News & Country Digest

This Week's Top News

Belgium Supports Tobin Tax

by Marc Quaghebeur

The Belgian Parliament has approved a law introducing a tax on the exchange of foreign currency, bank notes, and coins.[1] The Chamber of Representatives adopted the bill on July 15, and the Senate has not used its right to review it. The bill should be signed by King Albert II and published in the official gazette within a few weeks. Belgium will be the first country to introduce a Tobin tax, although under article 13, paragraph 3 of the law, the tax cannot enter into force until all member states of the European Economic and Monetary Union adopt similar legislation.

The Tobin tax is named for James Tobin (1918-2002), an economics professor who was awarded the Nobel prize in 1981 for his analysis of financial markets and their relationship to government spending decisions, employment, production, and prices. He launched his proposal for a tax on foreign exchange transactions in 1972,[2] with the goal of increasing the independence of monetary policy and reducing nominal exchange-rate volatility when capital flows freely across international borders.

In 1996 Professor Paul Bernd Spahn proposed an alternative version of the Tobin tax. He argued that the Tobin tax could not be effective as a pure transaction tax. Because of its structure, the tax would impair the operations of the international financial markets and create liquidity problems without deterring speculation, he said. As a variant of the original proposal, he proposed a two-tier structure[3] that consists of a minimal-rate transaction tax (for example, 0.02 percent) on all currency transactions, and an exchange surcharge that would act as an antispeculation device. The surcharge would be triggered only during periods of exchange-rate turbulence, and on the basis of well-established quantitative criteria. "The minimal-rate transaction tax would function on a continuing basis and raise substantial, stable revenues without necessarily impairing the normal liquidity function of world financial markets," Spahn said.[4]

The Belgian Tobin-Spahn Tax

The version of the currency exchange tax approved by the Belgian Parliament applies to any person that carries out, in an independent manner,[5]

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[1]*Loi instaurant une taxe sur les opérations de change de devises, de billets de banque et de monnaies.*

[2]Tobin, James, *The New Economics: One Decade Older*. Princeton University Press, 1972, pp. 88-93.

[3]Spahn, Paul Bernd, "The Tobin Tax and Exchange Rate Stability," *Finance & Development,* International Monetary Fund, June 1996, pp. 24-27.

[4]*Ibid.,* p. 26.

[5]To prevent tax evasion and tax fraud, transactions by persons who are independent from a legal point of view, but are financially, economically, or organizationally close to a taxpayer, are treated as transactions of the taxpayer.

exchange transactions involving foreign currency, bank notes, and coins. The tax is levied on any direct or indirect currency exchange transactions that take place in Belgium, in cash or in futures, whether or not by giro (a system allowing European banks and other financial institutions to move money from one account to another via a central computer).

Currency Exchange Transaction

A currency exchange transaction is any transfer of the power to exchange — in the capacity of an owner — the currencies of one country against the currencies of another country.[6] Applicable currencies include all currencies, bank notes, and coins that are legal means of payment, with the exception of collectibles. The tax also is due on currency exchange transactions under an exchange contract on commission. If a currency is exchanged by the intermediary of a person acting in his own name, but on behalf of a third party, the latter is deemed to have carried out the transaction. Also, the tax is due on transactions involving financial instruments that have the same effect as the exchange of currencies.

Localization of the Transaction

The currency exchange is deemed to have taken place in Belgium if:

- one of the parties or intermediaries involved in the currency exchange is established in Belgium;
- the payment, the negotiation, or the order for the exchange is made in Belgium; and
- one of the currencies exchanged is a legal means of payment in Belgium.

To prevent the application of these three criteria from leading to multiple taxation in Belgium, an order of precedence among the criteria will be established by Royal Decree. And to prevent international double taxation, a currency exchange transaction will be exempt in Belgium if it is effectively taxed abroad under a regulation similar to the Belgian currency exchange tax regarding the basis, tax rate, the taxpayer, and the location of the taxable transaction. However, the exemption is limited to 50 percent if one of the parties to the transaction is established in Belgium. If both parties are located in Belgium, the exemption will be denied.

If the currency exchange transaction is localized in Belgium, the currency exchange will be subject to tax in Belgium, and the proceeds of the tax will be paid into a fund managed by the EMU, after the deduction of a collection fee to be determined by Royal Decree. The proceeds will be used for cooperative development, and for the promotion of social and ecological justice and the conservation and protection of international public goods.

Taxable Event

The taxable event is the element through which all statutory conditions are met for the tax to become due. This is deemed to be the case at the time that the Treasury can legally claim payment of the tax from the taxpayer, regardless of whether the exchange transaction or its payment occurs before or after that time. The taxable event occurs at the time the payment is collected or at the time of its settlement, if the payment is made to a third party.

Taxable Basis and Tax Rate

The tax is levied on the gross amount of the exchange transaction, including additional expenses. As proposed by Spahn, the two-tier tax rate consists of a normal tax rate of 0.02 percent of the taxable basis, which applies to all currency exchanges, and a second rate that applies to speculative transactions (meaning any currency exchange transactions that are outside the fluctuation margin of a central rate to be determined by Royal Decree in relation to a progressive mean rate calculated over 20 days). The rate for speculative transactions will be determined by a decision of the EU Council of Economic and Finance Ministers under article 59 of the EC Treaty, but will not exceed 80 percent. The applicable tax rate will be determined in relation to the timing of the taxable event.

Tax Liability

Each taxpayer owes half of the tax on the currency exchange transaction, and any taxpayer established in Belgium is jointly and severally liable for the payment of the tax due by its contract party. If a taxpayer uses the services of a financial intermediary, the tax is payable by the financial intermediary.

In any event, the Belgian taxpayer that is liable for payment of the tax due by its contract party, and the financial intermediary, are authorized to withhold the tax or a counter value for the tax.

Exemptions

Individuals' currency exchange transactions that do not exceed €10,000 per year,[7] and those by central banks and assimilated international institutions that are acknowledged by Royal Decree, are exempt from the tax.

[6]For purposes of this provision, the European Economic and Monetary Union, is considered to be a single country, as is any other territory with a single currency.

[7]That is the limit under anti-money-laundering legislation (Law of January 11, 1993).

Procedural Aspects

The government can establish a simplified regime for taxpayers for whom the application of the normal regime would create problems. The simplified regime would take the form of a lump sum tax payable by the financial institutions, which would free those institutions from the obligation to pay the tax at the level of the wholesale trade of currencies.

Specific measures to ensure the collection of the tax can be established by Royal Decree. In particular, the king can determine conditions and impose any obligations necessary for the correct and simple collection of the tax, and to prevent fraud, tax evasion, and abuses. The government also can sign agreements with the central bank, which controls the legal means of payment in Belgium, including measures regulating the application of the currency exchange tax.

Moreover, by Royal Decree, chartered accountants can be required to report specifically on the application of the law, and Belgium-based chartered accountants who are part of an international group of auditors can be required to obtain information about the application of the law from their colleagues.

Entry Into Force

As previously stated, the law will not enter into force until all EMU member states have adopted a similar tax on currency exchange transactions, or until it is made mandatory by a European regulation or directive. Furthermore, some of the provisions of the law cannot be applied without the agreement of the European Council.

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