

2012-N-061
31 October 2012

Market news

France – Financial Transaction Tax – The tax, our service and what's still to come

Important

Target audience

- Network managers
- Product Managers
- Settlement operations
- Tax operations

Effective date

Immediately

Highlights

You will find in this Newsletter:

- further clarifications and information on the French Financial Transaction Tax received since our Newsletter 2012-N-037 sent on 29 June 2012
- an up-to-date overview of all aspects you should know about, including points previously sent to you via *Operational news* and *EquityReach Newsflashes*

Actions

- Take note of the relevant deadlines and formatting requirements when sending us your FTT Declarations and payments
- For the latest FTT info and documentation, visit our dedicated FTT page on euroclearbank.com under **Markets > France > Tax services > Financial Transaction Tax**

What you will find in this Newsletter:

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Important to note

- This Newsletter contains the information we have today. There are still points open for discussion in the market which we have indicated in the Newsletter.
- The English terms provided in this Newsletter are unofficial translations of the official documentation and FTT Law. Only the original French version is legally binding.
- We recommend you to seek proper legal advice.

Main features of the FTT

1. Background

On 15 March 2012, the French government published a law which introduces a new financial transaction tax (FTT). Further to amendments proposed by the Council of Ministers, and reviewed by the French Parliament and Senate the updated law was published in the Official Bulletin on 17 August 2012.

The FTT applies to every acquisition for consideration⁽¹⁾ that gives rise to a transfer of ownership of capital instruments and assimilated securities (mainly equities) that are:

- listed on a recognised regulated market
- issued by a company with headquarters in France and with a market capitalisation exceeding one billion euro

The tax applies upon settlement (legal transfer of ownership of the acquisition) of eligible transactions as of **Wednesday, 1 August 2012**. There are some exceptions, see the 'Declaration' section for more details.

Eligible transactions need to be declared in a tax declaration (the 'FTT Declaration') and the FTT must be paid in the month following the settlement of the acquisition.

Note: the Law also introduced a FTT on:

- the short-selling of EU sovereign Credit Default Swaps
- trading activity above a certain order-to-trade ratio (High Frequency Trading) conducted by French firms or French branches of non-residents

We have not included details of the above in this Newsletter as we are not involved in the process.

(1) The law defines 'acquisition for consideration' as follows:

French Tax Code Article 235 ter ZD, I, 1: "A tax is applied to any acquisition for consideration of a security (...)"

French Tax Code Article 235 ter ZD, I, 2 " Acquisition, as used in the first paragraph of this article, means the purchase, including purchase by exercising an option or a forward purchase which has previously been defined in a contract, the exchange or the allotment, in consideration for contributions of equity securities as defined in said first paragraph".

2. Official documentation

The Law introducing the *FTT*, *Article 235 ter ZD of the General Tax Code (Code Général des Impôts)* is available on www.legifrance.gouv.fr

The latest official publication by the French tax authorities on 12 September 2012 consists of five documents from the *Bulletin Officiel des Finances Publiques-Impôts*. These documents replace the *Bulletin Officiel des Impôts (Administrative Guidelines)* of 3 August 2012 (ref 3 P-3-12) and are applicable as of 12 September 2012. All these documents can be found on our FTT page:

- BOI-TCA-FIN-10-10-20120912
- BOI-TCA-FIN-10-20-20120912
- BOI-TCA-FIN-10-30-20120912
- BOI-TCA-FIN-10-40-20120912
- BOI-TCA-FIN-10-50-20120912

3. FTT rate and payment currency

The FTT rate is 0.2%⁽¹⁾ of the transaction amount, applicable since **1 August 2012**.

The tax is due in euro. It is not possible to declare and pay the tax in a non-euro currency.

For transactions in foreign currencies, the closing price on the currency market the day before the acquisition is used to determine the tax base.

4. Taxable base

The FTT is based on the acquisition value of the securities as expressed in the contract resulting in the transfer of ownership to the acquirer. The tax base is determined by:

- the execution price of the transaction for trades on a market or with a counterparty
- the exercise price of a derivative that gives rise to a delivery of securities
- the price agreed in the issue contract for the conversion or redemption or exchange of a bond

When shares are exchanged, the value used is the one set out in the exchange contract. If no value is expressed in the contract, the acquisition value corresponds to the value of the securities on the market in the country where the shares were first listed on a regulated market, at the closing of the trading day preceding the exchange.

However, in the case of exchange of securities of unequal values, each party to the exchange will be taxed on the value of the securities it acquires.

(1) In the first version of the Law, the FTT rate was 0.1% of the transaction amount.

The tax applies on the acquisition price without taking into account expenses and fees related to the transaction (broker fees, commission etc.)

The FTT Law does not provide for a minimum amount on which the tax should be calculated nor for a minimum tax amount to be paid.

When several buy and sell transactions in a security during the day result in a net buying position, the tax applies to the end-of-day net buying position (see the 'Transactions' section for more information on netting).

