

In this issue:

Financial Transaction Tax – The UK government launches a legal claim at the European Court of Justice against the EU FTT.

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Operational Tax News

FTT Update

6 May 2013

Financial Transaction Tax – The UK government launches a legal claim against the EU FTT

On 18 April 2013, the UK Government lodged a formal legal claim at the European Court of Justice against the introduction of the EU Financial Transaction Tax (FTT) under the Enhanced Cooperation Procedure. This claim is based on the grounds that the existing proposal will impact countries not taking part to the initiative. This casts more doubts on the likelihood of the EU FTT being introduced on 1 January 2014, as originally planned by the EU Commission.

Background

As a reminder, the EU Commission published in February 2013 a revised draft Directive backed up by a subset of 11 Member States, including France and Germany (the “Participating Member States” or the “FTT zone”).

Under the current proposal, a qualifying financial transaction entered into by a financial institution would be subject to the levy, provided that one of the parties to the transaction is established in a Participating Member State. However, the concept of establishment is defined so that any financial transactions entered into by a financial institution located outside the FTT zone would be subject to the tax provided that the other party to the transaction is established in a Participating Member State. In addition, the EU Commission added to this proposal the issuance principle in order to further prevent the avoidance of the tax. Hence, qualifying financial transactions entered into by two financial institutions, both located outside the FTT zone, would be subject to taxation provided that they involve financial instruments issued in one of the Participating Member States.

For further information, please refer to our previous newsletters via our website (see the link below).



The UK's claim

This legal claim follows a letter from the House of Lords to the UK Government dated 26 March 2013 which urged legal actions to be considered. The House of Lords pointed out that the UK authorities could be obliged to collect the FTT under EU Mutual Assistance Provisions, although they may not benefit from the revenues collected as it is not a Participating Member State.

George Osborne, the UK Chancellor of the Exchequer, stated that they are not in principle against financial transaction taxes, with reference to the UK Stamp Duty Reserve Tax in force for more than 25 years. They are, however, concerned about the extra-territorial aspects of the existing EU Commission Proposal in terms of both tax costs and collection obligations.

On 22 April 2013, Luc Frieden, Luxembourg's Finance Minister has demonstrated his support to the legal claim launched by the UK, during a conference held in London. Although Luxembourg has not formally joined the legal claim, it has clearly demonstrated its full support towards this legal action.

For the Luxembourg's Finance Minister, it is essential that the objectives of such tax are clearly identified and that its international impacts are also further assessed.

It is interesting to note that a spokesman of the EU Commission has communicated that the Commission is confident that the current proposal is legally sound.

Next steps

The UK Government has stated that it remains hopeful that concerns about the extra-territorial impacts of the EU FTT, in its current form, can be addressed via the on-going discussions and negotiations.

The UK claim will certainly be a topic for discussion at the next ECOFIN meetings where we anticipate an interesting debate between Participating Member States and non-Participating Member States on the extra-territoriality rules. This may end up reshaping partially the proposed tax.

For your information, the next meeting is scheduled for the 15 May 2013.

Finally, one can reasonably expect that the original proposed implementation date of the 1 January 2014 may be postponed.

Stay up-to-date of the latest developments via our FTT website by clicking on the link below and do not hesitate to register to receive our FTT Newsletters.

http://www.deloitte.com/view/en_LU/lu/market-challenges/financial-transaction-tax/index.htm

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