Financial Transaction Tax ("FTT")

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Agenda

- Introduction and Background
- Objectives European Commission
- What is it ?
- Scope and definitions
- Examples
- Key Challenges

Introduction and background

- Political pressure to regulate the excesses of the financial sector against the background of the 2007 global financial crisis and the recent EU financial crisis.
- IMF at the request of G 20 published a report in 2010 recommending a Financial Transaction Tax to pay for the rescue of troubled institutions
- 28 September 2011 : European Commission's Proposal for a Council Directive to introduce a common system for a financial transaction tax (“FTT”)
- Not all member states in favour - strong opposition of UK, Sweden – EU Directive requires all members states

Introduction and background

- Recent developments indicate a introduction with a limited number of countries (at least 9) under the Enhanced Cooperation procedure
- Belgium is in favour of introduction
- EU “own resource” funding the EU Budget
- EU FTT would replace domestic FTT (Belgische beurstax) - shift from Belgian tax revenue to European tax revenue
- FAT (activity) versus FTT (transaction)
- Proposed implementation date : 1 January 2014

Objectives of the European Commission

- Twofold : 1) financial and 2) regulatory
- " *Ensure that the financial sector makes a fair contribution at a time of fiscal consolidation in the Member States; the financial sector is currently under taxed vis-à-vis other sectors"*
- *"Strengthen the EU Single Market by setting up a harmonized framework to tax financial transactions;*
  - this will help reduce competitive distortions,
  - discourage potentially risky activities,
  - complement regulatory measures aimed at avoiding future crises,
  - and to promote common rules for the introduction of FTT at global level, notably through the G20"
- 57 billion revenue - 0, 5% decrease GDP

What is it ?

- The financial transaction tax is a tax applied to financial transactions on condition that at least one party to the transaction is established in a Member State AND that a financial institution established in the territory of a Member State is party to the transaction, either acting for its own account or for the account of another person, or is acting in the name of a party to the transaction.
- Key questions :
  - Which financial transactions ?
  - Which financial institutions ?
  - At what rate ?
- Definitions linked to EU regulatory framework (MIFID)

Scope and definitions

- Covered Transactions : Very broad
  - Regulated and OTC
  - Purchase and sale of transferable securities, money-market instruments, units and shares in collective investment undertakings, structured products, including securities lending and borrowing and repos
  - conclusion/modification and trading of derivatives agreements such as forwards, futures, options, swaps
  - Transfers of financial instruments between group entities, which are not a purchase and sale
- Excluded Transactions
  - Primary market transactions
  - Transactions with the EU institutions and bodies, central banks
  - Bank lending, insurance contracts, mortgage lending, consumer credit

Scope and definitions

- Taxable persons are financial institutions : Very broad
  - Investment firms
  - Organised markets
  - Credit institutions
  - Insurance and re-insurance undertakings
  - Collective investment undertakings (including alternative investment funds) and their managers
  - Pension funds and managers
  - Special purpose entities / vehicles (securitisation)
  - Any other undertaking, such as a holding company, financial leasing company, other trader of financial instruments with significant financial transactions
- Acting in their own name but also for the name and account of others (except if for other financial institution)

Scope and definitions

- Territorial scope is very broad
  - Residency based on registered seat or permanent address
  - A financial institution is deemed to be established in a MS
    1. MS of authorisation (in respect of transactions covered by that authorisation)
    2. MS of registered seat
    3. MS of permanent address or usual residence
    4. MS of branch (in respect of transactions carried out by that branch)
    5. MS of (counter) party to a transaction, in case a **non EU financial institution is** party to transaction (or acts in the name of a party) with a financial institution established in the EU (according to previous points) or with a non financial institution established in EU

    Order of priority in application of previous points: descending order
  - A financial institution is not considered to be established in a MS in case it proves that there is no link between the economic substance of the transaction and the territory of any MS

Scope and definitions

- Rate
  - Minimum proposed rates by the EU
  - 0,01 % for derivatives and 0,1% for other transactions
- Taxable amount
  - Consideration paid or owned with market price as minimum (0,1%)
  - Nominal amount for derivates (0,01%)
  - Also when no purchase or a sale
  - No netting
- Taxable event and payment
  - When the financial transaction occurs
  - Taxation for every taxable party involved
  - Immediately payable (electronic) or within 3 working days
  - Payment by financial institution and monthly returns
  - Joint and several liability

Examples (as provided by the EC)

Ta, Tb: tax of country A / B
Tax paid by **EU Party**
Tax paid by **Non EU party**

The taxation rules also apply when an FI is not a direct party but is acting on behalf of a party to the transaction.

Where an FI acts in the name or on account of another FI only that other FI shall be liable to pay FTT.

Economic substance escape clause may apply

Examples

Party/ counterparty	EU financial institution (MS B)	EU citizens, companies and alike (MS B)	Non EU Financial institution	Non-EU citizens, companies and alike
EU financial institution (MS A)	Tb / Ta	- / Ta	Ta / Ta	- / Ta
EU citizens, companies and alike (MS A)	Tb / -	- / -	Ta / -	- / -
Non EU Financial institution	Tb / Tb	- / Tb	- / -	- / -
Non EU citizens, companies and alike	Tb / -	- / -	- / -	- / -

Key Challenges

- Wide territorial application in order to avoid migration of activities
  - Quid if not introduced in all EU countries ?
- Wide scope of taxable parties
  - Beyond traditional financial institutions ?
  - Impact on in house banking and treasury ? Quid Belgium if not in all of EU ?
  - Service companies, Holding companies ?
- Multiple taxable events in one transaction (each taxable party)
  - Multiple taxable events lead to explosion of FTT ?
- Non-EU economic substance exclusion case to avoid harming EU banks in transactions outside the EU
  - Defining these transactions ?
  - Quid if non all EU countries implement ? In the zone versus out of the zone ?
- No EU central Monitoring, Collection and Anti-Abuse (also OTC)
  - To be organized by each MS ?
- Complexity and macro economic impact of tax measure for regulation ?
- Minimum rates ? Impact of EU countries differentiate ?

Questions?