

Financial Services Tax News

The Financial Transactions Tax Latest developments

Special Edition: February 2012



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This Newsletter provides an update on the ongoing debate regarding the proposed introduction of a Financial Transactions Tax (FTT) within the EU. In this Newsletter we focus on how the debate has developed since December at the level of the EU, including the latest position across the Member States. We provide a brief overview of the proposed French transaction tax and what this might mean for the EU's proposals. Whilst the final shape of any FTT remains uncertain, it is clear that political will for the introduction of some form of FTT remains very strong. We have therefore commented in this Newsletter on where the proposals might ultimately land and the key dates over the next 6 months.
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The EU proposals

At the Cannes G20 Summit in November 2011, plans for a global FTT were put on the backburner. Focus on the FTT has returned to Europe as the procedural aspects required to introduce a FTT into law have continued and various national and EU institutions have contributed to the debate.

In summary, recent weeks have seen moves by certain EU countries to accelerate the process for introduction of a FTT, together with an increase in the likelihood of the introduction of a FTT under the EU's 'enhanced cooperation procedure'. The key developments were as follows:

- On 5 December, fiscal attachés of the Member States met in Brussels for an initial orientation discussion on the technical and practical aspects of the FTT.
- On the same date, the time limit for the eight week "yellow card procedure" expired. This procedure allows national parliaments to vote against Commission proposals on the grounds of subsidiarity and proportionality. However, since the number of votes against the proposals fell short of the 18 votes required to force the Commission to review the FTT proposals, the process for introducing an EU FTT was not interrupted.

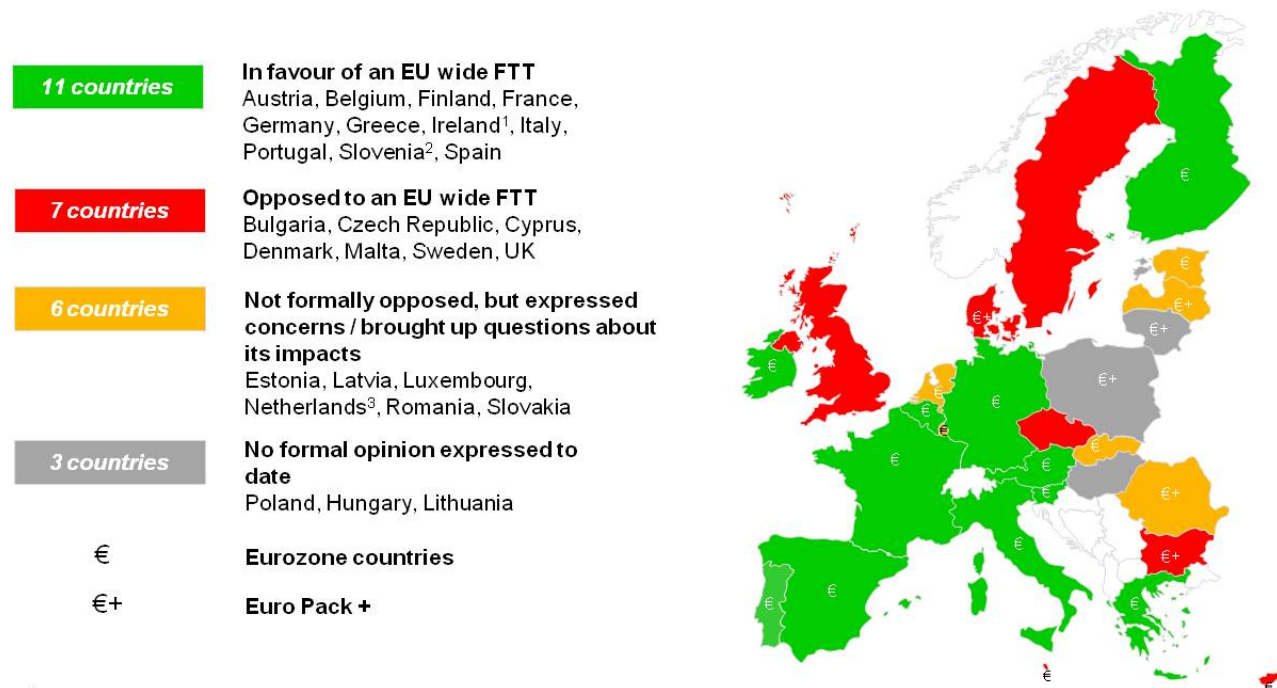
