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Proposal for a

COUNCIL DIRECTIVE

implementing enhanced cooperation in the area of financial transaction tax

{SWD(2013) 28 final}
{SWD(2013) 29 final}
EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1. Background and history

The recent global economic and financial crisis had a serious impact on our economies and the public finances. The financial sector has played a major role in causing the economic crisis whilst governments and European citizens at large have borne the cost. There is a strong consensus within Europe and internationally that the financial sector should contribute more fairly given the costs of dealing with the crisis and the current under-taxation of the sector. Several EU Member States have already taken divergent action in the area of financial sector taxation.

Therefore, on 28 September 2011 the Commission tabled a proposal for a Council Directive on a common system of financial transaction tax (FTT) and amending Directive 2008/7/EC\(^1\). The legal basis for the proposed Council Directive was Article 113 TFEU, as the proposed provisions aim at the harmonisation of legislation concerning the taxation of financial transactions to the extent necessary to ensure the proper functioning of the internal market for transactions in financial instruments and to avoid distortion of competition. This legal basis prescribes Council unanimity in accordance with a special legislative procedure, after consulting the European Parliament and the Economic and Social Committee.

The main objectives of this proposal were:

- harmonising legislation concerning indirect taxation on financial transactions, which is needed to ensure the proper functioning of the internal market for transactions in financial instruments and to avoid distortion of competition between financial instruments, actors and market places across the European Union, and at the same time

- ensuring that financial institutions make a fair and substantial contribution to covering the costs of the recent crisis and creating a level playing field with other sectors from a taxation point of view\(^2\), and

- creating appropriate disincentives for transactions that do not enhance the efficiency of financial markets thereby complementing regulatory measures to avoid future crises.

Given the extremely high mobility of most of the transactions to be potentially taxed, it was and still is important to avoid distortions caused by tax rules conceived by Member States acting unilaterally. Indeed, a fragmentation of financial markets across activities and across borders, and among products and actors can only be avoided and equal treatment of financial institutions in the EU and thus ultimately, the proper functioning of the internal market, can only be ensured through action at EU level. The development of a common system of financial transaction tax in the EU reduces the risk of distortion of markets through a taxation-induced geographical delocalisation of

\(^1\) COM(2011) 594 final.

\(^2\) Financial institutions, either directly or indirectly, largely benefited from the rescue and guarantee operations (pre-)financed by the European taxpayer in the course of 2008 to 2012. These operations, together with the faltering of economic activity caused by the spread of uncertainty about the stability of the overall economic and financial system have triggered a deterioration in the public finance balances across Europe by more than 20% of GDP. Also, most financial and insurance services are exempted from VAT.
activities. Furthermore, such common system can also ensure tax neutrality through harmonisation with a broad scope, notably to also cover very mobile products such as derivatives, mobile actors and market places, thus also contributing to less double-taxation or double-non-taxation.

The proposal therefore provided for harmonisation of Member States’ taxes on financial transactions to ensure the smooth functioning of the single market and thus set out the essential features of a common system for a broad based FTT in the EU.

Since around the time of the initial Commission proposal the case for harmonisation has been further illustrated by developments in practice: France has introduced a national tax on certain financial transactions since 1 August 2012 and Spain, Italy and Portugal have recently made announcements of introducing such national taxes as well – all with different scope, rates and technical design features.

The European Parliament delivered its favourable opinion on 23 May 2012\(^3\) and the Economic and Social Committee on 29 March 2012\(^4\) on the Commission’s initial proposal. Also the Committee of Regions adopted a favourable opinion on 15 February 2012\(^5\).

The proposal and variants thereof were extensively discussed in the meetings of the Council which started under the Polish Presidency\(^6\) and continued at an accelerated pace under the Danish Presidency, but failed to get the required unanimous support because of fundamental and unbridgeable differences amongst Member States.

At the Council meetings of 22 June and 10 July 2012, it was ascertained that essential differences in opinion persist as regards the need to establish a common system of FTT at EU level and that the principle of harmonised tax on financial transactions will not receive unanimous support within the Council in the foreseeable future.

It follows from the above that the objectives of a common system of FTT, as discussed in the Council upon the Commission's initial proposal, cannot be attained within a reasonable period by the Union as a whole.

On the basis of the request of eleven Member States (Belgium, Germany, Estonia, Greece, Spain, France, Italy, Austria, Portugal, Slovenia and Slovakia) the Commission submitted a proposal\(^7\) to the Council for authorising enhanced cooperation in the area of financial transaction tax.

All Member States specified in their requests that the scope and objectives of the Commission's legislative proposal implementing enhanced cooperation should be based on the Commission's initial FTT proposal. Furthermore, they specified that evasive actions, distortions and transfers to other jurisdictions are to be avoided.

\(^3\) P7_TA-(2012)0217.
\(^6\) FTT was first on the agenda of the Council on Economic and Financial Affairs on 8 November 2011 and then at three subsequent meetings in March, June and July 2012. From December 2011 to June 2012 seven Council Working Party meetings on Tax Questions – Indirect taxation were devoted to the subject.
\(^7\) COM(2012) 631 final/2.
The present proposal for a Directive concerns the implementation of the enhanced cooperation in the area of FTT, in accordance with the authorisation of the Council of 22 January 2013, issued following the European Parliament's consent given on 12 December 2012.

In the light of this new context of enhanced cooperation, the 2011 Commission proposal mentioned above becomes without object and the Commission therefore intends to withdraw it.

The Commission Proposal for a Council Decision on the system of own resources of the European Union of 29 June 2011\(^8\), as amended on 9 November 2011\(^9\), set out that part of receipts generated by the FTT shall constitute an own resource for the EU budget. This would imply that the GNI-based resource drawn from the participating Member States would be reduced accordingly.

1.2. Objectives of the proposal

The general objectives of this proposal are those of the Commission's original proposal of 2011. The recent and ongoing global economic and financial crisis had a serious impact on the economies and public finances in the EU. The financial sector has played a major role in causing the economic crisis whilst governments and European citizens at large have born the costs. Even though it is made of a wide variety of market actors, the financial sector at large has experienced high profitability over the last two decades which could be partially the result of an (implicit or explicit) safety net provided by governments, combined with financial sector regulation and VAT exemption.

Under these circumstances, some Member States started to implement additional forms of financial sector taxation, whilst other Member States already had in place specific tax regimes for financial transactions. The current situation leads to the following undesirable effects:

- a fragmentation of the tax treatment in the internal market for financial services - bearing in mind the increasing number of uncoordinated national tax measures being put in place- with the consequent possibilities of distortions of competition between financial instruments, actors and market places across the European Union and double taxation or double non-taxation;

- the financial institutions do not make a fair and substantial contribution to covering the cost of the recent crisis and a level playing field with other sectors from a taxation point of view is not ensured;

- taxation policy neither contributes to providing disincentives for transactions which do not enhance the efficiency of financial markets but which might only divert rents from the non-financial sector of the economy to financial institutions and, thus, trigger over-investment in activities that are not welfare enhancing, nor does it contribute alongside ongoing regulatory and supervisory measures to avoid future crises in the financial services sector.

The implementation of a common system of financial transaction tax amongst a sufficient number of Member States would entail immediate tangible advantages on all three points listed above, in

\(^8\) COM(2011) 510 final.

\(^9\) COM(2011) 739 final.
regard to financial transactions covered by enhanced cooperation. In connection with these points, the position of the participating Member States in terms of relocation risks, tax revenues and efficiency of the financial market and avoidance of double taxation or non-taxation would be improved.

The decision authorising enhanced cooperation found that all the requirements of the Treaties in regard to such cooperation are fulfilled, and in particular that the competences, rights and obligations of non-participating Member States are respected. The present proposal sets out the necessary substance for the cooperation thus authorised, in line with the Treaty provisions.

1.3. General approach and relationship with the Commission's initial proposal

This proposal is based on the Commission's original proposal of 2011 in that it respects all the essential principles thereof. However, some adaptations were made:

– to take account of the new context of enhanced cooperation; this means in particular that the 'FTT jurisdiction' is limited to participating Member States, that transactions carried out within a participating Member State which would have been taxed under the original proposal remain taxable, and that it is ensured that Council Directive 2008/7/EC of 12 February 2008 concerning indirect taxes on the raising of capital 10, whose modification had been proposed in the initial proposal, remains unaffected;

– to some of the proposed provisions for the sake of clarity and

– to further strengthen anti-avoidance of taxation; this is achieved through rules whereby taxation follows the "issuance principle" as a last resort, which compounds the "principle of establishment", which is maintained as the main principle. This addition reflects notably the requests of the interested Member States which referred to the need to avoid evasive actions, distortions and transfers to other jurisdictions. Indeed, by complementing the residence principle with elements of the issuance principle, it will be less advantageous to relocate activities and establishments outside the FTT jurisdictions, since trading in the financial instruments subject to taxation under the latter principle and issued in the FTT jurisdictions will be taxable anyway.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

2.1. External consultation and expertise

The original proposal has been formulated against the background of a wide range of external contributions. These contributions took the form of feedback received in the course of a public consultation on financial sector taxation, targeted consultations with the Member States, experts and the financial sector stakeholders, as well as three different external studies commissioned for the purpose of the impact assessment accompanying the original proposal. The results of the consultation process and the external input are reflected in this impact assessment.

The present proposal does not differ markedly from the Commission's September 2011 proposal and retains the same solutions of principle for a common system of FTT under enhanced cooperation (e.g. as regards the scope of the tax, the establishment of a financial institution involved in a transaction as the connecting factor, the taxable amount and rates and the person liable to pay the tax to the tax authorities) and thus no new specific consultations were initiated by the Commission.

However, the Commission also benefited from the consultation of all interested parties over the last year, such as Member States, the European and national parliaments, representatives of the financial industry from within and from outside the European Union, the academic world, non-governmental organisations, and the results of ad hoc external studies that had been published in the aftermath of the tabling of the Commission's initial proposal on a common system of FTT for the entire European Union.

Commission representatives participated in numerous public events across and outside Europe on the establishment of a common system of financial transaction tax. Also, the Commission actively participated in a dialogue with those national parliaments and their relevant committees that so wished discussing the original Commission proposal.

2.2. Impact assessment

The Commission services carried out an impact assessment which accompanies its original proposal adopted on 28 September 2011. Further additional technical analysis of this proposal has been presented on the Commission's website. As requested by the Member States that have sought the authorisation for enhanced cooperation, the scope and objectives of this proposal are based on the Commission’s initial proposal. Therefore, the fundamental building blocks of the latter proposal are not changed, so that a new impact assessment covering the same subject area has not been considered appropriate.

However, Member States had weighed different alternative policy options within the framework of the initial Commission proposal. Also, this new proposal is intended to implement enhanced cooperation, as opposed to the initial proposal for a directive to be applied by all Member States, and Member States have specifically shown interest in learning more on the specific mechanisms that might be at work in this context and their main effects. Therefore, the Commission services have undertaken an additional analysis of these policy options and impacts that complements and reviews, where appropriate, the findings of the impact assessment accompanying the initial proposal of 2011.

3. LEGAL ELEMENTS OF THE PROPOSAL

3.1. Legal basis

Council Decision 2013/52/EU of 22 January 2013 authorising enhanced cooperation in the area of financial transaction tax authorised the Member States listed in its Article 1 to establish enhanced cooperation in the area of FTT.
The pertinent legal basis for the proposed Directive is Article 113 TFEU. The proposal aims at harmonising legislation concerning indirect taxation on financial transactions, which is needed to ensure the proper functioning of the internal market and to avoid distortion of competition. Non-participating States’ financial institutions will benefit from the enhanced cooperation, as they will be confronted with only one common system of FTT applicable in the participating Member States instead of a multitude of systems.

3.2. **Subsidiarity and proportionality**

The harmonisation of legislation concerning the taxation of financial transactions necessary for the proper functioning of the internal market and to avoid distortions of competition, be it only among the participating Member States, can only be achieved through a Union act, i.e. by way of a uniform definition of the essential features of an FTT. The common rules are necessary to avoid undue relocations of transactions and market participants and substitution of financial instruments.

By the same token, a uniform definition could play a crucial role in reducing the existing fragmentation of the internal market, including for the different products of the financial sector that often serve as close substitutes. Non harmonisation of FTT leads to tax arbitrage and potential double or non-taxation. This not only prevents financial transactions to be carried out on a level playing field, but also affects revenues of Member States. Furthermore, it imposes extra compliance costs on the financial sector arising from too different tax regimes. These findings remain valid in a context of enhanced cooperation, even though such cooperation implies a more reduced geographical reach than a similar scheme adopted at the level of all 27 Member States.

The present proposal thus concentrates on setting a common structure of the tax and common provisions on chargeability. The proposal thus leaves a sufficient margin of manoeuvre for the participating Member States when it comes to the actual setting of the tax rates above the minimum. On the other hand, it is proposed to confer delegated powers to the Commission as regards the specification of registration, accounting, reporting and other obligations intended to ensure that FTT due to the tax authorities is effectively paid to them. As regards uniform methods of collection of the FTT due, implementing powers conferred to the Commission are proposed.

A common framework for an FTT therefore respects the subsidiarity and proportionality principle as set in Article 5 TEU. The objective of this proposal cannot be sufficiently achieved by the Member States and can therefore, by reason of ensuring the proper functioning of the internal market, be better achieved at Union level, if necessary through enhanced cooperation.

The harmonisation proposed, in the form of a Directive rather than a Regulation, does not go beyond what is necessary in order to achieve the objectives pursued, first and foremost for the proper functioning of the internal market. It thus complies with the principle of proportionality.

3.3. **Detailed explanation of the proposal**

3.3.1. **Chapter I (Subject matter and definitions)**

This chapter defines the subject matter of this proposed Directive containing the proposal for implementation of the enhanced cooperation in the area of FTT. Furthermore, this chapter provides for definitions of the main terms used in this proposal.
3.3.2. Chapter II (Scope of the common system of FTT)

This chapter defines the essential framework of the proposed common system of FTT under enhanced cooperation. This FTT aims at taxing gross transactions before any netting off.

The scope of the tax is wide, because it aims at covering transactions relating to all types of financial instruments as they are often close substitutes for each other. Thus, the scope covers instruments which are negotiable on the capital market, money-market instruments (with the exception of instruments of payment), units or shares in collective investment undertakings - which include undertakings for collective investment in transferable securities (UCITS) and alternative investment funds (AIF)\(^\text{13}\) and derivatives contracts. Furthermore, the scope of the tax is not limited to trade in organised markets, such as regulated markets, multilateral trading facilities or systematic internalisers, but also covers other types of trades including over-the-counter trade. It is also not limited to the transfer of ownership but rather represents the obligation entered into, mirroring whether or not the party concerned assumes the risk implied by a given financial instrument ("purchase and sale").

Furthermore, where financial instruments whose purchase and sale is taxable form the object of a transfer between separate entities of a group, this transfer shall be taxable even though it might not be a purchase or sale.

Exchanges of financial instruments and repurchase and reverse repurchase and securities lending and borrowing agreements are explicitly included into the scope of the tax. For reasons of avoiding tax circumvention exchanges of financial instruments are considered to give rise to two financial transactions. On the other hand, by way of repurchase and reverse repurchase agreements and securities lending and borrowing agreements, a financial instrument is put at the disposal of a given person for a defined period of time. All such agreements should therefore be considered as giving rise to one financial transaction only.

Additionally, in order to prevent tax avoidance, each material modification of a taxable financial transaction should be considered a new taxable financial transaction of the same type as the original transaction. It is proposed to add a non-limitative list of what can be considered a material modification.

Also, where a derivatives contract results in a supply of financial instruments, in addition to the taxable derivatives contract, the supply of these financial instruments is also subject to tax, provided that all other conditions for taxation are fulfilled.

For the financial instruments which may form the object of a taxable financial transaction, the relevant regulatory framework at EU level provides a clear, comprehensive and accepted set of definitions\(^\text{14}\). It emerges from the definitions used that spot currency transactions are not taxable.

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financial transactions, while currency derivative contracts are. Derivative contracts relating to commodities are also covered, while physical commodity transactions are not.

Structured products, meaning tradable securities or other financial instruments offered by way of a securitisation can also form the object of taxable financial transactions. Such products are comparable to any other financial instrument and thus need to be covered by the term financial instrument as used in this proposal. Excluding them from the scope of FTT would open avoidance opportunities. This category of products notably includes certain notes, warrants and certificates as well as banking securitisations which usually transfer a large part of the credit risk associated with assets such as mortgages or loans into the market, as well as insurance securitisations, which involve the transfers of other types of risk, for example the underwriting risk.

However, the scope of the tax is focused on financial transactions carried out by financial institutions acting as party to a financial transaction, either for their own account or for the account of other persons, or acting in the name of a party to the transaction. This approach ensures that FTT is comprehensively applied. In practical terms the presence of financial transactions is usually evident via respective entries in the books. The imposition of FTT should not negatively affect the refinancing possibilities of financial institutions and States, nor monetary policies in general or public debt management. Therefore, transactions with the European Central Bank, the European Financial Stability Facility, the European Stability Mechanism, the European Union where it exercises the function of management of its assets, of balance of payment loans and of similar activities, and the central banks of Member States should be excluded from the scope of the Directive.

The provisions of Council Directive 2008/7/EC continue to be fully applicable. Article 5 (1)(e) and (2) of that Directive is relevant to the area covered by the present Directive and prohibits the imposition of any tax whatsoever on the transactions referred to in its terms, subject to Article 6(1)(a) of the same Directive. To the extent Directive 2008/7/EC thus prohibits or could prohibit the imposition of taxes on certain transactions, in particular financial transactions as part of restructuring operations or of the issue of securities as defined in this Directive, they should not be subject to FTT. The aim is to avoid any possible conflict with Directive 2008/7/EC, without it being necessary to ascertain the precise limits of the obligations imposed by that Directive. Moreover, independently from the extent to which Directive 2008/7/EC prohibits taxation of the issuance of shares and units of collective investment undertakings considerations of tax neutrality require the single treatment of issuances by all these undertakings. The redemption of shares and units thus issued are however not in the nature of a primary market transaction and should thus be taxable.

Further to the exclusion of primary markets explained above most day-to-day financial activities relevant for citizens and businesses remain outside the scope of the FTT. This is the case for the conclusion of insurance contracts, mortgage lending, consumer credits, enterprise loans, payment services etc. (though the subsequent trading of these via structured products is included). Also, currency transactions on spot markets are outside the scope of the FTT, which preserves the free movement of capital. However, derivatives contracts based on currency transactions are covered by the FTT since they are not as such currency transactions.

The definition of financial institutions is broad and essentially includes investment firms, organised markets, credit institutions, insurance and reinsurance undertakings, collective investment undertakings and their managers, pension funds and their managers, holding companies, financial leasing companies, special purpose entities, and where possible refers to the definitions provided by the relevant EU legislation adopted for regulatory purposes. Additionally, other undertakings, institutions, bodies or persons carrying out certain financial activities with a significant annual
average value of financial transactions should be considered as financial institutions. The present proposal sets the threshold at 50% of its overall average net annual turnover of the entity concerned.

The proposed Directive provides for further technical details of the calculation of the value of the financial transactions and the average of values referred to in respect of entities that may be regarded as financial institutions only on account of the value of the financial transactions they carry out, and makes provision for situations where such entities no longer qualify as financial institutions..

Central Counterparties (CCPs), Central Securities Depositories (CSDs), International Central Securities Depositories (ICSDs) and Member States and public bodies entrusted with the function of managing public debt, when exercising that function are not considered financial institutions to the extent they are not engaged in trading activity in itself. They are also key for a more efficient and more transparent functioning of financial markets and for a proper management of public debt. However, because of their central role certain obligations relating to ensuring the payment of the tax to the tax authorities and to the verification of the payment should continue to apply.

The territorial application of the proposed FTT and the participating Member States’ taxing rights are defined on the basis of the rules laid down in Article 4. This provision refers to the notion of “establishment”. In essence, it is based on the "residence principle” supplemented by elements of the issuance principle with a view mainly to strengthen anti-relocation (details regarding this latter aspect are set out further below).

In order for a financial transaction to be taxable in the participating Member States, one of the parties to the transaction needs to be established in the territory of a participating Member State according to the criteria of Article 4. Taxation will take place in the participating Member State in the territory of which the establishment of a financial institution is located, on condition that this institution is party to the transaction, acting either for its own account or for the account of another person, or is acting in the name of a party to the transaction.

In case the different financial institutions, as parties to the transaction or acting in the name of such parties, are established in the territory of different participating Member States, according to the criteria of Article 4, each of these different Member States will be competent to subject the transaction to tax at the rates it has set in accordance with this proposal. Where the establishments concerned are located in the territory of a State which is not a participating Member State the transaction is not subject to FTT in a participating Member State, unless one of the parties to the transaction is established in a participating Member State in which case the financial institution that is not established in a participating Member State will also be deemed to be established in that participating Member State and the transaction becomes taxable there.

One particular change due to the new context of enhanced cooperation concerns what was Article 3(1)(a) of the initial proposal. Within that proposal, the reference to a financial institution “authorised” by a Member State covered headquarter authorisations and authorisations provided by the Member State concerned in regard to transactions operated by third-country financial institutions without a physical presence in the territory of that Member State. In the former configuration, transactions may be covered, according to the case, by a “passport” foreseen in EU legislation. The only “authorisation” is then the one granted to the headquarters of the financial institution. In a context of enhanced cooperation, a new configuration may raise, namely of institutions with headquarters in a non-participating Member State that operate on the basis of a “passport” in the FTT jurisdiction (cf. e.g. Article 31 of Directive 2004/39/EC). The latter situation should be assimilated to the situation of third country institutions operating on the basis of a specific authorisation provided by the Member State concerned by the transaction.
The residence principle is supplemented also by elements of the "issuance principle" as a last resort, in order to improve the resilience of the system against relocation. Indeed, by complementing the residence principle with the issuance principle, it will be less advantageous to relocate activities and establishments outside the FTT jurisdictions, since trading in the financial instruments subject to taxation under the latter principle and issued in the FTT jurisdictions will be taxable anyway. This applies where none of the parties to the transaction would have been “established” in a participating Member State, on the basis of the criteria set out in the Commission’s initial proposal but where such parties are trading in financial instruments issued in that Member State. This concerns essentially shares, bonds and equivalent securities, money-market instruments, structured products, units and shares in collective investment undertakings and derivatives traded on organised trade venues or platforms. In the context of the issuance principle, which also underlies certain existing national financial sector taxes, the transaction is linked to the participating Member State in which the issuer is located. The persons involved in such transaction will be deemed to be established in that Member State because of this link, and the financial institution(s) concerned will have to pay FTT in that State.

All the above mentioned criteria are subject to a general rule, regarding the case where the person liable to pay the tax proves that there is no link between the economic substance of the transaction and the territory of any participating Member State. In that case, the financial institution or other person shall not be considered established within a participating Member State.

All in all, through the connecting factors chosen in combination with the above mentioned general rule, it is ensured that taxation can only take place in the presence of a sufficient link between the transaction and the territory of the FTT jurisdiction. As in existing EU legislation in the area of indirect taxes, territoriality principles are fully respected.

3.3.3. Chapter III (chargeability, taxable amount and rates)

The moment of chargeability is defined as the moment when the financial transaction occurs. Subsequent cancellation cannot be considered as a reason to exclude chargeability of the tax, except in cases of errors.

As transactions in derivatives and in financial instruments other than derivatives have a different nature and characteristics, they have to be associated to different taxable amounts.

For the purchase and sale of financial instruments (other than derivatives), usually a price or any other form of consideration will be determined. Logically, this is to be defined as the taxable amount. However, to avoid market distortions special rules are necessary where the consideration is lower than the market price or for transactions taking place between entities of a group and which are not covered by the notions of "purchase" and "sale". In these cases the taxable amount is to be the market price determined at arm's length at the time FTT becomes chargeable. Such transactions between entities of a group are likely to involve transfers without consideration, while transfers for consideration correspond to the notions of "purchase" and "sale".

For the purchase/sale, transfer, exchange, conclusion of derivative contracts, and material modifications thereof, the taxable amount of the FTT shall be the notional amount referred to in the derivatives contract at the time it is purchased/sold, transferred, exchanged, concluded or when the operation concerned is materially modified. This approach would allow for a straightforward and easy application of FTT on derivative contracts while ensuring low compliance and administrative costs. Also, this approach makes it more difficult to artificially reduce the tax burden through creative contract design for the derivative contract as there would be no tax incentive for example to
enter into a contract on differences in prices or values only. Furthermore it implies the taxation at the moment of the purchase/sale, transfer, exchange, conclusion of the contract or material modification of the operation concerned, as compared to taxing cash-flows at different moments in time during the life cycle of the contract. The rate to be used in this case will need to be rather low in order to define an adequate tax burden.

Special provisions might be necessary in the participating Member States in order to prevent fraud and evasion and a general anti-abuse rule is proposed (see also section 3.3.4). This rule could for example be applied in cases where the notional amount is artificially divided: the notional amount of a swap could for instance be divided by an arbitrarily large factor and all payments could be multiplied by the same factor. This would leave the cash flows of the instrument unchanged but arbitrarily shrink the size of the tax base.

Special provisions are necessary to determine the taxable amount in respect of transactions where the taxable amount or parts thereof are expressed in another currency than that of the participating Member State of assessment.

Transactions in derivatives and transactions in other financial instruments are different in nature. Moreover, markets are likely to react differently to a financial transaction tax applied to each of these two categories. For these reasons, and in order to ensure a broadly even taxation, the rates should be differentiated as between the two categories.

The rates should also take into account differences in the applicable methods for the determination of the taxable amounts.

Generally speaking, the minimum tax rates (above which there is room of manoeuvre for national policies) are proposed to be set at a level sufficiently high for the harmonisation objective of this Directive to be achieved. At the same time, the proposed rates are situated low enough so that delocalisation risks are minimised.

3.3.4. Chapter IV (Payment of FTT, related obligations and prevention of evasion, avoidance and abuse)

This proposal defines the scope of FTT by reference to financial transactions to which a financial institution established in the territory of the participating Member State concerned is party (acting either for its own account or for the account of another person) or transactions where the institution acts in the name of a party. In fact, financial institutions execute the bulk of transactions on financial markets, and the FTT should concentrate on the financial sector as such rather than on citizens. Therefore, these institutions should be liable to pay the tax to the tax authorities of the participating Member States in the territories of which these financial institutions are deemed to be established. However, in order to avoid a certain cascade of the tax, when a financial institution acts in the name or for the account of another financial institution, only that other financial institution should pay the tax.

It is also proposed to ensure as far as possible that FTT is effectively paid. According to the terms of this proposal, therefore, in case the FTT due on account of a transaction has not been timely paid each party to that transaction should be held jointly and severally liable for the payment of the tax. Moreover, participating Member States should have the possibility to hold other persons jointly and severally liable for payment of the tax, including in cases where a party to a transaction has its headquarters located outside the territory of the participating Member States.
This proposal also provides for time limits for the payment of FTT to the accounts determined by the participating Member States. Most financial transactions are carried out by electronic means. In these cases, FTT should be paid immediately at the moment of chargeability. In other cases, the tax should be paid within a period which, while being sufficiently long so as to allow for the manual processing of the payment, avoids that unjustifiable cash-flow advantages accrue to the financial institution concerned. A period of three working days from the moment of chargeability can be considered appropriate in this sense.

The participating Member States should be obliged to take appropriate measures for registration, accounting, reporting and other obligations for the FTT to be levied accurately and timely and effectively paid to the tax authorities. In this regard, it is proposed to empower the Commission to provide for further details. This is necessary in order to ensure harmonised measures reducing compliance costs for operators and to enable speedy technical adaptations whenever they are necessary. In this context, the participating Member States should take advantage of existing and forthcoming EU legislation on financial markets that includes reporting and data maintenance obligations with respect to financial transactions.

The proposed Directive would also oblige Member States to take measures in order to prevent fraud and evasion.

Furthermore, in order to address the risk of abuse which could undermine the proper operation of the common system, it is proposed to set out a number of details in the directive. Thus, the proposal contains a general anti-abuse rule, based on the similar clause included in the Commission Recommendation of 6 December 2012 on aggressive tax planning15, as well as a provision based on the same principles but addressing the particular problems linked to depositary receipts and similar securities.

In order to avoid complications in the collection of the tax through differing collection methods, and ensuing unnecessary compliance costs, the methods applied by the participating Member States for the collection of the FTT due should be uniform, to the extent necessary for those purposes. Such uniform methods would also contribute to equal treatment of all taxpayers. Therefore, the proposed Directive provides for an empowerment of the Commission to adopt implementing measures to this effect.

In order to ease the administration of the tax, the participating Member States could introduce national (publicly accessible) registries for the FTT entities. In practice, they could make use of existing codification, for instance the Business Identification Codes (BIC/ISO 9362) for both financial and non-financial institutions, the Classification of Financial Instruments (CFI/ISO 10962) for financial instruments and the Market Identifier Code (MIC/ISO 10383) for the different markets.

In addition to discussions on the definition of uniform collection methods in the relevant Committee, the Commission might organise regular expert meetings with a view to discuss with the participating Member States the operation of the Directive once adopted, in particular ways of ensuring the proper payment of the tax and the verification of payment, as well as matters pertaining to the prevention of tax evasion, avoidance and abuse.

The draft Directive does not address issues of administrative cooperation which are covered in existing instruments relating to the assessment and recovery of taxes, in particular Directive

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2011/16/EU of the Council of 15 February on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC\(^\text{16}\) (applicable as of 1 January 2013), Directive 2010/24/EU of the Council of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures\(^\text{17}\) (applicable as of 1 January 2012). The directive proposed here neither adds to those instruments, nor does it diminish their scope. They continue to apply to all taxes of any kind levied by or on behalf a Member State\(^\text{18}\), and this encompasses FTT as it does any other tax thus levied. These instruments apply to all Member States who should provide assistance within the limits and conditions thereof. Other instruments which are relevant in this context include the OECD - Council of Europe Multilateral Convention on Mutual Administrative Assistance in Tax Matters\(^\text{19}\).

Together with the conceptual approach underlying the FTT (broad scope, broadly defined residence principle, no exemptions), the rules outlined above allow to minimise tax evasion, avoidance and abuse.

3.3.5. Chapter V (Final provisions)

It follows from the harmonisation objective of this proposal that the participating Member States should not be allowed to maintain or introduce taxes on financial transactions as defined in this proposal other than the FTT object of the proposed Directive or VAT. Indeed, as far as VAT is concerned, the right of option to tax as provided for in Article 137(1)(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax\(^\text{20}\) continues to apply. Other taxes like those on insurance premiums etc. have of course a different nature, as have registration fees on financial transactions, in case they represent a genuine re-imbursement of costs or consideration for a service rendered. Such taxes and fees are thus not affected by this proposal.

It is proposed for the participating Member States to communicate to the Commission the text of the provisions transposing the proposed Directive into national legal provisions. No provision of explanatory documents is proposed in this respect, given the limited number of articles in the proposal and ensuing obligations on Member States.

4. BUDGETARY IMPLICATION

Preliminary estimates indicate that, depending on market reactions, the revenues of the tax could have been between EUR 30 and 35 billion on a yearly basis in the whole of participating Member States in case the original proposal for EU27 had been applied to EU11. However, when taking account of the net effects of the adjustments made as compared to the original proposal, notably (i) the issue of units and shares of UCITS and AIF is no longer considered not to be a primary market transaction, and (ii) the anti-relocation provisions of the residence principle as initially defined have been strengthened by complementing them with elements of the issuance principle, preliminary estimates indicate that the revenues of the tax could be in the order of magnitude of EUR 31 billion annually.

\(^{16}\) OJ L 64, 11.3.2011, p. 1.
\(^{17}\) OJ L 84, 31.3.2010, p. 1.
\(^{18}\) With certain exceptions in the case of Directive 2011/16/EU but which are no relevant here.
\(^{19}\) http://www.oecdlibrary.org/docserver/download/fulltext/2311331e.pdf?expires=1309623132&id=id&accname=ocid194935&checksum=37A9732331E7939B3EE154BB7EC53C41
The Commission Proposal for a Council Decision on the system of own resources of the European Union of 29 June 2011\textsuperscript{21}, as amended on 9 November 2011\textsuperscript{22}, set out that part of receipts generated by the FTT shall constitute an own resource for the EU Budget. The GNI-based resource drawn from the participating Member States would be reduced accordingly.

The European Council of 7/8 February 2013 invited the participating Member States to examine if the FTT could become the base for a new own resource for the EU Budget.

\textsuperscript{21} COM(2011) 510 final.

\textsuperscript{22} COM(2011) 739 final.
Proposal for a

COUNCIL DIRECTIVE

implementing enhanced cooperation in the area of financial transaction tax

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 113 thereof,

Having regard to Council Decision 2013/52/EU of 22 January 2013 authorising enhanced cooperation in the area of financial transaction tax¹,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Parliament²,

Having regard to the opinion of the European Economic and Social Committee³,

Acting in accordance with a special legislative procedure,

Whereas:

(1) In 2011, the Commission took note of a debate on-going at all levels on additional taxation of the financial sector. The debate originates from the desire to ensure that the financial sector fairly and substantially contributes to the costs of the crisis and that it is taxed in a fair way vis-à-vis other sectors for the future, to dis-incentivise excessively risky activities by financial institutions, to complement regulatory measures aimed at avoiding future crises and to generate additional revenue for general budgets or specific policy purposes.

(2) By Decision 2013/52/EU the Council authorised enhanced cooperation between Belgium, Germany, Estonia, Greece, Spain, France, Italy, Austria, Portugal, Slovenia and Slovakia (hereinafter "participating Member States") in the area of financial transaction tax (FTT).

(3) In order to prevent distortions through measures taken unilaterally by the participating Member States, bearing in mind the extremely high mobility of most of the relevant financial transactions, and thus to improve the proper functioning of the internal market, it is important that the basic features of a FTT in the participating Member States are harmonised at Union level. Incentives for tax arbitrage between the participating Member States and

¹ OJ L 22, 25.1.2013, p. 11
² OJ C ..., ..., p..
³ OJ C ..., ..., p..
allocation distortions between financial markets in those States, as well as possibilities for double or non-taxation should thereby be avoided.

(4) The improvement of the operation of the internal market, in particular the avoidance of distortions between the participating Member States requires that a FTT applies to a broadly determined range of financial institutions and transactions, to trade in a wide range of financial instruments, including structured products, both in the organised markets and "over-the-counter", as well as to the conclusion of all derivative contracts and to material modifications of the operations concerned.

(5) In principle, each transfer agreed upon, of one or more financial instruments, is linked to a given transaction which in turn should be subject to FTT on account of such agreed transfer. Since an exchange of financial instruments gives rise to two such transfers, each such exchange should be considered as giving rise to two transactions, so as to avoid circumvention of the tax. By way of repurchase and reverse repurchase and securities lending and borrowing agreements, a financial instrument is put at the disposal of a given person for a specified period of time. All such agreements, as well as their material modification, should therefore be considered as giving rise to one transaction only.

(6) In order to preserve the efficient and transparent functioning of financial markets or the public debt management, it is necessary to exclude certain entities from the scope of the FTT, in as much as these are exercising functions which are not considered to be trading activity in itself but rather facilitating trade or protecting the management of public debt. However, entities excluded specifically because of their central role for the functioning of financial markets or public debt management should be made subject to the rules that ensure the proper payment of the tax to the tax authorities and the verification of the payment.

(7) The imposition of FTT should not negatively affect the refinancing possibilities of financial institutions and States, nor monetary policies in general. Therefore, transactions with the European Central Bank, the European Financial Stability Facility, the European Stability Mechanism, the European Union where it exercises the function of management of its assets, of balance of payment loans and of similar activities, and the central banks of Member States should not be subject to FTT.

(8) With the exception of the conclusion or material modification of derivative contracts, the trade on primary markets and transactions relevant for citizens and businesses such as conclusion of insurance contracts, mortgage lending, consumer credits or payment services should be excluded from the scope of FTT, so as not to undermine the raising of capital by companies and governments and to avoid impact on households.

(9) The provisions of Council Directive 2008/7/EC of 12 February 2008 concerning indirect taxes on the raising of capital continue to be fully applicable. Article 5(1)(e) and (2) of that Directive is relevant to the area covered by this Directive and prohibits, subject to Article 6(1)(a) of that Directive, the imposition of any tax whatsoever on the transactions referred to in its provisions. Transactions in respect of which Directive 2008/7/EC prohibits or could prohibit the imposition of taxes should therefore not be subject to FTT. Independently from the extent to which Directive 2008/7/EC prohibits taxation of the issuance of shares and units collective investment undertakings, considerations of tax neutrality require a single treatment of issuances by all these undertakings. The redemption of shares and units thus

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issued are however not in the nature of a primary market transaction and should thus be taxable.

(10) The chargeability and taxable amount should be harmonised so as to avoid distortions in the internal market.

(11) The moment of chargeability should not be unduly delayed and should coincide with the moment where the financial transaction occurs.

(12) In order to allow for the taxable amount to be determined as easily as possible so as to limit costs for businesses and for tax administrations, in the case of financial transactions other than those related to derivatives contracts reference should be made normally to the consideration granted in the context of the transaction. Where no consideration is granted or where the consideration granted is lower than the market price, the market price should be referred to as a fair reflection of the value of the transaction. Equally for reasons of ease of calculation, where derivatives contracts are purchased/sold, transferred, exchanged, concluded or where these operations are materially modified, the notional amount referred to in the contract should be used.

(13) In the interest of equal treatment, a single tax rate should apply within each category of transactions, namely trade in financial instruments other than derivatives and material modification of the operations concerned, on the one hand, and the purchase/sale, transfer, exchange, conclusion of derivatives contracts, and material modification of these operations on the other hand.

(14) In order to concentrate the taxation on the financial sector as such rather than on citizens and because financial institutions execute the vast majority of transactions on financial markets, the tax should apply to those institutions, whether they trade in their own name, in the name of other persons, for their own account or for the account of other persons.

(15) Because of the high mobility of financial transactions and in order to help mitigating potential tax avoidance, the FTT should be applied on the basis of the residence principle. To further minimise the risk of relocation of transactions, while maintaining a single reference to “establishment” for ease of application, this principle should be supplemented by elements of the issuance principle. Thus, for transactions in certain financial instruments, the persons involved should be considered established in the participating Member State in which the instrument has been issued.

(16) The minimum tax rates should be set at a level sufficiently high for the harmonisation objective of a common FTT to be achieved. At the same time, they have to be low enough so that delocalisation risks are minimised.

(17) It should be avoided that any side of a single transaction be taxed more than once. Therefore, where a financial institution acts in the name or for the account of another financial institution, only that other financial institution should pay the tax.

(18) In order for the FTT to be levied in an accurate and timely manner, the participating Member States should be obliged to take the necessary measures.

(19) In order to prevent tax fraud and evasion the participating Member States should be obliged to adopt appropriate measures.
In order to prevent tax avoidance and abuse through artificial schemes, it is necessary to provide for a general anti-abuse rule. A specific rule based on the same principles should be added with a view to address the particular problems linked to depositary receipts and similar securities.

In order to allow the adoption of more detailed rules in certain technical areas, regarding registration, accounting, reporting obligations and other obligations intended to ensure that FTT due to the tax authorities is effectively paid to the tax authorities, and their timely adaptation as appropriate, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of specifying the measures necessary to this effect. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a timely and appropriate transmission of relevant documents to the Council.

In order to ensure uniform conditions for the implementation of this Directive, as regards the collection of the tax in the participating Member States, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission’s exercise of implementing powers.\(^5\)

Since market operators will need some time to adjust to the new rules, an appropriate period of time should be provided for between the adoption of the national rules necessary to comply with this Directive and the application of those rules.

Since the objective of this Directive, namely to harmonise the essential features of a FTT within the participating Member States at Union level, cannot be sufficiently achieved by these Member States and can therefore, by reason of improving the proper functioning of the Single Market, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve this objective,

HAS ADOPTED THIS DIRECTIVE:

**Chapter I**

**Subject matter and definitions**

**Article 1**

**Subject matter**

1. This Directive implements the enhanced cooperation authorised by Decision 2013/52/EU by laying down provisions for a harmonised financial transaction tax (FTT).

2. Participating Member States shall charge FTT in accordance with this Directive.

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\(^5\) OJ L 55, 28.2.2011, p. 13
Article 2
Definitions

1. For the purposes of this Directive, the following definitions shall apply:

(1) 'Participating Member State' means a Member State which participates, at the time when FTT becomes chargeable pursuant to this Directive, in enhanced cooperation in the area of FTT by virtue of Decision 2013/52/EU, or by virtue of a decision adopted in accordance with the second or third subparagraph of Article 331(1) of the TFEU;

(2) 'Financial transaction' means any of the following:

(a) the purchase and sale of a financial instrument before netting or settlement;

(b) the transfer between entities of a group of the right to dispose of a financial instrument as owner and any equivalent operation implying the transfer of the risk associated with the financial instrument, in cases not subject to point (a);

(c) the conclusion of derivatives contracts before netting or settlement;

(d) an exchange of financial instruments;

(e) a repurchase agreement, a reverse repurchase agreement, a securities lending and borrowing agreement;


(4) 'Derivatives contract' means a financial instrument as defined in points (4) to (10) of Section C of Annex I to Directive 2004/39/EC, as implemented by Articles 38 and 39 of Commission Regulation (EC) No 1287/2006;

(5) 'Repurchase agreement' and 'reverse repurchase agreement' means an agreement as defined in Article 3(1)(m) of Directive 2006/49/EC of the European Parliament and of the Council;

(6) 'Securities lending agreement' and 'securities borrowing agreement' mean an agreement referred to in Article 3 of Directive 2006/49/EC;

(7) 'Structured product' means tradable securities or other financial instruments offered by way of a securitisation within the meaning of Article 4(36) of Directive 2006/48/EC of the European Parliament and of the Council or by way of equivalent transactions involving the transfer of risks other than credit risk;

(8) 'Financial institution' means any of the following:

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(a) an investment firm as defined in Article 4(1)(1) of Directive 2004/39/EC;
(b) a regulated market as defined in Article 4(1)(14) of Directive 2004/39/EC and any other organised trade venue or platform;
(c) a credit institution as defined in Article 4(1) of Directive 2006/48/EC;
(d) an insurance and reinsurance undertaking as defined in Article 13 of Directive 2009/138/EC of the European Parliament and the Council10;
(f) a pension fund or an institution for occupational retirement provision as defined in Article 6(a) of Directive 2003/41/EC of the European Parliament and of the Council12, an investment manager of such fund or institution;
(g) an alternative investment fund (AIF) and an alternative investment fund manager (AIFM) as defined in Article 4 of Directive 2011/61/EU of the European Parliament and of the Council13;
(h) a securitisation special purpose entity as defined in Article 4(44) of Directive 2006/48/EC;
(i) a special purpose vehicle as defined in Article 13(26) of Directive 2009/138/EC;
(j) any other undertaking, institution, body or person carrying out one or more of the following activities, in case the average annual value of its financial transactions constitutes more than fifty per cent of its overall average net annual turnover, as referred to in Article 28 of Council Directive 78/660/EEC14:

(i) activities referred to in points 1, 2, 3 and 6 of Annex I to Directive 2006/48/EC;

ii) trading for own account or for account or in the name of customers with respect to any financial instrument;

(iii) acquisition of holdings in undertakings;

(iv) participation in or issuance of financial instruments;

(v) the provision of services related to activities referred to in point (iv);

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2. Each of the operations referred to in points (a), (b), (c) and (e) of paragraph 1(2) shall be considered to give rise to a single financial transaction. Each exchange as referred to in point (d) thereof shall be considered to give rise to two financial transactions. Each material modification of an operation as referred to in points (a) to (e) of paragraph 1(2) shall be considered to be a new operation of the same type as the original operation. A modification is considered to be material in particular where it involves a substitution of at least one party, in case the object or scope of the operation, including its temporal scope, or the consideration agreed upon is altered, or where the original operation would have attracted a higher tax had it been concluded as modified.