Rounding rules

The tax amount reported in the FTT Declaration is calculated with the following rounding rules:

- the tax amounts paid for each individual transaction are rounded up to the next eurocent for the declared transaction (the fraction of euro equal to 0.005 is rounded up to 0.01)
- the total cash amount to be paid monthly (header of the FTT Declaration) is rounded up to the next euro (the fraction of euro equal to 0.5 is rounded up to 1)

Value Added Tax (VAT)

The amount of FTT will not be subject to a VAT surcharge.

5. Impacted securities

Based on the Administrative Guidelines:

Securities	Within the scope of the FTT	Acquisitions in such securities are reportable in the FTT Declaration as of	Acquisitions in such securities are exempted and not reportable in the FTT Declaration
1. Capital instruments or assimilated, mainly equities, in the meaning of article L.211-41 of the <i>French Monetary and Financial Code</i>	Y	1 August 2012	N/A
2. Investment certificates, voting right certificates	Y	1 August 2012	N/A
3. Certificates representative of French shares issued by entities regardless of their location (for example, American Depository Receipts (ADRs)) ⁽¹⁾	Y	1 December 2012	N/A
4. Securities giving capital access rights or voting rights: - bonds convertible into shares (OCA) - bonds redeemable into shares (ORA) - bonds exchangeable into shares (OEA) - bonds convertible into new shares or existing shares (OCEANE) - bonds with share subscription warrants attached (OBSA) - bonds with redeemable share subscription warrants attached (OBSAR) - bonds with redeemable share subscription or acquisition warrants attached (OBSAAR) - bonds redeemable in new or existing shares or bonds redeemable in new actions or in cash (ORANE) - bonds redeemable in cash or in new or existing shares (ORNANE)	Y	N/A	Y ⁽²⁾
- share subscription warrants (BSA) - redeemable share subscription warrants (BSAR) - redeemable share subscription or acquisition warrants (BSAAR) - subscription rights (DPS) ⁽¹⁾	Y	1 August 2012	N/A
5. Shares from collective investment vehicles (Fond Commun de Placement) ⁽³⁾	N	N/A	N/A
6. Shares from French SICAV, including Exchange Traded Funds (ETFs) ⁽³⁾	N	N/A	N/A
7. Acquisitions of financial contracts (notably options, futures, warrants) to the extent that they do not qualify as equity within the meaning of the <i>French Monetary and Commercial Code</i> ⁽³⁾⁽⁴⁾	N	N/A	N/A

(1) For certificates representative of French shares, the FTT will apply to acquisitions as of 1 December 2012.

(2) The acquisition of eligible shares at the time of the conversion, the redemption or the exchange will be subject to tax if it results in an acquisition of existing shares.

(3) These instrument types are out of scope of the FTT Law on the condition that they are not considered as capital instruments under the *French Monetary and Financial Code*.

(4) The exercise of these contracts resulting in an acquisition of shares meeting the taxation criteria would be taxable.

Important: the naming convention for securities in French may differ from the commonly known terms in English. For example:

- ‘*droits préférentiels de souscription* (DPS)’ are in scope and could be translated as subscription rights
- the term ‘warrant’ is used as such in the French text of law and has been classified as out of scope (to the extent that warrants do not qualify as an equity under the *French Monetary and Commercial Code*). The above-mentioned **BSA**, **BSAR** and **BSAAR** are in the scope of the FTT as they qualify as equity. In our system, they are classified as equity warrants.

Points pending further clarification from the French tax authorities

The AMAFI (French association of financial markets) has asked the French authorities to confirm whether DPS are in scope of the FTT Law, as in their view DPS are not financial instruments.

6. Impacted companies and ISINs

The FTT applies to every acquisition for consideration giving rise to a transfer of ownership of capital instruments and assimilated securities that are:

- listed on a recognised regulated market ⁽¹⁾
- issued by a company with headquarters in France and with a market capitalisation exceeding one billion euro on 1 January of that fiscal year

You can find the Ministerial Decree that lists the names of impacted companies for 2012 on our FTT page. The list should remain stable for the whole year unless one of the following events happens:

- an issuer of a taxable security transfers its headquarters outside France
- a company, which meets the other eligibility conditions, transfers its headquarters to France
- an issuer creates a temporary non-fungible tranche of an existing taxable security

However, a reduction in the capitalisation of a company to below one billion euro in the course of the year will not impact the security being taxable.

Then, on a yearly basis, the list of impacted companies will be updated by Ministerial Decree on 1 December of the previous fiscal year. This means that the list of companies reaching the threshold of capitalisation will be assessed on 1 December 2012 to make the list of impacted companies available for 1 January 2013.

This list only contains companies' names but not the ISINs of the impacted securities.

There is no official list of taxable securities made public. However, indicative lists of ISINs have been provided by Euronext and Six Financial Information (both available on our FTT page).

