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Financing the Costs of Tackling Climate Change: The Financial Transaction Tax at the COP 30

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Abstract

Adapting to climate change and mitigating its effects will require a major global financial effort. One of the financial instruments that has been discussed over the past two decades to finance this effort, without ever achieving visible success, is the Financial Transaction Tax (FTT). More recently, at the COP 28, the tax was given new impetus with the creation of the Global Solidarity Levies Task Force, led by France, Kenya and Barbados and supported by several other countries and a wide range of international organisations (including the IMF, the World Bank, the UN, the OECD and the G20), with the aim of identifying sources of financing for the global effort. The Task Force has identified the FTT as one of the levies that merits further research. It is hoped that at the forthcoming COP 30, to be held in Brazil in November 2025, the Task Force will present final technical proposals for the introduction of new levies at the global level, including an FTT. The aim of this study is to contribute to this endeavour by evaluating the FTT proposal recently released by the Task Force for public consultation and, where relevant, making policy suggestions for consideration.

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1. The Financial Transaction Tax and the *Global Solidarity Levies Task Force*

Adapting to climate change and mitigating its effects will require a major global financial effort[1]. One of the financial instruments that has often been discussed over the past two decades to help finance these efforts, without ever achieving visible success, is the Financial Transaction Tax (FTT)[2]. More recently, at the COP 28[3], the tax was given new impetus with the creation of the *Global Solidarity Levies Task Force*, led by France, Kenya and Barbados, and supported by several other countries and a large number of international organisations (including the IMF, the World Bank, the United Nations, the OECD and the G20), with the aim of identifying sources of financing for this global effort[4]. The Task Force, composed of a distinguished panel of experts from various countries and organisations, has identified the FTT as one of the levies that

[1] A review of the specialised literature on climate finance is beyond the scope of this study. For a good overview, see the Third Report of the Independent High-Level Expert Group on Climate Finance, November 2024, at https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2024/11/Raising-ambition-and-accelerating-delivery-of-climate-finance_Third-IHLEG-report.pdf (last accessed on February 5th, 2025). For the United Nations' perspective on the topic, see https://www.un.org/en/climatechange/raising-ambition/climate-finance (last accessed on February 5th, 2025)

[2] See, e.g., CIDSE Recommendations on the use of an FTT to finance "climate justice", at https://www.cidse.org/2011/06/01/the-ftt-for-people-and-the-planet-financing-climate-justice/; WWF Recommendations on the use of an FTT to finance the cost of climate change and development, at https://wwfeu.awsassets.panda.org/downloads/wwf_position_paper__ftt_final_nov_2010.pdf; Report by *Stamp Out Poverty* and the *Institute of Development Studies* on financing mechanisms for climate change mitigation and adaptation, at https://unfccc.int/files/cooperation_support/financial_mechanism/long-term_finance/application/pdf/climate_finance_and_the_financial_transaction_tax.pdf; *Stamp Out Poverty*'s technical report on FTT, https://www.stampoutpoverty.org/wf_library_post/raising-revenue/; the "*Robin Hood Tax*" campaign, supported by a coalition of more than 50 NGOs and civil society groups at https://www.stampoutpoverty.org/rht-faqs/; and the long-standing lobby on the FTT by ATTAC (*Association pour la Taxation des Transactions financières et pour l'Action Citoyenne*), at https://www.globaljustice.org.uk/about-us/attac/ (all sources last accessed on February 5th, 2025).

[3] "COP 28" refers to the *UN Climate Change Conference (Conference of the Parties*) that took place in Dubai at the end of 2023. The COPs are held every year. They are a multilateral decision-making forum on climate change with the participation of almost every country in the world. For further details, see https://unfccc.int/process-and-meetings/what-are-united-nations-climate-change-conferences (last accessed on February 5th, 2025).

[4] See https://globalsolidaritylevies.org (last accessed on February 5th, 2025).

merits further research[5]. It is hoped that at the forthcoming COP 30, to be held in Brazil in November 2025, the Task Force will present final technical proposals for the introduction of new levies at the global level, including an FTT[6].

The aim of this study is to contribute to this endeavour by evaluating the FTT proposal recently released by the Task Force for public consultation and, where deemed relevant, to make suggestions for possible consideration[7].

The analysis is presented in four parts. First, the study provides a high-level introduction to the technical structure of the tax and the key elements that guide the analysis of its economic impact. It then briefly presents the FTT that the Task Force proposes in its public consultation document of February 2025[8]. This is followed by a detailed assessment of the full technical structure of the proposed tax. As we will see, the Task Force's current proposal is still silent on several of the tax's constituent elements, so we will build on the vision presented by the Task Force and, in addition to assessing the proposed elements, make suggestions for those that are still unknown, where relevant. The study concludes with a presentation of the main conclusions of the analysis carried out.

Given the purpose and limited scope of this study, it is necessary to strictly limit its subject matter. Therefore, we will not analyse the historical development of the tax[9];

[5] For the Task Force's technical vision of a globally implemented FTT, see the document put out for public consultation until the end of February 2025, entitled *Consultation on strawman options for solidarity levies* (hereafter "*Task Force Report*"), available at https://globalsolidaritylevies.org/consultation-on-straw-man-levy-proposals/ (last accessed on February 5th, 2025), pp. 17-19. See also the discussion below in Sections 4 et seq. for a detailed assessment of this proposal.

[6] See https://globalsolidaritylevies.org (last accessed on February 5th, 2025).

[7] It should be clarified that the author has already contributed to the public consultation process through the official channels provided for the purpose. This study complements our modest contribution to the public discussion by presenting our views in a more detailed and reasoned manner. These reflections are based on the decade of study that we have devoted to the tax, while negotiating at the technical level, on behalf of Portugal, the proposal for a Directive to introduce a harmonised FTT in the European Union. The opinions expressed here reflect only the views and thoughts of the author and in no way represent the opinion of any institution.

[8] See https://globalsolidaritylevies.org/consultation-on-straw-man-levy-proposals/ (last accessed on February 5th, 2025), pp. 17-19.

[9] Since Keynes' original idea, the tax has undergone a great deal of theoretical and practical evolution. A a good overview of this evolution can be found in MOLINA (2021), pp. 32-283.

evaluate previous attempts to introduce an FTT at the global or regional levels[10]; delve into the voluminous, and often inconsistent, economic literature on the subject[11]; contrast the FTT with other ways of taxing the financial sector[12]; discuss its legal nature[13]; examine the possible regulatory functions of the tax[14]; or analyse the various FTTs already implemented by various jurisdictions. Reference to the FTTs already implemented or designed will be made only to the extent necessary to substantiate the comments and suggestions made, and will be limited to the FTTs implemented by France and Italy, as well as to the Proposal for a Directive of the Council of the European Union implementing Enhanced Cooperation in the area of Financial Transaction Tax, COM(2013) 71 final (hereinafter, "*Proposal for an EU FTT Directive*")[15].

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[10] With regard to regional efforts, we refer here specifically to the EU's proposed FTT Directive, which requires a separate study. For an introduction to the topic, see EUROPEAN COMMISSION (2015). As for proposals for a Global FTT, see e.g., PEKANOV & SCHRATZENSTALLER (2019).

[11] In this study, we will limit ourselves to highlighting the core conclusions of these lines of research. For a more in-depth look, we recommend consulting the references on the subject listed below in Section 2 of this study, as well as, for a good overview of the topic, PWC (2013) and BURMAN *et. aliii* (2016).

[12] In particular, the confrontation between the FTT, the FAT and the VAT. The topic deserves its own autonomous study. We would like to emphasise that political economy is also an element that needs to be taken into account in this assessment. Furthermore, in our view, not all evaluations of the FTT demonstrate enough familiarity with its design possibilities. For in-depth studies, with different perspectives on the issue, see CLAESSENS, KEEN, & PAZARBASIOGLU (2010); FERIA & NESS (2016); MOOJI, & NICODÈME (2014).

[13] A rigorous definition of the legal nature of this tax would require prior clarification of various elements that the Task Force's proposal leaves open. It is also a discussion that is strongly influenced by the legal-constitutional framework of each state. For these reasons, at this stage of the discussion, when the main elements of the basic model to be implemented are still being defined, it would be a premature discussion with limited value. For the purposes of this study, we will refer to the tax generically as "*Financial Transaction Tax*" (FTT), adopting the terminology most commonly used in the international literature.

[14] Part of the doctrine has characterised the FTT as a tax with Pigouvian characteristics, capable of contributing to a better functioning of the markets by reducing their volatility. This, it should be added, was Keynes' original vision when he conceptualised the tax. As we shall see, the economic analysis of this matter is inconclusive. For a defence of the regulatory features of the FTT, see, in particular, STIGLITZ (1989); and SUMMERS & SUMMERS (1989).

[15] A large number of countries have implemented taxes known as FTTs, albeit sometimes with very different technical characteristics. In this study, we will focus only on the analysis of the FTTs implemented by France and Italy, as they, especially the former, appear to be the inspirational models for the Task Force's proposal. Given the centrality of the French model, we will reproduce some of the rules that we believe are crucial to a proper understanding of the tax. The Italian model is relevant to our analysis because it contains some technical innovations when compared to the French model,

With regard to the Task Force's proposals for the taxation of the financial sector, we will focus only on analysing the proposed FTT to be levied on transactions in shares (*stock*), referred to in its Consultation Report as "*A new/enhanced financial transaction levy*", and will not consider the other taxes proposed for the financial sector, namely those related to the taxation of crypto-assets[16]. Finally, given that it is possible to design FTTs of very different scope and structure, we will always base our analysis on the technical proposal of the Task Force, suggesting improvements to it where appropriate, rather than exploring radically different models, an option that seems to us to be of less value at this point in the political and technical evolution of the process.

2. A Controversial Tax

Analysed in its original purity, the FTT is a technically "crude" tax that taxes transactions in financial instruments on a gross basis, without any deduction or credit, resulting in cascading taxation[17]. In other words, if you buy or sell a share worth €100 on the market, the tax will be levied on this value, and it will do so every time the share changes hands. So, if it changes hands a hundred times in a year, the tax will be levied a hundred times on the same asset, without any deduction or credit for the tax already paid in the previous transactions. Analysed in its original purity, and considering the transactional complexity of today's markets, where the simple

namely the taxation of equity derivatives, an issue which we believe deserves careful consideration, as will be explained in Section 5 of this study. In view of its secondary nature in the analysis and the limited length of this study, we will generally confine ourselves to indicating the relevant Italian legal rules, avoiding their transcriptions unless they prove essential to ensure the clarity of the arguments being analysed. For a question of rigour, all reproductions of the French and Italian laws are presented in their original language versions. The Spanish experience is largely based on the French and Italian experiences and will not be dealt with in this study. For a competent overview of the main features of the FTTs that currently exist at a global level, including an exhaustive description of the Spanish FTT regime, see MOLINA (2021), pp. 327-517. Finally, reference will be made to some aspects of the Proposal for an EU FTT Directive. We believe that an analysis of some of its solutions is very useful, especially when considering the possibilities of extending the scope of the basic FTT model that the Task Force proposes.