3. For the purposes of point (8)(j) of paragraph 1:

(a) the average annual value referred to in that point shall be calculated either over the three preceding calendar years or, in the case of a shorter period of previous activity, over that shorter period;

(b) the value of each transaction referred to in Article 6 shall be the taxable amount as defined in that Article;

(c) the value of each transaction referred to in Article 7 shall be ten per cent of the taxable amount as defined in that Article;

(d) where the average annual value of financial transactions in two consecutive calendar years does not exceed fifty per cent of the overall average net annual turnover, as defined in Article 28 of Directive 78/660/EEC, the undertaking, institution, body or person concerned shall be entitled, upon request, to be considered as not being or no longer being a financial institution.

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Chapter II
Scope of the common system of FTT

Article 3
Scope

1. This Directive shall apply to all financial transactions, on the condition that at least one party to the transaction is established in the territory of a participating Member State and that a financial institution established in the territory of a participating Member State is party to the transaction, acting either for its own account or for the account of another person, or is acting in the name of a party to the transaction.

2. This Directive, with the exception of paragraphs 3 and 4 of Article 10 and paragraphs 1 to 4 of Article 11, shall not apply to the following entities:

   (a) Central Counter Parties (CCPs) where exercising the function of a CCP;

   (b) Central Securities Depositories (CSDs) and International Central Securities Depositories (ICSDs) where exercising the function of a CSD or ICSD;

   (c) Member States, including public bodies entrusted with the function of managing the public debt, when exercising that function.

3. Where an entity is not taxable pursuant to paragraph 2, this shall not preclude the taxability of its counterparty.

4. This Directive shall not apply to the following transactions:

   (a) primary market transactions referred to in Article 5(c) of Regulation (EC) No 1287/2006, including the activity of underwriting and subsequent allocation of financial instruments in the framework of their issue;

   (b) transactions with the central banks of Member States;

   (c) transactions with the European Central Bank;

   (d) transactions with the European Financial Stability Facility and the European Stability Mechanism, transactions with the European Union related to financial assistance made available under Article 143 of the TFEU and to financial assistance made available under Article 122(2) of the TFEU, as well as transactions with the European Union and the European Atomic Energy Community related to the management of their assets;

   (e) without prejudice to point (c) and (d), transactions with the European Union, the European Atomic Energy Community, the European Investment Bank and with bodies set up by the European Union or the European Atomic Energy Community to which the Protocol on the privileges and immunities of the European Union applies, within the limits and under the conditions of that Protocol, the headquarter agreements or any other agreements concluded for the implementation of the Protocol;
transactions with international organisations or bodies, other than those referred to in points (c), (d) and (e), recognised as such by the public authorities of the host State, within the limits and under the conditions laid down by the international conventions establishing the bodies or by headquarters agreements;

transactions carried out as part of restructuring operations referred to in Article 4 of Council Directive 2008/7/EC\(^{17}\).

**Article 4**

**Establishment**

1. For the purposes of this Directive, a financial institution shall be deemed to be established in the territory of a participating Member State where any of the following conditions is fulfilled:

   (a) it has been authorised by the authorities of that Member State to act as such, in respect of transactions covered by that authorisation;

   (b) it is authorised or otherwise entitled to operate, from abroad, as financial institution in regard to the territory of that Member State, in respect of transactions covered by such authorisation or entitlement;

   (c) it has its registered seat within that Member State;

   (d) its permanent address or, if no permanent address can be ascertained, its usual residence is located in that Member State;

   (e) it has a branch within that Member State, in respect of transactions carried out by that branch;

   (f) it is party, acting either for its own account or for the account of another person, or is acting in the name of a party to the transaction, to a financial transaction with another financial institution established in that Member State pursuant to points (a), (b), (c), (d) or (e), or with a party established in the territory of that Member State and which is not a financial institution;

   (g) it is party, acting either for its own account or for the account of another person, or is acting in the name of a party to the transaction, to a financial transaction in a structured product or one of the financial instruments referred to in Section C of Annex I of Directive 2004/39/EC issued within the territory of that Member State, with the exception of instruments referred to in points (4) to (10) of that Section which are not traded on an organised platform.

2. A person which is not a financial institution shall be deemed to be established within a participating Member State where any of the following conditions is fulfilled:

   (a) its registered seat or, in case of a natural person, its permanent address or, if no permanent address can be ascertained, its usual residence is located in that State;

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\(^{17}\) OJ L 46, 21.2.2008, p.11.
(b) it has a branch in that State, in respect of financial transactions carried out by that branch;

(c) it is party to a financial transaction in a structured product or one of the financial instruments referred to Section C of Annex I to Directive 2004/39/EC issued within the territory of that Member State, with the exception of instruments referred to in points (4) to (10) of that Section which are not traded on an organised platform.

3. Notwithstanding paragraphs 1 and 2, a financial institution or a person which is not a financial institution shall not be deemed to be established within the meaning of those paragraphs, where the person liable for payment of FTT proves that there is no link between the economic substance of the transaction and the territory of any participating Member State.

4. Where more than one of the conditions in the lists set out in paragraphs 1 and 2 respectively is fulfilled, the first condition fulfilled from the start of the list in descending order shall be relevant for determining the participating Member State of establishment.

**Chapter III**

**Chargeability, taxable amount and rates of the common FTT**

*Article 5*  
**Chargeability of FTT**

1. The FTT shall become chargeable for each financial transaction at the moment it occurs.

2. Subsequent cancellation or rectification of a financial transaction shall have no effect on chargeability, except for cases of errors.

*Article 6*  
**Taxable amount of the FTT in the case of financial transactions other than those related to derivatives contracts**

1. In the case of financial transactions other than those referred to in point 2(c) of Article 2(1) and, in respect of derivative contracts, in points 2(a), 2(b) and 2(d) of Article 2(1), the taxable amount shall be everything which constitutes consideration paid or owed, in return for the transfer, from the counterparty or a third party.

2. Notwithstanding paragraph 1, in the cases referred to in that paragraph the taxable amount shall be the market price determined at the time the FTT becomes chargeable:

   (a) where the consideration is lower than the market price;

   (b) in the cases referred to in point 2(b) of Article 2(1).

3. For the purposes of paragraph 2, the market price shall be the full amount that would have been paid as consideration for the financial instrument concerned in a transaction at arm's length.
Article 7
Taxable amount in the case of financial transactions related to derivatives contracts

In the case of financial transactions referred to in point 2(c) of Article 2(1) and, in respect of derivative contracts, in points 2(a), 2(b) and 2(d) of Article 2(1), the taxable amount of the FTT shall be the notional amount referred to in the derivatives contract at the time of the financial transaction.

Where more than one notional amount is identified, the highest amount shall be used for the purpose of determining the taxable amount.

Article 8
Common provisions on taxable amount

For the purposes of Articles 6 and 7, where the value relevant for the determination of the taxable amount is expressed, in whole or in part, in a currency other than that of the taxing participating Member State, the applicable exchange rate shall be the latest selling rate recorded, at the time the FTT becomes chargeable, on the most representative exchange market of the participating Member State concerned, or at an exchange rate determined by reference to that market, in accordance with the rules laid down by that Member State.

Article 9
Application, structure and level of rates

1. The participating Member States shall apply the rates of FTT in force at the time when the tax becomes chargeable.

2. The rates shall be fixed by each participating Member State as a percentage of the taxable amount.

Those rates shall not be lower than:

(a) 0.1% in respect of the financial transactions referred to in Article 6;

(b) 0.01% in respect of financial transactions referred to in Article 7.

3. The participating Member States shall apply the same rate to all financial transactions that fall under the same category pursuant to points (a) and (b) of paragraph 2.

Chapter IV
Payment of the common FTT, related obligations and prevention of evasion, avoidance and abuse

Article 10
Person liable for payment of FTT to the tax authorities

1. In respect of each financial transaction, FTT shall be payable by each financial institution which fulfils any of the following conditions:
(a) it is party to the transaction, acting either for its own account or for the account of another person;

(b) it is acting in the name of a party to the transaction;

(c) the transaction has been carried out on its account.

The FTT shall be payable to the tax authorities of the participating Member State in the territory of which the financial institution is deemed to be established.

2. Where a financial institution acts in the name or for the account of another financial institution only that other financial institution shall be liable to pay FTT.

3. Where the tax due has not been paid within the time limit set out in Article 11(5), each party to a transaction, including persons other than financial institutions shall be jointly and severally liable for the payment of the tax due by a financial institution on account of that transaction.

4. The participating Member States may provide that a person other than the persons liable for payment of FTT referred to in paragraphs 1, 2 and 3 is to be held jointly and severally liable for the payment of the tax.

Article 11
Provisions relating to time limits for the payment of FTT, to obligations intended to ensure payment, to the verification of payment

1. The participating Member States shall lay down registration, accounting, reporting obligations and other obligations intended to ensure that FTT due is effectively paid to the tax authorities.

2. The Commission may, in accordance with Article 16 adopt delegated acts specifying the measures to be taken pursuant to paragraph 1 by the participating Member States.

3. The participating Member States shall adopt measures to ensure that every person liable for payment of FTT submits to the tax authorities a return setting out all the information needed to calculate the FTT that has become chargeable during a period of one month including the total value of the transactions taxed at each rate.

The FTT return shall be submitted by the tenth day of the month following the month during which the FTT became chargeable.

4. The participating Member States shall ensure that financial institutions keep at the disposal of the tax authorities, for at least five years, the relevant data relating to all financial transactions which they have carried out, whether in their own name or in the name of another person, for their own account or for the account of another person.

In specifying that obligation they shall take account, where applicable, of obligations they have already imposed on financial institutions in view of Article 25(2) of Directive 2004/39/EC.

5. The participating Member States shall ensure that any FTT due is paid to the accounts determined by the participating Member States at the following points in time:
(a) at the moment when the tax becomes chargeable in case the transaction is carried out electronically;

(b) within three working days from the moment the tax becomes chargeable in all other cases.

The Commission may adopt implementing acts providing for uniform methods of collection of the FTT due. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 18(2).

6. The participating Member States shall ensure that the tax authorities verify whether the tax has been correctly paid.

**Article 12**

*Prevention of fraud and evasion*

The participating Member States shall adopt measures to prevent tax fraud and evasion.

**Article 13**

*General anti-abuse rule*

1. An artificial arrangement or an artificial series of arrangements which has been put into place for the essential purpose of avoiding taxation and leads to a tax benefit shall be ignored. Participating Member States shall treat these arrangements for tax purposes by reference to their economic substance.

2. For the purposes of paragraph 1 an arrangement means any transaction, scheme, action, operation, agreement, grant, understanding, promise, undertaking or event. An arrangement may comprise more than one step or part.

3. For the purposes of paragraph 1 an arrangement or a series of arrangements is artificial where it lacks commercial substance. In determining whether the arrangement or series of arrangements is artificial, participating Member States shall consider, in particular, whether they involve one or more of the following situations:

   (a) the legal characterisation of the individual steps which an arrangement consists of is inconsistent with the legal substance of the arrangement as a whole;

   (b) the arrangement or series of arrangements is carried out in a manner which would not ordinarily be employed in what is expected to be a reasonable business conduct;

   (c) the arrangement or series of arrangements includes elements which have the effect of offsetting or cancelling each other;

   (d) transactions concluded are circular in nature;

   (e) the arrangement or series of arrangements results in a significant tax benefit but this is not reflected in the business risks undertaken by the taxpayer or its cash flows.

4. For the purposes of paragraph 1, the purpose of an arrangement or series of arrangements consists in avoiding taxation where, regardless of any subjective intentions of the taxpayer, it defeats the object, spirit and purpose of the tax provisions that would otherwise apply.
5. For the purposes of paragraph 1, a given purpose is to be considered essential where any other purpose that is or could be attributed to the arrangement or series of arrangements appears at most negligible, in view of all the circumstances of the case.

6. In determining whether an arrangement or series of arrangements has led to a tax benefit as referred to in paragraph 1, participating Member States shall compare the amount of tax due by a taxpayer, having regard to those arrangement(s), with the amount that the same taxpayer would owe under the same circumstances in the absence of the arrangement(s).

Article 14
Abuse in the case of depositary receipts and similar securities

1. Without prejudice to Article 13, a depositary receipt or similar security issued with the essential purpose of avoiding tax on transactions in the underlying security issued in a participating Member State shall be considered issued in that participating Member State, in case a tax benefit would otherwise arise.

2. For the purposes of paragraph 1, paragraphs 4, 5 and 6 of Article 13 shall apply.

3. In applying paragraph 1, regard shall be had to the extent to which trade in the depositary receipt or similar security has replaced trade in the underlying security. Where such replacement has occurred to a significant extent, it shall be for the person liable for payment of FTT to demonstrate that the depositary receipt or similar security was not issued with the essential purpose of avoiding tax on transactions in the underlying security.

Chapter V
Final provisions

Article 15
Other taxes on financial transactions

The participating Member States shall not maintain or introduce taxes on financial transactions other than the FTT object of this Directive or value-added tax as provided for in Council Directive 2006/112/EC.\(^\text{18}\)

Article 16
Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The delegation of powers referred to in Article 11(2) shall be conferred for an indeterminate period of time from the date referred to in Article 19.

3. The delegation of power referred to in Article 11(2) may be revoked at any time by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of the delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it to the Council.

5. A delegated act adopted pursuant to Article 11(2) shall enter into force only if no objection has been expressed by the Council within a period of 2 months of notification of that act to the Council or if, before the expiry of that period, the Council has informed the Commission that it will not object. That period shall be extended by 2 months at the initiative of the Council.

---

**Article 17**

*Information of the European Parliament*

The European Parliament shall be informed of the adoption of delegated acts by the Commission, of any objection formulated to them, or of the revocation of the delegation of powers by the Council.

---

**Article 18**

*Committee procedure*

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

---

**Article 19**

*Review clause*

Every five years and for the first time by 31 December 2016, the Commission shall submit to the Council a report on the application of this Directive, and, where appropriate, a proposal.

In that report the Commission shall, at least, examine the impact of the FTT on the proper functioning of the internal market, the financial markets and the real economy and it shall take into account the progress on taxation of the financial sector in the international context.

---

**Article 20**

*Transposition*

1. The participating Member States shall adopt and publish, by 30 September 2013 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

   They shall apply those provisions from 1 January 2014.

   When the participating Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their
official publication. The participating Member States shall determine how such reference is to be made.

2. The participating Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 21
Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

Article 22
Addressees

This Directive is addressed to the participating Member States.

Done at Brussels,

For the Council
The President
# ANNEX

## LEGISLATIVE FINANCIAL STATEMENT

### 1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

#### 1.1. Title of the proposal/initiative

| Council Directive implementing enhanced cooperation in the area of financial transaction tax |

#### 1.2. Policy area(s) concerned in the ABM/ABB structure

| 14 05 Taxation Policy |

#### 1.3. Nature of the proposal/initiative

| The proposal relates to a new action |

#### 1.4. Objective(s)

##### 1.4.1. The Commission's multiannual strategic objective targeted by the proposal

| Financial stability |

##### 1.4.2. Specific objectives and ABM/ABB activity(ies) concerned

| Specific Objective No.3 |
| To develop new tax initiatives and actions to support EU policy objectives |
| ABM/ABB activity(ies) concerned |
| Title 14 Taxation and Customs Union; ABB 05 Taxation Policy |

##### 1.4.3. Expected result(s)

| To avoid fragmentation in the internal market for financial services, bearing in mind the increasing number of uncoordinated national tax measures being put in place. |
| To ensure that financial institutions make a fair and substantial contribution to covering the costs of the recent crisis, and to ensure even taxation of the sector vis-à-vis other sectors. |
| To create appropriate disincentives for transactions which do not enhance welfare or the efficiency of financial markets and to complement regulatory measures aimed at avoiding future crisis. |

#### 1.5. Grounds for the proposal/initiative

##### 1.5.1. Requirement(s) to be met in the short or long term

| Contribute to the overall objective of stability in the EU in the aftermath of the financial crisis |
1.5.2. Added value of EU involvement

A fragmentation of financial markets across activities and across borders can only be avoided and equal treatment of financial institutions in the EU and, ultimately, the proper functioning of the internal market, can only be ensured through action at EU level if necessary through enhanced cooperation.

1.5.3. Lessons learned from similar experiences in the past

Introducing a broad-based FTT at national level achieving the three above objectives without serious delocalisation effects has proven to be hardly possible (example of Sweden)."

1.5.4. Coherence and possible synergy with other relevant instruments

Taxes are part of the global resolution framework. Levying FTT would facilitate efforts of budgetary consolidation in the participating Member States. Moreover, the Commission has proposed to use part of the proceeds of the FTT as a future own resource – if they were to be used for financing EU budget, the participating Member States would see their GNI-based national contributions reduced.

1.6. Duration and financial impact

Proposal of unlimited duration

1.7. Management method(s) envisaged

N/A.

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Participating Member States must take appropriate measures for FTT to be levied accurately and timely, which includes measures of verification.

The provision of appropriate measures to ensure payment of the tax and to monitor and verify correct payment is left to participating Member States.

2.2. Management and control system

2.2.1. Risk(s) identified

1. Delays in the transposition of the Directive at participating Member States' level
2. Risk of evasion, avoidance and abuse
3. Risk of relocation

2.2.2. Control method(s) envisaged

Article 11 of the Directive mentions the specific provisions relating to the prevention of evasion,
avoidance and abuse: delegated acts and administrative cooperation in tax matters.

The risks of relocation are tackled by the choice of an appropriate set of tax rates and a broad definition of the taxable base.

2.3. **Measures to prevent fraud and irregularities**

Specify existing or envisaged prevention and protection measures.

3. **ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE**

3.1. **Heading(s) of the multiannual financial framework and expenditure budget line(s) affected**

- Existing expenditure budget lines

In order of multiannual financial framework headings and budget lines.

<table>
<thead>
<tr>
<th>Heading of multiannual financial framework</th>
<th>Budget line</th>
<th>Type of expenditure</th>
<th>Contribution</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number [Description…………..]</td>
<td>Diff./non-diff. from EFTA countries</td>
<td>from candidate countries</td>
<td>within the meaning of Article 18(1)(aa) of the Financial Regulation</td>
</tr>
<tr>
<td>[XX.YY.YY.YY]</td>
<td>Diff./non-diff.</td>
<td>YES/NO</td>
<td>YES/NO</td>
</tr>
</tbody>
</table>

- New budget lines requested

In order of multiannual financial framework headings and budget lines.

<table>
<thead>
<tr>
<th>Heading of multiannual financial framework</th>
<th>Budget line</th>
<th>Type of expenditure</th>
<th>Contribution</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number [Heading……………]</td>
<td>Diff./non-diff. from EFTA countries</td>
<td>from candidate countries</td>
<td>within the meaning of Article 18(1)(aa) of the Financial Regulation</td>
</tr>
<tr>
<td>[XX.YY.YY.YY]</td>
<td>YES/NO</td>
<td>YES/NO</td>
<td>YES/NO</td>
</tr>
</tbody>
</table>

---

1 Diff. = Differentiated appropriations / Non-Diff. = Non-differentiated appropriations.
2 EFTA: European Free Trade Association.
3 Candidate countries and, where applicable, potential candidate countries from the Western Balkans.
3.2. **Estimated impact on expenditure**

3.2.1. **Summary of estimated impact on expenditure**

<table>
<thead>
<tr>
<th>Heading of multiannual financial framework:</th>
<th>Number</th>
<th>[Heading …………………………………………………..]</th>
</tr>
</thead>
</table>

EUR million (to 3 decimal places)

<table>
<thead>
<tr>
<th>DG: &lt;……..&gt;</th>
<th>Year N⁴</th>
<th>Year N+1</th>
<th>Year N+2</th>
<th>Year N+3</th>
<th>… enter as many years as necessary to show the duration of the impact (see point 1.6)</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operational appropriations</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of budget line</td>
<td>Commitments (1)</td>
<td>Year N⁴</td>
<td>Year N+1</td>
<td>Year N+2</td>
<td>Year N+3</td>
<td>TOTAL</td>
</tr>
<tr>
<td></td>
<td>Payments (2)</td>
<td>Year N⁴</td>
<td>Year N+1</td>
<td>Year N+2</td>
<td>Year N+3</td>
<td>TOTAL</td>
</tr>
<tr>
<td>Number of budget line</td>
<td>Commitments (1a)</td>
<td>Year N⁴</td>
<td>Year N+1</td>
<td>Year N+2</td>
<td>Year N+3</td>
<td>TOTAL</td>
</tr>
<tr>
<td></td>
<td>Payments (2a)</td>
<td>Year N⁴</td>
<td>Year N+1</td>
<td>Year N+2</td>
<td>Year N+3</td>
<td>TOTAL</td>
</tr>
<tr>
<td>Appropriations of an administrative nature financed from the envelope for specific programmes⁵</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of budget line</td>
<td>(3)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>TOTAL appropriations for DG &lt;……..&gt;</td>
<td>Commitments =1+1a+3</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>Payments =2+2a+3</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>

| TOTAL operational appropriations | Commitments (4) | Year N⁴ | Year N+1 | Year N+2 | Year N+3 | TOTAL |
| | Payments (5) | Year N⁴ | Year N+1 | Year N+2 | Year N+3 | TOTAL |
| TOTAL appropriations of an administrative nature financed from the envelope for specific programmes | | | | | | |
| TOTAL appropriations under HEADING <……..> of the multiannual financial framework | Commitments =4+ 6 | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A |
| Payments =5+ 6 | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A |

If more than one heading is affected by the proposal / initiative:

---

⁴ Year N is the year in which implementation of the proposal/initiative starts.

⁵ Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former "BA" lines), indirect research, direct research.
### TOTAL operational appropriations

<table>
<thead>
<tr>
<th>Year</th>
<th>From 2017 onwards</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013</td>
<td></td>
</tr>
<tr>
<td>2014</td>
<td></td>
</tr>
<tr>
<td>2015</td>
<td></td>
</tr>
<tr>
<td>2016</td>
<td></td>
</tr>
<tr>
<td>2017 onwards</td>
<td></td>
</tr>
</tbody>
</table>

### TOTAL appropriations of an administrative nature financed from the envelope for specific programmes

<table>
<thead>
<tr>
<th>Year</th>
<th>From 2017 onwards</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013</td>
<td></td>
</tr>
<tr>
<td>2014</td>
<td></td>
</tr>
<tr>
<td>2015</td>
<td></td>
</tr>
<tr>
<td>2016</td>
<td></td>
</tr>
<tr>
<td>2017 onwards</td>
<td></td>
</tr>
</tbody>
</table>

### TOTAL appropriations under HEADINGS 1 to 4 of the multiannual financial framework (Reference amount)

<table>
<thead>
<tr>
<th>Year</th>
<th>From 2017 onwards</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013</td>
<td></td>
</tr>
<tr>
<td>2014</td>
<td></td>
</tr>
<tr>
<td>2015</td>
<td></td>
</tr>
<tr>
<td>2016</td>
<td></td>
</tr>
<tr>
<td>2017 onwards</td>
<td></td>
</tr>
</tbody>
</table>

### TOTAL appropriations under HEADINGS 5 of the multiannual financial framework

<table>
<thead>
<tr>
<th>Year</th>
<th>From 2017 onwards</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013</td>
<td></td>
</tr>
<tr>
<td>2014</td>
<td></td>
</tr>
<tr>
<td>2015</td>
<td></td>
</tr>
<tr>
<td>2016</td>
<td></td>
</tr>
<tr>
<td>2017 onwards</td>
<td></td>
</tr>
</tbody>
</table>

### DG: TAXUD

<table>
<thead>
<tr>
<th>Year</th>
<th>From 2017 onwards</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013</td>
<td></td>
</tr>
<tr>
<td>2014</td>
<td></td>
</tr>
<tr>
<td>2015</td>
<td></td>
</tr>
<tr>
<td>2016</td>
<td></td>
</tr>
<tr>
<td>2017 onwards</td>
<td></td>
</tr>
</tbody>
</table>

### Estimated impact on operational appropriations

- **X** The proposal/initiative does not require the use of operational appropriations

### Estimated impact on appropriations of an administrative nature

**3.2.3.1. Summary**

- **X** The proposal/initiative requires the use of administrative appropriations, as explained below:
<table>
<thead>
<tr>
<th>Year</th>
<th>Year</th>
<th>Year</th>
<th>Year</th>
<th>From</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013</td>
<td>2014</td>
<td>2015</td>
<td>2016</td>
<td>onwards</td>
</tr>
</tbody>
</table>

**HEADING 5 of the multiannual financial framework**

<table>
<thead>
<tr>
<th>Item</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017 onwards</th>
</tr>
</thead>
<tbody>
<tr>
<td>Human resources</td>
<td>0.254</td>
<td>0.762</td>
<td>0.762</td>
<td>0.762</td>
<td>0.762</td>
</tr>
<tr>
<td>Other administrative expenditure</td>
<td>0.040</td>
<td>0.036</td>
<td>0.036</td>
<td>0.036</td>
<td>0.036</td>
</tr>
<tr>
<td>Subtotal HEADING 5 of the multiannual financial framework</td>
<td>0.294</td>
<td>0.798</td>
<td>0.798</td>
<td>0.798</td>
<td>0.798</td>
</tr>
</tbody>
</table>

**Outside HEADING 5 of the multiannual financial framework**

<table>
<thead>
<tr>
<th>Item</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017 onwards</th>
</tr>
</thead>
<tbody>
<tr>
<td>Human resources</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other expenditure of an administrative nature</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Subtotal outside HEADING 5 of the multiannual financial framework</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>

**TOTAL**

<table>
<thead>
<tr>
<th></th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017 onwards</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>0.294</td>
<td>0.798</td>
<td>0.798</td>
<td>0.798</td>
<td>0.798</td>
</tr>
</tbody>
</table>

3.2.3.2. Estimated requirements of human resources

- **X** The proposal/initiative requires the use of human resources, as explained below:

---

6 Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former "BA" lines), indirect research, direct research.
Estimate to be expressed in full amounts (or at most to one decimal place)

<table>
<thead>
<tr>
<th>Establishment plan posts (officials and temporary agents)</th>
<th>Year 2013</th>
<th>Year 2014</th>
<th>Year 2015</th>
<th>Year 2016</th>
<th>From 2017 onwards</th>
</tr>
</thead>
<tbody>
<tr>
<td>14 01 01 01 (Headquarters and Commission’s Representation Offices)</td>
<td>0.254</td>
<td>0.762</td>
<td>0.762</td>
<td>0.762</td>
<td>0.762</td>
</tr>
<tr>
<td>14 01 01 02 (Delegations)</td>
<td>p.m.</td>
<td>p.m.</td>
<td>p.m.</td>
<td>p.m.</td>
<td>p.m.</td>
</tr>
<tr>
<td>14 01 05 01 (Indirect research)</td>
<td>p.m.</td>
<td>p.m.</td>
<td>p.m.</td>
<td>p.m.</td>
<td>p.m.</td>
</tr>
<tr>
<td>10 01 05 01 (Direct research)</td>
<td>p.m.</td>
<td>p.m.</td>
<td>p.m.</td>
<td>p.m.</td>
<td>p.m.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>External personnel (in Full Time Equivalent unit: FTE)</th>
</tr>
</thead>
<tbody>
<tr>
<td>14 01 02 01 (CA, INT, SNE from the &quot;global envelope&quot;)</td>
</tr>
<tr>
<td>14 01 02 02 (CA, INT, JED, LA and SNE in the delegations)</td>
</tr>
<tr>
<td>01 04 yy</td>
</tr>
<tr>
<td>01 05 02 (CA, INT, SNE - Indirect research)</td>
</tr>
<tr>
<td>10 01 05 02 (CA, INT, SNE - Direct research)</td>
</tr>
<tr>
<td>TOTAL</td>
</tr>
</tbody>
</table>

14 is the policy area or budget title concerned.

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

<table>
<thead>
<tr>
<th>Officials and temporary agents</th>
<th>Year 2013</th>
<th>Year 2014</th>
<th>Year 2015</th>
<th>Year 2016</th>
<th>From 2017 onwards</th>
</tr>
</thead>
<tbody>
<tr>
<td>Officials and temporary agents</td>
<td>The current staff allocation of DG TAXUD does not really take the total issue of a common system of FTT into account and will require internal redeployment. Main tasks of the assigned officials will be: to elaborate the technicalities on the practical functioning of the tax so as to help the negotiation process, monitor the subsequent implementation, prepare legal interpretations and working documents, contribute to the delegated acts among others on anti-avoidance/anti-abuse provisions, prepare infringement procedures as appropriate etc.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

3.2.4. Compatibility with the current multiannual financial framework

- X Proposal/initiative is compatible the current multiannual financial framework.

---

7 CA= Contract Agent; INT= agency staff ("Intérimaire"); JED= "Jeune Expert en Délégation" (Young Experts in Delegations); LA= Local Agent; SNE= Seconded National Expert.
8 Under the ceiling for external personnel from operational appropriations (former "BA" lines).
9 Essentially for Structural Funds, European Agricultural Fund for Rural Development (EAFRD) and European Fisheries Fund (EFF).
3.2.5. *Third-party contributions*

- The proposal/initiative does not provide for co-financing by third parties

3.3. **Estimated impact on revenue**

- **X** Proposal/initiative as such has no financial impact on revenue. However, if parts of the proceeds of the FTT were to be used as an own resource, thus reducing the residual GNI-based own resource drawn from the participating Member States, the composition of the revenue sources would be impacted.
A. European Model (*not yet in force*)

I. EU Directive Proposal Enh. Coop. 2013 (English) ........................................5
II. EU Directive Proposal Enh. Coop. 2013 (German) .................................45
IV. Appendix
   i. Bundesrat – Statement 22.03.2013 (German) ........................................114
   ii. European Commission – FTT Presentation 14.02.2013 .............................120
   iii. Technical Fiche – Territoriality of the tax .................................................132
   iv. Official Journal of the European Union – Case C-209/13 .........................136
Vorschlag für eine

RICHTLINIE DES RATES

über die Umsetzung einer Verstärkten Zusammenarbeit im Bereich der
Finanztransaktionssteuer

{SWD(2013) 28 final}
{SWD(2013) 29 final}
1. KONTEXT DES VORSCHLAGS

1.1. Hintergrund und Vorgeschichte


Mit dem Vorschlag wurden im Wesentlichen die folgenden Ziele verfolgt:

– Harmonisierung der Rechtsvorschriften für die indirekte Besteuerung von Finanztransaktionen. Dies ist erforderlich, um das ordnungsgemäße Funktionieren des Binnenmarktes für Transaktionen mit Finanzinstrumenten zu gewährleisten und Verzerrungen des Wettbewerbs zwischen Finanzinstrumenten, Akteuren und Märkten in der Europäischen Union zu verhindern;

– Gewährleistung, dass die Finanzinstitute einen angemessenen und substanziellen Beitrag zu den Kosten der jüngsten Krise leisten und dass in steuerlicher Hinsicht die gleichen Ausgangsbedingungen geschaffen werden wie sie für andere Wirtschaftszweige bestehen;

– Schaffung geeigneter Hemmnisse für Transaktionen, die der Effizienz der Finanzmärkte nicht förderlich sind, womit regulatorische Maßnahmen zur Vermeidung künftiger Krisen ergänzt werden sollen.

Angesichts der äußerst hohen Mobilität eines Großteils der potenziell zu besteuernnden Transaktionen kam es und kommt es darauf an, Wettbewerbsverzerrungen infolge einseitiger

1 KOM(2011) 594 endg.
2 Die Finanzinstitute haben entweder direkt oder indirekt massiv von den Rettungs- und Bürgschaftsmaßnahmen profitiert, die im Zeitraum 2008 bis 2012 vom europäischen Steuerzahler (vor-)finanziert wurden. Diese Maßnahmen sowie die Tatsache, dass die Wirtschaftstätigkeit wegen der zunehmenden Unsicherheit bezüglich der Stabilität des Wirtschafts- und Finanzsystems insgesamt ins Stocken geraten ist, haben in ganz Europa die Lage der Staatshaushalte verschlechtert (um mehr als 20 % des BIP). Außerdem sind die meisten Finanz- und Versicherungsdienstleistungen von der Mehrwertsteuer befreit.

Der Vorschlag sah daher – um das ordnungsgemäße Funktionieren des Binnenmarkts sicherzustellen – die Harmonisierung der Steuern der Mitgliedstaaten auf Finanztransaktionen vor und erläuterte die Grundzüge eines gemeinsamen Systems für eine Finanztransaktionssteuer auf breiter Basis in der EU.


Der Vorschlag und seine Varianten wurden auf den Ratstagungen ausführlich erörtert, zunächst unter polnischem Vorsitz und dann beschleunigt unter dänischem Vorsitz. Wegen grundlegender und unüberbrückbarer Differenzen zwischen den Mitgliedstaaten konnte die erforderliche Einstimmigkeit jedoch nicht erzielt werden.


Daraus ergibt sich, dass die Ziele eines gemeinsamen Finanztransaktionssteuersystems, wie sie nach dem ursprünglichen Vorschlag der Kommission im Rat erörtert wurden, von der Union in ihrer Gesamtheit nicht innerhalb eines vertretbaren Zeitraums verwirklicht werden können.

Nachdem elf Mitgliedstaaten (Belgien, Deutschland, Estland, Griechenland, Spanien, Frankreich, Italien, Österreich, Portugal, Slowenien und die Slowakei) entsprechende Anträge gestellt hatten,
legte die Kommission dem Rat einen Vorschlag für einen Beschluss über die Ermächtigung zu einer Verstärkten Zusammenarbeit im Bereich der Finanztransaktionssteuer⁷ vor.


In diesem neuen Kontext der Verstärkten Zusammenarbeit ist der oben genannte Kommissionsvorschlag von 2011 gegenstandslos, und die Kommission gedenkt ihn daher zurückzuziehen.


1.2. Ziele des Vorschlags


In dieser Situation haben mehrere Mitgliedstaaten begonnen, zusätzliche Formen der Besteuerung des Finanzsektors einzuführen, während es in anderen Mitgliedstaaten bereits spezielle Steuerregelungen für Finanztransaktionen gab. Die derzeitige Situation hat folgende unerwünschte Auswirkungen:

– Angesichts der wachsenden Zahl unkoordinierter steuerlicher Maßnahmen der Mitgliedstaaten entsteht eine Fragmentierung der steuerlichen Behandlung im Binnenmarkt für Finanzdienstleistungen, was EU-weit zu Wettbewerbsverzerrungen

⁸ KOM(2011) 510 endg.
⁹ KOM(2011) 739 endg.
zwischen Finanzinstrumenten, Akteuren und Märkten sowie Doppelbesteuerung oder doppelter Nichtbesteuerung führen kann;

– die Finanzinstitute leisten keinen angemessenen und substanziellen Beitrag zu den Kosten der jüngsten Krise, und es ist nicht sichergestellt, dass in steuerlicher Hinsicht die gleichen Ausgangsbedingungen bestehen wie für andere Wirtschaftszweige;

– die Steuerpolitik trägt weder dazu bei, von Transaktionen abzuhalten, die der Effizienz der Finanzmärkte nicht förderlich sind, aber der Realwirtschaft Mittel zugunsten der Finanzinstitute entziehen und damit übermäßige Investitionen in nicht wohlstands fördernde Tätigkeiten auslösen könnten, noch ergänzt sie laufende regulatorische und Aufsichtsmaßnahmen zur Vermeidung künftiger Krisen im Bereich der Finanzdienstleistungen.


Im Beschluss über die Ermächtigung zu einer Verstärkten Zusammenarbeit wird festgestellt, dass alle Anforderungen des Vertrags an eine solche Zusammenarbeit, insbesondere in Bezug auf die Zuständigkeiten, Rechte und Pflichten der nicht teilnehmenden Mitgliedstaaten, erfüllt sind. Im vorliegenden Vorschlag wird die Ausgestaltung dieser Zusammenarbeit im Einklang mit den Vertragsbestimmungen festgelegt.

1.3. Grundkonzept und Bezug zum ursprünglichen Vorschlag der Kommission

Der vorliegende Vorschlag stützt sich auf den ursprünglichen Kommissionsvorschlag von 2011 und bewahrt dessen wesentliche Grundsätze. Einige Anpassungen wurden jedoch vorgenommen, und zwar:

– Dem neuen Rahmen der Verstärkten Zusammenarbeit wird Rechnung getragen; vor allem bedeutet dies, dass das „Steuergebiet für die Finanztransaktionssteuer“ nur die teilnehmenden Mitgliedstaaten umfasst, dass sichergestellt ist, dass in einem teilnehmenden Mitgliedstaat getätigte Transaktionen, die gemäß dem ursprünglichen Vorschlag steuerpflichtig wären, dies auch bleiben, und dass die Richtlinie 2008/7/EG des Rates vom 12. Februar 2008 betreffend die indirekten Steuern auf die Ansammlung von Kapital10, deren Änderung im ursprünglichen Vorschlag vorgeschlagen worden war, unberührt bleibt;

– einige der vorgeschlagenen Bestimmungen werden präzisiert;

– die Maßnahmen zur Bekämpfung der Steuerumgehung werden weiter gestärkt; bewerkstelligt wird dies durch Vorschriften, wonach sich die Besteuerung auf das „Ausgabeprinzip“ als letztes Mittel stützt, das das „Ansässigkeitsprinzip“ – das das Hauptprinzip bleibt – ergänzt. Mit dieser Ergänzung wird insbesondere den Belangen jener

Mitgliedstaaten Rechnung getragen, die auf die Notwendigkeit hingewiesen haben, Steuerumgehungsmaßnahmen, Wettbewerbsverzerrungen und Verlagerungen in andere Steuergebiete vorzubeugen. Tatsächlich macht es die Kombination des Ansässigkeitsprinzips mit Elementen des Ausgabeprinzips weniger vorteilhaft, Tätigkeiten und Einrichtungen aus den Steuergebieten für die Finanztransaktionssteuer zu verlagern, da der Handel mit nach dem Ausgabeprinzip der Steuer unterliegenden Finanzinstrumenten, die in den Steuergebieten für die Finanztransaktionssteuer ausgegeben werden, in jedem Fall steuerpflichtig sein wird.

2. ERGEBNISSE DER KONSULTATIONEN DER INTERESSIERTEN KREISE UND DER FOLGENABSCHÄTZUNGEN

2.1. Externe Konsultation und externes Fachwissen


2.2. Folgenabschätzung

Die Dienststellen der Kommission haben eine Folgenabschätzung durchgeführt, die mit ihrem ursprünglichen Vorschlag vom 28. September 2011 vorgelegt wurde. Weitere technische Analysen zu diesem Vorschlag wurden auf der Website der Kommission\textsuperscript{11} veröffentlicht. Wie von den

\textsuperscript{11} http://ec.europa.eu/taxation_customs/taxation/other_taxes/financial_sector/index_de.htm


3. **RECHTLICHE ASPEKTE DES VORSCHLAGS**

3.1. **Rechtsgrundlage**


3.2. **Subsidiarität und Verhältnismäßigkeit**

Die Harmonisierung der Rechtsvorschriften über die Besteuerung von Finanztransaktionen, die für das ordnungsgemäße Funktionieren des Binnenmarkts und die Verhinderung von Wettbewerbsverzerrungen erforderlich ist, kann – auch wenn sie nur für die teilnehmenden Mitgliedstaaten gilt – nur durch einen Rechtsakt der Union, d. h. eine einheitliche Festlegung der Grundzüge einer Finanztransaktionssteuer, erreicht werden. Es bedarf gemeinsamer Vorschriften, um unangemessene Verlagerungen von Transaktionen oder Standortwechsel von Marktteilnehmern und die Substitution von Finanzinstrumenten zu verhindern.

Zudem könnte eine einheitliche Festlegung eine wichtige Rolle dabei spielen, die gegenwärtige Zersplitterung des Binnenmarkts – auch im Hinblick auf die verschiedenen Produkte des Finanzsektors, die oft als Substitute verwendet werden – zu verringern. Ohne Harmonisierung führt die Finanztransaktionssteuer zur Steuerarbitrage und möglicherweise zu Doppel- oder Nichtheuersteuerung. Dies würde nicht nur verhindern, dass Finanztransaktionen unter gleichen

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\(^{12}\) ABl. L 22 vom 25.1.2013, S. 11.


Eine einheitliche Rahmenregelung für eine Finanztransaktionssteuer wahrt somit die Grundsätze der Subsidiarität und der Verhältnismäßigkeit gemäß Artikel 5 EUV. Das Ziel der vorgeschlagenen Richtlinie lässt sich von den Mitgliedstaaten nicht ausreichend verwirklichen; es ist daher – im Hinblick auf das ordnungsgemäße Funktionieren des Binnenmarktes – besser auf Unionsebene zu verwirklichen, nötigenfalls durch eine Verstärkte Zusammenarbeit.


3.3. Der Vorschlag im Einzelnen

3.3.1. Kapitel I (Gegenstand und Begriffsbestimmungen)

Dieses Kapitel definiert den Gegenstand der vorgeschlagenen Richtlinie über die Umsetzung der Verstärkten Zusammenarbeit im Bereich der Finanztransaktionssteuer. Zudem enthält das Kapitel die für diesen Vorschlag wesentlichen Begriffsbestimmungen.

3.3.2. Kapitel II (Anwendungsbereich des gemeinsamen Finanztransaktionssteuersystems)

Dieses Kapitel definiert die wesentlichen Elemente des vorgeschlagenen gemeinsamen Finanztransaktionssteuersystems im Rahmen der Verstärkten Zusammenarbeit. Die Finanztransaktionssteuer ist auf die Besteuerung des Bruttowerts der Transaktionen (vor der Aufrechnung) ausgerichtet.

