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Tax alert
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Proposed bank levies – comparison of certain jurisdictions

Following on from recent G20 talks and EU Member State agreements in June 2010, many governments, namely Austria, Cyprus, France, Germany, Portugal, Sweden, the UK and the US have announced and started to implement their plans for bank levies. There are a number of inconsistencies of approach around the world; the EU included. The information below highlights these by providing a comparison on some of the details of the respective proposals.

	Austria	Cyprus	France	Germany	Hungary	Portugal	Sweden	UK	US
OVERVIEW									
Local name for tax	Stabilitätsabgabe ("stability levy")	Bank Levy/Tax	Tax on Banks ("Taxe systémique sur les banques")	Bankenabgabe ("Bank Levy")	Tax on financial institutions	Extraordinary contribution on the banking sector	TBC	Bank Levy	Financial Crisis Responsibility Fee
Legal status	Legislation is in force as from January 1, 2011	Not yet enacted/pending	Adopted as part of Finance Law for 2011	Adopted as part of Restrucuturing Law	The legislation is in force as from September 27, 2010. The tax is payable in two installments in 2010, the first by September 30, 2010 and the second by December 10, 2010.	Article 141 of the Government Budget Law for 2011	The legislation is in force as from December 30, 2009. Bank levy is payable from January 1, 2009 (50% of the fixed rate for 2009 and 2010, i.e. 0.018%).	Draft legislation issued on December 9, 2010	On January 14, 2010, President Obama announced his intention to propose a financial crisis fee. However, subsequent political developments may now mean that the fee is not introduced after all.
Start date	January 1, 2011	TBD	January 1, 2011, based on figures of calendar year 2010	January 1, 2011, but by reference to prior year balance sheets	September 27, 2010, but by reference to prior year balance sheets	January 1, 2011, but by reference to prior year balance sheets	December 30, 2009	January 1, 2011	Uncertain
Funds raised contribute to?	Treasury	Stability Fund for Banks (name to be determined)-Treasury	Treasury	Banking fund	Treasury	Treasury	Banking fund	Treasury	Fund to recoup costs of Troubled Asset Relief Program (TARP)

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OVERVIEW									
Expected duration: permanent /temporary	Permanent	2 years	Permanent	Permanent	Temporary (2-3 yrs)	Not defined	Permanent	Permanent	Tax to apply for at least 10 years, but would continue until TARP is fully repaid. In January 2010, the estimated cost of TARP was between USD109 and USD117 billion, while the fee was expected to earn USD90 billion over 10 years. The cost has been trending downward over time and in October 2010 was estimated at USD66 billion.
SCOPE									
"Bank" definition	Credit institutions according to the Austrian Banking Act. Domestic branches of foreign credit institutions.	TBD	Broad definition, which includes credit institutions, investment companies (other than portfolio management companies), market operators ("entreprises de marché"), members of a clearing house, payment institutions, regulated financial companies and bank holding companies.	s.1 of the German Banking Act, including all credit institutes which have a permission according to s.32 of the German Banking Act.	According to the Hungarian Act on Credit Institutions and Financial Enterprises. Generally credit institutions (including branches of foreign entities), cooperative societies. Please note, that the tax is levied on other financial institutions not only on banks. (i.e. insurance companies, financial enterprises, fund management companies, the stock exchange, broker dealers).	Credit institutions domiciled in Portugal (including affiliates of foreign credit institutions) and Portuguese branches of credit institutions domiciled outside the EU.	Regulated credit institutions (kreditinstitut); includes Swedish entities established by the credit institution; includes foreign branch of Swedish entities; includes leasing companies.	Banking groups, building societies; definition wide enough to include broker dealers.	Broad definition: bank holding companies (large securities house became such entities to qualify for TARP); also includes insured depository institutions, thrift holding companies, insurance or other companies that owned insured depository institutions, or securities broker/dealers.
Local Bank	Yes, local entities (but may capture foreign branches of local entities)	Yes	Yes, local entities (excluding the French Development Agency - "Agence française de développement") on a consolidated basis including subs and foreign branches. Only the consolidating parent is subject to the tax in groups subject to regulatory supervision on a consolidated basis.	Yes, local entities only (but may capture foreign branches of local entities)	Yes, local entities only (but may capture foreign branches of local entities)	Yes, local entities only (but may capture foreign branches of local entities)	Yes, local entities only (but may capture foreign branches of local entities)	Yes, levy based on global consolidated accounts from banking groups/building societies	Levy based on global consolidated accounts

