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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

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 at the earliest, on 1 January 2004, provided that the possibility 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 be involved 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 computerization of the sector, liberalization of the global capital market made it possible for 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 very 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 those countries that are 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 seems to offer guarantees to speculators that they will recover the amounts that they have invested. In fact, 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 we do in order to prevent the future occurrence of this type of financial crises and, by the same token, resolve them in a more efficient manner? We are now in the heart of our 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 had already understood the danger that speculative behaviour in capital flows represented and 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 allows us to reap 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 that would be levied on all exchange transactions would therefore have to be sufficiently high to be able 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 is its inventor . 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 tax of 0,01% would bring in 50 billion dollars for the State or as much as all development aid taken together. Another advantage would be 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, being given that, at the present time, financial authorities have difficulty exercising control over financial institutions and it happens on a regular basis that embezzlements come to light after they have occurred..

The second tax is high (it can attain 80%), and this is intentional, since the idea is to seek to 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 that the States themselves, because of the nature of things, are obliged to levy higher taxes on labour and consumption. Capital is now undertaxed, which is not only unjust, but in addition, 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. Moreover, such excessive depreciation brings in enormous social consequences 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 can have serious social consequences as well.

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 be 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 to include 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 monetary and economic Union requires it, through safeguard measures not exceeding six months. It 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 pay 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. Companies or independent persons from a legal point of view, but 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 the one 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 undisputably, 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 are 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 done 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.

Dirk VAN DER MAELEN (SP.A – SPIRIT)
Geert LAMBERT (SP.A – SPIRIT)

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 to be 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 to be 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 and 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 stablish 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 totally paid into a fund, managed by the European Union, and 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 be adopted to this effect.

5 June 2003

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