

FTT newsletter

UK Government's formal legal challenge to use of enhanced co-operation procedure to introduce EU FTT.



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Following our 'STOP PRESS' alert on Friday, we now bring you a few more details on the legal challenge lodged by the UK against the FTT.

To discuss any aspect of FTT please contact your usual Deloitte contact or **Martin Walker** on +44 20 7303 7644.

EU FTT

On Thursday 18 April 2013, the UK launched a formal legal challenge against the use of the enhanced co-operation procedure ("ECP") to introduce the EU FTT. This date was thought to be the deadline for the filing of such a challenge. 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 through the on-going negotiations and discussions.



The Chancellor of the Exchequer said in an interview "We're not against financial transaction taxes in principle ... but we are concerned about the extra-territorial aspects of the (European) Commission's proposal for the tax and I think that concern is shared by some other countries". Countries which are known to have expressed reservations about the EU FTT include Ireland, Luxembourg and Sweden.

The UK Government's challenge is based upon the use of ECP despite the impact of FTT on non-participating Member States in terms of both potential tax cost and collection obligations. Articles 326 and 327 of the Treaty on the Functioning of the EU state "such cooperation shall not undermine the internal markets or economic, social and territorial cohesion ... Any enhanced cooperation shall respect the competences, rights and obligations of those Member States which do not participate in it." There is little precedent in this area, as ECP has only been used on two previous occasions (in the fields of divorce and patent law).

This legal challenge follows the House of Lords' letter to the UK Government which urged legal options to be considered. The House of Lords made the point that the UK authorities could be obliged to collect the FTT under Mutual Assistance Provisions, but, as it was not a participating Member State, may not benefit from the revenues collected.

While at this stage the impact on the introduction of the EU FTT remains unclear, in terms of the timing, the UK's legal challenge casts more doubt on the likelihood of the EU FTT being introduced on 1 January 2014 as the European Commission had originally intended. It may potentially have the effect of encouraging amendments to the FTT directive outside the formal ECP process and ensuring the involvement of non-participating Member States in the design of the FTT.

A spokesman for the European Commission has stated that the Commission is confident that the proposed FTT is "legally sound". A challenge to one of the previous uses of ECP was unsuccessful, although it is thought that the ramifications of the FTT for the functioning of the internal market are markedly different than in that case.

We will of course keep you updated with developments in this area through our regular FTT newsletters.

A list of Deloitte's [FTT contacts](#) across Europe can be found here along with a link to the [FTT website](#).



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Director

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