[16] The Task Force proposes three different levies on cryptocurrencies for consideration, namely: A *financial transaction tax on cryptocurrency transactions*; a *levy on cryptocurrency gains*; and a *levy on energy used in mining for cryptocurrency*. See Task Force Report, pp. 20-23.

[17] It should be noted that the term "Financial Transaction Tax" is commonly used to refer to a wide range of taxes. In this study, the reference to an FTT assumes a transactional tax on financial instruments. For the various possible meanings of the term FTT, see MOLINA (2021), pp. 275-325.

purchase of a financial instrument can involve more than ten parties in the same transaction, it's not surprising that the tax is fiercely criticised by the financial sector[18].

The tax is also criticised in various academic circles, either because of its technical crudeness; because it is a tax on an intermediate stage of the production cycle, in clear contradiction to the traditional canons of the Diammond-Mirrlees "good tax"[19]; or due to its inconsistency with the classic Ramsey rule, which states that a tax should ideally favour inelastic bases[20].

In short, a tax that imposes cascading taxation at an intermediate stage of the production cycle, in a market characterised by long and complex chains of transactions, on a highly elastic tax base. To put it bluntly: a real tax "fiasco".

Based on this rudimentary interpretation of the technical possibilities of structuring the tax, a catastrophic view of its potential economic impact has become widespread[21]. We would highlight three core concerns. Firstly, the introduction of an FTT by one jurisdiction will result in a mass relocation of financial institutions and financial activity to other jurisdictions, as happened in the Swedish experience in the 1980s[22]. Secondly, the tax will drastically reduce the liquidity of the financial markets, severely hampering the financing of companies and individuals, and thus acting as an obstacle to investment and economic growth. Thirdly, the tax will be passed on in full by the financial sector to end consumers, increasing the cost of financing for the real economy, without imposing any real tax burden on the sector. The inconclusiveness of several of the existing economic studies on the tax has not helped to deconstruct these arguments.

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[18] Regarding the pressure from the financial sector lobby, and for a description of some its main arguments, see in particular SCHULMEISTER (2015).
[19] See DIAMOND & MIRRLEES (1971).
[20] See RAMSEY (1927) and STIGLITZ (2014). As we shall see, the FTT taxes highly elastic transactions, given the great ease of substitution in the financial markets.
[21] See, in particular, SCHULMEISTER (2015).
[22] Sweden introduced an FTT in 1984, which was subsequently repealed in 1991, that was an outright failure often cited by opponents of the tax. The Swedish FTT is an excellent example of poor tax design. Its main weakness was the connecting factor chosen to define the territoriality of the tax, i.e., the Swedish residence of the *brokers*. The connecting factor was very easy to circumvent by using the services of *brokers* resident in other countries. For a detailed explanation of the harmful economic effects of the Swedish FTT, see UMLAUF (1993). On the care to be taken in defining the territorial scope of an FTT, see Section 5.4 below.

The economic literature has analysed the impact of FTTs on the behaviour of financial markets, essentially based on the evolution of four variables, namely volatility, volume, liquidity and cost of capital. However, the existing literature is still sparse and, in many respects, largely inconclusive. For example, with regard to market volatility, some literature finds an increase in market volatility associated with FTTs[23], while other contributions find no effect[24]. Some papers even find a negative relationship[25]. The determination of the impact of FTTs on the cost of capital suffers from similar uncertainties and insufficient analysis[26]. The impact of FTTs on volume and liquidity also requires further investigation, although the existing literature seems to suggest that FTTs may lead to a reduction in transaction volume and liquidity in markets[27]. This data in itself, however, also entails a high degree of uncertainty about the ultimate positive or negative impact of FTTs on market behaviour. For example, the reduction in the volume of transactions could be explained by a significant reduction in short-term speculative transactions and, to that extent, could possibly

[23] See POMERANETS & WEAVER (2011); HAU (2006).

[24] See ROLL (1989); COELHO (2014); EUROPEAN COMMISSION, *Did the New French Tax on Financial Transactions Influence Trading Volumes, Price Levels and/or Volatility on the Taxed Market Segment? A Trend Analysis* (2014).

[25] See BECCHETTI, FERRARI, & TRENTA (2014); JONES & SEGUIN (1997).

[26] However, the limited evidence available seems to suggest that the introduction of an FTT could lead to an increase in the cost of capital. See AMIHUD & MENDELSON (1992). See also MATHESON (2011) (the author proposes that for shares with wider bid-ask spreads (i.e., less liquid) and longer average holding periods, the impact of the FTT on the cost of capital is small).

[27] There is no consensus in the economic literature on the impact of the FTT on market liquidity. Some authors argue that this also depends on the microstructure of the market and the liquidity measure used. See SUBRAHMANYAM (1998) and DUPONT & LEE (2007). Other studies point to an increase in the differential between supply and demand. See THÖNI (2020). From an empirical point of view, the results of the literature on the impact of an FTT on liquidity are also not convergent. For example, CAPPELLETTI, GUAZZAROTTI & TOMMASINO, (2016) and RÜHL & STEIN (2014) studied the impact of the Italian FTT on liquidity by analysing the spread between the buy and sell price and found a decrease in liquidity. They also found an increase in market volatility. However, the studies carried out on the French FTT came to different conclusions. CAPELLE-BLANCARD (2017) assessed the impact of the French FTT on liquidity and volatility. With regard to liquidity, two measures are assessed: the bid-ask spread and the liquidity ratio. There was an increase in the bid-ask spread, but no significant effect on the liquidity ratio (i.e., the measure of the change in volume required for a price change). No effect on volatility was found, regardless of the measure used. See CAPELLE-BLANCARD (2017). A more recent empirical study finds that the liquidity of taxed shares tends to decrease compared to untaxed shares. See PARWADA, RUI & SHEN (2021). On this subject, see also COLLIARD & HOFFMANN (2017); MEYER, WAGENER & WEINHARDT (2015).

contribute to a less volatile market[28]. Similarly, if we assume a diminishing marginal return associated with liquidity (i.e., more and more liquidity does not necessarily lead to a more efficient market), it is not clear that a slight reduction in the liquidity of a market automatically penalises its efficiency.

In sum, given the inconclusive nature of the existing technical analysis – to some extent also explained by the different types of FTTs analysed and the time periods covered[29] – it is not easy to say what type and magnitude of effects the introduction of an FTT will have on the functioning of financial markets[30].

3. *It's All About Tax Design*

Fortunately, history is replete with examples of courageous nations willing to challenge premature judgements. For the specific FTT that the Task Force proposes, the French and Italian experiences with this tax are particularly useful[31]. Given their relevance to the analysis that follows, let's look briefly at the lessons learnt from these two experiences. Let's do this by assessing how these two jurisdictions have dealt with the three main concerns associated with the "catastrophic vision" of the FTT's impact.

Let's start our analysis with the fear of relocation of financial institutions and activities. The potential for relocation is largely based on the connecting factor selected to define the territoriality of the tax for each financial instrument. For example, when designing the tax, do we define the taxing jurisdiction of a country on the basis of the residence of financial intermediaries or of end investors? Do we also tax the counterparties to the transaction? And why not tax financial instruments based on

[28] See, for instance, STIGLITZ (1989); and SUMMERS & SUMMERS (1989).

[29] See, in this respect, EUROPEAN COMMISSION (2015), p. 6.

[30] Nevertheless, as can be seen from this brief section, some progress has been made in this field by analysing data from the recent French and Italian FTTs. This literature is particularly relevant to evaluate the FTT model that the Task Force proposes, considering its proximity to the French FTT model. For a detailed discussion of the technical profile of the FTT that the Task Force proposes and its comparison with the French and Italian FTTs, see Sections 4 and 5 below.

[31] There are, of course, other models that also have some important lessons. For example, the UK Stamp Duty and the Belgian FTT, which, among other interesting aspects, tax intraday transactions. See MOLINA (2021), namely pp. 420-423 (United Kingdom) and pp. 414-416 (Belgium).

their place of issuance, as France and Italy have done?[32] Perhaps, who knows, cumulate the two connecting factors, residence and issuance?[33]

No less important is the relative burden of the tax. Substitution behaviour, including the relocation of financial institutions or activities, tends to have direct and indirect costs[34]. The potential for relocation will therefore also depend on the burden of the tax, both in terms of the rates applied and of the methodology chosen to determine the tax base for each financial instrument[35]. It is not surprising, therefore, that the tax is characterised by the application of extremely low tax rates[36], and that the methodology for determining the tax base of the different types of financial instruments is identified across the board as an area requiring particular attention[37].

Let's now consider the potential negative impact of the FTT on market liquidity. Again, the experience of these jurisdictions shows that the many choices regarding the structure of the tax play a crucial role. The French FTT, which has been in force since 2012 and generates more than one billion euros per year by taxing transactions in shares on the secondary markets, has resulted in a negligible reduction in market

[32] See discussion below in Section 5.

[33] This is the approach advocated in the Proposal for an EU FTT Directive, in its Article 4. For illustrative practical examples of the application of this comprehensive approach to the territoriality of an FTT, see https://taxation-customs.ec.europa.eu/document/download/af17c85a-a2d0-426c-b056-c4a8822201f2_en?filename=ftt_examples.pdf&prefLang=hr (last accessed on February 12th, 2025).

[34] See SCHOLES (2015).

[35] As we will see below, different asset classes may require a differentiated approach to the determination of the tax base and the definition of the applicable rate, in order to ensure a close alignment between the burden of the tax and the economic value of the instrument.

[36] In France, for example, a rate of 0.3% applied until recently. It changed on the 6th of February 2025 to 0.4%. It should be noted that the rate initially applied was 0.2%, which shows that France is gradually becoming more comfortable with the application of the tax and the control of its impact on the market. See *Code général des impôts* (hereinafter "CGI") Section XX, Article 235 ter ZD, point V. The tax rates applied in the other countries that have introduced an FTT are also in this low range. For an overview, see MOLINA (2021), pp. 327-517. As we will see in more detail, the low tax rates and well calibrated methodologies for determining the taxable amount of the different financial instruments need to be complemented by a number of surgical exemptions to deal with the cascading effect of the FTT on the chain of transactions involved in the transfer of ownership of a financial instrument.

[37] For a detailed discussion of the recommended methods for determining the taxable amount for each type of financial instrument, see Section 5.6 below. It should also be noted that the imposition of an exit tax is another tool available to the legislator to minimise the incentive to relocate.

liquidity[38]. A reduction that, given the diminishing marginal return to liquidity (i.e., an infinite degree of liquidity does not necessarily lead to a more efficient market) has apparently had no impact on asset prices[39]. The secret was to create surgical exemptions to ensure the necessary liquidity in the markets. And, indeed, there are various exemptions, or out-of-scope provisions, that could and should be discussed at an early stage of the implementation of the tax[40]. Exemptions for primary markets; for market infrastructures, such as Central Counterparties and Central Securities Depositories; for certain actors in the transaction chain, such as agents or clearing members; for market-making activities; for potentially illiquid securities, such as shares in small or medium-sized companies; for repurchase agreements and reverse repurchase agreements ("*Repos and Reverse Repos*"); for intraday transactions; etc[41].

