EU Tax Centre

Issue 188 – June 27, 2012

Council orientation debate of the EU Financial Transaction Tax (FTT)

Council of the EU – ECOFIN - FTT – consultation procedure – enhanced cooperation

Adoption of the FTT for all 27 EU Member States appears unlikely after a key orientation debate held in Luxembourg on June 22, 2012, by the Economic and Financial Affairs (ECOFIN) Council of the EU. The main focus of the discussions was the issue of 'enhanced cooperation', which allows a minimum of nine Member States to introduce a directive that only binds the participating countries. During the debate it appeared that there were ten Member States willing to consider such an approach, with most others adopting a wait and see position. Sweden maintained its categorical opposition to the proposal, while the UK continued to make any support conditional on adoption in other large financial centres.

No broad consensus was reached on alternative taxes such as a financial activities tax (FAT), the idea of implementing the tax on a step-by-step basis, a solution along the lines of the UK's stamp duty, or France's own FTT that is due to come into force on August 1, 2012.

Background

On September 28, 2011, the European Commission published a draft directive that would introduce an EU-wide FTT. Under this directive, the FTT would apply to a wide range of financial transactions involving financial institutions (broadly defined to include traditional financial institutions, but also holding companies, special purpose vehicles and any other persons who carry out certain significant financial operations), including the purchase and sale of financial instruments, the transfer of the risk associated to a financial instrument between members of a group (even if not part of a purchase/sale) and also the conclusion of derivatives agreements. The directive provides for a minimum FTT of 0.1% for standard transactions and 0.01% in the case of derivative agreements.

On May 23, 2012, the European Parliament (EP) voted in favor of the European Commission's Proposal for a Financial Transaction Tax (FTT), proposing certain amendments to the Commission's original text, including imposing the tax based on both the *issuance principle*, i.e. transactions that involve a financial instrument issued by an EU entity, and the *residence principle* as put forward in the Commission's Proposal, i.e. at least one party to the transaction is established in a Member State. The EP also proposed the introduction of a system that would ensure that a contract to buy or sell an instrument would only become legally enforceable once the FTT has been paid. Please note that the European Parliament's role in the legislative process for the adoption of the FTT is only consultative, with the Council of the EU as sole legislator.

Council orientation debate

The Danish presidency of the Council had initially expressed its intention to obtain recommendations on how to proceed with the Commission's proposal, i.e. whether to focus on a step-by-step approach starting with a narrow-based transactions tax (e.g. similar to a stamp duty) and/or to undertake a more in-depth examination of alternatives for regulating or taxing the financial sector. However, in light of the positions expressed by certain Member States (i.e. prior to the debate Germany had circulated a memo asking Member States for their views on the proposal to move forward under the enhanced cooperation procedure) and the Commission's input (articulated by the Commissioner for taxation and customs union, Algirdas Šemeta), participants were invited to express their views on whether the review of the FTT proposal should be continued, or if enhanced cooperation was the way forward.

In this context, the Austrian Minister of Finance, Maria Fekter, mentioned that ratification of the European Stability Mechanism (a crisis mechanism set up to safeguard financial stability in the euro area) by the Austrian Parliament depends to a certain extent on progress being made on the FTT. Austria therefore declared its support for the Commission's proposal and the possibility for some Member States to go forward under enhanced cooperation. Several other Member States (including Belgium, Cyprus, Germany, France, Greece, Poland, Portugal, Slovenia and Spain) stated that they are open to exploring whether enhanced cooperation is a possible way forward.

Although a number of representatives (from the Netherlands, Latvia, the Czech Republic, Slovakia) were of the opinion that while the point where it was clear that unanimity was unattainable had not yet been reached and therefore work on alternatives should continue, the presidency of the Council concluded the session by noting that the Commission's proposal was not unanimously supported by Member States. This paves the way for Member States that are willing to examine the option of moving forward under enhanced cooperation.

According to the representative of the Council's Legal Service, in order for the enhanced cooperation procedure to be implemented, at least nine Member States should send a letter to the European Commission indicating the scope and the objectives envisaged. The Commission may then decide to issue a proposal to authorize enhanced cooperation, verifying that the conditions for such a procedure are met.

EU Tax Centre Comment

The comments herein are of an indicative nature and are based on a webcast of the orientation debate held by the Council (ECOFIN) on June 22, 2012.

Should you require further assistance in this matter, please contact the EU Tax Centre or, as appropriate, your local KPMG tax advisor.

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