



The FTT would apply to all financial institutions. Financial institutions are defined as investment firms, trading platforms or exchanges, insurance companies, pension funds, alternative investment funds, special purpose entities (SPEs) and special purpose vehicles (SPVs) and any other entity for which the average annual value of financial transactions constitute more than fifty percent of overall net turnover.⁹

There are limited exceptions. Non-financial entities are not required to pay, but financial institutions transacting with non-financial entities are. Moreover, non-financial entities would be held jointly and severally liable if a financial institution fails to pay. Transactions with Central Counter Parties (CCPs), Central Security Depositories (CSDs) and International Central Securities Depositories (ICSDs), national debt management offices, member state central banks, the ECB and other international organizations do not fall under the FTT. The FTT would also not be charged on primary market transactions, or underwriting.

The proposal envisages a broad territorial reach of the FTT. It would apply to all financial entities established in participating states. It would also apply to all financial entities transacting with a counterparty based in the participating states. Transactions involving securities issued within a participating member state will also be caught, irrespective of where the counterparties to the deal are based. This 'issuance principle' is designed to strengthen anti-relocation provisions of the FTT, by making less desirable for entities established in participating states to move trading activities abroad. The issuance principle would apply to instruments like bonds and stocks. It is uncertain as to whether it would apply to the euro currency. Euros are issued by the ECB, an EU-established entity. It is not clear whether euro-denominated derivative contracts traded on an organized platform will be subject.

The proposal anticipates that the broker or settlement agent would be liable for the calculation for the FTT. For electronic transactions, collection and payment is assumed to be immediate. For other types of transactions, the proposal suggests that a period of three working days is an appropriate time period within which the FTT should be paid. The proposal does not state which counterparty should be held responsible for paying the FTT, but that in the event the tax is not paid, both counterparties would be held jointly and severally liable.

Headline versus Effective Costs

The headline rates established by the European Commission are 10bp for securities transactions and 1bp for derivatives. However, the effective rates for financial transactions are higher. This is because the FTT is levied on a gross basis, at every stage of the transaction. This approach would cause a 'cascade effect,' whereby the effective tax rate increases in a linear fashion with the amount of intermediation in the deal.

The draft proposal distinguishes between financial institutions that are a 'party' to a financial transaction and those that act on an 'agency' basis. 'Parties' are required to pay the FTT, while those acting on an 'agency' basis will not be caught. There is still a lack of clarity over which entities would fall under each definition (for example, whether the tax would capture a prime broker executing a 'give up,' since the prime broker bears credit risk for the transaction). The FTT would, however, appear to capture entities acting independently that facilitate a single

⁹ European Commission, Proposal for a Council Directive, Implementing Enhanced Cooperation in the Area of Financial Transaction Tax, 14th February 2013