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SCOPE									
Branches of foreign entities	Yes, but the tax is only levied on the branch's adjusted balance-sheet total	Yes if regulated locally	Yes, if regulated in France, except if the branch's head-office is in the EEU (EU + Norway, Iceland and Liechtenstein). Tax based on the French branch's balance-sheet only.	Yes - but only if regulatory permission under s.32 of the German banking act (i.e. German activity only)	Yes, but the tax is only levied on the branch's adjusted balance-sheet total	Yes, but only for Portuguese branches of credit institutions domiciled outside the EU	Generally, the legislation only applies to Swedish legal entities. However, the question whether branches of certain foreign legal entities should be included has been raised by the legislator, but has not been solved. Hence, it is for now rather uncertain whether Swedish branches of foreign legal entities are out of scope.	Levy based on UK activity (aggregate all relevant UK subsidiaries and branches), plus entities held/branches under the UK	Yes, if regulated in the US, but the fee is only levied on the US based liabilities
EU Passported Banks	Yes, in respect of domestic branches	TBD	No, French branches of EU banks are exempt	Unclear. But as the proposals stand the levy only seems to apply to banks with permissions under s.32 of the German Banking Act. i.e. EU passported banks have an advantage.	No exemption for EU passported bank branches. Only entities which prepare Hungarian annual reports are subject to this tax i.e. foreign legal entities which are not established (not having a branch) in Hungary are currently out of the scope of the legislation.	No, Portuguese branches of EU credit institutions are excluded	Only Swedish legal entities i.e. foreign legal entities are currently out of the scope of the legislation	Yes - discussions are being held with German Tax Authorities re. double tax concerns. Agreement with French government progressing	N/A
Broker dealers	Yes, if a credit institution under Austrian regulatory rules	TBD	Yes	Only if they have a permission according to s.32 of the German Banking Act, in particular broker dealers who act in their own name but for account of a third party ("principal broking service")	The tax is levied on other financial institutions also, not only on banks. Broker dealers are subject to this tax, even if not regulated as banks. Different tax base and tax rate apply to other financial institutions (i.e. broker dealers).	No	If a credit institution under Swedish regulatory rules. In general, broker dealers are normally not included. However, a separate assessment should always be made to determine whether the broker dealer could be deemed to be a credit institution.	Securities dealers not regulated as banks but likely to be in scope	Broker/dealer entities are included, though many of them are also bank holding companies as they converted to avail themselves of TARP funds.
Non-banking groups with bank within group	Levy payable by the bank only	TBD	Yes if regulated, tax due on the bank's balance-sheet only (but in practice should be exempt due to the taxation threshold).	Levy payable by the bank only	Levy payable by financial institutions (i.e. other non-banking members of the group are also subject to this tax [but different tax base & rate apply])	Levy payable by the credit institution only	Levy payable by the credit institution only	Levy payable by the bank only	Unclear, but presume levy payable by the bank only

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TAX BASE AND RATES									
Tax base	Unconsolidated balance sheet total, minus for instance the nominal capital and reserves, assured bank deposits in terms of Sec 93 Banking Act and certain liabilities from the liquidity requirements of Sec 25 Banking Act. In addition, there will be a tax levied on the transaction volume derived from derivatives. The taxable amount will be the nominal amount of all derivatives reported on the trading book as required by annex 2 to § 22 Banking Act and of all short option positions. The tax base is calculated as the average of the relevant figures at the end of the first three calendar quarters and the end of the financial year.	TBD	Minimal amount of own funds required in order to comply with the coverage ratios' obligations - as provided for under the relevant French banking regulations - defined during the previous calendar year. The minimal amount of own funds requirement is determined by the regulator, on a consolidated basis for groups subject to French supervision on a consolidated basis, and on the French company's stand-alone accounts otherwise.	Relevant liabilities of the prior year balance sheet (local) based on legal entity accounts	The adjusted balance sheet total (total assets). The adjusted balance sheet total is the balance-sheet total for 2009 decreased by the items listed below. The tax base is different for other financial institutions (i.e. insurance companies, financial enterprises, the stock exchange, fund management companies, broker dealers), such as premium income, profits, or value of managed funds.	Total liabilities plus the notional amounts of financial derivatives entered by the credit institution	Relevant liabilities - in general total world wide debts and provisions at the end of the financial year for the Swedish legal entity	Relevant liabilities; 50% tax rate for "stickier" funding (>1 year maturity); relevant liabilities up to £20bn not chargeable	Relevant worldwide liabilities for U.S. based financial institutions. Relevant U.S. liabilities for non-U.S. based financial institutions. While neither the administration nor the legislature has released a revised tax base, the Treasury Secretary has stated in Congressional testimony that the fee would be based on "a fixed percentage of their assets adjusted for risk, minus their capital, insured deposits, and certain insurance policy reserves."
Exclusion from tax base	See above	TBD	None due to the tax base definition	Customer deposits and other liabilities toward non-banks equity capital	Debt receivables arising from domestic interbank loans. Securities and shares issued by other domestic credit institutions, financial enterprises or investment companies. Loans, subordinated loans and supplementary subordinated loans granted to domestic financial enterprises and investment companies (including reverse placement transactions, repurchase agreements and delivery repurchase agreements concluded with such institutions).	Tier 1 and Tier 2 capital and deposits covered by the Portuguese Deposit Guarantee Fund ("FGD")	Intergroup balances already subjected to levy (e.g. re. a leasing sub of a bank). Untaxed reserves, considerable discussions re. changing rules to take account of risk profile of banks.	Main exclusions include: Tier 1 capital "protected" deposits (e.g. retail deposits covered by insurance schemes and government guarantees), certain insurance business, segregated client money, repo liabilities secured against sovereign debt netting of e.g. derivatives where there is a legal right to offset assets and liabilities for respective counterparties, reduce relevant liabilities by high quality liquid assets held for FSA regulatory purposes.	Tier 1 capital, FDIC-assessed deposits, Insurance policy reserves

