Bundesverband der Wertpapierfirmen e.V.
Schillerstraße 20, 60313 Frankfurt/Main

European Commission

Directorate General
Taxation and Customs Union
B-1040 Bruxelles

via e-mail: TAXUD-FINTAX-REG-ORG-FIN@ec.europa.eu

your reference

your message of
22 February 2011

city_date
Frankfurt/Main, 18.04.2011

European Commission consultation on an initiative on the taxation of the financial sector

Dear Sir, dear Madam,

The Bundesverband der Wertpapierfirmen e.V. (bwf)[1] is a trade association representing securities trading firms and market specialists at the securities exchanges throughout Germany. The bwf therefore expressly welcomes the opportunity to participate in the European Commission's public consultation on an initiative on the taxation of the financial sector.

bwf field of activity and member structure

The bwf represents the interests of its members in particular:

a) in connection with legal matters related to stock market and securities trading issues,

b) in the context of official capital markets supervision,

c) in connection with proposed national, European and international regulatory, legislative and implementing measures in the area of financial services and capital markets law,

d) in relation to various stock market and securities trading institutions and

e) in communicating the business activities and the professional profile of the association's members to the general public.

[1] The Bundesverband der Wertpapierfirmen e.V. is registered in the list of interest representatives with the European Commission under Registration No. 1880407752-10. The association does not have the status of a recognised European partner organisation nor is it a representative of a European (sectoral) social dialogue committee.

Bundesverband der Wertpapierfirmen e.V.

Federal Association of Securities Trading Firms – a registered association

Registered Seat
Fasanenstraße 3
D-10623 Berlin

Postal Address & Office
Schillerstraße 20
D-60313 Frankfurt/Main

Tel.: +49 (0) 69 92 10 16 91
Fax: +49 (0) 69 92 10 16 92
mail@bwf-verband.de
www.bwf-verband.de

Board of Governors
Prof. Dr. Jörg Franke (Chairman)
Daniel Förtsch
Dirk Freitag
Kai Jordan
Dr. Annette Kliffmüller-Frank
Torsten Kuck
Ralf Nachbauer
Herbert Schuster
Michael Wilhelm

Secretary General
Michael H. Sterzenbach
m.sterzenbach@bwf-verband.de

Legal Adviser
Dr. Hans Mewes
Herrengraben 31, D-20459 Hamburg
Tel.: +49 (0) 40 36 80 5 - 132
Fax: +49 (0) 40 36 28 96
h.mewes@bwf-verband.de

Banking-Account
Deutsche Bank PGK Frankfurt
Swift: DEUTDEFFXXX / DEUTDEDBFRA
Bank Code: 500 700 24
Account: 0 18 32 10 00

Furthermore, the association assists and informs its members on all matters that concern them in connection with their activity as securities trading firms.

bwf members are usually small and medium sized enterprises. However, despite their size they are usually completely "wholesale" firms. Their clients and market counterparts are German and international banks, UCITS companies, insurance companies and other investment firms alike. While some of the members are still focused solely on their function as an exchange market specialist, others offer the full range of trading, order routing and order execution services on German and European trading venues across a wide range of instruments. Some member firms are also active in the IPO and corporate finance business.

According to the EU legal framework, bwf members are categorized as investment firms, some of them also have the status of credit institutions. However, in the light of the partly deviating German classification for financial institutions, numerous bwf members are credit institutions under German law in their capacity as "securities trading banks" ("Wertpapierhandelsbanken"). Our association currently represents 49 members among which there are 22 securities trading firms, 3 single members (natural persons) and 24 supporting members.[2]

Depending on the scope of possible new taxation initiatives, bwf members will be directly affected by the measures discussed in the consultation document.

Publication arrangement and structure of our response

The bwf has no objections regarding the publication of our response to this consultation by the Commission services on its website and we agree to having our response published along with responses from other stakeholders.

