EU FTT: time for the EU-11 to "compromise" and "deliver"?

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In brief

All eyes were on Wednesday's Franco-German meeting to see if it would provide a catalyst for the EU Financial Transaction Tax (EU FTT). The German and French leaders publicly restated their commitment to lead the way on EU FTT and also offered a self-imposed, concrete timeline for a compromise proposal by May this year. Notwithstanding Wednesday's announcement, much remains to be done to reconcile the various stakeholder interests of the eleven Participating Member States (the EU-11) in order to progress with the implementation of an EU FTT. In light of this, it is now increasingly clear that a phased approach to introduction will be required, most likely with a tax on equities and possibly equity derivatives as a first step.

This week's developments

The FTT was one of the topics discussed at Wednesday's joint meeting of the French and German Councils of Ministers. Following this meeting, both France and Germany affirmed their commitment to agreeing a deal amongst the EU-11 on the scope of the EU FTT under enhanced cooperation – if possible - before the elections for the European Parliament in May.

Whilst this development sustains the political support in favour of the EU FTT, some observers had anticipated that further progress on the precise scope of the tax might have been achieved ahead of the Franco-German meeting. The EU FTT had been removed from the agenda for Tuesday's Economic and Financial Affairs (ECOFIN) Council, leading some to speculate that the negotiations may have reached a more advanced stage.

The outcome of the Franco-German meeting does not represent a substantive development in the implementation of the EU FTT other than a primarily symbolic restatement of leadership by the German and French governments. Nevertheless, it does signal progress given that in the latter part of 2013 German and French leadership on the detailed negotiations had been absent.

Furthermore, having announced an intention to lead the way, it would now be difficult for the French and German governments to fail in their stated objective.

In order to meet the May deadline, and in light of recent statements and work on the introduction of the tax (discussed below), it now seems certain that any adoption would involve a phased approach. The most likely starting point for this is a narrow-based tax on equity and possibly equity derivative products based closely on the regimes already introduced in France and Italy.

Even in the event that this type of narrow-based tax is agreed, three fundamental questions remain:

- Whether the counterparty principle will be retained (under which institutions outside of the EU-11 are brought within the scope of the tax when transacting with counterparties in the EU-11);
- whether the scope of the tax will include a market maker exemption (this will have consequences for the potential impact of the cascading effect of the EU FTT, as discussed in previous Newsflashes);
- whether the tax will provide exemptions for transactions by certain market participants, such as pension funds.

Wednesday's developments follow a week of intensive lobbying on both sides of the debate. Indeed, Chancellor Merkel's assertion that such progress ahead of the EU elections would represent an "important signal to the EU public" underlines the political interest that continues to drive the debate. During the discussion in the February Plenary Session of the European Parliament on 4 February 2014 (the Plenary Session), EU Tax Commissioner Šemeta cited a recent survey which found that 64% of the EU's population were in favour of an EU FTT.

EU Parliamentary debate

As part of the Plenary Session, Commissioner Šemeta pushed for a quick implementation of a broad scoped EU FTT, with reference to the European elections due to take place in May.

It was acknowledged in this session that introducing the EU FTT in a phased approach is likely to be the most effective and efficient way of implementing the tax. There was recognition that there was not sufficient political will to push ahead with the more ambitious proposal at this stage.

Mr Šemeta called on the EU-11 to now push to compromise and agree the form of the tax so that this can be implemented with speed, which was generally welcomed at the European Parliament. It should be noted, however, that the European Parliament's legislative role is confined to providing its (non-binding) opinion on the Commission's proposal, which it did last year.

Ongoing negotiations

As the EU's current Presidency, and as one of the EU-11 participating Member States, Greece has been taking a leading role recently in trying to reconcile the positions and drive a compromise agreement between the EU-11. Greece announced at the outset of its Presidency term that the EU FTT is one of three priority areas in taxation for the Presidency. In the Plenary Session, Greece reiterated its commitment to driving forward the proposed EU FTT.

In the most recent meeting of the Working Party on Tax Questions - Indirect Taxation (FTT), presided over by Greece, it was apparent that the Greek Presidency had picked up the baton from the Lithuanian Presidency and attempted to move forward in two key areas.

Firstly, they are focussing on the practicalities of the reporting and collection mechanisms required. This is being supported by a paper commissioned by the EU Commission on potential collection mechanisms. Consideration is being given to existing reporting requirements under regulations such as MiFID and EMIR, and how the reporting mechanism for EU FTT can utilise or have features similar to these existing reporting requirements. In this regard, the Presidency has encouraged the EU-11 to utilise the existing reporting infrastructure as far as possible.

The second area of focus from the Greek Presidency has been the legal process around the use of a phased approach. As noted above, this provides a strong indication that this approach will be used for the EU FTT.

However, it is interesting to note that the Greek Presidency has not sought to address the issues relating to the legality of the extra-territorial scope of the tax (although any such considerations would arguably be less acute if an issuance-based tax is introduced as the first step of a phased approach).

Timing of next steps

Even if agreement can be reached by the EU-11 ahead of May 2014, we still consider that the implementation date is most likely to be in 2016. This timing was reinforced by comments made this week by Michael Spindelegger, the Finance Minister of Austria, one of the EU-11 countries.

What should FS institutions be doing now?

The message to FS institutions remains the same: it is important to continue to closely monitor the developments over the coming weeks and months. In targeting a May agreement we expect a revised compromise text for a revised Directive to be developed in the coming months.

The ongoing discussion and debate around the collection mechanism has brought in to focus the overlap between the existing infrastructure being used for transaction reporting for other regulatory purposes and that which will be required for the EU FTT. In light of this, some institutions are beginning to consider in more detail how this interaction might work in practice.

FS institutions are also continuing to review existing responses to the French FTT and Italian FTT and to undertake remediation where required. Although this presents an opportunity to identify "lessons learned" in preparation for implementation of the EU FTT, most institutions are reluctant to go beyond tactical fixes at this stage, given the uncertainty that still surrounds the precise scope and timing of an EU FTT.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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