

**Redistribution through Innovative Measures:
A Currency Transactions Tax**

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A CIDSE Position Paper

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CIDSE
Coopération Internationale pour le
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Introduction

This position paper of the CIDSE network¹ proposes a redistribution of wealth through a currency transactions tax. The objective is to translate the principle of redistribution into a concrete political demand. Governments have the duty to safeguard the resources at their disposal, which also entails taking care of the most vulnerable, in both the North and the South. Governments are urged to pass the necessary measures to achieve a fair redistribution of wealth between rich and poor (between and within countries); a tax on currency transactions is one of the possibilities to better achieve this goal.

Foreign currency exchange is the largest, most dynamic market in the world. Between US\$1200 and 2600 billion worth of currency is traded daily in a market that literally does not sleep². Centred in Tokyo, London and New York, traders deal smoothly across borders and time zones, often in multiples of €1 billion. The liberalisation of the global capital market, combined with technological advances in the sector, has left the market virtually unrecognisable from 10 years ago. It is now possible to send millions of euros around the world in just a few seconds. Market theorists believe that the near instant dissemination of news, data and price information has led to what they call "efficiency" – an accurate price at any given time. They also acknowledge that it has affected the way in which currency pairs move. Today's behaviour is often likened to a school of fish, all changing direction simultaneously. The overall volatility of currencies is greater. Since traders profit from volatile prices, this has encouraged greater speculative trading activity along with an increase in trade by new groups.

This greater speculative trading activity is one of the reasons why, over the 1990s, a series of currency crises occurred: Mexico, Thailand, Indonesia, South Korea, Malaysia, Russia, Brazil and in 2001, Argentina. Specifically emerging markets appear most vulnerable to currency crises, bank crises or twin crises (simultaneous banking and currency crises). Emerging markets tend to be open to international capital inflows, and have experienced large private capital inflows that are typically short-term. This debt is also usually denominated in foreign currency (generally in US\$). These large short-term foreign-currency debt positions increase the vulnerability of these economies to swings in exchange rates and cessation of new capital to roll over existing debt. A currency crisis is associated with a 1.3% decline in average output economic growth over a five year period. A combination of currency and banking crises reduces growth contemporaneously by about 2% per year. The cumulative output loss for a twin crisis over and above the average recession is 16% of GDP³. Thus speculation can have a destabilizing effect, especially in those countries where the currency is under attack. Currency crises, mainly due to financial speculation, mean that many countries - even those with sound economies - are finding themselves burdened with job losses, bankruptcy, fresh debts and increasing poverty among the population. World Bank estimates suggest that, in four Southeast Asian countries alone, an overall reduction of 10% in economic activity took place and a doubling of the numbers of people living in poverty (to 90 million)⁴. Other economies were also seriously affected by these crises.

¹ CIDSE - International Cooperation for Development and Solidarity -is a network that brings together fifteen catholic development organisations from Europe and North America. This paper has been prepared by the joint CIDSE-Caritas Internationalis Task Group on Social Justice; its main author is Ann De Jonghe (Broederlijk Delen). The paper is based on a previous CIDSE/Caritas Internationalis/Justice and Peace Europe background paper and on the report of a CIDSE/Caritas consultation on the CTT, held in Antwerp in October 1999.

² Figures of Bank of International Settlements (Triennial Survey of the FX market, 2004) and of the Central Bank of Belgium, 2004.

³ Hutchison, M.M. and I. Neuberger. 2002. "How bad are twins? Output costs of currency and banking crises" Wade, R. 1998. "The Asian crisis and the global economy: causes, consequences, and cure", *Current History*, 97, Nov 1998, 316-375; Cohen, B.J., o.c. 2003; SOROS, G., o.c. 1998, 192.

⁴ *Financial Times*, 28/8/1998, p.4.

The international recommendations imposed on these economies during and after these crises are controversial and are even criticised by voices from the World Bank. Many argued that the advice of the World Bank and the IMF increased the difficulties and suffering of some of the nations involved⁵. The explanation that these crises had been due entirely to bad practices in the banks and finance houses of the respective countries is not convincing because countries affected did not demonstrate a higher incidence of bad practices than those not affected⁶. In fact, this interpretation seems to be an example of “wisdom after the event”, in that the crises were not foreseen by international organisations, rating agencies or foreign investors⁷. More reliable and readily available ways of protecting countries against currency crises are needed.

The Spahn proposal of a currency transactions tax (CTT) constitutes a reliable means of meeting this need and forms an essential part of a new international financial architecture. Through the mechanism of a two-tier (two-rate) CTT, as proposed by Professor Spahn, the world community acting co-operatively (or any one of a number of individual governments acting together for its own currency) could prevent rapid speculative runs on currencies and, at the same time, apply a much lower rate as a means of raising revenue. Consequently, a currency transactions tax acts as an effective protection against major currency crises, a monitoring device and generates a certain amount of revenue.

The revenue of the tax should be dedicated to global social and sustainable development purposes to achieve a fair redistribution of wealth between rich and poor, in the North and South. Moreover, the money should be earmarked as additional aid and direct support for the Millennium Development Goals⁸. Levying the CTT should be viewed as the implementation of the commitment made in paragraph 14 of the Millennium Declaration, where heads of states and governments committed themselves to mobilise additional resources and ensure the success of the International Conference on Financing for Development. This paper proposes that a currency transactions tax, through its potential of realising a more equitable distribution of wealth and a more stable financial climate, is a crucial element in this process.

⁵ Krugman, 1999, pp.111-117,146-151; Wyplosz, 1999, pp.169-175.

⁶ Krugman, 1999, pp.98-101.

⁷ Wyplosz, 1999, p.167.

⁸ The *Millennium Development Goals* are listed in the Millennium Declaration which was endorsed in September 2000. The Goals aim to combat hunger and poverty and improve education, health, the status of women, and the environment by the year 2015. These Goals are a commitment by all governments, agreed by the head of states. For more information, see *International Campaign on the Millennium Development Goals*, a CIDSE/Caritas Internationalis paper, October 2003.

Redistribution through innovative measures: a currency transactions tax

1. The principle of redistribution

As a faith-based network, CIDSE's goal is to promote a "preferential option for the poor", through, inter alia, redistribution of wealth. Our network urges governments to take concrete actions, based on the commitments they made at different summits, and considers good international political governance to be indispensable. We aim to promote means of regulating the world economy at the political level in order to make it serve the common good. One way to regulate the world economy is taxation. It is the main source of income for funding social development (education, health and other public services). Through progressive taxation, the aims of reducing income inequalities - between and within countries - and promoting social and gender equity can be pursued. However, an international taxation (to achieve more equality between countries) does not exist, and a wealth distribution system through taxation and duties at national level, is still in many countries non-existent or ineffective.

At the international level, various sources of income linked to economic and financial activities are not taxed, yet they generate considerable profits for institutions and businesses. Many innovative tax proposals have been made over the years to generate additional financing for development, either nationally or internationally. At present the most advanced and frequently discussed proposals are a currency transactions tax (CTT), taxation on certain sales of arms, voluntary and socially responsible investments and environmental taxation. Without disregarding discussions on other types of taxes, CIDSE advocates that the introduction of a currency transactions tax should be considered.

2. Evolution of the currency transactions tax proposal

2.1 *The original Tobin proposal*

Most of the discussions on a currency transactions tax are based on the original proposal of Mr. Tobin. As early as 1972, James Tobin saw the danger of speculative capital. The Tobin proposal consists of levying a tax on short-term speculation, with the aim of reining it back and channelling the majority of capital into long-term investments. Tobin proposed introducing a worldwide tax of 0.5% on all speculative transactions. He also believed this system would give governments greater autonomy to implement a good monetary policy, without denying the economic reality.

More than thirty years later, most of the arguments against a currency transactions tax are still based on the old Tobin proposal. For example, one of the arguments often used against the Tobin tax is that there may be a conflict between the revenue-raising aspect of the tax and a reduction of capital movements: there is wide agreement that the rate should be low enough to have no significant effect on international trade in goods and services or long-term investment. The lower the rate, the less the "tax-base" (the volume of exchange-transactions) will be reduced. But by the same token, a very low rate is unlikely in itself to have much effect on capital movements. There is the possibility that raising the tax rate above some critical level may reduce the tax-base so much that it actually reduces the tax revenue.

