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NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

Subject: Enhanced cooperation in the area of Financial Transaction Tax

- Proposal for a Council Directive implementing enhanced cooperation in the area of Financial Transaction Tax
- = State of play

I. INTRODUCTION

1. On 28 September 2011, the Commission tabled a proposal for a Council Directive on a common system of financial transaction tax (FTT) and amending Directive 2008/7/EC. The objective of the proposal was to ensure a fair contribution of the financial sector to the costs of the financial crisis, avoid fragmentation of the Single Market and create appropriate disincentives for transactions that do not enhance the efficiency of financial markets. At the Council meetings of 22 June and 10 July 2012 and at the European Council meeting on 28/29 June 2012, it was ascertained that essential differences in opinion remained as regards the need to establish a common system of FTT at EU level and that the proposal would have not received unanimous support within the Council in the foreseeable future.

2. On the basis of the request of eleven Member States (Austria, Belgium, Estonia,¹ France, Germany, Greece, Italy, Portugal, Slovakia, Slovenia and Spain - hereafter referred to as "participating Member States"), and in accordance with the authorization of the Council of 22 January 2013,² which was adopted following the European Parliament's consent given on 12 December 2012, the Commission on 14 February 2013 submitted a proposal for a Council Directive implementing enhanced cooperation in the area of financial transaction tax (hereafter referred to as the "Commission proposal"). This Commission proposal, essentially, mirrored the scope and objectives of the original FTT proposal put forward by the Commission in 2011.

II. STATE OF PLAY

3. Following the preparatory work by the Working Party on Tax Questions (WPTQ), and, where relevant, by the High Level Working Party on Tax Questions (HLWP), the state of play on this dossier has been discussed at the following meetings of ECOFIN Council:
- 6 May 2014, where the Ministers of ten participating Member States (without Slovenia) released a Joint Statement;³
 - 7 November 2014,⁴ 9 December 2014,⁵ and 8 December 2015,⁶ on the basis of the Presidency reports;

¹ On 16 March 2016, the Republic of Estonia has completed the formalities required to leave the enhanced co-operation on FTT. See doc. 7808/16 FISC 47 LIMITE.

² OJ L 22, 25.1.2013, p. 11.

³ See doc. 9399/14 FISC 79 ECOFIN 445 and doc. 9576/14 PV/CONS 22 ECOFIN 460.

⁴ See doc. 14949/14 FISC 181 ECOFIN 1001.

⁵ See doc. 16498/14 FISC 222 ECOFIN 1159 and doc. 16753/14 FISC 230 ECOFIN 1188 CO EUR-PREP 50, points 36 to 46.

⁶ See doc. 14942/15 FISC 181 ECOFIN 947.

- 17 June 2016,⁷ where, as a follow-up to the statement of ten participating Member States (without Estonia) that was inserted into the minutes of the 8 December 2015 ECOFIN,⁸ the Council took note of the state of play on this dossier regarding a number of selected issues, namely:
- a) application of "issuance" and "residence" principles and the territorial scope for the FTT;⁹
 - b) exemption from FTT of market making activities;¹⁰
 - c) scope of transactions in derivatives contracts to be subject to the FTT.¹¹
4. The process that has started in 2015, where "the WPTQ discussed the constitutive parts (the "building blocks") of the FTT and the assembly of those "building blocks" into possible FTT models",¹² has also continued under the Slovak Presidency. At the initiative of the participating Member States, further progress could be demonstrated at the WPTQ level on a number of elements of the FTT, which are deemed to be of high importance (the "core engine") for further work on further refining the remaining aspects of the future FTT and drafting a legislative text of the Directive.
5. Moreover, the participating Member States have presented to the WPTQ their findings relating to cost efficiency of FTT collection, as the discussion at June 2016 ECOFIN has shown a need for further reassurance that the tax can be collected in a cost-efficient way.

⁷ See doc. 9602/16 FISC 90 ECOFIN 522.

⁸ See doc. 15112/15 PV/CONS 72 ECOFIN 961 ADD 1.

⁹ See doc. 9602/16 FISC 90 ECOFIN 522, point 6 to 8, and doc. 14942/15 FISC 181 ECOFIN 947, point 7 to 11.

¹⁰ See doc. 9602/16 FISC 90 ECOFIN 522, point 9 to 12, and doc. 14942/15 FISC 181 ECOFIN 947, point 15 to 17.

¹¹ See doc. 9602/16 FISC 90 ECOFIN 522, point 13 to 15, and doc. 14942/15 FISC 181 ECOFIN 947, point 18 to 19.