Der Anwendungsbereich der Steuer ist weit gefasst, da sie Transaktionen mit Finanzinstrumenten aller Art betreffen soll, die oft als Substitute füreinander verwendet werden. So werden Instrumente erfasst, die auf dem Kapitalmarkt handelbar sind, Geldmarktinstrumente (mit Ausnahme von Zahlungsinstrumenten), Anteile an Organismen für gemeinsame Anlagen – die Organismen für gemeinsame Anlagen in Wertpapieren (OGAW) und alternative Investmentfonds (AIF)13 umfassen

– sowie Derivatkontrakte. Zudem gilt die Steuer nicht nur für den Handel in organisierten Märkten wie etwa geregelten Märkten, für multilaterale Handelssysteme oder systematische Internalisierer, sondern auch für andere Handelsformen einschließlich des außerbörslichen Handels. Sie erfasst ferner nicht nur die Übertragung von Eigentum, sondern auch die Übernahme einer Verpflichtung und spiegelt also wider, ob die betroffene Partei das mit einem Finanzinstrument verbundene Risiko übernimmt („Kauf und Verkauf“).

Wenn Finanzinstrumente, deren Kauf oder Verkauf steuerpflichtig ist, Gegenstand einer Übertragung zwischen getrennten Unternehmen einer Gruppe sind, ist diese Übertragung steuerpflichtig, auch wenn es sich nicht um einen Kauf oder Verkauf handelt.


Zur Verhinderung von Steuerumgehung ist zudem jede wesentliche Änderung einer steuerpflichtigen Finanztransaktion als eine neue steuerpflichtige Finanztransaktion von der Art der ursprünglichen Finanztransaktion anzusehen. Vorgeschlagen wird zudem ein nicht erschöpfendes Verzeichnis dessen, was als wesentliche Änderung gelten kann.

Führt zudem ein Derivatkontrakt zur Lieferung von Finanzinstrumenten, ist nicht nur der Derivatkontrakt, sondern auch die Lieferung dieser Finanzinstrumente steuerpflichtig, sofern alle anderen Voraussetzungen für die Besteuerung erfüllt sind.


Vor allem Richtlinie 2004/39/EG (siehe vorherige Anmerkung).
Ausfallrisikos in den Markt verlagern, sowie Versicherungsverbrieffungen, die Risiken anderer Art, z. B. das Übernahmerisiko, in den Markt verlagern.


Die vorgeschlagene Richtlinie sieht weitere technische Einzelheiten zur Berechnung des Wertes der Finanztransaktionen und der genannten Durchschnittswerte im Hinblick auf Einrichtungen vor, die nur aufgrund des Werts der von ihnen durchgeführten Finanztransaktionen als Finanzinstitute angesehen werden können, und regelt Situationen, in denen diese Einrichtungen nicht mehr als Finanzinstitute einzustufen sind.

Zentrale Gegenparteien (CCP), Zentralverwahrer (CSD), internationale Zentralverwahrer (ICSD) sowie Mitgliedstaaten und mit der öffentlichen Schuldenverwaltung betraute öffentliche Einrichtungen bei Ausübung dieser Funktion gelten nicht als Finanzinstitute, soweit sie keiner eigentlichen Handelstätigkeit nachgehen. Zudem spielen sie für ein effizientes und transparenteres Funktionieren der Finanzmärkte und für die ordnungsgemäße Verwaltung der öffentlichen Schulden eine Schlüsselrolle. Bestimmte Pflichten in Bezug auf die Gewährleistung der Entrichtung der Steuer an die Steuerbehörden und die Überprüfung der Entrichtung sollten jedoch aufgrund ihrer zentralen Bedeutung beibehalten werden.

In räumlicher Hinsicht folgt die Anwendung der vorgeschlagenen Finanztransaktionssteuer und der Besteuerungsrechte der teilnehmenden Mitgliedstaaten den Vorschriften in Artikel 4 („Ansässigkeit“). Im Wesentlichen stützt sich dieser Artikel auf das „Ansässigkeitsprinzip“, das hauptsächlich zur Stärkung von Hemmnissen für Verlagerungen um Elemente des Ausgabeprinzips ergänzt wurde (Einzelheiten dazu unten).

Damit eine Finanztransaktion in den teilnehmenden Mitgliedstaaten steuerpflichtig ist, muss eine Transaktionspartei gemäß den Kriterien in Artikel 4 im Hoheitsgebiet eines teilnehmenden Mitgliedstaats ansässig sein. Die Steuer wird in dem teilnehmenden Mitgliedstaat erhoben, in dessen Hoheitsgebiet ein Finanzinstitut ansässig ist, sofern dieses Institut Partei der Finanztransaktion ist und entweder für eigene oder fremde Rechnung oder im Namen einer Transaktionspartei handelt.

Sind die Finanzinstitute, die Transaktionsparteien sind oder im Namen solcher Parteien handeln, gemäß den Kriterien in Artikel 4 im Hoheitsgebiet verschiedener teilnehmender Mitgliedstaaten ansässig, so ist jeder dieser Mitgliedstaaten befugt, die Transaktionen nach den Sätzen zu besteuern, die er im Einklang mit dem vorliegenden Vorschlag erlassen hat. Sind die betreffenden Einrichtungen im Hoheitsgebiet eines Staates ansässig, der nicht ein teilnehmender Mitgliedstaat ist, unterliegt die Transaktion nicht der Finanztransaktionssteuer in einem teilnehmenden Mitgliedstaat, es sei denn, eine der Transaktionsparteien ist in einem teilnehmenden Mitgliedstaat ansässig; in diesem Fall gilt das nicht in einem teilnehmenden Mitgliedstaat ansässige Finanzinstitut als in diesem teilnehmenden Mitgliedstaat ansässig und die Transaktion ist dort steuerpflichtig.

werden, die aufgrund einer besonderen Genehmigung des von der Transaktion betroffenen Mitgliedstaats tätig sind.


Alle vorgenannten Kriterien unterliegen einer allgemeinen Vorschrift für den Fall, dass der Steuerschuldner nachweist, dass zwischen der wirtschaftlichen Substanz der Transaktion und dem Hoheitsgebiet eines teilnehmenden Mitgliedstaats kein Zusammenhang besteht. In diesem Fall gilt das Finanzinstitut oder die sonstige Person nicht als in einem teilnehmenden Mitgliedstaat ansässig.

Aufgrund der gewählten Verknüpfungsfaktoren und der Kombination mit der oben genannten allgemeinen Vorschrift ist insgesamt sichergestellt, dass eine Besteuerung nur bei einem hinreichenden Zusammenhang zwischen der Transaktion und dem Hoheitsgebiet, in dem die Finanztransaktionssteuer gilt, möglich ist. Wie bei den bestehenden EU-Rechtsvorschriften im Bereich der indirekten Steuern bleiben Territorialitätsprinzipien in vollem Umfang gewahrt.

3.3.3. Kapitel III (Steuerspruch, Bemessungsgrundlage und Steuersätze)


Da sich Transaktionen mit Derivaten und mit anderen Finanzinstrumenten als Derivaten ihrer Art und ihren Merkmalen nach unterscheiden, bedürfen sie unterschiedlicher Bemessungsgrundlagen.


In den Mitgliedstaaten wären gegebenenfalls besondere Vorschriften zur Verhinderung von Steuerbetrug und Steuerhinterziehung erforderlich, und es wird eine allgemeine Vorschrift zur Bekämpfung des Missbrauchs vorgeschlagen (siehe auch Abschnitt 3.3.4). Diese Vorschrift könnte zum Beispiel in Fällen Anwendung finden, in denen der Nominalbetrag künstlich geteilt ist – so könnte etwa der Nominalbetrag eines Swaps durch einen willkürlich großen Faktor geteilt sein, während alle Zahlungen mit diesem Faktor multipliziert werden. Der Cashflow des Instruments bliebe damit unverändert, die Bemessungsgrundlage aber würde willkürlich verkleinert.

Bei Transaktionen, bei denen die Bemessungsgrundlage ganz oder teilweise in einer anderen Währung als der des teilnehmenden Mitgliedstaats der Steuerfestsetzung ausgedrückt wird, sind besondere Vorschriften zur Bestimmung der Bemessungsgrundlage erforderlich.


Die Steuersätze sollten auch den Unterschieden bei den Verfahren zur Bestimmung der Bemessungsgrundlage Rechnung tragen.

Allgemein gilt, dass die vorgeschlagenen Mindeststeuersätze (oberhalb deren die Mitgliedstaaten Gestaltungsspielräume haben) hoch genug sind, um die mit dem vorliegenden Vorschlag angestrebte Harmonisierung zu erreichen. Zugleich sind sie niedrig genug, um die Verlagerungsrisiken gering zu halten.

3.3.4. Kapitel IV (Entrichtung der Finanztransaktionssteuer, damit verbundene Pflichten und Verhinderung von Hinterziehung, Umgehung und Missbrauch)

Der vorliegende Vorschlag legt den Anwendungsbereich der Finanztransaktionssteuer in Bezug auf Finanztransaktionen fest, bei denen ein im Hoheitsgebiet des betreffenden teilnehmenden Mitgliedstaats ansässiges Finanzinstitut Transaktionspartei ist (und entweder für eigene oder fremde Rechnung handelt) oder im Namen einer Transaktionspartei handelt. Tatsächlich führen Finanzinstitute den Großteil der Transaktionen an den Finanzmärkten durch, und die Finanztransaktionssteuer sollte ihr Hauptaugenmerk auf den Finanzsektor und nicht die Bürger legen. Daher sollten diese Finanzinstitute die Steuer den Steuerbehörden der teilnehmenden Mitgliedstaaten schulden, in deren Hoheitsgebiet sie als ansässig gelten. Handelt ein Finanzinstitut im Namen oder für Rechnung eines anderen Finanzinstituts, sollte jedoch zur Vermeidung
steuerlicher Kaskadeneffekte lediglich das andere Finanzinstitut die Finanztransaktionssteuer entrichten.

Zudem soll möglichst weitgehend sichergestellt werden, dass die Finanztransaktionssteuer tatsächlich entrichtet wird. Gemäß diesem Vorschlag haftet daher in Fällen, in denen die aufgrund einer Transaktion geschuldete Finanztransaktionssteuer nicht fristgerecht entrichtet wird, jede Vertragspartei dieser Transaktion gesamtschuldnerisch für die Entrichtung der Steuer. Zudem sollten die teilnehmenden Mitgliedstaaten vorsehen können, dass andere Personen gesamtschuldnerisch für die Entrichtung der Steuer haften, auch in Fällen, in denen eine Transaktionspartei ihren Sitz außerhalb des Hoheitsgebiet der teilnehmenden Mitgliedstaaten hat.


Die teilnehmenden Mitgliedstaaten sollten in Bezug auf Registrierungs-, Rechnungslegungs- und Berichtspflichten sowie auf andere Pflichten geeignete Maßnahmen ergreifen, um sicherzustellen, dass die Finanztransaktionssteuer ordnungs- und fristgemäß erhoben und an die Steuerbehörden entrichtet wird. In dieser Hinsicht wird vorgeschlagen, der Kommission die Befugnis zur Festlegung weiterer Einzelheiten zu übertragen. Dies ist erforderlich, um harmonisierte Maßnahmen zu gewährleisten, mit denen die Befolgungskosten für die Wirtschaftsbeteiligten möglichst gering gehalten werden, und jederzeit rasche technische Anpassungen zu ermöglichen. Hier sollten sich die teilnehmenden Mitgliedstaaten an den bestehenden und in Vorbereitung befindlichen EU-Rechtshinweisen für die Finanzmärkte orientieren, in denen Pflichten für die Berichterstattung und die Datenverwaltung in Bezug auf Finanztransaktionen vorgesehen sind.

Durch die vorgeschlagene Richtlinie werden die Mitgliedstaaten zudem verpflichtet, Maßnahmen zur Verhinderung von Steuerbetrug und Steuerhinterziehung zu ergreifen.


vorgeschlagene Richtlinie vor, der Kommission die Befugnis zum Erlass entsprechender Durchführungsmaßnahmen zu übertragen.

Um die Steuerverwaltung zu erleichtern, könnten die teilnehmenden Mitgliedstaaten nationale (öffentlich zugängliche) Register für die Finanztransaktionssteuer einführen. In der Praxis könnten sie sich die bestehende Kodifizierung zunutze machen, z. B. die Unternehmensidentifikationscodes (BIC/ISO 9362) für Finanz- und Nichtfinanzinstitute, die Klassifizierung von Finanzinstrumenten (CFI/ISO 10962) für Finanzinstrumente und den Marktidentifikationscode (MIC/ISO 10383) für die verschiedenen Märkte.

Abgesehen von den Diskussionen zur Festlegung einheitlicher Erhebungsverfahren im einschlägigen Ausschuss könnte die Kommission regelmäßige Sachverständigentreffen organisieren, um nach Annahme der Richtlinie mit den teilnehmenden Mitgliedstaaten über die Funktionsweise der Richtlinie zu diskutieren, und zwar insbesondere darüber, wie gewährleistet werden soll, dass die Steuer ordnungsgemäß entrichtet und dies überprüft wird, sowie über Fragen im Zusammenhang mit der Bekämpfung von Steuerhinterziehung, Steuernachzahldung und Missbrauch.


Zusammen mit dem der Finanztransaktionssteuer zugrunde liegenden Konzept (umfangreicher Anwendungsbereich, weit gefasstes Ansässigkeitsprinzip, keine Ausnahmen) können mit den vorstehend erläuterten Vorschriften Steuerhinterziehung, Steuerumgehung und Missbrauch auf ein Mindestmaß beschränkt werden.

3.3.5. Kapitel V (Schlussbestimmungen)


16 ABl. L 64 vom 11.3.2011, S. 1.
17 ABl. L 84 vom 31.3.2010, S. 1.
18 Mit bestimmten Ausnahmen im Fall der Richtlinie 2011/16/EU, die hier aber nicht relevant sind.
19 http://www.oecdilibrary.org/docserv/edownload/fulltext/2311331e.pdf?expires=1309623132&id=id&accname=ocid194935&checksum=37A9732331E7939B3EE154BB7EC53C41


**4. AUSWIRKUNGEN AUF DEN HAUSHALT**


Der Europäische Rat hat auf seiner Tagung vom 7. und 8. Februar 2013 die teilnehmenden Mitgliedstaaten ersucht zu prüfen, ob die Finanztransaktionssteuer die Grundlage für eine neue Eigenmittelskategorie für den EU-Haushalt werden könnte.

\textsuperscript{21} KOM(2011) 510 endg.
\textsuperscript{22} KOM(2011) 739 endg.

[Links zu Verweisen in der Text]
Vorschlag für eine
RICHTLINIE DES RATES
über die Umsetzung einer Verstärkten Zusammenarbeit im Bereich der
Finanztransaktionssteuer

DER RAT DER EUROPÄISCHEN UNION —

gestützt auf den Vertrag über die Arbeitsweise der Europäischen Union, insbesondere auf Artikel 113,

gestützt auf den Beschluss 2013/52/EU des Rates vom 22. Januar 2013 über die Ermächtigung zu einer Verstärkten Zusammenarbeit im Bereich der Finanztransaktionssteuer¹,

auf Vorschlag der Europäischen Kommission,

nach Zuleitung des Entwurfs des Gesetzgebungsakts an die nationalen Parlamente,

nach Stellungnahme des Europäischen Parlaments²,

nach Stellungnahme des Europäischen Wirtschafts- und Sozialausschusses³,

gemäß einem besonderen Gesetzgebungsverfahren,

in Erwägung nachstehender Gründe:

(1) Im Jahr 2011 stellte die Kommission fest, dass auf allen Ebenen eine Debatte über eine zusätzliche Besteuerung des Finanzsektors im Gang war. Diese Debatte entspringt dem Wunsch sicherzustellen, dass der Finanzsektor angemessen und in beträchtlichem Umfang an den Kosten der Krise beteiligt und in Zukunft gegenüber anderen Wirtschaftszweigen angemessen besteuert wird, die Finanzinstitute von übermäßig riskanten Tätigkeiten abzuhalten, regulatorische Maßnahmen, mit denen künftige Krisen verhindert werden sollen, zu ergänzen und zusätzliche Einnahmen für die öffentlichen Haushalte oder für besondere politische Ziele zu generieren.

(2) Mit dem Beschluss 2013/52/EU hat der Rat eine Verstärkte Zusammenarbeit zwischen Belgien, Deutschland, Estland, Griechenland, Spanien, Frankreich, Italien, Österreich, Portugal, Slowenien und der Slowakei (nachstehend „teilnehmende Mitgliedstaaten“) im Bereich der Finanztransaktionssteuer genehmigt.

(3) Damit angesichts der äußerst hohen Mobilität der meisten relevanten Finanztransaktionen einseitige Maßnahmen der teilnehmenden Mitgliedstaaten nicht zu Verzerrungen führen und

¹ ABl. L 22 vom 25.1.2013, S. 11.
² ABl. C … vom …, S. .
³ ABl. C … vom …, S. .

(4) Um die Funktionsweise des Binnenmarkts zu verbessern und insbesondere Verzerrungen zwischen den beteiligten Mitgliedstaaten zu vermeiden, muss die Finanztransaktionssteuer auf ein breites Spektrum an Finanzinstituten und Transaktionen, auf den Handel mit einer Vielzahl an Finanzinstrumenten einschließlich strukturierteter Produkte sowohl in geregelten Märkten als auch im außerordentlichen Handel und auf den Abschluss aller Derivatkontrakte sowie auf wesentliche Änderungen der betreffenden Vorgänge Anwendung finden.


(6) Zur Gewährleistung des effizienten und transparenten Funktionierens der Finanzmärkte oder der öffentlichen Schuldenverwaltung sind bestimmte Einrichtungen von dem Anwendungsbereich der Finanztransaktionssteuer auszunehmen, da sie Funktionen erfüllen, die nicht als eigentliche Handelstätigkeit, sondern eher als den Handel ermöglichehende oder die öffentliche Schuldenverwaltung unterstützende Tätigkeit anzusehen sind. Einrichtungen, die aufgrund ihrer zentralen Bedeutung für das Funktionieren der Finanzmärkte oder die öffentliche Schuldenverwaltung von der Finanztransaktionssteuer ausgenommen sind, sollten jedoch den Vorschriften unterliegen, mit denen die ordnungsgemäße Entrichtung der Steuer an die Steuerbehörden und die Überprüfung der Zahlungen sichergestellt werden.


(8) Mit Ausnahme des Abschlusses oder der wesentlichen Änderung von Derivatkontrakten sollten der Handel in Primärmarkten und für Bürger und Unternehmen wichtige Transaktionen wie der Abschluss von Versicherungsverträgen, Hypothekendarlehen, Verbraucherkredite oder Zahlungsdienste nicht der Finanztransaktionssteuer unterliegen, damit die Kapitalbeschaffung für öffentliche Haushalte und Unternehmen nicht erschwert wird und es keine Auswirkungen auf private Haushalte gibt.

(10) Die Entstehung des Steueranspruchs und die Bemessungsgrundlage sollten zur Vermeidung von Verzerrungen im Binnenmarkt harmonisiert werden.

(11) Das Entstehen des Steueranspruchs sollte nicht unangemessen aufgeschoben werden und mit dem Zeitpunkt, zu dem die Transaktion durchgeführt wird, zusammenfallen.


(13) Im Interesse der Gleichbehandlung sollte innerhalb jeder Transaktionskategorie, also auf den Handel mit anderen Finanzinstrumenten als Derivaten und wesentliche Änderungen der betreffenden Vorgänge einerseits und den Kauf/Verkauf, die Übertragung, den Austausch und den Abschluss von Derivatkontrakten und wesentliche Änderungen dieser Vorgänge andererseits, nur ein einziger Steuersatz angewendet werden.

(14) Damit sich die Besteuerung auf den Finanzsektor und nicht die Bürger konzentriert und da Finanzinstitute die überwiegende Mehrheit der Transaktionen in den Finanzmärkten durchführen, sollte die Steuer von diesen Instituten entrichtet werden, unabhängig davon, ob sie in eigenem oder fremdem Namen, für eigene oder fremde Rechnung handeln.


(16) Die Mindeststeuersätze sollten hoch genug sein, um die mit der gemeinsamen Finanztransaktionssteuer angestrebte Harmonisierung zu erreichen. Zugleich müssen sie niedrig genug sein, um die Verlagerungsrisiken gering zu halten.

(17) Es sollte vermieden werden, dass eine Partei einer einzigen Transaktion mehr als einmal besteuert wird. Handelt ein Finanzinstitut im Namen oder für Rechnung eines anderen Finanzinstituts, sollte lediglich das andere Finanzinstitut die Finanztransaktionssteuer entrichten.

(18) Die teilnehmenden Mitgliedstaaten sollten verpflichtet sein, die erforderlichen Maßnahmen zu ergreifen, damit die Finanztransaktionssteuer ordnungs- und fristgemäß erhoben wird.

(19) Die teilnehmenden Mitgliedstaaten sollten verpflichtet sein, angemessene Maßnahmen zu ergreifen, um Steuerbetrug und Steuerhinterziehung zu verhindern.

(20) Zur Vermeidung von Steuerumgehung und Missbrauch durch künstliche Systeme muss eine allgemeine Vorschrift zur Verhinderung von Missbrauch vorgesehen werden. Um den besonderen Problemen bei Aktienzertifikaten und vergleichbaren Wertpapieren zu begegnen, bedarf es zudem einer auf den gleichen Grundsätzen beruhenden Spezialvorschrift.

(21) Damit in bestimmten steuertechnischen Bereichen im Hinblick auf Registrierungs-, Rechnungslegungs- und Berichtspflichten sowie auf andere Pflichten Durchführungsbestimmungen erlassen werden können, die sicherstellen, dass die den Steuerbehörden geschuldete Finanztransaktionssteuer tatsächlich entrichtet wird, und damit diese Durchführungsbestimmungen rechtzeitig entsprechend angepasst werden können, sollte der Kommission die Befugnis übertragen werden, zur Festlegung der zu diesem Zweck erforderlichen Maßnahmen Rechtsakte gemäß Artikel 290 des Vertrags über die Arbeitsweise der Europäischen Union zu erlassen. Es kommt insbesondere darauf an, dass die Kommission bei ihren Vorarbeiten angemessene Konsultationen unter Einbeziehung der Sachverständigenbene durchführt. Bei der Vorbereitung und Ausarbeitung delegierter Rechtsakte sollte die Kommission gewährleisten, dass die einschlägigen Dokumente dem Rat rechtzeitig und auf angemessene Weise übermittelt werden.


(23) Da die Marktteilnehmer eine gewisse Zeit für die Anpassung an die neuen Vorschriften benötigen werden, sollte zwischen der Annahme der für die Einhaltung dieser Richtlinie erforderlichen einzelstaatlichen Rechtsvorschriften und der Anwendung dieser Vorschriften ein angemessener Zeitraum vorgesehen werden.

(24) Da das Ziel der vorliegenden Richtlinie, nämlich die Harmonisierung der wesentlichen Merkmale einer Finanztransaktionssteuer in den teilnehmenden Mitgliedstaaten auf EU-Ebene, von diesen Mitgliedstaaten nicht ausreichend verwirklicht werden kann und – im

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Hinblick auf das ordnungsgemäße Funktionieren des Binnenmarktes – besser auf Unionsebene zu verwirklichen ist, kann die Union im Einklang mit dem in Artikel 5 des Vertrags über die Europäische Union niedergelegten Subsidiaritätsprinzip tätig werden. Nach dem in demselben Artikel niedergelegten Grundsatz der Verhältnismäßigkeit geht diese Richtlinie nicht über das für die Erreichung dieses Ziels erforderliche Maß hinaus —

HAT FOLGENDE RICHTLINIE ERLASSEN:

Kapitel I
Gegenstand und Begriffsbestimmungen

Artikel 1
Gegenstand

1. Mit der vorliegenden Richtlinie wird die durch den Beschluss 2013/52/EU genehmigte Verstärkte Zusammenarbeit durch Festlegung von Bestimmungen für eine harmonisierte Finanztransaktionssteuer (FTS) umgesetzt.

2. Die teilnehmenden Mitgliedstaaten erheben eine Finanztransaktionssteuer gemäß dieser Richtlinie.

Artikel 2
Begriffsbestimmungen

1. Für die Zwecke dieser Richtlinie gelten die folgenden Begriffsbestimmungen:

   (1) „Teilnehmende Mitgliedstaaten“ sind Mitgliedstaaten, die zum Zeitpunkt der Entstehung des Steueranspruchs gemäß dieser Richtlinie an einer Verstärkten Zusammenarbeit im Bereich der Finanztransaktionssteuer gemäß dem Beschluss 2013/52/EU oder auf der Grundlage eines gemäß Artikel 331 Absatz 1 Unterabsatz 2 oder 3 AEUV gefassten Beschlusses teilnehmen;

   (2) „Finanztransaktionen“ sind die folgenden Transaktionen:

   a) Kauf und Verkauf eines Finanzinstruments vor der Aufrechnung (Netting) oder Abrechnung;

   b) zwischen den Unternehmen einer Gruppe vorgenommene Übertragung des Rechts, wie ein Eigentümer über Finanzinstrumente zu verfügen, sowie alle gleichwertigen Vorgänge, bei denen das mit dem Finanzinstrument verbundene Risiko übertragen wird, sofern diese Fälle nicht unter Buchstabe a fallen;

   c) Abschluss von Derivatkontrakten vor Aufrechnung oder Abrechnung;

   d) Austausch von Finanzinstrumenten;

   e) Pensionsgeschäfte, umgekehrte Pensionsgeschäfte, Wertpapierverleih- und -leihgeschäfte;
(3) „Finanzinstrumente“ sind Finanzinstrumente im Sinne von Anhang I Abschnitt C der Richtlinie 2004/39/EG des Europäischen Parlaments und des Rates\(^6\) sowie strukturierte Produkte;

(4) „Derivatkontrakte“ sind Finanzinstrumente im Sinne von Anhang I Abschnitt C Nummern 4 bis 10 der Richtlinie 2004/39/EG, durchgeführt durch die Artikel 38 und 39 der Verordnung (EG) Nr. 1287/2006 der Kommission\(^7\);

(5) „Pensionsgeschäfte“ und „umgekehrte Pensionsgeschäfte“ sind Vereinbarungen im Sinne von Artikel 3 Absatz 1 Buchstabe m der Richtlinie 2006/49/EG des Europäischen Parlaments und des Rates\(^8\);

(6) „Wertpapierverleihgeschäfte“ und „Wertpapierleihgeschäfte“ sind Geschäfte im Sinne von Artikel 3 der Richtlinie 2006/49/EG;


(8) „Finanzinstitute“ sind die folgenden Institute:

a) eine Wertpapierfirma im Sinne von Artikel 4 Absatz 1 Nummer 1 der Richtlinie 2004/39/EG;

b) ein geregelter Markt im Sinne von Artikel 4 Absatz 1 Nummer 14 der Richtlinie 2004/39/EG und sämtliche andere organisierte Handelsplätze oder -plattformen;

c) ein Kreditinstitut im Sinne von Artikel 4 Nummer 1 der Richtlinie 2006/48/EG;

d) ein Versicherungs- und Rückversicherungsunternehmen im Sinne von Artikel 13 der Richtlinie 2009/138/EG des Europäischen Parlaments und des Rates\(^10\);

e) ein Organismus für gemeinsame Anlagen in Wertpapieren (OGAW) im Sinne von Artikel 1 Absatz 2 der Richtlinie 2009/65/EG des Europäischen Parlaments und des Rates\(^11\) und eine Verwaltungsgesellschaft im Sinne von Artikel 2 Absatz 1 Buchstabe b der Richtlinie 2009/65/EG;

f) ein Pensionsfonds oder eine Einrichtung der betrieblichen Altersversorgung im Sinne von Artikel 6 Buchstabe a der Richtlinie 2003/41/EG des Europäischen Parlaments und des Rates\(^12\), ein Anlageverwalter eines solchen Fonds oder einer solchen Einrichtung;

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\(^7\) ABl. L 241 vom 2.9.2006, S. 1.
\(^8\) ABl. L 177 vom 30.6.2006, S. 201.
\(^12\) ABl. L 235 vom 23.9.2003, S. 10.
g) ein alternativer Investmentfonds (AIF) und ein Verwalter alternativer Investmentfonds (AIFM) im Sinne von Artikel 4 der Richtlinie 2011/61/EU des Europäischen Parlaments und des Rates\textsuperscript{13};

h) eine Zweckgesellschaft, auf die die verbreiteten Forderungen übertragen werden, im Sinne von Artikel 4 Nummer 44 der Richtlinie 2006/48/EG;

i) eine Zweckgesellschaft im Sinne von Artikel 13 Nummer 26 der Richtlinie 2009/138/EG;

j) andere Unternehmen, Institute, Einrichtungen oder Personen, die eine oder mehrere der folgenden Tätigkeiten ausüben, sofern der jährliche Durchschnittswert ihrer finanziellen Transaktionen über fünfzig Prozent ihres durchschnittlichen Nettojahresumsatzes gemäß Artikel 28 der Richtlinie 78/660/EWG des Rates\textsuperscript{14} ausmacht:

i) Tätigkeiten gemäß Anhang I Nummern 1, 2, 3 und 6 der Richtlinie 2006/48/EG;

ii) Handel für eigene oder fremde Rechnung oder im Namen von Kunden in Bezug auf sämtliche Finanzinstrumente;

iii) Erwerb von Beteiligungen an Unternehmen;

iv) Beteiligung an oder Ausgabe von Finanzinstrumenten;

v) Erbringung von Dienstleistungen im Zusammenhang mit den in Ziffer (iv) angeführten Tätigkeiten;

\textsuperscript{(9)} „Zentrale Gegenpartei“ (CCP) ist eine CCP im Sinne von Artikel 2 Absatz 1 der Verordnung (EU) Nr. 648/2012 des Europäischen Parlaments und des Rates\textsuperscript{15};

\textsuperscript{(10)} „Aufrechnung“ (Netting) ist eine Aufrechnung im Sinne von Artikel 2 Buchstabe k der Richtlinie 98/26/EG des Europäischen Parlaments und des Rates\textsuperscript{16};

\textsuperscript{(11)} „Ein Finanzinstrument im Sinne von Anhang I Abschnitt C der Richtlinie 2004/39/EG und ein strukturiertes Produkt, das im Hoheitsgebiet eines teilnehmenden Mitgliedstaats ausgegeben wird“ ist ein Finanzinstrument, das von einer Person ausgegeben wird, die ihren eingetragenen Sitz bzw. im Fall einer natürlichen Person ihren ständigen Wohnsitz oder, falls kein ständiger Wohnsitz festgestellt werden kann, ihren gewöhnlichen Aufenthaltsort in diesem Staat hat;

\textsuperscript{(12)} „Nominalbetrag“ ist der zugrunde liegende nominelle Betrag, der zur Berechnung von Zahlungen herangezogen wird, die auf einem bestimmten Derivatkontrakt beruhen;

2. Bei jedem der in Absatz 1 Nummer 2 Buchstaben a, b, c und e aufgeführten Vorgänge wird davon ausgegangen, dass er eine einzige Finanztransaktion umfasst. Bei jedem Austausch gemäß Buchstabe d wird davon ausgegangen, dass er zwei Finanztransaktionen umfasst. Jede wesentliche Änderung eines Vorgangs gemäß Absatz 1 Nummer 2 Buchstaben a bis e

\textsuperscript{13} ABl. L 174 vom 1.7.2011, S. 1.
\textsuperscript{14} ABl. L 222 vom 14.8.1978, S. 11.
\textsuperscript{15} ABl. L 201 vom 27.7.2012, S. 1.
\textsuperscript{16} ABl. L 166 vom 11.6.1998, S. 45.
gilt als neuer Vorgang der gleichen Art wie der ursprüngliche Vorgang. Eine Änderung wird insbesondere als wesentlich erachtet, wenn diese den Austausch von mindestens einer Partei betrifft, sollte das Ziel oder der Umfang des Vorgangs, einschließlich des zeitlichen Umfangs, oder die vereinbarte Gegenleistung verändert werden, oder wenn der ursprüngliche Vorgang bei Abschluss gemäß der Änderung eine höhere Steuer nach sich gezogen hätte.

3. Für die Zwecke von Absatz 1 Nummer 8 Buchstabe j gilt:

   a) der in dieser Nummer genannte jährliche Durchschnittswert wird entweder auf der Grundlage der drei vorangegangenen Kalenderjahre oder, im Falle eines kürzeren Zeitraums der früheren Tätigkeit, dieses kürzeren Zeitraums berechnet;

   b) der Wert jeder Transaktion gemäß Artikel 6 bildet die Steuerbemessungsgrundlage im Sinne dieses Artikels;

   c) der Wert jeder Transaktion gemäß Artikel 7 wird auf 10 % der Steuerbemessungsgrundlage im Sinne dieses Artikels festgesetzt;

   d) übersteigt der jährliche Durchschnittswert der Finanztransaktionen in zwei aufeinanderfolgenden Kalenderjahren nicht fünfzig Prozent des durchschnittlichen Netto-Jahresumsatzes gemäß Artikel 28 der Richtlinie 78/660/EWG, sind die betroffenen Unternehmen, Institute, Einrichtungen oder Personen berechtigt, darum zu ersuchen, nicht oder nicht länger als Finanzinstitut zu gelten.

Kapitel II
Anwendungsbereich des gemeinsamen Finanztransaktionssteuersystems

Artikel 3
Anwendungsbereich

1. Diese Richtlinie findet auf alle Finanztransaktionen Anwendung, sofern zumindest eine an der Transaktion beteiligte Partei im Hoheitsgebiet eines teilnehmenden Mitgliedstaates ansässig ist und ein im Hoheitsgebiet eines teilnehmenden Mitgliedstaates ansässiges Finanzinstitut eine Transaktionspartei ist, die entweder für eigene oder fremde Rechnung oder im Namen einer Transaktionspartei handelt.

2. Diese Richtlinie gilt mit Ausnahme von Artikel 10 Absätze 3 und 4 sowie Artikel 11 Absätze 1 bis 4 nicht für die folgenden Einrichtungen:

   a) zentrale Gegenparteien (CCP), sofern sie die Funktion einer CCP ausüben;

   b) Zentralverwahrer (CSD – Central Securities Depositories) und internationale Zentralverwahrer (ICSD – International Central Securities Depositories), sofern sie die Funktion eines CSD oder ICSD ausüben;

   c) Mitgliedstaaten, soweit sie öffentliche Schulden verwalten, sowie mit der Verwaltung öffentlicher Schulden betraute öffentliche Einrichtungen, soweit sie diese Funktion ausüben.
3. Unterliegt eine Einrichtung gemäß Absatz 2 nicht der Steuer, so steht dies der Steuerbarkeit ihrer Gegenpartei nicht entgegen.

4. Diese Richtlinie gilt nicht für die folgenden Transaktionen:

   a) Primärmarktgeschäfte gemäß Artikel 5 Buchstabe c der Verordnung (EG) Nr. 1287/2006, einschließlich der Emissionsübernahme und anschließenden Zuweisung von Finanzinstrumenten im Rahmen ihrer Ausstellung;

   b) Transaktionen mit den Zentralbanken der Mitgliedstaaten;

   c) Transaktionen mit der Europäischen Zentralbank;

   d) Transaktionen mit der Europäischen Finanzstabilisierungsfazilität (EFSF) und dem Europäischen Stabilitätsmechanismus, Transaktionen mit der Europäischen Union im Zusammenhang mit einer im Rahmen von Artikel 143 AEUV gewährten Finanzhilfe und einer im Rahmen von Artikel 122 Absatz 2 AEUV gewährten Finanzhilfe sowie Transaktionen mit der Europäischen Union und der Europäischen Atomgemeinschaft im Zusammenhang mit der Verwaltung ihres Vermögens;

   e) unbeschadet der Buchstaben c und d Transaktionen mit der Europäischen Union, der Europäischen Atomgemeinschaft, der Europäischen Zentralbank, der Europäischen Investitionsbank und von der Europäischen Union oder der Europäischen Atomgemeinschaft geschaffenen Einrichtungen, auf die das Protokoll über die Vorrechte und Befreiungen der Europäischen Union anwendbar ist, und zwar in den Grenzen und zu den Bedingungen, die in diesem Protokoll, den Abkommen über ihren Sitz oder anderen Übereinkünften zur Umsetzung des Protokolls festgelegt sind;

   f) Transaktionen mit anderen als den in den Buchstaben c, d und e genannten internationalen Organisationen oder Einrichtungen, die als solche von den Behörden des Gaststaates anerkannt sind, und zwar in den Grenzen und zu den Bedingungen, die in den internationalen Übereinkommen über die Gründung dieser Einrichtungen oder in den Abkommen über ihren Sitz festgelegt sind;

   g) Transaktionen im Rahmen von Umstrukturierungen gemäß Artikel 4 der Richtlinie 2008/7/EG des Rates.\textsuperscript{17}

\textit{Artikel 4
Ansässigkeit}

1. Für die Zwecke dieser Richtlinie gilt ein Finanzinstitut als im Hoheitsgebiet eines teilnehmenden Mitgliedstaates ansässig, wenn eine der folgenden Bedingungen erfüllt ist:

   a) ihm wurde von den zuständigen Behörden des betreffenden Mitgliedstaates die Genehmigung erteilt, als solches zu handeln, in Bezug auf durch diese Genehmigung abgedeckte Transaktionen;

\textsuperscript{17} ABl. L 46 vom 21.2.2008, S. 11.
b) ihm wurde die Genehmigung erteilt bzw. es wurde anderweitig berechtigt, bezüglich des Hoheitsgebiets dieses Mitgliedstaates vom Ausland aus als Finanzinstitut tätig zu sein, in Bezug auf durch diese Genehmigungen oder Berechtigungen abgedeckte Transaktionen;

c) es hat seinen eingetragenen Sitz in diesem Mitgliedstaat;

d) es hat seine feste Anschrift oder, falls keine feste Anschrift festgestellt werden kann, seinen gewöhnlichen Sitz in diesem Mitgliedstaat;

e) es hat eine Zweigstelle in diesem Mitgliedstaat, in Bezug auf von dieser Zweigstelle durchgeführte Transaktionen;

f) es ist eine für eigene oder fremde Rechnung oder im Namen einer Transaktionspartei handelnde Partei einer Finanztransaktion mit einem anderen gemäß den Buchstaben a, b, c, d oder e in diesem Mitgliedstaat ansässigen Finanzinstitut oder mit einer im Hoheitsgebiet dieses Mitgliedstaates ansässigen Partei, die kein Finanzinstitut ist;


2. Eine Person, die kein Finanzinstitut ist, gilt als in einem teilnehmenden Mitgliedstaat ansässig, wenn eine der folgenden Bedingungen erfüllt ist:

a) sie hat ihren eingetragenen Sitz bzw. im Fall einer natürlichen Person ihren ständigen Wohnsitz oder, falls kein ständiger Wohnsitz festgestellt werden kann, ihren gewöhnlichen Aufenthaltsort in diesem Staat;

b) sie unterhält eine Zweigstelle in diesem Staat, in Bezug auf die von dieser Zweigstelle durchgeführten Finanztransaktionen;


3. Ungeachtet der Absätze 1 und 2 gilt ein Finanzinstitut oder eine Person, die kein Finanzinstitut ist, im Sinne dieser Absätze nicht als ansässig, wenn der Schuldner der Finanztransaktionssteuer nachweist, dass zwischen der wirtschaftlichen Substanz der Transaktion und dem Hoheitsgebiet eines teilnehmenden Mitgliedstaates kein Zusammenhang besteht.

4. Ist mehr als jeweils eine der in den Absätzen 1 und 2 angeführten Bedingungen erfüllt, dient die erste vom Beginn der Auflistung in absteigender Reihenfolge erfüllte Bedingung zur Bestimmung des teilnehmenden Mitgliedstaates der Ansässigkeit.
Kapitel III
Steueranspruch, Steuerbemessungsgrundlage und Steuersätze der gemeinsamen Finanztransaktionssteuer

Artikel 5
Finanztransaktionssteueranspruch

1. Der Finanztransaktionssteueranspruch entsteht für jede Finanztransaktion zum Zeitpunkt ihrer Durchführung.

2. Eine anschließende Stornierung oder Berichtigung einer Finanztransaktion hat, sofern kein Fehler vorliegt, keine Auswirkung auf den Steueranspruch.

Artikel 6
Steuerbemessungsgrundlage bei Finanztransaktionen, die nicht mit Derivatkontrakten im Zusammenhang stehen

1. Bei anderen als den in Artikel 2 Absatz 1 Nummer 2 Buchstabe c und in Bezug auf Derivatkontrakte in Artikel 2 Absatz 1 Nummer 2 Buchstaben a, b und d genannten Finanztransaktionen setzt sich die Steuerbemessungsgrundlage aus allen Komponenten zusammen, die die von der Gegenpartei oder einer dritten Partei für die Übertragung entrichtete oder geschuldete Gegenleistung darstellen.

2. Ungeachtet des Absatzes 1 gilt in den in diesem Absatz genannten Fällen der zum Zeitpunkt der Entstehung des Anspruchs auf Finanztransaktionssteuer ermittelte Marktpreis als Steuerbemessungsgrundlage:
   a) wenn die Gegenleistung geringer ist als der Marktpreis;
   b) in den in Artikel 2 Absatz 1 Nummer 2 Buchstabe b genannten Fällen.

3. Für die Zwecke des Absatzes 2 wird unter dem Marktpreis der Gesamtbetrag verstanden, der als Gegenleistung für das betreffende Finanzinstrument bei einer Transaktion zwischen voneinander unabhängigen Geschäftspartnern gezahlt worden wäre.

Artikel 7
Steuerbemessungsgrundlage bei Finanztransaktionen im Zusammenhang mit Derivatkontrakten

Bei in Artikel 2 Absatz 1 Nummer 2 Buchstabe c und in Bezug auf Derivatkontrakte in Artikel 2 Absatz 1 Nummer 2 Buchstaben a, b und d genannten Finanztransaktionen ist die Steuerbemessungsgrundlage der im Derivatkontrakt zum Zeitpunkt der Finanztransaktion genannte Nominalbetrag.

Wird mehr als ein Nominalbetrag festgestellt, dient der höchste Betrag zur Festsetzung der Steuerbemessungsgrundlage.
**Artikel 8**

_Gemeinsame Bestimmungen für die Steuerbemessungsgrundlage_

Wird der für die Festsetzung der Steuerbemessungsgrundlage relevante Wert für die Zwecke von Artikel 6 und Artikel 7 ganz oder teilweise in einer anderen Währung als der des teilnehmenden Mitgliedstaats der Besteuerung ausgedrückt, gilt als Umrechnungskurs der letzte Verkaufskurs, der zu dem Zeitpunkt des Entstehens des Finanztransaktionssteueranspruchs an dem repräsentativsten Devisenmarkt des betreffenden teilnehmenden Mitgliedstaats verzeichnet wurde, oder ein Kurs, der mit Bezug auf diesen Devisenmarkt entsprechend den von dem betreffenden Mitgliedstaat festgelegten Regeln festgesetzt wird.