In order to facilitate an efficient evaluation and further processing, our response strictly follows the list of questions set out in the consultative document. For better orientation, we have quoted the questions and headlines (and footnotes); all text taken from the consultative document is printed in *italics*.

We have also tried to bring our comments as close as possible to the proposed alternative answers. However, since the proposed answers are not mutually exclusive, we have chosen different answers where appropriate. Finally, where the consecutive numbering of answers in the consultative document shows obvious printing errors our reference carries over the numbers as printed.

This said, we would like to respond to the questions raised in the consultation document as follows:

[2] A complete list of bwf members can be found on our website under www.bwf-verband.de (→der bwf →Mitglieder).

bwf logo omitted

4.1 Problem definition

Q1: Do you consider it justifiable that the revenue side of fiscal consolidation efforts of Member States are targeting the financial sector?

Answer 4.:

It needs to be stressed that the “financial sector” is no homogenous group. Financial institutions significantly differ in terms of size, business models, product range, complexity, interconnectedness, contribution to systemic risk and involvement/responsibility for the financial crisis. Therefore, any additional taxation on a uniform and indistinctive basis could not be regarded as fair and would clearly violate the “costs-by-cause principle”.

Furthermore, the heated public discussion on financial sector contributions to refinance substantial public spending made in different forms as a direct reaction to the crisis often neglects the share of responsibility of fiscal and monetary policy measures, in particular but not exclusively, in the United States, in the creation of a “bubble economy” which contributed decisively to the emergence of the financial crisis. In this respect, the current discussion on responsibility for the crisis seems to be one-sided.

Equally important, the call for a higher taxation of the financial sector directly opposes the regulatory priority of strengthening the capital base of financial institutions in order to make them more resilient and less prone to potential crisis in the future. A higher taxation would also weaken the financial sector’s funding power for deposit guarantee and investor compensation schemes whose funding level shall be increased as a response to the crisis. Unfortunately, these clear conflicts of objectives are – except from a consideration in Question 8 – not adequately addressed in the present consultation.

Q2: Do you find it problematic that Member States introduce patch-work national measures without coordination?

Answer 1.:

In our view any unilateral measures at Member State level which would significantly increase the tax burden of financial institutions are clearly to be rejected as they would inevitably result in competitive distortion thereby raising the danger of regulatory arbitrage and economic imbalances and misallocation of capital. Furthermore national “patch-work” approaches interfere de facto with the concept of a “level-playing-field” and thereby the European Single Market objective.

Responsibility for the crisis

Q3: Do you consider that shortcomings in the governance or behaviour of financial markets or financial institutions were one of the major reasons for the financial and economic crisis?

Answer 2.:

It is hard to deny that the financial crisis did reveal severe weaknesses in the governance structure, risk management and incentive structures in numerous financial institutions. However, once again it would be misleading to interpret these findings as a solely private sector problem as several situations of serious corporate distress among the public sector German "Landesbanken" leading to massive publicly funded bail-outs has illustrated.

On the other hand, even during the peak of the crisis, other parts of the financial sector, namely regulated markets and market infrastructure like risk mitigating CCPs demonstrated a high level of reliability and remained fully functional even under the most severe market conditions. Therefore, it must not be overlooked that the financial crisis, was first and foremost a crisis in the OTC-market. The high losses in financial sector stocks observable at this time were an indication of the extent of the crisis and not their cause. Therefore, it would be fundamentally wrong to hold "the financial market" responsible for the crisis.

Q4: Which sectors and activities within the financial sector had to do most with the crisis?

Answers 1, 2, 4 & 7:

Having its very origin in irresponsible negligent lending practices in the mortgage market, investment banking based on structured products and high leverage-effects allowed (as the mortgages themselves) by lax monetary policy laid the groundwork for the "originate and distribute" business model which led to an exponential growth in globally redistributed exposures in the securitised lending market.

On the investor's side, the low interest rate environment resulting from lax monetary policy facilitated highly leveraged investment strategies particularly in the alternative investment segment.