2.2 *The Spahn proposal: a two-rate tax system*

In 1994, Paul-Bernd Spahn (Professor of Economics at the University of Frankfurt-am-Main and an IMF expert at that time) proposed the device of a *two-tier* CTT, to meet the two separate objectives: raising revenue and influencing capital movements⁹. He proposed a very low, uniform

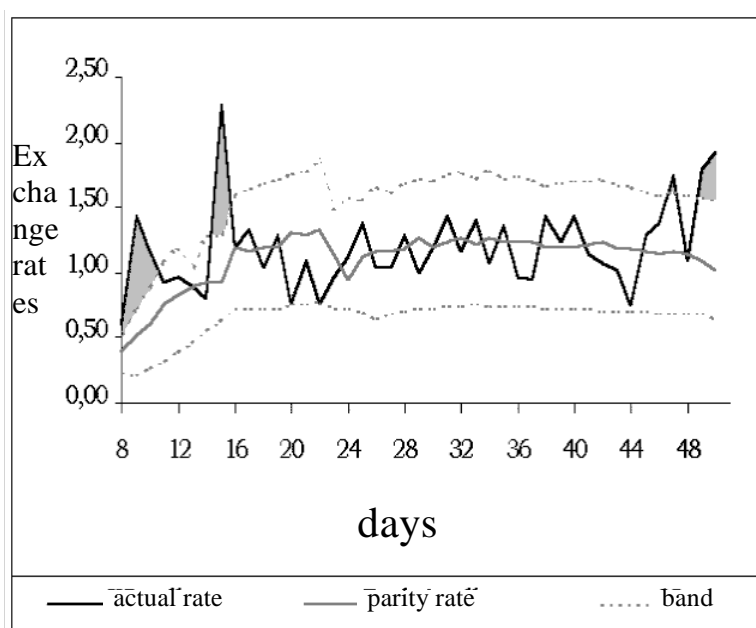
⁹ Paul Bernd Spahn in IMF *Finance and Development*, June 1996.

rate on every currency transactions for the sake of collecting revenue *and* a much higher, temporary penal rate, if the speed of the currency exchange-rate movement indicates the currency is likely to be subject to a speculative currency flight.

So, the two-tier (two-rate) CTT consists of:

- 1) a minimum tax (0.01 or 0.02%) which provides a constant income during "normal" market development and
- 2) a very heavy tax (50 or even 100%) during a financial crisis; this would act as a circuit breaker to virtually halt trade, if a currency is rising or falling sharply. A similar system is already used on stock markets when the situation becomes overheated.

Contrary to what people generally imagine, this tax is not comparable to a system of fixed exchange rates. If the rate of a given currency is too high in relation to its fundamental economic principles, it will depreciate within time, and vice versa. The mechanism proposed by Spahn perfectly allows for such depreciation. The major difference here, in comparison to the present system, is that the adjustment is no longer in the nature of "shock therapy". Instead of depreciating very rapidly in the space of a few days (particularly as a result of the gregarious behaviour of the speculators), the currency will progressively depreciate, thus giving the local government the time to adapt its economic policies to the signals given out by the market. It is because depreciation occurred so rapidly during the past crises that it became impossible to stop them.



Explanation of the graph:

The horizontal line shows the days on which trade in the currency is carried out; the vertical line is the definition of the currency value. The graph itself has three kinds of lines:

1. the black line is the current value of the currency, as defined by supply and demand;
the grey line is the average value of a currency, defined by an upper and lower margin. The minimum tax is levied on this average value (based on the last 20 days the currency has been sold);
2. the dotted lines show the upper and lower margin of the currency value; As soon as the currency moves "out of the band", the heavy tax is applied (hatched parts). This sort of band was also provided by the European Monetary System (EMS), the forerunner of the euro.

Source: Spahn [1996].

A Currency Transactions Tax of 0.01% would generate considerable return because between \$1200 and 2600 billion worth of currency is traded daily in currency markets¹⁰. A worldwide tax of 0.01% on a currency transactions would thus provide an extra and constant income of US\$30 to 50 billion every year¹¹. This money should be earmarked as direct support for the Millennium Development Goals. In fact, it should be viewed as the implementation of the commitment made in paragraph 14 of the Millennium Declaration, where heads of states and governments committed themselves to mobilise additional resources and ensure the success of the Conference on

¹⁰ Figures of Bank of International Settlements (Triennial Survey of the FX market, 2004) and of the Central Bank of Belgium, 2004.

¹¹ Innovative Sources of Financing for Development, Note by the Secretary General prepared for the 59th Session of the UN General Assembly (Advance unedited version, 17 August 2004), Annex to the note: "New Sources of Development Finance: Funding the Millennium Development Goals" (summary of the UNU-WIDER study), Para 26.

Financing for Development. At the moment, the programmes and projects (such as health, education, water-supply and sanitation) for reaching the Millennium Development Goals (to halve poverty by 2015) and the global public goods are seriously under-funded. The CTT would be a token of the credibility the international community wants to confer to the Millennium Declaration.

2.3 The feasibility of the CTT investigated by R. Schmidt

In 1997, the Canadian Ministry of Finance commissioned Dr. Rodney Schmidt to examine if and how a currency transactions tax could be applied and monitored. In his study¹² Mr. Schmidt argued that technological changes make it relatively easy for a CTT to be collected, namely through the *System of Interbank Settlement of Foreign-exchange Trades* (the daily settlements between national banks)¹³ and by the *Continuous Linked Settlement (CLS) System*.

Central banks require netting systems to use gross-transaction-identification-and-monitoring facilities, as a condition to allow them the access they need to domestic payment systems. Moreover, at the international level a unification of the technological support of the financial market is taking place. Since 2000, electronic financial networks are being centralised into the *Continuous Linked Settlement (CLS) System*¹⁴. This enables the two sides of every wholesale inter bank transactions between currencies to be settled simultaneously, and for this purpose it has access to information identifying all gross foreign-exchange transactions. Information technology has in effect created a single system of information management on the basis of which simultaneous settlement of currency transactions will soon be universally possible and universally required. For this reason, Mr. Schmidt argued, a currency transactions tax is technically far easier to implement than existing income taxes or the systems of value-added tax (VAT)¹⁵, even taking into account that some small problems remain (e.g. on some very complex derivative products).

Dr. Rodney Schmidt, A feasible foreign exchange transactions tax, September 1997:

"Provided one of alternative sets of necessary conditions is fulfilled, taxing "wholesale" foreign-exchange transactions at the point of payment is likely to be the most watertight, economically efficient, and transparent method of controlling capital movements between currencies. The required conditions are these:

1. Any monetary authority, other than that of one of the four to six key currencies, can apply controls by this method independently and unilaterally on purchases or sales of its currency, provided it has a modern, domestic, large-value, payment system. This condition is now fulfilled by all the G10 countries, by most of the larger middle-income countries, and by some large low-income countries. Others are expected to fulfil it in the near future.
2. Controls by this method can be applied to any currency now, provided the four to six key-currency authorities cooperate to impose them.
3. Similarly, a uniform tax at a low rate on payments in wholesale foreign-exchange transactions could be applied across the world for revenue purposes, provided the key-currency countries cooperated to impose it.

A combination of regulatory powers and transactions costs, the latter partly related to risk and contributing to economies of scale, would prevent significant "leakage" of transactions through the "retail" market. The reliability of this defence would be enhanced if any long-term taxes were imposed at very low rates, taxes for medium-term inflow-control purposes at moderate rates, and any penal rates applied only briefly".

¹² Rodney Schmidt: *A Feasible Foreign Exchange Transactions Tax* – The North-South Institute, Ottawa, Canada – paper by Rodney Schmidt, July 1999.

