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

Dr. Manfred Bergmann
Director
Indirect Taxation and Tax Administration

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Two objectives:

“Those who benefit from a policy should also be those that should pay for it!”

“Europe must be <u>more</u> and not less than the sum of its parts!”

Also:
A first tangible step for an FTT at the global level

Key choices had to be made

- Taxation at the place of issuance of the traded asset (**Issuance principle**)
  - not adequate if one also wants to cover derivatives agreements, as most derivative agreements such as interest rate swaps are not ‚issued'
- Taxation at the place where the transaction is carried out (**Place-of-transaction principle**)
  - Not adequate if one also wants to cover 'over the counter' transactions
  - Easy to circumvent
- Taxation at the place of establishment of the parties to the transaction (**Residence principle**)
  - Easily applicable for both securities trading and for the conclusion of derivatives agreements
  - More difficult to circumvent
  - Taxation geographically less concentrated

The essential framework

- Legal base: Article 113 TFEU: Functioning of the Single Market
  - Directive
  - Minimum tax rates only
- Taxes "financial transactions"
  - regulated markets
  - "over-the-counter" transactions
- At least one party to transaction "established in a Member State" <u>AND</u>
- 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
- Person liable to pay the tax: the above "financial institutions"

What is the “residence principle” about?

- One of the parties needs to be “established in a MS”.
- As a rule “the place of establishment of a 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 (counter)party established in the EU
  - Order of priority in application of previous points: descending order

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
  - Spot currency transactions
- Ring-fencing public borrowing
  - Issuing of government bonds
- Ring-fencing monetary policy, clearing houses etc.:
  - Transactions with ECB, Central Banks of Member States
  - EFSF
  - Central Counter Parties

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.

Financial (market) transactions covered

- 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, etc
  - financial contracts for difference
- Transfers of financial instruments between group entities, which are not a purchase and sale

Taxable amount and tax rates

- 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 »
  - Tax rate: 0.1% (for each party to the transaction)

- 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)
  - Tax rate: 0.01% (for each party to the agreement)

* Other taxable amounts for derivatives agreements such as market price, 'marked to market' or 'marked to model' had been considered but were eventually discarded as (i) they were too cumbersome and controversial to implement from a taxation point of view, (ii) would have led to a multitude of rates and (iii) would not have been able to catch the different degrees of leveraging coming with the different derivatives agreements.

The role of Member States

- MS shall (where they haven't done yet) lay down rules as to (link with subsidiarity; adapt to own legislative and administrative systems):
  - Registration of financial institutions
  - Accounting and reporting and other obligations to ensure effective payment
  - Keeping at disposal of tax authorities of relevant data on financial transactions, where not provided for in regulatory directives (MiFID) in any case
  - Verification of correct payment of the tax
- MS have to make use of administrative cooperation and existing reporting and data maintenance obligations (financial EU legislation)
- Prevention of tax evasion, avoidance, abuse – delegated acts provision
- 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 (link with OR)
- Review clause

Delocalisation: Myth or real threat?

GDP: > 12 trillion €
Exports: > 500 billion €
Imports: > 500 billion €
Intra-EU trade: > 2 trillion €

Annual savings: >2 trillion €
Annual investment: >2 trillion €
Outstanding Government bonds: [>8] trillion €
Outstanding Enterprise bonds: [>1.5] trillion €

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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 15%, namely with respect to the segment of HFT
  - The turnover on derivatives markets is expected to decline by up to 75% 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
  - Potential positive impact on the effectiveness of financial markets

Europe must be more than the sum of its parts!

In the field of (indirect) taxation, it is still less than this!