At the same time credit enhancement products offered by the insurance sector and questionable product ratings by CRAs further fuelled a "bubble economy" by sending misleading indicators regarding the true risks associated with an increasingly opaque multitude of "repackaged investment products" which became "toxic assets" once the crisis took its course.

Q5: Do you consider those shortcomings in the governance or behaviour of financial markets or financial institutions to be an EU-wide problem?

Answer 1.:

Principally speaking, insufficient governance controls were a global and therefore also an EU-wide problem. However, not only were different countries affected to different extents, also different parts of the financial sector within Member States showed very different levels of "contagion".

Having *Under/over-taxation*

Q6: Do you consider the financial sector in the EU to be under-taxed (e.g. because of VAT exemption, exemption from thin capitalization rules, higher economic rent i.e. excess profits) or overtaxed (e.g. because of special additional taxes already implemented) with respect to other sectors of economic activity?

Answer 3:

Taking into account taxes and other public charges financial institutions have to pay, we do not see any indication that the industry is under-taxed compared with other sectors of the economy.

The question whether financial services should or should not be subject to VAT is a long lasting and still open political and academic debate running for decades which we think will not be solved by this consultation. Moreover the net effect of this exemption is hard to measure. While no VAT is paid by the consumer for financial services supplied by a financial institution, the institution faces comparably higher production costs for non-recoverable VAT paid on purchases. To which degree these higher costs can be passed on to the consumer depends on different factors, mainly the competitive environment. However, VAT exemption is a coin with two sides and both of them have to be taken into account in determining the effective tax burden.

Q7: Which sectors and/or activities within the financial sector do you think are most under-taxed/over-taxed?

Answer 3.:

No answer can be given since we do not see any evidence for under-taxation of the financial sector.

bwf

4.2. Taxation as a relevant measure

Q8: What do you think of tax measures, versus regulatory measures and levies (connected to the financing of funds to ensure the proper resolution of financial institutions)?

Answers 4. & 6.:

Taxes and regulatory levies have to be financed from the same revenue base and therefore have to be analysed in combination. Both charges reduce the marginal return on capital for investorsand thereby would result in allocation effects. Beside regulatory levies paid by financial institutions to external entities (funding regulatory oversight, DGS & ICS, resolution funds etc.), internal regulatory and compliance costs put a significant burden on net profits of financial intermediaries with a direct impact on the production function and net profitability.

Legislators should be aware of the fact that in an environment where the financial sector has to compete with other industries from an investor's perspective, increasing the overall burden from taxes, levies and internal costs will create pressure to shift to business activities with higher margins (which usually come at the cost of higher risk) and further consolidation (resulting in ever larger entities representing a higher contribution to systemic risk).

The core dilemma indeed, as mentioned already in our answer to question 1., lies in the fact that increasing taxes and levies will directly reduce the ability of financial institutions to use cash flows for the purpose of strengthening their capital base in order to make them less prone to possible shocks and crisis in the future, unquestionable a measure of paramount importance within the current debate on regulatory reform.

Q9: Do you consider that an FTT or an FAT could lead to cumulative social and economic effects in combination with any of the ongoing regulatory reforms in the financial sector, including the banking levy (see COM 2010(301)final)[3]?

Answer 1.:

Whatever the political motivation for the introduction of an FTT or FAT might be, its immediate economic effect of absorbing cash flows from revenues generated by financial institutions cannot be brought in line with the target of "enhanced resilience and stability of the financial sector" as stipulated by COM 2010(301)final. It is a simple economic truth that additional taxes will "ceteris paribus" not foster but impede the improvement of "the quality and quantity of capital", the introduction of "capital buffers" as well as the implementation of

[3] http://ec.europa.eu/internal_market/finances/docs/general/com2010_en.pdf

an “effective liquidity regime”. Equally true, an additional tax burden would make it more difficult to increase the net funding ration of DGS & ICS.

