13 February 2013

Algirdas Šemeta
Member of the European Commission
Commissioner
Taxation and Customs Union, Audit and Anti-Fraud
B-1049 Brussels
Belgium

Re: Enhanced Cooperation Agreement for the Financial Transaction Tax

Dear Commissioner Šemeta:

On behalf of our members, the undersigned trade associations are writing to express our serious concern over the extraterritorial impact in the United States and other countries of the European Commission's draft Council Directive implementing enhanced cooperation in the area of financial transaction tax. We understand that the Commission's proposed directive has substantial extraterritorial impact and introduces both a residency and issuance test for taxation. These novel and unilateral theories of tax jurisdiction are both unprecedented and inconsistent with existing norms of international tax law and long-standing treaty commitments. There is a high risk that their adoption could lead to double and multiple taxation, a deterioration of international tax cooperation, and trade protectionism that would further impede global capital flows and harm domestic economies and consumers. Moreover, we are particularly concerned that as the US and EU work towards launching negotiations for a trade and investment agreement to eliminate barriers between the two regions, that the European Union would propose to implement a tax with such broad extraterritorial reach.

Most supporters of the financial transaction tax agree that where such taxes have been imposed in the past, they have increased trading costs, dramatically reduced financial transactions in financial markets subject to the tax, and diminished liquidity that benefits all investors and businesses. We believe that the wisdom of Presidents Kennedy and Johnson in repealing this job killing tax in the United States still holds true today. The extraterritorial application of this tax in the United States by other jurisdictions would further fray the bonds that bind our global economy.

Our understanding is that the tax is specifically designed to be global in its reach, and, as such, it would collect revenue from financial markets and investors around the world to which the minority of EU countries that support the tax have little or no connection. The extremely broad concept of residency embedded in the EC proposal, coupled with the issuance principle, would extend the EC FTT to many transactions occurring within the United States that have no direct connection to Europe, as the EC has explained in background papers published on its website. In addition, the EU's approach to tax secondary market trading in a wide spectrum of asset classes raises unique concerns related to its impact on financial markets, the cost of capital, and hedging. We are not persuaded that the mechanism adopted by the drafters to avoid extraterritoriality will be practical or effective to exempt transactions that lack an economic connection to Europe. Furthermore, we do not believe the EU should attempt unilaterally to apply an excise tax on transactions occurring outside the borders of the implementing states.

The case against the imposition of a global or regional FTT is as strong today as it ever was, and the arguments against such a levy are well known. In addition to the tax policy concerns listed above, we are concerned that a broadly extraterritorial transaction tax will cycle through the entire global economy, harming businesses and investors. Numerous studies have shown that an FTT will impede the efficiency of markets, impair their depth and liquidity, and raise costs to issuers, investors, and retirees. Studies have also shown that FTTs distort capital flows by discriminating against certain asset classes, and major economies that have adopted FTTs or FTT-like levies have experienced negative results, including reduced asset prices, substantial movement of trading to other venues, market dislocation, and a decrease in liquidity that can lead to higher, not less, volatility. Indeed we note that since the imposition of the French transaction tax, share trading on the French stock exchange dropped significantly in just the first months.

Global markets remain fragile, with many economies experiencing historic levels of unemployment and unusually slow recoveries. Now is not the time to experiment with policies that experience tells us will impede growth, fragment markets, increase market volatility, harm savings, and encourage uneconomic tax-motivated decision making.

In light of the foregoing, we strongly object to the form of the Commission's draft directive, because it is not the result of multilateral negotiations with the countries affected, and, as drafted, it will apply to vast numbers of transactions outside of the implementing states in contravention of long-standing international tax norms and treaty agreements. We recognize and respect the right of European Union states to enact financial transaction tax laws within their own territories and to enact reasonable rules to prevent circumvention or abuse of those laws, but the need to prevent circumvention must not be a pretext for the unilateral imposition of a global financial transaction tax.

Yours sincerely,

The Financial Services Forum[1]
The Financial Services Roundtable[2]
The Investment Company Institute (ICI)[3]
The Securities Industry and Financial Markets Association (SIFMA)[4]
The United States Chamber of Commerce[5]

Cc: Michel Barnier
European Commissioner for Internal Market and Services
European Commission

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1 The Financial Services Forum is an economic and financial policy organization comprised of 20 chief executive officers of the largest and most diversified financial institutions with business operations in the United States. The Forum's purpose is to promote policies that enhance savings and investment in the United States, and that ensure an open, competitive, and sound financial services marketplace.

2 The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO.

3 The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of $14.2 trillion and serve over 90 million shareholders.

4 SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. Together, our industry employs almost 800,000 people nation-wide. These individuals are engaged in communities across the country to raise capital for businesses, promote job creation and lead economic growth.

5 The U.S. Chamber of Commerce ("Chamber") is the world's largest business federation representing the interests of over three million companies of every size, sector, and region.