¹³ On 22 October 1999, CIDSE and Caritas Internationalis organised an international expert meeting in Antwerp on this particular issue. *Update of Report of a Consultation held by CIDSE and Caritas Internationalis in Collaboration with the University of Antwerp (UFSIA)*, 22 October 1999, Antwerp, Belgium by Professor Anthony Clunies Ross – Economics Department, University of Strathclyde (Glasgow, Scotland), revised Easter 2001. Report available at <http://www.cidse.org/pubs/antencon.htm>.

¹⁴ The first operational phase of CLS started in September 2002 with 55 settlement members. During 2003, the group of CLS-members grew spectacularly. Beginning 2004, 116 CLS-members were noted and on some days a gross amount of more than US\$ 2.1 billion is traded via the CLS system. *Banking Review*, March 2004, pp. 6-8.

¹⁵ The systems of value-added tax (VAT) are common instruments in more than 85 countries.

Mr. Schmidt concluded his study by saying that the CLS technology could serve perfectly as the technical basis on which to levy a Spahn tax. It could be done electronically and automatically, and records could be kept for verification by central banks and regulators. Since the recent financial crises also affected Western markets, most of the central bank authorities are convinced that prudential regulation of financial markets is necessary for medium- and long-term economic policy-making. Transparency is the first condition for the introduction of global prudential regulation by central bank authorities. The monitoring device of the Spahn tax could provide the transparency needed in the financial markets.

3. The CTT as a regulatory instrument

3.1 *The monitoring device of the tax*

The currency transactions tax is a good compromise between existing market mechanisms and a prudential policy. The heavy tax is an effective tool for hindering excessive speculation and thus reduces the risk of a currency crisis such as the one in Argentina in 2001. The low tax (0.01%) provides an instrument for tracking market movements and enables governments to take the necessary measures to avoid a major crisis. It is the ideal instrument to create the time to act - the very time governments lacked during the financial crises in the past decade. Thus a CTT administered by a number of national authorities would imply continual *monitoring* of foreign-exchange movements; this could provide early warning of currency crises. If it succeeds in reducing the perceived risk of crises, the cost of hedging (which is used to mitigate the risks arising from instability of exchange-rates) may fall.

3.2 *Using national bank reserves for domestic development*

Most small economies lack the capacity to build up sufficient national bank reserves to counter a major attack on their national currency. Most of these reserves are often low-return investments in one of the hard currencies. This capital is "immobile " until it is needed to protect the currency. With the high tax (the circuit breaker) in the Spahn proposal, those small economies do not need a large amount of useless capital, because their currency is protected by the Spahn system. The trade will slow down automatically without intervention from a central bank. This enables governments to invest most of that immobile capital in domestic development.

4. The currency transactions tax as a redistribution mechanism

The amount of revenue of the CTT depends on the level the tax would be levied. Let us therefore first look at which level the tax should be levied.

4.1 *The level at which to levy the CTT*

CIDSE advocates the worldwide collection of the tax at a uniform rate according to the terms of an international agreement. The United Nations, in collaboration with the relevant international financial institutions, could establish an international agreement on redistributive measures (even if such a currency transactions tax were to be introduced on the national level). The collection of the tax would probably come under the judicial responsibility of each member state (it could be collected by the authorities issuing the five major 'vehicle'-currencies), but the conditions of the international agreement could provide for it to be carried out globally in the same way and at the same rate, thereby avoiding new tax competition between nation states. The international agreement could specify means of application, monitoring, possible sanctions, and the way in which the revenue from this tax could be spent and redistributed. A first draft of an international

agreement was written in January 2002 by Professors L. Denys and H. Patomäki¹⁶. In the long term, we hope the UN will be able to levy international taxes to establish a fair international redistribution between North and South.

At the moment, an international agreement or an international institution with the legal power to levy an international tax does not exist. Although the tax should preferably be levied at the international or regional¹⁷ level, it does not have to be collected internationally or at a uniform rate. The tax can be levied by individual government(s), with the legal authority to levy taxes. Two states have already introduced a similar tax system. In Latin America, Chile levied a tax on short-term capital invested in the country¹⁸. In Asia, Malaysia took a number of steps to fight the financial crisis it faced in September 1998, namely, linking the Malaysian currency (the ringgit) to the dollar, introducing measures for the local stock markets and restricting the movement of the local currency into and out of the country. Although this policy was at first branded as taboo by the IMF, the Malaysian government later received support from a number of leading economists and countries in the region (e.g. Japan).

4.2 The tax as a source of revenue and redistribution mechanism

International taxation is a better instrument for realising a worldwide redistribution of wealth than the current Official Development Assistance (ODA). Current ODA levels are clearly not sufficient to combat poverty and are very unpredictable as well. Although donor countries have promised to spend 0.7% of their GNP in development finance to the South since 1970, very few do so. An international tax on currency exchange (additional to the ODA budget) would create a constant and predictable financial flow towards the South, more transparency in, and a better coordination and flexibility of assistance (instead of tied aid).

A worldwide tax of 0.01% on a currency transactions would provide an extra and constant income of US\$30 to 50 billion every year¹⁹. This money should be directed towards global sustainable social development in the broadest sense of the term: sustainable in terms of both time and space, supported by a broad section of the population involved, in the interests of - and with the participation of - the poorest. Poverty reduction must be the overriding objective. Greater effectiveness of help requires recipient governments and civil society to be at the centre of the development programmes and to develop their own comprehensive poverty reduction framework. At present the programmes and projects (such as health, education, water-supply and sanitation) for reaching the Millennium Development Goals (to halve poverty by 2015) and the global public goods are seriously under-funded. The CTT could provide the resources for these global goods and global purposes.

4.3 Preliminary conclusion

¹⁶ *Treaty on Global Currency Transactions Tax*, Dr. L. Denys and H. Patomäki, January 2002.

¹⁷ Different studies confirm the feasibility of the CTT at EU level only (without e.g. Japan or the US). Professor Lieven Denys demonstrate that the Tobin-Spahn tax could perfectly fit into the legal framework of the EU-treaties, including its principle of free movement of capital: Denys, L. 2001 "Tobin-Spahn tax on financial transactions and article 56 EC: an opinion", published in : *European Taxation*, Nov. 2001, vol 41, nr 11, pg. 430-435. Also Nissanke, M. 2003 "Revenue Potential of the Tobin Tax for Development Finance: a Critical Appraisal", School of Oriental and African Studies, University of London, December 2003, (<http://www.wider.unu.edu/publications/dps/dps2003/dp2003-081.pdf>).

¹⁸ The IMF publication *Economic Issues*, September 1999 states "by taxing short-term capital, as implemented by Chile, hedge funds and other speculators were discouraged from making a sudden decision to move capital. The managers of hedge funds, who attach a great deal of importance to taking and changing positions with a minimum of cost, are especially sensitive to this type of measure". (Eichengreen, B. 1999 "Hedge Funds" *IMF Economic Issues*, No. 19, Washington)

¹⁹ Innovative Sources of Financing for Development, note by the Secretary General prepared for the 59th Session of the UN General Assembly (Advance unedited version, 17 August 2004), Annex to the note: "New Sources of Development Finance: Funding the Millennium Development Goals" (summary of the UNU-WIDER study), Para 26.

A currency transactions tax, as proposed by Professor Spahn, is a domestic instrument to raise revenue that can be dedicated to social and sustainable development purposes. The tax is technically far easier to implement than existing income tax systems. This proposal concurrently provides a certain amount of revenue, a monitoring device and effective protection against major currency crises. Some governments have successfully implemented similar measures in the past. Ideally, this domestic tax instrument should function in the context of an international agreement in order to avoid tax competition between different nation states.