- At the EU Summit held on 8-9 December, EU leaders welcomed a report from the Finance Ministers of the 23 Euro Plus Pact countries and the Commission on the progress made on their discussions on tax policy issues. The Euro Plus Pact's focus is on the avoidance of harmful tax practices, fighting fraud and tax evasion, sharing of best practices and better tax coordination. A number of countries, including France, are keen to include financial sector taxation, including the FTT, in this dialogue. Finance Ministers and the Commission are to report on progress on these priority tax aspects of the Pact to the European Council in June 2012.
- Following the UK's exercise of its veto on further financial sector regulation and taxation from Brussels, 26 of the 27 EU Member States agreed to press ahead with an intergovernmental treaty instead. The treaty specifies that the Contracting Parties stand ready to make active use of the enhanced cooperation procedure on matters essential for the smooth functioning of the Euro region. Broadly, this procedure enables a subset of Member States to create EU law provided (1) at least 9 Member States support the proposal and (2) a qualified majority vote by all 27 Member States establishes at least 70% of the EU's population in favour. The procedure creates EU law which is only binding on the participating countries. The FTT is one of the three key EU proposals relating to tax that form part of the EU's strategy for dealing with the current crisis. For this reason, and given that EU legislative proposals on tax normally require unanimous support from all 27 Member States, the FTT is a likely candidate for enhanced cooperation following the UK's veto.
- On 7 February, a letter was sent to the Danish EU presidency by the Finance Ministers of 9 Member States (France, Germany, Italy, Spain, Austria, Belgium, Finland, Greece and Portugal) stating strong support for a FTT implemented at EU level and calling on the Danish presidency to accelerate the legislative process so as to allow for discussions on compromise proposals to start by Spring 2012. Whilst Denmark is opposed to a FTT, it has "welcomed" the letter and will be obliged politically to take this request further.
- In support of its EU-wide FTT proposal, the European Commission recently announced it is revising its initial impact assessment. The revised assessment concludes that a FTT would have a positive impact on EU GDP growth (contrary to the initial assessment which concluded that impact on GDP growth would be negative).