Important: these lists are not binding for the French tax authorities and are for information only. It is the Accountable Party's responsibility to determine if the acquired securities fall in the scope of the FTT or not.

(1) The list is available on the *Autorités de Marchés Financiers* (AMF) website (http://www.amf-france.org/documents/general/5404_1.pdf)

7. Impacted transactions

Which transactions are taxable?

The tax applies to acquisitions for consideration (*'acquisitions à titre onéreux'*) of taxable securities, when the acquisition generates a transfer of ownership. The transfer of ownership happens when securities are recorded to the securities account of the purchaser, which is the day the transaction actually settles.

Are there any exempt transactions?

The following transaction types are exempt from FTT:

1. Purchases linked to an issue of securities (primary market)
2. Purchases made by a clearing house or a central securities depository within the framework of its activities
3. Purchases linked to market making activities
4. Purchases linked to a liquidity contract
5. Intra-group transactions and restructuring operations
6. Securities lending and repos
7. Acquisitions by employee mutual funds, employee open-ended investment funds or by employees directly
8. Acquisitions (including purchase of company shares) for employee savings schemes
9. Acquisitions of bonds that can be exchanged for or converted into shares

Important: although exempted, these transactions must still be reported in the FTT Declaration, except for transactions under exemption code 9 (which are exempt and not declarable) ⁽¹⁾.

How is the end-of-day net buying position calculated?

When there are several transactions in an impacted security during the day, the end-of-day net buying position is calculated as follows:

- per day
- per ISIN
- per transaction executed for own account and per transaction executed for each end investor
- the quantity of acquisitions during the day minus the quantity of sales during the same day, excluding exempt purchase and sale transactions

The net buying position calculated is then multiplied by the daily weighted average purchase price to obtain the tax base.

Example provided in the Administrative Guidelines and the BOFIP

Note: a tax rate of 0.1% (instead of the 0.2% actual rate) was used in the following example.

(1) The Decree N° 2012-956 dated 6 August 2012 confirms that transactions falling under exemption code 9 are no longer declarable.

Trading activity on one day	Net buying position	Tax base	Tax amount
Own account <ul style="list-style-type: none"> purchase 1,000 securities A @ EUR 50 (*exempt in context of its market making activity) purchase 500 securities A @ EUR 49 sale 800 securities A @ EUR 50,50 (exempt as market making activity*) <p>* Transactions executed as part of the Accountable Party's market making activity (exempt) are not taken into account to calculate the net buying position</p>	500 securities A	500 securities A x EUR 49 = EUR 24,500	EUR 24,500 x 0.1% = EUR 24.5
Client X <ul style="list-style-type: none"> purchase 100 securities A @ EUR 50 (total purchase price = EUR 5,000) purchase 50 securities A @ EUR 49 (total purchase price = EUR 2,450). 	100 + 50 = 150 securities A	150 securities A x EUR 49.67* = EUR 7,450 * daily weighted average purchase price calculated as EUR 5,000 + 2,450 (total purchase price)/150 (amount of securities acquired) = EUR 49.67	EUR 7,450 x 0.1% = EUR 7.45
Client Y <ul style="list-style-type: none"> Purchase 1,500 securities B @ EUR 12 Sale 80 securities A Sale 1000 securities B 	1,500 – 1,000 = 500 securities B	500 securities B x EUR 12 = EUR 6,000	EUR 6,000 x 0.1% = EUR 6
Total tax due by the Accountable Party: EUR 37,950.50 x 0.1% = EUR 37.95			

Note: when the transactions to be netted on settlement date have different trade dates, market associations⁽¹⁾ recommend you to complete your FTT Declaration with the trade date used in the majority of trades that compose the net position.

(1) Several French market associations are analysing the impacts of the FTT and are working to define a common interpretation and pragmatic working procedures in line with the law. They have and are still working on 'Whitepapers' aimed at the domestic and international market players. These associations are namely AMAFI (French association of financial markets) and AFTI (French Association of Securities Professionals).

Points for which there are no clear guidelines in the official documentation

- **Exempt transactions:** it is our understanding that the declaration of exempt transactions can be aggregated (netted) for declaration purposes
- **Multiple trading venues:** when there are several transactions executed on several trading venues, it is our understanding that transactions can be netted across trading venues

Points pending further clarification from the French tax authorities

The market associations have raised several points with the tax authorities, including:

- the inclusion of lending and borrowing transactions in the scope of the FTT. In their opinion, they should not be in the scope of the tax as these transactions are not acquisitions for consideration
- they consider repos as out of scope as these transactions do not generate a transfer of ownership
- they seek confirmation that the FTT is only due on the acquisition of ADRs on the secondary market and not on ADR conversion
- whether FTT needs to be applied to international organisations benefiting from fiscal immunity and asked for a list of such organisations

Corporate actions

Corporate actions are also deemed as transactions in scope of the FTT when the resulting securities proceeds are considered an acquisition that meets the criteria for the FTT.