¹² See doc. 14942/15 FISC 181 ECOFIN 947, point 3.

III. RECENTLY DISCUSSED ISSUES

a) *"Core engine" of FTT*

6. At the WPTQ meeting of 25 October, the participating Member States have indicated that further negotiations on FTT and drafting of a compromise text of the future Directive will be made against the basis of the agreed broad lines relating to a number of the building blocks of FTT, as set out in the Annex to this note (e.g. scope of taxable transactions in shares and derivatives, territoriality, transaction chain, market making exemption, etc.).
7. This basic agreement will still have to be transformed into a legal text, where a number of issues will have to be refined further. *Inter alia*, an appropriate operational drafting solution will have to be found for designing the transitional periods for taxation of transactions in shares and derivatives.
8. Once this work is done and a draft text of the Directive is available, the discussions will continue on that basis, among all EU Member States, as appropriate.

b) *Cost-Efficiency of FTT collection*

9. The participating Member States have also presented their findings on possible solutions how to ensure adequate revenue at low administrative costs and some considerations on the actual costs of implementation of FTT.
10. The findings of the participating Member States covered challenges and advantages of the centralised tax collection model (which could operate through centralisation of the existing market infrastructure or through creation of a new utility for tax collection) or self-assessment model. The participating Member States seemed to broadly agree that both the centralized tax collection model, as well as the self-assessment model, will play a role in administering a future FTT. To cover all transactions taxed by a future FTT, a system of self-assessment by financial institutions will have anyhow to be put into place, either as an addition to a centralized system or as the main system of tax collection.

11. Keeping in mind the objective that the "financial viability of the tax for each country is required", ¹³ it is clear that the ultimate choice of the tax collection model will depend on the actual design of the future FTT.

IV. THE WAY FORWARD

12. Given the circumstances that during the discussions at WPTQ level a certain degree of progress in the negotiations on FTT under enhanced co-operation could be observed, it is deemed appropriate that the state of play on this legislative file is submitted to ECOFIN level.
13. In the light of the foregoing, and as already indicated in the June 2016 ECOFIN report to the European Council on Tax matters,¹⁴ "further work at the Council and its preparatory bodies will be required, before a final agreement on this dossier can be reached among the Member States participating in the enhanced co-operation, that respects the competences, rights and obligations of the Member States not participating in the enhanced co-operation on FTT".
14. Against this background, the Committee of Permanent Representatives is invited to recommend to the Council to:
- a) take note of the progress achieved to date; and
 - b) exchange views on the state of play on this dossier.

¹³ See the statement of the participating Member States in doc. 15112/15 PV/CONS 72 ECOFIN 961 ADD 1.

¹⁴ See doc. 10502/16 FISC 108 ECOFIN 640 CO EUR-PREP 28, point 42.

"CORE ENGINE" OF FINANCIAL TRANSACTION TAX

I. Territoriality

- Shares: Cumulation of residence, issuance principles. As a first step harmonised taxation shall only be applied to shares of the participating Member States. After a transition period it shall be extended to all shares unless participating Member States decide otherwise.
- Derivatives: as in Commission proposal.

II. Tax base for derivatives

- For option-type derivatives the tax base should preferably be based on the option premium.
- For products others than option-type derivatives and coming with a maturity, a kind of term-adjusted notional amount/market value (where available) might be considered as the appropriate taxable base.
- For products others than option-type derivatives and not coming with a maturity, the notional amount/market value (where available) might be considered as the appropriate taxable base.
- In some cases, adjustments to the tax rates or to the definition of the tax base might be necessary in order to avoid distortions.

III. Scope of derivatives

- Repos/reverse repos and transactions of public debt managers and their counterparties shall be exempt from the scope of the Directive.
- Apart from that all derivatives shall be taxed, however, as a first step, products with public debt to 100% as direct underlying should be exempt from the scope of the Directive. After a transition period the scope shall be extended to these derivatives unless participating Member States decide otherwise.

IV. Market Making (for shares markets)

A reduced minimum rate (80% of normal tax rate) can be applied for market makers bound by a contract with a specific trading venue to carry out market making activities with regard to specific shares, irrespective whether is proprietary trading or market making.

V. Taxable event for securities

Taxation of gross transactions.

VI. Transaction chain

Taxation of all transactions in the chain except agents and clearing members (when acting as facilitators) according to Commission proposal.

VII. Real economy and pension funds

Further analysis with regard to real economy and pension funds is required.
