Latest developments on the EU Financial Transaction Tax – deciphering the Brussels labyrinth

Global FS Tax Newsflash

15 January 2013

Enhanced cooperation continues to be the most likely way in which certain Member States of the EU will adopt some form of Financial Transaction Tax (FTT). The ECOFIN Council vote on authorising enhanced cooperation is expected soon. After this, negotiations begin on the detailed shape of any EU FTT. The planned implementation date of 1 January 2014 will most likely be delayed and there are good opportunities for lobbying to shape the proposed FTT regimes over the coming months.

For enhanced cooperation to proceed, a number of steps must be taken. The European Parliament must first give its formal approval for enhanced cooperation, which is then followed by an authorisation vote in the ECOFIN Council.

Recent events

The European Commission prepared a draft Council Decision authorising enhanced cooperation and on 30 November 2012, the EU's Permanent Representatives Committee[1] decided, by simple majority, to send a letter to the European Parliament requesting its consent on the draft.

On 4 December 2012 the European Parliament's Committee on Economic and Monetary Affairs ("ECON") adopted its Recommendation on the proposal for a Council Decision authorising enhanced cooperation. This recommendation was formally adopted by the European Parliament in its Plenary Session in Strasbourg on 12 December 2012.

[1] The EU's Permanent Representatives Committee (COREPER) is made up of the heads or deputy heads of mission from the EU Member States in Brussels whose defined role it is to prepare the agenda for the ministerial Council of the European Union meetings.

Individual country positions

Now that the European Parliament has given its approval, the next step will be for the ECOFIN Council to authorize the start of enhanced cooperation through a qualified majority vote. Whilst it is expected that there will be enough support from the Member States for enhanced cooperation to be approved, a number of Member States have their own individual country concerns which does make the position less clear.

The UK wishes to know, in advance, the precise impact on the City of London or see a (substantive) new Commission draft Directive before it will agree/not vote against the proposals in the ECOFIN vote. Sweden and Malta are also reluctant to agree to the proposal before the impact is known for non-participating Member States.

The Commission, as well as France and Germany, are concerned that the wishes of these non-participating Member States could lead to a potential legal battle if mistakes are made in the enhanced cooperation process, and so the Commission will not present any amended substantive proposal before the ECOFIN vote has taken place.

The Netherlands has reiterated its interest in joining enhanced cooperation provided however, that Dutch pension funds are exempted. Whilst this seems unlikely under the existing Commission proposal, exempting pension funds has received support from the European Parliament. The new Dutch Government, which appears to be inclined towards a "FTT light" (for example, based on UK or French stamp duty), remains on the fence for now but will likely vote for authorising enhanced cooperation.

Denmark and Finland are expected to vote for enhanced cooperation, the latter having indicated that it will not join an EU wide FTT. Hungary, Latvia and Lithuania are also expected to vote in favour.

Poland, Romania and Cyprus are the "swing states" and wish to know the impact upfront. However, they are expected to give approval for authorisation.

Where is this heading?

On 9 January 2012, the European Commission reportedly informed the Council's tax working group that they are now willing to make changes to its original proposal to include:

- the addition of the issuers principle to the residence principle;
- a single and lower tax on repos;
- an exemption for the sale of UCITS shares/units.

Essentially, it remains up to the Member States (rather than the European Commission) to agree on the scope and objectives of the final proposal, which could be a "FTT light" model.

The French or UK stamp duty style FTT models appear to be likely candidates for the first step in a "step-by-step" procedure (the second step being possible implementation of a wider scope FTT - although there are currently no official talks about the scope and objectives of the EU wide FTT) and it seems that two camps are developing:

1. Proponents of a French or UK FTT style tax on shares, plus derivatives of shares, with a review clause in a couple of years to include new proposals by the Commission, an exemption for state bonds, an exemption for the issuance by UCITS, a single and lower tax on repos, and the addition of the issuers residence principle (as was proposed by the European Parliament). This group includes France, Italy, Portugal and Spain;

2. Proponents of a more ambitious proposal which stays close to the Commission's original proposal and goes further than a mere stamp duty. This group includes Austria, Greece and a number of Eastern European countries, which want to maximise FTT revenue.

