



# EU Financial Transaction Tax

April 2021

# Background

## What is it?



A proposed harmonized tax on transactions in financial instruments proposed for EU Member States in 2011

## Which countries?



- EU FTT: 10 EU Member States discussing the proposal
- Several EU Member States (e.g. France, Italy and Spain) have already introduced national FTTs

## Why was it proposed?



Commission's initial proposal: (1) Recover cost of crisis from banks (2) reduce risk (3) level playing field (VAT) (4) harmonization

## Status



Under political and technical discussion under 'enhanced cooperation'

# Political Status

## Technical differences under discussion

- Technical/design discussions by European Commission Working Party on Tax Questions
- UK launched legal challenge — dismissed by the Court on 30 April 2014
- EU Council's legal service has issued negative opinion (related to the design of the proposed EU nexus)
- Following Estonia's formal withdrawal in March 2016, ten Member States continued to participate in discussions on this file, but had not yet reached agreement on the design
- In December 2019, the German Finance Minister issued a revised proposal of the FTT, which also envisages a new system for mutualization of the FTT revenues, meaning the revenue generated would be allocated between the Member States wishing to introduce the tax.
- Under the Union's long-term budget (the multiannual financial framework — MFF) and the EU's recovery fund (Next Generation EU), there is a commitment on exploring options of an EU FTT as a new own resource.
- In February 2021, the Portuguese Presidency of the Council of the EU relaunched an inclusive (non-public) discussion among all Member States on tax design issues of the FTT at EU level. No further progress has been reported publicly.
- Some Member States have expressed dissatisfaction with the approach proposed by the Portuguese Presidency. However, no formal announcements have been made on the future of this initiative, either under enhanced cooperation or as a broad EU initiative.

# 2013 European Commission Proposals vs 2019 German Proposal

	EU FTT (2013 European Comission Proposal)	EU FTT (2019 German Proposal)
<b>Financial instruments/transactions</b>	<ul style="list-style-type: none"> <li>— Structured products, stocks, bonds, UCITS, derivatives</li> <li>— Sale/purchase, UCITS redemption, repos, stock lending, derivatives</li> </ul>	Acquisitions of ownership of listed shares (including ordinary and any preference shares)
<b>Nexus based on:</b>		
Residency/deemed residency of counterparties	Yes	No
Residency of issuer	Yes	Yes
<b>Taxable base</b>	<ul style="list-style-type: none"> <li>— Consideration paid (standard transactions)</li> <li>— Notional amount (derivatives)</li> <li>— Market value, if not at arm's length</li> </ul>	<ul style="list-style-type: none"> <li>— Consideration paid or</li> <li>— Market value, if not at arm's length and in case of acquisition of financial instrument arising from the physical settlement of derivatives</li> </ul>
<b>Rates:</b>	*Directive only sets minimum rate — Member States are free to choose a higher rate when implementing into domestic law.	
Equities, bonds, etc.	Minimum 0.1%	Minimum 0.2%
Derivatives	Minimum 0.001%	N/A
<b>Taxpayer</b>	Financial Institutions	Financial Institutions

# 2019 German proposal: Key Features (1)

## Financial Transactions

- **Acquisition of ownership of a financial instrument for consideration**, including:
  - the acquisition by means of an exchange of financial instruments,
  - a physical settlement of a derivative,
  - the exchange, redemption or conversion of a debt instrument.

## Financial instruments

- **Shares** (including ordinary and any preference shares) **admitted to trading on an EU trading venue or a similar third country venue**, provided that the issuing company/partnership/entity has a market capitalisation that exceeds EUR 1 billion on 1 December of the calendar year preceding that in which the FTT becomes chargeable
- Unlike in the Commission's proposal, derivatives are out of scope (unless physical delivery)

## Issuance principle

- FTT shall apply to the acquisition of ownership for a consideration of **shares or similar instruments issued by a company, a partnership or other entity whose registered office is established in the FTT-zone**
- The country where the transaction takes place is irrelevant, as well as whoever the counterparties are.

# 2019 German proposal: Key Features (2)

## Rates

- At least 0.2 percent for all financial transactions.

## Taxpayer

- Tax payable by **each** 'financial institution', i.e.:
  - EU investment firm;
  - EU credit institution;
  - entity established in a third country which, were it established in the EU, would be regarded as an investment firm or a credit institution.

