European Commission
Taxation and Customs Union

The Commission Proposal for a Council Directive on a common system of FTT

COM(2011) 594
of
28 September 2011

objectives of FTT in the EU

- Ensure that the financial sector makes a fair contribution at a time of fiscal consolidation in the Member States; the financial sector is currently undertaxed vis-à-vis other sectors
- Strengthen the EU Single Market by setting up a harmonised 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.

scope of the tax

- General:
  - Wide scope in terms of financial instruments and types of transactions covered (both organised markets and OTC)
  - Focus on financial institutions
    - broad definition
    - needs to be involved to have a taxable transaction
    - liable to pay the tax
  - Reference to relevant regulatory EU framework used as much as possible (definitions of financial instruments and institutions)
  - Taxing gross transactions before netting and settlement

scope of the tax (2)

- Essential framework:
  - Taxes "financial transactions"
  - At least one party to transaction "established in a MS" AND
  - A "financial institution" "established in MS" concerned
    - 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

scope of the tax (3)

- "Financial transaction"
  - Purchase and sale of
    - transferable securities, money-market instruments, units and shares in collective investment undertakings, structured products
    - includes securities lending and borrowing and repos
  - Conclusion/Modification and trading of derivatives agreements
    - such as forwards, futures, options, swaps and
    - financial contracts for difference
  - Transfers of financial instruments between group entities, which are not a purchase and sale
- A derivatives agreement resulting in a sale or purchase of a financial instrument (physical settlement) triggers additional taxable transaction

scope of the tax (4)

- "Financial institutions"
  - 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
  - Any other undertaking, such as a holding company, financial leasing company, other trader of financial instruments with significant financial transactions (Commission delegated act for determination of significant financial transactions)
  - Excluded:
    - European Financial Stability Facility, Central Counterparties (to preserve regulatory efforts), national and international Central Securities Depositories (not considered to be trading), (if not out of scope) international financial institution to mobilise funding and financial assistance (= future ESM)

scope of the tax (5)

- Territorial application:
  - Based on residence principle
  - One of the parties needs to be "established in a MS".
  - As a rule "establishment of financial institution" determines which MS has to tax
  - A financial institution is deemed to be established in
    - MS of authorisation (in respect of transactions covered by that authorisation)
    - MS of registered seat
    - MS of permanent address or usual residence
    - MS of branch (in respect of transactions carried out by that branch)
    - 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

scope of the tax (6)

- Territorial application (2)
- 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
- A person which is not a financial institution is deemed to be established in:
  - MS of its registered seat
  - MS of permanent address or resual residence
  - MS of branch in respect of financial transactions carried out by that branch

out of scope

- Ring-fencing Private Households and SMEs:
  - Enterprise borrowing/lending
  - Mortgage loans
  - Consumer credits
  - Insurance contracts
  - Payment transactions, etc.
- Ring-fencing large and international business:
  - Primary market transactions for raising capital through the issuing of shares and bonds (except for shares and units of collective investment undertakings)
  - Spot currency transactions (as opposed to currency derivatives)
- Ring-fencing public borrowing:
  - Issuing of government bonds
- Ring-fencing monetary policy etc.:
  - Transactions with ECB, Central Banks of Member States
  - EFSF (not considered to be a financial institution)
  - Central Counter Parties (idem)

chargeable event

- Moment of chargeability of the FTT: when the financial transaction occurs (e.g. at moment of purchase/sale of financial instruments or lending/borrowing of securities or conclusion/modification of a derivatives agreement)

- Subsequent cancellation cannot exclude chargeability, except in case of errors

taxable amount

- Financial transactions other than those related to derivatives agreements
  - Consideration paid or owed for the transfer
  - Market price (=at arm's length price) in case :
    - consideration is lower than market price
    - Or transfers of financial instruments between entities of a group in case they do not constitute a « purchase or a sale »

- Derivatives agreements
  - Notional amount of the derivatives agreement (underlying notional or face amount that is used to calculate payments made on a given derivatives agreement)

- Common provision on exchange rate to be applied

rates

- Financial instruments other than derivatives and derivatives are different in nature/economic value/taxable amount => rates to be differentiated between two categories

- Level of rates defined in the Proposal:
  - would guarantee a part of revenue for the EU budget and a part for the Member States' budgets
  - need to be sufficiently high for harmonisation objective
  - need to be low enough to avoid excessive market reactions and relocation

- Tax rates: 0,01% for derivatives and 0,1% for other transactions (for each taxable party to the transaction)

- Character of the rate:
  - Minimum rates
  - One single rate (for each of the two product groups)

payment of FTT

- Involvement of a financial institution established in a MS of EU: key element in determining whether a financial transaction is taxable
- Financial institutions execute the bulk of financial transactions
- Consequently, financial institutions are the persons liable to pay FTT
- To avoid unjustifiable cash flow advantages by financial institutions, FTT to be paid to the tax authorities:
  - at the moment the tax becomes chargeable in case of electronic financial transactions
  - within three working days from chargeability in all other cases
- Each party to a transaction jointly and severally liable for payment in case financial institution liable has not paid in time; other person may also be held jointly and severally liable

The taxation of transactions:

An illustration

Party/ counterparty	**EU** financial institution (Member State B)	**EU** citizens, companies and alike (Member State B)	**Non EU** financial institution	**Non EU** citizens, companies and alike
EU financial institution (Member State A)	Tb / Ta	- / Ta	Ta / Ta	- / Ta
EU citizens, companies and alike (Member State A)	Tb / -	- / -	Ta / -	- / -
Non EU financial institution	Tb / Tb	- / Tb	- / -	- / -
Non EU citizens, companies and alike	Tb / -	- / -	- / -	- / -

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.

The Proposal: other obligations

- Person liable for the payment of FTT has to submit a return with info on transactions for a given month by 10 th of following month
- MS shall lay down obligations as to
  - Registration of financial institutions
  - Accounting and reporting and other obligations to ensure effective payment
  - Keeping at disposal of tax authorities of relevant data re financial transactions, where not provided for in regulatory directives (MiFID)
  - Verification of correct payment of the tax
  - Prevention of tax evasion, avoidance, abuse – Commission delegated acts possibility
- MS have to make use of administrative cooperation tools and existing reporting and data maintenance obligations (under financial EU legislation)

The Proposal: final provisions

- MS cannot maintain or introduce FTTs other than FTT object of the proposal or VAT (harmonisation objective)
- Capital duty directive adapted where necessary, its general line remains unchanged
- In case of conflict between capital duty directive and FTT directive: FTT directive has precedence
- Proposed implementation as of 1 January 2014
- Review clause: after five years, first time by 31/12/ 2016, report on application of FTT, possibly with a modification proposal

Some expected impacts

- **Revenue estimation:**
  - ≈ €55 bn annually, depending on market reactions and effectiveness of tax collection

- **Market reaction / functioning:**
  - The turnover on securities markets is assumed to decline by up to 20%, namely with respect to the segment of HFT
  - The turnover on derivatives markets is expected to decline by up to 90% in some market segments, especially in the market segment of HFT and highly-leveraged products

- **Impact on financial centres:**
  - Important decline in the (inflated) turnover in some market segments (namely HFT and highly-leveraged products)
  - Need for adjusting business models to the new tax environment
  - Small impact on employment

- **Economic impacts:**
  - Non-financial economy largely ring-fenced – so no direct increase in the cost of capital
  - No impact on the effectiveness of monetary policy
  - Positive impact on the effectiveness of financial markets

More information can be found at:

http://ec.europa.eu/taxation_customs