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Tax Policy Design for Banks – 30 January 2018

Purpose: To set out the principles of good tax policy, and their application to banks.

Background: Banks have a pivotal role in the economy, and policies that impact banks impact businesses and the broader public. Banks have been the subject of heightened scrutiny and many countries have implemented changes to taxation policy and laws that directly impact banks. Tax law changes should take into account good tax policy, so that it does not have adverse flow on consequences to the broader economy.

Principles of good tax policy (OECD): Neutrality, Efficiency, Certainty & Simplicity, Effectiveness & Fairness, and Flexibility *(Addressing the Tax Challenges of the Digital Economy OECD 2014, Chapter 2 – Fundamental Principles of Taxation)*

Recommendations: The table below sets out some of the fundamental principles of tax policy design, as applied to Banks some of which are detailed in the tax report dated March 2017: *"Tax certainty IMF/OECD report for the G20 Finance ministers"*.

	OECD Tax Policy Principles	Applicable Principles to Banks	Design Recommendations / Considerations
1	**Neutrality –** Taxation should seek to be neutral and equitable between forms of business activities. Minimizing the effect of the tax law on a taxpayer's decisions as to how to carry out a particular transaction or whether to engage in a transaction.	**Structure** – Banks may operate in many jurisdictions and in many different business forms (e.g. branches, subsidiaries).	• Taxation law should seek to be neutral between differing corporate structures for banking entities, including large multinationals, domestic / regional banks and smaller enterprises including specialist lenders. For example higher tax rates (or other disincentives) applied to larger corporates over small business and specific bank levies can distort market neutrality. • Bank branches should be taxed as functionally separate entities. • Neutrality should also be sought through an effective dispute resolution mechanism which should be fair

			and independent, accessible to taxpayers and effective in resolving disputes in a timely manner.
2	**Efficiency –** Compliance costs to business and administration costs for governments should be minimized as far as possible. The tax system should not unduly impede or reduce the productive capacity of the economy.	• **Compliance and tax avoidance –** Tax laws should minimize noncompliance. • **Existing regulatory framework –** A regulatory environment already exists for banks which constrain the allocation of capital, funding and income (at both an international and domestic level). Tax policy should not result in added inefficiencies for an already highly regulated industry.	• Banks are generally not carrying on the activities giving rise to BEPS concerns. • The tax authorities should undertake skilled and strategic compliance / audit activity that is not unduly onerous for banks. Technology and analytics tools should be used. Audits carried out to control banks where banks function in the role as tax collectors and paying institutions should be proportionate and not too time consuming. • It is important that tax administrations increase predictability and consistency through timely issuance of rulings and technical interpretations. • Existing regulatory frameworks act as an effective method of limiting debt and excessive leverage within large banking groups. Similarly, non-banks carrying out banking activities need to be properly regulated. • Recognition of capital should be based on regulatory requirements. • Intra-group funding should be benchmarked to external market data.
3	**Certainty and Simplicity –** Tax rules should be clear and simple to understand, so that taxpayers know where they stand. Simple tax laws are necessary so that taxpayers understand the rules and can comply with them correctly and in a cost-efficient manner.	• **Complexity of tax laws –** Financial transactions are complex. Complexity of tax laws result in additional costs for taxpayers and can lead to opportunities for avoidance. • **Transparency and Visibility –** Taxpayers should know that a tax exists and how and when it is imposed upon them and others. • **Accountability to Taxpayers –** Accessibility and visibility of information on tax laws and their development, modification and purpose, are necessary. A chronological forecast of changes	• Access to quick and binding tax outcomes from authorities. Binding agreements can provide certainty. • Clear legislation and instruments and broad anti-avoidance provisions. Revenue authorities should provide guidance on interpretation of the law. Audit activity and litigated disputes are costly to the taxpayers and regulators. • Governments should seek input from banks and industry groups on tax reform and thus ensuring appropriate mechanisms for consultation on proposed

		can be very useful.	or announced legislation and enhanced guidance. • Governments should agree on the basis for valuing related party funding.
4	**Effectiveness and Fairness –** Taxation should produce the right amount of tax at the right time, while avoiding both double taxation and unintentional non-taxation. Tax laws should have horizontal equity and vertical equity.	• **Revenue generation –** The tax system functions as a revenue tool for governments. Indirect taxes, personal taxes and property taxes should be considered as part of any tax reform. • **Double taxation** – Treaties and multilateral instruments seek to limit the potential for double taxation and are an important tool to mitigate unfair tax outcomes. • **Penalty regimes** - Large banks and multinationals are now subject to increased / additional penalties for failure to comply with tax laws.	• Where there is a corporate tax rate concession or reduction under law, then it should be applied equally, to all companies regardless of size / turnover. • Bank profits distributed to shareholders should not be subject to double taxation (i.e. exemption or credits should be available to investors). • Particular industries should not be targeted by Governments (e.g. banks and mining companies based on profits or perceived risks). • Banks should not be subject to more punitive / differing tax penalty regimes in comparison to other corporate taxpayers or multinationals. • In the aftermath of the crisis, financial institutions have been subjected to new regulatory requirements, new capital requirements and new tax requirements, including bank levies. We note that there is substantial overlap or duplication, domestically and at internal level. In international situations, these bank levies are not often addressed in double tax treaties, resulting in double taxation. • The banks are facing a new challenge with the evolution of the digital economy. Governments should ensure that banks are not unduly impacted and penalized by the tax measures put in place to deal with the digitization of the economy worldwide. • Governments should ensure an effective and efficient Mutual Agreement Procedure to prevent long standing uncertainty around double taxation positions
5	**Flexibility –** Taxation systems should	• **Administration of the law** – Tax authorities must	• Banks are in a unique position to assist revenue

	be flexible and dynamic enough to ensure they keep pace with technological and commercial developments.	adjust their methods to best adapt to the needs of the changes in technology, the commercial environment and taxpayer profile. • **Technology** – Tax laws must keep pace with developments impacting banks, e.g. digital disruptors, tax incentives for smaller participants, “open” banking, changes to payment systems, impact of cryptocurrencies, block chain technology and artificial intelligence. • **Information security** – banks hold a significant amount of sensitive information in addition to regular customer / financial data (e.g. smartphone and tablet applications, spending habits, mobile payment and business technologies and biometrics). Security of client and customer data is imperative. Changes to privacy laws have altered how some taxpayers must disclose their income and transactions. • **The cash economy** – there is a movement toward electronic payment and reduction in cash transactions, particular to customer and employee transactions.	authorities in relation to payment and transaction information, reportable transactions and data matching (legal obligations around anti money laundering, tax fraud etc.). De facto, banks play a significant role in the levying of taxes and gathering of information about clients. This needs to be balanced against a banks fiduciary duty, contractual and privacy obligations and the (monetary) investments required to perform such assistance • Banks need to consider limitations on data sharing by reference to tax reform including what information banks are willing / reasonably able to provide and the form it is provided to regulators. • Who bears the costs of additional reporting, IT architecture etc.?