## Compliance

- Details of registration, accounting and reporting obligations left to Member States
- FTT payment by the twentieth day of the month following that during which the FTT became chargeable
- FTT monthly return and at least five year record keeping
- Specific and general anti-avoidance rules

## Base

- Consideration paid or owed in return for the acquisition of financial instruments
- Market value, if not at arm's length and in case of acquisition of financial instrument arising from the physical settlement of derivatives

# 2019 German proposal: Key Features (3)

## Subjective Exemptions

- Central Counter Parties (CCPs)
- Central securities depositories (CSDs)
- States, regional and local authorities, etc.
- Central Banks of the States, European Central Bank (ECB) and Bank for International Settlements (BIS)
- European Union, European Stability Mechanism (ESM), European Atomic Energy Community (EAEC), European Investment Bank (EIB), etc.
- International organizations or bodies
- Collective investment undertakings, if their units are held by pension funds
- Pension funds (optional → left to EU Participating Member States)

## Objective Exemptions

- Transactions in shares or units of collective investment undertakings
- Transactions in financial instruments exclusively admitted to trading on SME growth markets
- Creation, issue, admission to quotation on a stock exchange, making available on the market or dealing in stocks, shares or other securities of the same type
- Intra-group transactions and transactions carried out as part of restructuring operations
- Repurchase agreements, reverse repurchase agreements, securities lending and securities borrowing and buy-sell back transactions and sell-buy back transactions
- Market-making activities

# Most recent status

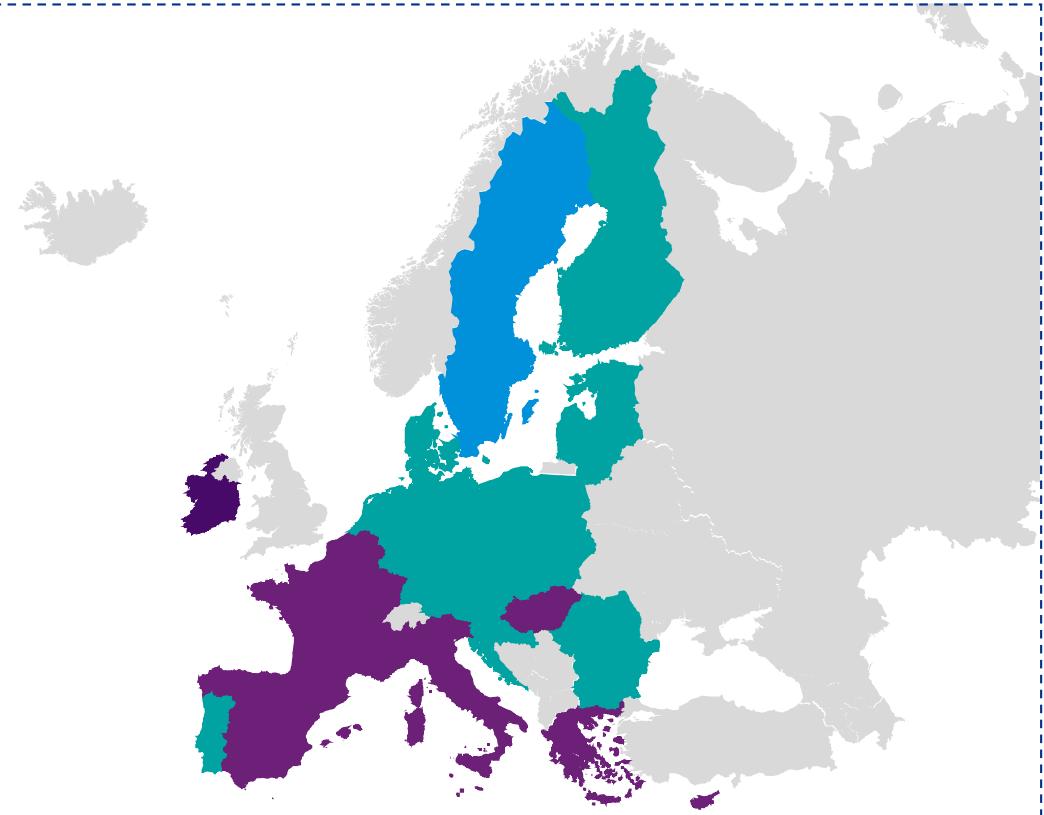
## The FTT proposal from the Portuguese Presidency of the Council of the EU

