



EU Tax Centre

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EU Court of Justice rejects UK challenge to EU Financial Transaction Tax on procedural grounds

FTT – enhanced cooperation – UK government legal action

On April 30, 2014, the Court of Justice of the EU (CJEU) rejected a legal action filed by the United Kingdom government for the annulment of the EU Council's decision to authorize enhanced cooperation in the area of financial transaction tax ([case C-209/13](#)).

Background

The decision to authorise eleven Member States to move forward with a common financial transaction tax under the enhanced cooperation procedure was taken on January 22, 2013, by the Economic and Financial Affairs (ECOFIN) Council of the EU. This followed discussions at which it had become apparent that there was no unanimous support amongst EU Member States for such a tax. Enhanced cooperation provides a mechanism for a limited number of Member States (at least nine) to adopt measures that only apply to those Member States, subject to complying with certain procedural and legal requirements. On February 14, 2013 the EU Commission issued a revised proposal for a Directive to introduce a common FTT in the eleven Member States concerned (Austria, Belgium, Estonia, France, Germany, Greece, Italy, Portugal, Slovenia, Slovakia and Spain). This was largely based on the original proposal, but with adaptations to reflect the fact that not all EU Member States would apply the tax.

The UK Legal Action

On April 18, 2013 the UK government filed an action for annulment of the ECOFIN decision authorising enhanced cooperation, on the grounds that it infringed provisions of the Treaty on the Functioning of the EU (TFEU). More specifically they argued that the decision was illegal because it authorised the adoption of an FTT that would have 'extraterritorial effects', in breach of Article 3 and 327 TFEU, and that it would impose costs on non-participating Member States, in breach of Article 332 TFEU. The reference to 'extraterritorial effects' is understood to refer in particular to the fact that the tax could also be imposed on counter-parties in non-participating Member States and, to this extent, would infringe those Member States' competences, rights and obligations as well as infringing customary international law.

The CJEU Decision

The CJEU rejected the UK arguments on the grounds that they were directed at the elements of a potential FTT, and not at the authorization to establish enhanced cooperation that was the subject of the UK's action. Since the Council's decision to authorize the enhanced cooperation did not contain any substantive element on the FTT itself, the arguments were not accepted.

Next steps

Notwithstanding the rejection of the UK government's claim, it remains open for them to file a claim in the future as and when the substantive elements of the FTT are known. Whether or not this will prove necessary will no doubt become clear once the details of a revised proposal have been agreed between the eleven participating Member States. In that regard all eyes will be on the upcoming ECOFIN meeting on May 6 where the FTT is scheduled to be addressed.

EU Tax Centre Comment

While the current decision will be an unwelcome set-back for the UK government and the UK financial sector, they may still have an opportunity to argue their substantive case should it prove necessary. However, it should be noted that there are very divided opinions as to the merits of their arguments and the outcome is by no means a foregone conclusion. Financial sector businesses therefore need to monitor the issue closely to be able to react effectively as matters develop.

Should you require further assistance in this matter, please contact the EU Tax Centre or, as appropriate, your local KPMG tax advisor. Click [here](#) for KPMG's FTT contacts.

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