Issuers and their agents are expected to include FTT information in their corporate action notifications (i.e. whether the corporate action is subject to the FTT or not, to include an exemption code if exempt, the taxable basis of the corporate action).

We will report this information to you via corporate action notification as and when we receive it.

Note: in the context of the SWIFT Release 2013 discussions, there are proposals to define the use of a specific field dedicated to FTT in ISO 15022 messaging.

Please find below an indicative list of corporate actions that fall under the scope of the FTT (source AFTI):

Coporate action type	ISO indicator	Definition	Exempt
Repurchase Offer/ Issuer Bid/Reverse Rights	BIDS	Offer to existing shareholders by the issuing company to repurchase equity or other securities convertible into equity. The objective of the offer is to reduce the number of outstanding equities. This is always voluntary and initiated by the issuer.	Yes: for intra group operations/restructuring (exemption code 5)
			Yes: if acquisitions by employee mutual funds, employee open-ended investment funds or by employees directly (exemption code 7)
Conversion	CONV	Conversion of securities (generally convertible bonds or preferred shares) into another form of securities (usually common shares) at a pre-stated price/ratio.	Yes: for the receipt of newly-issued securities (exemption code 1)
			No: if existing securities are received
Dutch Auction	DTCH	An action by a party wishing to acquire a security. Holders of the security are invited to make an offer to sell, within a specific price range. The acquiring party will buy from the holder with lowest offer.	Yes: if the acquiring party is the issuer (exemption code 5)
			No: if existing securities are received
Dividend option	DVOP	Distribution of a dividend to shareholders with a choice of benefit to receive. Shareholders may choose to receive shares or cash.	Yes: for the receipt of newly-issued securities (exemption code 1)
			No: if existing securities are received
Stock dividend	DVSE	Dividend paid to shareholders in the form of equities of the issuing corporation.	Yes: for the receipt of newly-issued securities (exemption code 1)
			No: if existing securities are received
Exchange	EXOF	Exchange of holdings for other securities and/or cash. The exchange can be either mandatory or voluntary involving the exchange of outstanding securities for different securities and/or cash.	Yes: for the receipt of newly-issued securities (exemption code 1)
			Yes: if holding is greater than 40% (exemption code 5)
			No: if existing securities are received
			No: if holding is less than 40%
Rights exercise	EXRI	Call or exercise on nil-paid securities or intermediate securities resulting from an intermediate securities distribution (RHD). This code is used for the second event, when an intermediate securities' issue (rights/coupons) is composed of two events, the first event being the distribution of intermediate securities.	Yes: for the receipt of newly-issued securities (exemption code 1)
			No: if existing securities are received
Maturity extension	EXTM	SECU if the holder accepts the extension, with or without exchange of securities MPUT if the holder has the option retain the original security without the maturity extension	Yes: for the receipt of newly-issued securities (exemption code 1)
			No: if existing securities are received
Exercise of warrants	EXWA	Option offered to holders to buy (call warrant) or to sell (put warrant) a specific amount of stock, cash, or both.	Yes: for the receipt of newly-issued securities (exemption code 1)
			No: if existing securities are received
Merger	MRGR	Exchange of outstanding securities, initiated by the issuer which may include options, as the result of two or more companies combining assets, i.e. an external third party company. Cash payments may accompany equity exchange.	Yes: for intra group operations/restructuring (exemption code 5)
			No: if holding is less than 40%
Payment in kind	PINK	Interest payment, in any kind except cash, distributed to holders of an interest bearing asset.	Yes: for the receipt of newly-issued securities (exemption code 1)
			No: if existing securities are received
Instalment call	PPMT	An instalment towards the purchase of equity capital, subject to an agreement between an issuer and a purchaser.	Yes: for the receipt of newly-issued securities (exemption code 1)
			No: if existing securities are received
Priority issue	PRIO	Form of open or public offer where, due to a limited amount of securities available, priority is given to existing shareholders.	Yes: for the receipt of newly-issued securities (exemption code 1)
			No: if existing securities are received
Tender/ Acquisition/ Takeover/ Purchase Offer/Buyback	TEND	An offer made to shareholders, normally by a third party, requesting them to sell (tender) or exchange their equities.	Yes: for the receipt of newly-issued securities (exemption code 1)
			Yes: if holding is greater than 40% (exoneration 5)
			No: if existing securities are received
			No: if holding is less than 40%

Points pending further clarification from the French tax authorities

The market associations challenge the French tax authorities on the inclusion of the optional dividend (DVOP) in the scope of the FTT.

8. Accountable Parties

What is an Accountable Party?

