Financial transaction tax

OMCG meeting
Frankfurt am Main, 12 June 2013
## Selected national financial transaction taxes in the EU

<table>
<thead>
<tr>
<th>Feature</th>
<th>United Kingdom</th>
<th>France</th>
<th>Sweden</th>
<th>Germany</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Name of tax</strong></td>
<td>Stamp Duty and Stamp Duty Reserve Tax (SDRT)</td>
<td>FTT (Taxe sur les transactions financières)</td>
<td>Swedish financial transaction tax (Valpskatt)</td>
<td>Exchange turnover tax (Börsenumsatzsteuer)</td>
</tr>
<tr>
<td><strong>Status</strong></td>
<td>Stamp duty introduced in 1694 SDRT introduced in 1986</td>
<td>Introduced 1 August 2012</td>
<td>Introduced 1 January 1984</td>
<td>Introduced in 19th century Abrogated 1 January 1991</td>
</tr>
<tr>
<td><strong>Taxed transactions</strong></td>
<td>Equity shares in companies established in the UK</td>
<td>Equity shares in all publicly traded companies with a market value over 1 billion euro</td>
<td>Initially equity shares, later also fixed-income securities.</td>
<td>Debt certificates, bonds, equity shares, CDSs,</td>
</tr>
<tr>
<td><strong>Geographic scope</strong></td>
<td>All transactions of equity shares in companies established in the UK, no matter where the trade is agreed</td>
<td>All transactions of companies with a market value over 1 billion euro and registered seat in France</td>
<td>All equity security trades in Sweden using domestic brokerage services</td>
<td>All domestic transactions and transactions abroad if domestic institutions are involved</td>
</tr>
<tr>
<td><strong>Price used for tax base</strong></td>
<td>Transaction price</td>
<td>Transaction price</td>
<td>Transaction price</td>
<td>Transaction price minus fees (if not available, market price or highest possible valuation)</td>
</tr>
<tr>
<td><strong>Tax debtor</strong></td>
<td>London Stock Exchange and the UK Central Securities Depository</td>
<td>CSD</td>
<td>Brokerage services</td>
<td>Financial institutions</td>
</tr>
<tr>
<td><strong>Exemptions</strong></td>
<td>Primary transactions</td>
<td>CCPs and CSDs</td>
<td>Convertible debt securities</td>
<td>Primary placements, public sector bonds if used as means of payments for public tasks</td>
</tr>
<tr>
<td><strong>Tax rate</strong></td>
<td>0.5% for all transactions 1.5% for issues or transfers to a person or entity that operates a depositary receipt structure</td>
<td>0.1%</td>
<td>0.02% - 1% depending on the security with frequent changes over time</td>
<td>Public debt securities 0.1% Inv. fund shares: 0.2% Other securities: 0.25%</td>
</tr>
<tr>
<td><strong>Tax collection</strong></td>
<td>Exchange and clearing service</td>
<td>CSD</td>
<td>Brokerage services</td>
<td>Financial institutions</td>
</tr>
</tbody>
</table>

**Notes:** This schematic overview does not present the full details of the underlying legal texts.
### Key features of the Commission proposal for **enhanced cooperation** in the area of FTT

| **Taxable transactions** | Transactions of financial instruments if  
|                       | • at least one of the parties in the transaction is established in the FTT area, or  
|                       | • the issuer of the financial instrument is located in the FTT area. |
| **Taxable institutions** | Financial institutions broadly defined (e.g. investment firms, credit institutions, insurance undertakings, pension funds, AIFs, SPVs,...) |
| **Tax base**            | Generally the price of the transaction but at least the market price of the instrument (notional for derivatives) |
| **Minimum tax rate**    | 0.1% (0.01% for derivatives) for each party involved in the transaction |
| **Recipient**           | Member State where financial institution is deemed to be established |
Taxable transactions I

FTT applies to a financial transaction if
• at least one party to the transaction is established in the territory of a participating Member State, and if
• a financial institution established in the territory of a participating Member State is party to the transaction (acting either for its own account or for the account of another Person) or is acting in the name of a party to the transaction.
**Notion of “establishment”**
A financial institution shall be deemed to be established in the territory of a participating Member State if…

**Residence principle**
1. it has been authorised by authorities of that Member State to act as such, etc.
2. it has its registered seat within that Member State,
3. its permanent address or, if no permanent address can be ascertained, its usual residence is located in that Member State,
4. it has a branch within that Member State, in respect of transactions carried out by that branch, or
5. etc.

