

FTT Update

Significant Developments Expected on EU FTT

A significant number of EU Member States are expected to submit requests to use the Enhanced Cooperation Procedure (“ECP”) to implement FTT.

Executive Summary

It is anticipated that as many as 15 EU Member States will submit, on an individual basis, a request to the European Commission (“EC”) to use ECP in respect of FTT. These Member States are likely to include the majority of the Eurozone countries, although we understand that some Eurozone countries like Ireland, Luxembourg and the Netherlands still have significant concerns about the tax. The request for ECP would mark a significant new development toward the implementation of an FTT in the EU and an indication that there is significant political will behind this tax.

If the ECP is successful, then those who participate in it will be able to move forward with adopting FTT legislation locally.

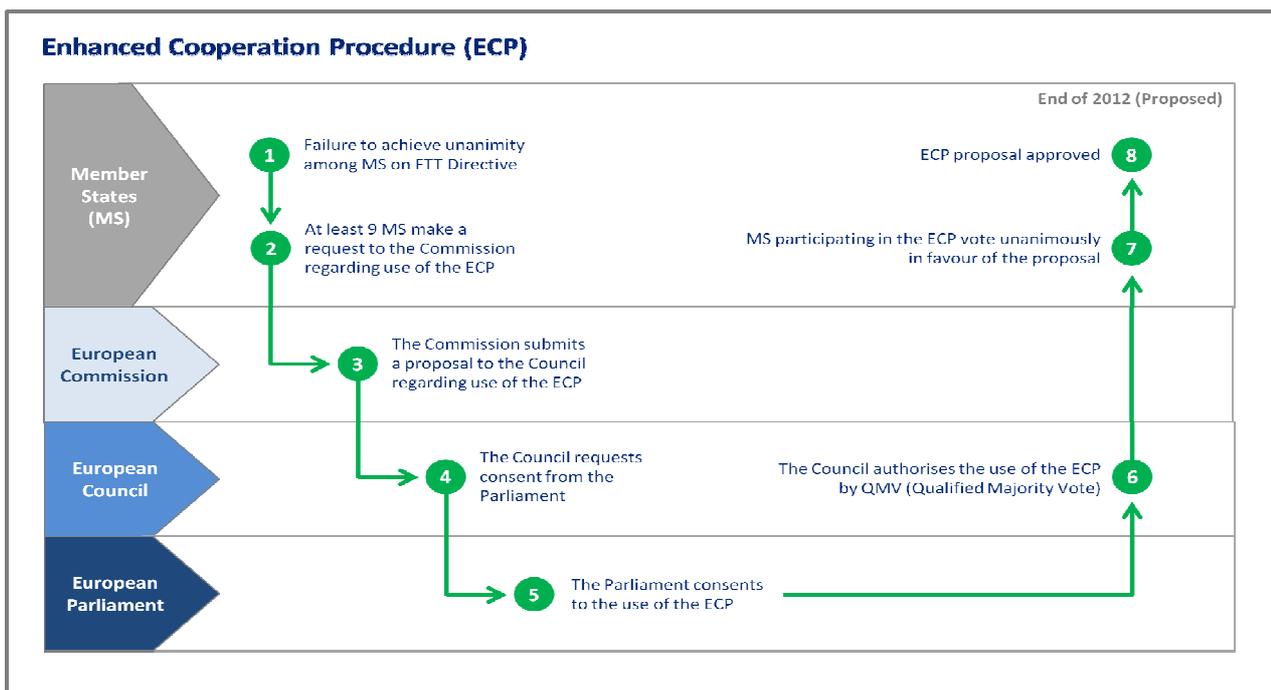
Background and Implications

The EC published draft FTT legislation on 28 September 2011 that was intended to apply to all 27 EU Member States (“EU 27 FTT”). This legislation immediately became subject to intense political debate. In late June 2012, following ECOFIN and the European Council (“the Council”) meetings, it was concluded that an FTT could not be achieved across all 27 EU Member States within a reasonable period of time. The Council and ECOFIN recognised however that several Member States wished to launch a request for ECP in regard to FTT with a view to its adoption by the end of 2012.

ECP: Overview

ECP is a legislative procedure that is to be used as a last resort. Member States can use it when a group of them want to implement a piece of legislation, but cannot do so because the legislation is unable gain unanimity among all 27 EU Member States.

ECP has been used only twice before and never for a tax matter. Therefore, it remains untested in this area and there is a certain degree of uncertainty surrounding the use of this procedure. However, we expect it to work as follows:



There are two items of particular note in the above chart. One is that the ECP process includes the use of QMV, which allows the Council to approve the ECP FTT proposal without obtaining the unanimous consent of all Member States. The other is the requirement that the ECP FTT receives a unanimous vote by the Member States that wish to implement the legislation. This is a highly political process, so additional discussions on the tax which could influence its outcome are expected.

What's Next?

Once the participating Member States have submitted their petitions, the EC's proposal to the Council (step 3 above) should contain key details on the tax. This would allow businesses to begin planning for it. Planning for the tax from the earliest possible moment is crucial in order to be ready for its introduction.

Details on what the ECP FTT will look like and the date on which it will be implemented are still unknown, but the legislation is expected to be based on the EU 27 FTT legislation from September 2011 and the discussions from the Technical Working Group on this topic. We understand that this group considered issues such as the scope of the tax (the types of trades it will apply to – equities, bonds, derivatives, etc.) and how to tax these trades (on an issuance basis or on a residence basis), but no clear outline on the design of the ECP FTT has been provided to date.

What Should Businesses be Doing?

Now that it is increasingly likely that several EU Member States will implement an FTT, businesses (both within Member States that may implement the ECP FTT and those outside of this region) should monitor developments very closely and increase the profile of this tax within their finance function and relevant business units. Additionally, businesses should begin setting the groundwork internally to undertake an impact analysis once details of the tax become clearer. The aim of such an analysis is to understand the steps required to achieve compliance, and then implement these steps by defining the products that could be affected, reviewing current systems architecture and undertaking the level of change needed. Evidence from the introduction of FTT in France this year suggests that this could involve a significant amount of work.

Contact your local Deloitte advisor or any of those persons listed below for more information on FTT.

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