According to French law, the Accountable Party is the institution legally obliged to report (FTT Declaration) and pay the FTT. It is either:

- the Investment Service Provider ('ISP') ⁽¹⁾ who has executed the transaction for its own account
- the ISP who has executed the transaction for third parties
- the account holder of the end investor for transactions not executed through a ISP

Note: the Accountable Party is legally responsible to pay the tax. It may however pass the tax to the end investor (individuals, asset management companies or any investor involved in proprietary activity) who acquires the securities. In all likelihood, the end investors are expected to bear the economic cost of the tax.

Operationally, the end investor will have to inform and disclose all necessary information to the Accountable Party allowing them to declare and pay the tax to the tax authorities.

Indeed, it is the end investor's responsibility to:

- pass necessary information to the ISP executing the order to allow it to calculate the net buying position
- inform its account holder in case a transaction has been executed without an ISP and provide all necessary information allowing the account holder to declare (including if transactions are exempted) and pay the tax

AFTI's current view is that in the absence of such information, the account holder presumes that the transaction is made with the intervention of an ISP (who is therefore the Accountable Party).

(1) The ISP as defined in *article L.321-1 of the Monetary and Financial Code*, which includes the following services and activities:

- reception and transmission of orders on behalf of third parties
- execution of orders on behalf of third parties
- negotiation for own account
- management of portfolio on behalf of third parties
- provide investment advice
- underwrite new issues
- guaranteed and non-guaranteed investment
- operate a multilateral trading system within the meaning of article L.424-1

Note: providers offering similar services outside France are accountable under the same conditions.

Chain of intermediaries – Who is the Accountable Party?

There are three scenarios, as described in the guidelines:

1. When an ISP, buying securities for its own account, transmits the purchase order for execution to another ISP, it is the ISP buying the securities for its own account that is considered the Accountable Party.
2. When several ISPs are involved in the execution of the acquisition for a third party, it is the first ISP receiving the purchase order from the buying end investor who is considered the Accountable Party.
3. When an ISP, not having a legal agreement to execute third party orders, transmits purchase orders from its clients to another ISP responsible for the execution, it is the second ISP that is accountable.

Corporate actions – Who is the Accountable Party?

The texts of the FTT Law do not refer to any other specific declaration process for corporate actions.

Therefore, the definition of an Accountable Party and the chain of intermediaries principles should also apply to corporate actions, meaning:

- if there is an ISP or a chain of ISPs, the Accountable Party is the ISP closest to the beneficial owner
- if there is no ISP, the Accountable Party is the account holder of the beneficial owner

The current understanding is that Issuers and their agents are not considered as Accountable Parties.

9. Declaring the FTT

What to declare?

On a monthly basis, if you are an Accountable Party, you must:

- report transactions (taxable and exempt) that settled in the previous month in the FTT Declaration (transactions in the scope of the FTT Law)
- pay the tax due for the transactions reported as taxable

Transactions in the impacted securities must be declared as either:

- **taxable**, in that case you must declare the tax amount
- **tax exempt**, exempted transactions must be flagged with one of the exemption reasons foreseen by the Law ⁽¹⁾

FTT Declarations must be sent per Accountable Party. A FTT Declaration can include transactions in several ISINs and several end investors for the same Accountable Party.

(1) Purchase of convertible bonds (exemption code 9) need not be declared.

Exceptions

1. Purchase of convertible bonds

The purchase of bonds (exchangeable, convertible and redeemable into shares) even if in scope but exempted from FTT (exemption code 9) does not have to be declared.

Note: the exchange, conversion or redemption of such bonds into existing shares remains subject to the FTT.

2. Use of the intended settlement date to determine when the FTT is payable

As a reminder, the Law states that:

- the FTT is triggered on the transfer of ownership date which is the date the transaction settles (i.e. the actual settlement date)
- the tax is payable ('exigible') on the first day of the month following the actual settlement date

The French tax authorities authorise the Accountable Party to apply the intended settlement date, instead of the actual settlement date (default), to determine when the FTT is (or becomes) payable. The Accountable Party must notify Euroclear France and the French tax authorities that it will use this option. For more information, refer to Annex 1.

Example

Default	Intended settlement date option
Intended settlement date: 30 October 2012 Actual settlement date: 2 November 2012 FTT trigger event: 2 November 2012 FTT payable date: 1 December 2012	Intended settlement date: 30 October 2012 Actual settlement date: 2 November 2012 FTT trigger event: 2 November 2012 FTT payable date: 1 November 2012

The intended settlement date option is an option to determine when to pay the tax. It does not determine when the tax base is calculated (securities position at the end of a day).

Transactions declared based on the intended settlement date may need to be updated in a subsequent FTT Declaration, for example in the event of a failed transaction.

When to send the FTT Declaration?

While the tax is payable on the first day of the month following the acquisition (M), the deadline to receive your FTT Declaration and pay the tax for a transaction settling in Month M is the 4th Calendar day of Month M+1, at the latest.