However, the net effects will certainly differ depending of the taxation instrument chosen, since an FTT would be paid by all investors no matter whether they are part of the financial sector or not. In contrast, the effective additional burden by an FAT would depend on the ability to pass on at least part of the additional “costs” created by the tax to consumers of financial services via price increases for such services.

4.3. Financial transaction tax (FTT)

Q10: At what level do you think that the FTT will be most effective?

Answer 2.:

In order to avoid substantial competitive disadvantages for the European economy as well as unintended far reaching misallocations of capital, an FTT would need to be implemented on a global level.

Nevertheless, since an FTT would tax all investors whereby its direct impact would not be limited to the financial sector, together with the fact that it would be applied in particular to transactions carried out on organised markets, in our view, disqualifies it as an effective instrument to “recover” injections of public money into the financial sector during the crisis.

Q11: Do you think that a broad based financial transaction tax is a viable instrument?

Answers 2., 3., 4.:

While we do not support the introduction of any form of FTT, a broad based FTT could be seen as the “lesser evil” compared with limiting an FTT to stocks and bonds and thereby excluding the (OTC) derivatives market which without doubt has a stronger involvement in the crisis than the cash markets for stocks and bonds.

However, even a broad based FTT should exclude foreign exchange transactions whose taxation would have a direct impact on the real economy and international trade. The resulting price increase would hinder international division of labour and induce a disintegration of the global economy with negative effects on growth and welfare. Furthermore, FX-transactions should be excluded from the application of an FTT in order to avoid a double-taxation wherever securities transactions require the conversions of currencies.

In general, an FTT would impede the financial market’s efficiency by absorbing parts of the savings which are turned into investments and creating artificial

“switching costs” whenever investments are reallocated. Thereby, depending on the tax-rate, the marginal productivity of capital would be reduced, creating adaption processes which will be felt especially in countries with comparably high labour costs and a correspondingly high dependency on an efficient capital market in order to safeguard their levels of employment.

Q12: What do you consider as an appropriate connecting factor for the place of levying of the tax?

Answers 4., 6., 8.:

As a rule, the collecting mechanism for an FTT should be as transparent and homogenous as possible, ensuring the same level of enforcement, no matter where the transaction takes place.

At first glance, to collect the tax at the place of trading seems to be a favourable option from an administrational point of view. However such considerations only hold true for “organised” forms of trading e.g. on regulated markets or MTFs and indeed would set incentives for relocation of trading activities if the FTT is not implemented on a global scale. Another concern would be that trading activities may be shifted to less transparent OTC markets where monitoring and enforcement of the levying of the tax are more difficult to achieve.

In order to ensure equal treatment, independent from the market segment and trading venue, the principal of the transaction should be responsible for paying the tax. However, whenever the principal is not a financial institution, the financial intermediary of the buyer/seller would be responsible for facilitating the levy. Even though the procedure of taxing both legs of the transaction is more complicated from an administrative point of view, it could avoid other difficulties which would arise from taxing either the buyer or the seller (e.g. in the case of transactions in which buyer and seller a domiciled in different tax territories).

WQ13: Do you think that the value set for the underlying is (in general) a correct tax base for derivatives?

Answers 4., 7.:

The key consideration in the definition of an appropriate tax base for derivatives should be the avoidance of tax privileges or disadvantages for different asset classes. In other words, holding a derivative which reproduces a certain cash market position should create the same tax obligation as the direct cash market transaction.

The taxation therefore should reflect the true economic exposure. In the futures market the exposure does indeed equal the value of the underlying securities, while in the options market this is not necessarily the case. Depending on the options delta the economic exposure may differ from the total value set for the

underlying. We therefore suggest that in the case of an option contract the option premium would be the more appropriate tax base.

Another important aspect of the fair taxation of derivatives contracts is the neutrality of treatment between contracts with physical delivery and cash settlement.

Q14: Do you consider that there would be a risk of financial engineering around the broad-based or narrow-based FTT that would undermine the objectives of the measure?