In short, from a technical point of view, the technical crudeness of this tax in terms of deductions/credits should be offset by a meticulous approach to the definition of the taxable persons and taxable transactions; to its territoriality; to the exemptions and out-of-scope provisions to be applied; to the prudent choice of the moment when the taxable event occurs and when the tax is due; and to the careful determination of the taxable amount of financial instruments and the respective applicable tax rates, with the aim of aligning the burden of taxation with the economic value of the asset and preventing the tax cost from jeopardising the healthy functioning of the markets[42]. The design of these elements, as we shall see, is the basis of a technically well-structured FTT.

Finally, let's look at the claim that the tax will be passed on in full from the financial sector to final consumers, thereby increasing the cost of financing the real economy, without imposing any real additional tax burden on the sector. There are three arguments that need to be underlined at this juncture. First, in a competitive market, shifting the full cost of the tax to consumers is far from a fait accompli. Market

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[38] In particular, in 2022, the French FTT earned the French coffers 1,363 million euros. See CAPELLE-BLANCARD (2023), p. 10. For a good analysis of the tax's impact on market liquidity, see also, CAPELLE-BLANCARD (2017); and the discussion above in Section 2.

[39] See discussion above in Section 2.

[40] The choice between an exemption or an out-of-scope provision must take into account the overall structure of the tax and its efficient administration.

[41] See Section 5.8 below for a discussion of these possible exemptions and their justification.

[42] A particularly sensitive area, which we do not wish to address in this short study, is the difficulty of distinguishing between transactions that are useful for the proper functioning of financial markets and those that are not.

competition will determine how much of the cost can be passed on to final investors and how much must be internalised by financial institutions. Second, in a well-designed FTT, the majority of current financial activities that are relevant to citizens and businesses should remain outside the scope of the tax[43]. This is the case for insurance contracts; mortgage loans; consumer credit; loans to businesses; payment services, etc[44]. Finally, regardless of how the statutory incidence of the tax is defined, the ultimate economic incidence of the tax will always fall on individuals, as is the case with all taxes, whether indirect or direct. The key question in this area is, therefore, which individuals will ultimately bear the financial burden of the tax. Research carried out in the US on this issue suggests that, in the context of a moderately ambitious FTT model, 75 per cent of the burden of the FTT should fall on the richest 20 per cent, while the richest 1 per cent should bear 40 per cent of the tax burden[45]. In short, a progressive tax, if properly designed.

At this point, we hope that the reader, even if still somewhat reluctant, will be more open to exploring the structure of this tax in greater depth. As we have tried to demonstrate briefly, and will do in the remainder of this study, the FTT is far from being a tax "fiasco" and far from having "catastrophic" economic consequences if it is designed with the sophistication and prudence that financial markets demand.

4. The FTT proposed by the *Global Solidarity Levies Task Force*

The public consultation document on which we will base our analysis does not define several elements of the tax. In this section, we propose to indicate only the technical elements identified by the Task Force. In the next section, in addition to assessing the elements identified, we will try to offer some reflections on those that have yet to be defined.

[43] On this issue, see the Proposal for an EU FTT Directive, Recital 8.

[44] However, it should be noted that their subsequent trading through structured products should be covered by a broad FTT. This will not be the case with the FTT proposed by the Task Force, which is a narrow scope FTT, especially when compared to the proposed EU FTT Directive. With a view to protecting the progressivity of the tax base, the need for possible exemptions for pension funds and certain investment funds may also merit special consideration.

[45] See BURMAN *et aliii* (2016), p. 206.

The Task Force presents its FTT on the basis of three elements: Base, Rate and "Recovery Mechanism"[46]. Below we present the proposal exactly as put forward by the Task Force. As we shall see, the systematisation is not entirely rigorous[47].

That said, with regard to what the Task Force classifies as the "Base" of the tax, the proposal distinguishes between countries that do not yet apply an FTT and those that already do. For the former, a tax on the acquisition of shares is proposed. Technical simplicity and political feasibility are cited as reasons for this approach. As we will see in more detail in the next sections of this study, it is a model that has already been tested in its core features by several jurisdictions. For the latter jurisdictions, it is proposed to increase the tax rate on share acquisitions by a further percentage point and/or to adopt measures aimed at a "*global upward harmonisation of revenues tax*". The document clarifies that these revenue-raising measures could include removing the exemption for intraday transactions and broadening the tax base to include bonds[48]. However, it is not clear which bonds. For this second group of countries, it is also suggested that consideration be given to possible taxation of "*listed derivatives*"[49] and "*currency transactions*", although it is recognised that this is likely to be politically difficult to implement in the short term.

The same difference in approach between countries that do not yet apply a financial transaction tax and those that already do is proposed for the determination of the tax rate to be applied. For the former, a rate of 0.5 per cent on the "*purchase value*" of the shares is proposed,[50] as well as the introduction of an exemption for market-making

[46] There is a fourth entry in the document concerning revenue estimates. Here, the Task Force simply refers to the Capelle-Blancard study, noting that it estimates revenues of €270 billion per year for a 0.5 per cent rate FTT focused on the taxation of shares (excluding intraday transactions) worldwide, or €450 billion if intraday transactions are taxed. See CAPELLE-BLANCARD (2023).

[47] Most likely due to the early stage of conceptualization, some elements of the rate are presented in the description of the base and vice versa. The next section of this study will give a more systematic account of the proposal.

[48] See the discussion below for a discussion of these concepts.

[49] In other words, derivatives traded on stock exchanges or organised markets.

[50] The Task Force's choice of tax rate is based on the conclusions of the economic literature, which suggests a range of rates between 0.01% and 0.5%, depending on the instrument to be taxed and the scope of the tax. In the specific case of shares, the range is generally between 0.3% and 0.5%. See Task Force Report, p. 17.

activities[51]. For those countries that currently have an FTT, it is recommended that the current rate be increased if it is lower than 0.5% and that a further increase of 0.2% be applied to the taxation of *over-the-counter* (OTC) transactions[52]. This is justified by the fact that Italy and South Korea already apply different rates to penalise the most opaque transactions[53].

Finally, in what is described as the "Recovery mechanism", it is stated that the FTT will be levied on the purchase of shares issued by companies incorporated in the country that has introduced the FTT. The tax would be levied at the time of the transaction. It could be collected by the central securities depository or by the financial market regulatory authorities.

The Task Force proposes that this initiative should focus on the 30 countries that already have some form of FTT, with other countries encouraged to join.

5. Critical Analysis of the FTT Technical Structure proposed by the Task Force

5.1. General Considerations

The Task Force is well aware of the technical and political difficulties of implementing a comprehensive FTT on all types of financial instruments, including shares, bonds, derivatives and structured products. The lessons learned from the painful experience of trying to implement a comprehensive FTT at the European Union level, which France, as a founding country of the Task Force, knows so well, are clearly reflected in this proposal[54]. In our view, there are two core considerations that guide the technical-political approach proposed here.

Firstly, it is clear that the intention is to move forward with a very unambitious FTT, based on the technically conservative French FTT model. France had already tried this approach in the recent past, with the support of Germany, to unblock the FTT

[51] See the discussion below in Section 5.8 for an explanation of the concept of market-making and a more detailed discussion of the reasons that might justify this exemption.
[52] Briefly, OTC refers to a decentralised market where participants trade directly with each other.
[53] See Task Force Report, p. 17.
[54] For a brief description of the historical development of the negotiations on the EU's proposed FTT Directive, see RODRÍGUEZ (2021), pp. 152-154.

negotiations at EU level[55]. At the time, the initiative failed to achieve the necessary consensus, given the greater ambition defended by other Member States participating in the enhanced cooperation, still fans of the ambitious FTT model designed by the European Commission[56]. Here, the Task Force adopts a somewhat different stance. As a paradigm, it proposes a simple model and is very parsimonious about the possibility of increasing the ambition of the tax. In order to increase the political feasibility of the initiative, it is also proposed to start by harmonising the FTTs of the jurisdictions that already have this type of tax[57], both in terms of the tax base and the tax rate.

Secondly, it proposes that the evolution towards a more ambitious FTT model should take place very gradually, not compulsorily, and led by the jurisdictions that already have the most experience with the tax. Two indications are given for this process: to start with, eliminate some exemptions/exclusions from taxation that characterise the French FTT[58], generally justified as technical expedients to protect market liquidity, namely, the exemption for market-making activities and the non-taxation of intraday transactions[59]. Here, the Task Force is probably relying on the expected reduction in the potential for relocation associated with the accession of the world's main financial centres to the tax, which could allow FTT participating jurisdictions to lower their guard by eliminating tax exemptions/exclusions which, despite safeguarding market liquidity, have a considerable cost in tax revenue[60]. Further, the scope of the taxable

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[55] For the 2019 Franco-German proposal, see https://data.consilium.europa.eu/doc/document/ST-10097-2019-INIT/en/pdf (last accessed on February 12th, 2025).

[56] The Portuguese Presidency of the Council of the European Union made a last effort to rescue the FTT, but the divergence of positions among the Member States of the enhanced cooperation was too great. See https://img1.wsimg.com/blobby/go/c09f8535-6e24-44e8-9e46-241415f920f5/downloads/La%20UE%20lanza%20una%20nueva%20propuesta%20para%20una%20'tasa.pdf?ver=1737019336760 (last accessed on February 12th, 2025). Gabriela Rodrigues mentions in her article that the reason for the non-acceptance of the Franco-German proposal was the disagreement between the Member States involved in the enhanced cooperation over the methodology for sharing the tax revenues. See RODRÍGUEZ (2021), p. 154. This was certainly one point of disagreement. But the disagreement was much deeper, centred on the ambition of the FTT model to be implemented.

[57] As noted above, the Task Force identified 30 jurisdictions. It is not clear how this survey was carried out, not least because, as noted above, there is a wide variety of taxes that have been labelled "FTTs." For a good overview of the implementation of the tax at the international level, see MOLINA (2021), pp. 327-517.

[58] As well as their followers, such as the Italian and Spanish FTTs.

[59] For an explanation of these concepts, see the discussion below in Section 5.8.

[60] The figures in the Capelle-Blancard study referred to by the Task Force illustrate this, pointing to an estimated revenue of €270 billion per year for the equivalent of a 0.5% FTT on shares (excluding

transactions should be progressively extended to include bonds, listed derivatives and currency transactions. It is in this proposed extension, about which little is known, that the most complex elements of the FTT are to be found. This will be discussed below.

Having presented the Task Force's proposal, the time has now come to more rigorously scrutinise its technical elements. We will do so by adopting a systematisation similar to that found in the Tax Codes, assessing the tax in terms of its taxable persons; taxable transactions; territoriality; chargeable event and chargeability; taxable amount; rates; exemptions; and mechanisms for assessing, paying and collecting the tax.

5.2. Taxable Persons

Identifying the taxable person is a crucial decision in the design of any tax. In the case of the FTT, the legislator has two structural options. The first is to choose the final investor as the taxable person[61]. In this case, the taxable person could be the buyer, the

intraday transactions) worldwide, or €450 billion if intraday transactions are taxed. The removal of the exemption for market-making is also likely to raise significant revenue.