Exceptions: please note the declaration timing for the following cases:

Type	Scope	Acquisitions to be declared as from	FTT Declaration to be sent
Certificates representative of French shares (e.g. ADRs)		1 December 2012	January 2013
Repo transactions	exemption code 6 such as securities lending and repo transactions (6° of II of article 235 ter ZD "cession temporaires de titres")	1 January 2013	February 2013
Corporate actions	exemption code 1 (i.e. acquisitions that result in the receipt/acquisition of new securities)	1 January 2013	February 2013

Please also refer to the 'Timing and deadlines' section later in this Newsletter.

Where to send the FTT Declaration?

It is the Accountable Party's responsibility to decide where and to whom they send their FTT Declaration. The declaration flow is supposed to be in line with the place of settlement.

The FTT Law provides for the following scenarios:

1. Securities for which Euroclear France is the Issuer CSD

Place of settlement	FTT Declaration to be sent to	Actions
Euroclear France	Euroclear France	The Accountable Party specifies the Euroclear France member that will pay the FTT
On the books of a Euroclear France member (such as Euroclear Bank)	Euroclear France via a Euroclear France member	Euroclear France member pays the FTT
On the books of a client of the Euroclear France member	Euroclear France via a Euroclear France member	The Accountable Party specifies the Euroclear France member that will pay the FTT
Other than the above places of settlement	The French tax authorities or via a Euroclear France member of its choice	If the Accountable Party chooses to send its FTT Declaration via a Euroclear France member of its choice, the Accountable Party must notify the tax authorities in advance.

It is our understanding that Accountable Parties will send the FTT Declarations and pay tax through the settlement agent/custodian of the Accountable Party, to be then forwarded to Euroclear France (or through chain of intermediaries to Euroclear France).

2. Securities for which Euroclear France is not the Issuer CSD

The FTT Declaration has to be sent directly to the tax authorities (without the option to report to Euroclear France through a Euroclear France member).

Points pending further clarification from the French tax authorities

There are discussions in the market challenging the need for the FTT Declaration to follow the settlement chain.

Market associations have requested more flexibility from the French authorities to allow the Accountable Party to send its FTT Declaration(s) to a Euroclear France member of its choice (probably the one with which it has more activity).

However, any change to these rules will require a change to the current FTT Law.

10. Other points

Impact on instruction formats

The format of securities transaction instructions (MT 54x) is not impacted by the FTT (except SBI ⁽¹⁾).

We understand that market players may include the FTT amount in the cash consideration of the securities transaction instruction (together with other fees and commissions).

Controls performed by Euroclear France

Ex-post checks

The tax authorities require Euroclear France to perform ex-post checks. These checks verify the details of the transactions included in the FTT Declaration files. The results will be provided to the tax authorities with an 'Anomaly' status (no detailed reason codes).

Euroclear France will perform the ex-post checks after receiving your FTT Declaration. These checks will not lead to the rejection of your declaration.

Based on Euroclear France's reports, the tax authorities may consult the details of your FTT Declarations and decide to apply the penalties foreseen by the Law for missing or incomplete information ⁽²⁾. These penalties will be claimed and raised directly by the tax authorities to the Accountable Party.

Euroclear France will perform the following controls per transactions declared (provisional list):

- Mandatory field (at transaction level) not filled in or filled improperly
- No amount of due tax with a taxable flag equal to 'Y'
- Amount of due tax with a taxable flag equal to 'N'
- No exoneration rationale with a taxable flag equal to 'N'
- Exoneration code with a taxable flag = 'Y'
- 'Late transactions' i.e. a transaction with a settlement date different than the payment month -1

(1) If you are using the *Sociétés de Bourses Intermédiaires* (SBI) trade confirmations service, field 19A: LOCL of your MT 54x will be dedicated to input the FTT amount. These trades should nevertheless be declared in your FTT Declaration

(2) According to the Law, inaccuracies or omissions in the declaration shall result in the application of a penalty of EUR 150 per omission or inaccuracy, which amount may not exceed 40% of the tax omitted.

Consistency checks

The tax authorities also require Euroclear France to perform consistency checks. On a monthly basis, Euroclear France will provide dedicated reports to the tax authorities to:

- allow them to check the validity of your FTT Declarations
- decide on potential further controls towards the Accountable Parties

These checks are listed in the Ministerial Decree published on 7 August 2012. Euroclear France will report the following cases to the tax authorities (provisional list):

- FTT Declarations for which the total amount of due tax is not in line with the taxable transactions in the repetitive records
- FTT Declarations for which the tax amount declared is not consistent with the taxable amount
- Accountable Parties with no transaction declared, for a given month on the 30 most declared ISINs
- for each Accountable Party, the evolution of the total amount and quantity of acquisitions between the current month and the previous one
- the evolution of the exoneration ratio per Accountable Party and per month
- Accountable Parties for whom the total amount of purchases settled in Euroclear France's books is higher than the amounts of purchases declared

Our service offering

As a direct member of Euroclear France, we will:

- collect your FTT Declarations and send them to Euroclear France for further reporting to the French tax authorities
- debit the corresponding tax amount you reported in your FTT Declaration
- pay Euroclear France for further credit to the French State Treasury

As an Accountable Party, you can send your FTT Declaration via either:

- a single monthly declaration before the declaration deadline
- several declarations sent throughout the month of acquisition

1. Euroclear Bank as Accountable Party

By default, we consider that all securities you receive on your Euroclear Bank account have been executed by an ISP or that you are an ISP.

