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Operational Tax News

European Update



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The revival of the EU Financial Transaction Tax

One year after the publication of the Commission's proposal for a directive on a EU-wide Financial Transactions Tax (FTT), the introduction of a FTT across Europe is still debated amongst Member States. The ECOFIN meeting held in Luxembourg on 9 October 2012 is a major step for the introduction of a FTT in Europe. **11 Member States have indeed confirmed their political commitment to the introduction of a FTT through the enhanced cooperation procedure.** The EU Tax Commissioner Algirdas Šemeta stated that a new FTT proposal would be published by the next ECOFIN meeting scheduled on 13 November 2012.

The EU-wide Financial Transactions Tax is dead...

In September 2011, the Commission released a **draft directive for the introduction of a EU-wide FTT**. This new tax has been identified by the Commission as a potential new own resource for the EU that would allow a corresponding decrease of Member States contributions.

Several Member States like the UK or Sweden however showed a fierce opposition and expressed their concern that the EU FTT could have an extremely damaging impact on EU competitiveness.

Given the difficulty faced in achieving a common agreement between the 27 Member States, the Danish Presidency to the EU finally concluded during the ECOFIN meeting held in June 2012, that the support for a FTT as proposed by the Commission is not unanimous. But this did not mean that the project of a EU FTT has been abandoned.

... Long live to the (mini) EU Financial Transactions Tax?

Several countries across Europe are still supporting the introduction of a FTT. Some of them even started to introduce or plan to introduce in their domestic legislations a

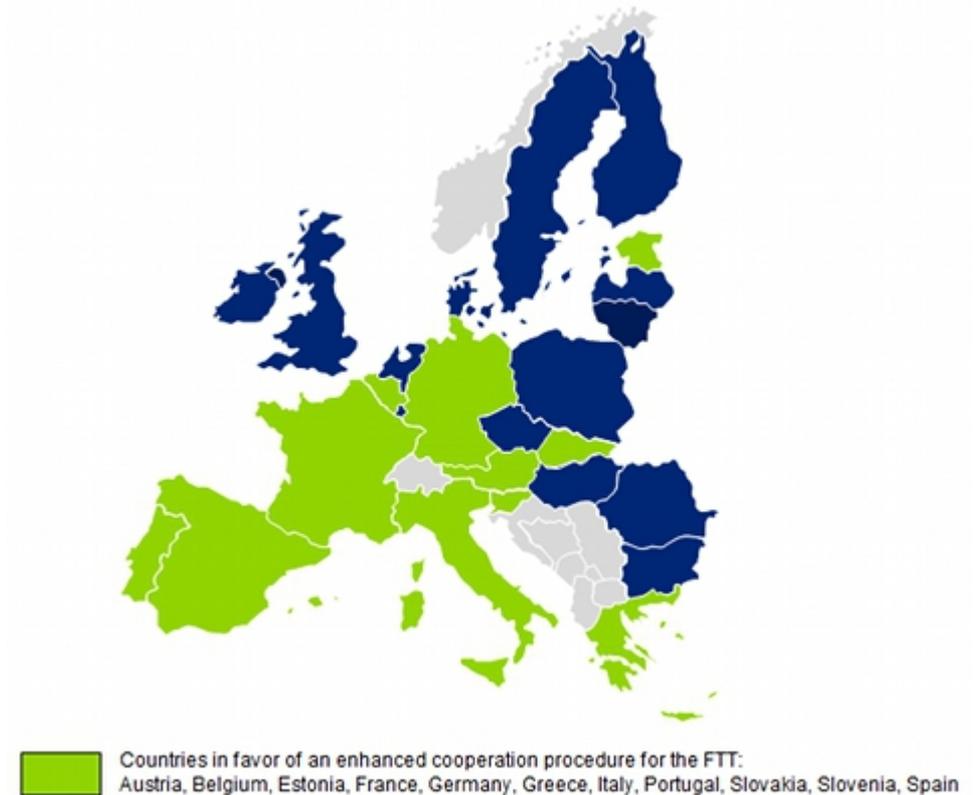
transaction tax unilaterally, e.g. :

- France introduced its own version of the FTT, effective from 1st August 2012.
- The Hungarian Parliament voted on a FTT, which will be introduced as of 1st January 2013.
- Spain has more recently released a bill for the introduction of a Spanish FTT similar to the French FTT

Considering the risk of increasing number of uncoordinated national measures across Europe, the idea to introduce a common system of FTT through the enhanced cooperation procedure is up in the air for a couple of months now. The **enhanced cooperation procedure** offers the possibility to Member States to establish closer cooperation between themselves on matters covered by the EU Treaties, using the institutions and procedures of the EU. The enhanced cooperation is subject to very specific requirements:

- It may be undertaken only as a last resort, when it has been established within the EU Council that the objectives of such cooperation cannot be attained within a reasonable period by applying the relevant provisions of the EU Treaties.
- At least 9 Member States must support the proposal.
- A Qualifying Majority Vote at the EU Council by all 27 Member States is also required: in other words, the proposal must receive the support of Member States representing at least 70% of the total population of the EU.

Following the ECOFIN meeting held on 9 October 2012, the EU Tax Commissioner Algirdas Šemeta confirmed that 11 Member States expressed their intention to join enhanced cooperation on FTT, while reminding those that stated it orally to formally confirm their position in writing. It remains however unclear as of today whether the 70% threshold will be achieved.



Luxembourg did however not formally join the enhanced cooperation.

Another element of uncertainty is the shape of the future tax. Even if Germany and France want that the scope of the new proposal to be based on the draft directive released by the Commission in September 2011, this still needs to be confirmed.

Next steps and impact for the Luxembourg financial place

Even if Luxembourg is not part of the enhanced cooperation, its Financial Services industry will be impacted directly or indirectly depending on the shape of the future tax. It is therefore crucial that all Luxembourg players stay abreast of the latest EU developments and understand the basics of the new proposal once released by the Commission. An impact assessment measuring the effects of the FTT on their business will be necessary to take appropriate actions and start lobbying.

We will keep you informed on any new developments in this regard.

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