[61] Note that in many financial transactions the final investor may be a financial institution. Indeed, where financial institutions are chosen as the taxable person for this tax, as occurs with the Proposal for an EU FTT Directive, it is necessary to clearly determine in which role or roles they will be taxable. The European Comission when deeming the "financial institutions" as the taxable persons of the FTT, took the broadest possible approach, effectively cumulating the two structural options here described. Indeed, in its Article 3, n.º 1, it is determined that the financial institution will be a taxable person *when acting as party to a financial transaction, acting either for its own account* or *for the account of another person*, or *when acting in the name of a party to the transaction*. The definition of "financial institution" itself is also very broad. See Article 2, n.º 1, paragraph 8. As a measure to avoid abuse, even a non-financial entity could be reclassified as a financial entity if the main part of its activity consisted in carrying out financial transactions. See Article 2, n.º 1, paragraph 8, subparagraph (j). The intention was to cast the net very wide to avoid evasion. Note that the Commission clearly opted not to tax transactions in which financial institutions were not involved. The Commission took the view that, given the broad definition of "*financial institution*" in the Directive Proposal, the definition of taxable transactions should cover most of the financial transactions envisaged in the proposal and leave "*little or no room*" for the substitution of a financial institution by a non-financial one. Furthermore, it was claimed that the aim was never "*to tax transactions directly between citizens or between enterprises with a limited volume of financial transactions or between citizens and these enterprises, without any involvement of a financial institution.*" See EUROPEAN COMMISSION, *How the FTT Works in Specific Cases and Other Questions and Answers*, available at https://taxation-customs.ec.europa.eu/document/download/af17c85a-a2d0-426c-b056-c4a8822201f2_en?filename=ftt_examples.pdf&prefLang=hr, p. 10 (last accessed on February 12th, 2025).

seller or both[62]. This option, with its three sub-options, can be implemented imposing obligations to settle and pay the tax on third parties, namely market infrastructures or financial intermediaries that have the necessary data, structure and know-how to ensure the swift fulfilment of the tax obligations. Another option is to elect financial intermediaries as the taxable persons. The sub-options available are similar: tax the intermediary acting as the buyer or seller, or tax both counterparties[63].

The Task Force's proposal is not explicit on this point. However, by indicating that it will largely follow the model of the French FTT, we can deduce that the financial intermediary acquiring the financial instrument will possibly be designated as the primary taxable person. Following the French model, the taxable person may be the investment firms that carried out the transactions on their own behalf or on behalf of their clients, or the holder of the investor's securities account (depositary) when the transactions are not carried out by investment firms/brokers[64]. The Italian FTT has

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Although not explored in this study, this approach could, nonetheless, be extended by also identifying non-financial ultimate investors as taxpayers as a complementary criterion (e.g., buying and selling of shares between two non-financial companies). It is questionable whether this would be a commendable approach.

[62] In this case, each of the counterparties would be autonomously responsible for paying its share of the tax. Although the subject will not be explored in depth in this study, it should be noted that the option of taxing both counterparties can be implemented in conjunction with the joint and several liability mechanism, making the parties jointly and severally liable for the entire tax payment due on both legs of the transaction. This option has its advantages and disadvantages, which need to be carefully considered. The issue goes beyond the limited scope of this study.

[63] In this case, when several financial intermediaries are present in a transaction, it will be necessary to determine ordering rules, establishing which one should classify as the taxable person (e.g., the financial intermediary closest to the final investor, which directly receives the buy or sell order).

[64] See CGI, Section XX, Article 235 ter ZD, point VI, paragraph 1, which states that: "*La taxe est liquidée et due par l'opérateur fournissant des services d'investissement, au sens de l'article L. 321-1 du code monétaire et financier, ayant exécuté l'ordre d'achat du titre ou ayant négocié pour son compte propre, quel que soit son lieu d'établissement.*" Paragraph 2 of the rule deals with the case where several operators are involved in the transaction. In this case, the tax is settled and due by the operator who receives the order directly from the final purchaser, in particular: "*Lorsque plusieurs opérateurs mentionnés au premier alinéa du présent VI interviennent pour l'exécution de l'ordre d'achat d'un titre, la taxe est liquidée et due par celui qui reçoit directement de l'acquéreur final l'ordre d'achat.*". Paragraph 3 deals with the case where no investment service provider is involved in the transaction. In this scenario, French law provides that: "*Lorsque l'acquisition a lieu sans intervention d'un opérateur fournissant des services d'investissement, la taxe est liquidée et due par l'établissement assurant la fonction de tenue de compte-conservation, au sens du 1 de l'article L. 321-2 du même code, quel que soit son lieu d'établissement. L'acquéreur lui transmet les informations mentionnées au VIII du présent article.*".

also identified the purchaser of the financial instrument as the taxable person[65], although it adopts a different approach to the definition of the taxable person[66].

Provided that the scope of the FTT is limited to the acquisition of shares, or even bonds[67], we agree with the approach proposed by the Task Force for an initial phase of implementation of the tax, especially as regards taxing only the acquirer. It results in greater simplicity for the administration of the tax, avoiding the practical complexities associated with taxing both counterparties, namely the difficulty of identifying the identity of the counterparty on anonymous trading platforms[68].

If we consider extending the scope of the tax to derivatives, as the Task Force's proposal leaves open for those jurisdictions that have more experience with this tax, the issue becomes far more complex. Note that the Task Force limits the extension of the scope of taxable transactions to *listed derivatives*[69]. This delimitation requires some comments.

In general, a derivative is a contract whose value is derived from an *underlying* asset, such as shares, currency, etc. There are different types of derivatives[70]. Among other

[65] The UK Stamp Duty has adopted a similar approach. It should be stressed, however, that other countries followed different approaches. For example, the Greek FTT has selected the seller as the taxable person, and the Belgian FTT both counterparties (although the person responsible for collecting and remitting the tax to the state is the financial intermediary who mediates the transaction). See MOLINA (2021), p. 425 (Greece); p. 415 (Belgium) and p. 422 (United Kingdom).

[66] See *Articolo 1, commi da 491-500, legge 228/2012 (Legge di stabilità 2013),* paragraph 494, which states that "*L'imposta di cui al comma 491 e' dovuta dal soggetto a favore del quale avviene il trasferimento... L'imposta di cui ai commi 491 ... non si applica ai soggetti che si interpongono nelle medesime operazioni. Nel caso di trasferimento della proprieta' di azioni e strumenti finanziari di cui al comma 491, ..., l'imposta e' versata dalle banche, dalle societa' fiduciarie e dalle imprese di investimento abilitate all'esercizio professionale nei confronti del pubblico dei servizi e delle attivita' di investimento... Qualora nell'esecuzione dell'operazione intervengano piu' soggetti tra quelli indicati nel terzo periodo, l'imposta e' versata da colui che riceve direttamente dall'acquirente o dalla controparte finale l'ordine di esecuzione. Negli altri casi l'imposta e' versata dal contribuente*." (emphasis added). As we can see, Italian law defines the taxpayer as the final purchaser and imposes the ancillary tax obligations on him if there is no intermediary in the transaction in question.

[67] See our comments below in Section 5.3.

[68] See our comments below in this section for further details.

[69] *Listed derivatives*, also known as *exchange-based derivatives*, are financial contracts traded on regulated markets. They include, for example, instruments such as futures and options.

[70] For a comprehensive definition of these instruments, see Annex I, Section C, paragraphs 4 to 10 of MiFID II (Directive 2014/65/EU).

functions, these contracts allow the parties to assume obligations to buy or sell the underlying asset on a future date at a predetermined price. As we will see in more detail in the following sections, the taxation of derivatives raises very different issues from the taxation of shares and bonds[71], be it in the definition of the taxable event, the determination of the taxable amount, the applicable tax rate, the connecting factors to be used for territoriality and, of particular relevance for our present analysis, the definition of the taxable persons.

Indeed, the legal nature of derivatives commends that *both counterparties* be identified as taxable persons. Derivatives are contracts in which the parties are *mutually obliged* to specified obligations for a certain period of time, unlike a transaction in which a security is traded. In this context, taxing both counterparties ensures a more rigorous and secure application of the tax[72]. However, it raises complex issues that should be duly considered by jurisdictions considering the inclusion of *listed* derivatives in the scope of the tax. The main issue to be addressed is how to deal with anonymous transactions, where the counterparties are unknown, as is the case with anonymous trading platforms. The root of the problem lies in the fact that listed derivatives are generally traded on regulated markets and multilateral trading facilities ("MTFs"), with market infrastructures that, as a rule, do not provide for the identification of the counterparty[73].

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[71] These financial instruments are collectively known as "*securities*", given the characteristics they share. It should be noted that there are also *securitised derivatives* traded on the stock exchange. This type of derivative raises specific issues that also need to be considered. The subject goes beyond the limited scope of this study.

[72] This was the Italian approach to the taxation of derivatives. While in the case of the transfer of shares, the Italian legislator has chosen only the acquirer as the direct taxable person, in the case of derivatives on shares, it has chosen both counterparties as the taxable persons. *Articolo 1, commi da 491-500, legge 228/2012 (Legge di stabilità 2013),* paragraph 494, which states that "*L'imposta ...di cui al comma 492 e' dovuta nella misura ivi stabilita da ciascuna delle controparti delle operazioni*". (emphasis added). It should be noted that the "*buyer-only*" model could be applied to securitised derivatives transactions. However, differentiation from other derivatives in this respect should be avoided in order to avoid market distortions caused by differential taxation of essentially identical instruments.

[73] See EUROPEAN COMMISSION, *FTT - Collection Methods and Data Requirements* (2014), p. 44. It should be emphasised that around 90% to 95% of listed derivatives are traded on regulated markets. The remainder is typically traded on *MTFs/multi-dealer* platforms. *Ibid*. The Proposal for an EU FTT Directive proposed to tax both counterparties to a derivative contract, including listed derivatives. The proposal did not, however, establish any rules on *matching* between the parties. The Commission's position on this issue has been to defend that the trading venue should implement relevant IT tools and other solutions to identify the counterparty's responsibility in the matching process. See in this regard

On the other hand, for unlisted or OTC derivatives[74], the determination of the primary tax liability should be straightforward, as in these cases the counterparty tends to be known[75]. We will comment on the Task Force's decision not to include OTC derivatives in the scope of the FTT in the next section of this study.

In short, the "*buyer-only*" approach to the definition of taxable persons seems appropriate in the context of a tax with a scope limited to the acquisition of shares and bonds. However, if we consider extending its scope to derivatives contracts, the approach to be adopted should require further consideration.

5.3. Taxable Transactions

The basic FTT model proposed by the Task Force focuses on the acquisition of shares. The simplicity of the formulation masks an important set of issues. The first difficulty is identifying which securities should be considered "shares" for tax purposes. The second is deciding whether to tax only shares traded on regulated markets or also those traded on OTC markets. Thirdly, whether to tax all shares regardless of the size of the company, or to limit the scope of the tax to the shares of large companies. Finally, it is important to consider whether the scope of the tax should include, from the outset, the taxation of instruments that lend themselves to high substitutability in relation to shares, namely equity derivatives.