5. The subsequent stages for a CTT at the international level

Over time the CTT proposal gained the respect of an increasing number of renowned international experts (R. Schmidt, A.B. Atkinson and M. Nissanke among others). Several political (national and international) bodies have commissioned studies on the CTT. The CTT proposal will be discussed, amongst other proposals, at the General Assembly of the United Nations in October 2004. CIDSE has been lobbying for a tax on currency transactions for seven years now:

- In **1997**, CIDSE and Caritas Internationalis asked Dr. Luc Van Liedekerke, Professor of Economics at the University of Leuven, to analyse whether the currency transactions tax is a viable mechanism to finance development in the South. In collaboration with Justice and Peace Europe, the first official CIDSE-Caritas background paper on the CTT was drafted in **1998**. It was based on the Spahn version of the CTT and developed with the help of Dr. Danny Cassimon, Professor of Economics at the University of Antwerp. On 22 October **1999**, CIDSE and Caritas together with the University of Antwerp organised an experts' meeting on the CTT. Several academics, EU and UN officials, CIDSE advocacy officers and representatives of NGOs were present. Among the speakers were Dr. D. Cassimon (University of Antwerp), Dr. P-B. Spahn (University of Frankfurt), R. Schmidt (North-South Institute), Dr. L. van Liedekerke (University of Leuven).²⁰ Based on this experts' meeting and the CIDSE-Caritas-Justice and Peace Europe document, intensive lobby work took place directed towards the UN Commission for Social Development.²¹
- In June **2000**, at its 24th special session in Geneva, the General Assembly requested the international community to "*conduct a rigorous analysis of the advantages, disadvantages and other implications of proposals for developing new and innovative sources of funding, both public and private, for dedication to social development and poverty eradication programs*". The Canadian and Norwegian governments had it recorded that they actually construed this to mean a study on a currency transactions tax (CTT).
- The ACP-EU Parliamentary Assembly on globalisation adopted a resolution in October **2000**, which "considers that the time has come to send out a signal heralding a new departure for the implementation of globalisation and therefore calls on major industrialised countries, and notably the European Union, to introduce a tax on capital transfers as proposed by Professor Tobin."²²

²⁰ CIDSE-Caritas report of the consultation on the CTT, by Professor Anthony Clunies Ross – Economics Department, University of Strathclyde, Glasgow, Scotland, February 2000.

²¹ CIDSE and Caritas Internationalis organised a workshop on CTT during a session of the UN Commission on Social Development (1999). Intensive lobbying work was conducted by CIDSE at the 38th Session of the UN Commission for Social Development (February 2000) and at preparatory meetings for the Copenhagen +5 Review (May 1999, February and April 2000).

²² Paragraph 21 of the resolution of the ACP-EU Parliamentary Assembly on Globalisation (ACP-EU 2976/A/00/fin), October 2000, Brussels, Belgium. Available at: http://europa.eu.int/eur-lex/pri/en/oj/dat/2001/c_064/c_06420010228en00200059.pdf .

- Under the Belgian EU Presidency in **2001**, the Council of Economics and Finance Ministers of the European Union (ECOFIN) requested the European Commission to commission a study on the challenges of globalisation, including a study on the CTT²³. The report formed the basis of the EU position for the UN Conference on Financing for Development, in March 2002. In the same year an Intergroup of the European Parliament (Capital Tax, Fiscal Systems and Globalisation Intergroup) organised a hearing on the Tobin Tax and the European Parliament also commissioned a study which was published in March 2002.²⁴
- From 2000 to 2002, CIDSE and Caritas Internationalis actively advocated for the CTT to be included in the agenda of the upcoming International UN Conference on Financing for Development.²⁵ In Spring **2002**, the International Conference on Financing for Development (FfD) took place in Monterrey and the CTT was included (though not literally) in the final text of this conference. Paragraph 44 of the Monterrey Consensus recognises “the value of exploring innovative sources of finance, provided that those sources do not unduly burden developing countries ...” CIDSE and Caritas Internationalis continued their international advocacy work on CTT in the framework of the FfD follow-up process.²⁶
- At the national level, the **French Parliament** adopted an amendment to the **2002** National Law of Finance, on the principle of a tax on currency transactions, meaning that a CTT could be implemented if so decided at EU level.²⁷ In 2003, President Chirac launched an expert group on innovative sources of Financing for Development, whose report, released on 14th September 2004, shows the technical feasibility of a CTT.
- At its 58th plenary meeting in September-October **2003**, the General Assembly (GA) decided to “*consider at its 59th session possible innovative sources of financing for development, and requests the Secretary General to submit the result of the analysis on this issue as called for in §44 of the Monterrey Consensus*”²⁸. The ultimate objective was to galvanise political support for the implementation of viable financing mechanisms, in an attempt to reach consensus on possible avenues for effectively reaching the Millennium Development Goals by 2015²⁹. A CTT was one of the proposed financing mechanisms. The “UN study on innovative resources for development cooperation”, commissioned in Geneva in 2000, will be released at the 59th session starting on 21st September 2004.
- CIDSE participated in a UNU-WIDER international expert meeting on innovative resources (Helsinki, September **2003**). One session of the 3-days meeting discussed the Tobin tax,

²³ The results were published in February 2002. The study is available online at: <http://globalpolicy.igc.org/socecon/un/unctad/2002/0228euglobal.htm>.

²⁴ *Feasibility and impact of taxation for development assistance on international capital transactions*, Working paper of the European Parliament, DG for Research, Development Series, DEVE 104 EN, March 2002.

²⁵ Intensive lobby work at the different preparatory meetings of the FfD conference (May/November 2000, February/May/October 2001, January/February 2002) and at the International Conference on FfD itself (Monterrey, March 2002). The FfD conference was organised by the United Nations, in collaboration with the IMF and World Bank, and in consultation with the World Trade Organisation.

²⁶ In 2003 and 2004, advocacy work took place during the High-Level Dialogue on the FfD (March/April/October 2003 and March 2004).

²⁷ French Law text nr. 721, Petite loi de l'Assemblée Nationale du 20 novembre 2001, “Projet de loi de finances pour 2002”, Article 53 bis.

²⁸ See the UN Resolution A/C.2/58/L.83 issued on 15 December 2003, by the Second Committee of the UN General Assembly at the end of the 58th session, page 4 §14.

²⁹ For more information, see *International Campaign on the Millennium Development Goals*, a CIDSE/Caritas Internationalis paper, October 2003.

based on the study of Prof. Machinko Nissanke.³⁰ It confirmed the feasibility of the CTT at EU level only (without Japan or the US, for example). The conclusions of this expert meeting were included in the report of the UN study on innovative resources for development cooperation, which will be sent to all governments in 2004.

- In January **2004**, the UN Secretary General instigated, together with the Presidents of Brazil, France, Chile (and later Spain), an action programme aimed at identifying innovative sources of financing. A technical group was set up to explore new sources of finance, such as taxes on financial transactions (CTT), the British "International Finance Facility (IFF)" proposal and environmental taxation. World leaders were invited to discuss the findings of the technical group and other contributions from governments and institutions on 20 September 2004 (on the eve of the opening session of the 59th session of the General Assembly).
- A major breakthrough in the advocacy work for a CTT came when a **Belgian law on the CTT** was voted in the Belgian Parliament in **July 2004**. It is the first concrete law to levy a Spahn tax at the European level³¹. The law, which consists of 16 pages, is considered technically strong and readily adaptable to legislation in other EU countries³².
- At present several initiatives are being undertaken at national and European levels. The Belgian law (in annex) is taken up by organisations and parliamentarians in other EU countries who advocate for a law on CTT in their respective countries. In the European Parliament (EP), a Tobin working group has been re-established, consisting of the European Tobin Tax Network (tobin-europe@lists.atac.be) and European Parliamentarians. Members of the EP are invited to sign a declaration to place the Currency Transactions Taxation back on the EP's agenda. A questionnaire is sent to civil society organisations in order to have an overview of organisations working or willing to work on the CTT. This should foster contacts between the different organisations within and between countries. For information, contact tobin-europe@lists.atac.be.

³⁰ Nissanke, M. 2003 *Revenue Potential of the Tobin Tax for Development Finance: a Critical Appraisal* School of Oriental and African Studies, University of London; the paper was updated in December 2003 to take into account comments made at the Helsinki conference (<http://www.wider.unu.edu/publications/dps/dps2003/dp2003-081.pdf>).

³¹ This Belgian law is translated into French, English and Spanish. DOC 51, 0088/001.