Answer 1.:

There can be little doubt that a narrow-based FTT would set strong direct incentives to reproduce the economic exposure of cash market positions by derivatives and to offer such products as substitutes in order to avoid taxation.

The experience in the United Kingdom where CFDs were used to a considerable extent as a vehicle to escape from the obligation to pay "stamp duty" can be seen as an illustrative example.

Q15: What do you think of the FTT designed as a cumulative tax, i.e. every subsequent sale is taxed at the full amount of the transaction without any deduction of previously paid FTT?

Answer 6.:

We think that a "VAT-like" system which takes into account the tax already paid at an earlier stage simply would not be practicable in the light of the complexity, volume and speed of financial market transactions.

Given that the FTT intends to tax the overall level of financial market activity, a cumulative tax based on the full amount of the transaction would indeed fulfil this purpose. However, since we do not think that an FTT as such would be justified we would like to subsume our response under answer 6.

Q16: Would there be a need for specific exemption of certain transactions from the FTT or an exemption threshold?

Answers 1.:

It can be reasonably expected that an FTT would have a measurable negative impact on market liquidity. Therefore it is of utmost importance that the overall design of the taxation limits this undesirable effect to the greatest extent possible. Therefore persons providing liquidity to the market in a specified and sustainable way as part of their professional capacity, namely market makers and market specialists on regulated markets and MTFs, as well as systematic internalisers should be necessarily exempt from a transaction tax.

Equally important, an FTT regime should not penalise intermediation and division of labour. Therefore it needs to be ensured that an investment firm shall not be taxed when it executes a client order in the course of self-dealing (e.g. when it executes a "VWAP"-Order[4]). Where execution chains are in place, it needs to be ensured that the tax is levied only once and charged to the beneficiary (buyer/seller) or originator of the transaction.

We are not in favour of any kind of exemption thresholds since the size of a transaction is no reliable indicator of its economic nature (e.g. a transaction small in size could be rather a long term retail investment as well as an element of a very short term high frequency trading strategy).

Q17: Do you think FTT rates should be differentiated depending on the type of product traded?

Answer 2.:

As mentioned before, in order to avoid misallocations and regulatory arbitrage, an FTT regime should not be preferential or discriminatory with respect to different asset-classes or products.

Q18: Do you think that the tax incidence of the tax will fall on the financial sector, or will it be shifted to the customers?

Answers 5.:

The direction of the question is, at least to some degree, incomprehensible since the consultation document acknowledges itself that the impact of an FTT would not be limited to the financial sector per se.

Where the tax burden is carried by an entity within the financial sector it will naturally try to pass it on like any other cost factor. Whether such an attempt will be successful depends mainly on the competitive environment and the market power of the financial institution. In general, it can be assumed that larger players would find it easier to price the tax component into their margin than smaller firms.

Q19: What do you think of the administrative costs related to the broad-based FTT?

Answer 2.:

It will be comparatively high, because of the large number of taxable transactions and a low tax rate which is necessary to minimise the unintended economic side effects of an FTT.

---

[4] An Order which is executed by an investment firm at a volume weighted average (market) price.

Q19(2): Do you think that it would be the same for a narrow-based FTT?

Answer 1.:

Yes, because on a transaction level, there is no difference between a broad- and a narrow-based FTT. Since the fixed costs for implementing and running one or the other system can be assumed to be more or less the same, a narrow-based FTT could even create higher administrative costs per transaction since the basis of tax-events to break down the fixed costs would be smaller.

Q20: What do you think of the effect on employment from broad-based FTT?

Answers 1., 5.:

The answer as already given in the last paragraph of question 11 is applicable here: in general, an FTT would impede the financial market's efficiency by absorbing parts of the savings which are turned into investments and creating artificial "switching costs" whenever investments are reallocated. Thereby, depending on the tax-rate, the marginal productivity of capital would be reduced, creating adaption processes which will be felt especially in countries with comparably high labour costs and a correspondingly high dependency on an efficient capital market in order to safeguard their levels of employment.