Let's address each of these points separately.

(i) The Definition of "Shares"

EUROPEAN COMMISSION, *How the FTT Works in Specific Cases and Other Questions and Answers*, available at https://taxation-customs.ec.europa.eu/document/download/af17c85a-a2d0-426c-b056-c4a8822201f2_en?filename=ftt_examples.pdf&prefLang=hr, pp. 18 and 27-28 (last accessed on February 12th, 2025). As the E&Y report demonstrates, there are several practical difficulties in implementing this approach. See EUROPEAN COMMISSION, *FTT - Collection Methods and Data Requirements* (2014). Despite these difficulties, we believe that the current state of technology justifies an in-depth study and analysis of this issue. Indeed, an FTT will be significantly strengthened if it is applied to both counterparties.

[74] Generally speaking, OTC derivatives are financial contracts traded directly between two parties, outside of a regulated market. Common types of OTC derivatives include *swaps* and *forwards*.

[75] This should be the case for all transactions, whether or not they involve a Central Counterparty. Therefore, the application of the counterparty principle to OTC derivatives, whether cleared or uncleared, should in principle not be problematic.

Firstly, which securities should be classified as "shares" for tax purposes. It is likely that each state will refer to the rules of its Commercial Law for this purpose. This is what the French and Italian legislators do, adding some clarifications for tax purposes[76].

In our view, it could be useful to provide some general guidance on this issue in a future, more detailed proposal from the Task Force, broadly indicating the type of instruments that should in principle be included in this definition, thus contributing to a greater harmonisation of the tax.

(ii) The Decision to Tax Only Listed Shares Traded on Regulated Markets

Let's now take a closer look at the decision to tax only listed shares traded on regulated markets, or also listed shares traded on OTC markets, or even unlisted shares.

[76] See CGI, Section XX, Article 235 ter ZD, point I, "*Une taxe s'applique à toute acquisition à titre onéreux <u>d'un titre de capital, au sens de l'article L. 212-1 A du code monétaire et financier, ou d'un titre de capital assimilé, au sens de l'article L. 211-41 du même code</u>, dès lors que ce titre est <u>admis aux négociations sur un marché réglementé</u> français, européen ou étranger, au sens des articles L. 421-4, L. 422-1 ou L. 423-1 dudit code, ..., et que ce titre est émis par une société dont le siège social est situé en France et dont la capitalisation boursière dépasse un milliard d'euros au 1er décembre de l'année précédant celle d'imposition*" (ênfase nossa). The Directorate General of Finance in the *Bulletin Officiel des Finances Publiques, BOI-TCA-FIN-10-10, de 21/12/2015,* elaborates on this definition as follows*: "Les titres de capital ou titres assimilés, au sens de l'article L. 211-41 du CoMoFi, comprennent les actions et autres titres donnant ou pouvant donner accès au capital ou aux droits de vote, y compris lorsque ces titres sont émis sur le fondement de droits étrangers. Sont notamment dans le champ de la taxe les certificats d'investissement (CI) et de droit de vote (CDV). Sont également dans le champ de la taxe les titres donnant ou pouvant donner accès au capital ou aux droits de vote, et notamment les obligations convertibles en actions (OCA), les obligations remboursables en actions (ORA), les obligations convertibles en actions nouvelles ou existantes (OCEANE), les obligations échangeables en actions (OEA), les obligations à bon de souscription d'actions (OBSA), les obligations à bon de souscription d'actions remboursables (OBSAR), les obligations à bon de souscription ou d'acquisition d'actions remboursables (OBSAAR), les obligations remboursables en actions nouvelles ou existantes ou obligations remboursables en actions nouvelles ou en espèces (ORANE), les obligations remboursables en numéraire ou en actions nouvelles ou existantes (ORNANE), les bons de souscription d'actions (BSA), les bons de souscription d'actions remboursables (BSAR) et les bons de souscription ou d'acquisition d'actions remboursables (BSAAR). Sont en outre dans le champ de la taxe, à compter du 1er décembre 2012, les certificats représentatifs d'actions (CRA) françaises émis par une entité quel que soit son lieu d'établissement.*" (emphasis added). For Italy, see *Articolo 1, commi da 491-500, legge 228/2012 (Legge di stabilità 2013),* paragraph 491. For a more detailed definition, see *Decreto del ministero dell'Economia e delle Finanze 21 febbraio 2013 - Attuazione dei commi da 491 a 499 della legge n. 228/2012 - imposta sulle transazioni finanziarie,* Article 1.

The French and the Italian laws have adopted a different stance on this issue. France has chosen to tax only listed shares[77]. Italy, on the other hand, has chosen to broaden the scope of the tax[78].

Let's start by evaluating the decision not to tax unlisted shares. Taxing only listed shares traded on regulated markets is easier to administer, as it allows the assessment and collection of the tax to be delegated to market infrastructures. Revenue from unlisted shares also tends to be much more limited[79]. It could be argued, however, that not taxing the trading of shares in unlisted companies could be an incentive for them to remain unlisted. We are not convinced, however, that a small tax such as the one proposed here would be decisive in this assessment.

A different issue is the sale of a listed share in an OTC market. The Task Force admits that it can be taxed, at least by countries that already have an FTT, when it proposes an increase of 0.2 per cent for transactions that take place on OTC. We believe this is the right approach. If OTC transactions in listed shares (with or without the intervention of an intermediary) are not taxed, the tax will provide an incentive to relocate these transactions outside the regulated markets, which does not contribute to market transparency[80]. However, the implementation of this option will require particular care in defining the procedures for the settlement and collection of the tax, as it will not be possible to use a market infrastructure to automate these tasks. The taxation of OTC transactions will generally require taxable persons or their intermediaries to declare the transaction directly. At the limit, a centralised system for the assessment, payment and collection of the tax could be set up for transactions taking place on regulated markets, with a subsidiary system based on self-assessment being defined for the reporting of transactions carried out over-the-counter[81].

[77] See CGI, Section XX, Article 235 ter ZD, point I, "*Une taxe s'applique à toute acquisition à titre onéreux d'un titre de capital..., ou d'un titre de capital assimilé, ..., dès lors que ce titre est admis aux négociations sur un marché réglementé français, européen ou étranger...*" (emphasis added).

[78] See *Articolo 1, commi da 491-500, legge 228/2012 (Legge di stabilità 2013)*, paragraph 491. For the densification of the definition see *Decreto del ministero dell'Economia e delle Finanze 21 febbraio 2013 - Attuazione dei commi da 491 a 499 della legge n. 228/2012 - imposta sulle transazioni finanziarie,* Article 1.

[79] However, in some countries there are large companies owned by individuals or families that are not listed. This is an issue to be examined in the light of the specific characteristics of the country concerned.

[80] For an assessment of the proposal for a higher rate for OTC transactions, see Section 5.7 below.

[81] See Section 5.9 below for a more detailed discussion of the procedures for assessing, paying and collecting the tax.

In summary, given the aim of defining an easy-to-implement base model with reduced costs associated with complying with the ancillary obligations of the tax, the scope of the tax could be limited to listed shares traded on regulated markets and, with certain precautions regarding the mechanism for assessing and collecting the tax, to the transfer of these shares on OTC markets. Far from ideal, but very close to what is politically realistic in the short term.

(iii) Taxation and Company Size

Let's now consider the option of taxing shares irrespective of the size of the company or, instead, limiting the scope of the tax to the shares of large companies. Both France and Italy have chosen to limit their FTT to the taxation of shares in large companies[82]. The objective is clear. To minimise the impact of the tax on market liquidity. The securities of small and medium-sized listed companies tend to be much less liquid than those of large companies[83]. The revenue from taxing these securities would, in principle, also tend to be small, given the generally limited volume of transactions involved. For these reasons, at an early stage in the implementation of the tax, we would suggest, following the French and Italian approaches, to focus the tax only on the most liquid securities, to test the markets cautiously.

(iv) Substitution and Equity Derivatives

Finally, when designing the basic model of the FTT, it is necessary to consider whether it would be appropriate to include in the scope of the tax financial instruments that are highly substitutable with shares, namely equity derivatives.

From a tax policy point of view, when taxing a financial instrument, it is advisable to tax its closest substitutes. This minimises the behavioural changes induced by the tax

[82] See CGI, Section XX, Article 235 ter ZD, point I, "*...ce titre est émis par une société dont le siège social est situé en France et dont la capitalisation boursière dépasse un milliard d'euros au 1er décembre de l'année précédant celle d'imposition*" (emphasis added). The list of these companies is published annually. For the list of companies currently in force, see *Bulletin Officiel des Finances Publiques*, BOI-ANNX-000467 of 23/12/2024. For Italy, see *Articolo 1, commi da 491-500, legge 228/2012 (Legge di stabilità 2013)*, paragraph 491, which states that the companies covered are "*societa' la cui capitalizzazione media nel mese di novembre dell'anno precedente a quello in cui avviene il trasferimento di proprieta' sia inferiore a 500 milioni di euro.*"

[83] There are several reasons for this. Given the narrow scope of this study, the subject will not be explored here.

and, consequently, the associated deadweight loss, which generates economic inefficiency[84]. These behavioural changes, in the form of tax avoidance strategies, also reduce the tax base and, hence, the expected tax revenue[85].

In this case, it is a question of preventing the replacement of transactions involving shares, which would be taxed, with transactions on equity derivatives, which may be able to replicate all the characteristics of shares, except voting rights, without being taxed. If equity derivatives are excluded from the scope of the tax, market participants interested in the economic value of a share, but not its voting rights, will be able to use derivatives to fulfil their purpose without paying the tax[86].

Italy has chosen to address this risk in the design of its FTT. The Italian FTT taxes derivative transactions whenever the underlying asset is a taxable Italian share. The tax is payable by *each of the parties to the transaction* at a specific rate (rather than an *ad valorem* rate), depending on the nature and nominal value of the instrument in question[87]. The tax is payable regardless of the place where the transaction is concluded or the place of residence of the contracting parties. The intermediaries involved in the transactions are responsible for collecting the tax.

[84] SEE CORREIA (2013), p. 124.

[85] It should be noted that this substitution behaviour is not always observable, since the market for corporate control, in certain situations, can be strong enough to sustain a balanced stock market and dissuade taxpayers from substituting.

[86] Several authors also support this approach. See, e.g., MATHESON (2011), p. 28 ("*Taxing securities without taxing their derivatives could result in migration of trade from the spot market to derivatives markets, with an accompanying increase in leverage and risk. To limit such distortions, an STT should be applied to transactions in all types of traded securities-equity, debt, and foreign exchange-and their derivatives.*"); BRONDOLO (2011), p. 18 ("*Shareholders may also seek to avoid the tax by trading in derivatives instead of the underlying share, but here too some limitations and controls can be introduced. Countries could consider expanding the tax base of the FTT to eliminate any loopholes that may be available to derivatives, such as contracts for differences CFDs.*"); or MEYER, WAGENER & WEINHARDT (2015), p.18 ("*The tax design must minimise the potential risk that professional investors simply trade instruments in which their activities will not be taxed. For example, transactions in substitutes for stocks that can have similar pay-off structure, such as futures, options, and other derivatives, have to be taxed.*").