Discussions amongst EU Finance Ministers are expected to last until March 2012, the date that Ministers had set themselves as a deadline to reach an agreement on the FTT across the 27 Member States.

Continued disagreement amongst EU Member States

The debate around the introduction of an EU-wide FTT remains politically charged across the Member States. Denmark joined the UK, Sweden and some other countries in openly opposing the Commission’s FTT proposal. The new Italian Prime Minister, Mario Monti, stated that Italy has changed its position under his leadership and now supports a FTT at an EU level.

The latest position across the Member States in relation to the EU FTT proposals is summarised in the map below.



¹ Ireland is opposed to an Eurozone FTT but would be supportive if introduced on a global or EU-wide basis.

² Position of the former Slovenian government expressed in November 2011. No official opinion of the new government since then.

³ The Netherlands recently voiced concerns with the current proposal, while the Dutch Prime Minister stated he supports the proposal, unless it is introduced in only a few countries.

The current status of the EU FTT is based on the best information available to date. The positions expressed by some Member States have evolved over the recent months and may still be subject to change depending of the political debate. Therefore, this information must be carefully considered.

The French proposal

Overview: Given the difficulty faced in achieving a common agreement on the FTT across all EU Member States, and an eagerness to fulfil a promise to implement a FTT before the next presidential election in April 2012, President Sarkozy of France announced in January a plan to introduce a French financial transaction tax unilaterally. On 8 February, a bill was presented to the French Council of Ministers for a French transaction tax. For further details on the proposals, please refer to the following link:

<http://landwell.cabestan.com/french-financial-transaction-tax-proposal.cfm>

These proposals are very different to those put forward by the EU Commission. In particular, it is interesting to note the following:

- An exemption to the tax is proposed for market makers. Given that one key objective of the original EU proposals was to raise a “fair and substantial contribution” from the financial services sector, providing an exemption to market makers could be seen as being at odds with this objective.
- The types of transaction and types of business within scope of the tax are much narrower than those under the EU proposals. In addition, certain aspects of the French tax operate by reference to the location of the asset being traded rather than the location of the party trading the asset. For example, the charge

on acquiring shares applies to transactions over certain French equities rather than to transactions executed by parties established in France. This is opposite to the approach taken under the draft EU directive.

- Certain aspects of the French proposals are closer to the UK's stamp duty regime (in particular, the UK regime includes a form of exemption for market makers and typically applies, broadly, to purchases of shares which have been issued by UK companies).

What does this mean?: Given that France has moved first in presenting draft law for a transaction tax to its national parliament, it is conceivable that this may influence the debate over the form that any EU FTT ultimately implemented should take.

Given that Germany (together with France) was highly influential in the development of the draft directive as it stands, it is worth noting that Germany has reportedly been considering whether a tax more closely aligned to the UK stamp duty (perhaps along the lines of the French proposals) might work at an EU level.

Potential outcomes

- **Global adoption of a FTT:** This outcome remains highly unlikely given that there appears to be very limited support for a FTT by countries outside of the EU.
- **EU-wide adoption of the FTT as currently proposed:** Given the continued, stated opposition to the proposals by certain countries in the EU, including the UK, EU-wide adoption of the current draft directive continues to be highly unlikely.
- **Eurozone / subset of EU countries adopt the EU FTT as currently proposed:** Given the opposition of certain EU countries which would prevent adoption of the current draft directive at EU level, the ultimate outcome may be the introduction of a FTT amongst at least 9 Eurozone countries and possibly a number of other non-Eurozone countries under enhanced cooperation. However, even this alternative would likely be highly charged politically: certain Eurozone countries (e.g. Ireland) have indicated that they are reluctant to support a FTT without the UK in agreement, given the damage it could cause to their countries' financial centres and given the territorial scope of the current FTT proposals.
- **Adoption of a FTT akin to the UK stamp duty:** Given the UK's position that it will exercise its veto in relation of the current draft FTT directive, and the opposition of some EU member states to a FTT that is not adopted in the EU as a whole, there is some discussion of whether the FTT proposal should be redrafted to be closer in form to the French proposal and the UK stamp duty. If this were to happen it may be more difficult for the UK to veto a transaction tax that is similar to its own (i.e. the UK stamp duty). However, the UK could be expected to resist proposals for any transaction tax that is wider in scope than its own tax (for example, a tax that applies a charge to transactions over derivatives as well as equities).
- **Unilateral French transaction tax:** President Sarkozy is clearly committed to introducing some form of financial transaction tax, perhaps hoping that other Member States will follow his lead. The outcome of these proposals will clearly be dependent on the results of the French Presidential election, although it is worth noting that one of President Sarkozy's main rivals for the Presidency, Francois Hollande, has also publically stated support for some form of tax on financial transactions.

What happens next? Key dates to June 2012

The discussions amongst the EU 27 Finance Ministers in the coming weeks will be crucial for the future of the FTT in Europe. Given the divergence of views on the draft directive, there is clearly some way to go and further clarity is expected in the coming months. We have set out in the table below the key milestone dates for the FTT over the period to June 2012.

21 February	ECOFIN: preparation for the EU summit in March. The agenda for the summit includes discussion on the French-German proposals for enhanced tax coordination, including the FTT
28 February	Draft EU Parliament opinion on the FTT expected
1-2 March	EU summit: discussion on the French-German proposals for enhanced tax coordination, including the FTT
24 April	EU Parliament ECON committee vote on the draft EU Parliament opinion
12 June	EU Parliament Plenary vote
22 June	ECOFIN: orientation debate on the FTT
28-29 June	EU summit

For more detailed information, please do not hesitate to contact your financial tax services representative or any of the following members:

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