

# Financial transaction taxes: the Italian FTT takes shape

Global FS Tax Newsflash

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***In the late evening of 12 December, 2012, the Italian Government filed the long-awaited FTT amendment with the Senate Commission. While this amendment is theoretically still subject to change in the Senate and in the Chamber of Deputies, as a practical matter it should not be altered substantially. A Ministerial Decree should be published within 30 days from the entry into force of the budget law, further defining the technicalities of the Italian FTT.***

## Summary

In overview, the amendment contains a number of changes to the original draft law, some of which (in particular the later start date) will be very much welcomed by financial services institutions.

The key points of interest are as follows:

1. The concerns of the industry regarding the proposed start date of 1 January 2013 have been addressed. The start date has been deferred to 1 March 2013 for transactions over equities, with a start date of 1 July 2013 for transactions over derivatives. Clearly the time remaining before the law takes effect is still tight, but this change will allow those institutions affected some additional time to prepare for the new regime.
2. The tax on equity transactions is in many respects similar to the charge on equity transactions under the French FTT. Institutions should therefore be able to build upon some of the work done already in preparing for the French FTT.
3. The Italian FTT is the first FTT regime to apply to a wide range of derivative transactions. In this respect, the Italian FTT could be seen as closer to the proposed EU FTT than the traditional “stamp duty style” FTTs, such as the French FTT introduced in August 2012.
4. The regime applies higher rates for equity transactions undertaken in 2013 than in future years, so as to compensate for the loss of revenue resulting from the later start date.
5. Bonds and fund units remain outside the scope of the regime.
6. The regime provides for an exemption for market makers, which broadly mirrors the corresponding exemption under the French FTT.
7. We await the release of the Ministerial Decree which will provide further details of the operational aspects of the Italian FTT regime.

The remainder of this bulletin sets out in further detail the key provisions within the amendment.

That said, the Italian FTT includes different tax rates for transactions executed on a recognised stock exchange and transactions executed OTC. This is likely to make compliance with the regime more complex.

## *Scope*

The amendment provides for three ways of applying the Italian FTT:

1. to share transactions,
2. to derivatives,
3. to high-frequency trading

## *Share Transactions*

### *Taxable transactions*

The amendment confirmed that the FTT applies to:

- the transfer of shares (and other participating instruments) issued by Italian companies;
- the transfer of securities representing the above shares (e.g. ADRs and GDRs), irrespective of the issuer<sup>1</sup> and
- the transfer of shares via convertible bonds.<sup>2</sup>

### *Non taxable transactions*

FTT does not apply to:

- share transfers upon death and via a gift deed (i.e. without consideration);
- transactions on the primary market (i.e. issue and redemption of shares);

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<sup>1</sup> Likely interpretation: as long as the shares underlying the representative security are issued by an Italian resident company, it does not matter whether the representative security itself is issued by an Italian company; indeed, most of such representative securities are not issued by Italian companies (e.g. ADRs).

<sup>2</sup> Likely interpretation: the transfer of convertible bonds is NOT subject to FTT; the conversion of a bond into newly issued shares is covered by the primary market exemption and as such is also NOT subject to FTT (see 1.2); the only transaction subject to FTT is the conversion of a bond into already existing portfolio shares.

- conversion of a bond into newly issued shares;
- securities financing transactions (i.e. an instance of stock lending or stock borrowing or the lending or borrowing of other financial instruments, a repurchase or reverse repurchase transaction, or a buy-sell back or sell-buy back transaction);
- transfers of shares (i) listed in regulated markets or in multilateral exchange systems and (ii) issued by companies with a net market value below € 500 million.<sup>3</sup>

### *Territoriality rule*

The territoriality rule for share transactions is now exclusively based on the residence of the issuer<sup>4</sup> and neither the place where the transaction is carried on, nor the residence of the counterparties, is relevant.

### *Rate*

The tax rate applied is 0.20% of the transaction value. The rate is halved (i.e. a 0.10% rate applies) for transactions carried out on regulated markets and on multilateral exchange systems.

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<sup>3</sup> The net market value shall be assessed as of the month of November of the year before the one in which the transaction takes place (e.g. the average price of November 2012 will be relevant for transactions carried on in 2013).

<sup>4</sup> The territoriality rule under the previous draft text was a complex mixture of (i) issuer, (ii) place of execution and (iii) counterpart principles. The basic rule was that transactions taxable were those involving equity instruments issued by Italian resident companies. However, transactions executed outside of Italy, should have been taxable only to the extent that at least an Italian counterpart was involved.

For 2013 only, the basic rate is increased to 0.22% and the rate for transactions carried out on regulated markets and on multilateral exchange systems is increased to 0.12%.

### *Taxable base*

The tax is due on the net daily balance of purchase and sale transactions performed by the same person on the same financial instrument, which means that transactions closed intraday should not be relevant for FTT purposes.

### *Taxable person*

The tax is due and borne by the (ultimate) purchaser: interposed persons (e.g. brokers) are not affected.

Banks and other financial intermediaries (even non-resident ones)<sup>5</sup> involved in the transaction are responsible for the payment of the tax. In the event several financial intermediaries are involved, the payment duty falls on the party that directly receives the transaction order from the ultimate purchaser.

If no financial intermediary is involved, the purchaser shall directly pay the tax.

