

Euro Tax Flash

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Euro Tax Flash from KPMG's EU Tax Centre



EU Council progress on EU Financial Transaction Tax

[FTT – enhanced cooperation – ECOFIN](#)

On May 6, 2014 the Council of the EU (ECOFIN) addressed the proposal for a Directive on a Financial Transaction Tax in 11 EU Member States, that was proposed by the EU Commission in February 2014. Although the details of the proposal are still under discussion, it appears that participating Member States would like to implement a scaled down version of the original proposal as from 2016.

Background

The decision to authorize 11 Member States to move forward with a common financial transaction tax under the enhanced cooperation procedure was taken on January 22, 2013, by the Economic and Financial Affairs (ECOFIN) Council of the EU. This followed discussions at which it had become apparent that there was no unanimous support among EU Member States for such a tax. Enhanced cooperation provides a mechanism for a limited number of Member States (at least 9) to adopt measures that only apply to those Member States, subject to complying with certain procedural and legal requirements. On February 14, 2013 the EU Commission

issued a revised proposal for a Directive to introduce a common FTT in the 11 Member States concerned (Austria, Belgium, Estonia, France, Germany, Greece, Italy, Portugal, Slovakia, Slovenia and Spain). This was largely based on the original proposal, but with revisions to reflect the fact that not all EU Member States would apply the tax.

Scope of the FTT as proposed in 2013

Under the proposal as drafted by the EU Commission in February 2013, the tax would be imposed on transactions involving one or more financial institutions. It would apply to all kinds of financial instruments, such as shares, bonds and derivatives. The FTT rate proposed was a minimum rate of 0.1%, or 0.01% for derivatives. The tax would be levied on financial institutions established (or deemed to be established) in one of the participating 11 Member States. A financial institution could be deemed established in a participating Member State in a variety of circumstances, including by being a counter-party to a transaction with a financial institution that was actually established in such a Member State, or where the instrument was issued by an entity so established. These rules have proved controversial and led to a legal challenge by the UK government that they infringed EU law. This action was rejected by the CJEU on procedural grounds on April 30, 2013 (see [Euro Tax Flash 225](#)).

ECOFIN Position

Notwithstanding the opposition shown by the non-participating Member States, the 11 participating Member States are determined to implement the FTT as from 2016. The tax will be given a narrower scope than originally proposed and will, initially, be applied only to shares and certain derivatives. The participating Member States were also urged to keep the other Member States informed of any developments, since this tax will impact both participating and non participating Member States.

Next steps

The political will to proceed with this initiative is continuing and it now seems more likely that agreement will be reached on the broad design of the proposal. It will then be up to the EU Commission to draft a new proposal, taking into account the many technical issues that have been discussed between the participating Member States. The form of this new proposal is likely to be key in the UK's decision whether or not to launch a second legal challenge.

EU Tax Centre Comment

The outcome of the meeting will be disappointing to those who were hoping for a definitive decision on the EU FTT. However, this is not surprising given the many unresolved controversial issues

surrounding the initiative.

Should you require further assistance in this matter, please contact the EU Tax Centre or, as appropriate, your local KPMG tax advisor. Click [here](#) for KPMG's FTT contacts.

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