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FTT Newsletter

A Round-Up of FTT developments across Europe

The UK Government's legal challenge against the use of the enhanced co-operation procedure ("ECP") to bring in the EU FTT has been rejected by the Court of Justice of the European Union ("CJEU"). Further details are provided below.

Separately, UK Stamp Tax has been abolished with effect from 28 April 2014 on UK securities traded on "recognised growth markets".

EU FTT

The UK Government had, on 18 April 2013, **lodged a legal challenge** against the decision by the Council of the European Union to authorise the use of the ECP to introduce FTT. The CJEU has today delivered its judgment, dismissing the UK's challenge on procedural grounds.

The UK Government's challenge was made on two grounds, namely:

1. The Council's decision is an infringement of Article 327 of The Treaty of Functioning of the European Union ("TFEU") and of customary international law insofar as use of the ECP authorises the adoption of an FTT which produces extra territorial effects outside the participating Member States seeking to implement the FTT. (Article 327 states that the use of ECP must respect the competencies, rights and obligations of non-participating Member States).

2. The Council's decision is an infringement of Article 332 of the TFEU as it authorises the adoption of an FTT which will impose costs on non-participating Member States.

At a high level, the UK objected to the use of the ECP by a minority of European Union Member States to implement a tax which would (due to the size of the UK's financial markets activities) disproportionately fall on UK business and investors, including the cost of collecting FTT on behalf of foreign exchequers. The UK acknowledged that the challenge could be considered to be premature, but was a precautionary measure (and was made at that time to avoid the risk of missing a deadline to challenge the use of ECP to introduce FTT).

The CJEU rejected the first of these challenges noting that the Council has only authorised the participating Member States to proceed with the FTT, and that the UK's challenge was not effectively aimed at the Council's authorisation. The CJEU noted *"It is clear that the objective of the contested decision is to authorise 11 Member States to establish enhanced cooperation between themselves in the area of the establishment of a common system of FTT with due regard to the relevant provisions of the Treaties. The principles of taxation challenged by the United Kingdom are, however, not in any way constituent elements of that decision."*

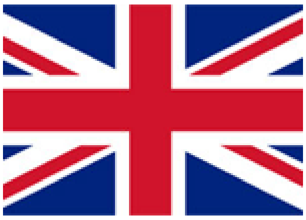
The second challenge was dismissed on the grounds that there are presently no details as to what costs would be borne by what parties. The CJEU noted *"the contested decision contains no provision related to the issue of expenditure…"*

It is clear that the CJEU regards the action taken by the UK Government as premature as it is based on a tax which neither yet exists nor is there any detail on what the final tax would look like. Therefore the CJEU's judgment today is not a vindication of the FTT project as a whole and potentially leaves the door open to a further challenge by the UK Government at a later date, once there have been more concrete developments in relation to what the FTT will look like and how it will be enforced (particularly outside the FTT zone).

The CJEU's judgement will undoubtedly come as a boost to the participating Member States and the European Commission. **It has been previously reported** that a political agreement between members of the FTT zone has been reached. This agreement, as reported, is that the tax would apply initially to equities and derivatives (bonds excluded) and be imposed on an issuer basis. Further announcements are expected following the ECOFIN meeting due to be held on 6 May 2014.

We will, of course, continue to keep you updated on key developments.

UK



With effect from 28 April 2014, the UK Government abolished Stamp Duty and Stamp Duty Reserve Tax on UK shares traded on "recognised growth markets" (save for stocks also listed elsewhere). Five growth markets are currently recognised by HMRC as being growth markets, including the Alternative Investment Market ("AIM") and ICAP's Securities and Derivatives Exchange ("ISDX"), although further markets can apply to the UK tax authorities for this status. The UK Government took this action to boost investor participation in equity growth markets and improve the conditions for growing companies to raise equity finance. It is noteworthy that this move by the UK Government is consistent with French FTT and Italian FTT which only apply to equities issued by companies with a market capitalisation of over EUR1 billion and EUR500 million respectively.

However, the EU FTT, as proposed, does not contain a de minimis and would apply to equities regardless of the size of the issuing company, if introduced in its current form. This seems to be contrary to the market trend to encourage equity investment by exempting "small cap" stocks from transfer taxes.