³² The Belgian law uses the context of the sixth European Directive that deals with the VAT question. This is interesting because the inherent technique, particular to the VAT regime, is adopted in more than 80 countries in the world. Owing to this fact, several countries in the EU will now experience fewer difficulties to include the Tobin tax in their legislation. The Tobin dossier bears an astonishing resemblance to the history of VAT. When the question of VAT was first raised at the end of the sixties, it provoked uproar. Most "specialists" were convinced at the time that it was impossible to implement such a tax and that, therefore, it would never see the light of day. Forty years later, it has become reality. A note of warning: the Tobin tax is not a tax on added value. The tax is indeed deducted from the gross amount of the exchange transaction. The sixth directive relative to VAT was therefore just a source of inspiration.

6. Conclusion

On 20 September 2004 a meeting of world leaders was convened to 'generate high-level momentum in favour of social and economic development, hunger and poverty eradication' by Brazilian President Lula. The invitation to the meeting acknowledges that the campaign against poverty and hunger is not an end in itself but part of a process at the heart of which 'lies the need to identify innovative financial mechanisms capable of promoting development and ridding the world of hunger.' CIDSE welcomes such an initiative which reinforces our values of equitable development and a preferential option for the poor.

According to CIDSE analysis, a currency transactions tax, through its potential of realising a more equitable distribution of wealth and a more stable financial climate is a crucial element in this process. The US\$30 to 50 billion generated annually could be directed towards global sustainable social development in the broadest and deepest sense. It also could provide the resources that have been lamentably lacking in financing efforts to reach the Millennium Development Goals in the short term and investment in global goods and global purposes in the long term. The CTT provides an ideal way out of the principal problem raised by the British proposal for an International Finance Facility (IFF), namely the sustainability of the funds in the medium and long run. This paper proposes that the technical arguments for the CTT are sufficiently strong for its international adoption, what is needed now is the political will.

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CHAMBER OF the REPRESENTATIVES OF BELGIUM

July 15, 2003

PRIVATE MEMBERS' BILL

***Seeking to levy a tax on foreign currency exchange operations,
banknotes and coins***

*(filed by MESSRS Dirk Van der Maelen
and Geert Lambert)*

SUMMARY

1. *Synopsis*
2. *Developments*
3. *Private members' bill*

cdH : Centre démocrate Humaniste
CD&V : Christen-Democratisch en Vlaams
ECOLO : Ecologistes Confédérés pour l'organisation de luttes originales
FN : Front National
MR : Mouvement Réformateur
N-VA : Nieuw - Vlaamse Alliantie
PS : Parti socialiste
SP.a – SPIRIT : Socialistische Partij Anders – Sociaal progressief internationaal, regionalistisch integraal democratisch toekomstgericht
VLAAMS BLOK : Vlaams Blok
VLD : Vlaamse Liberalen en Demcoraten

Abbreviations in the numbering of the publications:

DOC 50 000/000 : Parliamentary document of the 50th legislature / basic number and serial number

QRVA : Questions and Answers in written form

CRIV : Complete Report of the Proceedings including, on the left, the complete report and, on the right, the translated analytical account of interventions (on white paper, with appendices)

CRIV : Provisional version of the complete Report (on green paper)

CRABV : Analytical Report (on blue paper)

PLEN : Plenary session (white cover)

COM : Committee Meeting (beige cover)

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SYNOPSIS

The authors are of the opinion that speculators' activities have an important destabilizing effect on the country whose currency is subjected to this type of speculation.

In order to resolve this situation the authors are proposing the "Spahn tax" which is an alternative to the "Tobin tax". The difference with regard to the first tax, is that the proposed tax would include two types of levy: a very low rate fixed at 0,01 or 0,02%, that would apply to all transactions, and a rate of 80%, which would be applicable when the exchange rate of the currency concerned showed predetermined fluctuation margins.

The institution of the "Spahn tax" according to its authors, is based on the sixth European Directive concerning VAT matters, since more than eighty countries resort to the technique that is inherent to the VAT regime. However, this tax is not a value added tax, but it is levied is on the gross amount of the exchange transaction.

The authors would like the product of this tax that will be levied in the countries of the European Union to be paid into a fund set up within the European Union, to be used for development cooperation, for the struggle against social and ecological injustice and for the conservation of international public goods.

This tax would enter into force on 1 January 2004 at the earliest, provided the conditions for instituting it is provided for in the legislation of all countries concerned within the Eurozone.

DEVELOPMENTS

LADIES, GENTLEMEN,

The present private bill adapts the text of the private bill n° 1685-001 - 2001 /2002. 22.

The liberalization of the international capital markets coupled with the removal of all possible restrictions to the free movement of capital flows had important repercussive effects all over the world. The free circulation of capital allowed developing countries to participate in the global economy, with some of them even becoming economic tigers. No one can deny that the contribution of foreign capital in the form of direct investments has been a blessing for the economic development of some countries

Together with the widespread computerisation of the sector, liberalization of the global capital market enabled millions of euros to circulate around the world at the speed of lightning. Thus, it became possible for considerable profit earnings to be generated in this manner on the basis of anticipation of the variations in currency exchange rates. This is known as speculation. However, the activities of the speculators considerably destabilise those countries whose currencies are the subject of such speculation, bringing in its wake scenarios that are catastrophic and which, most often, unfold as follows: the speculators decide (actually, some "decide" and others "follow"), to flood a given country with short-term capital, and this capital influx in turn, drives different macroeconomic indicators - such as exchange rates and share prices - outside of the zone that can be considered as their long-term balance. When after a certain lapse of time, the financial bubble that they themselves have created comes close to bursting, the concerned persons then recover their mass of funds, and this sudden withdrawal is followed by the all too well-known consequences: bankruptcies, massive layoffs, and fatal poverty for the population. Because of the highly advanced globalization in the area of the circulation of capital, the crises spread across the borders of the countries thus afflicted. The aforementioned financial upsets also affect the neighbouring countries, and even countries much further away.

The countries that are hit by the crisis can appeal to the International Monetary Fund (IMF). This institution tries to limit the damages of the crisis by offering financial aid to the affected countries. In 1998, the IMF spent a record amount of nearly 100 billion dollars in this type of aid. In the short-term, however, IMF aid does not seem to be very efficient. In fact, the main effect of this type of aid is to offer guarantees to speculators that they will recover the amounts that they have invested. In reality, the IMF is giving indirect support to speculators rather than offering direct support to the afflicted countries.

This is how the situation stands at the present point in time. It goes without saying that reforms are imperative. But what can be done to prevent the future occurrence of this type of financial crises and, by the same token, resolve them in a more efficient manner? This question lies at the heart of argument on which the Tobin tax is based, and which has the capacity to become an essential element in the construction of the new international financial architecture.

What is the Tobin tax?

Way back in 1972, James Tobin already understood the danger speculative behaviour in capital flows represented. In order to counter the perverse effects of extremely volatile capital flows, Tobin proposed to institute a tax that would be levied on all financial operations, at a possible the rate of 0,1 or 0,5%. The effect of this tax is twofold: on the one hand, it has an effect on capital flows and, on the other, it generates earnings on an international scale, which can then be used to finance global projects.

However, the uniform rate, initially imagined by Tobin, makes this technique rather inefficient. Indeed, it is impossible to distinguish between regular capital flows and speculative capital flows, which implies that all exchange transactions must be taxed. It follows that the uniform rate of this tax which would be levied on all exchange transactions would have to be sufficiently high to slow down the speculation and sufficiently low so as not to hinder regular investments. The fixing of such a rate is an impossible task.

An alternative that successfully overcomes these limitations is the "Spahn tax", which is named after the German professor, Paul Bernd Spahn who conceived it. Spahn proposes a two level system based on two different taxes, each having its own objective. The first would be very low - 0,01 or 0,02 percent - and would be applied permanently on all transactions. Since it is very low, it would not create a massive flow of transactions in the direction of those financial centres that didn't participate in the system, because the displacement of the transactions would be more costly than the payment of the tax itself. And as financial markets are indeed concentrated in a limited number of places, the tax would already be very efficient if five of the most important financial centres collaborated in the scheme. Since the tax would be levied on all transactions, it would also generate considerable returns: a worldwide tax of 0,01% would bring in US\$50 billion or as much as all development aid taken together. Another advantage is the possibility of using it as an instrument of measure: it would allow all financial capital flows to be listed, which in itself is a very good thing, given that, at the present time, financial authorities have difficulty exercising control over financial institutions and embezzlement cases regularly come to light after they have occurred.