If this is not the case and if you are the end investor, Euroclear Bank (as account holder) is the Accountable Party. You therefore need to send us an FTT Declaration containing information on those acquisitions for which we are accountable.

The following table summarises the possible scenarios:

You are the end-investor ISP	Transaction executed with an ISP	Euroclear Bank is the Accountable Party	Comments
No	Yes	No	We consider that the ISP has declared and paid the FTT
Yes	Yes/No	No	We consider that the ISP has declared and paid the FTT
No	No	Yes	You must send us the necessary information in the form of a FTT Declaration with Euroclear Bank as the Accountable Party. Note: we have created an FTT Declaration template for this purpose. It is available on our FTT page.

2. Overview of the FTT process

1. You upload your FTT Declaration using the Euroclear SelfService Centre (ESSC).
2. We carry out technical and functional validations (**Note:** we do not check the content of your FTT Declaration).
3. We transmit your FTT Declaration to Euroclear France and report the validation results to you. The FTT Declarations will be stored for audit purposes.
4. Based on the tax amount you provided in the FTT Declaration, we will debit your cash account.

3. Timing and deadlines

You can already start sending us your FTT Declarations.

Our testing environment is available since 11 October 2012 and remains available after the launch of the service.

Schedule	Acquisition date	Declaration deadline	Cash debited
Interim	between 1 August and 31 October 2012	11:00 on 9 November 2012	9 November 2012 (around noon)
Standard	On or after 1 November 2012	11:00 on the 4th calendar day of the month following the month of acquisition (M+1) *	4th calendar day of the month following the month of acquisition* (around noon)
Late declarations	Previous month	Upon receipt, we will send declarations to Euroclear France	Reasonable-effort basis. Once a day, we will debit your account and transfer the tax amount to Euroclear France.
On time Declarations with no cash/ credit in your account	Previous month	Upon receipt, we will send declarations to Euroclear France	Reasonable-effort basis. Once a day as from the 9 November (interim schedule) or 4th CD of M+1 (standard schedule), we attempt to debit your account. If no cash or credit is available, we will not transfer the tax amount to Euroclear France and attempt the debit the next day.

* The month of acquisition is the month when the declared transaction settled. If the day on which the deadline falls is not a business day, the deadline will be the next business day.

All FTT Declarations uploaded via the ESSC and which passed our validations will be transmitted on an ongoing basis to Euroclear France. We do not wait for the monthly deadline to transmit the FTT Declarations to Euroclear France.

Inflow of FTT Declarations

We will take into account FTT Declarations that have been successfully validated by Euroclear France no later than 11:30 (Brussels time) as we have to process the payment of the tax amount to the French tax authorities on the same day.

When uploading your FTT Declaration via the ESSC, your FTT Declaration will be assigned the 'processed' status. This means that we acknowledge the receipt of your FTT Declaration and that it will be submitted for further validation.

If your FTT Declaration is assigned a 'failed' status, you will have to re-submit your FTT Declaration again as the upload of the declaration was not successful.

Outflow of FTT Declarations

We will send you the results of the Euroclear France validation process as soon as we receive them.

We expect a peak of activity around the deadline date in Euroclear France. This may delay the validation process and the receipt of the validation feedback.

Therefore, we strongly advise you to send the FTT Declaration as soon as available and ahead of the Euroclear Bank deadline as we cannot guarantee that Euroclear France will process and validate the FTT Declaration within the deadline.

First FTT Declaration deadline

The interim schedule set by the law foresees that the acquisitions made between 1 August and 31 October 2012 must be declared and paid by the **9 November 2012**.

Given expected peaks around the first declaration deadline, Euroclear France has published a set of golden rules to:

- increase straight-through processing
- prevent late FTT Declarations
- avoid related penalties foreseen by the FTT Law

We strongly recommend you to apply the following golden rules, despite the fact that our deadline of 9 November for sending us your FTT Declaration(s) will not change.

We will debit your account on 9 November 2012 with the relevant FTT payment amounts for the months of August, September and October.