[87] See *Articolo 1, commi da 491-500, legge 228/2012 (Legge di stabilità 2013),* paragraph 492, which states that derivatives on taxable shares "*sono soggette, al momento della conclusione, ad imposta in misura fissa, determinata con riferimento alla tipologia di strumento e al valore del contratto*". For a more detailed description of the rule, see *Decreto del ministero dell'Economia e delle Finanze 21 febbraio 2013 - Attuazione dei commi da 491 a 499 della legge n. 228/2012 - imposta sulle transazioni finanziarie,* Articles 9 and 11.

Other Financial Instruments – Bonds

In addition to taxing the acquisition of "shares", the Task Force proposes a possible extension of the scope of the tax to bonds, although without specifying which ones; to listed derivatives; and to currency transactions. Let's look very briefly at the decision to include bonds and listed derivatives in the scope of the tax[88].

There are a couple of good arguments in favour of broadening the tax base to include bonds. Firstly, with respect to the taxation of *corporate bonds*, it would make it possible to maintain the neutrality of the tax in relation to the company's decision to finance itself through debt or equity. This neutrality is relevant given that most corporate income tax systems still fiscally favour debt financing over equity financing, with the negative consequences that are well-known[89]. Secondly, the revenue from taxing bonds could be significant if government bonds were also included in the tax base.

Although this extension is certainly worth considering, there are several elements that call for caution. As regards the taxation of corporate bonds, these markets are generally much less liquid than equity markets. The impact of the tax on the liquidity of these markets should be carefully assessed before deciding to include these instruments in the scope of the tax.

In the case of government bonds, the potential impact of the tax on the cost of government financing must also be considered. Although we assume for the purposes of this study, as discussed in Section 5.8 (Exemptions) below, that primary markets will always be excluded from the tax, either through an exemption or an out-of-scope provision, the taxation of a security in secondary markets may nevertheless have an impact on an investor's appetite for a security in primary markets. The taxation of government bonds could therefore eventually result in the need to increase the interest rate offered to the investor to compensate for the cost of the tax, to keep the attractiveness of the securities unchanged. Investors, especially institutional investors, also tend to use these types of bonds as a risk management tool, so taxing them could have a negative impact in this respect. We stress that these are just some of the

[88] The analysis of the taxation of currency (foreign exchange) transactions has its own peculiarities, which merit a separate study. Given the narrow scope of this study, the issue will not be dealt with here.

[89] See EUROPEAN COMMISSION (2012).

elements that should be carefully weighed when considering extending the scope of the tax to government bonds. The issue is economically (and politically) complex.

Finally, it seems to us that even if it is decided to include corporate and government bonds in the scope of the tax, a differentiated treatment of short-term Money Market Instruments should be seriously considered, given their central role in the proper functioning of the markets[90].

In conclusion, the extension of the scope the FTT to both corporate and government bonds should be carefully considered. It should be underlined that each of these categories of bonds raises different tax policy concerns.

Other Financial Instruments – Listed Derivatives

With regard to derivatives, as noted above, the Task Force proposes that only *listed* derivatives should be included in the scope of the tax. We assume that the intention is again to facilitate the administration of the tax by using market infrastructures to assist in the assessment and collection of the tax. However, listed derivatives represent a very limited portion of all existing derivatives, with the proportion of derivatives traded on OTC markets being much higher[91].

Whether or not to tax derivatives, and which ones, is, in our view, the most difficult decision in setting up an FTT, whether due to the high degree of substitutability of these instruments; their technical complexity; the difficulty of aligning the burden of the tax with the economic value of the derivative; the important risk management functions that certain derivatives can perform; the potential interference with monetary policy; and the impact that their taxation can have on the real economy. In short, it is not surprising that the Task Force is moving away from these instruments at this stage.

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[90] Instruments that are commonly traded on the Money Market, especially short-term ones, fulfil important liquidity protection functions in the markets, which it may be prudent to take into account. For a definition of Money Market Instruments see, for example, Article 4, n.º 1, paragraph 17, of MiFID II (Directive 2014/65/EU), i.e., "*...those classes of instruments which are normally dealt in on the money market, such as treasury bills, certificates of deposit and commercial papers and excluding instruments of payment*".

[91] See https://data.bis.org/topics/OTC_DER (last accessed on February 15th, 2025).

All in all, for reasons of *simplicity and political feasibility*, the scope of the tax that the Task Force proposes for its FTT base model, limited to the "acquisition of shares", seems reasonable to us[92]. However, for the reasons set out above, we would recommend that this basic model be extended to include the taxation of equity derivatives, following the Italian solution, which could serve as a technical inspiration. The possible extension to corporate and/or government bonds and other categories of derivatives, on the other hand, requires much more complex and careful consideration, which is why we agree that, for the same reasons of simplicity and political feasibility, these financial instruments should not be included in the basic FTT model for the time being.

5.4. Territoriality

In principle, the FTT will be levied on the purchase of shares issued by companies established in the country implementing the FTT. This is also the approach taken by the French and Italian FTTs[93]. The application of the issuance principle considerably limits the risks of evasion, since all transactions in shares of listed companies with registered offices in the country implementing the FTT will be taxed, regardless of the place of the transaction, the nationality or the place of residence of the financial intermediaries or final investors. This means that the tax also covers taxable securities transactions carried out on foreign stock exchanges.

The only way for issuing companies to exclude their securities from the scope of the tax would be to transfer their headquarters outside the taxing state. It is highly unlikely that companies would do this for the sole purpose of avoiding a very low tax rate on secondary market transactions. Indeed, this type of behaviour has not been observed in France or in Italy[94]. The adoption of the tax at a global level could only reinforce this conclusion.

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[92] Based on our experience in negotiating this tax at the EU level, we believe that the Task Force's approach is politically wise. First, there is the need to increase the number of countries that have an FTT and harmonise the tax as much as possible. Only then does it make sense to increase its ambition. An ambitious FTT, even if it is extremely well calibrated, requires the participation of the world's main financial centres, for both economic and administrative reasons.

[93] See CGI, Section XX, Article 235 ter ZD, point I, "*...ce titre est émis par une société dont le siège social est situé en France...*". See also the densification of the criterion by the Directorate General of Finance in the *Bulletin Officiel des Finances Publiques,* BOI-TCA-FIN-10-10, of 21/12/2015, in its points 80 and 90. For Italy, see *Articolo 1, commi da 491-500, legge 228/2012 (Legge di stabilità 2013)*, paragraph 491.

[94] See discussion in Section 2 above.

If all jurisdictions adopt the issuance principle only, the potential for international double taxation of the tax can also be greatly reduced.

However, and somewhat confusingly given the basic model it is proposing, the Task Force indicates in the economic analysis section of its proposal that it envisages the application of both the issuance *and* residence principles[95]. Let's wait for further developments on this proposal, but it seems to us that the mention of the residence principle may be an attempt to address concerns about the taxation of other financial instruments, particularly derivatives, in the case of jurisdictions that intend to broaden the scope of the tax.

If only the acquisition of shares is to be taxed, the issuance principle should be sufficient and easier to implement.

It should also be emphasised that the extension of the basic model proposed in this study, which includes the taxation of equity derivatives from the outset, does not necessarily require the application of the residence principle to these instruments. The Italian FTT taxes derivative transactions whenever the underlying is a taxable Italian share, applying only the issuance principle (i.e. the derivative is taxed based on the place of issuance of the underlying)[96].

5.5. Chargeable Event and Chargeability

The Task Force's proposal tells us little about the chargeable event and chargeability of this FTT. However, the open assimilation to the French FTT; the mention of the (initial) intention not to tax intraday transactions; and the indication that the tax should be levied at the time of the transaction, do give us solid clues to try to uncover the Task Force's thinking on this matter. Let's just focus on the proposed FTT base model, where the scope of the tax is limited to the "*purchase of stock*".

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[95] Task Force Report, p. 18.

[96] See *Articolo 1, commi da 491-500, legge 228/2012 (Legge di stabilità 2013),* paragraph 492. We note that doubts have been raised in the past about the compatibility of this application of the issuance principle with EU law. However, on 30 April 2020, the Court of Justice of the European Union finally clarified these doubts in the *Société Générale* judgement (C-565/18), considering the Italian approach to the taxation of derivatives to be compatible with EU law.

From a legal point of view, the chargeable event could be linked to the occurrence of the transaction or to the transfer of ownership that results from it. Not all financial markets transactions necessarily result in a transfer of ownership. Transactions are usually resumed at the end of the day and only the cleared transactions are executed[97]. Although taxation before clearing is technically feasible (gross taxation), the choice of the transfer of ownership as the chargeable event is generally associated with the taxation of cleared transactions[98].

This was indeed the choice of the French legislator. In the French FTT, the chargeable event is defined as an acquisition resulting in the *transfer of ownership of* a security[99]. The transfer of ownership takes place when the securities acquired are registered in the acquirer's securities account. This registration is different from the simple accounting entry that occurs when the custodian registers the security in the buyer's securities account when executing the purchase order. Thus, the purchase of a security that is actually booked, insofar as it is preceded or followed by sales of the same security during the same day, will not be covered by the tax (so intraday trading is not included in the scope of the FTT)[100] . Only the net position of an acquisition at the

[97] With regard to the definition of "*netting*", Article 2, n.º 1, paragraph 10, of the Proposal for an EU FTT Directive refers to Article 2, paragraph k), of the EU Directive 98/26/EC. According to such provision, *netting* means "*the conversion into one net claim or one net obligation of claims and obligations resulting from transfer orders which a participant or participants either issue to, or receive from, one or more other participants with the result that only a net claim can be demanded or a net obligation be owed*". It should be noted that the definition of "settlement" for financial purposes is different from that used for tax purposes.

[98] This is indeed the approach taken by the UK Stamp Duty and the Belgian FTT, which tax on a gross basis. See MOLINA (2021), in particular, pp. 420-423 (UK) and pp. 414-416 (Belgium). The proposed EU FTT Directive also provides for the taxation of gross transactions before any offsetting. Article 2, n.º 1, paragraph 2 (a), includes in the definition of "*financial transaction*" the "*purchase and sale of a financial instrument before netting or settlement*". This means that all transactions ordered during a trading day are taxable.

[99] In particular, the CGI, Section XX, Article 235 ter ZD, point I, states that the FTT is due on acquisitions of equity securities resulting in a "*transfert de propriété*". The definition of "transfer", however, is legally dense. See *Bulletin Officiel des Finances Publiques,* BOI-TCA-FIN-10-10, of 21/12/2015, paragraphs 40 to 70. In summary, the transfer of ownership results from the registration of the acquired securities in the buyer's securities account. Thus, acquisitions of a security that are not materialised by an accounting entry, insofar as they are preceded or followed by sales of the same security on the same day, are not covered by the tax. In this case, only the net (purchase) position of the purchases at the end of the day is subject to the tax.