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TAX BASE AND RATES									
Threshold	Tax base of EUR 1 Billion	TBD	EUR 500 million of minimal own funds requirement	None	None	N/A	None	GBP20 billion "relevant" liabilities	USD50 billion of consolidated assets
Rates	A tax base between EUR 1 Billion and EUR 20 Billion triggers a tax at a rate of 0.055% and any exceeding amount is taxable at a rate of 0.085%. 0.013% of the tax base of derivatives.	0.05-0.1% (TBD but latest information suggest 0.0950%)	0.25%	Progressive rates for "relevant liabilities": ≤ € 10 bn = 0.02% > € 10 bn ≤ € 100 bn = 0.03% > € 100 bn = 0.04% 0.00015% for off balance sheet derivatives	Progressive rates: 0.15% up to HUF 50 billon and 0.5% on the excess part. The tax rate is different for other classes of financial institutions (i.e. insurance company, financial enterprises, stock exchange, fund management companies, broker dealers).	(i) Total liabilities deducted from Tier 1 and Tier 2 capital will be subject to a rate that can range between 1 bp and 5 bps; (ii) Notional amount of financial derivatives will be subject to a rate that can range between 0.01 bps and 0.02 bps. The final rates will be defined by the Ministry of Finance.	0.036% but a 50% reduced rate for 2009 and 2010	0.07% and 0.0375% for longer maturity funding; in practice, transitional lower rates for 2011 calendar year rescinded (i.e. for a December 2011 year end the effectives rates are also 0.07% and 0.0375%).	Not set, but expected to be 0.15% of "covered" liabilities
Cap/Floor	N/A	Percentage on accounting period profits to which deposits relate (most probably 20%)	N/A	Charge capped proposed at 15% of annual net income; minimum 5% of annual charge (in years where losses are generated)	N/A	N/A	N/A	N/A	N/A
OTHER ISSUES									
Double Taxation risk? [1]	Possible. Will not be a tax under standard tax treaties.	Yes	Possible since the tax on banks should not be a tax under standard tax treaties, although the provision seeks to avoid double taxation. A tax credit is granted to any French entity subject to this tax if its head-office or consolidating parent is established in another country in which a similar bank levy has been established, but only if this other country grants similar benefits to local entities with a French head-office or consolidating parent. The list of countries for which the tax credit will be granted should be determined by the Ministry of Finance. When available, the tax credit equals the portion of the foreign tax paid by the foreign head-office or consolidating parent by reason of the existence of the French entity, for the same year; it is capped at the amount of the French tax due by the French entity.	Possible. Will not be a tax under standard tax treaties.	Possible. Will not be a tax under standard tax treaties.	Possible. Will not be a tax under standard tax treaties and no credit relief will be applicable in Portugal for foreign levies.	Possible. Will not be a tax under standard tax treaties. Lobbying to ensure considered as a tax.	Yes. Levy will not be a tax under standard tax treaties. UK Tax Authorities are liaising with German and French Authorities regarding double taxation. UK/French agreement proposed. Draft legislation anticipates relief being granted on foreign levies.	Yes; no credit relief for foreign levies; expense relief may be available
Deductible for corporate tax purposes?	Yes	TBD	Yes	No	Yes	No.	Possibly [2]	No	Possibly

1. For double taxation risk within the EU, could the arbitration convention provide a solution? The arbitration convention is applicable to specified "taxes on incomes" or replacement taxes.
2. Payments derived from the 'stability fund' in due course will be treated as taxable income; expected that contribution into the fund will be deductible to ensure tax symmetry

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