different countries at different dates, for different asset classes, and with plenty of different exceptions. Therefore options shall be established, to switch countries, triggers or persons; single or clustered. Even the tax rate might be subject to changes.

A fast and easy implementation requires an antecedent modularization. Specifications, documentations and processes both in business and IT can be recorded even today with regard to future EU-FTT. This enables "recycling" of tools and methods already developed for France or Italy that otherwise would be lost. And for banks first implementing FTT, gained transparency eases and accelerates later projects.

Anyway banks should take the chance to gain now the advance with low efforts, to later realize this mandatory project avoiding expenses and pressure of time.

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