Q20 (2): Do you think it would be the same for a narrow-based FTT?

Answer 1.:

Basically yes; the effect could be even stronger, because market participants would try to escape the FTT by artificially reproducing cash market investments in the derivatives markets which lie outside the scope of a narrow-based FTT, thereby reducing the amount of savings directly transformed into investments in the real economy.

Q21: What do you think of the effect on small and medium enterprises (SMEs) from broad-based FTT?

Answer 4.:

As demonstrated in our response to Question 11, a broad-based FTT would have negative effects for the economy as a whole, which will be felt by SMEs as well. For SMEs in the form of financial institutions it can be expected to be more difficult to adjust to the additional cost burden implied by the FTT than for larger firms with considerably stronger market power (see also our response to question 18).

bwf

Q21 (2): Do you think it would be the same for a narrow-based FTT?

Answer 1.:

We do not see a significant difference in the impact on SMEs between a broad- and a narrow-based FTT.

4.4. Financial activities tax (FAT)

Q22: At what level do you think that the FAT will be most effective?

Answer 2.:

Even though the "relocation" of business in order to escape taxation would be more difficult to conduct under an FAT rather than an FTT regime, international active players will of course use any possibility to protect their revenue streams from additional taxation. While retail and some forms of commercial banking can be considered to be "local" and therefore hard to relocate, this does not hold true for most institutional and investment banking activities which can be conducted more or less at any place around the world. Therefore we think that the tax territory for a FAT should at least cover the G20 countries in order to have any rudimentary effect.

Q23: What is your opinion of the industry scope of the FAT?

Answers 3., 6.:

It must encompass the financial sector defined broadly in order to keep the level playing field and to prevent a substitution effect. However, even with a broad industry scope, an FAT will set strong incentives for strengthening the "shadow banking" sector and shifting transactions off balance sheet for financial institutions. Furthermore, under level playing field consideration, existing differences in the accounting standards applied could have an impact on effective taxation and therefore result in distortions of competition.

Q24: Which form of FAT do you consider most appropriate?

Answers 2., 5.:

We do not hold any form of FAT to be an appropriate instrument. In particular, we have strong concerns that "penalising" a specific sector of the economy by a substantially higher taxation of generated profits would come into conflict with the general equality principle usually granted on a constitutional level.

Furthermore, the "VAT exemption" debate should not be used to justify other forms of fiscal interventions. If the VAT exemption on financial services is identi-

fied as valid problem, it should be removed and not confused with other measures. Obviously, even on a European level, there is no evidence for any clear political consensus regarding a potential change in the VAT treatment of financial services.

Given one has to choose between “Scylla und Charybdis”, a rent-taxing FAT – from our point of view –would be preferential among the proposed approaches.

Q25: What are the major difficulties with the three forms of FAT?

Answers 1., 2., 3.:

All approaches are confronted with the same concerns regarding the general equality principle already mentioned in our response to question 24, while taxing wages under the additional method FAT could have unintended impacts on factor allocation and the level of employment. Consequently, it would set a strong incentive to relocate business units and jobs to locations outside the tax territory. Finally, the risk taxing FAT sees itself confronted with the practical problem to define “undue risk activities”.

Q26: What do you consider the most appropriate starting point for the addition method FAT?

Answers 3., 4.:

As already mentioned in our response to question 23, the existing differences in accounting rules in different Member States as well as for different economic operators in the financial sector would impede a fair levying of a FAT.

Q27: What do you consider the most appropriate starting point for rent-taxing and risk taxing FAT?

Answer 3.:

A harmonised corporate income tax base.

Q28: Do you consider individual or consolidated statements as more appropriate?

Answer 1.:

We would consider consolidated statements (as per IAS 27) to be more appropriate. However, IAS 27 is not mandatory for all financial institutions which would be likely to fall under a FAT regime.

