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FTT newsletter

A round-up of FTT developments across Europe



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Various media sources report that a document originating from the Legal Service of the Council of the European Union has called into question the legality of the FTT insofar as it might apply to parties outside the FTT zone. The document takes the view that the imposition of the FTT on financial institutions deemed to be established in the FTT zone by virtue only of the location of their counterparty would breach EU law, and reaches this view on a number of different grounds. This might give participating member states further cause to reconsider the proposed scope of the FTT. This opinion is confined to the deemed establishment of non-FTT zone financial institutions and does not comment on the legality of other aspects of the FTT directive.

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

Please feel free to forward this newsletter onto any of your colleagues. Please also see our FTT website where you can access past editions of this newsletter and find other FTT related material.

EU FTT

The document specifically deals with Article 4(1)(f) of the proposed FTT directive of February 2013 (“the FTT directive”). This provision deems a party not established in a member state which adopts the FTT and that transacts with a financial institution which is established in a participating member state, to also be established in that participating member state. For example, a UK bank entering into a financial transaction with a German counterparty would be deemed to be established in Germany for FTT purposes under Article 4 (1)(f).



The document offers the opinion that this provision:

- i. exceeds Member States’ jurisdiction under international customary law;
- ii. is discriminatory and likely to lead to a distortion of competition to the detriment of non-participating Member States; and

iii. is not compatible with Article 327 of the treaty of Functioning of the European Union which states *“any enhanced cooperation shall respect the competencies, rights and obligations of those Member States which do not participate in it. Those Member States shall not impede its implementation by the participating Member States”*

The third point is particularly noteworthy as the UK’s legal challenge against the use of the enhanced cooperation procedure (“ECP”) to introduce FTT is based on this argument.

It is however important to note that the document is non-binding. It remains for the participating Member States to decide how to implement the FTT directive. A spokesperson for the European Commission has already been quoted as saying that it “strongly disagrees” with the document.

It is worth emphasising that the document does not declare the whole FTT project to be illegal, nor the use of ECP, as it confines itself to the extra-territoriality of Article 4(1)(f). For example, nothing in the document calls into question the legality of an FTT which only applies to financial institutions established in participating member states or which applies to financial instruments issued in those participating member states (wherever the parties are located), similar to UK stamp duty reserve tax and the existing French and Italian financial transaction taxes.

If you would like a copy of the opinion, please **contact us**.



Martin Walker

Director

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