**Artikel 9**

_Anwendung, Struktur und Höhe der Steuersätze_

1. Die teilnehmenden Mitgliedstaaten wenden die zum Zeitpunkt der Entstehung des Steueranspruchs geltenden Finanztransaktionssteuersätze an.

2. Jeder teilnehmende Mitgliedstaat legt die Steuersätze durch Angabe eines prozentualen Anteils der Steuerbemessungsgrundlage fest.

Diese Steuersätze dürfen nicht niedriger sein als:

a) 0,1 % in Bezug auf die in Artikel 6 genannten Finanztransaktionen;

b) 0,01 % in Bezug auf die in Artikel 7 genannten Finanztransaktionen.

3. Die teilnehmenden Mitgliedstaaten wenden auf alle Finanztransaktionen, die gemäß Absatz 2 Buchstaben a und b unter dieselbe Kategorie fallen, dieselben Steuersätze an.

**Kapitel IV**

_Entrichtung der Finanztransaktionssteuer, damit verbundene Verpflichtungen und Verhinderung von Hinterziehung, Umgehung und Missbrauch_

**Artikel 10**

_Zur Entrichtung der Finanztransaktionssteuer an die Steuerbehörden verpflichtete Personen_

1. Jedes Finanzinstitut schuldet für jede Finanztransaktion die Finanztransaktionssteuer, sofern es eine der folgenden Bedingungen erfüllt:

a) es ist Transaktionspartei und handelt entweder für eigene oder fremde Rechnung;

b) es handelt im Namen einer Transaktionspartei oder

c) die Transaktion wurde für seine Rechnung durchgeführt.

Die Finanztransaktionssteuer ist an die Steuerbehörden des teilnehmenden Mitgliedstaats zu entrichten, in dessen Hoheitsgebiet das Finanzinstitut als ansässig gilt.
2. Handelt ein Finanzinstitut im Namen oder für Rechnung eines anderen Finanzinstituts, schuldet lediglich das andere Finanzinstitut die Finanztransaktionssteuer.

3. Wurde die geschuldete Steuer nicht innerhalb der in Artikel 11 Absatz 5 festgelegten Frist entrichtet, haften alle Parteien einer Transaktion einschließlich anderer Personen als Finanzinstitute gesamtschuldnerisch für die Entrichtung der Steuer, die aufgrund dieser Transaktion von einem Finanzinstitut geschuldet wird.

4. Die teilnehmenden Mitgliedstaaten können vorsehen, dass andere als die in den Absätzen 1, 2 und 3 genannten Personen, die die Finanztransaktionssteuer schulden, gesamtschuldnerisch für die Entrichtung der Steuer haften.

Artikel 11
Bestimmungen in Bezug auf die Fristen für die Entrichtung der Finanztransaktionssteuer, die Pflichten, durch die die Entrichtung sichergestellt wird, und die Überprüfung der Entrichtung

1. Die teilnehmenden Mitgliedstaaten legen Registrierungs-, Rechnungslegungs- und Berichtspflichten sowie andere Pflichten fest, die sicherstellen, dass die geschuldete Finanztransaktionssteuer tatsächlich an die Steuerbehörden entrichtet wird.

2. Die Kommission kann gemäß Artikel 16 delegierte Rechtsakte zur Festlegung der von den teilnehmenden Mitgliedstaaten gemäß Absatz 1 zu ergreifenden Maßnahmen erlassen.

3. Die teilnehmenden Mitgliedstaaten ergreifen Maßnahmen, um dafür Sorge zu tragen, dass jede Person, die die Finanztransaktionssteuer schuldet, bei den Steuerbehörden eine Steuererklärung einreicht, in der alle Angaben enthalten sind, die zur Berechnung der innerhalb eines Monats angefallenen Finanztransaktionssteuer benötigt werden, einschließlich des Gesamtwerts der zu den jeweiligen Steuersätzen besteuerten Transaktionen.

Die Finanztransaktionssteuererklärung wird jeweils bis zum Zehnten des Monats eingereicht, der auf den Monat, in dem der Steueranspruch entstanden ist, folgt.

4. Die teilnehmenden Mitgliedstaaten stellen sicher, dass die Finanzinstitute die relevanten Daten in Bezug auf sämtliche Finanztransaktionen, die sie durchgeführt haben, mindestens für die Dauer von fünf Jahren zur Verfügung der Steuerbehörden halten, unabhängig davon, ob die Finanzinstitute dabei in eigenem oder fremdem Namen oder für eigene oder fremde Rechnung gehandelt haben.

Bei der Ausgestaltung dieser Pflicht tragen sie gegebenenfalls den Pflichten Rechnung, die den Finanzinstituten bereits gemäß Artikel 25 Absatz 2 der Richtlinie 2004/39/EG auferlegt sind.

5. Die teilnehmenden Mitgliedstaaten stellen sicher, dass die geschuldete Finanztransaktionssteuer zu folgenden Zeitpunkten auf die von den teilnehmenden Mitgliedstaaten festgelegten Konten eingezahlt wird:

a) im Fall von elektronisch durchgeführten Transaktionen zum Zeitpunkt der Entstehung des Steueranspruchs;

b) in allen anderen Fällen innerhalb von drei Arbeitstagen nach Entstehen des Steueranspruchs.
Die Kommission kann Durchführungsrechtsakte erlassen, um einheitliche Methoden für die Erhebung der geschuldeten Finanztransaktionssteuer festzulegen. Diese Durchführungsrechtsakte werden nach dem in Artikel 18 Absatz 2 genannten Prüfverfahren angenommen.

6. Die teilnehmenden Mitgliedstaaten stellen sicher, dass die Steuerbehörden überprüfen, ob die Steuer ordnungsgemäß entrichtet wurde.

**Artikel 12**

Verhinderung von Betrug und Hinterziehung

Die teilnehmenden Mitgliedstaaten ergreifen Maßnahmen zur Verhinderung von Betrug und Steuerhinterziehung.

**Artikel 13**

Allgemeine Vorschrift zur Verhinderung von Missbrauch


3. Für die Zwecke der Absatzes 1 gilt eine Vorkehrung oder eine Reihe von Vorkehrungen als künstlich, wenn sie keine wirtschaftliche Substanz hat. Bei der Entscheidung, ob eine Vorkehrung oder eine Reihe von Vorkehrungen künstlich ist, prüfen die teilnehmenden Mitgliedstaaten, ob eine oder mehrere der folgenden Situationen vorliegt:

   a) die rechtlichen Merkmale der einzelnen Schritte, aus denen eine Vorkehrung besteht, stehen nicht im Einklang mit der rechtlichen Substanz der Vorkehrung als Ganzes;

   b) die Vorkehrung oder die Reihe von Vorkehrungen wird auf eine Weise ausgeführt, die bei einem als vernünftig anzusehenden Geschäftsgebaren in der Regel nicht angewandt würde;

   c) die Vorkehrung oder die Reihe von Vorkehrungen umfasst Elemente, die die Wirkung haben, einander auszugleichen oder zu aufzuheben;

   d) die Transaktionen sind zirkulär;

   e) die Vorkehrung oder die Reihe von Vorkehrungen führt zu einem bedeutenden steuerlichen Vorteil, der sich aber nicht in den vom Steuerpflichtigen eingegangenen unternehmerischen Risiken oder seinen Cashflows widerspiegelt.

4. Für die Zwecke des Absatzes 1 hat eine Vorkehrung oder eine Reihe von Vorkehrungen dann den Zweck, die Besteuerung zu vermeiden, wenn sie ungeachtet der subjektiven Absichten des Steuerpflichtigen den Gegenstand, Geist und Zweck der Steuervorschriften unterläuft, die andernfalls gelten würden.
Für die Zwecke des Absatzes 1 ist ein Zweck dann als wesentlich anzusehen, wenn jeder andere Zweck, der der Vorkehrung oder der Reihe von Vorkehrungen zugeschrieben wird oder werden könnte, in Anbetracht aller Umstände des Falls allenfalls als vernachlässigbar gilt.

Bei der Entscheidung, ob eine Vorkehrung oder eine Reihe von Vorkehrungen zu einem steuerlichen Vorteil gemäß Absatz 1 geführt hat, vergleichen die teilnehmenden Mitgliedstaaten den Steuerbetrag, den der Steuerpflichtige angesichts dieser Vorkehrung(en) schuldet, mit dem Betrag, den derselbe Steuerpflichtige unter denselben Umständen ohne diese Vorkehrung(en) schulden würde.

**Artikel 14**

*Missbrauch bei Aktienzertifikaten und vergleichbaren Wertpapieren*

1. Unbeschadet des Artikels 13 gilt ein Aktienzertifikat oder vergleichbares Wertpapier, das im Wesentlichen mit dem Ziel ausgegeben wird, die Steuer auf Transaktionen mit dem zugrunde liegenden Wertpapier zu umgehen, als in diesem teilnehmenden Mitgliedstaat ausgegeben, sofern andernfalls ein Steuervorteil entstünde.

2. Für die Zwecke von Absatz 1 gilt Artikel 13 Absätze 4, 5 und 6.


**Kapitel V**

**Schlussbestimmungen**

**Artikel 15**

*Andere Steuern auf Finanztransaktionen*

Die teilnehmenden Mitgliedstaaten dürfen keine anderen Steuern auf Finanztransaktionen beibehalten oder einführen als die durch diese Richtlinie geregelte Finanztransaktionssteuer oder die durch die Richtlinie 2006/112/EG des Rates18 geregelte Mehrwertsteuer.

**Artikel 16**

*Ausübung der Befugnisübertragung*

1. Die Befugnis zum Erlass delegierter Rechtsakte wird der Kommission unter den Bedingungen dieses Artikels übertragen.

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2. Die Befugnisübertragung gemäß Artikel 11 Absatz 2 gilt ab dem in Artikel 19 genannten Datum für einen unbefristeten Zeitraum.


4. Sobald die Kommission einen delegierten Rechtsakt erlässt, übermittelt sie ihn dem Rat.

5. Ein gemäß Artikel 11 Absatz 2 erlassener delegierter Rechtsakt tritt nur in Kraft, wenn der Rat binnen zwei Monaten ab dem Tag der Mitteilung keine Einwände gegen ihn erhebt oder wenn der Rat der Kommission vor Ablauf dieser Frist mitgeteilt hat, dass er nicht die Absicht hat, Einwände zu erheben. Auf Initiative des Rates kann diese Frist um zwei Monate verlängert werden.

Artikel 17
Unterrichtung des Europäischen Parlaments

Das Europäische Parlament wird von der Annahme eines delegierten Rechtsakts durch die Kommission, von gegen diesen vorgebrachten Einwänden oder von dem Widerruf der Befugnisübertragung durch den Rat in Kenntnis gesetzt.

Artikel 18
Ausschussverfahren


Artikel 19
Überprüfungsklausel


In diesem Bericht überprüft die Kommission mindestens die Auswirkungen der Finanztransaktionssteuer auf das ordnungsgemäße Funktionieren des Binnenmarktes, die Finanzmärkte und die Realwirtschaft und berücksichtigt die Fortschritte bei der Besteuerung des Finanzsektors im internationalen Kontext.

Artikel 20
Umsetzung

1. Die teilnehmenden Mitgliedstaaten erlassen und veröffentlichen spätestens am 30. September 2013 die erforderlichen Rechts- und Verwaltungsvorschriften, um dieser
Richtlinie nachzukommen. Sie teilen der Kommission unverzüglich den Wortlaut dieser Rechtsvorschriften mit.


Bei Erlass dieser Vorschriften nehmen die teilnehmenden Mitgliedstaaten in den Vorschriften selbst oder durch einen Hinweis bei der amtlichen Veröffentlichung auf diese Richtlinie Bezug. Die teilnehmenden Mitgliedstaaten regeln die Einzelheiten dieser Bezugsannahme.

2. Die teilnehmenden Mitgliedstaaten teilen der Kommission den Wortlaut der wichtigsten innerstaatlichen Rechtsvorschriften mit, die sie auf dem unter diese Richtlinie fallenden Gebiet erlassen.

   Artikel 21
   Inkrafttreten

Diese Richtlinie tritt am zwanzigsten Tag nach ihrer Veröffentlichung im *Amtsblatt der Europäischen Union* in Kraft.

   Artikel 22
   Adressaten

Diese Richtlinie ist an die teilnehmenden Mitgliedstaaten gerichtet.

Geschehen zu Brüssel am […]

*Im Namen des Rates*
*Der Präsident*
## ANHANG

### FINANZBOGEN ZU RECHTSAKTEN

1. **RAHMEN DES VORSCHLAGS/DER INITIATIVE**

1.1. **Bezeichnung des Vorschlags/der Initiative**

| Richtlinie des Rates über die Umsetzung einer Verstärkten Zusammenarbeit im Bereich der Finanztransaktionssteuer |

1.2. **Politikbereich(e) in der ABM/ABB-Struktur**

| 14 05 Steuerpolitik |

1.3. **Art des Vorschlags/der Initiative**

| Der Vorschlag betrifft eine **neue Maßnahme**. |

1.4. **Ziele**

1.4.1. **Mit dem Vorschlag verfolgte mehrjährige strategische Ziele der Kommission**

| Finanzstabilität |

1.4.2. **Einzelziele und ABM/ABB-Tätigkeiten**

| **Einzelziel Nr. 3** |
| Erarbeitung neuer Steuerinitiativen und -maßnahmen zur Förderung von Zielen der EU-Politik |
| **ABM/ABB-Tätigkeiten** |
| Titel 14 Steuern und Zollunion, ABB 05 Steuerpolitik |

1.4.3. **Erwartete Ergebnisse und Auswirkungen**

| Vermeidung einer Zersplitterung des Binnenmarktes für Finanzdienstleistungen angesichts der steigenden Zahl unkoordinierter einzelstaatlicher Steuermaßnahmen |
| Sicherstellung einer angemessenen und substanziellen Beteiligung der Finanzinstitute an den Kosten der jüngsten Krise und Angleichung der Besteuerung des Finanzsektors an andere Wirtschaftszweige |
| Schaffung von angemessenen Anreizregelungen zur Unterbindung von Transaktionen, die dem Wohlstand und der Effizienz der Finanzmärkte nicht förderlich sind, und zur Ergänzung regulatorischer Maßnahmen zur Vermeidung künftiger Krisen |
1.5. Begründung des Vorschlags/der Initiative

1.5.1. Kurz- oder langfristig zu deckender Bedarf

Beitrag zum übergeordneten Ziel der Schaffung von Stabilität in der EU nach der Finanzkrise

1.5.2. Mehrwert durch die Intervention der EU

Allein das Vorgehen auf EU-Ebene, gegebenenfalls durch eine Verstärkte Zusammenarbeit, kann eine Zersplitterung der Finanzmärkte nach Tätigkeiten und Staaten verhindern und die Gleichbehandlung der Finanzinstitute innerhalb der EU und damit das ordnungsgemäße Funktionieren des Binnenmarkts sicherstellen.

1.5.3. Aus früheren ähnlichen Maßnahmen gewonnene wesentliche Erkenntnisse

Die Einführung einer umfassenden Finanztransaktionssteuer auf nationaler Ebene, mit der die drei oben genannten Ziele erreicht werden sollen, ohne schwerwiegende Standortverlagerungen hervorzurufen, hat sich als nahezu unmöglich erwiesen (Beispiel Schweden).

1.5.4. Kohärenz mit anderen Finanzierungsinstrumenten sowie mögliche Synergieeffekte

Steuern sind Teil des weltweiten Krisenmanagements. Die Erhebung der Finanztransaktionssteuer würde die Bemühungen der teilnehmenden Mitgliedstaaten um Haushaltskonsolidierung unterstützen. Zudem hat die Kommission vorgeschlagen, die Einnahmen aus der Finanztransaktionssteuer teilweise als Eigenmittel zur Finanzierung des EU-Haushalts zu verwenden, womit sich die auf der Grundlage des Bruttonationaleinkommens berechneten Beiträge der teilnehmenden Mitgliedstaaten verringern würden.

1.6. Dauer der Maßnahme und ihrer finanziellen Auswirkungen

Vorschlag mit unbefristeter Geltungsdauer

1.7. Vorgeschlagene Methode(n) der Mittelverwaltung

N/A.

2. VERWALTUNGSMASSNAHMEN

2.1. Monitoring und Berichterstattung

Die teilnehmenden Mitgliedstaaten müssen geeignete Maßnahmen ergreifen, um sicherzustellen, dass die Finanztransaktionssteuer ordnungs- und fristgemäß erhoben wird, einschließlich Maßnahmen zur Überprüfung.

Die Festlegung geeigneter Maßnahmen zur Sicherstellung der Entrichtung der Steuer und zur Überwachung und Überprüfung der ordnungsgemäßen Entrichtung obliegt den teilnehmenden Mitgliedstaaten.
2.2. Verwaltungs- und Kontrollsyste

2.2.1. Ermittelte Risiken

1. Verzögerungen bei der Umsetzung der Richtlinie auf Ebene der teilnehmenden Mitgliedstaaten
2. Gefahr der Hinterziehung, Umgehung und des Missbrauchs
3. Gefahr der Standortverlagerung

2.2.2. Vorgesehene Kontrollverfahren

In Artikel 12 der Richtlinie werden besondere Bestimmungen für die Verhinderung von Hinterziehung, Umgehung und Missbrauch angeführt: delegierte Rechtsakte und Zusammenarbeit der Verwaltungsbehörden in Steuersachen.

Die Gefahr der Standortverlagerung soll durch angemessene Steuersätze und eine weit gefasste Besteuerungsgrundlage abgewendet werden.

2.3. Prävention von Betrug und Unregelmäßigkeiten

Bitte geben Sie an, welche Präventions- und Schutzmaßnahmen vorhanden oder vorgesehen sind.

3. Geschätzte finanzielle Auswirkungen des Vorschlags/der Initiative

3.1. Betroffene Rubriken(en) des mehrjährigen Finanzrahmens und Ausgabenlinie(n)

- Bestehende Haushaltslinien

In der Reihenfolge der Rubriken des mehrjährigen Finanzrahmens und der Haushaltslinien.

<table>
<thead>
<tr>
<th>Rubrik des mehrjährigen Finanzrahmens</th>
<th>Haushaltslinie</th>
<th>Art der Ausgaben</th>
<th>Finanzierungsbeiträge</th>
<th>nach Artikel 18 Absatz 1 Buchstabe aa der Haushaltsordnung</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nummer [Bezeichnung….]</td>
<td>GM/NGM¹</td>
<td>von EFTA-Ländern²</td>
<td>von Bewerberländern³</td>
<td>von Drittländern</td>
</tr>
<tr>
<td>[XX.YY.YY.YY]</td>
<td>GM/NGM</td>
<td>JA/NEIN</td>
<td>JA/NEIN</td>
<td>JA/NEIN</td>
</tr>
</tbody>
</table>

- Neu zu schaffende Haushaltslinien

In der Reihenfolge der Rubriken des mehrjährigen Finanzrahmens und der Haushaltslinien.

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¹ GM = Getrennte Mittel / NGM = Nichtgetrennte Mittel.
² EFTA: Europäische Freihandelsassoziation.
³ Bewerberländer sowie gegebenenfalls potenzielle Bewerberländer des Westbalkans.
### 3.2. Geschätzte Auswirkungen auf die Ausgaben

#### 3.2.1. Übersicht

*in Mio. EUR (3 Dezimalstellen)*

<table>
<thead>
<tr>
<th></th>
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<th></th>
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<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>• Operative Mittel</td>
<td></td>
<td>Nummer der Haushaltslinie</td>
<td>Verpflichtungen</td>
<td>1</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Zahlungen</td>
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<td></td>
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<td></td>
<td></td>
<td>Verpflichtungen</td>
<td>(1a)</td>
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<tr>
<td></td>
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<td>Zahlungen</td>
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<td></td>
</tr>
<tr>
<td>• Mittel INSGESAMT für GD &lt;………&gt;</td>
<td></td>
<td>Verpflichtungen</td>
<td>= 1 + 1a + 3</td>
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<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Zahlungen</td>
<td>= 2 + 2a + 3</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>

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⁴ Das Jahr N ist das Jahr, in dem mit der Umsetzung des Vorschlags/der Initiative begonnen wird.

⁵ Ausgaben für technische und/oder administrative Unterstützung und Ausgaben zur Unterstützung der Umsetzung von Programmen bzw. Maßnahmen der EU (vormalige BA-Linien), indirekte Forschung, direkte Forschung.
### Rubrik des mehrjährigen Finanzrahmens: 5 Verwaltungsausgaben

<table>
<thead>
<tr>
<th>Jahr</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>ab 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>GD: TAXUD</td>
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</tr>
<tr>
<td>Personalausgaben</td>
<td>0,254</td>
<td>0,762</td>
<td>0,762</td>
<td>0,762</td>
<td>0,762</td>
</tr>
<tr>
<td>Sonstige Verwaltungsausgaben</td>
<td>0,040</td>
<td>0,036</td>
<td>0,036</td>
<td>0,036</td>
<td>0,036</td>
</tr>
<tr>
<td>GD TAXUD INSGESAMT</td>
<td>0,294</td>
<td>0,798</td>
<td>0,798</td>
<td>0,798</td>
<td>0,798</td>
</tr>
</tbody>
</table>

### Mittel INSGESAMT unter RUBRIK 5 des mehrjährigen Finanzrahmens

<table>
<thead>
<tr>
<th>Jahr</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>ab 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Verpflichtungen insges.</td>
<td>0,294</td>
<td>0,798</td>
<td>0,798</td>
<td>0,798</td>
<td>0,798</td>
</tr>
<tr>
<td>Zahlungen insges.</td>
<td>0,294</td>
<td>0,798</td>
<td>0,798</td>
<td>0,798</td>
<td>0,798</td>
</tr>
</tbody>
</table>

3.2.2. Geschätzte Auswirkungen auf die operativen Mittel

- **X** Für den Vorschlag/die Initiative werden keine operativen Mittel benötigt
3.2.3. Geschätzte Auswirkungen auf die Verwaltungsmittel

3.2.3.1. Übersicht

Für den Vorschlag/die Initiative werden die folgenden Verwaltungsmittel benötigt:

<table>
<thead>
<tr>
<th>Jahr</th>
<th>Jahr 2013</th>
<th>Jahr 2014</th>
<th>Jahr 2015</th>
<th>Jahr 2016</th>
<th>ab 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>RUBRIK 5</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>des mehrjährigen</td>
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<td></td>
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<tr>
<td>Finanzrahmens</td>
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<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Personalausgaben</td>
<td>0,254</td>
<td>0,762</td>
<td>0,762</td>
<td>0,762</td>
<td>0,762</td>
</tr>
<tr>
<td>Sonstige Verwaltungsausgaben</td>
<td>0,040</td>
<td>0,036</td>
<td>0,036</td>
<td>0,036</td>
<td>0,036</td>
</tr>
<tr>
<td><strong>Zwischensumme RUBRIK 5</strong></td>
<td></td>
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<td></td>
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<tr>
<td>des mehrjährigen</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Finanzrahmens</td>
<td>0,294</td>
<td>0,798</td>
<td>0,798</td>
<td>0,798</td>
<td>0,798</td>
</tr>
<tr>
<td><strong>Außerhalb RUBRIK 5</strong></td>
<td></td>
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<tr>
<td>Personalausgaben</td>
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</tr>
<tr>
<td>sonstige Verwaltungsausgaben</td>
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<td></td>
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<tr>
<td><strong>Zwischensumme der Mittel</strong></td>
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<tr>
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**INSGESAMT**

<table>
<thead>
<tr>
<th>Jahr 2013</th>
<th>Jahr 2014</th>
<th>Jahr 2015</th>
<th>Jahr 2016</th>
<th>ab 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>0,294</td>
<td>0,798</td>
<td>0,798</td>
<td>0,798</td>
<td>0,798</td>
</tr>
</tbody>
</table>

3.2.3.2. Geschätzter Personalbedarf

Für den Vorschlag/die Initiative wird das folgende Personal benötigt:

---

Schätzung in ganzzahligen Werten (oder mit höchstens einer Dezimalstelle)

<table>
<thead>
<tr>
<th>• Im Stellenplan vorgesehene Planstellen (Beamte und Bedienstete auf Zeit)</th>
<th>Jahr 2013</th>
<th>Jahr 2014</th>
<th>Jahr 2015</th>
<th>Jahr 2016</th>
<th>ab 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>14 01 01 01 (am Sitz und in den Vertretungen der Kommission)</td>
<td>0,254</td>
<td>0,762</td>
<td>0,762</td>
<td>0,762</td>
<td>0,762</td>
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<td>14 01 01 02 (in den Delegationen)</td>
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<td>14 01 05 01 (indirekte Forschung)</td>
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<td>10 01 05 01 (direkte Forschung)</td>
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<td>• Externe Personal (in Vollzeitäquivalenten = FTE)</td>
<td>p. m.</td>
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<tr>
<td>14 01 02 01 (CA, INT, SNE der Globaldotation)</td>
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<td>p. m.</td>
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<tr>
<td>14 01 02 02 (CA, INT, JED, LA und SNE in den Delegationen)</td>
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Beschreibung der auszuführenden Aufgaben:

<table>
<thead>
<tr>
<th>Beamte und Zeitbedienstete</th>
<th>Jahr 2013</th>
<th>Jahr 2014</th>
<th>Jahr 2015</th>
<th>Jahr 2016</th>
<th>ab 2017</th>
</tr>
</thead>
</table>

3.2.4. Vereinbarkeit mit dem mehrjährigen Finanzrahmen

- X Der Vorschlag/die Initiative ist mit dem derzeitigen mehrjährigen Finanzrahmen vereinbar.

---

7 CA= Contract Agent; INT= agency staff („Intérimaire“); JED= „Jeune Expert en Délégation“ (Young Experts in Delegation); LA= Local Agent; SNE= Seconded National Expert.
8 Teilobergrenze für aus den operativen Mitteln finanziertes externes Personal (vormalige BA-Linien).
9 Insbesondere für Strukturfonds, Europäischer Landwirtschaftsfonds für die Entwicklung des ländlichen Raums (ELER) und Europäischer Fischereifonds (EFF).
3.2.5. Finanzierungsbeteiligung Dritter

– Der Vorschlag/die Initiative sieht keine Kofinanzierung durch Dritte vor.

3.3. Geschätzte Auswirkungen auf die Einnahmen

– X Der Vorschlag/die Initiative wirkt sich nicht auf die Einnahmen aus. Würden jedoch die Einnahmen aus der Finanztransaktionssteuer teilweise als Eigenmittel verwendet und würden sich damit die auf der Grundlage des Bruttonationaleinkommens von den teilnehmenden Mitgliedstaaten erhobenen Eigenmittel verringern, so hätte dies Auswirkungen auf die Zusammensetzung der Einnahmequellen.
A. European Model (*not yet in force*)

I. EU Directive Proposal Enh. Coop. 2013 (English) ................................. 5
II. EU Directive Proposal Enh. Coop. 2013 (German) ............................. 45
IV. Appendix
   i. Bundesrat – Statement 22.03.2013 (German) .................................. 114
   ii. European Commission – FITT Presentation 14.02.2013 .................... 120
   iii. Technical Fiche – Territoriality of the tax .................................... 132
### Article 1

#### Subject matter and scope

| 1. | This Directive establishes the common system of financial transaction tax (FTT). |
| 2. | This Directive shall apply to all financial transactions, on condition that at least one party to the transaction is established in a Member State and that a financial institution established in the territory of a Member State is party to the transaction, acting either for its own account or for the account of another person, or is acting in the name of a party to the transaction. |
| 3. | This Directive shall not apply to the following entities: |
|     | (a) the European Financial Stability Facility; |
|     | (b) subject to point (c) of paragraph 4, an international financial institution established by two or more Member States, which has the purpose to mobilise funding and provide financial assistance to the benefit of its members that are experiencing or threatened by severe financing problems; |
|     | (c) Central Counter Parties (CCPs) where exercising the function of a CCP; |
|     | (d) Central Securities Depositories (CSDs) and International Central Securities Depositories (ICSDs) where exercising the function of a CSD or ICSD. |
| | However, where an entity is not taxable pursuant to the first subparagraph, this shall not preclude the taxability of its counterparty. |

---

#### Subject matter

| 1. | This Directive implements the enhanced cooperation authorised by Decision 2013/52/EU by laying down provisions for a harmonised financial transaction tax (FTT). |
| 2. | Participating Member States shall charge FTT in accordance with this Directive. |

New in Article 3 (Scope)
4. This Directive shall not apply to the following transactions:


(b) transactions with the European Union, the European Atomic Energy Community, the European Central Bank, the European Investment Bank and with bodies set up by the European Union or the European Atomic Energy Community to which the Protocol on the privileges and immunities of the European Union applies, within the limits and under the conditions of that Protocol and the agreements for its implementation or the headquarters agreements, in so far as it does not lead to distortion of competition;

(c) transactions with international organisations or bodies, other than those referred to in point (b), recognised as such by the public authorities of the host State, within the limits and under the conditions laid down by the international conventions establishing the bodies or by headquarters agreements;

(d) transactions with the central banks of Member States.
## Article 2
### Definitions

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<tbody>
<tr>
<td>1. For the purposes of this Directive, the following definitions shall apply:</td>
<td>1. For the purposes of this Directive, the following definitions shall apply:</td>
</tr>
<tr>
<td>(1) 'Participating Member State' means a Member State which participates, at the time when FTT becomes chargeable pursuant to this Directive, in enhanced cooperation in the area of FTT by virtue of Decision 2013/52/EU, or by virtue of a decision adopted in accordance with the second or third subparagraph of Article 331(1) of the TFEU;</td>
<td>(1) 'Participating Member State' means a Member State which participates, at the time when FTT becomes chargeable pursuant to this Directive, in enhanced cooperation in the area of FTT by virtue of Decision 2013/52/EU, or by virtue of a decision adopted in accordance with the second or third subparagraph of Article 331(1) of the TFEU;</td>
</tr>
<tr>
<td>(2) Financial transaction means any of the following:</td>
<td>(2) Financial transaction means any of the following:</td>
</tr>
<tr>
<td>(a) the purchase and sale of a financial instrument before netting and settlement, including repurchase and reverse repurchase and securities lending and borrowing agreements;</td>
<td>(a) the purchase and sale of a financial instrument before netting or settlement;</td>
</tr>
<tr>
<td>New in letter (e)</td>
<td></td>
</tr>
<tr>
<td>(b) the transfer between entities of a group of the right to dispose of a financial instrument as owner and any equivalent operation implying the transfer of the risk associated with the financial instrument, in cases not subject to point (a);</td>
<td>(b) unmodified</td>
</tr>
<tr>
<td>(c) the conclusion or modification of derivatives agreements;</td>
<td>(c) the conclusion of derivatives contracts before netting or settlement;</td>
</tr>
<tr>
<td>(d) an exchange of financial instruments;</td>
<td></td>
</tr>
<tr>
<td>(e) a repurchase agreement, a reverse repurchase agreement, a securities lending and borrowing agreement;</td>
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**Removed:**

**Modified:**
**Synopsis EU Directive Proposal 2011 – 2013**

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<tr>
<td><strong>(3)</strong> 'Derivatives agreement' means a financial instrument as defined in points (4) to (10) of Section C of Annex I to the Directive 2004/39/EC;</td>
<td><strong>(4)</strong> 'Derivatives contract' means a financial instrument as defined in points (4) to (10) of Section C of Annex I to Directive 2004/39/EC, as implemented by Articles 38 and 39 of Commission Regulation (EC) No 1287/2006;</td>
</tr>
<tr>
<td><strong>(5)</strong> 'Securities lending agreement' and 'securities borrowing agreement' mean an agreement referred to in Article 3 of Directive 2006/49/EC;</td>
<td><strong>(6)</strong> unmodified</td>
</tr>
<tr>
<td><strong>(6)</strong> 'Structured product' means tradable securities or other financial instruments offered by way of a securitisation within the meaning of Article 4(36) of Directive 2006/48/EC of the European Parliament and the Council or equivalent transactions involving the transfer of risks other than credit risk;</td>
<td><strong>(7)</strong> 'Structured product' means tradable securities or other financial instruments offered by way of a securitisation within the meaning of Article 4(36) of Directive 2006/48/EC of the European Parliament and of the Council or by way of equivalent transactions involving the transfer of risks other than credit risk;</td>
</tr>
<tr>
<td><strong>(7)</strong> 'Financial institution' means any of the following:</td>
<td><strong>(8)</strong> 'Financial institution' means any of the following:</td>
</tr>
<tr>
<td>(a) an investment firm as defined in Article 4 of Directive 2004/39/EC;</td>
<td>(a) an investment firm as defined in Article 4(1)(1) of Directive 2004/39/EC;</td>
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<tr>
<td>(b) a regulated market as defined in Article 4 of Directive 2004/39/EC and any other organised trade venue or platform;</td>
<td>(b) a regulated market as defined in Article 4(1)(14) of Directive 2004/39/EC and any other organised trade venue or platform;</td>
</tr>
<tr>
<td>(c) a credit institution as defined in Article 4 of Directive 2006/48/EC;</td>
<td>(c) a credit institution as defined in Article 4(1) of Directive 2006/48/EC;</td>
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**Synopsis EU Directive Proposal 2011 – 2013**

### Proposal 28.09.2011

| (e) | an undertaking for collective investments in transferable securities (UCITS) as defined in Article 1 of Directive 2009/65/EC and a management company as defined in Article 2 of Directive 2009/65/EC; |
| (f) | a pension fund or an institution for occupational retirement provision as defined in Article 6(a) of Directive 2003/41/EC of the European Parliament and the Council, an investment manager of such fund or institution; |
| (g) | an alternative investment fund (AIF) and an alternative investment fund manager (AIFM) as defined in Article 4 of Directive 2011/61/EU; |
| (h) | a securitisation special purpose entity as defined in Article 4 of Directive 2006/48/EC; |
| (i) | a special purpose vehicle as defined in Article 13(26) of Directive 2009/138/EC; |
| (j) | any other undertaking carrying out one or more of the following activities, in case these activities constitute a significant part of its overall activity, in terms of volume or value of financial transactions: |

- (i) activities referred to in points 1, 2, 3, 6 of Annex I of Directive 2006/48/EC;  
- (ii) trading for own account or for account of customers with respect to any financial instrument;  

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### Proposal 14.02.2013

| (e) | an undertaking for collective investments in transferable securities (UCITS) as defined in Article 1(2) of Directive 2009/65/EC of the European Parliament and of the Council and a management company as defined in Article 2(1)(b) of Directive 2009/65/EC; |
| (f) | a pension fund or an institution for occupational retirement provision as defined in Article 6(a) of Directive 2003/41/EC of the European Parliament and of the Council, an investment manager of such fund or institution; |
| (g) | an alternative investment fund (AIF) and an alternative investment fund manager (AIFM) as defined in Article 4 of Directive 2011/61/EU of the European Parliament and of the Council; |
| (h) | a securitisation special purpose entity as defined in Article 4(44) of Directive 2006/48/EC; |
| (i) | unmodified |
| (j) | any other undertaking, institution, body or person carrying out one or more of the following activities, in case the average annual value of its financial transactions constitutes more than fifty per cent of its overall average net annual turnover, as referred to in Article 28 of Council Directive 78/660/EEC: |

- (i) unmodified  
- (ii) trading for own account or for account or in the name of customers with respect to any financial instrument;  

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<td>(iii) acquisition of holdings in undertakings;</td>
<td>(iii) unmodified</td>
</tr>
<tr>
<td>(iv) participation in or issuance of financial instruments;</td>
<td>(iv) unmodified</td>
</tr>
<tr>
<td>(v) the provision of services related to activities referred to in point (iv).</td>
<td>(v) unmodified</td>
</tr>
</tbody>
</table>

(8) 'Central Counter Party' (CCP) means a legal entity that interposes itself between the counterparties to a trade within one or more financial markets, becoming the buyer to every seller and the seller to every buyer;

(9) 'Central Counter Party' (CCP) means a CCP as defined in Article 2(1) of Regulation (EU) No 648/2012 of the European Parliament and of the Council;

(9) 'Netting' shall have the meaning defined in Article 2 of Directive 98/26/EC of the European Parliament and of the Council;

(10) 'Netting' means netting as defined in Article 2(k) of Directive 98/26/EC of the European Parliament and of the Council;

(11) 'A financial instrument referred to in Section C of Annex I to Directive 2004/39/EC and structured products issued within the territory of a participating Member State' means such a financial instrument that is issued by a person who has its registered seat or, in case of a natural person, its permanent address or, if no permanent address can be ascertained, its usual residence in that State;

(10) 'Notional amount' means the underlying nominal or face amount that is used to calculate payments made on a given derivative agreement.

(12) 'Notional amount' means the underlying nominal or face amount that is used to calculate payments made on a given derivative contract.
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<tr>
<td>2. The Commission shall, in accordance with Article 13 adopt delegated acts laying down detailed rules regarding the determination whether activities as referred to in paragraph 1(7)(j) constitute a significant part of the undertaking's overall activity.</td>
<td>2. Each of the operations referred to in points (a), (b), (c) and (e) of paragraph 1(2) shall be considered to give rise to a single financial transaction. Each exchange as referred to in point (d) thereof shall be considered to give rise to two financial transactions. Each material modification of an operation as referred to in points (a) to (e) of paragraph 1(2) shall be considered to be a new operation of the same type as the original operation. A modification is considered to be material in particular where it involves a substitution of at least one party, in case the object or scope of the operation, including its temporal scope, or the consideration agreed upon is altered, or where the original operation would have attracted a higher tax had it been concluded as modified.</td>
</tr>
<tr>
<td>3. For the purposes of point (8) (j) of para. 1:</td>
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</tr>
<tr>
<td>(a) the average annual value referred to in that point shall be calculated either over the three preceding calendar years or, in the case of a shorter period of previous activity, over that shorter period;</td>
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<tr>
<td>(b) the value of each transaction referred to in Article 6 shall be the taxable amount as defined in that Article;</td>
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<td>(c) the value of each transaction referred to in Article 7 shall be ten per cent of the taxable amount as defined in that Article;</td>
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<tr>
<td>(d) where the average annual value of financial transactions in two consecutive calendar years does not exceed fifty per cent of the overall average net annual turnover, as defined in Article 28 of Directive 78/660/EEC, the undertaking, institution, body or person concerned shall be entitled, upon request, to be considered as not being or no longer being a financial institution.</td>
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</table>
### Article 3

#### Scope

1. This Directive shall apply to all financial transactions, on condition that at least one party to the transaction is established in the territory of a participating Member State and that a financial institution established in the territory of a participating Member State is party to the transaction, acting either for its own account or for the account of another person, or is acting in the name of a party to the transaction.

2. This Directive, with the exception of paragraphs 3 and 4 of Article 10 and paragraphs 1 to 4 of Article 11, shall not apply to the following entities:
   - **(a)** Central Counter Parties (CCPs) where exercising the function of a CCP;
   - **(b)** Central Securities Depositories (CSDs) and International Central Securities Depositories (ICSDs) where exercising the function of a CSD or ICSD.
   - **(c)** Member States, including public bodies entrusted with the function of managing the public debt, when exercising that function.

3. Where an entity is not taxable pursuant to paragraph 2, this shall not preclude the taxability of its counterparty.

4. This Directive shall not apply to the following transactions:
   - **(a)** primary market transactions referred to in Article 5(c) of Regulation (EC) No 1287/2006, including the activity of underwriting and subsequent allocation of financial instruments in the framework of their issue;
   - **(b)** transactions with the central banks of Member States;
   - **(c)** transactions with the European Central Bank;

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<td></td>
<td><strong>(d)</strong> transactions with the European Financial Stability Facility and the European Stability Mechanism, transactions with the European Union related to financial assistance made available under Article 143 of the TFEU and to financial assistance made available under Article 122(2) of the TFEU, as well as transactions with the European Union and the European Atomic Energy Community related to the management of their assets;</td>
</tr>
<tr>
<td></td>
<td><strong>(e)</strong> without prejudice to point (c) and (d), transactions with the European Union, the European Atomic Energy Community, the European Investment Bank and with bodies set up by the European Union or the European Atomic Energy Community to which the Protocol on the privileges and immunities of the European Union applies, within the limits and under the conditions of that Protocol, the headquarter agreements or any other agreements concluded for the implementation of the Protocol;</td>
</tr>
<tr>
<td></td>
<td><strong>(f)</strong> transactions with international organisations or bodies, other than those referred to in points (c), (d) and (e), recognised as such by the public authorities of the host State, within the limits and under the conditions laid down by the international conventions establishing the bodies or by headquarters agreements;</td>
</tr>
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<td></td>
<td><strong>(g)</strong> transactions carried out as part of restructuring operations referred to in Article 4 of Council Directive 2008/7/EC.</td>
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**Proposal 14.02.2013**
## Article 3

**Establishment**

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<tbody>
<tr>
<td>1. <strong>For the purposes of this Directive, a financial institution shall be deemed to be established in the territory of a Member State where any of the following conditions is fulfilled:</strong></td>
<td>1. <strong>For the purposes of this Directive, a financial institution shall be deemed to be established in the territory of a participating Member State where any of the following conditions is fulfilled:</strong></td>
</tr>
<tr>
<td>(a) it has been authorised by the authorities of that Member State to act as such, in respect of transactions covered by that authorisation;</td>
<td>(a) unmodified</td>
</tr>
<tr>
<td>(b) it has its registered seat within that Member State;</td>
<td>(b) it is authorised or otherwise entitled to operate, from abroad, as financial institution in regard to the territory of that Member State, in respect of transactions covered by such authorisation or entitlement;</td>
</tr>
<tr>
<td>(c) its permanent address or usual residence is located in that Member State;</td>
<td>(c) it has its registered seat within that Member State;</td>
</tr>
<tr>
<td>(d) it has a branch within that Member State, in respect of transactions carried out by that branch;</td>
<td>(d) its permanent address or, if no permanent address can be ascertained, its usual residence is located in that Member State;</td>
</tr>
<tr>
<td>(e) it is party, acting either for its own account or for the account of another person, or is acting in the name of a party to the transaction, to a financial transaction with another financial institution established in that Member State pursuant to points (a), (b), (c) or (d), or with a party established in the territory of that Member State and which is not a financial institution.</td>
<td>(f) it is party, acting either for its own account or for the account of another person, or is acting in the name of a party to the transaction, to a financial transaction with another financial institution established in that Member State pursuant to points (a), (b), (c), (d) or (e), or with a party established in the territory of that Member State and which is not a financial institution;</td>
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#### Proposal 28.09.2011

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<td></td>
<td>(g) It is party, acting either for its own account or for the account of another person, or is acting in the name of a party to the transaction, to a financial transaction in a structured product or one of the financial instruments referred to in Section C of Annex I of Directive 2004/39/EC issued within the territory of that Member State, with the exception of instruments referred to in points (4) to (10) of that Section which are not traded on an organised platform.</td>
</tr>
</tbody>
</table>

2. Where more than one of the conditions in the list set out in paragraph 1 is fulfilled, the first condition met from the start of the list in descending order shall be relevant for determining the Member State of establishment.

