Spanish Financial Transactions Tax proposed

Global FS Tax Newsflash

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The Spanish authorities have somewhat unexpectedly tabled proposals for a Spanish FTT which, on the surface, has similarities to the French FTT model. Meanwhile, discussions continue at an EU level about an EU FTT. While there are many technicalities to resolve at the EU level, one key issue is whether any proposal will be able to achieve the necessary 70% support among EU members to pass the "enhanced cooperation" threshold to become law in some member states.

Meanwhile, the Spanish development shows that member states may not wait for the EU political wheel to turn and may consider their own version.

For the FS industry, an EU FTT is unwelcome, placing significant administrative burden on the industry at a time of extreme stress on many groups. However, there is one thing that is worse than an EU FTT and that is a "patchwork quilt" of different FTTs in certain member states. Given the need to raise tax revenues and the lack of clear direction from the EU this patchwork quilt of FTTs may be just what the FS industry will end up with.

According to the press, the draft Law would have been sent to the European Commission, IMF and the ECB (the "troika") for comments in the context of the Memorandum of Understanding signed between Spain and these bodies with respect to the Spanish banking reform.

We set out below our early views on the Spanish proposals**.**

Transactions covered

The tax would be applicable to the acquisition of certain equities, to certain high frequency trading operations on equities and to the acquisition of CDSs on EU sovereign debt where the beneficiary is not the holder of such debt.

Equities

The taxable event in this respect is defined as the acquisition for consideration of shares admitted to negotiation in any regulated market, either Spanish, European or foreign, of companies of Spanish nationality, the market capitalisation value of which exceeds a threshold (yet to be established) as of

December 1st of the year preceding the acquisition year.

Negotiable securities equivalent to the shares or granting acquisition rights over them, as well as securities representing the former, are assimilated to shares, wherever the issuer of such securities is established.

Exemptions are granted to the issue of the shares in primary markets, to transactions made by the clearing and settlement entity of the market where the shares are traded, to market makers, to transactions conducted within the group under tax neutral restructuring transactions, to temporary assignment of shares made under article 2.10 of the EC Regulation 1287/2006 and to convertible bonds representing a financing.

The base of the tax would be the higher of the price agreed or the market value. The tax rate is not yet proposed.

The taxpayer would be the entity executing the purchase order either in its own name or for the account of a third party; if there were various intermediaries, only the one receiving the order from the final purchaser would be taxed.

High frequency trading

The taxable event is the cancellation or modification of high frequency operations (as defined) referencing shares of Spanish companies or shares listed in a Spanish official market, if they exceed certain thresholds, yet to be defined, and when these operations are realised for their own account by Spanish residents or by non-residents established in Spain.

Market makers would be exempt.

The tax rate has not yet been proposed, and the tax base would be the daily excess of cancellation and modification orders over the total of transmission and modification orders, of shares of a single company.

CDS

In this case the taxable event is the purchase of a CDS on sovereign debt issued by an EU member country, realised by a Spanish resident or by a non-resident established in Spain when the beneficiary of the CDS is not the holder of the sovereign debt at hand (i.e. speculative transactions).

Market makers would be exempt.

The tax base would be the notional amount of the contract and again, the tax rate has not been yet included in the draft proposal.

What happens next?

The circulation of the draft is, at a minimum, a clear indication of political willingness to introduce an FTT in Spain. Particular attention should be paid to the comments of the EU Commission, IMF and ECB with respect to the potential impact of the introduction of this tax in the current Spanish economic context and banking system restructuring.

PwC contacts

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