Banking Concepts AG
Gartenstrasse 59
CH – 4052 Basel

Tel: +41 61 284 90 80
Fax: +41 61 284 90 83
www.bankingconcepts.com

Spanish Financial Transaction Tax (FTT)

Spain decided in October 2020 to introduce a Financial Transaction Tax (FTT) by January 2021.

This new FTT expands the requirements for the financial industry and requires timely implementation. The taxation approach is based on the taxes on financial transactions already introduced in France (2012) and Italy (2013), but it is not identical and requires special attention.

This newsletter highlights the challenges for financial service providers in this regard. It also considers that the introduction of an EU-wide FTT, which has been discussed since the financial crisis in 2008, is uncertain. Therefore, further country-specific taxation approaches are to be expected, e.g.: the German Federal Ministry of Finance has set up a new department IV B7 „Financial Transaction Tax “.[1]

The new Spanish Financial Transaction Tax will be levied on transactions in the secondary market:

- On shares of Spanish companies and instruments related to these shares (e.g. ADRs)
- On defined transaction and business types (not just buy / sell transactions)
- Regardless of the domicile or registered office of the transaction parties involved
- If there are no listed exceptions (e.g. certain transaction types)

The following table provides an overview on the impacted financial instruments and the currently applied tax rates.

Country	**Shares**	**Derivatives / Certificates**	**Bonds (exceptions possible)**
Spain **(from 16.01.2021)**	0,2%	0,2%	0
France (since 2012)[2]	0,3%	0	0
Italy (since 2013)	0,1% - 0,2%)	0,01% - 0.02%	0

The universe of financial instruments affected by the FTT (e.g. shares, derivatives), the possible exemption criteria (e.g. market capitalization, primary market transactions) and the tax rates to be applied are country specific.

All three countries have foreseen the “place of issue” approach in order to prevent possible circumvention by the actors involved. From Spain's point of view, all shares issued by Spanish companies are initially subject to FTT, regardless of the stock exchange listing and / or the domicile of the investor, broker, custodian or financial service provider involved.

In general, the financial intermediary who receives the securities order directly from his client will be obliged to withhold the tax.

Specific fields of action:

The operational implementation of the various country-specific FTTs affects almost all areas of the value chain of a bank: Starting with investment advisory activities, on to recording and execution of orders and the correct billing and accounting as well as the actual delivery of the raised taxes to the respective tax authorities.

The FTT relevance in Spain is depending, among other things, on the type of financial instrument and the type of transaction or its context (e.g. shares or bonds, IPO, merger, split or conversion).

[1] Source: Link, Inquiry in the German Parliament
[2] Depending on share impact, exceptions on derivatives or bonds are possible

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Identification of FFT relevance of financial instruments

For the material scope, i.e. which financial instruments are potentially subject to the Spanish FTT, it can be assumed that service providers for securities master data will provide the corresponding information.

In order to create legal certainty, the Spanish tax authority will publish at the beginning of each year a list of Spanish companies with a market capitalization of more than EUR 1,000 million.

Examples:

Financial instrument	Issuers Country	Market-capitalization	Stock exchange	FTT Relevance
Share	Spain	> 1'000 Mio. EUR	Frankfurt	Yes
Bond	Spain	--	Paris	No
IBEX35 certificate[3]	Switzerland	--	OTC	Yes

Transaction related impact of FTT

Further exemptions from FTT tax liability are related to the type of transaction. They are not depending on certain characteristics of the investor (exception: transactions within a group of companies). This means that transactions by pension funds or investment funds are also taxed. On the other hand, primary market transactions relating to the issue of shares or securities lending and repo transactions are exempt from the Spanish FTT.

Experience from FTTs already introduced shows that the correct classification of the type of transaction (e.g. subscription of an issuing, purchase on the stock exchange, type of corporate action) is challenging and usually has to be carried out by the financial service provider.

The FTT impact has to be taken into account when the order is initially keyed, so that rule-based reviews of advice to investor, order processing and customer billing can be carried out and the periodic reporting can access the relevant information.

Examples:

Type of transaction	FTT impact of financial instrument	Role	Stock exchange	FTT Impact
Execution stock option	Yes	Investor	Frankfurt	Yes
IPO, purchase share	Yes	Investor	Paris	No
Corporate Actions	Yes	Investor	Frankfurt	partially Yes
Execution convertible bond	Yes	Investor	Rome	Yes
SWAP	Yes	Banking Ledger	Zurich	partially Yes
Purchase share	Yes	Market Maker	Madrid	No
Custody transfer	No	Investor	n/a	No

[3] Fictitious certificate (comparable to an ADR) based on a share listed in the Spanish index of shares "IBEX 35" (Iberia Index), containing 35 of the most important Spanish companies

Reconciliation and tax delivery

The delivery of the Spanish FTT is planned on a monthly basis. The first reporting and the first delivery are therefore expected as early as February 2021; however a specific date has not been announced, yet. The delivery is currently planned via a Spanish central securities depository ("CSD") or a CSD that works with a Spanish CSD. A FTT standard delivery form is currently not available.

Like other tax deductions, the Spanish FTT must be executed transaction-based and auditable, posted on internal bank accounts until the payment is due, continuously reconciled and monitored as well as delivered on time.

Conclusions:

The implementation period until the Spanish FTT comes into force (January 16, 2021) is very short and the first tax delivery deadline February 2021 (?) is approaching fast. Therefore, there is a need for immediate action.

Also, it does not help that Spain has not yet stipulated specific penalties. For the time being, only the general penalties in the Spanish tax law are applicable.

The remaining implementation period may require additional workarounds. The new Spanish FTT and the potentially increasing number of other country-specific and non-harmonized FTTs will further increase the complexity of day-to-day operations and the associated risk of errors. Considerations should certainly be given to useful, cost efficient and compliant FTT solutions.

Contact persons for questions:

André Schwarz
Managing Partner
Mobile: +41 79 600 85 74
Email: andre.schwarz@bankingconcepts.com
Internet: www.bankingconcepts.com

Michael Steiner
Senior Consultant
Mobile: + 41 79 826 18 30
Email: michael.steiner@bankingconcepts.com

Luigi Benincasa
Senior Consultant
Mobile: +41 76 382 1975
Email: luigi.benincasa@bankingconcepts.com