# EU FTT: EU-10 come together with further statement of political intent

*7 May 2014*

## In brief

The spotlight returned to Brussels yesterday as observers awaited an update on the latest developments on the EU Financial Transaction Tax ("EU FTT") at the ECOFIN meeting of finance ministers. This meeting followed last week's rejection by the Court of Justice of the European Union ("CJEU") of the UK's challenge to the introduction of an EU FTT. At yesterday's meeting, a statement ("the Joint Statement") by 10 of the 11 Member States signed up to the EU FTT ("the EU-10") was circulated to update all EU Member States on the status of the discussions between the 11 Participating Member States ("PMS"). Despite providing some information on the broad principles agreed for the EU FTT, including a phased introduction of the tax with equities and certain derivatives subject to the tax as a first step, those hoping for full clarity on the scope and operation of the regime would have been disappointed. In this sense, the statement represented little more than a further statement of political intent. What is clear is that much work remains to be done in order to introduce the first phase of the tax by the 1 January 2016 deadline announced yesterday.

### Yesterday's ECOFIN

Earlier this year, Germany and France reaffirmed their commitment to the introduction of an EU FTT and announced their intention to reach an agreement on the scope of the regime ahead of the European Parliamentary elections on 22-25 May. With last week's rejection by the CJEU of the UK's legal challenge to the introduction of an EU FTT, the stage was set for progress on the discussions on the EU FTT to be shared at yesterday's ECOFIN meeting.

At the meeting, the EU-10[1] made a joint statement providing a status update. This statement took the form of a one page briefing document which was provided to the non-Participating Member States shortly before the commencement of the meeting. It was notable that Slovenia, which is a member of the 11 PMS, did not sign the Joint Statement. This may in part have been a result of the current political situation in Slovenia, although the Slovenian Finance Minister was yesterday quoted as saying that the EU FTT does not make "economic sense", so it is also possible that Slovenia could drop out of the Enhanced Cooperation Procedure.

In addition to reaffirming their strong commitment to the introduction of an EU FTT, the statement covered four main areas concerning the scope and introduction of the tax:

- The tax will be introduced as part of a phased approach, with the first step consisting of a tax on equities and "some derivatives".
- Individual Member States will be free to continue to tax other financial instruments that are not included as part of the first phase of the EU FTT.
- Further technical work is required, with the aim of reaching a compromise by the end of 2014.
- The start date for the first phase should be no later than 1 January 2016.

These points are discussed in this Newsflash, together with our comments on what each means for the EU FTT and what affected institutions should be doing now.

[1] Austria, Belgium, Estonia, France, Germany, Greece, Italy, Portugal, Slovakia and Spain.

### *1. A "progressive" introduction*

The joint statement announced that the introduction of an EU-FTT would take place via a phased or "progressive" implementation. Under this approach the first step will be a tax on equities and "some derivatives".

*PwC comment*

This part of the statement does little more than confirm what many were already expecting.

One area that the Greek Presidency has been working on is the legal mechanism for a phased implementation and it remains to be seen how this would be achieved.

Despite confirming that equities and certain derivatives would be included as a first phase, a number of questions remain. For example, the statement provides no clarity on whether exemptions will be introduced. In particular, whether a form of market maker relief will be provided, and whether specific institutions (e.g., pension funds) will be exempted from the tax.

With respect to derivatives, although the implementation of the Italian FTT on derivatives has proved challenging for the industry, affected institutions are now familiar with a regime that taxes equity derivatives. It will be important to see whether an EU FTT derivatives tax introduced as part of a first phase covers equity derivatives only or wider instruments, such as interest rate or currency derivatives. To the extent such instruments are in scope this will prove very challenging for institutions at an operational level, and may have a significant knock-on implication for the non-FS sector, which in some cases use such derivatives as part of their treasury activities for hedging interest rate or currency exposure.

### *2. Potential for unilateral taxes*

The joint statement notes that the EU-10 may impose taxes that cover financial instruments which are not within scope of the first phase of the EU FTT, "in order to maintain existing taxes".

*PwC comment*

It will be important to see whether this proposal only allows jurisdictions to retain existing elements of domestic transaction taxes (as implied by the wording above) or allows for the introduction of new taxes beyond the scope of the agreed first phase. The former would allow affected institutions to better plan for what individual Member States may introduce as part of a first phase.

In either case, this statement raises the question of whether individual jurisdictions will want to bring in (or retain) taxes on instruments outside the scope of the first phase. Whilst doing so would potentially increase scope for revenue raising, securities issued in jurisdictions with a wider scope could become less competitive as compared with other Member States.

Any variation in approach across the EU-10 would also make compliance with the regime more difficult for affected institutions.

### *3. Further work required*

The EU-10 noted the need for further technical work to be conducted in order to be able to reach a compromise. This is to include further work on the economic impact of the regime.

The EU-10 stated their intention to conclude this work by the end of 2014, whilst also stating their intention to engage with, and take account of the concerns of, non-Participating Member States as part of this process.

*PwC comment*

It is not surprising, given the remaining material questions on scope referred to above, that the EU-10 recognised that much more work is required.

One key question remaining is whether the 'counterparty principle' (under which an institution outside of the PMS transacting with a counterparty in the PMS is subject to the tax) will be retained. The comment by the EU-10 that the concerns of non-Participating Member States will be taken into account could be seen as a signal that this counterparty principle will be removed, particularly given the UK's objection to this principle and the statement from the UK Treasury that it will challenge the final EU FTT Directive if it has concerns with its extra-territorial effect.

It is also worth noting that the UK was joined by other Member States in yesterday's meeting (including Sweden, Denmark, the Netherlands and Malta) in voicing strong concerns about the lack of transparency in the EU-10 discussions and requesting greater opportunity for engagement in the discussions.

Given these outcomes, despite the rejection of the UK's challenge last week by the CJEU on the grounds that it was premature, the UK may see this aspect of the Joint

Statement to some extent as a validation of its legal challenge.

### *4. A 2016 start date?*

Finally, the EU-10's statement noted that the first phase of the revised tax should be implemented no later than 1 January 2016.

*PwC comment*

Although 1 January 2016 is referred to as a "latest" start date, given the lack of agreement around the precise scope of the tax and all that needs to be done before the tax can be introduced, realistically it is unlikely that the tax could be introduced earlier than this date.

### *What should institutions be doing now?*

At one level, the outcome of yesterday's meeting provides little further clarity on many aspects of the EU FTT regime.

However, yesterday's meeting did establish that 10 Member States of the 11 PMS remain committed to introducing the tax and have signalled the broad principles of a first phase.

It now seems clear that this first phase will likely include a tax on equities and equity derivatives issued within the EU-10, perhaps modelled on the Italian FTT. Institutions can therefore start work, if they have not done so already, on reviewing their existing responses to the Italian (and French) FTT regime to evaluate whether this can be scaled up to deal with the eleven jurisdictions, and to start planning for remedial work should this be required.

## *Let's talk*

For a deeper discussion of how this issue might affect your business, please contact:

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