Q29: Would there be a need for specific exemption of certain profit/remuneration from the FAT?

Answer 4.:

Under the assumption that a rent-taxing FAT regime would be implemented, we do not see the need for specific exemptions as long as the levels above which profits would be taxed are appropriately calibrated.

Q30: The state of the head office or group headquarters may tax on the basis of consolidated statements and the state of the branches or group members may also tax those. What do you consider as a suitable solution?

Answer 5.:

We have no comments regarding this question.

Q31: Due to the way the tax base in a FAT is derived (their accounting treatment and/or the subsequent adjustment), do you consider that one or more of the following items will be unduly disadvantaged//favoured:

(i) financial instruments;

(ii) activities;

(iii)remuneration packages?

Answer 7.:

We have no comments regarding this question.

Q32: Would the addition-method FAT need to be aligned with the current VAT system to avoid the cascading effect from the interaction between the two?

Answer 1.:

As already clarified in our response to question 24, a FAT regime should not be a substitute for VAT revenues on financial services. Nevertheless, in case of the implementation of a FAT regime, the resulting cumulative tax burden for financial institutions needs to be taken into account. This should clearly also include "hidden" taxation in form of non-recoverable VAT on purchases by financial institutions.

Q33: Could a FAT rate well below the current standard VAT rate reduce distortions that might arise from missing interaction between VAT and addition-method FAT?

Answer 4.:

Since the tax base of VAT and FAT would be fundamentally different, the chosen tax rates would not be directly comparable in their effects. As mentioned in our response to the previous question, the effective overall tax burden (including "hidden taxes" e.g. non-recoverable VAT on purchases) needs to be given adequate attention.

Q34: Do you think that the tax incidence of the tax will fall of the financial sector, or it will be shifted to the customers?

Answer 5.:

Any form of FAT will unquestionably have an impact on the pricing models for financial services. Where possible, depending on market structure and competitive strength of the financial institution, tax payers will try to pass on the additional cost factor arising from FAT to their customers by adjusting the prices for financial services offered.

Q35: What do you think of the administrative costs related to the FAT?

Answer 1.:

Compared to an FTT the administrative costs related to FAT can be considered to be rather low due to the different tax base and the dramatically lower number of taxable events.

Q36: What do you think of the effect on employment from the FAT?

Answer 1.:

To the extent that financial institutions can pass on the costs of FAT by adjusting their prices for financial services offered, this would result in an increase of financing costs for the real economy, which undoubtedly could also have a negative impact on employment and the economy as a whole.

Q37: What do you think of the effect on small and medium enterprises (SMEs) from FAT?

Answer 4.:

To the degree that financing costs would increase as a result of a FAT it would have negative effects for the economy as a whole, which will be felt by SMEs as

well. Once again (see our answer to question 21 discussing the effects of an FTT), for SMEs in the form of financial institutions it can be expected to be more difficult to adjust to the additional cost burden implied by a FAT compared with larger firms with considerably stronger market power.

4.5. Cumulative effects with other measures – especially bank levies[5] and regulatory measures

Q38: At what level do you think that the levy will be most effective?

Answer 2.:

Here, basically the same answer as our response to question 22 can be given. Therefore the harmonisation should be at least on a G20 level.

Q39: What is your opinion of the industry scope of the levy?

Answer 1.:

It should encompass strictly only the banking sector since it was mainly responsible for the crisis. However, the problem of different involvement and responsibilities of different parts of the banking sector would still remain unsolved.

Q40: What is your perception of the risk exposure for the financial sector?

Answer 1.:

With respect to the crisis, a combination of poor asset quality and financing mismatches on the liability side were responsible for a large part of the problems arising.

Q41: Therefore, which form of levy do you consider most appropriate?

Answer 1.:

Despite the fact that factors leading to the crisis could be identified on the asset as well as on the liability side of the balance sheets, we would consider it to be more appropriate to focus on an asset-based FST.