**Issuance principle**
a party is trading certain financial instruments whose issuer is located in a participating Member State. The transaction is linked to the participating Member State in which the issuer is located and the FTT becomes payable in that state.
Taxable transactions III

**Financial transaction**
- Purchase and sale of a *financial instrument* before netting or settlement,
- transfer between entities of a group of the right to dispose of a financial instrument as owner and any equivalent operation implying the transfer of the risk associated with the financial instrument,
- Conclusion of derivatives contracts before netting or settlement;
- An exchange of financial instruments, or
- A repurchase agreement, a reverse repurchase agreement, a securities lending and borrowing (purchase and repurchase count as one transaction)

**Financial instrument**
- Transferable securities,
- Money market instruments,
- Options, futures, swaps, FX derivatives, CFDs, etc.,
- Depositary receipts issued with the essential purpose of avoiding tax on transaction in the underlying (liable person must demonstrate otherwise), or
- etc.
Transactions exempted from the proposed FTT

Exemptions

- Primary transactions including the activity of underwriting;
- Transactions with the ECB and national central banks of Member States;
- Transactions with EFSF, ESM, EU, EIB and other EU bodies under conditions;
- Transactions with other international organisations or bodies recognised as such by the public authorities of the host State, within the limits of international conventions or headquarter agreements.

Implicit exemptions

- Instruments of payment
- Spot currency transactions (while currency derivatives are taxable)
- Most day-to-day financial activities relevant for citizens and businesses (conclusion of insurance contracts, mortgage lending, consumer credits, enterprise loans, payment services etc.)

1) Not explicitly stated in proposed Directive but emerges from used definitions and the Commission’s explanatory memorandum.
Taxable institutions

• FTT shall be payable by each financial institution
  – that is party to the transaction, acting either for its own account or for the account of another person
  – that is acting in the name of a party to the transaction; or
  – on whose account the transaction has been carried out.

• When a financial institution acts in the name of or for the account of another financial institution only that other financial institution shall be liable

Exemptions

• Central Counter Parties (CCPs) where exercising the function of a CCP;
• Central Securities Depositories (CSDs) and International Central Securities Depositories (ICSDs) where exercising the function of a CSD or ICSD;
• Member States, including public bodies entrusted with the function of managing the public debt, when exercising that function.
Collection of the tax

• Proposed tax would be payable to the tax authorities of the participating Member State in the territory of which the financial institutions is deemed to be established

• The Member State can however decide that another person than those foreseen in the tax is to be held jointly and severally liable for the payment of the tax

• Collection on trading level and before netting (differently from stamp duties in FR and UK)

• Details about collection methods have not yet been announced

• Commission aims to define uniform collection method across Member States via implementing acts (Article 11.5 of proposal)
The timeline of the Commission proposal

28 September 2011
Commission proposal for FTT in EU27

June/July 2012
Proposal fails in EU Council

14 February 2013

23 October 2012
Commission proposal to authorise FTT via enhanced cooperation (Articles 326 and 334 TFEU) upon request by eleven Member States

22 January 2013
EU Council authorises enhanced cooperation

12 December 2012
European Parliament authorises enhanced cooperation

22 May 2013
Discussion on Council Working Party

1 January 2014
Proposed start of FTT

1) BE, DE, EE, GR, ES, FR, IT, AT, PT, SI, SK; represented 89% of euro area GDP and 66% of EU GDP in 2011 (Eurostat); NL has stated it may join OMCG meeting
Thank you for your attention

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