[100] It is important to note that France approved legislation to tax intraday transactions, which came into force on 1 January 2017 and was subsequently postponed to 1 January 2018. However, the Macron-led government eventually abandoned the idea, citing as justification the need to promote Paris'

end of the day is subject to the tax. The Italian legislator has largely followed suit of the French approach to this issue[101].

The exclusion of intraday trades from the tax has two major disadvantages: it leads to a significant loss of tax revenue and reduces the (supposed) regulatory potential of the tax, as it does not discourage High Frequency Trading (HFT)[102]. It does, however, ensure better protection of market liquidity. It should also help to simplify the operation of the tax, as it should speed up the implementation of a centralised collection system. We believe that most central securities depositories are only aware of the net position of each account at the end of the day. Therefore, the net taxation of securities ensures that these entities can carry out basic cross-checks to facilitate tax collection and control.

We recall that the Task Force suggests that the more experienced jurisdictions could consider taxing intraday transactions to increase tax revenues. This is not an impossible task, as the UK Stamp Duty example shows, but it requires careful liaison

competitiveness in a post-Brexit scenario and to avoid legal risks. The issue is politically controversial. See CAPELLE-BLANCARD (2023), p. 12. However, as the UK Stamp Duty and the Belgian FTT clearly demonstrate, taxing intraday transactions is possible, although it requires technical precautions.

[101] Under the Italian FTT regime, the transfer of ownership of shares is subject to tax. See *Articolo 1, commi da 491-500, legge 228/2012 (Legge di stabilità 2013),* paragraph 491. In summary, Article 3 of the *Decreto del ministero dell'Economia e delle Finanze 21 febbraio 2013 - Attuazione dei commi da 491 a 499 della legge n. 228/2012 - imposta sulle transazioni finanziarie* clarifies that the transfer of ownership in the case of transactions relating to shares is deemed to have taken place on the date of their settlement. Settlement date means the date of registration of transfers following the settlement of the respective transaction. Article 4 of this Ministerial Decree states that the value of the transaction referred to in paragraph 491 of Law 228/2012 is determined on the basis of the net balance of the transaction regulated on a daily basis, calculated for each responsible person with reference to the number of securities traded on the same day and relating to the same financial instrument. The net balance is calculated by the person responsible for paying the tax.

[102] *High-Frequency Traders* (HFT) typically close their positions at the end of the trading day in order to minimise *overnight* exposures, so an FTT that does not tax intraday trades should not affect HFT activity. In this study, we will not explore the (generally) harmful aspects of HFT. We simply note that, as the French and Italian laws show, it is possible to complement an FTT that does not tax intraday transactions with an additional tax, exclusively with regulatory functions, aimed at taxing HFT. For French law, see CGI, Section XX, Article 235 ter ZD bis. For Italian law, see *Articolo 1, commi da 491-500, legge 228/2012 (Legge di stabilità 2013),* paragraphs 495 and 496.

with the jurisdiction's market infrastructure beforehand to assess its technical feasibility[103].

In this short study, we will not focus on the chargeable event for other financial instruments, although we reiterate the peculiarities of derivatives contracts in this regard[104].

5.6. Taxable Amount

Financial assets can be divided into four categories: shares, bonds, derivatives and structured products. From the point of view of determining the taxable amount, shares are relatively easy to deal with as they have a clear market value that is recorded for all transactions. In this vein, for example, the EU's proposed FTT Directive states that the taxable value of shares "*shall be everything which constitutes consideration paid or owed, in return for the transfer, from the counterparty or a third party*"[105]. In other words, as with VAT, the value subjectively determined by the parties will prevail in determining the taxable amount. Only when there is evidence of abuse will an objective criterion be adopted, in which case the taxable amount will be the "*market price*", defined as "*the full amount that would have been paid as consideration*

[103] UK Stamp Duty taxes intraday transactions using its market infrastructures, but this is fundamentally due to the specificities of these infrastructures, which were designed *ab initio* to deal with this tax. It is interesting to note that the European Commission, in its Proposal for an EU FTT Directive, has opted to tax intraday transactions, both for revenue reasons and for regulatory concerns. The proposed model is noteworthy. In particular, under the proposed FTT Directive, all transactions (before netting or settlement) that actually take place are taxable. The FTT is payable on each financial transaction at the moment it occurs (see Article 5, n.º 1, of the Proposal for an EU FTT Directive). Cancellation or rectification of transactions will not normally affect the chargeability of the FTT, except in cases of error (see Article 5, n.º 2). A material change to a transaction would constitute a new transaction (see Article 2, n.º 2). The purpose of the expression "*before netting or settlement*" is to clearly indicate that the FTT is intended to tax gross transactions, including intraday transactions and HFT, i.e., before netting or settlement and not after. Thus, only the original underlying transaction should be taxed. Post-trade activities, such as netting or settlement or post-trade portfolio compression, are activities that are part of the ex-post management of the original taxed transaction and would therefore fall outside the scope of the Directive.

[104] Structurally, the chargeable event for derivatives may be the signing/negotiation of the contract, its modification or its conclusion. The analysis of this issue requires a separate study.

[105] See Article 6, n.º 1.

for the financial instrument concerned in a transaction at arm's length"[106]. The French and Italian FTTs adopt a similar stance[107].

The Task Force has adopted a similar approach, although naturally, at this stage, without the same legal density, by setting the taxable amount of its basic FTT model as the *stock purchase value*.

The taxable amount of bonds, on the other hand, is more complex to determine[108]. The same applies to derivatives, which are by far the type of financial instrument that requires the greatest care in defining this element of the tax[109].

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[106] See Article 6, n.º 2 and 3.

[107] See CGI, Section XX, Article 235 ter ZD, point III, which states that "*La taxe est assise sur la <u>valeur d'acquisition du titre</u>. En cas d'échange, à défaut de valeur d'acquisition exprimée dans un contrat, la valeur d'acquisition correspond à la cotation des titres sur le marché le plus pertinent en termes de liquidité, au sens de l'article 9 du règlement (CE) 1287/2006 de la Commission, du 10 août 2006, précité, à la clôture de la journée de bourse qui précède celle où l'échange se produit. En cas d'échange entre des titres d'inégale valeur, chaque partie à l'échange est taxée sur la valeur des titres dont elle fait l'acquisition.*" (emphasis added). For a densification of this rule, with several points of particular relevance for the determination of the taxable amount, see *Bulletin Officiel des Finances Publiques,* BOI-TCA-FIN-10-30, of 03/05/2017, in its points 90 to 140. For Italian law, see *Articolo 1, commi da 491-500, legge 228/2012 (Legge di stabilità 2013),* paragraph 491. For a detailed description of the rule, see *Decreto del ministero dell'Economia e delle Finanze 21 febbraio 2013 - Attuazione dei commi da 491 a 499 della legge n. 228/2012 - imposta sulle transazioni finanziarie,* Article 4.

[108] It should be noted that the Proposal for an EU FTT Directive does not differentiate between the determination of the taxable amount of shares and bonds. See Article 6. This approach is criticisable. Applying an undifferentiated approach could discourage the transaction of highly liquid short-term public debt securities, which are traded very frequently, since financial institutions tend to use this type of short-term asset to manage their cash reserves. One possibility to be explored to mitigate this effect would be to adjust the taxable amount of these instruments to take account of their maturity, thereby reducing the tax burden on short-term instruments. See BURMAN *et. aliii* (2016), pp. 183-184.

[109] The Proposal for an EU FTT Directive adopts the notional amount (i.e., the value of the underlying asset) as the taxable value of derivatives. See Article 7. Such an approach should be avoided because, although simple, it does not allow for an effective alignment between the tax burden and the economic value of the derivative. Countries that choose to include these instruments in the scope of the tax should favour other approaches. For example, using the market price of the derivative where available (e.g., for derivatives such as options). Another possibility to explore would be to use the notional amount of the derivative, but adjusted for the maturity of the instrument. For derivatives without market value or maturity, the notional amount would remain as a safeguard.

5.7. Tax Rates

Based on the existing economic literature, the Task Force proposes a rate of 0.5 per cent on the "*stock purchase value*". For countries that currently have an FTT, it is proposed to increase the tax rate if it is below 0.5 per cent, and to increase it by a further 0.2 per cent for the taxation of OTC transactions.

In the context of this type of securities, a higher FTT rate on OTC transactions seems to us to be the right choice[110], as it helps to reduce the attractiveness of these markets, encouraging transactions to move to regulated markets, which are more transparent than the OTC markets[111].

As for the tax rates on the other instruments (bonds, derivatives and structured products), here we repeat what we said about the other elements of the tax. The approach to each of these types of financial instruments should be individualised, and the calibration of the tax base and the applicable rate should seek to find the balance that most closely matches the burden of the tax to the economic value of the instrument, thereby minimising the incentive for substitutability between instruments.

5.8. Exemptions

As we have already noted in this study, exemptions and out-of-scope provisions occupy a high place in the arsenal of technical tools available to the legislator to adapt the FTT to the reality of the financial markets. Their careful selection and parameterisation is crucial to minimise the potential negative effects of the tax. It is an often difficult technical balance between the need to protect market liquidity and its proper functioning on the one hand, and the associated loss of revenue, the possible

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[110] We recall what we said above regarding the need to provide for a differentiated settlement and collection system for these transactions, based on the self-declaration model, since in this case the market infrastructures will not be present to handle these tasks.

[111] In the case of derivatives, the issue is far from straightforward, both because there are derivatives that are only traded on OTC markets and because the regulator itself has sometimes decided to explicitly authorise certain derivatives to be traded on OTC markets, given their characteristics. It is not the role of taxation to overturn the choices made by the regulator, who is undoubtedly more familiar with the characteristics and dynamics of the markets.

increase in the complexity of the tax's administration and, in extreme situations, the fairness of the tax, on the other. In our view, it is prudent to start the implementation of the tax with a flexible approach to these tools, tightening their scope or gradually eliminating them as the markets' reaction to the tax is assessed.

These tools are particularly useful to address two key concerns: firstly, ensuring that the liquidity of the markets is preserved at a level that ensures their healthy functioning; and secondly, adapting the tax, which we recall does not incorporate any type of deduction or credit, to the taxation of transactions characterised by potentially long chains of transactions, thus minimising the effects of cascading taxation. Although the two concerns are closely related, for the sake of clarity we will present separately the exemptions/out-of-scope provisions that are most notably dedicated to dealing with one or other of these concerns.

Let's look first at market liquidity. The Task Force recommends that the initial implementation of the FTT should include an exemption for market-making, and that its removal should be considered at a more mature stage of the tax's application[112]. This seems to us to be the right decision, given the importance of the activity of market-makers' activities to market liquidity[113]. This was also the approach taken in the French and Italian FTTs[114].

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[112] We would add that the gradual removal of the exemption could be achieved by initially subjecting market-making to a reduced rate.

[113] In general terms, market-making can be described as the continuous/regular offering of bid and offer prices for financial instruments at firm and competitive prices set by the market maker, either on a voluntary basis or on the basis of an agreement with the trading venue/issuer. The market maker will profit from the bid-ask spread, from any benefits provided for in said agreement and from inventory revenues. The market-making function is generally considered to be of particular importance in markets, particularly those that tend to be less liquid and/or where there is a large discrepancy between the timing preferences of issuers and investors.