---

[5] *The term levy is used in a more general term that can encompass both taxes and fees, without prejudging the use made of the collected revenue.*

Q42: What are the major difficulties with the two forms of levy?

Answer 3.:

We have no comments regarding this question.

Q43: What do you consider the most appropriate starting point for the asset-based levy?

Answer 4.:

We have no comments regarding this question.

Q44: What do you consider the most appropriate starting point for the liabilities-based levy?

Answer 4.:

We have no comments regarding this question.

Q45: Would there be a need for specific exemption of certain assets/liabilities from the FST?

Answer 5.:

We have no comments regarding this question.

Q46: Would there be a need for a threshold (i.e. the levy is levied only on financial institutions with large balance sheets) or allowance (i.e. for all financial institutions there would be a "tax-free" allowance for a certain amount of assets/liabilities) from the levy?

Answers 1.,2., 5.:

From a perspective of fairness, those institutions eligible to be supported by a resolution fund in case of emergency should also carry the main financing burden. In cases where small and medium sized financial institutions de facto have no access to a resolution fund's resources, this should be appropriately reflected in their funding obligations. This could be achieved by thresholds, allowances or other measures.

Q47: Do you consider individual or consolidated statements as more appropriate?

Answer 3.:

We have no comments regarding this question.

Q48: The state of the head office or group headquarters may tax on the basis of consolidated statements and the state of the branches or group members may also tax those. What do you consider as a suitable solution?

Answer 7.:

We have no comments regarding this question.

Q49: What would be the solution for attribution of assets/liabilities to bank branches (not subsidiaries)?

Answer 3.:

We have no comments regarding this question.

Q50: Since some Member States have already implemented such levies, which are different in their features, what do you think the interaction should be with those levies?

Answer 2.:

In order to avoid competitive distortion all individual levies based on the balance sheet must allow for a credit for the EU-wide levy.

Q51: Due to the way the tax base in a levy is derived (their accounting treatment and/or the subsequent adjustment, do you consider that one or more of the following items will be unduly disadvantaged/favoured:

(i) investments;

(ii) financing means;

(ii) activities in general?

Answer 7.:

We have no comments regarding this question.

Q52: Some authors argue that overnight secured credit (through repos mainly) necessitates special treatment of those types of funding because of the cheap, but unstable funding leading to systemic risk. Do you agree to such an argument and if so, what treatment do you suggest?

Answer 7.:

We have no comments regarding this question.

Q53: Would there be a necessity for a harmonization of certain accounting concepts (e.g. creation of provisions/reserves, netting of derivatives and other related positions) and to what extent?

Answer 1.:

In order to avoid arbitrage and competitive distortion, existing differences and possible harmonisation of accounting standards should be given appropriate attention when designing and calibrating the levies.

Q54: Do you think that the incidence of the levy will fall of the financial sector, or it will be shifted to the customers?

Answer 1.:

Wherever possible, depending on market structure and competitive strength of the financial institution, it can be expected that it will try to pass on the additional cost factor arising from the levies to their customers by adjusting the prices for financial services offered.

Q55: What do you think of the administrative costs related to the levy?

Answer 1.:

The costs should be comparable with those for a FAT. Compared to an FTT the administrative costs related to the levy can be considered to be rather low due to the different tax base and the dramatically lower number of taxable events.

Q56: What do you think of the effect on employment from the levy?

Answer 1.:

To the degree that financial institutions can pass on the costs of the levy to their customers, financing costs for the real economy would increase with possible negative effects for employment and the economy as a whole.

Q57: What do you think of the effect on small and medium enterprises (SMEs) from the levy?

Answer 1.:

Any negative effect the levy might have an impact on the economy as a whole (see our response to the previous question) and therefore will be felt by SMEs as well. SMEs in the form of financial institutions are likely to face a “disadvantage” since it will be harder for them to pass on the levy by increasing the prices for their services as a result of their comparably weaker market power.

Yours faithfully

Michael H. Sterzenbach
Secretary General