

Global Financial Services French Bank Tax

Finance Bill 2011, which was presented on 29 September 2010 to the Council of Ministers, sets out details of a new “bank tax” which is to be introduced in France.

Background

Following the joint statement issued by Germany, France and the UK regarding the need for international cooperation on fiscal measures aimed at the banking sector, details of the French approach have now been set out in Finance Bill 2011, which was presented on 29 September 2010 to the Council of Ministers.

The French government expects the new “bank tax” to generate EUR 504m in 2011, rising to EUR 810m by 2013 – it is hoped that, in addition to helping to tackle the fiscal deficit, the bank tax encourages financial institutions to better manage their risk.

Scope of tax

The new tax will be payable by certain financial institutions which are subject to the supervision of the Prudential Control Authority regarding reserve ratios or minimum equity requirements as required by the French monetary and financial code (“CMF”).

Any amounts due under the new tax will be payable in addition to contributions made to the deposit guarantee fund as well as the supervision fees which are required to be paid by financial institutions.

Broadly, those financial institutions falling within the scope of the bank tax will include:

- credit institutions;
- investment companies other than portfolio management companies;
- market/exchange operators;
- members of clearing houses;
- persons agreed to manage activities of conservation or management of certain financial instruments;
- payment institutions;
- financial companies and mixed financial holding companies.

Certain institutions will fall outside the scope of the tax, including:

- institutions which have a registered office located in another member state of the European Economic Area (EEA), which manage their business activity in France exclusively through a branch or under the “freedom to provide services” rules;
- institutions with equity of less than EUR 500m, as decided during the previous tax year;
- the *Agence française de développement* (French Development Agency).

The French Minister for Finance estimates that the bank tax should only apply to around twenty financial institutions.

It should be noted that “fund” entities (e.g. hedge funds or securitization vehicles) will remain outside the scope of the tax.

Taxable basis

The Finance Bill provides that French banks will be subject to the bank tax on their worldwide business activities. By contrast, foreign financial institutions (if they are within the scope of the tax, i.e. non-EEA) carrying out business activity in France will only be subject to the bank tax with regards to their business activity carried out in France.

The equity requirements which will be used as the taxable basis for the calculation of the bank tax will be calculated on a consolidated basis. Therefore, those institutions which fall within the scope of the tax and which belong to a consolidated group will not be subject to the tax on an individual basis. Where they are not part of such a group, institutions will pay a contribution calculated on their individual position.

The taxable basis will be made up of the minimum equity required of the institution, as set out by the Prudential Control Authority to meet reserve ratio requirements in accordance with Basel II standards (provided by the CMF) and specified during the previous calendar year.

Tax rate

The Finance Bill provides that the rate of the bank tax will amount to 0.25% of the taxable basis.

Any amounts paid in respect of the bank tax will be deductible for corporate income tax purposes.

Practical considerations

In terms of practicalities, the bank tax will become due on 30 April annually. A tax return will have to be filed by 30 June every year and the total balance due will have to be settled at the same time.

Tax credit

Subject to the principle of reciprocity, it should be noted that taxpayers for which the registered office or the group parent company is located in a State which has enforced a similar tax on systemic risk, can benefit from a tax credit. This tax credit can be used to settle the tax due or can be reimbursed.

Challenges

Any taxpayer wanting to challenge minimum equity requirements will be required to file a claim with the Prudential Control Authority. Should the claim be rejected, it may be sent to the French administrative court.

Where the bank tax is not settled in full and all or part of it remains due, the French Tax Authorities will issue a writ of execution. The collection of the tax will be made under the same conditions as the taxes on turnover. In the event that the minimum equity requirement is challenged by the taxpayer, demand for payment of the bank tax will not be possible until the revised minimum equity requirement has been issued.

Contacts

If you would like further advice in relation to the issues outlined above, please call your local PwC contact or alternatively any of the people listed below:

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