Ministers of participating Member States issue joint statement on the EU Financial Transaction Tax

On 6 May 2014, the Finance Ministers of Austria, Belgium, Estonia, France, Germany, Greece, Italy, Portugal, Slovakia and Spain issued a joint statement (the Statement) reaffirming their aim to create a harmonized taxation regime for financial transactions and to introduce an EU Financial Transaction Tax (EU FTT).

This Alert summarizes the key points covered in the Statement and addresses some issues and questions arising from this development.

Key points

The Statement covers the following points in relation to the EU FTT proposal:

▪ **Signatories:** 10 of the participating Member States (PMS) reaffirm their aim to create a harmonized taxation regime for financial transactions and to introduce an EU FTT.

▪ **Current status:** The Statement highlights the difficulties that have arisen to date in the deliberations on the Commission’s proposal, and the need to conduct more technical work.

▪ **Scope:** The PMS intend to implement the tax progressively i.e. on a step-by-step basis, with the initial focus on the taxation of shares and “some derivatives.” The Statement emphasizes that each step towards “full implementation” will take due consideration of the economic impact.

▪ **Timing:** The PMS are determined to “finalize viable solutions” by the end of December 2014, while taking into account the concerns of the non-PMS. The first step of the tax should be implemented by 1 January 2016 at the latest.
**Flexibility:** The PMS would be permitted to maintain taxation of instruments that were not within the scope of the tax levied under the initial step. So, for example, Italy currently taxes equity derivatives under its own domestic FTT rules in addition to shares, and therefore would be permitted to continue to do so, even if equity derivatives are not within the scope of the EU FTT following implementation of the initial step.

**Implications**

This Statement is essentially a political declaration which should be read in the context of the public commitments from France and Germany to try to achieve agreement between the PMS, at least at a high level, ahead of the elections for the European Parliament, which are being held on 22-25 May 2014.

**Basis of tax:** The Statement does not clarify the basis on which the tax will apply; i.e., whether the tax will be based on all or some of the issuance, residence or counterparty principles. In this regard, it is notable that the Statement acknowledges the need to take into account the concerns voiced by non-PMS.

**Have the PMS now been reduced to 10 Member States?** The Statement has only been signed by 10 countries only. Slovenia (previously included as a PMS) has not signed up to the Statement. While it was originally reported in some quarters that Slovenia did not sign the Statement because its Government had resigned and therefore there was no representative to agree to the Statement, the Slovenian media is now reporting that the Slovenian Government has changed its position and intends to exit the enhanced cooperation process. If Slovenia exits the enhanced cooperation process, it is expected that the process should be able to continue with the remaining 10 PMS. However, a minimum of nine Member States must be involved in the enhanced cooperation process. So this may encourage opponents of the tax to consider if they may be able to persuade an additional two PMS to exit, thus effectively terminating the enhanced cooperation process.

**Scope:** The Statement states that the initial focus will be on the taxation of shares and “some derivatives.” However, the Statement does not expressly confirm that the first step, to be implemented by 1 January 2016, will include derivatives. This is, however, implicit in the Statement and the inclusion of “some derivatives” in the first step was also supported by comments made by some of the Finance Ministers during the ECOFIN meeting held on 6 May 2014.

**Exemptions:** The Statement does not reflect the position of the PMS on exemptions from the EU FTT. This has been a key concern for the financial markets, given the almost complete lack of exemptions (in particular, for stock lending and repo transactions, intra-group transactions and for marketmakers/intermediaries) in the European Commission’s draft proposal of 14 February 2013.

**Timetable:** This is the first occasion on which the PMS jointly have committed publicly to a timetable for the EU FTT. A start date of 1 January 2016 is plausible, but it is notable that the Statement refers to 1 January 2016 as being the “latest” date for implementing the first step.

An earlier start date would be very ambitious given (i) the current limited agreement between the PMS, (ii) the time required to get a final EU FTT Directive duly adopted by the PMS, (iii) the time required to transpose that Directive into national laws (which would typically be at least six months from the date the Directive is passed into EU law), and (iv) further time needed for financial markets to implement the tax.
in its judgment on 30 April 2014 rejecting the UK’s challenge to the enhanced cooperation process with regard to the EU FTT, the Court of Justice of the European Union confirmed that the UK would be able to make a further challenge for annulment of any final FTT Directive should that be adopted.

The last legal challenge was solely filed by the UK. However, Sweden confirmed that it is moving closer to the UK’s position. The implication is that Sweden may be prepared to join a further UK challenge to the FTT if one were to be launched.

What next?

The PMS have not outlined publicly any timetable for progressing their discussions between now and the end of 2014 (the timeline for finalizing “viable solutions”). It is expected, however, that there will be intensive discussions, both at a political and a technical level, between the PMS, and among the Working Group on EU FTT that involves all 28 EU Member States, in order to get to a position whereby either a final EU FTT Directive will be adopted or a near final draft Directive will be published, by the end of 2014.

What steps can financial institutions take in the meantime?

There is now a valuable window of opportunity for financial institutions to influence the debate on the future of EU FTT proposal, including the shape of any EU FTT adopted by engaging with key government stakeholders.

What would happen if the PMS are unable to reach agreement in 2014 and the EU FTT is either abandoned or delayed?

Given the publication of the Statement, and the very public support given to the tax by the PMS, especially France, Germany and Spain at the ECOFIN, it appears that the prospect of some form of EU FTT being introduced in 2016 is a real one.

Nonetheless, the financial markets are also thinking hard about possible outcomes in the event that the PMS are unable to reach agreement in 2014 and the EU FTT is either abandoned or delayed. In that event, it is possible that individual Member States (such as France or Italy) could extend the scope of their existing FTTs or (in the case in particular of Spain or Portugal) introduce FTTs. However, it does not appear that any individual Member State is currently taking unilateral steps of this nature. However, it is entirely possible that this would be revisited should significant progress not be achieved before the end of 2014.
For additional information with respect to this Alert, please contact the following:

**Ernst & Young LLP (United Kingdom), London**
- Rod Roman +44 20 7951 1549 rroman@uk.ey.com
- Mark Persoff +44 20 7951 9400 mpersoff@uk.ey.com
- Geoff Lloyd +44 20 7951 8736 glloyd@uk.ey.com
- Nigel Nelkon +44 20 7951 6011 nnelkon@uk.ey.com

**Studio Legale Tributario in association with Ernst & Young, Milan**
- Marco Ragusa +39 02 881 4926 marco.ragusa@it.ey.com

**Ernst & Young Société d’Avocats, Paris**
- Matthieu Dautriat +33 1 55 61 11 90 matthieu.dautriat@fr.ey.com
- Nacéra Beniken +33 1 55 61 10 69 nacera.beniken@ey-avocats.com

**Ernst & Young GmbH Wirtschaftsprüfungsgesellschaft, Frankfurt**
- Volker Bock +49 6196 996 27459 volker.bock@de.ey.com

**Ernst & Young Abogados, Madrid**
- Adolfo Zunzunegui Ruano +34 915 727 889 adolfo.zunzuneguiruano@es.ey.com

**Ernst & Young, S.A., Lisbon**
- Nuno Bastos +351 217 912 000 nuno.bastos@pt.ey.com
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