The second tax is high (it can reach 80%). This is intentional, since the idea is to try and avoid all abrupt variations in exchange rates. Spahn suggests resorting to a system similar to the European currency snake system whereby the exchange rates fluctuate within the limits of a prescribed margin of fluctuation with reference to a central rate. If the rate of a given currency moves out of the boundaries of this fluctuation limit, the tax becomes applicable.

The Spahn tax allows for a redistribution of a fairer justice. Since capital funds have become extremely volatile, practically speaking it is no longer possible to tax them at the national level, so the states themselves, because of the nature of things, are obliged to levy higher taxes on labour and consumption. Capital is now under-taxed, which is not only unjust, but also creates damaging economic distortions that are harmful to the labour market.

The "Spahn" tax has a stabilising effect and does not perturb the market

Contrary to what people generally imagine, this tax is not comparable to a system of fixed exchange rates. If the rate of a given currency is too high in relation to its fundamental economic principles, it will depreciate within time, and vice versa. The mechanism proposed by Spahn perfectly allows for such depreciation. The major difference here, in comparison to the present system, is that the adjustment is no longer in the nature of "shock therapy". Instead of depreciating very rapidly in the space of a few days, (particularly because of the gregarious behaviour of the speculators), the currency will progressively depreciate, thus giving the local government the time to adapt its economic policies to the signals given out by the market. It is because depreciation occurred so rapidly during the past crises that it became impossible to stop them.

So, for example, if the value of the rupee is too high in comparison to its correct base value, what would happen in reality and what impact would the introduction of the Spahn system have in this particular case?

What happens in reality at the moment. It is very well possible that the rupee would be sold massively. All persons possessing rupees would follow the movement out of fear of holding a greatly depreciated currency. The high proportion of rupees being sold would expose the currency to a fall in value to such a low point that it would experience great difficulty to return to its initial

value. After some time, the value of the rupee will stabilize, and it will climb again to return to its base level. No one can prevent this depreciation, which often bears serious social consequences.

What would happen if the Spahn system were instituted: if the Spahn system were to be applied, there would also be a monetary depreciation. At the time when the rupee was being massively sold, this depreciation would, however, stabilize after some time, because the currency would have reached its lower limit in comparison to its average rate of exchange. Suppose the sale still continues, the high tax rate would then be put into application. Traders would become aware of it and would stop selling. The following day, the average rate of exchange, (and therefore also the lowest limit) would be reduced, being given that it would still be calculated on the basis of the sales that had occurred during the last twenty days. Therefore, one could once again sell a certain amount of rupees, in other words, until the lower limit had been reached, etc. The government would in the meantime have received sufficient warning signals and would be in a position to rectify its policies from then on. The risk of a continuous currency depreciation would thus be appreciably reduced, given that this system would attenuate panic movements.

The Spahn system ensures a progressive adaptation of the rate of exchange, thus erasing the possibility of extreme variations.

The Spahn variable in taxation laws

Recently, the French state Council approved an amendment to the budget, that provides for the institution of a Tobin tax as of January 1, 2003, on condition that this possibility be included in the legislation of all other member states in the European Union. Although the symbolic value of this amendment is extremely important, its technical modalities still remain very vague. Besides, the French proposition is inspired by the original structure imagined by Tobin: a single tax. We would like to be more ambitious and go even further, by using Spahn's variable which is more realistic.

The present private bill transposes Spahn's variable into legislation while using the context of the sixth European Directive that deals with the VAT question. This way of proceeding is especially interesting because the inherent technique particular to the VAT regime was adopted, more or less importantly, in more than eighty countries in the world. Owing to this fact, several countries in the EU will now experience fewer difficulties including the Tobin tax in their legislation. A note of warning: the Tobin tax is not a tax on added value. The tax is indeed deducted from the gross amount of the exchange transaction. The sixth Directive relative to VAT was therefore just a source of inspiration.

The Tobin dossier bears an astonishing resemblance to the history of VAT. When the question of VAT was first raised at the end of the sixties, it provoked an uproar. Most "specialists" were convinced at the time that it was impossible to implement such a tax and that, therefore, it would never see the day. Forty years later, we know that it has become reality.

How will the Tobin tax be applied therefore in concrete terms, in the context of this present proposition?

- A minimal tax of 0,02% will be levied on the gross amount of all exchange transactions which can earn revenue for our country. It means concretely that the tax will be levied on all transactions that take place in Belgium, transactions effected by Belgians and the transactions effected in euros outside of our borders (in the latter case, an exoneration is provided for if this type of Tobin tax is also applied in the country concerned). The exchange operations that are effected in the context of the trade in goods and services will also be taxed.

- An exchange transaction always takes place between two parties and both of them should pay tax on the total amount of foreign exchange involved. Since the exchange transaction is therefore

doubly taxed, the total amount is divided by two. Each party thus pays half of the tax which falls due according to the Tobin calculation.

-The tax will be applied at the time the exchange transaction is made. In this way, all sorts of financial engineering mechanisms set up for the express purpose of avoiding this type of tax are rendered useless.

- In practice, the wholesalers in foreign currencies will pass on the Tobin tax to their customers. These wholesalers will then pay the amount that constitutes the tax to the European Central Bank. The present proposition also provides for the possibility of having these tax payments inspected by auditors from authorised companies. The infringements will be liable to sanctions as provided for in the Tax Code and subject to stamp duty.

- Tax exemptions: exchange transactions involving an amount lower than 10.000 euros - in line with the legislation on money laundering - and exchange transactions done by an approved central bank. Similarly, certain professional categories will benefit from simplification of these measures, as for example the exoneration of VAT payments for farmers.

- The maximum increased rate of 80% is applied as soon as a currency deviates from its acceptable fluctuation limits. A decision made by the European Council of Ministers is however necessary to this effect, in compliance with article 59 of the Treaty instituting the European Community that authorises the Council to intervene in capital movements with third countries when the correct functioning of the economic and monetary Union requires it, through safeguard measures not exceeding six months. This is the same procedure that used to be applied in the past for devaluations.

- The product of the tax would be paid into a fund to be set up within the European Union. This fund would be used for development cooperation, for the fight against social and ecological injustices and for the conservation of property that falls into the international public domain.

- Finally, in the interest of aligning it with the French initiative, it is stipulated that the tax will come into force as of January 1st, 2004 at the earliest, provided that the other member states of the European Union include this possibility in their tax legislation.

DISCUSSION PERTAINING TO THE ARTICLES

CHAPTER II

Application field

Art. 2

This article is similar to article 2 of the sixth VAT Directive and to article 2 of the VAT Code.

Exchange transactions using legal tender are subjected to tax on condition that these operations take place in Belgium. These include cash transactions as well as credit transactions. These exchange transactions need not involve a physical delivery of money in the form of coins, banknotes or other securities. Purely scriptural transactions also fall under the proposed law.

Moreover, the normal type of foreign exchange dealings are not the only ones that fall under the law. All operations in foreign currencies, be they direct or indirect, and all operations using instruments that have a similar function, (cf. art. 4) fall under the law that govern the aforementioned tax. If it were not so, it would have been possible to get around the rules with the idea of exchanging dollars and Belgian francs in order to avoid paying tax - exchanging Dow Jones indices for example for Bel20 indices. It follows from the general definition that the law also applies

to the exchange operations involving the purchase of goods and services. When, for example, goods coming from the United States are bought in Belgium and must be paid for in dollars, this purchase requires in principle a prior conversion of euros into dollars. Tax also falls due in this case.