Rule No.	Related to	Rule	Comments
1	Testing	Ensure that you have performed successful end-to-end testing of all FTT messages before the launch in production.	
2	FTT Declarations for August and September 2012	Send your FTT Declarations for transactions settled in August and September no later than Wednesday, 31 October 2012.	By sending your FTT messages early, you will be able to correct and re-send a new file in time should your initial file being rejected
3	FTT Declarations for October 2012	Send your FTT Declarations for transactions settled in October 2012 no later than Tuesday, 6 November 2012.	By sending your FTT messages early, you will be able to correct and re-send a new file in time should your initial file being rejected
4	Important format specifications	FTT Declarations – for August, September and October, the payment month indicated in the FTT Declaration must be 'November 2012'	Any different value will result in rejections or an anomaly reported to the French tax authorities.

4. Fees

The fee we apply is to cover our running costs for the FTT. **Note:** the use of the ESSC is free.

We will:

- charge a fee for the **processing** of the FTT Declaration and payment. We currently consider :
 - a fee per FTT Declaration
 - a fee per declared transaction

Today, there is no viable means to anticipate the volumes of transactions that will be declared. In early 2013, we will define an appropriate pricing based on the activity of November and December 2012. The fees will not be charged retroactively.

- charge a keying fee for **manual operations** (e.g. cancelling your FTT Declaration). Similarly, those fees will not be charged in 2012 and will only be defined early 2013.
- re-charge the fees applied by Euroclear France. The Euroclear France fees will be charged retroactively, meaning that we will only know in January 2013 how much we will re-charge you retroactively for 2012:
 - a **fee per transaction declared**. Euroclear France recently published that this fee would be between 0.01 euro and 0.04 euro but the exact fee will only be defined in January 2013 based on the assessment of the first months of activity
 - a **manual processing fee**
 - a **late payment fee**. When the tax is paid after the payment deadline of 4th day of the month following the acquisition. **Note:** Euroclear France will not charge any late payment fee for the two first payments of the year (November and December 2012)
- recharge any penalty incurred

Given that the Euroclear France fee is undetermined, we will communicate on the pricing applicable to you in December 2012. The first fees will be charged in your January 2013 invoice. The Euroclear France fees applicable for the activity of the year 2012 will be charged in the monthly invoice of March 2013.

We will confirm the applicable fees in a future Newsletter.

Any questions?

If you have any questions on the content of this Newsletter, please contact your Account Manager.

Documentation

The information in this Newsletter amends and supplement the information on euroclearbank.com under **Markets > France**.

Use of the intended settlement date option to determine when the FTT is payable

More about the option

What is the option?	Accountable Parties have the option to apply the intended settlement date to determine the chargeability of the FTT instead of using the actual settlement date.
When is the intended settlement date?	<ul style="list-style-type: none"> • acquisitions on a regulated market: usually the third day following the transaction • over-the-counter acquisitions: the date bilaterally agreed as set forth in the contract
Who must notify?	The legal representative of the Accountable Party.
Who should be notified?	<ul style="list-style-type: none"> • Euroclear France, except if the Accountable Party is in a situation provided for in the last two paragraphs of section VII of article 235 ter ZD of the General Tax Code (direct return and payment to the tax authority) and • the French tax authorities
When to notify?	The notification must be sent before the 25th day of the month preceding the effective date. The date of sending to the French tax authorities (post stamp or equivalent proof) will prevail.
When is the effective date of the option?	As from the transaction on the first day of the month following the notification. Note: during the transition period, in agreement with the French tax authorities, any option letter received before 25 October 2012 will have a retroactive effect from 1 August 2012.

Notification requirements

The notification must be established according to the following guidelines:

Form of notification	<ul style="list-style-type: none"> • In duplicate form (for Euroclear France and the French tax authorities) • On the letterhead of the Accountable Party • Sent via registered mail with an acknowledgement of receipt
Language	French or English
Content	<ul style="list-style-type: none"> • The Accountable Party must specify that it opts to apply the intended settlement date to determine the chargeability of the FTT • Name and address of the Accountable Party • One of the following: <ul style="list-style-type: none"> - BIC of the Accountable Party - intra-community VAT number of the Accountable Party - national corporate registration number (former SIREN code) • Date
Signature	Signed by the legal representative of the Accountable Party. The latter must declare and warrant that it is duly authorised to provide such a notification letter in the name and on behalf of its company.
Recipients	<p>Euroclear France Direction des Opérations Département Règlement/Livraison – Service TTF 66 rue de la Victoire 75009 Paris France</p> <p>Ministère de l'Economie et des Finances Direction des Grandes Entreprises 8, rue Courtois 93505 PANTIN Cedex France</p> <p>Important note: Accountable Parties should not send their notifications to Euroclear Bank. If we receive a notification letter, we will forward it, on a best-effort basis, to Euroclear France without checking the content.</p>

How to withdraw from the option?

By sending a letter announcing your withdrawal to the same recipients, using the same form and conditions as the option letter.

Important note

The Accountable Party is responsible for the content of the notification letter. Euroclear France will not perform any specific control or follow-up on the content of the letters received or process any specific treatment of these documents. Euroclear France will keep the notification letters received until revocation by the Accountable Party.