### *Payment of the tax*

FTT is payable within the 16<sup>th</sup> of the month following the one in which the transaction takes place.

In order to allow for some time to adjust to the provisions of the upcoming Ministerial Decree, payments relating to transactions carried out in the first three months after the decree is issued will be made no sooner than the 16<sup>th</sup> day of the sixth month

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<sup>5</sup> Non-resident financial intermediaries may appoint an Italian withholding agent as a fiscal representative, in order to take care of the compliance related to the FTT.

following such issue; e.g. if the decree is issued in January (i.e. within 30 days), then the deadline for payments for transactions carried out until April should be 16 July.

### *Exemptions*

FTT does not apply to the following:

- transactions in which one of the counterparts is the European Union, the European Central Bank, a central bank of any EU member State, central banks of other States and entities managing the official reserves thereof, as well as international entities or organizations established under international agreements executed in Italy;
- market making activities;<sup>6</sup>
- intermediaries acting in a market making capacity on behalf of an issuer, in order to provide liquidity to its securities;
- compulsory and complementary pension scheme entities (e.g. pension funds);

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<sup>6</sup> Market making activities are defined by reference to Article 2(1)(k) of Regulation (EU) No 236/2012 of 14 March 2012 on short selling and certain aspects of credit default swaps. They are the activities of an investment firm, a credit institution, a third-country entity, or a firm which is a member of a trading venue or of a market in a third country (the legal and supervisory framework of which has been declared equivalent by the Commission) where it deals as principal in a financial instrument, whether traded on or outside a trading venue, in any of the following capacities: (i) by posting firm, simultaneous two-way quotes of comparable size and at competitive prices, with the result of providing liquidity on a regular and ongoing basis to the market; (ii) as part of its usual business, by fulfilling orders initiated by clients or in response to clients' requests to trade; (iii) by hedging positions arising from the fulfillment of tasks under points (i) and (ii).

- transactions between companies belonging to the same group, or anyway transactions resulting from a corporate reorganization (to be further specified by the ministerial decree).
- transactions on any other security involving a cash payment determined with reference to securities taxable under the share transaction FTT (cash-settled derivatives, including warrants, covered warrants, and certificates).

### *Entry into force*

FTT applies to taxable transactions performed from 1 March, 2013.

### *Derivatives*

#### *Taxable transactions*

FTT applies to:

- transactions on derivatives whose underlying is mainly one or more securities taxable under the share transaction FTT;
- transactions on derivatives whose value depends mainly on one or more securities taxable under the share transaction FTT;
- transactions on any other security, allowing to purchase or sale securities taxable under the share transaction FTT (equity-settled derivatives, including warrants, covered warrants, and certificates);

### *Territoriality rule*

The territoriality rule for derivative transactions is determined by reference to that of the share transaction FTT, i.e. it is exclusively based on the residence of the issuer of the underlying securities.<sup>7</sup>

Neither the place where the transactions is carried on nor the residence of the counterparties is relevant.

### *Rate and taxable base*

A fixed rate applies, according to the following table (figures in €k):

Derivative contract	Notional Value (figures in €'000s)							
	0-2.5	2.5-5	5-10	10-50	50-100	100-500	500-1000	>1000
Futures, certificates, covered warrants and options on share-related yields and indexes	0.025	0.05	0.1	0.5	1	5	10	20
Futures, certificates, covered warrants and options on shares Swaps, forwards and other derivatives	0.125	0.25	0.5	2.5	5	25	50	100

<sup>7</sup> The territoriality rule under the previous draft text was based instead on the counterpart principle: a transaction was taxable to the extent that at least one Italian counterpart was involved.

The rate is reduced to 20% (i.e. one fifth) of the above for transactions carried on in regulated markets and in multilateral exchange systems. In such a case, it may be determined with reference to the value of a standard contract under the upcoming Ministerial Decree.

If a derivative is equity-settled, the consequent share transaction is ordinarily subject to FTT; in other words, the derivative transaction FTT is cumulative with (and not alternative to) the share transaction FTT.

### *Taxable person*

The tax is due by each party involved in the transaction; interposed persons are not affected.

Banks and other financial intermediaries (even non-resident ones)<sup>8</sup> taking part in the transaction are responsible for the payment of the tax. In the event several financial intermediaries are involved, the payment duty falls on those directly receiving the transaction order from the (ultimate) parties. In the absence of a financial intermediary taking part in the transaction, the parties involved directly pay the tax.

### *Payment and exemptions*

Reference is made to the corresponding paragraphs of the share transaction FTT.

### *Entry into force*

FTT applies to taxable transactions performed from 1 July, 2013.

### *High-frequency trading*

A special FTT with a 0.02% rate applies to the counter-value of orders revoked or amended by high-frequency trading systems, to the extent such orders relate to taxable share transactions and derivatives.

Both the scope and the taxable base should be further defined by the upcoming Ministerial Decree.

This special FTT applies to share orders revoked or amended from 1 March, 2013 and to derivatives orders revoked or amended from 1 July, 2013.

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<sup>8</sup> Non-resident financial intermediaries may appoint an Italian withholding agent as a fiscal representative, in order to take care of the compliance related to the FTT.

## *PwC contacts*

If you would like further advice or information in relation to the issues outlined above, please call your local PwC contact or any of the individuals listed below:

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