AmCham EU
SPEAKING FOR AMERICAN BUSINESS IN EUROPE

Priorities - Tax

Financial Transaction Tax (FTT)

ISSUE

As part of the Next Generation EU, the Commission will propose by June 2024 new own resources, which could include an EU FTT. Since 2011, the EU has considered adopting a harmonised FTT, but due to opposition, it has only been able to seek to move forward on the basis of enhanced cooperation by a group of ten Member States (Austria, Belgium, France, Germany, Greece, Italy, Portugal, Slovenia, Slovakia, and Spain), but an agreement has not been reached. Although the current version sets out a more limited and less distortive EU FTT than previous ones, the proposal is still fundamentally flawed.

Overall, an EU FTT would be economically distortive, would favour short-term over long-term investment, would increase the cost of equity capital for issuers, would increase the taxation of end investors in capital markets, and – through the imposition of complex and burdensome, nationally-specific collection procedures - would segment European capital markets and discourage new entrants to capital markets.

Even though some of our concerns have been taken into account by narrowing the scope of the current proposal, it still is economically harmful and should be abandoned. The FTT proposal is incompatible with other political and regulatory objectives such as the Capital Markets Union, the encouragement of long-term investment and investment in equities.

BACKGROUND

The proposal under consideration by the enhanced cooperation of Member States has changed over time. Most recently, France and Germany relaunched an effort in 2018 to adopt a FTT through enhanced cooperation based on the existing French FTT.

This proposal would impose a levy of at least 0.2 percent on the acquisition of listed shares of companies headquartered in a participating Member State with a market capitalisation greater than EUR 1 billion; this excludes IPOs, market making, securities financing activities and intraday trading. France and Germany are proposing that the revenue be treated as an Own Resource of the EU, with an appropriate reduction in national contributions to the EU budget.

EU FTT is an indirect tax. The entity liable for paying the tax to the tax authorities is the financial institution executing a purchase order on behalf of an end investor; however, this financial institution will pass on the cost of the tax to its client, so that the cost of the tax will fall on end investors (pension funds, insurance companies, investment funds, retail investors) investing in equities.

EU FTT is an extra-territorial tax, in that the tax applies to all relevant transactions for in-scope securities no matter where in the world the transaction takes place and no matter where the buyer and seller are located. Financial institutions across the world that provide execution and/or custody services for European equities will have to report transactions in the relevant securities, and pay the tax.

Under current plans, each participating member state will set up its own reporting and collection mechanism. As the EU FTT proposal is a Directive, and as some key definitions (notably, the definition of market making) will be dependent on national law, there is a significant risk that the precise rules as to whether a specific transaction is in-, or out-of-scope, will vary country by country. In consequence, financial institutions across the world are faced with the prospect of being forced to establish separate reporting and payment processes for equities from each of the participating Member States.

RECOMMENDATIONS

- The proposal for an EU Financial Transaction Tax (FTT) should be abandoned, given that:
    - The tax is distortive and taxes long-term investment rather than short-term investment.
    - The tax is inconsistent with the Capital Markets Union (CMU) project as it increases the bias in the tax system against equity, it builds barriers between national equity markets and it discourages new entrants to capital markets.
    - The tax increases an already excessively high tax burden on end investors in equities.
- Efforts should be placed on increasing the efficiency and fairness of capital market investments taxes so that objectives such as increasing the size of EU capital markets, developing a CMU and ensuring that capital market participants contribute appropriately to the financing of the public sector, can be met.
- We believe that any new own resources funding proposal should not include an EU FTT for all these reasons.
- In the event that the proposal for an EU FTT moves forward , it is critical that:
    - All relevant definitions in Member State law (including the definition of "market making") are aligned so that financial institutions are faced with one set of rules. A Directive, a reference to the Short Selling Regulation or a more specific definition, will not be sufficient to prevent different national interpretations of "market making" (especially in regard to the hedging of OTC derivatives).
    - The implementation period is sufficiently long so that tax authorities and market participants have due time to make all necessary preparations and avoid market disruption at the launch of the tax.
    - Member States set up a joint reporting and collection mechanism for the tax on all in-scope equities so that financial institutions across the world can use one single operational process.
    - The reporting and collection mechanism are not integrated into the core settlement system (as such integration has long been identified as one of the 'Giovannini Barriers').