#### Proposal 14.02.2013

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<tr>
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2. A person which is not a financial institution shall be deemed to be established within a participating Member State where any of the following conditions is fulfilled:

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<td></td>
<td>(a) Its registered seat or, in case of a natural person, its permanent address or, if no permanent address can be ascertained, its usual residence is located in that State;</td>
</tr>
<tr>
<td></td>
<td>(b) It has a branch in that State, in respect of financial transactions carried out by that branch;</td>
</tr>
<tr>
<td></td>
<td>(c) It is party to a financial transaction in a structured product or one of the financial instruments referred to Section C of Annex I to Directive 2004/39/EC issued within the territory of that Member State, with the exception of instruments referred to in points (4) to (10) of that Section which are not traded on an organised platform.</td>
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#### Proposal 28.09.2011

<table>
<thead>
<tr>
<th>Paragraph</th>
<th>Text</th>
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<tbody>
<tr>
<td>3.</td>
<td>Notwithstanding paragraph 1, a financial institution shall not be considered established within the meaning of that paragraph, in case the person liable for payment of FTT proves that there is no link between the economic substance of the transaction and the territory of any Member State.</td>
</tr>
</tbody>
</table>

#### Proposal 14.02.2013

<table>
<thead>
<tr>
<th>Paragraph</th>
<th>Text</th>
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</thead>
<tbody>
<tr>
<td>3.</td>
<td>Notwithstanding paragraphs 1 and 2, a financial institution or a person which is not a financial institution shall not be deemed to be established within the meaning of those paragraphs, where the person liable for payment of FTT proves that there is no link between the economic substance of the transaction and the territory of any participating Member State.</td>
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<thead>
<tr>
<th>Paragraph</th>
<th>Text</th>
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<tbody>
<tr>
<td>4.</td>
<td>A person which is not a financial institution shall be deemed to be established within a Member State if its registered seat or, in case of a natural person, if its permanent address or usual residence is located in that State, or it has a branch in that State, in respect of financial transactions carried out by that branch.</td>
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New in para. 2

<table>
<thead>
<tr>
<th>Paragraph</th>
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<tr>
<td>4.</td>
<td>Where more than one of the conditions in the lists set out in paragraphs 1 and 2 respectively is fulfilled, the first condition fulfilled from the start of the list in descending order shall be relevant for determining the participating Member State of establishment.</td>
</tr>
</tbody>
</table>
### Article 4

**Chargeability of FTT**

1. The FTT shall become chargeable for each financial transaction at the moment it occurs.

2. Subsequent cancellation or rectification of a financial transaction shall have no effect on chargeability, except for cases of errors.

### Article 5

**Chargeability of FTT**

1. unmodified

### Article 6

#### Taxable amount of the FTT in the case of financial transactions other than those related to derivatives agreements

1. In the case of financial transactions other than those referred to in point 1(c) of Article 2(1) and, in respect of derivative agreements, in points 1(a) and 1(b) of Article 2(1), the taxable amount shall be everything which constitutes consideration paid or owed, in return for the transfer, from the counterparty or a third party.

2. Notwithstanding paragraph 1, in the cases referred to in that paragraph the taxable amount shall be the market price determined at the time the FTT becomes chargeable:

   (a) where the consideration is lower than the market price;

   (b) in the cases referred to in Article 2(1) (b).

3. For the purposes of paragraph 2, the market price shall mean the full amount that would have been paid as consideration for the financial instrument concerned in a transaction at arm’s length.

#### Taxable amount of the FTT in the case of financial transactions other than those related to derivatives contracts

1. In the case of financial transactions other than those referred to in point 2(c) of Article 2(1) and, in respect of derivative contracts, in points 2(a), 2(b) and 2(d) of Article 2(1), the taxable amount shall be everything which constitutes consideration paid or owed, in return for the transfer, from the counterparty or a third party.

2. unmodified

(b) in the cases referred to in point 2(b) of Article 2(1).
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<table>
<thead>
<tr>
<th>Article 6</th>
<th>Article 7</th>
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<tr>
<td><strong>Taxable amount in the case of financial transactions related to derivatives agreements</strong></td>
<td><strong>Taxable amount in the case of financial transactions related to derivatives contracts</strong></td>
</tr>
<tr>
<td>In the case of financial transactions referred to in point 1(c) of Article 2(1) and, in respect of derivative agreements, in points 1(a) and 1(b) of Article 2(1), the taxable amount of the FTT shall be the notional amount of the derivatives agreement at the time of the financial transaction.</td>
<td>In the case of financial transactions referred to in point 2(c) of Article 2(1) and, in respect of derivative contracts, in points 2(a), 2(b) and 2(d) of Article 2(1), the taxable amount of the FTT shall be the notional amount referred to in the derivatives contract at the time of the financial transaction.</td>
</tr>
<tr>
<td>Where more than one notional amount is identified, the highest amount shall be used for the purpose of determining the taxable amount.</td>
<td>unmodified</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Article 7</th>
<th>Article 8</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Common provisions on taxable amount</strong></td>
<td><strong>Common provisions on taxable amount</strong></td>
</tr>
<tr>
<td>Where the value relevant, under Article 5 or Article 6, for the determination of the taxable amount is expressed, in whole or in part, in a currency other than that of the taxing Member State, the exchange rate applicable shall be the latest selling rate recorded, at the time the FTT becomes chargeable, on the most representative exchange market of the Member State concerned, or at an exchange rate determined by reference to that market, in accordance with the rules laid down by that Member State.</td>
<td>For the purposes of Articles 6 and 7, where the value relevant for the determination of the taxable amount is expressed, in whole or in part, in a currency other than that of the taxing participating Member State, the applicable exchange rate shall be the latest selling rate recorded, at the time the FTT becomes chargeable, on the most representative exchange market of the participating Member State concerned, or at an exchange rate determined by reference to that market, in accordance with the rules laid down by that Member State.</td>
</tr>
</tbody>
</table>

### Proposal 28.09.2011

<table>
<thead>
<tr>
<th>Article 8</th>
<th>Article 9</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Application, structure and level of rates</strong></td>
<td><strong>Application, structure and level of rates</strong></td>
</tr>
<tr>
<td>1. Member States shall apply the rates of FTT in force at the time when the tax becomes chargeable.</td>
<td>1. The participating Member States shall apply the rates of FTT in force at the time when the tax becomes chargeable.</td>
</tr>
<tr>
<td>2. The rates shall be fixed by each Member State as a percentage of the taxable amount. Those rates shall not be lower than:</td>
<td>2. The rates shall be fixed by each participating Member State as a percentage of the taxable amount. Those rates shall not be lower than:</td>
</tr>
<tr>
<td>(a) 0.1% in respect of the financial transactions referred to in Article 5;</td>
<td>(a) 0.1% in respect of the financial transactions referred to in Article 6;</td>
</tr>
<tr>
<td>(b) 0.01% in respect of financial transactions referred to in Article 6.</td>
<td>(b) 0.01% in respect of financial transaction referred to in Article 7.</td>
</tr>
<tr>
<td>3. Member States shall apply the same rate to all financial transactions that fall under the same category pursuant to paragraph 2 (a) and (b).</td>
<td>3. The participating Member States shall apply the same rate to all financial transactions that fall under the same category pursuant to points (a) and (b) of paragraph 2.</td>
</tr>
</tbody>
</table>
### Person liable for payment of FTT to the tax authorities

<table>
<thead>
<tr>
<th>Article 9</th>
<th>Article 10</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Person liable for payment of FTT to the tax authorities</strong></td>
<td><strong>Person liable for payment of FTT to the tax authorities</strong></td>
</tr>
<tr>
<td><strong>1.</strong> In respect of each financial transaction, FTT shall be payable by</td>
<td><strong>1.</strong> unmodified</td>
</tr>
<tr>
<td>each financial institution which fulfils any of the following conditions:</td>
<td></td>
</tr>
<tr>
<td>(a) it is party to the transaction, acting either for its own account or</td>
<td>(a) unmodified</td>
</tr>
<tr>
<td>for the account of another person;</td>
<td></td>
</tr>
<tr>
<td>(b) it is acting in the name of a party to the transaction; or</td>
<td>(b) unmodified</td>
</tr>
<tr>
<td>(c) the transaction has been carried out on its account.</td>
<td>(c) unmodified</td>
</tr>
<tr>
<td><strong>2.</strong> Where a financial institution acts in the name or for the account of</td>
<td></td>
</tr>
<tr>
<td>another financial institution only that other financial institution shall</td>
<td></td>
</tr>
<tr>
<td>be liable to pay FTT.</td>
<td></td>
</tr>
<tr>
<td><strong>3.</strong> Each party to a transaction, including persons other than financial</td>
<td></td>
</tr>
<tr>
<td>institutions shall become jointly and severally liable for the payment</td>
<td></td>
</tr>
<tr>
<td>of the tax due by a financial institution on account of that transaction,</td>
<td></td>
</tr>
<tr>
<td>in case that financial institution has not paid the tax due by it within</td>
<td></td>
</tr>
<tr>
<td>the time limit set out in Article 10(4).</td>
<td></td>
</tr>
<tr>
<td><strong>4.</strong> Member States may provide that a person other than the persons liable</td>
<td></td>
</tr>
<tr>
<td>for payment of FTT referred to in paragraphs 1, 2 and 3 of this Article</td>
<td></td>
</tr>
<tr>
<td>is to be held jointly and severally liable for the payment of the tax.</td>
<td></td>
</tr>
<tr>
<td><strong>4.</strong> The participating Member States may provide that a person other than</td>
<td></td>
</tr>
<tr>
<td>the persons liable for payment of FTT referred to in paragraphs 1, 2 and</td>
<td></td>
</tr>
<tr>
<td>3 is to be held jointly and severally liable for the payment of the tax.</td>
<td></td>
</tr>
</tbody>
</table>

The FTT shall be payable to the tax authorities of the participating Member State in the territory of which the financial institution is deemed to be established.
### Article 10  
**Provisions relating to time limits for the payment of FTT, to obligations intended to ensure payment, to the verification of payment**

1. Member States shall lay down registration, accounting, reporting obligations and other obligations intended to ensure that FTT due to the tax authorities is effectively paid.

2. The participating Member States shall lay down registration, accounting, reporting obligations and other obligations intended to ensure that FTT due is effectively paid to the tax authorities.

3. Member States shall adopt measures to ensure that every person liable for payment of FTT submits to the tax authorities a return setting out all the information needed to calculate the FTT that has become chargeable during a period of one month including the total value of the transactions taxed at each rate. The FTT return shall be submitted by the tenth day of the month following the month during which the FTT became chargeable.

4. The participating Member States shall ensure that financial institutions keep at the disposal of the tax authorities, for at least five years, the relevant data relating to all financial transactions which they have carried out, whether in their own name or in the name of another person, for their own account or for the account of another person.

### Article 11  
**Provisions relating to time limits for the payment of FTT, to obligations intended to ensure payment, to the verification of payment**

1. The participating Member States shall lay down registration, accounting, reporting obligations and other obligations intended to ensure that FTT due is effectively paid to the tax authorities.

2. The Commission may, in accordance with Article 16 adopt delegated acts specifying the measures to be taken pursuant to paragraph 1 by the participating Member States.

3. The participating Member States shall adopt measures to ensure that every person liable for payment of FTT submits to the tax authorities a return setting out all the information needed to calculate the FTT that has become chargeable during a period of one month including the total value of the transactions taxed at each rate. The FTT return shall be submitted by the tenth day of the month following the month during which the FTT became chargeable.

4. The participating Member States shall ensure that financial institutions keep at the disposal of the tax authorities, for at least five years, the relevant data relating to all financial transactions which they have carried out, whether in their own name or in the name of another person, for their own account or for the account of another person. In specifying that obligation they shall take account, where applicable, of obligations they have already imposed on financial institutions in view of Article 25(2) of Directive 2004/39/EC.

**Proposal 28.09.2011**

<table>
<thead>
<tr>
<th>4.</th>
<th>Member States shall ensure that any FTT due is paid to the tax authorities at the following points in time:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td>at the moment when the tax becomes chargeable in case the transaction is carried out electronically;</td>
</tr>
<tr>
<td>(b)</td>
<td>within three working days from the moment the tax becomes chargeable in all other cases.</td>
</tr>
</tbody>
</table>

**Proposal 14.02.2013**

<table>
<thead>
<tr>
<th>5.</th>
<th>The participating Member States shall ensure that any FTT due is paid to the accounts determined by the participating Member States at the following points in time:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td>unmodified</td>
</tr>
<tr>
<td>(b)</td>
<td>unmodified</td>
</tr>
</tbody>
</table>

The Commission may adopt implementing acts providing for uniform methods of collection of the FTT due. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 18(2).

<table>
<thead>
<tr>
<th>5.</th>
<th>Member States shall ensure that the authorities competent in the matter verify whether the tax has been correctly paid.</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.</td>
<td>The participating Member States shall ensure that the tax authorities verify whether the tax has been correctly paid.</td>
</tr>
</tbody>
</table>

### Article 11

**Specific provisions relating to the prevention of evasion, avoidance and abuse**

1. Member States shall adopt measures to prevent tax evasion, avoidance and abuse.

### Article 12

**Prevention of fraud and evasion, General anti-abuse rule**

2. The participating Member States shall adopt measures to prevent tax fraud and evasion.

3. Member States shall, wherever necessary, make use of the provisions adopted by the Union regarding administrative cooperation in tax matters, and in particular by Council Directives 2011/16/EU and 2010/24/EU. They shall also make use of already existing reporting and data maintenance obligations related to financial transactions.
### Article 13

#### General anti-abuse rule

1. An artificial arrangement or an artificial series of arrangements which has been put into place for the essential purpose of avoiding taxation and leads to a tax benefit shall be ignored. Participating Member States shall treat these arrangements for tax purposes by reference to their economic substance.

2. For the purposes of paragraph 1 an arrangement means any transaction, scheme, action, operation, agreement, grant, understanding, promise, undertaking or event. An arrangement may comprise more than one step or part.

3. For the purposes of paragraph 1 an arrangement or a series of arrangements is artificial where it lacks commercial substance. In determining whether the arrangement or series of arrangements is artificial, participating Member States shall consider, in particular, whether they involve one or more of the following situations:

   (a) the legal characterisation of the individual steps which an arrangement consists of is inconsistent with the legal substance of the arrangement as a whole;

   (b) the arrangement or series of arrangements is carried out in a manner which would not ordinarily be employed in what is expected to be a reasonable business conduct;

   (c) the arrangement or series of arrangements includes elements which have the effect of offsetting or cancelling each other;

   (d) transactions concluded are circular in nature;

   …

#### Proposal 28.09.2011

<table>
<thead>
<tr>
<th>Paragraph</th>
<th>Text</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.</td>
<td>For the purposes of paragraph 1, the purpose of an arrangement or series of arrangements consists in avoiding taxation where, regardless of any subjective intentions of the taxpayer, it defeats the object, spirit and purpose of the tax provisions that would otherwise apply.</td>
</tr>
<tr>
<td>5.</td>
<td>For the purposes of paragraph 1, a given purpose is to be considered essential where any other purpose that is or could be attributed to the arrangement or series of arrangements appears at most negligible, in view of all the circumstances of the case.</td>
</tr>
<tr>
<td>6.</td>
<td>In determining whether an arrangement or series of arrangements has led to a tax benefit as referred to in paragraph 1, participating Member States shall compare the amount of tax due by a taxpayer, having regard to those arrangement(s), with the amount that the same taxpayer would owe under the same circumstances in the absence of the arrangement(s).</td>
</tr>
</tbody>
</table>

**Proposed Changes:**
- **(e)** the arrangement or series of arrangements results in a significant tax benefit but this is not reflected in the business risks undertaken by the taxpayer or its cash flows.

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**Synopsis EU Directive Proposal 2011 – 2013**

**Article 14**

*Abuse in the case of depositary receipts and similar securities*

1. Without prejudice to Article 13, a depositary receipt or similar security issued with the essential purpose of avoiding tax on transactions in the underlying security issued in a participating Member State shall be considered issued in that participating Member State, in case a tax benefit would otherwise arise.

2. For the purposes of paragraph 1, paragraphs 4, 5 and 6 of Article 13 shall apply.

3. In applying paragraph 1, regard shall be had to the extent to which trade in the depositary receipt or similar security has replaced trade in the underlying security. Where such replacement has occurred to a significant extent, it shall be for the person liable for payment of FTT to demonstrate that the depositary receipt or similar security was not issued with the essential purpose of avoiding tax on transactions in the underlying security.

**Article 12**

*Other taxes on financial transactions*

Member States shall not maintain or introduce taxes on financial transactions other than the FTT object of this Directive or value-added tax as provided for in Council Directive 2006/112/EC.

**Article 15**

*Other taxes on financial transactions*

The participating Member States shall not maintain or introduce taxes on financial transactions other than the FTT object of this Directive or value-added tax as provided for in Council Directive 2006/112/EC.
### Article 13

**Exercise of the delegation**

<table>
<thead>
<tr>
<th>Clause</th>
<th>Text</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.</td>
</tr>
<tr>
<td>2.</td>
<td>The delegation of powers referred to in Articles 2(2) and 11(2) shall be conferred for an indeterminate period of time from the date referred to in Article 18.</td>
</tr>
<tr>
<td>3.</td>
<td>The delegation of power referred to in Articles 2(2) and 11(2) may be revoked at any time by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the <em>Official Journal of the European Union</em> or at a later date specified therein. It shall not affect the validity of the delegated acts already in force.</td>
</tr>
<tr>
<td>4.</td>
<td>As soon as it adopts a delegated act, the Commission shall notify it to the Council.</td>
</tr>
<tr>
<td>5.</td>
<td>A delegated act adopted pursuant to Articles 2(2) and 11(2) shall enter into force only if no objection has been expressed by the Council within a period of 2 months of notification of that act to the Council or if, before the expiry of that period, the Council has informed the Commission that it will not object. That period shall be extended by 2 months at the initiative of the Council.</td>
</tr>
</tbody>
</table>

### Article 16

**Exercise of the delegation**

<table>
<thead>
<tr>
<th>Clause</th>
<th>Text</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>unmodified</td>
</tr>
<tr>
<td>2.</td>
<td>The delegation of powers referred to in Article 11(2) shall be conferred for an indeterminate period of time from the date referred to in Article 19.</td>
</tr>
<tr>
<td>3.</td>
<td>The delegation of power referred to in Article 11(2) may be revoked at any time by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the <em>Official Journal of the European Union</em> or at a later date specified therein. It shall not affect the validity of the delegated acts already in force.</td>
</tr>
<tr>
<td>4.</td>
<td>unmodified</td>
</tr>
<tr>
<td>5.</td>
<td>A delegated act adopted pursuant to Article 11(2) shall enter into force only if no objection has been expressed by the Council within a period of 2 months of notification of that act to the Council or if, before the expiry of that period, the Council has informed the Commission that it will not object. That period shall be extended by 2 months at the initiative of the Council.</td>
</tr>
</tbody>
</table>
### Article 14

**Information of the European Parliament**

The European Parliament shall be informed of the adoption of delegated acts by the Commission, of any objection formulated to them, or of the revocation of the delegation of powers by the Council.

### Article 17

**Information of the European Parliament**

unmodified

### Article 15

**Amendment of Directive 2008/7/EC**

Directive 2008/7/EC is amended as follows:

1. In Article 6(1) point (a) is deleted.

2. After Article 6, the following Article is inserted: "Article 6a Relationship with Directive …/…/EU

This Directive shall be without prejudice to Council Directive …/…/EU."

### Article 18

**Committee procedure**

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
### Article 16

**Review clause**

Every five years and for the first time by 31 December 2016, the Commission shall submit to the Council a report on the application of this Directive and, where appropriate, a proposal for its modification.

In that report the Commission shall, at least, examine the impact of the FTT on the proper functioning of the internal market, the financial markets and the real economy and it shall take into account the progress on taxation of the financial sector in the international context.

### Article 17

**Transposition**

1. Member States shall adopt and publish, by 31 December 2013 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

They shall apply those provisions from 1 January 2014.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

### Article 19

**Review clause**

Every five years and for the first time by 31 December 2016, the Commission shall submit to the Council a report on the application of this Directive, and, where appropriate, a proposal.

### Article 20

**Transposition**

1. The participating Member States shall adopt and publish, by 30 September 2013 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

When the participating Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The participating Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

### Proposal 28.09.2011

<table>
<thead>
<tr>
<th>Article 18</th>
<th>Article 21</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Entry into force</strong></td>
<td><strong>Entry into force</strong></td>
</tr>
<tr>
<td>This Directive shall enter into force on the twentieth day following that of its publication in the <em>Official Journal of the European Union</em>.</td>
<td>unmodified</td>
</tr>
</tbody>
</table>

### Proposal 14.02.2013

<table>
<thead>
<tr>
<th>Article 19</th>
<th>Article 22</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Addressees</strong></td>
<td><strong>Addressees</strong></td>
</tr>
<tr>
<td>This Directive is addressed to the Member States.</td>
<td>This Directive is addressed to the <strong>participating</strong> Member States.</td>
</tr>
</tbody>
</table>
CONTENTS

A. European Model (*not yet in force*)

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IV. Appendix
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    ii. European Commission – FTT Presentation 14.02.2013 .........................120
    iii. Technical Fiche – Territoriality of the tax ........................................132
Der Bundesrat hat in seiner 908. Sitzung am 22. März 2013 gemäß §§ 3 und 5 EUZBLG die folgende Stellungnahme beschlossen:


Er begrüßt, dass der Kommissionsvorschlag einen sehr robusten Ansatz verfolgt, der sich im Kern auf alle Finanztransaktionen von Finanzinstituten richtet und Steuerumgehen erschwert. Ausdrücklich nicht der Steuer unterliegen die meisten für die Bürgerinnen und Bürger und Unternehmen wichtigen Finanztätigkeiten, wie z.B. Verbraucherkredite, Hypothekendarlehen, Versicherungsverträge sowie auch Unternehmenskredite und Zahlungsdienste. Bei den Finanzinstituten werden hingegen alle Finanztransaktionen, ob börslich oder außerbörslich, umfassend in den Blick genommen - wie z. B. Aktien- und Anleihehandel, Geldmarktinstrumente, Derivatkontrakte (auch über Währungen) sowie strukturierte Wertpapiere und Pensions- und Leihgeschäfte.


- Die Ergänzung des für die Steuerpflicht maßgeblichen Ansässigkeitsprinzips um ein Ausgabeprinzip kann zwar einen Beitrag zur Reduzierung von Ausweichreaktionen leisten, der Bundesrat sieht hier jedoch die Gefahr struktureller Vollzugsdefizite. Der Bundesrat bittet daher die Bundesregierung zu prüfen, ob und wie der Steueranspruch bei Finanzinstituten aus nicht teilnehmenden Mitgliedstaaten durchgesetzt werden kann.

- Die öffentliche Hand nutzt im Interesse einer wirtschaftlichen Haushaltsführung - vor allem zur Absicherung von Zinsänderungsrisiken und zur Vorsorge für künftige Haushaltsbelastungen - auch Finanzinstrumente (z. B. durch Teilnahme an Sekundärmärkten oder den Abschluss von Finanzderivaten), die nach dem Vorschlag unter die Steuer fallen sollen. Vor diesem Hintergrund begrüßt der Bundesrat die Regelung in Artikel 3 Absatz 2 des Richtlinienvorschlags, nach der Mitgliedstaaten, soweit sie öffentliche Schulden verwalten, (und mit der Verwaltung öffentlicher Schulden betraute Einrichtungen, soweit sie diese Funktion ausüben,) nicht als Einrichtung im Sinne der Richtlinie gelten.

Allerdings reicht diese Ausnahme nach Auffassung des Bundesrates nicht weit genug. So führt die Steuerbarkeit der Gegenpartei im wirtschaftlichen Ergebnis weiterhin zu einer Belastung der öffentlichen Hand. Darüber hinaus haftet die öffentliche Hand nach Artikel 10 Absatz 3 gesamt- schuldnerisch für die Entrichtung der Steuer, sofern sie an einer steuerbaren Transaktion direkt beteiligt ist. Zudem ist die Beschränkung auf die öffentliche Schuldenverwaltung zu eng und der Wortlaut nicht eindeutig. Dies gilt auch für die Vorschriften von Artikel 11 Absatz 1 bis 4, die auch auf die öffentliche Schuldenverwaltung und für die damit beauftragten öffentlichen Einrichtungen anwendbar sein sollen, aus denen jedoch nicht hervorgeht, welche konkreten Pflichten begründet werden sollen. Daher sind alle Transaktionen mit den Schulden- und Liquiditätsverwaltungen
oder Sondervermögen der Mitgliedstaaten und aller staatlichen Ebenen - also einschließlich der Länder und Gemeinden -, der Landesförderinstitute und der Abwicklungsanstalten nach § 8a des Finanzmarktstabilisierungsfondsgesetzes (FMStFG) vom Geltungsbereich der Richtlinie nach Artikel 3 Absatz 4 des Richtlinienvorschlags ausdrücklich auszunehmen.

5. Der Bundesrat bekräftigt daher seine Forderung, dass die Förderbanken der Länder gleichbehandelt werden mit der vom Geltungsbereich der Richtlinie ausgenommenen Europäischen Investitionsbank und der Kreditanstalt für Wiederaufbau (BR-Drucksache 588/11 (Beschluss), Ziffer 5, Spiegelstrich 6). Er fordert die Bundesregierung auf, hierauf bzw. auf eine entsprechende Klarstellung im weiteren Verfahren hinzuwirken.


Marktteilnehmer, die Liquidität spenden, leisten einen maßgeblichen Beitrag zur Funktionsfähigkeit und Effizienz der Märkte. Sie ermöglichen den jederzeitigen Handel, unabhängig von der gerade vorhandenen Marktliquidität. Sie sichern damit für öffentliche wie private Emittenten ebenso wie für die Anleger das Funktionieren des Sekundärmarktes, was von gesamtwirtschaftlicher Bedeutung ist, und sollten daher vom Anwendungsbereich der Finanztransaktionssteuer ausgenommen werden.


8. Der Bundesrat fordert die Bundesregierung mit Nachdruck dazu auf, in den weiteren Beratungen konsequent und mit einer Stimme auf die Verwirklichung einer Finanztransaktionssteuer in Deutschland und den übrigen teilnehmenden


10. Der Bundesrat benennt für die Beratungen der Vorlage in den Gremien des Rates gemäß § 6 Absatz 1 EUZBLG i. V. m. Abschnitt I der Bund-Länder-Vereinbarung eine Vertreterin

des Landes Nordrhein-Westfalen,
Vertretung des Landes Nordrhein-Westfalen bei der EU
(TB‘e Susanne Metzler).

11. Der Bundesrat übermittelt diese Stellungnahme direkt an die Kommission.
Implementing enhanced cooperation in the area of Financial Transaction Tax

Features, impacts, illustrations

Brussels, 14 February 2013

Part I: The requests for enhanced cooperation
The requests

1. Objective and scope to be based on the Commission's initial proposal of September 2011

2. Evasive actions, distortions and transfer to other jurisdictions are to be avoided

• [Possible economic consequences associated with the introduction of FTT by way of enhanced cooperation should be analysed]

Two main objectives:

"Harmonisation of indirect tax legislation!"

"Fair and substantial contribution of the financial sector!"

One secondary objective:

"Create appropriate disincentives for certain transactions"

p.m. objective:

"First tangible step for a global approach!"
The scope of the original proposal

- Transactions on regulated/organised markets as well as over-the-counter transactions
- Transactions (such as sale/purchase, lending/borrowing, transfer of ownership, conclusion or modification of derivative contracts) in financial instruments
- Financial institutions (banking and "shadow-banking" sector) from the EU that are party to the transaction acting either for their own account, or for the account of another person, or are acting in the name of a party to the transaction

In a nutshell: All markets! All instruments! All actors!

Out of scope of the original proposal

- Ring-fencing Private Households and SMEs:
  - Enterprise borrowing/lending
  - Mortgage loans, consumer credits
  - Insurance contracts
  - Payment transactions, etc.

- Ring-fencing large and international business, and public borrowing, but also "conservative" pension funds:
  - Primary market transactions for raising capital through the issuing of shares and bonds - this also ring-fences "conservative" pension funds
  - Spot currency transactions
  - Issuing of government bonds

- Ring-fencing monetary policy, central clearing houses etc.:
  - Transactions with ECB, Central Banks of Member States, EFSF (ESM)
  - Central Counter Parties and alike
As a rule “the place of establishment of a financial institution” determines which MS has to tax.

A financial institution is deemed to be established in
- MS of authorisation (in respect of transactions covered by that authorisation)
- MS of registered seat
- MS of permanent address or usual residence
- MS of branch (in respect of transactions carried out by that branch)
- MS of (counter) party to a transaction, in case a non EU financial institution is party to transaction (or acts in the name of a party) with at least one party established in the EU

**Powerful anti-relocation provisions in the original proposal**

**Taxable amount and tax rates in the original proposal**

- Financial transactions other than those related to derivatives agreements
  - Consideration paid or owed for the transfer
  - Market price (=at arm’s length price) in case :
    - consideration is lower than market price
    - Or transfers of financial instruments between entities of a group in case they do not constitute a « purchase or a sale »
  - **Tax rate: 0.1%** (for each party to the transaction)

- Derivatives agreements
  - Notional amount of the derivatives agreement (underlying notional or face amount that is used to calculate payments made on a given derivatives agreement)
  - **Tax rate: 0.01%** (for each party to the agreement)
**Part II: What will change?**

**EU27**

- "FTT jurisdiction" now limited to "participating" Member States

**EU11**

- Capital duty Directive (2008/7/EU) to be fully respected:
  - No changes of capital duty directive possible!
  - All primary market transactions in shares and bonds and alike must remain tax free!
  - Restructuring operations referred to in the capital duty directive must remain out of scope of FTT!

**Changes necessary under enhanced cooperation**

- "FTT jurisdiction" now limited to "participating" Member States

- Capital duty Directive (2008/7/EU) to be fully respected:
  - No changes of capital duty directive possible!
  - All primary market transactions in shares and bonds and alike must remain tax free!
  - Restructuring operations referred to in the capital duty directive must remain out of scope of FTT!

p.m.:
- FTT directive does not bind non-participating Member States! It does not form part of the *acquis*!
**Strengthening anti-relocation provisions**

The "residence principle", as defined in Article 3.1 of the original proposal has been complemented with elements of the "issuance principle" for certain financial instruments:

- A "condition of last resort" has been introduced in the new Article 4 (Establishment)
- This condition stipulates that a financial institution or other party can also be deemed to be established in the territory of a participating Member State when the product in question has been issued in that Member State.
- This rule is applicable to transactions in financial instruments such as shares, bonds, structured products, money market instruments, units of collective investment funds and derivatives traded on organised trade venues or platforms.

**Main changes for the sake of clarity**

1. Transactions with the ECB, EFSF, ESM and the EU are out of scope.
2. Member States when managing their public debt are out of scope.
3. The underwriting including the subsequent allocation is defined as "primary market transaction" as well.
4. An exchange of financial instruments is included as "purchase and sale" (but = two transactions).
5. Repo agreements are considered as one single transaction. So are lending and borrowing agreements.
Other changes:
References to "delegated acts" have been replaced by specific provisions

1. A technical clarification has been introduced in Article 2 (definition of financial institutions) in the context of the "residual" provision on "any other undertaking, institution, body or person ..."

2. A comprehensive general "anti-abuse" provision has been introduced (Article 13).

3. A specific "anti-abuse" provision has been introduced with respect to "depository receipts and similar securities" (Article 14).

Other changes:
References to "delegated acts" and "implementing acts" for better harmonisation

1. Possibility for Commission to adopt delegated acts on registration, accounting, reporting and other obligations to ensure payment.

2. Possibility for the Commission to adopt implementing acts on uniform methods of collection.
Illustrations (1)

- A bank established in Germany carries out a financial transaction with an insurance company established in Spain, e.g. sale of share:
  - FTT is due both in Germany and Spain at national rates.

- A bank established in France enters into a Swap-agreement with a bank established in Switzerland:
  - FTT is due twice in France at national rate, by the Swiss bank deemed to be established in France and the FR bank.

Illustrations (2)

- A bank established the US (with no branches in the FTT jurisdiction) purchases on the London Stock Exchange shares issued in Germany from a bank (with no branches in the FTT jurisdiction) headquartered in Singapore.
  - FTT due at German rate by both banks as the shares were issued in DE.

  - The US institutions (branches) might be able to prove that there is no link between the economic substance of the transaction and France.
Part III: Analysis of policy options and impacts

"Analysis of policy options and impacts" - Macroeconomic effects -

- On participating Member States ✓
- On non-participating Member States ✓
"Analysis of policy options and impacts"
- Occurrences of double taxation -

- Within FTT jurisdiction: **NO!**

- Between FTT and non-FTT jurisdiction: **Possible, but ...**
  ... only for as long as not all Member States have joined the FTT jurisdiction

**Expected market reaction**
- change in turnover -

- "Market reactions" should not be confused with "geographical relocation"

- Instead they are in most cases the result of
  - Less frequent trading (e.g. less HFT)
  - Less risk exposure ("go for the net-risk only")
  - More passive and conservative risk hedging
  - Declining demand

- Modelling assumptions / results
  - Shares and bonds: minus 15%
  - Derivatives: minus 75%
"Analysis of policy options and impacts"

1. Should one (fully or partly) but permanently exempt certain products from the scope of the FTT?
   - Repurchase agreements?
   - Secondary markets for public debt?
   - Derivatives?

2. Should one (fully or partly) but permanently exempt certain actors from the scope of the FTT?
   - Regional and multilateral development banks?
   - "Internalisers" such as market makers, broker-dealers, proprietary traders etc.?
   - Pillar II and pillar III pension funds?

3. Should one (fully or partly) but only temporarily exempt certain products, actors and/or market places (step-by-step approach)?
Delocalisation: A real threat despite powerful anti-relocation provisions?

Also the EU11 economy is "too big" for being neglected as a market by financial institutions

Those who want to avoid the tax will no longer be able to serve the EU11 market!

Thank you for your attention!

More information available at the following web address:

http://ec.europa.eu/taxation_customs
The residence principle as defined in Article 3 is one of the crucial components of the proposal for an FTT with the aim to reduce to an acceptable level the risk of tax avoidance through geographical relocation of transactions outside the EU. Indeed, taking that financial companies are less mobile than financial transactions, taxing institutions that carry trade on the basis of the residence principle mitigates these geographical relocation risks compared to taxing transactions at source or at the place of issuance.

This principle as defined in Article 3.1 (a) to (d) of the proposed directive allows for the trading activities of financial institutions resident in the EU to be taxed, even if such transactions are carried out in third countries' jurisdictions:

**Article 3.1:**

"For the purposes of this Directive, a financial institution shall be deemed to be established in the territory of a Member State where any of the following conditions is fulfilled:

(a) it has been authorised by the authorities of that Member State to act as such, in respect of transactions covered by that authorisation;

(b) it has its registered seat within that Member State;

(c) its permanent address or usual residence is located in that Member State;

(d) it has a branch within that Member State, in respect of transactions carried out by that branch;

(e) it is party, acting either for its own account or for the account of another person, or is acting in the name of a party to the transaction, to a financial transaction with another financial institution established in that Member State pursuant to points (a), (b), (c) or (d), or with a party established in the territory of that Member State and which is not a financial institution."

According to this approach, it does not matter where a transaction is carried out but who the transaction partners are. Also, most financial institutions trading in the EU typically need to be authorised and are – in application of Article 3.1 (a) – deemed to be established in the EU.

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1 This technical fiche should be considered as a non-paper that commits only the Commission's services involved in its preparation.
The residence principle can be summarised as follows:

<table>
<thead>
<tr>
<th>Party/counterparty</th>
<th>EU financial institution (Member State B)</th>
<th>Non EU financial institution</th>
</tr>
</thead>
<tbody>
<tr>
<td>EU financial institution (Member State A)</td>
<td>Ta</td>
<td>Tb</td>
</tr>
<tr>
<td>Non EU financial institution</td>
<td>Tb</td>
<td>-</td>
</tr>
</tbody>
</table>

Legend:
- Ta: tax of country A, Tb: tax of country B
- Tax paid by \textit{EU Party}; Tax paid by \textit{Non EU party}

The taxation rules also apply when an FI is not a direct party but is acting on behalf of a party to the transaction. Where an FI acts in the name or on account of another FI only that other FI shall be liable to pay the tax.

In order to prevent the circumvention of the tax, in essence this rule has been extended to cover those cases in which a EU party (be it financial or non-financial) is trading with a financial counterparty established outside the EU, as described in Article 3.1 (e) of the proposal (see example 2 in the box below). This provision took its inspiration from the VAT directive (Article 58 of Directive 2006/112/EC). The FTT due would then accrue to the Member State in which the European financial institution is deemed to be established (see the two lightly-shaded cells in the above matrix). The only possibility for EU resident entities to avoid the proposed tax is to relocate themselves to third countries completely or through the formation of subsidiaries and in both cases give up their European customer base, a strategy which it is unlikely to be adopted.

The territoriality of the tax (Art. 3.1)

Example 1:
A bank established in Germany carries out a financial transaction with an insurance undertaking established in Spain, e.g. the sale/purchase of shares.

- FTT is due both in Germany and Spain, respectively (Art. 3.1), at national rates.
- If the market price of the transaction was EUR 600,000, and both countries applied the minimum rate of 0.1%, each financial institution would have to pay EUR 600 FTT.

**Example 2:**
A hedge fund established in France enters into a swap agreement with a bank established in Switzerland.

- FTT is due twice in France at national rate, by the Swiss bank deemed to be established in France (Art. 3.1.e) and by the French bank.
- If the notional value of the swap was EUR 600,000, and France applied the minimum rate of 0.01%, each financial institution would have to pay EUR 60 FTT.

In order to avoid extra-territoriality of the proposed FTT provisions it is also foreseen (see Article 3.3) that a financial institution shall not be considered established in the territory of a Member State "in case the person liable for payment of FTT proves that there is no link between the economic substance of the transaction and the territory of any Member State."

The below box illustrates how this provision could be applied.

**Economic substance (Art. 3.3)**

**Example 1:**
A Chinese bank and a Chinese investment firm, who acts in the name of a Chinese branch of an industrial company established in Germany, conclude a currency futures contract in China for operations of the industrial company in Germany.

- EU FTT is due at the German rate as both the Chinese bank and the Chinese investment firm are deemed to be established in Germany (Art. 3.1.e).
- If the notional value of the agreement at the time of conclusion of the future contract was EUR 600,000, and Germany applied the minimum rate of 0.01%, both the Chinese bank and the Chinese investment firm would have to pay EUR 60 FTT.

**Example 2:**
Same case as the first example, but this time it is a commodities (such as steel) futures contract for operations of the German company in China:

In principle, FTT is due as both the Chinese Bank and the Chinese investment firm are deemed to be established in Germany (Art. 3.1.e), unless both Chinese companies can prove that there is no link between the economic substance of the transaction and the territory of Germany (Art. 3.3). Such proof is not available, however, where the operations of the German company in China have an impact on the balance sheet of the German headquarter.
In the debate, some advocated adding the issuance principle to the residence principle as defined in the proposal to better minimise the risks coming from possible avoidance schemes. This approach would allow to tax trading in at least some financial instruments issued in the EU even when Article 3.1.a to 3.1.e do not apply. Where applicable, it would also make taxable cases where two non-EU financial institutions were party to a transaction or were acting in the name of exclusively non-EU parties to the transaction on certain instruments issued in the EU, thus transactions where there was no EU party involved at all. This approach would take its inspiration from the UK Stamp Duty and Stamp Duty Reserve Tax which is solely based on the issuance principle. Taking into account its possible positive impact on fighting tax avoidance, in case the requirement that at least one party to the transaction must be established in a Member States is not fulfilled, this issue might deserve further technical examination.
— misinterpreted the Contested Regulation in finding that it also covers NMA grouts containing acrylamide.

For these reasons the Appellants claim that the judgment of the General Court in Case T-368/11 should be set aside and the Contested Regulation should be annulled.

(1) OJ L 101, p. 12

Appeal brought on 16 April 2013 by Council of the European Union against the judgment of the General Court (Fourth Chamber) delivered on 5 February 2013 in Case T-494/10: Bank Saderat Iran v Council of the European Union

(Case C-200/13 P)

(2013/C 171/43)

Language of the case: English

Parties

Appellant: Council of the European Union (represented by: M. Bishop and S. Boelaert, agents)

Other parties to the proceedings: Bank Saderat Iran, European Commission

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court (Fourth Chamber) of 5 February 2013 in Case T-494/10;

— give a definitive ruling on the case and dismiss the application brought by Bank Saderat against the contested measures;

— order Bank Saderat to pay the costs incurred by the Council in the proceedings at first instance and in this appeal.

Pleas in law and main arguments

The Council considers that the judgment of the General Court of 5 February 2013 in Case T-494/10, Bank Saderat Iran v. Council, is vitiated by the following errors of law:

1. The General Court was mistaken to rule, with regard to the admissibility of the action, that Bank Saderat was entitled to rely on fundamental rights protections and guarantees regardless of whether it could be considered as an emanation of the Iranian State;

2. The General Court was wrong to hold that one of the reasons given for imposing restrictive measures against Bank Saderat was insufficiently precise;

3. The General Court erroneously applied the case-law concerning the communication of information on the Council's file;

4. The General Court erroneously considered that the reasons given for imposing restrictive measures against Bank Saderat were not substantiated, insofar as:

   — it failed to take due account of the fact that the evidence for Bank Saderat's support to Iran's nuclear proliferation activities comes from confidential sources;


   — it was mistaken to consider that the Council needed to produce detailed information concerning Bank Saderat's handling of letters of credit of two designated entities involved in Iran's nuclear proliferation activities.

Action brought on 18 April 2013 — United Kingdom of Great Britain and Northern Ireland v Council of the European Union

(Case C-209/13)

(2013/C 171/44)

Language of the case: English

Parties


Defendant: Council of the European Union

The applicant claims that the Court should:

— Annul Council Decision 2013/52/EU (1) authorising enhanced cooperation in the area of financial transaction tax; and
— Require the Council to pay the United Kingdom's costs of these proceedings.

**Pleas in law and main arguments**

**First plea in law, alleging** that Council Decision 2013/52/EU is contrary to Article 327 TFEU because it authorizes the adoption of a financial transaction tax ('FTT') with extraterritorial effects which will fail to respect the competences, rights and obligations of the Non-Participating States.