[114] It should be noted that although both jurisdictions have applied an exemption to market-making activities, their definitions differ in several respects. See CGI, Section XX, Article 235 ter ZD, point II, 3rd paragraph, and further elaboration in the *Bulletin Officiel des Finances Publiques*, BOI-TCA-FIN-10-20, of 18/11/2014, in its points 30 to 170. For Italian law, see *Articolo 1, commi da 491-500, legge 228/2012 (Legge di stabilità 2013),* paragraph 494. For the densification of the rule, see *Decreto del ministero dell'Economia e delle Finanze 21 febbraio 2013 - Attuazione dei commi da 491 a 499 della legge n. 228/2012 - imposta sulle transazioni finanziarie,* Article 16.

Another exemption that must be part of an FTT is that applicable to the initial issuance of securities, i.e., the exemption for primary markets, in order to minimise the impact of the tax on the ability of issuers of securities to raise funds on the market[115].

Additional exemptions worth considering in the first phase of implementing the tax include: (i) an exemption for *small caps* (listed companies of medium or small size), concentrating taxation on shares issued by companies with a high market capitalisation, whose liquidity is traditionally higher[116]; (ii) an exemption for intra-group transactions, in order to recognise the principle of continuity of economic interest, along the lines of, for example, the tax neutrality granted to corporate restructuring operations under the Corporate Income Tax[117]; and (iii) an exemption for repurchase and reverse repurchase agreements ("*Repos and Reverse Repos*"), given the importance of the functions they perform for the smooth functioning of the markets[118]. Finally, as a measure to safeguard market liquidity, the non-taxation of

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115 This is a common exemption/out-of-scope provision in FTTs, including in the French and Italian FTTs, as well as in the EU's proposed FTT Directive. See CGI, Section XX, Article 235 ter ZD, point II, 1st paragraph, and further elaboration in *Bulletin Officiel des Finances Publiques*, BOI-TCA-FIN-10-20, of 18/11/2014, in its point 10. For Italian law, see *Articolo 1, commi da 491-500, legge 228/2012 (Legge di stabilità 2013),* paragraph 491. See also Proposal for an EU FTT Directive, Article 3, n.º 4, paragraph a) (out-of-scope provision for transactions on the primary market).

116 See CGI, Section XX, Article 235 ter ZD, point I, and further elaboration in *Bulletin Officiel des Finances Publiques*, BOI-TCA-FIN-10-10, of 21/12/2015, in its points 100 and 110. For Italian law, see *Articolo 1, commi da 491-500, legge 228/2012 (Legge di stabilità 2013),* paragraph 491. For the densification of the rule, see *Decreto del ministero dell'Economia e delle Finanze 21 febbraio 2013 - Attuazione dei commi da 491 a 499 della legge n. 228/2012 - imposta sulle transazioni finanziarie,* Article 17.

117 See CGI, Section XX, Article 235 ter ZD, point II, 5th paragraph, and further elaboration in the *Bulletin Officiel des Finances Publiques*, BOI-TCA-FIN-10-20, of 18/11/2014, in its points 190 to 200. For Italian law, see *Articolo 1, commi da 491-500, legge 228/2012 (Legge di stabilità 2013),* paragraph 494, point d). For a more detailed description of the rule, see *Decreto del ministero dell'Economia e delle Finanze 21 febbraio 2013 - Attuazione dei commi da 491 a 499 della legge n. 228/2012 - imposta sulle transazioni finanziarie,* Article 15, n.º 1, g).

118 *Repurchase agreements* are financial transactions in which one party sells an asset (often debt securities) with the commitment to buy it back at a later date at a predefined price. A *reverse repo* is the opposite of a *repo*. Whereas in a *repo* a party sells an asset with a commitment to buy it back, in a *reverse repo* the party buys the asset with a commitment to resell it. These instruments play an important role in the marketplace, for example as a cash management tool in the interbank market and in the management of securities positions. In addition, they are often used by regulators in open market operations to provide (or remove) liquidity from the banking system. Taxing them would be counterproductive. The same could be said of other temporary transactions in securities intended only as collateral for other transactions, such as "*securities lending*" and "*buy/resell*" or "*sell/buy*" transactions.

intraday transactions could be considered in the first phase of the implementation of the tax. As mentioned above, their non-taxation could be achieved through the design of the chargeable event of the tax[119].

In order to minimise cascading taxation in the transaction chain, we strongly recommend considering an exemption/out-of-scope provision for certain actors in the transaction chain, such as agents or clearing members (when acting as intermediaries)[120], and for market infrastructures, such as central counterparties and central securities depositories[121]. These are entities that merely ensure that the transaction takes place with the necessary security and agility, and it makes no sense to subject them to taxation.

Finally, particular attention should be paid to the taxation of secondary market transactions in shares and units of *Undertakings for Collective Investment in Transferable Securities* (UCITS) and *Alternative Investment Funds* (AIF), to avoid double taxation scenarios. Possibilities to be considered include, for example, taxing the financial operations of these entities (asset taxation), but exempting transactions in their units and shares (liability exemption); or, alternatively, adopting a tighter sieve, exempting the issue and redemption of the units and shares of these entities (liability exemption) but taxing transactions in their units and shares (secondary market) as well as the financial operations carried out by these entities (asset taxation).

See the comprehensive French exemption for these situations in the CGI, Section XX, Article 235 ter ZD, point II, paragraph 6, and further elaboration in the *Bulletin Officiel des Finances Publiques*, BOI-TCA-FIN-10-20, of 18/11/2014, in its points 210 to 250. For Italian law, see *Articolo 1, commi da 491-500, legge 228/2012 (Legge di stabilità 2013)*, paragraph 494. For the densification of the rule, see *Decreto del ministero dell'Economia e delle Finanze 21 febbraio 2013 - Attuazione dei commi da 491 a 499 della legge n. 228/2012 - imposta sulle transazioni finanziarie,* Article 15, n.º 1, e).

[119] We refer to what has already been said on this subject in Section 5.5.

[120] We refer here to the entities involved in the clearing and settlement of financial transactions. These entities guarantee the performance of contracts and mitigate counterparty risk. It would be inappropriate to tax them. In the same sense, see the *Core Engine of the FTT* approved in 2016 by the Finance Ministers of the EU Member States involved in the enhanced cooperation for the institution of a harmonised FTT in Europe, at https://data.consilium.europa.eu/doc/document/ST-13608-2016-INIT/en/pdf (last accessed on February 12th, 2025).

[121] See CGI, Section XX, Article 235 ter ZD, point II, 2nd paragraph, and further elaboration in *Bulletin Officiel des Finances Publiques*, BOI-TCA-FIN-10-20, of 18/11/2014, in its point 20. For Italian law, see *Articolo 1, commi da 491-500, legge 228/2012 (Legge di stabilità 2013),* paragraph 494.

5.9. Assessment, Payment and Collection

The choice of collection methods for the FTT essentially boils down to a choice between (1) a model based on self-assessment and delegation of collection responsibilities (declaration and payment by the taxable person, with the possibility of delegating obligations to third parties) for all types of financial transactions and in all markets; and (2) a model based, where possible, on the financial infrastructure (a more centralised approach) for certain types of transactions and financial markets, with the possibility of implementing the self-assessment system for the rest.

The main advantages of the first model are ease of implementation in the short term, relatively low administrative costs and universality. Its main disadvantage is less control by the tax authorities and therefore possible loss of revenue. The second model has the advantage of providing more (cross) checks and the possibility of automating and integrating certain processes, making it easier for taxpayers to comply with their tax obligations and for the tax authorities to control them, although in principle it involves higher (initial) administrative costs and almost certainly does not cover all transactions.

The Task Force proposes that the tax be levied at the time of the transaction by the central securities depository, as is the case in several countries, notably France, or by the financial market regulator. This seems to us to be a sensible approach, as long as we assume the basic model of taxing only shares listed and traded on regulated markets, without taxing intraday transactions. Otherwise, as noted in various sections of this study, it will be necessary to better understand the way market infrastructures operate in the jurisdiction in question and to consider the possibility of implementing the self-assessment system for certain types of transactions and markets[122].

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[122] For the operation of the French model, see CGI, Section XX, Article 235 ter ZD, points VII to XI, and further elaboration in *Bulletin Officiel des Finances Publiques,* BOI-TCA-FIN-10-40, of 04/03/2015. For Italian law, see *Articolo 1, commi da 491-500, legge 228/2012 (Legge di stabilità 2013),* paragraph 498. For the densification of the rule see *Decreto del ministero dell'Economia e delle Finanze 21 febbraio 2013 - Attuazione dei commi da 491 a 499 della legge n. 228/2012 - imposta sulle transazioni finanziarie,* Article 19.

6. Some Notes on the Task Force's Assessment of the Efficiency, Equity and Political Viability of the FTT

The Task Force presents a very brief assessment of the efficiency and equity implications of its FTT[123]. As we have already noted in this study, we broadly agree with the Task Force's assessment on both fronts[124].

With regard to the efficiency analysis[125], we reiterate that the potential distortions caused by the FTT, as with any tax, depend to a large extent on the choices made in its design. Therefore, the impact of the FTT cannot be assessed independently of the specific features of the final proposal.

National experiences in implementing the FTT, as well as the in-depth technical debate held on the proposed EU FTT Directive, provide us with a relatively solid basis for identifying the characteristics of an FTT that could limit market distortions and possible tax evasion.

We agree with the Task Force's assessment of the (difficult) political feasibility of the initiative. Indeed, it is prudent to start by trying to harmonise the approach of those countries that already have an FTT, and to recommend a cautious approach to the others, based on the implementation of a conservative and well-tested FTT model such as the French FTT.

7. Conclusions

It's time to conclude:

1. Given the inconclusive nature of the existing economic analysis, it is not easy to ascertain the nature and extent of the effects that the introduction of an FTT will have on the functioning of financial markets.

[123] See Task Force Report, pp. 18-19.

[124] For efficiency, see Section 2 above. For fairness, see Section 3 above.

[125] For this purpose, we focus on efficiency as the minimization of the excess burden of the tax. For an elaboration of the concept, see CORREIA (2013), p. 59.

2. The potential distortions of the FTT, as with any tax, will depend primarily on its specific technical design.

3. The crudeness of the tax in terms of deductions/credits must be compensated for by a careful approach to the definition of its scope; its territoriality; exemptions and out-of-scope provisions; chargeable event and chargeability of the tax; methodology for determining the taxable amount of financial instruments; and applicable tax rates. A technically well-designed FTT will be based on a careful consideration of all these elements.

4. The FTT proposal submitted for public consultation shows that the Task Force is well aware of the technical and political difficulties of implementing an ambitious FTT taxing all types of financial instruments. Its conservative approach demonstrates political sagacity.

5. Let's wait for the Task Force's final technical proposal at COP 30 and the international community's reaction to it. At that point, a reassessment of the *status quo* may be warranted.

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