

# Financial Services Tax News

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## PwC Japan Tax Newsletter

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## Financial Crisis Responsibility Fee - Obama's proposals

On January 14, 2010 President Obama announced his intention to introduce a series of measures designed to impose an annual levy on the largest and most highly leveraged Wall Street firms, including not only banks but also insurers and other financial services firms. The stated aim of these proposals is to recoup the support provided by US taxpayers to the financial sector during the credit crisis. The "responsibility fee" is expected to be assessed at approximately 15 basis points of a respective firm's Covered Liabilities.

These measures will apply to around 35 US domestic groups, and around 15 US subsidiaries of groups headquartered outside the US. The Obama administration also plans to work through the G20 and the Financial Stability Board to encourage other jurisdictions to follow their lead by implementing similar measures, with the issue already being discussed in the UK, France and Germany.

## Why has this measure been introduced?

The Emergency Economic Stabilization Act of 2008 required that any losses to the US taxpayer occurring as a result of the stabilizing measures undertaken to support the banking system be recouped from the financial services industry. Additionally, it required the President to submit a proposal to this effect to Congress by 2013.

This requirement has subsequently been fast tracked, partly as a response to the size of the expected profit announcements from the financial services industry and also the recent speculation surrounding bonus payments in the sector.

## Who will the levy apply to?

These measures are intended to apply to banks, thrifts, insurance and other companies that own insured deposit institutions and to securities broker dealers, both of which are in existence on or after January 14, 2010 and that otherwise meet the conditions for assessment. These account for the institutions considered to have been the primary beneficiaries, either directly or indirectly, of the taxpayer funded aid provided through the Troubled Asset Relief Program (TARP), the Temporary Liquidity Guarantee Program (TLGP) and other programs of emergency assistance. These organizations are also considered by the Obama administration to have “contributed to the financial crisis through the risks that they took”.

The annual levy is intended to apply only to the largest financial firms, those with “consolidated” assets in excess of US\$50bn. The measure would apply to both US domestic groups and the US subsidiaries of groups headquartered outside the US. Accordingly, the asset test is expected to apply to the global profits of a US headquartered group, or the consolidated US operations of a non-US headquartered group.

## How will the fee be calculated?

The fee is expected to be approximately 15 basis points on “Covered Liabilities” per year.

Covered Liabilities will be calculated using the following formula:

$$CL = A - T1C - FDIC$$

Where:

CL	=	Covered Liabilities
A	=	Assets
T1C	=	Tier 1 Capital
FDIC	=	FDIC assessed deposits (and/or an adjustment for insurance liabilities covered by state guaranteed funds)

Federal Deposit Insurance Corporation (FDIC) assessed deposits have been excluded, as they are already subject to “deposit insurance” and are considered stable sources of funding. Likewise, the base for the fee would be appropriately reduced based on an adjustment for liabilities due to insurance policies covered by state guarantee funds.

## Worked example

- Bank X has US\$1 trillion in assets and US\$900 billion in liabilities
- Illustrative fee equal to 15 basis points on their Covered Liabilities

	<b>US\$1 trillion</b>	<b>Assets</b>
<b>minus</b>	<b>US\$100 billion</b>	<b>Tier 1 Capital</b>
<b>minus</b>	<b>US\$500 billion</b>	<b>FDIC Deposits</b>
<b>equals</b>	<b>US\$400 billion</b>	<b>Covered Liabilities</b>
<b>times</b>	<b>0.15%</b>	<b>Fee</b>
<b>equals</b>	<b>US\$600 million</b>	<b>Total fee paid</b>

### **When will the fee apply?**

The tax is expected to be in place for a minimum of ten years beginning on June 30, 2010. However, this timeframe may be extended such that all the costs of TARP are fully recovered. Recent projections value the cost of TARP at US\$117 billion.

It is currently predicted that the fee will raise US\$90 billion over the initial ten years and fully recover the US\$117 billion TARP cost after twelve years. The US Department of Treasury (Treasury) will be required to report on the effectiveness of this measure in meeting its objectives after five years.

### **How will the fee be assessed?**

Covered Liabilities will be assessed by regulators; however, the fees will be collected by the Internal Revenue Service (IRS). Informal comments from the Treasury indicate that the fee may be deductible for income tax purposes.

### **Next steps**

We expect further details in due course, to include a more detailed description of the proposal as a first step.

Draft legislation may then follow, potentially to be included in the forthcoming US budget. Anti-avoidance provisions are currently being discussed by the Obama administration, Congress and the regulatory agencies. The measures will need to be debated in, and approved by, Congress and may be subject to significant change prior to becoming law.

### **Will other countries follow the US lead?**

With many Western countries around the world facing budget deficits partly as a result of support to the financial system, and banks in particular, it would seem likely that other governments will look carefully at these measures to assess whether similar measures might make sense. Sweden has already introduced a similar levy. However, the UK, France and Germany, while welcoming the US proposals, have indicated that at present they are not considering following an exactly identical path to deal with their own costs of the financial crisis, preferring instead a financial transactions tax or an insurance scheme for banks. A UK Treasury spokesman said: "We will continue to work with other countries through the G20 on developing proposals around an insurance levy."

It seems quite possible that there will be measures aimed at the banking sector which received support in the crisis, and perhaps others in the financial sector too, even if the exact shape of this is unclear at present.

**For more detailed information, please do not hesitate to contact your financial tax services representative or any of the following members:**

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