**Second plea in law, alleging** that Council Decision 2013/52/EU is unlawful because it authorizes the adoption of an FTT with extraterritorial effects for which there is no justification in customary international law.

**Third plea in law, alleging** that Council Decision 2013/52/EU is contrary to Article 332 TFEU because it authorizes enhanced cooperation for an FTT, the implementation of which will inevitably cause costs to be incurred by the Non-Participating States.

(1) OJ L 22, p. 11

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**Action brought on 19 April 2013 — European Commission v Federal Republic of Germany**

(Case C-211/13)

(2013/C 171/45)

*Language of the case: German*

**Parties**

Applicant: European Commission (represented by: W. Mölls and W. Roels, acting as Agents)

Defendant: Federal Republic of Germany

**Form of order sought**

The applicant claims that the Court should:

— declare that, by adopting and retaining provisions under which only a low tax-free allowance is granted when inheritance and gift tax are applied to immovable property situated in Germany if the donor or the deceased person and the acquiring party were resident in another Member State at the time of the inheritance or gift, whereas a considerably higher tax-free allowance is granted if at least one of the two parties concerned was resident in Germany at that time, the Federal Republic of Germany has failed to fulfil its obligations under Article 63 TFEU;

— order the Federal Republic of Germany to pay the costs.

**Pleas in law and main arguments**

The taxation of inheritances and gifts is mitigated under German law by relatively high tax-free allowances, particularly in the case of inheritances and gifts between spouses, between parents and children and between certain relatives. These high tax-free allowances are, however, applicable only if Germany exercises an unrestricted right to tax whereas only a low, flat-rate tax-free allowance is applicable if the right to tax is restricted. According to the criteria which the Court of Justice set out in *Mattner* (1), those rules are incompatible with Article 63 TFEU.


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**Appeal brought on 23 April 2013 by Acron OAO, Dorogobuzh OAO against the judgment of the General Court (Eighth Chamber) delivered on 7 February 2013 in Case T-235/08: Acron OAO and Dorogobuzh OAO v Council of the European Union**

(Case C-215/13 P)

(2013/C 171/46)

*Language of the case: English*

**Parties**

Appellants: Acron OAO, Dorogobuzh OAO (represented by: B. Evtimov, E. Borovikov, avocats, D. O’Keeffe, Solicitor)

Other parties to the proceedings: Council of the European Union, European Commission, Fertilizers Europe

**Form of order sought**

The appellants claim that the Court should:

— Set aside the judgment of the General Court of 7 February 2013 in Case T-235/08: Acron OAO and Dorogobuzh OAO v Council of the European Union;

— Give a final judgment of the merits of the dispute, and annul Council Regulation (EC) No. 236/2008 of 10 March 2008 concerning terminating the partial interim review pursuant to Article 11(3) of Regulation 384/96 of the anti-dumping duty on imports of ammonium nitrate originating in Russia (1), insofar as it affects the Appellants;

— Order the Council to pay the costs of the proceedings before the Court of Justice as well as the costs of the proceedings before the General Court, including the costs of the Appellants at both instances;

(1) OJ L 22, p. 11
B. Italian Model

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491. The ownership transfer of shares and other participating financial instruments under Article 2346(6) of the Civil Code, issued by companies resident in Italy, as well as the transfer of securities representing the above shares/instruments regardless of the issuer residence, shall be subject to a 0.2 per cent tax on the transaction value. The ownership transfer of [portfolio] shares following the conversion of bonds, is also subject to the aforesaid tax. The tax does not apply in case of ownership transfer due to inheritance or donation. The transaction value is the value of the net balance of transactions settled daily on the same financial instrument and executed in the same trading day by the same person, or the amount paid. The tax applies regardless of the place of execution of the transaction and of the State of residence of the contracting parties. The tax rate is reduced by half for transfers that take place in regulated markets and multilateral trading facilities. The issue and redemption of shares and financial instruments are not subject to the tax, as well as the conversion into newly issued shares and the temporary acquisition of securities under Art. 2(10) of Regulation (EC) 1287/2006 of the European Commission dated 10 August 2006. The ownership transfer of shares traded in regulated markets or multilateral trading facilities issued by companies whose average market capitalization in the month of November of the year preceding the transfer is lower than €500 million shall also be excluded from taxation.

492. Transactions on financial derivatives under Article 1(3) of Legislative Decree 24 February 1998, n. 58, and subsequent amendments, whose underlying is one or more financial instruments under Paragraph 491, or whose value primarily depends on one or more financial instruments under the same Paragraph, and the transactions on securities referred to in Article 1(1-bis)(c) and (d), of the same Legislative Decree, allowing to purchase or sell mainly one or more financial instruments under Paragraph 491 or resulting in a cash settlement determined mainly with reference to one or more financial instruments referred to in the preceding Paragraph, including warrants, covered warrants and certificates, are subject, when executed, to a fixed amount tax, determined with reference to the type of instrument and the value of the contract, pursuant to Table 3 attached to the present law. The tax shall apply regardless of the place of execution of the transaction and of the State of residence of the contracting parties. In the event that the transactions referred to in the first period, provide as a settlement procedure also the transfer of shares or of the other participating financial instruments, the tax shall apply to the transfer of ownership of such financial instruments taking place at settlement subject to tax under Paragraph 491. Transactions executed in regulated markets or multilateral trading facilities, are subject to the fixed amount tax, reduced to 1/5 (one/fifth), to be determined by reference to the value of a standard contract (“lotto”), as provided by the Decree of the Ministry of Economy and Finance under Paragraph 500, taking into account the average value of a standard contract (“lotto”) in the preceding quarter.

493. For the purposes of Paragraphs 491 and 492, the terms “regulated market” and “multilateral trading facility” are defined within the meaning of Article 4(1), points 14 and 15 of Directive 2004/39/EC of the European Parliament and of the Council dated 21 April 2004 of the Member States of the European Union and of the States that signed the European Economic Area Agreement, included in the list of the Ministerial Decree issued under Article 168-bis of the Decree of the President of the Republic 22 December 1986, n. 917.

494. The tax under Paragraph 491 is due by the person in favor of whom the transfer takes place; the tax under Paragraph 492 is due to the extent provided therein by each of the counterparties to the transaction. The tax under Paragraphs 491 and 492 does not apply to persons acting as interposed parties in the same transactions. In case of ownership transfer of shares and financial instruments under Paragraph 491, as well as for transactions on the financial instruments under Paragraph 492, the tax shall be paid by banks, trust companies (“società fiduciarie”) and investment firms authorized to provide professional services to investors under Article 18 of Legislative Decree 24 February 1998, n. 58, and subsequent amendments, as well as by other persons that anyway take part in the execution of the aforesaid transactions, including non-resident intermediaries. In the event that several persons mentioned in the third period take part in the execution of the transaction, the tax shall be paid by the person receiving directly the execution order from the purchaser the final counterparty. In the other cases, the tax shall be paid by the taxpayer. The intermediaries and the other non-resident persons involved in the transaction may appoint a fiscal representative to be selected among the persons under Article

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1 This is an unofficial translation of the Law. It is provided for information purposes only. Reliance may only be placed upon the official Italian version of the Law published in the Official Gazette of the Italian Republic.
23 of the Decree of the President of the Republic 29 September 1973, n. 600, that is accountable, to the same extent and with the same responsibilities as the non-resident person, for the compliance related to the transactions referred to in the preceding Paragraphs. The tax shall be paid within the sixteenth day of the month following the month of the ownership transfer under Paragraph 491 or of the transactions referred to in Paragraph 492. The transactions that have as a counterparty, the European Union, the European Central Bank, the central banks of the EU member states and the central banks and organizations which also manage the official reserves of other States, as well as the institutions or international bodies constituted in accordance with international agreements executed in Italy, are exempt from the tax.

The tax referred to in Paragraphs 491 and 492 does not apply to:

a) The persons that carry out the transactions referred to in Paragraphs 491 and 492 within a market making activity and limited to such activity within the meaning of Article 2(1)(k) of Regulation (EU) n. 236/2012 of the European Parliament and of the Council dated 14 March 2012;

b) The persons that carry out, on behalf of an issuing company, the transactions referred to in Paragraphs 491 and 492 in order to enhance the liquidity of the shares issued by the company, within the framework of accepted market practices, approved by the Italian financial markets Authority in application of Directive 2003/6/EC of the European Parliament and of the Council dated 28 January 2003 and European Commission Directive 2004/72/EC dated 29 April 2004;

c) The Social Security Institutions as well as secondary pension schemes under Legislative Decree 5 December 2005, n. 252;

d) The transactions between companies between which there is a control link under Article 2359(1) (1) and (2) and 2359(2) of the Civil Code, or as a result of corporate reorganizations carried out fulfilling the requirements provided by the Decree under Paragraph 500;

e) The Transactions and operations on products or services qualified as ethical or socially responsible under Art. 117-ter of Legislative Decree 24 February 1998, n. 58 and associated implementing regulations.

495. The operations carried out on the Italian financial market are subject to a tax on high-frequency trading transactions, if regarding the financial instruments under Paragraphs 491 and 492. The high-frequency trading activity is the activity generated by an mathematical algorithm that automatically makes the decisions regarding the execution, modification or cancellation of the orders and of the associated parameters, where the execution, modification or cancellation of the orders on the same type of financial instruments are performed within a minimum time frame lower than the value provided by the Decree of the Ministry of Economy and Finance referred to in Paragraph 500. This value cannot anyway be greater than half second. The Tax applies with a 0.02 per cent rate to the value of the orders cancelled or modified that in a trading day exceed the threshold established by the Decree under the previous period. This threshold cannot in any case be lower than 60 per cent of the transmitted orders.

496. The tax referred to in Paragraph 495 shall be due by the person on whose behalf the orders referred to therein are executed. For tax payment purposes, the provisions referred to in Paragraph 494, if compatible, shall apply.

497. The tax referred to in Paragraphs 491, 492 and 495 applies to transactions concluded starting from 1 March 2013 for the transfers under Paragraph 491 and for transactions under Paragraph 495 regarding the above mentioned transfers, and starting from 1 July 2013 for transactions referred to in Paragraphs 492 and 495 regarding derivatives. For 2013 the rate of the tax referred to in Paragraph 491, first period, is 0.22 per cent; the rate of the tax referred to in the sixth period of the same Paragraph is 0.12 per cent. The tax due on the ownership transfers under Paragraph 491, on transactions under Paragraph 492 and on the orders under Paragraph 495 effected until the end of the third calendar month following the publication date of the Decree referred to in Paragraph 500 shall be paid not before the sixteenth day of the sixth month following the aforesaid date.
498. For the purposes of assessment, applicable penalties and collection of the tax referred to in Paragraphs 491, 492 and 495 as well as for the related tax litigation, VAT provisions shall apply, if compatible. The penalties for omitted or late payment only apply to the persons liable for the payment, which are also liable for the payment. Such persons can hold the execution of the transaction until they obtain the funding for the payment of the tax.

499. The tax under Paragraphs 491, 492 and 495 is not deductible for purposes of income taxes and of the regional tax on productive activities (“IRAP”).

500. A Decree of the Ministry of Economy and Finance, to be issued within thirty days from the date of entry into force of the present law, shall provide the implementing regulations of the tax under Paragraphs 491 through 498, including any tax return duty. One or more determination of the Internal Revenue Agency Director may provide for compliance and procedures for the payment of the tax under Paragraphs 491 through 498.
### Tabelle: Finanztransaktionssteuer für Finanzinstrumente

(Angaben in Euro für jeden Vertragspartner)

<table>
<thead>
<tr>
<th>Finanzinstrument</th>
<th>Nominalwert des Kontrakts (in TEuro)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>0-2,5</td>
</tr>
<tr>
<td>Future-Kontrakte, Zertifikate, Covered Warrants und Optionskontrakte auf Aktienraten, -messwerte oder -indizes</td>
<td>0,01875</td>
</tr>
<tr>
<td>Future-Kontrakte, Optionsscheine, Zertifikate, Covered Warrants und Optionskontrakte auf Aktien</td>
<td>0,125</td>
</tr>
<tr>
<td>Tauschkontrakte (Swaps) auf Aktien und deren Renditen, Indizes oder Messwerte</td>
<td>0,25</td>
</tr>
<tr>
<td>Terminkontrakte in Bezug auf Aktien und deren Renditen, Indizes oder Messwerte</td>
<td></td>
</tr>
<tr>
<td>Differenzkontrakte in Bezug auf Aktien und deren Renditen, Indizes oder Messwerte</td>
<td></td>
</tr>
<tr>
<td>Alle anderen Wertpapiere, für die ein bestimmter Barausgleich in Bezug auf Aktien und deren Renditen, Indizes oder Messwerte festgesetzt ist.</td>
<td></td>
</tr>
<tr>
<td>Kombinationen aus den vorgenannten Finanzkontrakten oder Wertpapieren</td>
<td></td>
</tr>
</tbody>
</table>
## B. Italian Model

<table>
<thead>
<tr>
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<th>Description</th>
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The Minister of Economy and Finance

Having regard to Law No 228 of 24 December 2012 laying down provisions for drawing up of the annual and multi-annual State budget ("Legge di stabilità 2013" – 2013 Stability Law);

Having regard, in particular, to Article 1, paragraph 500 of the above-mentioned Law No 228 of 2012, which provides that a Decree of the Minister of the Economy and Finance shall establish the procedures for applying the tax referred to in paragraphs 491 to 499 of Article 1, including any reporting obligations;


Having regard to Royal Decree No 267 of 16 March 1942 approving the text of the Civil Code;
UNOFFICIAL TRANSLATION

Having regard to the Decree of the President of the Republic No 600 of 29 September 1973 on common rules for the calculation of income tax;

Having regard to the Decree of the President of the Republic No 917 of 22 December 1986 adopting the Consolidated Version of the Law on the Taxation of Revenue;

Having regard to Legislative Decree No 471 of 18 December 1997 concerning the reform of non-criminal tax penalties in the field of direct taxation, value added tax and tax collection, in accordance with Article 3(133)(q) of Law No 662 of 23 December 1996;

Having regard to Legislative Decree No 58 of 24 February 1998 which consolidates all provisions in the field of financial intermediation, pursuant to Articles 8 and 21 of Law No 520F of 6 February 1996;

Having regard to Legislative Decree No 170 of 21 May 2004 implementing Directive 2002/47/EC on financial collateral arrangements;

Having regard to the Regulation adopted by Consob Resolution No 11971 of 14 May 1999 implementing Legislative Decree No 58 of 24 February 1998 concerning the regulation of issuers;

Having regard to the Regulation adopted by Consob Resolution No 16190 of 29 October 2007 implementing Legislative Decree No 58 of 24 February 1998 concerning the regulation of intermediaries;

ISSUES

the following Decree:
Title I

General provisions

Article 1

(Definitions)

1. For the purposes of this Decree, paragraphs 491-500 are referred to in the corresponding paragraphs of Article 1 of Law No 228 of 24 December 2012.

2. For the purposes of this Decree, the following definitions shall apply:
   a) TUF: the Consolidated Law on Financial Intermediation referred to in Legislative decree No 58 of 24 February 1998;
   b) TUIR: the Consolidated Act on Income Taxes referred to in Presidential decree No 917 of 22 December 1986;
   c) shares: stocks of companies belonging to one of the following types, even if falling into a special category, and regardless of the assignment of certain administrative or property rights: companies under Italian law known as “società per azioni”, “società in accomandita per azioni” and European companies referred to in Regulation (EC) No 2157/2001, as well as stakes of companies under Italian law known as “società cooperative” and “mutue assicuratrici”, unless the articles of incorporation stipulate that the laws for companies under Italian law known as “società a responsabilità limitata” pursuant to Article 2519, paragraph 2, of the Italian Civil Code, should apply;
   d) participating financial instruments: the financial instruments referred to in Article 2346, sixth paragraph, of Civil Code and issued by companies listed under letter c), which assign certain administrative and property rights against contributions by shareholders or third parties, resulting in any form of participation of the stakeholder to the performance of the company or of some of its branches of business, including the financial instruments for participating to a single transaction referred to in Article 2447-ter, paragraph 1, letter e), of the same Code;
   e) securities representing equity investment: depositary receipts in respect of shares and other certificates, irrespective of the issuer, representing shares or participating instruments, as referred to in above letter d), issued by companies resident in the Italian territory;
   f) regulated markets and multilateral trading facilities: the markets and systems recognized pursuant to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004, relevant to the Economic European Area, as included in the list published in the
specific section of the website of the European Securities and Markets Authority (http://mifiddatabase.esma.europa.eu/) for the purposes provided for in paragraph 2 of Article 13 of (EC) Regulation No 1287/2006 of the Commission, of 10 August 2006, provided that they are established in States and territories included in the list referred to in the Ministerial Decree issued in accordance with Article 168-bis of TUIR. In the case of the States to which the aforesaid provisions do not apply, regulated markets and multilateral trading facilities are considered those in regular operation and authorized by a National Public Authority with State supervision, including therein those recognized by CONSOB pursuant to Article 67, paragraph 2, of TUF, provided that they are established in States and territories included in the list referred to in the above Ministerial Decree.

Title II

Shares and other financial instruments subject to tax

Article 2

(Objective scope)

1. The tax referred to in Article 491 shall apply to the transfers of the ownership of securities and other financial instruments issued by companies resident in the State territory. For this purpose, residence shall be determined on the basis of the registered office. Additionally, the tax shall apply to the transfer of the ownership of securities representing equity investment, regardless of the place of residence of the issuer of the certificate and of the place where the contract has been concluded.

2. The transfers of the ownership of shares or units in collective investment undertakings (CIUs, OICR in Italy), including the shares of open-ended investment companies, shall be excluded from the scope of the tax.
Article 3
(Transfer of ownership)

1. For the purposes of the application of the tax referred to in paragraph 491, it is considered that transfers of ownership in the case of transactions relating to shares, participating financial instruments and securities representing equity investment admitted to central securities depositories, have taken place on the date of their settlement. Date of settlement shall mean the date of registration of the transfers following the settlement of the relevant transaction. Alternatively, the person liable to the payment of tax, subject to the taxpayer’s consent, can assume the date of liquidation stipulated in the contract as the date of the transaction.

2. For transactions other than those referred to in paragraph 1, the transfer of ownership corresponds with the moment when its legal effect is produced.

3. For the purposes of paragraph 491, transfers resulting from the conversion of bonds into shares, as well transfers arising from the exchange or the refund of bonds with shares or other participating financial instruments shall also be considered as transfers of ownership of shares or other participating financial instruments. In the case of the transactions referred to in the preceding sentence, the transfer of ownership corresponds with the date the conversion, exchange or refund have effect.

4. Transfers made through intermediaries buying in their name but on behalf of another person shall be deemed to be transfers of property only with regard to the person on behalf of whom the transfer has been made.

Article 4
(Value of the transaction)

1. The value of the transaction referred to in paragraph 491 is determined on the basis of the net balance of the transactions regulated daily, calculated for each liable person with reference to the number of securities traded on the same day and relating to the same financial instrument. The calculation of the net balance shall be made by the person liable for payment of the tax under Article 19. For this purpose, such person shall in the first place take into account separately purchases and sales, made on regulated markets or in multilateral trading facilities, as well as those made outside such markets. The tax base is the number of securities resulting from the algebraic
positive sum of the final net balances multiplied by the weighted average price of the purchases made on a particular day.

2. The term purchase price shall mean:
   a) in the case of market purchases, the exchange value paid for acquiring the securities;
   b) in the case of purchases of shares, participating financial instruments and the securities representing equity investment following settlement of the financial instruments referred to in paragraph 492, the higher between the fixed exercise value and the normal value determined pursuant to paragraph 4 of Article 9 of TUIR;
   c) in the case of conversion, exchange or refund of bonds with shares, participating financial instruments, securities representing equity investment or financial instruments referred to in paragraph 492, the value established in the issue prospectus;
   d) in all other cases, the value stipulated in the contract, or, failing that, the normal value determined under paragraph 4 of Article 9 of TUIR.

3. The purchases and sales excluded or exempt from the tax referred to in Articles 15 and 16 are not included in the calculation of the net balance values.

4. Where the same person carries out a number of transactions on the same trading day through several intermediaries, a single net balance may be calculated amounting to the algebraic sum of the balances relating to each intermediary, subject to a specific request of the taxpayer indicating a single intermediary liable for the payment of the tax. The intermediaries shall have the option not to consent to the taxpayer’s request. The person liable for payment of the tax referred to in the first sentence may request the centralized management company as of Article 80 of TUF to calculate the single net balance. In this case, the centralized management company reports to the intermediary liable for the payment of the tax the net balance of the person liable for payment. The effectiveness of the option for the single net balance calculation is subject to the acceptance by the intermediaries involved and to their transmission of the information necessary for the calculation.

5. In the case of acquisitions of shares, participating financial instruments and securities representing equity investment denominated in currencies other than the euro, the tax base shall be determined with reference to the exchange rate actually applied to the transaction for operations having euro settlement; in the other cases, the tax base shall be determined with reference to the exchange rate indicated in the specific section of the European Central Bank’s website http://www.ecb.int/stats/exchange/eurofxref/html/index.en.html relating to the day of the purchase.
UNOFFICIAL TRANSLATION

Article 5

(Persons liable to tax)

The tax is payable by the persons to which the ownership of shares, participating financial instruments and securities representing equity investment is transferred, regardless of their place of residence and the place where the contract is concluded.

Article 6

(Tax rate)

1. The tax rate for the transfers of ownership referred to in paragraph 491 is 0.2 per cent of the value of the transaction and is halved for the transfers taking place as a result of transactions effected on regulated markets or in multilateral trading facilities. Such reduction of the tax applies also in the case of purchase of shares, participating financial instruments and securities representing equity investment through a financial intermediary, interposed between the parties to the transaction, purchasing the above instruments on a regulated market or in a multilateral trading facility, provided that price, total quantity and date of settlement of buying and selling transactions coincide.

2. The reduction of the tax referred to in the preceding paragraph shall be granted as from the first day of the month following the inclusion of the market or facility in the list published on the website of the European Securities and Markets Authority, or, in all other cases, the first day of the month following the authorization and the start of supervision by the National Public Authority.

3. If the tax base is determined as the net balance between purchases and sales executed on regulated markets or in multilateral trading facilities, and other purchases and sales, the tax rate shall be equal to the average of the weighted rates by the number of securities purchased.

4. Operations attributable to negotiated transactions, pursuant to Article 19 of (EC) Commission Regulation No 1287/2006 of 10 August 2006, where they are provided for by the market, shall be also treated as transactions effected on regulated markets or in multilateral trading facilities. On the contrary, transactions carried out bilaterally by intermediaries, including those executed in internalisation systems and so-called crossing networks, irrespective of the procedures to comply with post-trade transparency obligations, shall be treated as transactions effected outside regulated markets and multilateral trading facilities.
5. A 0.2 percent tax rate shall apply to the purchase of shares, participating financial instruments and securities representing equity investment resulting from the settlement of the financial instruments referred to in paragraph 492.

Title III

Derivative instruments and other securities

Article 7

(Objective scope)

1. The tax referred to in paragraph 492 shall apply to transactions on:

   a) financial derivative instruments referred to in Article 1(3) of TUF, both traded on regulated markets or in multilateral trading facilities and subscribed or traded outside these markets, having as their underlying primarily one or more financial instruments referred to in paragraph 491 or the value of which depends primarily on one or more of these financial instruments;

   b) transferable securities referred to in Article 1(1-bis)(c) and (d) of TUF giving the right to acquire or sell mainly one or more financial instruments referred to in paragraph 491, or giving rise to a cash settlement determined mainly by reference to one or more securities referred to in paragraph 491.

2. The financial instruments and transferable securities referred to in the preceding paragraph are subject to tax provided that the underlying or reference value consists for more than 50 percent of the market value of the instruments referred to in paragraph 491 measured on the date of issuance for the financial instruments and transferable securities referred to in the preceding paragraph which are traded on regulated markets and in multilateral trading facilities and on the date on which the transaction on these instruments was concluded in the other cases. Where the underlying or reference value are represented by measurements on shares or indices, the review under the preceding sentence shall be carried out on the shares or indices which the measurements refer to. The part relating to the underlying or reference value represented by securities other than shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of shares shall not be relevant for the purposes of this calculation.
Article 8

(Entry into the contract)

Transactions in derivative financial instruments and transferable securities referred to in Article 7 are subject to tax at the time of their conclusion to be understood, respectively, as the time of subscription, negotiation or modification of the contract and as the time of transfer of ownership of such transferable securities. Modification of the contract shall mean a variation of its notional value, parties or maturity. Where the notional value is modified upward, on an automatic and not discretionary basis, under a contractual provision, the tax shall be applied only to the variation of the notional value. In order to establish the time from which the transfer of the ownership of transferable securities has taken place, reference is made to the provisions of Article 3.

Article 9

(Notional value)

1. For the sole purposes of this Decree and of the tax application, “notional value of the transaction” shall mean:
   1) for stock index futures traded on regulated markets or in multilateral trading facilities, the number of standard contracts multiplied by the number of index points under which the contract is traded by the value assigned to the index point;
   2) for single stock futures traded on regulated markets or multilateral trading facilities, the number of standard contracts multiplied by the price of the futures by the standard contract size;
   3) for stock index options traded on regulated markets or in multilateral trading facilities, the number of standard contracts multiplied by the contract price (premium) expressed in index points multiplied by the value assigned to the index point;
   4) for stock options traded on regulated markets or in multilateral trading facilities, the number of standard contracts multiplied by the contract price (premium) multiplied by the standard contract size.
   5) for other options, the price (premium) paid or received for entering into the contract;
   6) for forward contracts, where the underlying is - even indirectly - an index, the product of the forward unit value of the index and the number of units of the index under the contract; where the underlying are - even indirectly - shares, the number of shares multiplied by the forward price;
7) for swap contracts, the amount according to which the swap flows are determined - even indirectly - recognised upon conclusion of the transaction;
8) for financial contracts for difference, the value of the index or shares on which the contract’s profits or losses - even indirectly - depend;
9) for warrants, the number of warrants purchased, subscribed or sold multiplied by the purchase or selling price;
10) for covered warrants, the number of covered warrants purchased or sold multiplied by the purchase or selling price;
11) for certificates, the number of certificates purchased or sold multiplied by the purchase or selling price;
12) for securities giving rise to a cash settlement determined by reference to shares and related yields, indices or measurements, the amount according to which cash flows or maturity profile or economic result of the transaction are determined, calculated at the time of purchase and sale of securities;
13) for combinations of the above contracts or securities, the sum of the notional amounts of contracts and securities within the contract or security in question.

2. If the notional value of the instruments referred to in Article 7, other than those under 3), 4), 5), 9), 10) and 11) of this Article, is amplified due to the structure of the transaction, the actual notional value, equal to the reference notional value of the contract multiplied by the leverage effect, shall be determined. For contracts with a variable reference notional value, the reference value at the date in which the transaction has been concluded.

3. If the notional value of the instruments referred to in Article 7, other than those under 3), 4), 5), 9), 10) and 11) of this Article, is represented also by instruments other than shares, participating financial instruments and securities representing equity investment, for the purposes of this paragraph, only the notional value of these shares, instruments and securities shall be taken into consideration.

4. In the case of transactions in instruments referred to in Article 7 in currencies other than the euro, the tax base shall be determined with reference to the exchange rate actually applied to transactions having euro settlement; in the other cases, the tax base shall be determined with reference to the exchange rate shown in the specific section of the European Central Bank’s website (http://www.ecb.int/stats/exchange/eurofxref/html/index.en.html) relating to the day the transaction has been concluded.
5. As an alternative to the determination of the notional value, according to the rules of the preceding paragraphs, for the purposes of determining the amount of tax, the value is assumed to be equal to two million euro.

**Article 10**

*(Persons liable to tax)*

The tax is payable for the amount set out in Article 11 by both counterparties of the transactions on the financial instruments and transferable securities referred to in Article 7, regardless of their place of residence and the place where the transactions have been concluded.

**Article 11**

*(Amount of the tax)*

1. The tax for the transactions referred to in paragraph 492 shall be determined as set out in Table 3 attached to Law No 228 of 24 December 2012, and is reduced to 1/5 for transactions that are executed on regulated markets or in multilateral trading facilities. Such reduction of the tax applies also in the case of purchase of the instruments and transferable securities referred to in Article 7, through a financial intermediary interposed between the parties to the transaction, buying the above instruments on a regulated market or in a multilateral trading facility, provided that the price, total quantity and date of settlement of buying and selling transactions are the same. Operations attributable to negotiated transactions, pursuant to Article 19 of (EC) Commission Regulation No 1287/2006 of 10 August 2006, where they are provided for by the market, shall be also treated as transactions effected on regulated markets or in multilateral trading facilities. On the contrary, transactions carried out bilaterally by intermediaries, including those effected in internalisation systems and so-called crossing networks, shall be treated as transactions effected outside regulated markets and multilateral trading facilities.

2. The reduction of the tax referred to in the preceding paragraph shall be granted as from the first day of the month following the inclusion of the market or facility in the list published on the website of the European Securities and Markets Authority, or, in all other cases, from the first day of the month following the authorization and the start of supervision by the National Public Authority.
Title IV

High-frequency trading

Article 12

(Objective scope)

1. The transactions effected on the Italian financial market are subject to a tax on high-frequency trading relating to shares, participating financial instruments, securities representing equity investment and transferable securities as of paragraph 7, irrespective of the issuer, and to derivative financial instruments as of paragraph 7, having as their underlying mainly one or more financial instruments referred to in paragraph 491 or the value of which depends primarily on one or more of these financial instruments, irrespective of the issuer of these financial instruments referred to in paragraph 491 and regardless of the issuer’s residence. There shall be deemed to be high-frequency trading those transactions which jointly have the following features:

   a) they are generated by a computer algorithm that automatically determines the decisions relating to the sending, modification and cancellation of orders and of the relevant parameters with the exclusion of those used:

      (1) for the performance of the market-making activity referred to in paragraph 494, last sentence, letter a), provided that orders placed by such algorithms come from specific desks devoted to market-making activities as set out in Article 16, paragraph 3, letter a);

      (2) solely for the fulfillment of clients’ orders to comply with best execution requirements provided by Article 21 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004, or for the purpose of complying with equivalent best execution requirements for the client provided for by foreign regulations;

   b) they occur at intervals not exceeding half a second. This interval is calculated as the time between the placing of an order for purchase or sale and the subsequent modification or cancellation of the same order by the same algorithm.

2. Italian financial market means the regulated markets and multilateral trading facilities authorized by CONSOB pursuant to Articles 63 and 77-bis of TUF.
Article 13

(Application of the tax)

1. The tax is calculated on a daily basis and is payable where - in a single trading day - the ratio between the sum of cancelled orders and modified orders, and the sum of entered orders and modified orders exceeds 60 per cent, with reference to the single financial instruments. For this purpose, only the orders cancelled or modified within half a second are taken into consideration, as defined in Article 12. The tax is applied, for each trading day, on the value of the cancelled and modified orders exceeding the 60 per cent threshold.

2. For shares, participating financial instruments and securities representing equity investments, as well as the transferable securities referred to in Article 7, paragraph 1, letter b), the ratio specified in the above paragraph is calculated according to the number of securities included in the single orders that have been entered, modified or cancelled. The tax shall be applied to the product of the number of securities exceeding the threshold specified in paragraph 1 multiplied by the weighted average price of the purchase and sale orders or related modifications thereof for the specific financial instrument in the trading day.

3. For derivative financial instruments referred to in Article 7, paragraph 1, letter a), the ratio referred to in the preceding paragraph shall be calculated based on the number of standard contracts included in the single orders entered, modified or cancelled. The tax shall be applied to the product of the number of standard contracts exceeding the threshold referred to in paragraph 1 multiplied by the weighted average countervalue of purchase and sale orders or related modifications thereof for the specific financial instrument in the trading day. Equivalent value means, in the case of options, the premium specified in the contract multiplied by the number of shares making up the standard contract; in the other cases, the notional value of the standard contract.

Article 14

(Persons liable to tax)

The tax is payable by persons that, by means of the algorithms provided in Article 12, enter purchase and sale orders and the related modifications and cancellations referred to in the preceding Article.
Title V

General provisions

Article 15

(Exclusions from the tax)

1. The following transactions are excluded from the scope of the tax referred to in paragraphs 491 and 492:

a) the transfer of the ownership of financial instruments referred to in paragraph 491 or the change in the ownership of contracts and transferable securities referred to in paragraph 492 taking place by inheritance or gift;

b) the transactions in bonds and debt securities;

c) the transactions of issue and cancellation of the instruments referred to in paragraph 491 and of the transferable securities referred to in paragraph 492, including the repurchase of securities by the issuer;

d) the purchase of the ownership of newly issued shares also through the conversion of bonds or the exercise of an option by the shareholder, or if it constitutes a mode of settlement of the transactions referred to in paragraph 492 of the above Law;

e) the transfer of the ownership of the instruments referred to in paragraph 491 in connection with securities financing transactions as a result of a lending or borrowing or a repurchase or reverse repurchase transaction, or a "buy-sell back" or "sell-buy back" transaction. Likewise excluded from the scope of the tax is the transfer of ownership of the above instruments in the framework of financial collateral transactions arising from an arrangement under which a collateral-provider transfers full ownership of financial collateral to a collateral-taker for the purpose of securing or otherwise covering the performance of relevant financial obligations, including the repayment at the end of the collateral. In such circumstances, the tax applies in the case of final transfer of the ownership, or in the case of enforcement of the collateral (whether it takes place by sale or appropriation of securities), set-off of the collateral against the relevant financial obligations or application of the collateral in discharge of the relevant financial obligations or for other reasons involving – in any case –a permanent transfer of the ownership. Collateral consisting of securities or participating financial instruments, or other temporary transfers that do not involve the transfer of ownership shall also be excluded from the application of the tax.
f) the transfer of the ownership of shares traded on regulated markets or in multilateral trading facilities issued by the companies mentioned in the list referred to in Article 17, even if it constitutes a mode of settlement of the transactions referred to in paragraph 492. The exclusion also operates for transfers taking place outside markets and multilateral trading facilities;

g) the transfer of the ownership of the instruments referred to in paragraph 491 and the transactions referred to in paragraph 492 effected by companies between which there exists a relationship of control referred to in Article 2359, first paragraph, No 1) and No 2), and second paragraph of Civil Code or which are controlled by the same company;

h) the transfer of the ownership of the instruments referred to in paragraph 491, or the change of ownership of contracts and transferable securities referred to in paragraph 492, arising from restructuring operations under Article 4 of Council Directive 2008/7/EC of 12 February 2008, as well as mergers and divisions of collective investment undertakings;

i) the transfer of the ownership of securities representing equity investment or participating financial instruments issued by companies referred to in Article 17 of this Decree.

2. Similarly, the tax does not apply:

a) to purchases and transactions entered into by a financial intermediary interposed between two parties acting as a counterparty to both sides, purchasing on one hand, and selling on the other, securities or other financial instruments where for both operations price, total quantity and date of settlement of buying and selling transactions coincide, except the cases where the person to whom the financial intermediary transfers the title or the financial instrument does not fulfil its obligations;

b) to the purchases of the instruments referred to in paragraph 491 and to the transactions referred to in paragraph 492 entered into by systems interposing in the purchases or in the transactions for the purposes of clearing and collateral of said purchases or transactions. To that end, reference is made to the authorised or recognised entities under Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 that interpose themselves in a transaction on financial instruments for the purposes of clearing and collateral; for those countries where the above Regulation is not in force, reference is made to equivalent foreign systems which are authorized and supervised by a national public authority, provided that they are established in States and territories included in the list referred to in the Ministerial Decree issued in accordance with Article 168-bis of TUIR.
Article 16
(Exemptions)

1. There shall be exempt from the tax referred to in paragraphs 491 and 492:
   a) transactions having as their counterpart:
      1) the European Union or the European institutions, the European Atomic Energy
         Community;
      2) the bodies covered by the Protocol on the Privileges and Immunities of the
         European Union or the European Central Bank and the European Investment Bank;
      3) the central banks of the Member States of the European Union and the central
         banks and organizations managing also the official reserves of other States;
      4) bodies or international organizations established in accordance with international
         agreements enforced in Italy; a specific measure issued by the Director of the
         Agenzia delle Entrate may give notice of the above agreements;
   b) transfers of ownership and transactions in units of collective investment
      undertakings referred to in Article 1, paragraph 1, letter m) of TUF, classed as
      “ethical” or “socially responsible” pursuant to Article 117-ter of TUF for which a
      prospectus has been published according to the models in Annex 1B of the
      regulation adopted by CONSOB with Resolution No 11971 of 14 May 1999 and
      later amendments, including the additional information provided for by Article 89,
      paragraph 1 of the Regulation adopted by CONSOB with Resolution No 16190 of
      29 October 2007 and later amendments;
   c) the subscription of contracts for the provision of portfolio management services
      referred to in Article 1, paragraph 5, letter d) of TUF, classed as “ethical” or
      “socially responsible” pursuant to Article 117-ter of TUF, where the contract
      concluded with the customer includes the additional information provided for by
      Article 89, paragraph 1 of the regulation adopted by CONSOB with Resolution No
      16190 of 29 October 2007 and later amendments.

2. In relation to the transactions referred to in paragraph 1, the tax is not payable by either
   party.

3. There shall be also exempt from tax:
   a) the transactions effected during market making activities as defined in Article 2,
      paragraph 1, letter k) of Regulation (EC) No 236/2012 of the European Parliament and
of the Council of 14 March 2012, and in document ESMA/2013/158 “Final Report on Guidelines on the exemption of market-making activities and primary market operations under Regulation (EU) 236/2012 of the European Parliament and of the Council on short selling and certain aspects of Credit Default Swaps” of 1 February 2013, provided that the person acting in the course of this activity has been granted the exemption under Article 17, paragraph 1 of the Regulation by the authority specified in Article 17, paragraphs 5 and 8 of the Regulation. For those countries to which the above Regulation No 236/2012 is not directly applicable, if there is no such authorization referred to in the preceding sentence, the person acting in the course of market-making activities is entitled to the exemption, provided that such person has submitted a specific request to CONSOB according to the procedures to be issued by this public authority; the applicant shall in any case prove to comply with the same requirements and conditions provided for in the above Regulation and Guidelines; b) the transactions effected in the course of liquidity assistance activities within the framework of accepted market practices, approved by the financial market authority under Directive 2003/6/EC of the European Parliament and of the Council of 20 January 2003 and under Commission Directive 2004/72/EC of 29 April 2004. The non-application of the tax is limited exclusively to the operations and transactions carried out within the activities described above. There shall be included only the cases in which the person making the transactions and operations referred to in paragraph 491 and 492 has concluded a contract directly with the company issuing the security.

4. For the transactions referred to in paragraph 3, the exemption is exclusively granted to those persons carrying on market-making activities and providing liquidity assistance as indicated therein and only to the transactions effected in carrying on such activities; the tax may be applied to the counterparty, within the limits and under the conditions laid down by paragraph 494, first sentence.

5. The tax referred to in paragraphs 491 and 492 shall not apply to pension funds subject to supervision under Directive 2003/41/EC and to compulsory social security institutions, established in the Member States of the European Union and in the States which are parties to the Agreement on the European Economic Area listed in the Decree of the Minister of Economy and Finance issued pursuant to Article 168- bis of TUIR, as well as to other supplementary pension schemes referred to in Legislative Decree No 252 of 5 December 2005. The exemption shall also apply to persons and entities receiving solely the funds referred to in the preceding sentence.

Article 17
1. By 10 December of each year, CONSOB shall draw up and send to the Ministry of Economy and Finance the list of companies complying with the capitalisation limit as of paragraph 491, last sentence, and whose shares are traded on a regulated market or in an Italian multilateral trading facility.

2. The companies resident in the State territory complying with the capitalisation limit as of paragraph 1 and whose shares are traded on a regulated market or in an Italian multilateral trading facility shall send to the Ministry of Economy and Finance, by the 10th of December of each year, a written communication certifying the value of their own capitalisation, enclosing thereto an ad-hoc certification issued by the relevant regulated market under Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 or by the operator of a multilateral trading facility, if more relevant in terms of exchange value. In case of admission to trading on regulated markets or in multilateral trading facilities, the inclusion in the list is verified as from the year following that for which it is possible to calculate an average market capitalization for the month of November; until this year, a capitalization lower than the capitalization limit referred to in paragraph 491, last sentence, is assumed.

3. Based on the information received under the preceding paragraphs, the Ministry of Economy and Finance shall draw up and publish on its website, by the 20th of December of each year, the list of companies resident in the State territory for the purposes of the exemption referred to in paragraph 491, last sentence. For the first year of application, the list of the companies referred to in the preceding sentence is the one attached to this Decree as for the companies whose securities are traded on the Italian regulated market; as for the companies referred to in paragraph 2 of this Article, the communication referred to in the same paragraph 2 must be sent by the 20th of February 2013; a list including these latter companies shall be later issued by the 1st of March 2012 by the Ministry of Economy and Finance.

4. Average capitalisation means the simple average of the daily capitalisations calculated according to the relevant weighted average prices, with reference to each trading day, except those days for which the aforesaid prices are not consistent with the number of securities in circulation as, for example, in the case of capital increases, and those on which there has been no trading. In the case of securities suspended from trading, capitalisation is calculated with reference to the last available month. If the issuing company has several categories of traded shares, the evaluation is to be referred to the whole set of categories.

Article 18
UNOFFICIAL TRANSLATION

(Non-deductibility of the tax)

The tax laid down in paragraphs 491, 492 and 495 is not deductible for the purposes of income taxes, including their substitute taxes, as well as for the purposes of the Italian regional tax on productive activities.

Article 19

(Payment of the tax)

1. The tax shall be paid by banks, trusts and investment companies referred to in Article 18 of TUF which are involved in the execution of the transactions set forth in paragraphs 491, 492 and 495, as well as the notaries involved in the drawing up or authentication of deeds concerning the above-mentioned transactions. Article 64, third paragraph, of Presidential Decree No 600 of 29 September 1973 shall apply to the above entities. In the other cases the tax shall be paid by the taxpayer.

2. The tax shall be paid:
   a) for the transfers of ownership as of paragraph 491, by the 16th day of the month following the one of the transfer of ownership as established under Article 3;
   b) for the transactions as of paragraph 492, by the 16th day of the month following the one of the conclusion of the contract, as established under Article 8;
   c) for the trading transactions as of paragraph 495, by the 16th day of the month following the one of the dispatch date of the cancelled or modified order.

3. Intermediaries and other persons involved in the transaction shall not pay the tax if the taxpayer has certified that the transaction falls within the exclusion cases set forth in Article 15 or within the exemption cases laid down in Article 16.