Finally, it is not important to know whether the operation that has taken place is one of speculation or not. Only the person who issues the order knows his/her intentions. In practice, it is impossible for third parties to make a clear distinction between speculative capital flows and those that are not. The duration of the transaction does not necessarily provide an indication as to whether an operation is speculative or not (Parl. Doc., Senate, 1999-2000, 2-235/2, "hearings organized by the Committee on financial and economic affairs", July 20, 2000). Even the accounting law has not succeeded in defining the precise nature of the transactions.

CHAPTER III

Liability as regards tax

Art. 3

This article is an adapted version of article 4 of the sixth Directive concerning VAT and article 4 of the VAT Code.

Whosoever is involved in a taxable operation as defined in article 4, be it just once or even occasionally, becomes a person who must pay tax. It suffices to stress the fact here that when an operation involves an exchange of foreign currency both parties concerned must pay the tax that falls due. It could be a natural person, a legal entity or an association. The domicile or the place of residence (Belgium/abroad) is not of importance. The absence of a profit-making objective does not prevent the persons from being subjected to a tax.

Paragraph 2 seeks to avoid the situation whereby big companies or associations can have their foreign exchange operations done by subsidiaries or by entities to which they are related and are established in tax havens or in States where the tax in question is not applicable. It is necessary to adopt this extensive notion of territoriality in order to avoid tax evasion based on artificial separations and relocations. From the legal viewpoint, this protection clause against abuse, results in the notion of "fiscal unity", the definition of which is found in the sixth Directive. From a legal perspective companies or independent persons who have financial, economic or organizational ties may therefore be considered to be a single taxpayer.

CHAPTER IV

Taxable operations

Art. 4

As in the case of all taxes, a precise definition of a taxable operation is extremely important. The sixth Directive relative to VAT matters contains a specific definition on foreign currencies and transactions in foreign currencies: subject to derogation by the member States exonerations are granted in the case of "operations, including negotiation carrying with regard to foreign exchange, banknotes and currencies that are legal tender, with the exception of collectors' currencies." (sixth VAT Directive, art. 13, B, d, 4 and C, b). With regard to the application of the sixth Directive pertaining to VAT matters, the Court of Justice also confirms that "the securities that are exchanged against other securities in the context of a currency transaction constitute monetary units that are legal tender" (C.J.C.E., July 14, 1988, case C-172/96, First National Bank of Chicago). For the definition of the notion of currencies the article uses see the definition used in the context of VAT (paragraph 2).

A taxable operation is one involving an exchange of currencies, that is to say, the transfer of the power of exchange, in the capacity of the owner of the currency of one State against the currency of another State (paragraph 1). It follows, that in principle, all exchange transactions lead to two operations that are taxable: a transaction as regards one party and a transaction as regards the other. A conversion of euros into dollars, for example, will normally lead to double taxation. The transaction leading to the conversion of euros into dollars on the part of one of the parties is liable to tax and the transaction leading to the conversion of dollars into euros by the other party is liable to tax. The legal transfer of the ownership of the currency is not required. As soon as two parties or the intermediaries operate the transfer of risk or power involving currency, they accomplish an exchange operation that is taxable, by analogy with what is provided for in article 5.1 of the sixth Directive on VAT and article 10, § 1, of the VAT Code. The exchange operations effected under suspensive conditions are also taxable.

When an exchange transaction takes place through an intermediary acting in his/her own name but on behalf of others, this person is reputed to have effected the operation himself/herself (paragraph 3). Those who are concerned by this article are brokers and other intermediaries of the kind. An intermediary who acts in his/her own name in the context of an exchange operation involving currency, is deemed indisputably to have acted in an exchange transaction in the capacity of broker. A similar clause can be found in articles 5, 4, c and 6, 4 of the sixth Directive relative to VAT matters and in articles 13 and 20 of the Code on value added tax.

All operations using financial instruments having the same effect as an exchange of currency (paragraph 4) are also liable to tax. This is a clause that is in the nature of a “safety net”, the objective of which is to avoid certain actors being tempted to undertake operations using other financial instruments. The number of new financial instruments is constantly on the increase. However, all these products can be catalogued essentially under four basic forms or combinations as follows: forwards, futures, swaps and options. The trade in derivative exchange transactions or other by-products is generated in principle from payment flows - hence, the possibility to be taxed. Insofar as the trade in derivative products sooner or later leads to payment of the principal, expressed in different currencies, there is practically no difference in comparison to cash payment operations.

The operations based on derived products must be considered to be exchange transactions if they involve a risk of fluctuation of the exchange rates.

CHAPTER V

Place of taxable operations effected in Belgium

Art. 5

In order to be liable to tax, a currency exchange transaction as described in article 4, must take place in Belgium. In other words, it must be connected to Belgian territory. The definition of criteria for the term “connected to” is essential, because it helps to reduce the possibilities of tax evasion to a maximum. For the definition of the territorial field of application, a geographical criterion and a monetary criterion are used. If one of these criteria applies the tax is due.

The first two criteria referring to “connected to” are geographical in nature (§1, paragraph 1, 1° and 2°). Thus, all exchange transactions that are reputed to have taken place on Belgian territory, regardless of the type of currency involved are liable to be taxed. Exchange transactions in American dollars and yen are therefore also taxable. The third criterion of “connected to” concerns the currency that is the subject of the operation (§1, paragraph 1, 3°): if it satisfies this criterion, the currency exchange is taxed, regardless of the place where it is effected. In short, article 5 is drawn up in such a way that all transactions completed in Belgium, regardless of the currency used, are

taxed, as well as all exchange transactions from euros or in euros, regardless of the country where they are carried out.

If one of the parties or one of the intermediaries is established in Belgium, the exchange of currency is deemed to have taken place in Belgium (§ 1, paragraph 1, 1°). A subject liable to tax is established in Belgium when his/her/its headquarters or the effective management of his/her/its activity, or in the absence of such headquarters or of such management, a steady establishment is situated in Belgium. In case there is no such establishment he/she/it should have his/her/its domicile or his/her/its place of residence in Belgium (§ 2). Article 9 of the same Directive on VAT and article 21 of the VAT Code, which determine the place of service for VAT application, contain similar formulations.

§ 2, intended to fight against abuses, is applicable without any restriction. The notion of fiscal unity implies that companies and associations established in Belgium whose subsidiaries or entities are set up in tax havens – or in States where tax is not applicable – are parties or intermediaries at the time of the exchange of currencies, can be considered as being liable to tax.

Moreover, a currency exchange transaction is deemed to have taken place in Belgium if the payment, the negotiation, or the orders are carried out in Belgium (§ 1, paragraph, 1, 2°). The King is requested to fix more precise rules with regard to this topic.

Finally, a currency exchange transaction is considered to have taken place in Belgium if one of the currencies involved in this operation constitutes legal tender in Belgium (§ 1, paragraph 1, 3°).

CHAPTER VI

Taxability and payability of the tax

Art. 6

It is fundamental in this case that tax is due either at the time any payment is made, or when the details of the transaction are submitted.

CHAPTER VII

Basis of taxation

Art. 7

The tax is collected on the gross amount of the exchange operation including the costs.

CHAPTER VIII

Rate

Art. 8

This article fixes the rate of the double" Spahn" tax. As we already indicated it in the general chapter describing present developments, a minimum levy of 0,02% will be applied to all exchange transactions in periods of monetary calm.

When a currency deviates from its prescribed fluctuation margin the maximum increased rate of 80% will be applied. However, the application of this rate will necessitate a decision by the Council of Ministers of the European Union and that, by analogy to be in compliance with the European treaties. It is a procedure identical to the one that has been followed in the past for devaluation.

CHAPTER IX

Exemptions

Art. 9

This article stipulates that individuals are not obliged to pay tax on exchange transactions of less than 10 000 euros (or 400 000 Belgian francs). This limit is in compliance with the one prescribed in the legislation on money laundering.

The central banks, which are responsible for official monetary policies are naturally not liable to pay additional tax.

CHAPTER X

Persons liable to tax (persons who must pay tax)

Art. 10

This article defines which persons are liable for tax. This means those who will be called upon when the tax is not paid spontaneously.

CHAPTER XI

Measures for simplification

Art. 11

This article grants the King the possibility of introducing simplified regimes for specific groups. This article also draws on the contents of the legislation relative to the VAT rules.