Importantly, Germany does not appear to have decided on joining either group, although it is more likely to join the first group. Michael Sell, Head of the Tax Department at the German Federal Ministry, was quoted by Wirtschaftswoche as saying that he does not expect revenue from an FTT before 2016. Mr Sell believes that it could take 18 months to come to a final agreement plus a further 18 months lead time. Germany has reportedly not forcasted FTT proceeds for 2015, and Chancellor Merkel seems to be tying the fate of any EU FTT to the German general elections to be held in September 2013. Reaching agreement on a very light version of FTT ahead of the general elections may not be politically expedient for Chancellor Merkel and Wolfgang Schaüble as it could be dismissed by the opposition Social Democratic Party as not substantial enough.

What happens next?

The authorisation vote is now provisionally scheduled for the ECOFIN Council meeting of 22 January 2013 or 12 February 2013, although sources in Brussels hint that the COREPER meeting on 17 January 2013 might clarify whether the authorisation will pass or not. The general sense now is that the authorisation for enhanced cooperation will pass. Soon after this, the Commission will propose a "new" substantive FTT proposal which should largely be the same as the draft Directive for the EU-27.

Whilst the Commission's "new" proposal will form the basis for the final agreement, the ultimate wording of the measure will need to be agreed between the participating 11+ Member States, under the leadership of France and Germany. The Commission's proposal may therefore be considerably diluted.

The Council's Legal Service recently indicated that there is considerable scope for manouvre by the participating Member States, provided the measure remains a financial transaction tax. A stamp duty type tax (FTT light) could therefore, still be in scope.

Agreement on the substance of an EU wide FTT is not expected within the next 6 months, nor is the introduction of the EU wide FTT likely to be feasible for 1 January 2014 anymore, as was stated in the Commission's original proposal.

This opens up the possibility of more countries introducing local FTTs (following France, Italy and others). However, this does also increase the available time for financial institutions and companies to lobby to seek to refine the shape of any EU FTT regime.

As ever, financial institutions and companies should continue to monitor developments in this area closely.

PwC contacts

If you would like further advice or information in relation to the issues outlined above, please call your local PwC contact or any of the individuals listed below:

David Newton
Global FS Tax Leader
T: +44 (0)207 804 2039
david.newton@uk.pwc.com

Hans-Ulrich Lauermann
Global Banking and Capital Markets Tax Leader
T: +49 69 9585 6174
hansulrich.lauermann@de.pwc.com

Bob van der Made
EU Public Affairs Brussels
PwC Netherlands
T: +31 (0) 88 792 3696
bob.van.der.made@nl.pwc.com

Peter Barrow
Global Insurance Tax Leader
T: +44 (0) 207 904 2062
peter.barrow@uk.pwc.com

William Taggart
Global Asset Management Tax Leader
T: +1 646 471 2780
william.taggart@us.pwc.com

Frans Oomen
PwC Netherlands
T: +31 (0) 88 792 5156
frans.oomen@nl.pwc.com

Matthew Barling
PwC UK
T: +44 (0) 207 212 5544
matthew.barling@uk.pwc.com

Joseph Foy
PwC US
T: +1 (646) 471 8628
joseph.foy@us.pwc.com

Peter Yu
PwC China/HK
T: +852 2289 3122
peter.sh.yu@hk.pwc.com

Simon Leach
PwC UK
T: +44 (0)20 7213 4381
simon.j.leach@uk.pwc.com

Peter Churchill
PwC UK
T: +44 (0)20 7804 0865
peter.j.churchill@uk.pwc.com

PwC Singapore

Paul Lau
T: +65 6236 3733
paul.st.lau@sg.pwc.com

David Sandison
T: +65 6236 3675
david.sandison@sg.pwc.com

Gavin Helmer
T: +65 6236 7208
gavin.rh.helmer@sg.pwc.com

Tan Hui Cheng
T: +65 6236 7557
hui.cheng.tan@sg.pwc.com

Anuj Kagalwala
T: +65 6236 3822
anuj.kagalwala@sg.pwc.com

Tan Tay Lek
T: +65 6236 3768
tay.lek.tan@sg.pwc.com

Carrie Lim
T: +65 6236 3650
carrie.cl.lim@sg.pwc.com

Yip Yoke Har
T: +65 6236 3938
yoke.har.yip@sg.pwc.com

Lim Maan Huey
T: +65 6236 3702
maan.huey.lim@sg.pwc.com