**February 2021**

- The Portuguese Presidency of the Council of the EU proposed an inclusive discussion among all Member States on tax design issues of the FTT at EU level.
- The approach suggested by the Presidency would be to start a gradual implementation of the tax based on the models developed and already tested by France and Italy, where unilateral FTTs have been introduced, and potentially structured on the basis of a review clause.
- Member States have been invited to provide views on the proposed approach to the FTT design, as to whether the French and Italian experience would represent a solid basis for the gradual European approach on the FTT (either in the context of the enhanced co-operation or EU wide) and on the proposal to include the transactions in equity derivatives in the scope of the FTT (in line with the Italian FTT model).
- Member States not participating in the enhanced cooperation initiative were also asked whether the need to find additional sources for financing the EU recovery effort, coupled with the proposed technical approach to FTT design, might increase their interest in further work on an inclusive compromise proposal, i.e. for an EU-wide FTT.

# National FTT/stamp duty in the EU

- Countries where there is an FTT/similar tax (e.g. stamp duty) in place
- Countries where no FTT/similar tax in in place
- Countries where there is a proposal to introduce an FTT/similar tax



\* Finland does not impose an FTT; a transfer tax applies to disposals of shares in a non-listed Finnish company limited by shares.

\*\* In Luxembourg the transfer of shares in a company is in principle free of any FTT, stamp, registration or transcription duties. A transfer duty can apply to a transfer of shares in a corporation holding real estate, under certain circumstances.

\*\*\* In Poland a stamp duty (also known as a transfer tax or tax on civil law transactions) is charged on a closed list of transactions, including financial transactions e.g. providing a loan, sale of a receivable, establishment of a mortgage. However, Polish stamp duty should not be viewed as an FTT-like charge, as it generally does not apply to financial institutions (financial institutions are subject to VAT and as a result stamp duty does not apply to them).

# EU FTT vs national FTTs

	EU FTT	French FTT	Italian FTT	Spanish FTT	UK SDRT
<b>(Proposed) start date</b>	Unknown	1 Aug 2012	1 Mar 2013 (equities) 1 Sept 2013 (derivatives)	16 Jan 2021	1986
<b>Equities</b>	Yes	Yes	Yes	Yes	Yes
<b>Bonds</b>	No	No	No (with the exception of transactions in bonds and debt securities that contain the unconditional obligation to repay at maturity a specific amount)	No (acquisition of qualifying equities upon the redemption of convertible bonds will be in-scope)	No (with the exception of those which have certain equity-like features e.g. interest exceeding commercial return, or linked to profits/assets or conversion rights or repayable above par)
<b>Derivatives</b>	No	No	Yes (transfers of equity derivatives only)	No (acquisition of qualifying equities upon the physical settlement of financial instruments will be in-scope)	Yes (transfers of existing equity derivatives only)
<b>Stock loans and repos</b>	No	Yes but exempt	No	No	Yes
<b>ADRs</b>	No	Yes	Yes	Yes	No
<b>Residency/deemed residency basis of taxation</b>	No	No	No	No	No
<b>Issuance basis of taxation</b>	Yes	Yes	Yes	Yes	Yes
<b>Netting</b>	Yes	Yes	Yes	Yes	No
<b>Market maker exemption</b>	Yes	Yes	Yes	Yes	Yes
<b>Intra-group exemption</b>	Yes	Yes	Yes	Yes	No (unless transaction effected by document)
<b>Rate</b>	At least 0.2% (equities)	0.3% (equities)	0.1%/0.2% (equities) (on market/OTC) Fixed amounts (derivatives)	0.2% bps (equities)	0.5% (1.5% for certain cross-border transactions)
<b>Who is the taxpayer for the FTT?</b>	FI	ISP /custodian of the Buyer	Buyer (equities) All parties in the transaction (derivatives)	The economic taxpayer is the acquirer. The taxable persons will be investment services companies or credit institutions performing acquisitions for third parties and custodians, in certain cases	Buyer (but intermediaries could be accountable for payment and notification)

# KPMG's EU FTT Resources and Contacts

## KPMG's FTT resources

- KPMG's FTT Service
- FTT page
- EU Member State Comparative FTT Survey
- KPMG FTT contacts
- Available at [www.kpmg.com/ftt](http://www.kpmg.com/ftt)



## EU Core FTT Team



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