



European Commission  
**Taxation and Customs Union**

# The Commission Proposal for a Council Directive on a common system of FTT in the EU - COM(2011)594 of 28/9/2011

Bogdan Taşnadi, DG TAXUD  
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## objectives of FTT in the EU

- Avoid fragmentation in and ensure smooth functioning of Single Market – legal basis: Art 113 TFEU
- Ensure that the financial sector makes a fair contribution at a time of fiscal consolidation in the MS
- Discourage potentially risky activities (high frequency trading, highly leveraged derivatives): link with regulatory reforms aimed at avoiding future crises
- Contribute to level playing field re taxation: the financial sector vis-à-vis other sectors
- Generate additional revenue for MS: use as EU own resource (= > displace national contributions) with additional share for MS
- Provides basis for subsequent own resources proposal
- FTT at EU-level would be a strong signal and a first step to promote the introduction of such a tax at global level (= best solution)



# 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 (investment firms, credit institutions, insurance undertakings, funds, other with significant fin transactions – Commission delegated acts);
  - needs to be involved to have a taxable transaction;
  - liable to pay and “operator” of 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 a MS”
  - 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 etc;
    - financial contracts for difference.
  - Transfers of financial instruments between group entities, which are not a purchase and sale



## scope of the tax (4)

### ■ 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 (counter)party established in the EU;
  - Order of priority in application of previous points: descending order.



## scope of the tax (5)

- Territorial application (2)
- A person which is not a financial institution is deemed to be established in:
  - MS of its registered seat;
  - MS of permanent address or usual 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;
  - 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, other international bodies.



# 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)



# rates

- Financial instruments other than derivatives and derivatives are different in nature and economic value => 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)	1 Tb Ta	2 Ta	3 Ta Ta	4 Ta
EU citizens, companies and alike (Member State A)	5 Tb -	6 -	7 Ta -	8 -
Non EU financial institution	9 Tb Tb	10 Tb	11 -	12 -
Non EU citizens, companies and alike	13 Tb -	14 -	15 -	16 -

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.



## other obligations

- Person liable for the payment of FTT has to submit a return with info on transactions for a given month by 10<sup>th</sup> of the following month (link with OR)
- MS shall lay down obligations 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);
  - Verification of correct payment of the tax;
  - Prevention of tax evasion, avoidance, abuse – possibility of Commission delegated acts.
- MS have to make use of administrative cooperation and existing reporting and data maintenance obligations (financial EU legislation)



## final provisions

- MS cannot maintain or introduce FTTs other than FTT object of the proposal or VAT (harmonisation objective)
- Review clause: after five years, first time by 31/12/ 2016, report on application of FTT, possibly with a modification proposal
- Proposed implementation as of 1 January 2014



thank you for your attention

More information can be found at:

[http://ec.europa.eu/taxation\\_customs/taxation/other\\_taxes/financial\\_sector/index\\_en.htm](http://ec.europa.eu/taxation_customs/taxation/other_taxes/financial_sector/index_en.htm)