4. Where more persons among those indicated in paragraph 1 are involved in the transaction execution, the tax is paid by the one who receives the order to execute the transaction directly from the purchaser or the final counterparty. Where the purchaser or the final counterparty is one of the persons referred to in paragraph 1, not located in the States or territories referred to in the next sentence, this person pays directly the tax due. Persons located in States or territories with which Italy has no agreements in force for the purposes of the exchange of information and the assistance in the collection of tax credits, identified in a specific measure issued by the Director of the Agenzia delle Entrate, that are involved for any reason in the execution of the transaction, are considered in all respects as purchasers or final counterparties of the order of execution.
5. The persons obliged to pay the tax shall annually comply with the tax return obligations for transfers and transactions laid down in paragraph 2, which may include also the excluded and exempt ones, according to the terms and arrangements set forth in a measure issued by the Director of the Agenzia delle Entrate, to be adopted under paragraph 500. The same measure shall provide for arrangements for the payment of tax and the compliance with the related instrumental requirements. The persons referred to in paragraph 494 can apply to the Centralised Management Company referred to in Article 80 of TUF for the payment of tax and the reporting obligations. For such purpose, they shall appoint an ad-hoc proxy for the Centralised Management Company and send the information used for the tax calculation as is necessary for the payment of the tax and the compliance with the relevant tax return obligations. The delegating persons are held in any case responsible for the correct payment of the tax and for the compliance with the related instrumental requirements. Having received the funding from the persons referred to in paragraph 494, the Centralised Management Company makes the payment of the tax by the 16th day of the second month following the date of the transaction; the payment relating to the transactions of the month of November is made by the 19th day of the month of December and the delegating persons are required to send the information referred to in the fourth sentence and to provide the funding by the third working day before the above date.

6. The persons referred to in paragraph 1 are exempt from the obligation to file a tax return if the tax amount is lower than fifty euro.

7. The intermediaries and the other non-residents involved in the transaction, having a permanent establishment in Italy under Article 162 of TUIR, shall comply with the obligations deriving from the tax application through the permanent establishment which is liable under the same terms and with the same responsibilities of non resident persons for the obligations arising from the application of the tax. The intermediaries and the other non-residents having no permanent establishment in Italy can appoint a tax representative among the persons indicated in Article 23 of Presidential Decree No 600 of 29 September 1973. Such representative shares the same terms and responsibilities as non-resident persons for the obligations deriving from the application of the tax.

8. In the other cases, the aforesaid obligations, including the payment of the tax, shall be complied with directly by the foreign persons who, if obliged to file the tax return, shall be identified according to the arrangements to be laid down in a measure of the Director of the Agenzia delle Entrate.
UNOFFICIAL TRANSLATION

Article 20

(Application of penalties)

1. In case of delayed, insufficient or omitted payment of the tax, penalties provided for in Article 13 of Legislative Decree No 471 of 18 December 1997 are applied exclusively against the persons having to comply with such obligation and also liable for the payment of the tax. In case of insufficient or omitted payment of the tax, the Tax Administration has the authority to recover the tax and the relevant interests also against the taxpayer concerned.

2. As regards the breaches concerning the tax return, its contents and the instrumental requirements as of Article 19, paragraph 5, the penalties set forth in Legislative Decree No 471 of 18 December 1997 on the valued added tax shall apply.

Article 21

(Tax implementation in 2013)

1. The tax on the transfer of ownership of shares and other participating financial instruments, as well as of securities representing the aforesaid instruments and the transfer of ownership of shares as a result of the conversion of bonds or of transactions on financial instruments referred to in paragraph 492, shall apply to regulated transactions as from the 1st of March 2013, if traded after the 28th of February.

2. The tax on high-frequency trading transactions referred to in paragraph 495 concerning the instruments provided for in paragraph 491, shall apply to the orders sent as from the 1st of March 2013.

3. The tax on the transactions as of paragraph 492 shall apply to the contracts subscribed, negotiated, or modified – or to the securities transferred, as from the 1st of July 2013.

4. The tax on high-frequency trading transactions referred to in paragraph 495 concerning financial derivative instruments and transferable securities as of paragraph 492 shall apply to the orders sent as from the 1st of July 2013.

5. The tax referred to in paragraph 491 is set at the rate of 0.22% for 2013. The rate is reduced at 0.12 per cent for the transfers taking place on regulated markets and in multilateral trading facilities.

6. The tax as of paragraphs 491 and 495, only as for the transfers involving shares and other participating financial instruments and securities representing equity investment executed until the
end of the third calendar month following the date of publication of this Decree, shall be paid by the 16th of July 2013.

Article 22
(Refunds)

A measure issued by the Director of the Agenzia delle Entrate shall set the arrangements for the refund of the tax unduly paid also in the case where the taxpayer proves, unequivocally, that the same transaction has been subjected to multiple taxation.

Rome, 21 febbraio 2013
The MINISTER
B. Italian Model

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Having regard to Law No 228 of 24 December 2012 laying down provisions for drawing up of the annual and multi-annual State budget ("Legge di stabilità 2013" – 2013 Stability Law);

Having regard, in particular, to Article 1, paragraph 500 of the above-mentioned Law No 228 of 2012, which provides that a Decree of the Minister of the Economy and Finance shall establish the procedures for applying the tax referred to in paragraphs 491 to 499 of Article 1, including any reporting obligations;

Having regard to the Decree of the Minister of the Economy and Finance of 21 February 2013, published in the Official Gazette No 50 of 28 February 2013, implementing paragraphs 491 to 499 of Article 1 of Law No 228 of 24 December 2012;

Whereas it was necessary to amend the above-mentioned Decree of the Minister of the Economy and Finance of 21 February 2013 in order to complete the implementation of the afore-said paragraphs 491 to 499;

**ISSUES**

the following Decree:

**Article 1**

1. The Decree of the Minister of the Economy and Finance of 21 February 2013, published in the Official Gazette No 50 of 28 February 2013, implementing paragraphs 491 to 499 of Article 1 of Law No 228 of 24 December 2012 shall be amended as follows:

   a) in Article 2, after paragraph 2, the following shall be added: "3. For the sole purposes of the application of the tax referred to in paragraph 491, and considered that the right to property is associated with a set of rights that can be transferred also separately where the ownership of the shares, participating financial instruments and securities representing equity investment is transferred partially in the form of transfer of bare ownership, or where the right of usufruct on the same shares, participating financial instruments and securities
representing equity investment is transferred separately, both the transfers of bare ownership and of usufruct are subject to tax."

b) in Article 3, paragraph 3, after the words "participating financial instruments", whenever they are used, the following shall be added: "or securities representing equity investment ";

c) Article 4, paragraph 2, shall be amended as follows:

1) letter b) shall be replaced by the following: "b) in the case of purchases of shares, participating financial instruments and securities representing equity investment, following settlement of the financial instruments referred to in paragraph 492 other than those traded on regulated markets or multilateral trading facilities, the higher between the fixed exercise value of the shares, participating financial instruments and the securities representing equity investment and the price of liquidation of the same shares, participating financial instruments and the securities representing equity investment established in the contract for the specific financial instrument referred to in paragraph 492; "

2) after the letter b) the following shall be inserted: "b-bis) in the case of purchases of shares, participating financial instruments and securities representing equity investment, following settlement of the financial instruments referred to in paragraph 492 traded on regulated markets or multilateral trading facilities, the fixed exercise value of the shares, participating financial instruments and the securities representing equity investment;"

d) in Article 6, paragraph 1, first sentence, the words "of the value of the transaction" shall be deleted;

e) in Article 7, after paragraph 2, the following shall be added: "3. For the sole purposes of this Decree and of the application of the tax referred to in paragraph 492: a) the derivative financial instruments and transferable securities having dividends on shares as their underlying or as the reference value are not included in the scope of the tax, b) the bonds and debt securities other than those referred to in Article 15, paragraph 1, letter b), and the option rights are considered transferable securities referred to in letter b) of the preceding paragraph 1."

f) Article 8, paragraph 1, shall be amended as follows:

1) in the second sentence, after the word "notional", the words "of the underlying or reference value" shall be added;

2) in the third sentence, the words "on an automatic and not discretionary basis, under a contractual provision" shall be replaced by the following: "that does not depend on a modification of the underlying or reference value";
3) after the third sentence, the following shall be added: "In case of modification of the parties, the tax is payable by both the substituted Party and the successor."

g) in Article 9, paragraph 1, after the number 4) the following shall be inserted: "4-bis) for rights of option, the price paid or received for the sale or purchase of the right;"

h) Article 15 shall be amended as follows:

1) in paragraph 1:
   a) in letter b), after the words “debt securities” the following shall be added: “identified pursuant to Article 44, paragraph 2, letter c) of the Decree of the President of the Republic No 917 of 22 December 1986”;
   b) in letter d), after the word “conversion” the following shall be added: “, of the exchange or the refund”;
   c) after letter d), the following shall be inserted: “d-bis) the allotment of shares and participating financial instruments in case of distribution of profits or reserves;”;
   d) in letter g), after the words “by the same company” the following shall be added: “, as well as between the CIUs master and CIUs feeder referred to in Article 1, paragraph 1, of Legislative Decree No 58 of 24 February 1998;”;

2) in paragraph 2, letter b) the following sentence shall be added at the end: "The provisions laid down in this letter shall apply to the foreign systems authorized and supervised by a national public authority, not established in States and territories included in the afore-mentioned list, where these systems commit to keep the data relating to the purchases of the instruments referred to in paragraph 491 and to the transactions referred to in paragraph 492 as of the first sentence of this letter, and to transmit it upon request to the Agenzia delle Entrate (Italian Revenue Agency).

i) Article 16 shall be amended as follows:

1) in paragraph 3, letter a), the following words shall be added at the end: “. On the basis of the information received, Consob confirms that the necessary requirements are met, within the time limit defined in a subsequent decision it has to adopt. This is without prejudice to the possibility for Consob to request additional documentation; in this case, the time limit starts to run from the date of receipt of this documentation. Pending the issuance by the European Commission of the declaration of equivalence provided for in Article 2, paragraph 1, letter k) of Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012, for the purpose of the exemption for the market-making activities provided for in the second sentence, the regulated markets or multilateral trading facilities are considered equivalent if they are:
a) authorized and supervised by a National Public Authority, with which Consob has entered into a bilateral cooperation agreement, as identified in the relevant section of the CONSOB website (http://www.consob.it/main/consob/cosa_fa/impegni_internazionali/accordi.html)

or

b) authorized and supervised by a National Public Authority, with which Consob has entered into a multilateral cooperation agreement, as identified in the relevant section of the IOSCO website (http://www.iosco.org/library/index.cfm?section=mou_siglist, Annex A), provided that they are established in States and territories included in the list referred to in the Ministerial Decree issued pursuant to Article 168-bis of TUIR (“Consolidated Act on Income Taxes”);

or

c) recognized by CONSOB pursuant to Article 67, paragraph 2, of TUF (“Consolidated Law on Financial Intermediation”), as of the list published on the CONSOB website (http://www.consob.it/main/mercati/regolamentati/mercati_accordi.html).

2) in paragraph 3, letter b), after the first sentence, the following shall be added: "For the States to which the above-mentioned Directives do not apply, persons involved in market-making activities are entitled to the exemption, provided that such persons have submitted a specific request to CONSOB; this public authority shall issue its own regulations to establish the methods and conditions for submitting the request and for replying to the applicant. Such persons shall prove that they have concluded a contract to conduct market-making activities directly with the company issuing the stock and, except as provided in the following sentence, to comply with the same operating conditions required by the accepted market practice called "Liquidity Enhancement Agreements" approved by CONSOB and published in the relevant section of the ESMA website (http://www.esma.europa.eu/content/Accepted-Market-Practices-Liquidity-Enhancement-Agreements-and-Purchase-own-shares-set-shares). These activities shall be conducted on regulated markets or multilateral trading facilities which are:

a) authorized and supervised by a National Public Authority, with which Consob has entered into a bilateral cooperation agreement, as identified in the relevant section of the CONSOB website (http://www.consob.it/main/consob/cosa_fa/impegni_internazionali/accordi.html);
b) authorized and supervised by a National Public Authority, with which Consob has entered into a multilateral cooperation agreement, as identified in the relevant section of the IOSCO website (http://www.iosco.org/library/index.cfm?section=mou_siglist, Annex A), provided that they are established in States and territories included in the list referred to in the Ministerial Decree issued pursuant to Article 168-bis of TUIR.”;

or

c) recognized by CONSOB pursuant to Article 67, paragraph 2, of the TUF, as of the list published on the CONSOB website (http://www.consob.it/main/mercati/regolamentati/mercati_accordi.html).”;

3) in paragraph 5, last sentence, the word “funds” shall be replaced by “persons”.

The present Decree shall be sent to the competent control bodies and published in the Official Gazette of the Italian Republic

Rome, The MINISTER
B. Italian Model

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Financial Transaction Tax as per Article 1, paragraphs 491, 492 and 495 of Law no. 228 of 24th December 2012. Definition of filing obligations, terms of payment, instrumental requirements and methods of refund, in accordance with Article 19, paragraphs 5 and 8 and Article 22 of the Decree of the Minister of Economy and Finances of 21st February 2013, as modified by the Decree of the Minister of Economy and Finances of 18th March 2013.

THE COMMISSIONER OF ITALY REVENUE AGENCY

According to the powers conferred by the provisions indicated in the current Measure

Provides as follows:

1. Intermediaries responsible for the payment of the tax

1.1 For transactions subject to the tax provided for by Article 1, paragraphs 491, 492 and 495 of the law no. 228 of 24th December 2012 (hereafter referred to as Financial Stability Law, 2013), banks, investment firms and other subjects no matter how named are responsible for the payment of the tax, including intermediaries not resident in the territory of the State, authorised in the State of origin to the professional offering activity to the public services and investment activities similar to those specified in the Legislative Decree no. 58 of 24th February 1998 (hereafter TUF), Article 1, paragraph 5, sub-paragraph a) (“dealing on own account”), b) (“execution of orders for clients”) and e)
(“reception and transmission of orders”), excluding the activities aimed at putting two or more investors in contact.

2. Other subjects responsible for the payment of tax

2.1 For transactions subject to the tax provided for by Article 1, paragraphs 491 and 492 of the Financial Stability Law, 2013, the subjects listed below are required to pay the tax, provided that the conditions specified below are met:

a) entities authorised to provide collective asset management services or portfolio management services(also under the terms of a fiduciary contract) - including entities, no matter how named, not resident in the territory of the State, authorised in the State of origin to the exercise of activities similar to those indicated in the TUF, sub Article 1, paragraph 5, letter g) (“portfolio management”), and Article 1, paragraph 1, letter n) (“collective asset management”) - for transactions carried out within the framework of these activities, provided that such entities do not use a different person for the payment of tax in the execution of trading orders;

b) fiduciary companies - including companies not resident in the State, no matter how named, granted the licence in the State of origin to carry out activities falling within the administration of third party assets qualified as such by Article 1 of Law no. 1966 of 23rd November 1939 - for the transactions carried out in their own name and on behalf of the settlor (so-called “fiduciante”) of the financial instruments, provided that the fiduciary company does not use a different person for the payment of tax in the execution of trading orders, or that the settlor (“fiduciante”) certifies that the transaction tax has already been applied;

c) notaries and other parties involved in the transactions, namely in the drafting or in the authentication of the acts, including those carrying out the activity outside the territory of the State, unless the taxpayer certifies that the tax has already been applied. For transactions carried out through acts drafted or authenticated abroad which must be filed with a notary practicing in Italy, the tax must be paid by the latter, provided that the taxpayer does not certify that the tax has already been applied.
2.2 For transactions subject to the tax carried out without the intervention of the subjects indicated in paragraphs 1 and 2.1 of the present measure, the tax is paid by the taxpayer.

3. Obligation to pay the tax

3.1 General rules

3.1.1 The intermediaries and other subjects involved in the transaction, referred to in paragraphs 1 and 2.1 of this measure, are not bound to pay the tax should the taxpayer certify, unless the provisions indicated in paragraph 3.1.2 below apply, that the transaction falls under the cases of exclusion indicated in Article 15 of the Decree of the Minister of Economy and Finances of 21st February 2013 (hereafter referred to as “decree”) or under the cases of exemption indicated in Article 16 of the same Decree, provided that they do not know or do not have reason to know, on the basis of ordinary diligence, that the certification produced by the taxpayer is false or unreliable. The certification consists in a written declaration by the taxpayer whereby the requirements for obtaining any such exemption or exclusion are met.

3.1.2 The intermediaries and other subjects involved in the transaction, referred to in paragraphs 1 and 2.1 of this measure, may not require the certification referred to in paragraph 3.1.1, when the requirements of the provisions of exclusion or exemption are determined on the basis of the technical nature of the transactions or on the basis of publicly available information or of information available to them by virtue of their obligations for anti-money laundering and counter-terrorism financing purposes. In these cases the responsibility stays with the intermediaries and on the other subjects who take part to the transaction, referred to in paragraphs 1 and 2.1 of this measure in case of negligence, incompetence or imprudence.

3.1.3 In the cases provided for by the first sentence of paragraph 4 of Article 19 of the Decree, where the transaction is carried out by more subjects among those indicated
sub paragraph 1, the tax is paid by the subject who directly receives the order of execution from the purchaser or from the final counterparty.

3.1.4 In the cases referred to in paragraph 3.1.3, should the purchaser or the final counterparty be one of the persons referred to in paragraph 1 located in States or territories with which exchange of information or assistance in tax collection agreements are in force, as indicated in the decrees of the Commissioner of Agenzia delle Entrate provided for by Article 19, paragraph 4, third sentence, the said person shall directly pay the tax.

3.1.5 In the cases referred to in paragraph 3.1.3, unless paragraphs 3.1.7, 4.1.1, subsection II), and 4.1.5 apply, the persons referred to in paragraph 1, not located in States or territories with which exchange of information agreements or assistance in the collection of tax debts are in force, as indicated in the decrees of the Commissioner of Agenzia delle Entrate provided for by Article 19, paragraph 4, third sentence, that in any way intervene in the execution of the transaction, are considered, for the purpose of payment and filing obligations referred to in Article 19 of the Decree, purchaser or final counterparty. In this case, it is understood that the net balance referred to in Article 4 of the Decree, must be calculated for each person liable to tax as identified in accordance with Article 5 of the Decree, without taking into account, for this purpose, the provision referred to in the third sentence of paragraph 4 of Article 19 of the Decree.

3.1.6 For the purposes of the second and third sentence of paragraph 4 of Article 19 of the Decree, the subjects referred to in paragraph 1 of the measure are considered as located in a State or in a territory on the basis of their legal seat, unless points 3.1.7 and 4.1.1, subsection II) apply.

3.1.7 Unless paragraph 4.1.5 apply, the permanent establishment of a person referred to in paragraph 3.1.5, if established in States or territories with which exchange of information or assistance in tax collection agreements are in force, as indicated in the decrees of the Commissioner of Agenzia delle entrate referred to in Article 19, paragraph 4, third sentence, can identify itself in accordance with the provisions set out sub point 4.1.4, committing itself , by using the attached form (see Annex 1), to fulfil the payment obligations, to file the proper return, to keep the records referred to in point 5.1 and the
documentation referred to in point 3.1.1, relating to the transactions wherever carried out by the aforesaid person owning the permanent establishment. In this case, as from the date indicated in point 4.1.6, the second sentence of paragraph 4 of Article 19 of the Decree applies and third sentence of paragraph 4 of Article 19 of the Decree does not apply to the said transactions. The identification data of this person are published in accordance with point 4.1.6. Failure to comply with the obligations set out in this point triggers the application of provisions sub point 4.1.7.

3.2 Methods of payment of the tax

3.2.1 The financial transactions tax referred to in Article 1, paragraphs 491, 492 and 495, of the law no. 228 of 24th December 2012, shall be paid through the “F24” form.

3.2.2 In the cases referred to in points 4.1.2 and 7.3, the tax representative or the centralised management company referred to in Article 80 of the TUF, fulfils the payment of the tax separately with reference to each subject represented or each appointing person.

3.2.3 With a separate resolution of the Revenue Agency tax-payment codes are established and instructions are provided for filling the F24 payment form.

3.2.4 Non-resident persons obliged to pay the tax, not having accounts in bank or post offices in Italy and hence unable to perform the payment as per point 3.2.1 above, can make the payment through bank transfer in “EURO”, beneficiary “Bilancio dello Stato Capo 8 – Capitolo 1211”, indicating the following information, depending on the typology of tax

<table>
<thead>
<tr>
<th>ARTICLE</th>
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<th>IBAN</th>
<th>Tax</th>
</tr>
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<tbody>
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<td>1</td>
<td>BITAITRRENT</td>
<td>IT 83T 01000 03245 348 0 08 1211 01</td>
<td>TRANSACTION TAX ON SHARES AND OTHER EQUITY INSTRUMENTS REFERRED TO IN ARTICLE 1, PARAGRAPH 491 OF THE LAW NO. 228 OF 24TH DECEMBER 2012</td>
</tr>
<tr>
<td>2</td>
<td>BITAITRRENT</td>
<td>IT 60U 01000 03245 348 0 08</td>
<td>TRANSACTION TAX ON EQUITY</td>
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and, as payment description, the tax identification number, the tax-payment code and the period of reference (as indicated in the resolution referred to in Point 3.2.3). Non-resident persons obliged to pay the tax and exempt from submitting the declaration, under Article 19, paragraph 6 of the Decree, indicate their own details if not endowed with an Italian tax identification number. The above-mentioned IBAN codes are published on the website of the State General Accounting Office – Ministry of Economy and Finances [www.rgs.mef.gov.it](http://www.rgs.mef.gov.it).

4. Obligations arising from the tax application

4.1 Non-residents

4.1.1 I) The intermediaries and other non-residents in the territory of the State, obliged to pay the tax, having a permanent establishment in Italy, pursuant to Article 162 of the Consolidated Corporate Income Tax Code approved by Decree of the President of the Republic no. 917 of 22nd December 1986, for transactions wherever carried out by them, fulfil the obligations arising from the application of the financial transaction tax through the said permanent establishment.

II) The subjects referred to in paragraph 3.15, obliged to pay the tax, having a permanent establishment in Italy, pursuant to Article 162 of the Consolidated Corporate Income Tax Code approved by Decree of the President of the Republic no. 917 of 22nd December 1986, for transactions wherever carried out by them, fulfil the obligations arising from the application of the financial transaction tax through the said permanent establishment.
establishment. In this case, starting from the date indicated in paragraph 4.1.6, the second sentence of paragraph 4 of Article 19 of the Decree applies and third sentence of paragraph 4 of Article 19 of the Decree does not apply, in relation to the said transactions and, in this case, the permanent establishment in Italy must file, using the specific form (see Annex 2), to the electronic email address of the Revenue Agency, Operations Centre of Pescara, entrate.ftt@agenziaentrate.it, the identifying details of the permanent establishment’s owner. These identifying details are published as provided in point 4.1.6.

4.1.2 The intermediaries and other non-residents in the territory of the State, wherever located, without a permanent establishment in Italy, obliged to pay the tax, may appoint, pursuant to Article 19, paragraph 7 of the Decree, a tax representative selected from among the persons specified in Article 23 of the Decree of the President of the Republic no. 600 of 29th September 1973.

4.1.3 The tax representatives referred to in paragraph 4.1.2 must submit a request for the attribution of a tax identification number to the represented persons, unless the latter have not already been attributed with, in order to comply with the tax payment obligation and to file the return, to the email address of the Revenue Agency, Operations Centre of Pescara, entrate.ftt@agenziaentrate.it, together with the communication of their appointment as tax representatives.

4.1.4 In the absence of a permanent establishment in Italy or of the appointment of a tax representative, the filing obligations and the tax payment must be performed and the records must be kept directly by the foreign persons who, if required to file the tax return, must identify themselves by submitting a request of the tax identification number, unless they have not already been attributed with it. While individuals are ordinarily required to obtain a tax identification number directly or through specially-delegated persons, through the Italian diplomatic or consular representation in the Country of residence or in any office of the Revenue Agency, persons other than individuals can send their request to the email address indicated in paragraph 4.1.3. In the cases referred to in paragraph 3.1.7 the request must be accompanied by the form specified therein, where the identification details of the owner of the permanent establishment have to be indicated.
4.1.5 To the persons referred to in paragraph 1, located in States or territories with which exchange of information or assistance in the tax collection agreements are not in force, as identified by the decree of the Commissioner of the Agenzia delle entrate referred to in Article 19, paragraph 4, third sentence, without a permanent establishment in Italy or having a permanent establishment in one of the States or territories with which exchange of information or assistance in the tax collection agreements are in force, that has not opted for the possibility provided for in paragraph 3.1.7, the second sentence of paragraph 4 of Article 19 of the Decree applies and third sentence of paragraph 4 of Article 19 of the Decree does not apply, as from the date indicated in point 4.1.6, if, alternatively, they fall within the cases indicated sub point I) or II) below:

I) appointment, as fiscal representative, of one of the persons referred to in paragraphs 1 or 2.1, letter b) resident in Italy or of a permanent establishment in Italy of such persons and communication by the representative (see Annex 3) of the appointment to the email address indicated in paragraph 4.1.3;

II) a) request for the tax identification number, unless not already attributed; b) commitment to send to the Revenue Agency, through the appropriate form (see Annex 4), within 30 days from its receipt, the replies to the documentation and/or information requests, including the records referred to in the following paragraph 5, duly kept; c) communication of the release of the ad-hoc proxy referred to in Article 19, paragraph 5 of the Decree, for the centralised management Company referred to in Article 80 of the TUF and d) transmission, on a monthly basis, within the 16th day of the following month after the execution of the transaction, to the centralised management company referred to in Article 80 of the TUF of the information relating to the transactions listed in the Annex (Annex 5: “summary statement” of the transactions referred to in paragraphs 491, 492 and 495 of Article 1 of the Financial Stability Law, 2013), according to the technical specifications and the record format indicated in Annex (Annexes 6 and 7 record of type A, B, E, F and Z), and the related funding. The requirements referred to in letters a), b) and c) of the previous period must be carried out using the annexed form (see Annex 4) and the forms required for the request, where needed, of the fiscal code through the website of the
Revenue Agency and by submitting the documentation to the email address indicated in paragraph 4.1.3.

4.1.6 The identification data of the persons referred to in paragraph 3.1.7, of the persons referred to in paragraph 4.1.1, subsection II and of the persons referred to in paragraph 4.1.5, are published on the website of the Revenue Agency within 10 days from the receipt of the documents listed in the same paragraphs.

4.1.7 The identification data of the persons referred to in paragraphs 3.1.7 and 4.1.5 not fulfilling, respectively, at least one of the requirements provided for by paragraphs 3.1.7 and 4.1.5, will be deleted from the website after specific communication by the Revenue Agency. As from the date of deletion, which will be published on Italy Revenue Agency’s website, the second sentence of paragraph 4 of Article 19 of the Decree does not apply whereas the third sentence of paragraph 4 of Article 19 of the Decree does.

5. Instrumental requirements

5.1 Those responsible for the payment of the tax referred to in paragraph 1 of this measure must fulfil the instrumental requirements provided for in accordance with Article 19, paragraph 5 of the Decree. These requirements consist in the registration, with respect to each transaction, of the information contained in the “detailed statement” of the transactions referred to in paragraphs 491 and 492 of Article 1 of the Financial Stability Law, 2013 (Annex 8) and the “detailed statement” of the transactions referred to in paragraph 495 of the same Article (see Annex 9). The format and length of the fields related to the recorded information must be tailored to the technical specifications and the record layouts attached to this measure’s Annexes 6 and 7).

5.2 The records must be stored in an data warehouse electronically kept where the information is retained in a centralised manner, available at the person’s discretion in sectional tables as well, until the date indicated in Article 39 of the Decree of the President of the Republic no. 633 of 26th October 1972. The registrations carried out by those
responsible for the tax referred to in paragraphs 1 and resident in Italy must be kept in an electronic register format pursuant to the provisions of the Digital Administration Code referred to in the Legislative Decree no. 82 of 07th March 2005.

5.3 The register must be kept in such a way that allows the storage of the daily chronological order of the transactions, the unchangeability and the preservation of registered data.

5.4 The registration of information related to the transactions must be carried out within the legal period provided for the tax payment.

5.5 It is necessary to enter into a so-called “storno” (i.e. write-off) mode, by erasing the original registration flagging the “storno” field in the event is necessary to amend the information related to transactions already registered. In order to replace an entry, it is possible to assign a new ID code to the transaction.

5.6 The tax administration may require, pending an the audit activity, that full or partial data mining are carried out from the registers referred to in paragraph 5.2.

5.7 For purposes of paragraph 5.6, starting from the date referred to in paragraph 5.4, in the cases referred to in paragraphs 3.1.7, 4.1.1 and in paragraphs 4.1.2 and 4.1.5 subsection I), the registers must be kept, respectively, by the permanent establishment or by the appointed tax representative.

5.8 The provisions in paragraph 5.7 also apply for retaining the certificates referred to in point 3.1.1.

5.9 The parties obliged to pay the tax referred to in paragraph 2.1 and the taxpayers who are not individuals must retain the records relating to the transactions and prepare a daily chronological record of these, without prejudice to the possibility of adopting the registers referred to in paragraph 5.2. Individuals must retain the appropriate documentation to certify the successful transaction even through bank statements.

6. Filing obligations
6.1 By means of a subsequent measure of the Commissioner of the Revenue Agency, the financial transaction tax return to be used for the fulfilment of the filing obligations referred to in Article 19 of the Decree is approved.

6.2 The financial transaction tax return concerning the previous calendar year must be submitted to the Revenue Agency before 31\textsuperscript{st} March of each year by means electronic channels only. The provisions of the Decree of the President of the Republic no. 322 of 22\textsuperscript{nd} July 1998, and its subsequent amendments shall apply, whether consistent.

6.3 Non-resident persons not having a permanent establishment in Italy and who have not appointed a tax representative as referred to in paragraph 4.1.2 and 4.1.5, subsection I), identified in the manner provided for in paragraph 4.1.4 above, alternatively to electronic means as per paragraph 6.2, may submit the tax return to the Revenue Agency even through shipment from abroad, by registered mail or other equal means which indicates with certainty the date of shipment.

7. Centralised management company referred to in Article 80 of TUF

7.1 The persons referred to in paragraphs 1 and 2 of this measure, even in the cases referred to in paragraphs 3.1.7, 4.1.1, 4.1.2 and 4.1.5 subsection I), can use the centralised management company referred to in Article 80 of the TUF for the tax payment and for the filing obligations.

7.2 The persons referred to in paragraph 7.1 which aim to join the centralised management Company referred to in Article 80 of the TUF grant to this company an ad-hoc proxy.

7.3 The persons referred to in paragraph 7.2 and in paragraph 4.1.5 subsection II) of this measure transmit to the centralised management Company referred to in Article 80 of TUF the information used for the calculation of the tax, indicated in the “summary table” (Annex 5) according to the specific techniques and the track record listed in the Annex (Annexes 6 and 7 record type A, B, E, F and Z), necessary for the payment and the fulfilment of the filing obligations and the related funding – except as provided for by
Article 19, paragraph 5 for the transactions of November – within the 16th day of the following month in which the transactions were carried out. The centralised management company referred to in Article 80 of the TUF provides the Revenue Agency, by the end of the month following that in which the deadline for payment is set, with the information contained in the summary tables and communicates the events of insufficient funding received with respect to the tax due as indicated in the summary table.

7.4 The appointing person, however, remains responsible for the proper fulfilment of tax obligations and instrumental requirements.

7.5 The centralised management company referred to in Article 80 of TUF is considered as a qualified intermediary to the Entratel service for purposes of the electronic transmission of the tax return referred to in point 6 and the delegation of payment in the name and on behalf of the appointing person as well as the use of the electronic CIVIS service.

8. Refunds

8.1 Refunds for the excess tax payment are made through the tax return referred to in paragraph 6.

8.2 The refunds referred to in paragraph 8.1 are made according to the procedures set out by the Decree of the Ministry of Finance of 29th December 2000, with the exception of non-residents whose refunds are performed in accordance with a subsequent decree of the Commissioner of Revenue Agency.

8.3 Lacking any obligation to file the tax return referred to in paragraph 6, the refund is requested through an application to be submitted, for resident persons, to the appropriate office of the Revenue Agency identified on the basis of their fiscal domicile and, for non-residents, to the email address of the Revenue Agency, Operations Centre of Pescara, entrate.ftt@agenziaentrate.it, within the time-limit referred to in Article 21 of the Legislative Decree no. 546 of 31st December 1992.
8.4 Intermediaries located in states or territories with which there are no exchange of information or assistance in tax collection agreements in force as identified by the measures of the Commissioner of the Revenue Agency referred to in Article 19, paragraph 4, third sentence of the Decree referred to in paragraph 3.1.3, without a permanent establishment in Italy not falling in one of the cases indicated in paragraph 3.1.7 and in subsections I) and II) of paragraph 4.1.5, can file a request for refund through the email address of the Revenue Agency, Operations Centre of Pescara, entrate.ftt@agenziaentrate.it, in all those cases where, in application of Article 19, paragraph 4, third sentence, the same transaction has been taxed more than once.
**Motivations**

Article 1, paragraphs 491 to 500, of the Law no. 228 of 24th December 2012, (Financial Stability Law, 2013) introduced a financial transaction tax which applies to the transfer of shares and other equity instruments (paragraph 491), to transactions on derivatives and other securities (paragraph 492), as well as to high frequency trading as defined in paragraph 495 of the same Law.

Paragraph 500 of Article 1 of the above-mentioned Law provides that the procedures aimed at enacting the said provisions are established through a Decree of the Minister of Economy and Finances, which was issued on 21st February 2013, and published in the Official Gazzette no. 50 of 28th February 2013.

The same paragraph 500 provides that one or more decrees of the Commissioner of the Agenzia delle entrate will establish the requirements and the procedures establishing the payment of the tax.

In this respect, as stated in Article 19 of the Decree, whereby the persons responsible for the payment of the tax are identified - even in cases where more subjects are involved in carrying out the transaction - and whereby conditions and terms for the filing and payment obligations are established, a reference is made, for all the issues not ruled therein, to a subsequent decree of the Commissioner of the Agenzia delle entrate providing for the procedures for the payment of the tax and connected instrumental requirements.

Article 19, paragraph 8 stipulates as well that, in cases where the intermediaries and the other non-resident persons involved in the transaction do not have a permanent establishment in Italy and have not appointed a tax representative for the obligations arising from the application of the tax, these obligations have to be fulfilled directly by the foreign persons who, if required to file a tax return, are bound to identify themselves in accordance with the procedures established by the decree of Commissioner of the Revenue Agency.
Therefore, the current measure implements the provisions referred to in the above-mentioned paragraph 500 of Article 1 of the Financial Stability Law and those referred to in paragraphs 5 and 8 of Article 19 of the Decree of the Minister of Economy and Finances of 21st February 2013.

Paragraph 1 of the measure contains provisions related to the identification of the “Intermediaries on tax”, stating that for the transactions subject to the tax referred to in Article 1, paragraphs 491, 492 and 495 of the Financial Stability Law, 2013, banks and investment firms as well as other financial entities in any manner named are responsible for the tax payment, including intermediaries that are not resident in the territory of the State, authorised in the State of origin to provide professional services to the public and investment activities similar to those specified in the Legislative Decree no. 58 of 24th February 1998 and, in particular, to deal on own account, to execute orders for clients and to receive and transmit orders, with the exclusion of the activities aimed at putting together two or more investors (i.e. mediation).

Paragraph 2 identifies other persons who, under the conditions laid down therein, are responsible for the payment of the tax.

To this end, amongst the persons referred to in paragraph 2, reference is made to persons authorised to provide asset management or portfolio services (also under the terms of a fiduciary contract) including entities irrespective of how named, non-resident in the territory of the State, authorised in the State of origin to carry out activities similar to portfolio management and asset management ones, for transactions carried out within the framework of these activities, insofar as such persons do not make use of other persons responsible for the payment of tax in order to carry out trading orders; fiduciary companies, including companies non-resident in the territory of the State, irrespective of how they are named, authorised to carry out activities similar to the administration of third party assets in the state of origin, for transactions carried out under headings in their own name and on behalf of the settlor (“fiduciante”), provided that the fiduciary company does not use different persons accountable for tax payment in order to give execution of trading orders or the settlor declares that the tax related to that transaction has already been applied; the notaries and other persons involved in
the transactions, by drafting of or by authentication of acts, including those carrying out the activity outside the territory of the State, provided that the taxpayer does not declare that the tax has already been applied. In relation to this last category of subjects, it is specified that, for transactions carried out through acts drafted or authenticated abroad which must be filed with a notary practicing in Italy, the tax must be paid by the latter person, provided that the taxpayer does not certify that the tax has already been applied.

The arrangement of closure referred to in paragraph 2.2 provides that for taxable transactions carried out without the intervention of the subjects referred to in point 1 and the other subjects indicated in point 2.1, the tax is paid by the taxpayer.

Paragraph 3 relates, in general, the obligation to pay a tax and gives indications concerning the manner of payment.

In particular paragraph 3.1.1 specifies the certification terms to benefit from the exclusion or exemption to tax by establishing that the taxpayer has to declare in written form the fulfilment of the conditions of exclusion or exemption and places a burden of control on the receiving intermediary with respect to the reliability of the said written form. In doing so, paragraph 3.1.1 - recalls the content of Article 19, paragraph 3, of the Decree of 21st February 2013 whereby the intermediaries and other persons who intervene in the transaction (referred to in paragraphs 1 and 2.1 of the measure) are not required to pay tax if the taxpayer certifies that the transaction falls within one of the cases of exclusion referred to in Article 15 of the Decree of the Minister of Economy and Finance of 21st February 2013 (hereafter called Decree) or of exemption as indicated in Article 16 of the same Decree.-

As regards the above statement, the measure provides the faculty for those responsible for the tax (i.e. intermediaries and other persons who are involved in the transaction referred to in paragraphs 1 and 2.1) to not require the written declaration of the taxpayer for being entitled to the exclusion or exemption in the event the fulfilment of the above-mentioned conditions may be ascertained on the basis of the following: (i) the technical nature of the transactions (e.g.: “repo-” transactions); or (ii) information publicly available (e.g.: companies with an average market capitalisation of less than EUR 500 million); (iii) or information available to them by virtue of fulfilling their
obligations for money laundering and counter-terrorism financing purposes (e.g.: the legal nature of the client). In the circumstances listed above paragraph 3.1.2 of the measure states that intermediaries and other persons involved in the transaction have to be held accountable in case they have acted with negligence, incompetence or imprudence.

With respect to the provisions embedded in Article 19 paragraph 4, first sentence (i.e. when more persons responsible for the payment of the tax are involved in the transaction), paragraph 3.1.3 specifies that the provisions only apply when, in the execution of the transaction, more intermediaries referred to in paragraph 1 intervene in it. Accordingly the tax is paid by the intermediary who receives the order of execution directly from the purchaser or from the final counterparty.

Paragraph 3.1.4 also establishes that in case either the purchaser or the final counterparty is an intermediary referred to in paragraph 1 located in States or territories with which there are agreements in force for the exchange of information or for assistance in the recovery of debts, as indicated in the decree of the Commissioner of Revenue Agency provided for by Article 19, paragraph 4, third sentence, the same intermediary shall directly pay the tax. Paragraph 3.1.5 specifies that in case more intermediaries, as referred to in paragraph 1, intervene in the transaction, and the intermediaries are not located in any of the above mentioned States or territories that are in any way involved in the execution of the transaction, they must be deemed as the purchaser or the final counterparty by the other intermediaries for purposes of meeting the tax payment and filing obligations as referred to in Article 19 of the Decree. This applies unless the above mentioned intermediaries are expressly included in the list published on Italy Revenue Agency’s website the circumstances of which are referred to in paragraphs 3.1.7, 4.1.1, subsection II) and 4.1.5,.. In this latter regard the measure clarifies that, although the intermediaries are deemed as the purchaser or the final counterparty, yet the net balance must still be calculated for each taxable person as identified in accordance with Article 5 of the Decree, without taking into account the provision referred to in the third sentence of paragraph 4 of Article 19 of the Decree.
Paragraph 3.1.6 also specifies that for purposes of the second and third sentence of paragraph 4 of Article 19, intermediaries responsible for the payment of the tax are deemed to be located in a State or in a territory on the basis of their legal seat, unless the provisions provided for by paragraphs 3.17, 4.1.1 or 4.1.5 apply.

Paragraph 3.1.7 of the measure provides that, without prejudice to the application of provisions referred to in paragraph 4.1.5, the permanent establishment belonging to an intermediary, referred to in paragraph 1, not located in States or territories with which there are agreements in force for the exchange of information or for assistance in the recovery of debts, if such permanent establishment is established in states or territories with which said agreements are in force, can identify itself following the specific instructions provided by the measure in paragraph 4.1.4, committing, through an appropriate form to fulfil the obligations of payment, of filing the tax return, and keeping records of transactions and the documentation related to the exclusions and the exemptions with respect to all transactions, wherever performed, by the person owning the permanent establishment. By reason of the specific identification referred to above, the second sentence of paragraph 4 of Article 19 of the Decree applies and third sentence of paragraph 4 of Article 19 of the Decree does not apply to the person owning the permanent establishment for transactions wherever performed and the data from this subject are published on the website of the Revenue Agency within 10 days from receipt of the documentation.

Paragraph 3.2.1 it clarifies that the tax must be paid using the “F24” payment form; specific rules of payment are also laid down where a fiscal representative or proxy is made for a centralised management company as referred to in Article 80 of the TUF (paragraph 3.2.2).

Paragraph 3.2.3 states that with a resolution of the Revenue Agency tax-payment codes are set up for the payment of the tax and instructions are provided for filling the F24 payment form.

As for payments by non-residents who do not have accounts in bank or post offices in Italy and hence cannot pay by F24, in paragraph 3.2.4 it is determined that the payment must be done by bank transfer in “EURO”, beneficiary “Bilancio dello Stato"
Capo 8 – Capitolo 1211”, making explicit the specific information indicated in the measure by type of tax and, as payment description, the tax identification number, the tax tax-payment codes and the reference period.

It is, also, established that the IBAN codes are published on the website of the State General Accounting Office – Ministry of Economy and Finances www.rgs.mef.gov.it

Paragraph 4 of the measure concerns the obligations of non-residents arising from the application of the tax.

In paragraph 4.1.1 it is foreseen that the intermediaries and other non-residents in the territory of the State bound to pay the tax, owning a permanent establishment in Italy, fulfil, for transactions wherever carried out, the obligations arising from the tax application via that permanent establishment. Furthermore - starting from the date indicated in paragraph 4.1.6 - Article 19, paragraph 4, second sentence of the Decree applies - whereas the third sentence of the very same Article does not - to the persons referred to in paragraph 1 located in States or territories with which there are agreements in force for the exchange of information or for assistance in the recovery of debts, as a result of the presence of the permanent establishment in Italy. To this end, the permanent establishment must communicate to the Revenue Agency the data identifying the person owning the permanent establishment to emphasize, through the publication referred to in paragraph 4.1.6, the way of application of second and third sentence of paragraph 4 of Article 19 of the Decree.