CHAPTER XII

Final clause

Art.12

Now that twelve of the member States of the European Union share a common currency, Belgium on its own would be unable to levy a tax on currency exchange transactions, bank notes and currencies. Moreover, we are of the opinion that it would be desirable, in the light of the importance of the City of London, that the 15 Member States of the European Union institute this type of tax simultaneously.

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PRIVATE MEMBERS' BILL

CHAPTER I

General clause

Article 1

The present law rules on a matter described in article 78 of the Constitution.

CHAPTER II

Application field

Art. 2

Exchange transactions, be they direct or indirect, involving cash or credit, bank money or not, in currency are liable to tax when they take place in Belgium.

CHAPTER III

Liability as regards tax

Art. 3

Whoever is involved, even occasionally in an independent way, in a taxable operation is considered liable to pay tax.

With a view to avoiding all tax evasion or tax fraud, the operations engaged in by persons who are independent from a legal viewpoint, but who are closely linked with a subject who is liable to pay tax in the financial, economic and organizational sense, can be considered liable to pay tax.

CHAPTER IV

Taxable operations

Art. 4

The transfer of the power to exchange, in the capacity of an owner, currency of one State against currencies of another State is considered to be an operation involving foreign exchange.

For the application of the present clause, the economic and monetary European Union is considered to be a State, as is any other territory possessing a single currency.

Currency is considered to be such, when it is in the form of currency, bank notes and coins that are used as legal tender, with the exception of coins and notes that are collector's items.

Currency Exchange operations involving currency are deemed to be such when they involve the exchange of currency in return for commission. When an exchange takes place through the intermediary of a person acting in his/her own name, but on behalf of others, this person is reputed to have personally executed the operation. Also considered to be exchange operations are those involving financial instruments having the same effect as the exchange of currency. Also falling into this category are those exchange transactions involving instruments which have inherent risks as regards fluctuations in the value of the exchange transactions, and this includes the transactions of goods.

CHAPTER V

Place of the taxable operations effected in Belgium

Art. 5

§ 1. *An exchange of foreign currencies is reputed to have taken place in Belgium:*

1° if one of the parties or one of the intermediaries involved in the exchange transaction is established in Belgium;

2° if the payment, the negotiation or the orders are done in Belgium. The King can establish more precise rules relative to the definition of these places;

3° if one of the currencies exchanged constitutes a mode of legal payment in Belgium.

In this case, the product of the tax, after deduction of a percentage that is fixed by the King, is paid fully into a fund, managed by the European Union. It will be used for purposes of development cooperation, for the promotion of social and ecological justice and the preservation and the protection of international public property.

§ 2. *Without prejudice to the application of article 3, paragraph 2, a subject is considered to be established in Belgium when his/her/its headquarters or the effective management of his/her/its activity, or in the absence of such headquarters or such management, an establishment has his/her/its domicile or his/her/its usual place of residence in Belgium.*

§ 3. *In order to prevent multiple taxation in Belgium, the King will fix the order in which the places of exchange referred to in § 1 must be taken into consideration.*

§ 4. *In order to avoid double taxation at the international level, tax exemptions are permitted in cases where this type of operation has in fact been effectively taxed abroad in accordance with a regulation similar to the present law concerning the tax base, the rates, the persons liable to be taxed, and the place of the taxable operation. This exemption cannot exceed 50% when one of the parties is established in Belgium. No exemption will apply when both parties are established in Belgium.*

CHAPTER VI

Taxability and payability of the tax

Art. 6

§ 1. *The legal conditions necessary for the payability of the tax are considered to be the basis on which the tax can be required to be paid.*

The Treasury can legally require the subject to pay the tax, when the exchange operations or its settlement are anterior or posterior to the exchange transaction.

§ 2. *The tax falls due at the time of payment, or at the time when the detailed account is presented.*

CHAPTER VII

Basis of taxation

Art. 7

The tax is deducted on the gross amount of the exchange operation which includes the incidental charges. The King can draw up the modalities stipulating how the term 'gross amount' is to be interpreted.

CHAPTER VIII

Rate

Art. 8

The normal rate of the tax stands at 0,2 per thousand of the taxable base.

A maximum rate of 80%, determined by a decree discussed by the Council of Ministers in compliance with article 59 of the EC treaty and the law which derives from it is applied to the basis of taxation of all currency exchange operations that are undertaken with a rate that exceeds fluctuations as defined in paragraph 3.

As regards the application of paragraph 2, the King determines the central rate on the basis of a progressive average calculated over a period of twenty days and then proceeds to fix a fluctuation margin on the basis of the central rate.

The rate applicable to taxable operations is the one that was in force at the time of the generating fact.

CHAPTER IX

Exemptions

Art. 9

Tax exemptions are granted in the following situations:

1° the currency exchange transactions entered into by natural persons, as long as they do not exceed on yearly basis, the amount fixed in article 4 of the law of 11 January 1993 seeking to prevent financial systems being used for purposes of money laundering

2° the currency exchange transactions entered into by central banks and international institutions recognized by the King as being those that operate in the field of activity of central banks.

CHAPTER X

Persons liable to tax

Art. 10

The tax levied on the currency exchange transactions must be paid by all who are subjected to this system at a rate that is half of it.

The subject established in Belgium who engages in a taxable operation with a subject who is not established in Belgium is strictly responsible to acquit the tax that must be paid by his/her/its joint contracting party.

Paragraphs 1 and 2 do not apply and the tax is then due to be paid by the intermediary, when one of the persons liable to pay tax has recourse to intermediaries authorised by ministerial decree for the purpose of the currency exchange transaction, who may or not be liable to pay tax. The minister who is in charge of the Ministry of Finance may require the authorised intermediary to offer financial guarantees.

Notwithstanding all clauses or agreements to the contrary, the resident subject referred to in paragraph 2 or the intermediary referred to in paragraph 3 is authorized to deduct the amount or the exchange value of the tax from the contra that he is liable for or from the payment that he must make.

CHAPTER XI

Measures for simplification

Art. 11

With regard to those persons liable to tax who could experience certain difficulties if the normal tax regime were to be applied to them, the King will establish a simplified regime consisting of a lump sum as regards the wholesale trade in currencies and this tax must be paid by the financial institutions in the context of this wholesale trade.

CHAPTER XII

Measures seeking to guarantee the correct rate of tax deduction and to prevent fraud, tax evasion and abuses of the system.

Art. 12

The King determines the modalities of levy.

The King can establish conditions and can prescribe all the obligations necessary for a correct and simple deduction of tax as well as the prevention of fraud, tax evasion and abuses.

The King can conclude agreements with the central bank that controls legal tender in Belgium, which include control measures that are necessary for the application of the present law.

The King can oblige auditors to file a report specifically on the application of the present law. The auditors who are resident in Belgium and are part of an international network of auditors can be forced to inquire about the application of the present law by an international group of enterprises within their network through colleagues who inspect and verify the consolidated accounts of the

main establishment of an international group of enterprises, possibly limited to those institutes in charge of settlement in the wholesale currency trade.

Without prejudice to the other clauses of the present law, the King can do what is necessary to guarantee that the subject will not be given undue advantages or be unduly prejudiced during the transitional period preceding the application of article 8, paragraph 2 or by the present article.

The infringements to the present law and to its decrees will be sanctioned in accordance with the article 131 of the Tax Code on taxes and stamp duty.

CHAPTER XIII

Final clause

Art. 13

The King will inform the legislature immediately during its meeting, or if this is not possible, at the opening of its next session, about the private members' bill confirming the decrees adopted in the execution of article 5, § 1, of article 8, paragraphs 2 and 3, and of articles 11 and 12.

Article 5, § 1, 3°, and article 8, paragraph 2, will be applied only after the competent European authorities will have given their consent.

The present law will enter in force on a date to be fixed by the King, but by 1 January 2004 at the earliest, and only if all member states of the economic and monetary European Union include in their legislation a tax to be levied on currency conversion or if they state that a directive or a European regulation has been adopted to this effect.

5 June 2003

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