Paragraph 4.1.2 clarifies that non-residents without a permanent establishment can appoint, pursuant to Article 19, paragraph 7 of the Decree, a tax representative identified amongst the persons indicated in Article 23 of the Decree of the President of the Republic no. 600 of 29th September 1973.

In order to comply with the tax payment and filing tax return obligations, Paragraph 4.1.3 specifies that tax representatives must request the tax identification number of the represented persons - should the above mentioned persons be not already in possession of it - to the email address of the Revenue Agency, Operations Centre of Pescara (ente.ftt@agenziaentrate.it) together with the notification of the appointment.
Paragraph 4.1.4 establishes that in the absence of a permanent establishment in Italy or the appointment of a tax representative, payment, filing and record keeping obligations must be carried out by the foreign persons, which, if obliged to file the tax return, are required to identify themselves by submitting a request for a tax identification number - if they are not already in possession of it -. Such a request is met by following the ordinary request procedure of the tax identification number for individuals and, for entities who are not individuals, by sending the request for assignment to the email address of the Revenue Agency, Operations Centre of Pescara, entrate.ftt@agenziaentrate.it.

The same paragraph also requires the permanent establishment belonging to the persons referred to in paragraph 3.1.5, established in States or territories with which there are agreements in force for the exchange of information or for assistance in the recovery of tax debts, to accompany its request of identifying itself in accordance with paragraph 3.1.7, by using an appropriate model containing, amongst others, an indication of the elements identifying the person owning the permanent establishment.

Paragraph 4.1.5 stipulates that the second sentence of paragraph 4 of Article 19 of the Decree applies and third sentence of paragraph 4 of Article 19 of the Decree does not should intermediaries responsible for the tax payment located in States or territories with which there are no agreements in force for the exchange of information or for assistance in the recovery of tax debts as identified through the provisions of the Commissioner of the Revenue Agency -. not having a permanent establishment in Italy or which have not exerted the faculty set out in point 3.1.7 - , appoint, as tax representative, one of the intermediaries referred to in paragraph 1 or 2.1, letter b) of the measure which is a resident or has a permanent establishment in Italy and if the said representative communicates the appointment to the email address entrate.ftt@agenziaentrate.it. As an alternative, the same consequences apply in the following requirements are all cumulatively met: a) request the tax identification number, in the event it has not been already obtained; b) express commitment, by using the form attached to this measure, to submit to the Revenue Agency, within 30 days from receipt, the responses to requests for documentation and/or information, including the records referred to in paragraph 5, duly
kept and agree to the publication referred to in paragraph 4.1.6; c) communicate the attribution of proxy as referred to in Article 19, paragraph 5 of the Decree; d) submit to the centralised management Company, the information specified in the summary statement, according to the specifications and the track record attached to this measure and to the relative provision, on a monthly basis within the 16th day of the month following that in which the transaction was executed.

The form referred to in paragraph 4.1.5, subsection II), letter b) is attached to the current measure and the form required for the application of the tax identification number is available on the Revenue Agency’s website.

All the documentation must be sent to the email address entrate.ftt@agenziaentrate.it.

The measure states that the identification data of the persons referred to in paragraphs 3.1.7 and 4.1.1, subsection II) and 4.1.5 are published on the website of the Revenue Agency within 10 days from the receipt of the documentation listed in the same paragraphs, with respect to which – based on fulfilling the requirements listed in the previous paragraph - Article 19, paragraph 4, second sentence of the Decree applies whereas Article 19, paragraph 4, third sentence does not; paragraph 4.1.7 specifies that the identification data of the persons referred to in paragraphs 3.1.7 and 4.1.5 - which, subsequently, fail to meet one of the above mentioned commitments - will be deleted from the Revenue Agency’s website, following an appropriate communication. Such an event will trigger Article 19, paragraph 4, second sentence of the Decree not to apply whereas Article 19, paragraph 4, third sentence will.

The measure stipulates, in paragraph 5, the instrumental requirements to be met by those responsible for the tax payment pursuant to Article 19, paragraph 5 of the Decree of 21st February 2013.

For intermediaries, these obligations result in the recording, within the time-limit provided for the tax payment, - with respect to each transaction - of the information indicated in the “detailed statement” - attached to the current measure - of the transactions referred to in paragraphs 491, 492 and 495.
The measure also clarifies that the registration should be carried out within the period indicated for the payment of tax, in a dedicated electronic data warehouse to be kept until the time referred to in Article 39 of the Decree of the President of the Republic no. 633 of 26th October 1972 and that the registration by persons responsible for the tax referred to in paragraph 1 that are resident in Italy must be made in accordance with the provisions of the Digital Administration Code referred to in the Legislative Decree no. 82 of 07th March 2005.

More generally, it is specified that the register must be kept in a technical manner which guarantees the daily chronological order of the transactions, their unchangeability and the preservation of the recorded data.

It is specified that the Tax Authorities may request, as a means of control, the execution of total or partial data mining and that, starting from the date following the deadline of the tax payment (within which the registrations must be performed) the permanent establishment in Italy or of a fiscal representative (see paragraphs 4.1.2 and 4.1.5, subsection I), they need to retain the registers.

Within the same line of reasoning, the permanent establishment belonging to persons referred to in paragraph 3.1.5 established in States or territories with which there are agreements in force for the exchange of information or for assistance in the recovery of debts, identified according to the manner foreseen in points 3.1.7, keeps the transactions’s register wherever carried out by the permanent establishment owner. Similarly, they retain the documentation concerning the either the exclusions or exemptions.

The other persons responsible for the tax payment referred to in paragraph 2.1 and the taxpayers who are not individuals must store the documentation concerning the transactions and must keep a daily chronological record of these (subject to the possibility of adopting the records referred to in paragraph 5.2), while taxpayers who are individuals must keep the appropriate documentation demonstrating the successful transaction even through bank statements. It is understood that, in case of appointment of a tax representative, the instrumental requirements remain legally attached to the person
represented and the tax representative must retain the above-mentioned documentation and the above-mentioned chronological registers.

Paragraph 6, in referring the approval of the tax return form to a subsequent measure of the Commissioner of the Revenue Agency, sets the deadline for filing the tax return at 31\textsuperscript{st} March of each year. The filing has to be made solely in an electronic manner. The same paragraph states that, whether consistent, shall apply, the provisions contained in the Decree of the President of the Republic no. 322 of 22\textsuperscript{nd} July 1998, and subsequent amendments.

In this regard the measure specifies that non-residents not having a permanent establishment in Italy, not having appointed a fiscal representative in accordance with paragraphs 4.1.2 and 4.1.5, subsection I), as an alternative to the electronic transmission, may file the tax return to the Revenue Agency even by shipment from abroad, by registered mail or other equal means guaranteeing with certainty the date of shipment.

Paragraph 7 refers to the ad hoc proxy for the centralised managing company referred to in Article 80 of the TUF.

It is clarified that the both intermediaries and the other persons responsible for the tax payment referred to in paragraphs 1 and 2 of the measure, even in cases referred to in paragraphs 3.17, 4.1.1, 4.1.2 and 4.1.5 subsection I), can benefit from the centralised management Company for the tax payment and for filing the tax return.

Those who intend to benefit from the centralised management Company referred to in Article 80 of the TUF confer to such a company the ad-hoc proxy and send the information used for tax calculation purposes necessary for executing the tax payment and for the fulfilment of the relative filing obligations as well as provide the amount needed within the 16\textsuperscript{th} day of the month following that when the transaction was carried out.

The intermediaries responsible for the tax payment referred to in paragraph 1 and the other persons responsible for the tax payment referred to in paragraph 2, even in the cases referred to in paragraphs 3.17, 4.1.1, 4.1.2 and 4.1.5 subsections I) and II), send to the centralised management Company – as referred to in Article 80 of the TUF - the
information contained in a “summary statement. The aforementioned Company, having received the related funding, shall pay the tax resulting from the information given by the entity conferring the proxy.

The measure also provides that, within the end of the month following the deadline for the tax payment, the above mentioned Company has to render available to the Revenue Agency information contained in the summary tables and has to report - all the instances in which the funding received is lower than the amount of tax due as indicated in the summary table.

Lastly, the measure indicates that the appointing persons still remain responsible for both the correct tax payment and the instrumental requirements and that the centralised management company is deemed as a qualified intermediary to the Entranel service for purposes of the electronic transmission of statements and the delegation of payment, as well as for the use of the electronic CIVIS service.

With respect to refunds, paragraph 8 of the current measure stipulates that refunds of tax payments in excess of what actually due has to be requested via filing the tax return and that - in such cases - the refunds are granted on the basis of what agreed into the Decree of the Ministry of Finance of 29th December 2000. A different procedure applies for non-residents, for whom the refunds of excess tax are paid according to a subsequent measure of the Commissioner of the Revenue Agency.

The current measure also specifies that in the event the obligation to file the tax return as referred to in paragraph 6 does not arise, the refund is requested by resident persons to the relevant territorial office of the Revenue Agency identified on the basis of residence for tax purposes. As regards non-residents, the refund is requested by sending an email to the following address: entrate.ftt@agenziaentrate.it. Both of the above described refund requests have to be submitted within the deadline referred to in Article 21 of the Legislative Decree no. 546 of 31st December 1992.

For persons located in states or territories with which there are no agreements in force for the exchange of information or for assistance in the recovery of tax debts, referred to in paragraph 3.1.3, without a permanent establishment in Italy and which do not fall within the
application of paragraph 3.1.7 and subsections I) and II) of paragraph 4.1.5, the current measure provides that they have to submit a refund application by sending an e-mail to the following email address entrate.ftt@agenziaentrate.it, in cases where the same transaction has been taxed more than once.

**Legal References**

*Duties of the Commissioner of the Revenue Agency*

Legislative Decree no. 300 of 30th July 1999, concerning the reform of the organisation of the Government, in accordance with Article 11 of the law no. 59 of 15th March 1997 (Article 57; Article 62; Article 66; Article 67, paragraph 1; Article 68, paragraph 1; Article 71, paragraph 3, letter a); Article 73, paragraph 4);

Statute of the Revenue Agency published in the Official Journal no. 42 of 20th February 2001 (Article 5, paragraph 1; Article 6, paragraph 1);

Regulation of the Administration of the Revenue Agency published in the Official Journal no. 36 of 13th February 2001 (Article 2, paragraph 1);


**Legal framework of reference**

The law no. 228 of 24th December 2012 laying down rules for the preparation of the annual and the multi-annual budget of the State (Financial Stability Law, 2013), published in the Official Journal no. 302, O.S., of 29th December 2012;

Decree of the Minister of Economy and Finances of 21st February 2013, published in the Official Journal no. 50 of 28th February 2013, laying down the “Implementation of paragraphs from 491 to 499 of the law no. 228/2012 (Stability 2013) – tax on financial transactions.”;


Council Directive 2010/24/EU of 16th March 2010 on the mutual assistance for the recovery of the claims relating to duties, taxes and other measures, implemented by the
Legislative Decree no. 149 of 14\textsuperscript{th} August 2012, published in the Official Journal no. 202 of 30\textsuperscript{th} August 2012

Convention on the reciprocal administrative assistance in taxation matters between the Member States of the Council of Europe and the member Countries of the Organisation for Economic Co-operation and Development – OECD, made in Strasbourg on 25\textsuperscript{th} January 1988, ratified by law no. 19 on 10\textsuperscript{th} February 2005, published in the \textit{Official Journal} no. 48 of 28\textsuperscript{th} February 2005, amended by the protocol signed on 27\textsuperscript{th} May 2010 ratified by Law no. 193 of 27\textsuperscript{th} October 2011 published in the \textit{Official Journal} no. 273 of 23\textsuperscript{rd} November 2011

Legislative Decree no. 58 of 24\textsuperscript{th} February 1998 (TUF) bearing the Financial law on the provisions of financial intermediation, pursuant to Articles 8 and 21 of the law no. 52 of 06\textsuperscript{th} February 1996.

Order of the Director of the Revenue Agency prot. number 2013/26948 of 01\textsuperscript{st} March 2013

Order of the Director of the Revenue Agency prot. number 2013/40010 of 29\textsuperscript{th} March 2013

The publication of this measure on the website of the Revenue Agency takes the place of its publication in the \textit{Official Journal}, pursuant to Article 1, paragraph 361 of the law no. 244 of 24\textsuperscript{th} December 2007.

Rome, 18/07/2013

THE DIRECTOR OF THE REVENUE AGENCY

Attilio Befera
Fax letter of commitment, referred to in paragraph 3.1.7 of the measure, by the permanent establishment to meet the payment obligations, filing tax returns and keeping the records referred to in paragraph 5.1 of the measure and the documentation referred to in paragraph 3.1.1, relating to transactions wherever carried out by the person owning the permanent establishment.

Denomination of the permanent establishment: ____________________________________________
Foreign country of residence and address: _________________________________________________
Denomination of the person to whom the permanent establishment belongs: ____________________________________________
Foreign country of residence and the address of the person to whom the permanent establishment belongs: ____________________________________________
E-mail address to use for communication with the Revenue Agency: ____________________________

To the Revenue Agency
Operations Centre of Pescara

Re: financial transaction tax referred to in the measure of the Director of the Revenue Agency – point 3.1.7.

I, the undersigned, legal representative of ____________________________________________

Undertake, in relation to the transactions wherever carried out by the person owning the permanent establishment:

1) to meet the payment obligations;
2) to file the tax returns;
3) to keep the records referred to in paragraph 5.1 of the measure;
4) to keep the documentation referred to in paragraph 3.1.1. of the measure.
5) authorize the Revenue Agency to publish on its website, for the benefit of the public and of the market, the identifying data of the person owning the permanent establishment. This in
order to inform market participants that Article 19, paragraph 4 second sentence applies whereas the third sentence of Article 19, paragraph 4 does not with reference to those who meet the requirements provided for by the measure of the Commissioner of the Revenue Agency, amongst which it is included the signature of the current document. The above in spite of the fact that these persons are located in States or territories with which there are no agreements in force for the exchange of information or for assistance in the recovery of debts;

6) authorize the Revenue Agency to publish on its website, and make it available to the market, the identifying data of the person owning the permanent establishment in the event of failure to comply with the conditions relating to the undertaking referred to in here;

7) attach hereto the ID together with appropriate signature.

Place and date

Signature
Facsimile of the notice referred to in paragraph 4.1.1, subsection II) of the measure, on behalf of the permanent establishment in Italy of the non-resident person in the territory of the State, located in States or territories with which there are agreements in force concerning the exchange of information or the assistance in the recovery of debts, as identified with the measures of the Director of the Revenue Agency referred to in Article 19, paragraph 4, third sentence of the Decree of the Minister of Economy and Finances of 21st February 2013, as modified by the Minister of Economy and Finances of 18th March 2013.

a) Denomination of the permanent establishment in Italy: __________________________________

b) Address of the tax residence: _______________________________________________________

c) Denomination of the person to whom the permanent establishment belongs: ________________________________________________________________

d) Foreign country of residence and the address of the person to whom the permanent establishment belongs: ________________________________________________________________

e) E-mail address of the person referred to in a) to use for communication by the Revenue Agency: ________________________________________________________________

To the Revenue Agency
Operations Centre of Pescara

Re: financial transaction tax referred to in the measure of the Director of the Revenue Agency – point 4.1.1, subsection II).

The undersigned, as the legal representative of the permanent establishment in Italy of the non-resident person [indicate the person referred to in paragraph c)]

_____________________________________________:

- authorizes the Revenue Agency to make available on its website to the public and to the market the identifying data of the subject which owns the permanent establishment as referred to in paragraph c) above so that market participants are informed that, even if they are located in States or territories with which no agreements concerning either the exchange of information or the assistance in the recovery of debts are in force, the second sentence of
Article 19, paragraph 4 applies while the third sentence, of Article 19, paragraph 4 does not apply;

- attaches hereto the identity document together with signature.

Place and date

Signature
Facsimile of the notice of appointment of a tax representative referred to in paragraph 4.1.5, subsection I) of the measure.

a) Denomination of the representative: _________________________________________________
b) Tax identification number of the representative: _______________________________________
c) Tax domicile of the representative:__________________________________________________
d) Denomination of the person represented: _____________________________________________
e) Tax identification number of the person represented: ___________________________________
f) Tax domicile of the person represented:______________________________________________
g) E-mail address of the representative to be used for communication by the Revenue Agency:
_________________________________________________________________________________

To the Revenue Agency

Operations Centre of Pescara

Re: financial transaction tax referred to in the Measure of the Director of the Revenue Agency – paragraph 4.1.5, subsection I).

The undersigned, as the legal representative [indicate the person referred to in point a)] __________________________________________________________:

- declares that he has been appointed as tax representative of [indicate the person referred to in paragraph d above]: __________________________________________________________;
- authorises the Revenue Agency to publish on its website to the public and to the market, the identifying data of the person represented to guarantee that market participants are informed that Article 19, paragraph 4 second sentence applies whereas the third sentence of Article 19, paragraph 4 does not with reference to those who meet the requirements provided for by the measure of the Commissioner of the Revenue Agency, amongst which it is included the signature of the current document. The above in spite of the fact that these persons are located in States or territories with which there are no agreements in force for the exchange of information or for assistance in the recovery of debts
- attaches hereto the identity document together with signature.
• attaches to this the document of appointment.

Place and date

Signature
Facsimile of the letter of undertaking to commit to submit replies to the requests for documentation and/or information referred to in paragraph 4.1.5, subsection II) of the measure

Denomination: __________________________

Foreign country of residence and address: __________________________

Email address to be used by the Revenue Agency for its requests as referred to in paragraph 4.1.5 subsection II) letter b) and for the communication referred to in paragraph 4.1.7 of the measure of the Commissioner of Revenue Agency __________________________

To the Revenue Agency

Operations Centre of Pescara

Re: financial transaction tax referred to in the Measure of the Director of Inland Agency – point 4.1.5 – subsection II), letters b) and c).

The undersigned, as the legal representative of __________________________

8) undertakes to provide in a timely manner the information and the documentation required by the Italian tax authorities for the correct application and payment of the Italian tax on financial transactions;

9) certifies to have conferred the proxy to the centralised management company referred to in Article 80 of the Legislative Decree no. 58 of 24th February 1998, for the payment of the taxes and for filing the tax return (annexing to this Annex the ad-hoc proxy);

10) authorizes the Revenue Agency to publish on its website, for the benefit of the public and of the market, their own identifying data so that market participants are informed that Article 19, paragraph 4 second sentence applies and Article 19, paragraph 4 third sentence does not apply to those who respect the requirements provided for by the measure of the Commissioner of the Revenue Agency amongst which it is included the signature of the current document. The above in spite of the fact that these persons are located in States or...
territories with which there are no agreements in force for the exchange of information or for assistance in the recovery of debts;

11) authorizes the Revenue Agency to publish on its website, and make it available to the market, the identifying data in the event of failure to comply with the conditions relating to the undertaking referred to in here;

12) attaches hereto the identity document together with signature.

Place and date

Signature
## Annex 5

### Summary statement of transactions referred to in paragraphs 491, 492 and 495 of the Financial Stability law 2013

<table>
<thead>
<tr>
<th>Description</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>tax identification number of the intermediary</td>
</tr>
<tr>
<td>2</td>
<td>name of the person referred to in field 1</td>
</tr>
<tr>
<td>3</td>
<td>ISO Code of the person referred to in field 1</td>
</tr>
<tr>
<td>4</td>
<td>municipality or foreign state</td>
</tr>
<tr>
<td>5</td>
<td>Province</td>
</tr>
<tr>
<td>6</td>
<td>Address</td>
</tr>
<tr>
<td>7</td>
<td>telephone number</td>
</tr>
<tr>
<td>8</td>
<td>email address</td>
</tr>
<tr>
<td>9</td>
<td>point of contact surname</td>
</tr>
<tr>
<td>10</td>
<td>point of contact name</td>
</tr>
<tr>
<td>11</td>
<td>month of operations</td>
</tr>
<tr>
<td>12</td>
<td>date of payment</td>
</tr>
<tr>
<td>13</td>
<td>taxable transactions 491</td>
</tr>
<tr>
<td>14</td>
<td>tax 491</td>
</tr>
<tr>
<td>15</td>
<td>taxable basis’ exclusion for repo and securities lending</td>
</tr>
<tr>
<td>16</td>
<td>no. of transactions related to the previous field</td>
</tr>
<tr>
<td>17</td>
<td>taxable basis’ exclusion for intragroup</td>
</tr>
<tr>
<td>18</td>
<td>no. of transactions related to the previous field</td>
</tr>
<tr>
<td>19</td>
<td>taxable basis’ exclusion for Riskless principal</td>
</tr>
<tr>
<td>20</td>
<td>no. of transactions related to the previous field</td>
</tr>
<tr>
<td>21</td>
<td>taxable basis’ exemption for sovereign bodies</td>
</tr>
<tr>
<td>22</td>
<td>no. of transactions related to the previous field</td>
</tr>
<tr>
<td>23</td>
<td>taxable basis’ exemption for funds and ethical portfolios</td>
</tr>
<tr>
<td>24</td>
<td>no. of transactions related to the previous field</td>
</tr>
<tr>
<td>25</td>
<td>taxable basis’ exemption for market making</td>
</tr>
<tr>
<td>26</td>
<td>no. of transactions related to the previous field</td>
</tr>
<tr>
<td>27</td>
<td>taxable basis’ exemption to support liquidity</td>
</tr>
<tr>
<td>28</td>
<td>no. of transactions related to the previous field</td>
</tr>
<tr>
<td>29</td>
<td>taxable basis’ exemption for pension funds</td>
</tr>
<tr>
<td>30</td>
<td>no. of transactions related to the previous field</td>
</tr>
<tr>
<td>31</td>
<td>no. of transactions 492</td>
</tr>
<tr>
<td>32</td>
<td>tax 492</td>
</tr>
<tr>
<td>33</td>
<td>tax 495</td>
</tr>
</tbody>
</table>
Field 1 = tax identification number of the person responsible for the tax (delegator) who sends the communication
Field 2 = denomination of the person referred to in field 1
Field 3 = ISO Code of the person referred to in field 1
Field 4 = refers to the municipality or the foreign state of the person referred to in field 1
Field 5 = refers to the province or, in case of foreign state, EE of the person referred to in field 1
Field 6 = refers to the address of the person referred to in field 1
Field 7 = refers to the telephone number of the person referred to in field 1
Field 8 = refers to the email address of the person referred to in field 1
Field 9 = refers to the name of the natural person’s “point of contact” indicated by the subject referred to in field 1
Field 10 = refers to the surname of the natural person’s “point of contact” indicated by the subject referred to in field 1
Field 11 = refers to the month to which the report relates
Field 12 = refers to the date of payment which the communication refers to
Field 13 = refers to the tax basis of taxable transactions 491
Field 14 = refers to the tax due by the transactions tax 491
Fields 15, 17, 19, 21, 23, 25 27 and 29 = refers to the taxable base of the transactions which benefit from their respective exclusions or exemptions
Fields 16, 18, 20, 22, 24, 26 28 e 30= n° of transactions related to their previous fields
Field 31 = refers to the number of transactions used to determine the value of field 32
Field 32 = refers to the tax due for transactions 492
Field 33 = refers to the tax due for transactions 495
Technical specifications for the electronic transmission of the Financial Transactions Tax
# INDEX

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CONTENT AND TECHNICAL CHARACTERISTICS OF THE COMMUNICATION OF DATA RELATING TO THE TOBIX TAX TO BE SENT TO THE REVENUE AGENCY ELECTRONICALLY

1. GENERAL INFORMATION

Set out below are the technical specifications regarding the content and features of data supplies relating to the communication of the relative data concerning the Financial Transactions to be submitted electronically to the Revenue Agency.

1.1 General

Each electronic data supply consists in a sequence or records having the fixed length of 1,900 characters.

Each record in the supply is characterised by a specific “record-type” which identifies the content and determines the internal order within this same supply.

The records provided for the supply are:

- record type “A”: this is the top record of the supply and contains data identifying the supply and the person responsible for electronic transmission (supplier);
- record type “B”: this is the record which contains the identification data of the person responsible;
- record type “C”: this is the record which contains the data relating to Article 491 and 492;
- record type “D”: this is the record which contains the data relating to Article 495;
- record type “E”: this is the record which contains the summary data relating to the transactions 491, 492, 495;
- record type “F”: this is the record which contains any notes relating to each transaction;
- record type “Z”: this is the end record of the supply and contains some summary data of the supply itself.

1.2 Records Sequence

The record sequence within the supply must comply with the following rules:

- Presence of only one type “A” record placed as the first record of the supply;
- for each communication, the presence, in order, of a single type “B” record, records of type “C”, “D”, “E”, “F”.
- Presence of a single type “Z” record placed as the last record of the supply.
1.3 Records structure

The records of type “A”, “B”, “F” and “Z” only contain positional fields, that is fields whose position within the record is fixed. The position, the length and the format of these fields are provided in detail in the following specifications.

At the end of the record of each type there are 3 control characters, as described in detail in the following specifications.

Records with a variable structure are composed of:

- a first part, containing positional fields, having a length of 89 characters.
- a second part, having a length of 1,800 characters, consisting of a table of 75 elements to be used for the display of the only data present in the communication; each of these elements is constituted by a field-code of 8 characters and by a field-value of 16 characters.

The field-code has the following structure:

- first and second character identifying the context of the communication;
- third, fourth and fifth character that identify the number of the line of the framework;
- sixth, seventh and eighth character that identify the number of the column within the line.

The list of field-code and the configuration of the relative field-value is described in detail in the specifications below.

- A third part, 11 characters in length, intended to take up a non-utilised space of 8 characters and 3 control characters of the record.
1.4 Data structure

Positional fields

Positional fields, meaning the record fields of type “A”, “B”, “Z” and the first part of the record with a variable structure can take on a numeric or alphanumeric structure and for each of them there is indicated, in the specifications that follow, the symbol NU or AN respectively. In the case of fields intended to contain some particular data (for example dates, percentages, etc.) in the column “Format” there is indicated the particular format to use.

The alignment and the formatting of the positional fields are described in the following table.

<table>
<thead>
<tr>
<th>Designation Format</th>
<th>Description</th>
<th>Formatting</th>
<th>Alignment</th>
<th>Example of alignment</th>
</tr>
</thead>
<tbody>
<tr>
<td>AN</td>
<td>Alphanumeric field</td>
<td>Space</td>
<td>Left</td>
<td>‘STRING’</td>
</tr>
<tr>
<td>CF</td>
<td>Tax Identification Number (16 characters)</td>
<td>Space</td>
<td>Left with 5 spaces to the right</td>
<td>‘RSSGNN60R30H501U’</td>
</tr>
<tr>
<td>CN</td>
<td>Numeric Tax Identification number</td>
<td>Zero</td>
<td></td>
<td>‘02876990587’</td>
</tr>
<tr>
<td>DT</td>
<td>Date (format DDMYYY)</td>
<td>Zero</td>
<td></td>
<td>‘05051998’</td>
</tr>
<tr>
<td>NU</td>
<td>Positive numeric field</td>
<td>Zero</td>
<td>Right with non-significant zeros to the left</td>
<td>‘001234’</td>
</tr>
<tr>
<td>PN</td>
<td>Automotive designation of the Italian Provinces and the ‘space’ values and ‘EE’ for foreigners (for example, the province of birth)</td>
<td>Space</td>
<td></td>
<td>‘BO’</td>
</tr>
<tr>
<td>PR</td>
<td>Automotive designation of the Italian Provinces (for example, the province of residence)</td>
<td>Space</td>
<td></td>
<td>‘BO’</td>
</tr>
<tr>
<td>CB</td>
<td>Tick Box. If the box is ticked it is worth 1, otherwise it is zero</td>
<td>Zero</td>
<td></td>
<td>‘1’</td>
</tr>
</tbody>
</table>

WARNING:: an alignment of the fields or a formatting other than that intended in the above table is reason to reject the communication.

Therefore, a NU formatted field with a length of 5 whose value is 45 must be shown in the following way “00045”. 
Non-positional fields

The non-positional fields, namely those related to the table which constitutes the second part of the structurally-variable record, can take on one of the configurations shown in the table below:

<table>
<thead>
<tr>
<th>Designation Format</th>
<th>Description</th>
<th>Alignment</th>
<th>Example of alignment</th>
</tr>
</thead>
<tbody>
<tr>
<td>AN</td>
<td>Alphanumeric field</td>
<td>left</td>
<td>‘STRING       ’</td>
</tr>
<tr>
<td>CB</td>
<td>Tick box. The field consists of 15 spaces and a number (which may be worth only 1). NB. If the box is not ticked the field is to be considered empty</td>
<td>Right</td>
<td>‘               1’</td>
</tr>
<tr>
<td>CF</td>
<td>Tax Identification number (16 characters)</td>
<td>Left with 5 spaces to the right</td>
<td>‘RSSGNN60R30H501U’</td>
</tr>
<tr>
<td></td>
<td>VAT number (11 characters)</td>
<td>Left with 5 spaces to the right</td>
<td>‘02876990587     ’</td>
</tr>
<tr>
<td>CN</td>
<td>VAT number</td>
<td>Left with 5 spaces to the right</td>
<td>‘02876990587     ’</td>
</tr>
<tr>
<td>DT</td>
<td>Date (format DDMMYYYY)</td>
<td></td>
<td>‘05051998’</td>
</tr>
<tr>
<td>NU</td>
<td>Positive numeric field</td>
<td>Right with non-significant spaces to the left</td>
<td>‘       1234’</td>
</tr>
<tr>
<td></td>
<td>Negative numeric field</td>
<td></td>
<td>‘ -1234’</td>
</tr>
<tr>
<td>NP</td>
<td>Positive numeric field</td>
<td>Right with non-significant spaces to the left</td>
<td>‘       1234’</td>
</tr>
<tr>
<td>PN</td>
<td>Automotive designation of the Italian Provinces and the ‘space’ values and ‘EE’ for foreigners (for example, the province of birth)</td>
<td>Left with 14 spaces to the right</td>
<td>‘       BO’</td>
</tr>
<tr>
<td>PR</td>
<td>Automotive designation of the Italian Provinces (for example, the province of residence)</td>
<td>Left with 14 spaces to the right</td>
<td>‘       BO’</td>
</tr>
<tr>
<td>PC</td>
<td>Percentages and rates with up to three decimal places</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

It should be noted that in the previous tables there is a complete list of the possible configurations of the fields.

All the elements of the table which constitute the second part of the structurally-variable record must be initialised with spaces.

It should be noted that, as shown by the above-mentioned examples, all the amounts contained in the communication (positive or negative) are intended to be filled with spaces of non-significant characters. In
particular, for the numeric data that takes a negative value is expected the insertion of the symbol “-” in the position immediately preceding the first digit of the amount, while for the positive data there is in no case expected the insertion of the symbol “+”.
1.5 **General rules.**

1.5.1 **Tax Identification number of the person responsible**

The tax identification number of the person responsible should be recorded in duplicate on each record which constitutes the communication in the field “tax identification number of the person responsible”.

The tax identification numbers listed in the communication must be formally correct.

The tax identification number of the person responsible, reported in field 2 of record B, must be registered in Tax Register. The lack of the tax identification number means to reject the communication in the acceptance phase.

In the case of a taxpayer who has the same tax identification number as someone else and this conflict is solved by the Revenue Agency by issuing a new tax identification number, the indication in the communication of the previous tax identification number entails, when receiving the communication transmitted electronically, a rejection of the communication.

1.5.2 **Other data**

It should be noted that in the non-positional part of the structurally-variable record there should be reported only the data of communication whose content is a value different from zero and spaces.

With reference to the non-positional fields, in the case where the length of the data to insert should exceed the 16 characters available, there must be inserted another element with an identical field-code and with a field-value the first character of which must be set with the symbol “+”, while the next fifteen characters can be used for the continuation of the data to insert. It should be noted that this situation might only occur for some fields with the AN format.

All alphabetical characters must be set in uppercase.

1.5.3 **Type of communication**

In any communication it is necessary to specify the “Type of communication” – fields 7 and 8 of record “B”. Hereunder there is a breakdown of the types included:

- Ordinary sending: This is the sending of the communication relating to the reference period, to be made within the timeframe established by the Measure. Any delay in transmission may be notified in the electronic receipt.

- Annulment: This is the transmission through which the person required to request the annulment of a provision contained in a previously-transmitted ordinary or substitute file. The notice of annulment is composed only of record “A” “B” and “Z”.

The following describes the information content of electronic records inserted in the electronic transmission and the list of the field-codes, with the relative description and format for the data to be inserted in the table of records with a variable structure.
### Allegato 7

**Record di tipo "A"**

#### TYPE "A" RECORD

#### DRAFT

<table>
<thead>
<tr>
<th>Field</th>
<th>Description</th>
<th>Position</th>
<th>Configuration</th>
<th>Blocking controls/ Values allowed</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Record type</td>
<td>1</td>
<td>1 AN</td>
<td>Set to 'A'</td>
</tr>
<tr>
<td>2</td>
<td>Filler</td>
<td>2</td>
<td>14 AN</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Code provision</td>
<td>16</td>
<td>5 AN</td>
<td>&quot;TBT00&quot;</td>
</tr>
<tr>
<td>4</td>
<td>Supplier type</td>
<td>21</td>
<td>2 NU</td>
<td>Takes the values:</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>01 - Monte Titoli</td>
</tr>
<tr>
<td>5</td>
<td>Fiscal number of the supplier</td>
<td>23</td>
<td>16 CF</td>
<td>The field is obligatory. If the intermediary section is absent, the field must still be equal to the fiscal number of the required communication</td>
</tr>
</tbody>
</table>

#### Unused space

<table>
<thead>
<tr>
<th>Field</th>
<th>Description</th>
<th>Position</th>
<th>Configuration</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>Filler</td>
<td>39</td>
<td>483 AN</td>
</tr>
</tbody>
</table>

#### Space reserved for the Telematic service

<table>
<thead>
<tr>
<th>Field</th>
<th>Description</th>
<th>Position</th>
<th>Configuration</th>
</tr>
</thead>
<tbody>
<tr>
<td>7</td>
<td>Filler</td>
<td>522</td>
<td>1176 AN</td>
</tr>
<tr>
<td>8</td>
<td>Space reserved for the Telematic Service</td>
<td>1698</td>
<td>200 AN</td>
</tr>
</tbody>
</table>

#### Last characters of control

<table>
<thead>
<tr>
<th>Field</th>
<th>Description</th>
<th>Position</th>
<th>Configuration</th>
<th>Blocking controls/ Values allowed</th>
</tr>
</thead>
<tbody>
<tr>
<td>9</td>
<td>Filler</td>
<td>1898</td>
<td>1 AN</td>
<td>Set to the value 'A'</td>
</tr>
<tr>
<td>10</td>
<td>Filler</td>
<td>1899</td>
<td>2 AN</td>
<td>Set the hexadecimal values '0D' and '0A' (ASCII characters 'CR' and 'LF')</td>
</tr>
</tbody>
</table>
### TYPE "B" RECORD

<table>
<thead>
<tr>
<th>Field</th>
<th>Description</th>
<th>Position</th>
<th>Configuration</th>
<th>Blocking controls/Values allowed</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Record type</td>
<td>1</td>
<td>1 AN</td>
<td>Amounts to &quot;B&quot;</td>
</tr>
<tr>
<td>2</td>
<td>Tax identification number of the intermediary (as responsible for the tax or as the taxpayer) that records the transaction</td>
<td>2</td>
<td>11 CN</td>
<td>Required data. The tax identification number must be formally correct and registered in the Tax Registry. Non-registration leads to a gap in communication at the acceptance phase.</td>
</tr>
<tr>
<td>3</td>
<td>Filler</td>
<td>13</td>
<td>5 AN</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Progressive form</td>
<td>18</td>
<td>8 NU</td>
<td>Amounts to 1</td>
</tr>
<tr>
<td>5</td>
<td>Space available to the user</td>
<td>26</td>
<td>50 AN</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Filler</td>
<td>76</td>
<td>14 AN</td>
<td>Amounts to Space</td>
</tr>
</tbody>
</table>

#### Type of communication

<table>
<thead>
<tr>
<th>Field</th>
<th>Description</th>
<th>Position</th>
<th>Configuration</th>
<th>Blocking controls/Values allowed</th>
</tr>
</thead>
<tbody>
<tr>
<td>7</td>
<td>Ordinary communication</td>
<td>90</td>
<td>1 CB</td>
<td>The boxes are alternate</td>
</tr>
<tr>
<td>8</td>
<td>Notice of cancellation</td>
<td>91</td>
<td>1 CB</td>
<td>If the field 10 is set, it must contain the protocol of electronic communication to cancel, attributed to the file when being bought and received electronically</td>
</tr>
<tr>
<td>9</td>
<td>Communication protocol to cancel</td>
<td>92</td>
<td>24 NU</td>
<td></td>
</tr>
</tbody>
</table>

#### Data of the Person Obligated to pay - Delegator

<table>
<thead>
<tr>
<th>Field</th>
<th>Description</th>
<th>Position</th>
<th>Configuration</th>
<th>Blocking controls/Values allowed</th>
</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td>Denomination</td>
<td>116</td>
<td>60 AN</td>
<td>Data required.</td>
</tr>
<tr>
<td>11</td>
<td>Municipality or foreign Country of the registered office</td>
<td>176</td>
<td>40 AN</td>
<td>Data required.</td>
</tr>
<tr>
<td>12</td>
<td>Province (abbreviation) of the municipality of the registered office</td>
<td>216</td>
<td>2 PR</td>
<td>Data required. For foreign country indicate &quot;EE&quot;</td>
</tr>
<tr>
<td></td>
<td>Description</td>
<td>Value1</td>
<td>Value2</td>
<td>Value3</td>
</tr>
<tr>
<td>---</td>
<td>------------------------------------</td>
<td>--------</td>
<td>--------</td>
<td>--------</td>
</tr>
<tr>
<td>13</td>
<td>Year of communication</td>
<td>218</td>
<td>4</td>
<td>NU</td>
</tr>
<tr>
<td>14</td>
<td>Month of communication</td>
<td>222</td>
<td>2</td>
<td>NU</td>
</tr>
<tr>
<td>15</td>
<td>Filler</td>
<td>224</td>
<td>1674</td>
<td>AN</td>
</tr>
<tr>
<td>16</td>
<td>Filler</td>
<td>1898</td>
<td>1</td>
<td>AN</td>
</tr>
<tr>
<td>17</td>
<td>Filler</td>
<td>1899</td>
<td>2</td>
<td>AN</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Record di tipo "C"

**Type "C" Record**

#### Positional Fields (from 1 character to 89)

<table>
<thead>
<tr>
<th>Field</th>
<th>Description</th>
<th>Position</th>
<th>Configuration</th>
<th>Blocking controls/Values allowed</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Record type</td>
<td>1</td>
<td>1</td>
<td>AN</td>
</tr>
<tr>
<td>2</td>
<td>Fiscal number of the intermediary (tax responsible for the tax or as the taxpayer) that records the transaction</td>
<td>2</td>
<td>11</td>
<td>CN</td>
</tr>
<tr>
<td>3</td>
<td>Filler</td>
<td>13</td>
<td>5</td>
<td>AN</td>
</tr>
<tr>
<td>4</td>
<td>Progressive form</td>
<td>18</td>
<td>8</td>
<td>NU</td>
</tr>
<tr>
<td>5</td>
<td>Space available to the user</td>
<td>26</td>
<td>3</td>
<td>AN</td>
</tr>
<tr>
<td>6</td>
<td>Filler</td>
<td>29</td>
<td>61</td>
<td>AN</td>
</tr>
</tbody>
</table>

#### Non-Positional Fields (of 90 characters)

<table>
<thead>
<tr>
<th>Framework line</th>
<th>Description</th>
<th>Configuration</th>
<th>Blocked controls</th>
</tr>
</thead>
<tbody>
<tr>
<td>T001001</td>
<td>Tax type</td>
<td>NU</td>
<td>Values allowed:</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>1 = 491</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2 = 492</td>
</tr>
</tbody>
</table>

#### TI Framework - Tax type

| T001001        | Tax type    | NU            | Values allowed:  |
|                |             |               | 1 = 491          |
|                |             |               | 2 = 492          |

#### CL Framework - Client or other intermediary (person who gave or transmitted the order)

<table>
<thead>
<tr>
<th>CL001001</th>
<th>Tax identification number of the client</th>
<th>CF</th>
<th>Coincides with the fiscal number shown in Field 2 in the case where the person delegating is acting in his own name</th>
</tr>
</thead>
<tbody>
<tr>
<td>CL001002</td>
<td>An identification code which is unique to the client</td>
<td>AN</td>
<td>Alternative data</td>
</tr>
<tr>
<td>CL001003</td>
<td>Personal data of the client - Surname</td>
<td>AN</td>
<td>Alternative fields to the field CL001005</td>
</tr>
<tr>
<td>CL001004</td>
<td>Personal data of the client - Name</td>
<td>AN</td>
<td>Alternative field to the fields CL001003 and CL001004</td>
</tr>
<tr>
<td>CL001005</td>
<td>Personal data of the client - Denomination</td>
<td>AN</td>
<td>Alternative data</td>
</tr>
<tr>
<td>CL001006</td>
<td>ISO Code of residence of the client</td>
<td>AN</td>
<td>Alternative data</td>
</tr>
<tr>
<td>CL001007</td>
<td>Tax identification number of the person who knows the identity of the client</td>
<td>CF</td>
<td>Alternative data</td>
</tr>
<tr>
<td>CL001008</td>
<td>Other unique identification code of the person who knows the identity of the client</td>
<td>AN</td>
<td>Alternative data</td>
</tr>
<tr>
<td>CL001009</td>
<td>Name of the person who knows the identity of the client</td>
<td>AN</td>
<td>To set if it enhances the field CL001008</td>
</tr>
<tr>
<td>CL001010</td>
<td>ISO Code of the person who knows the identity of the client</td>
<td>AN</td>
<td>Alternative data</td>
</tr>
</tbody>
</table>

#### ES Framework - Performer - Buyer - Seller (the person to whom the person in referred to in field 2 has given the order)

<table>
<thead>
<tr>
<th>ES001001</th>
<th>Tax identification number of the performer</th>
<th>CF</th>
<th>Alternative data</th>
</tr>
</thead>
<tbody>
<tr>
<td>ES001002</td>
<td>Other unique identification code of the performer</td>
<td>AN</td>
<td>Unique identification code (for example: bic code or NDG)</td>
</tr>
<tr>
<td>ES001003</td>
<td>Personal data of the performer - Surname</td>
<td>AN</td>
<td>Obligatory field if the field ES001001 is present</td>
</tr>
<tr>
<td>ES001004</td>
<td>Personal data of the performer - Name</td>
<td>AN</td>
<td>Obligatory field if the field ES001001 is present</td>
</tr>
<tr>
<td>ES001005</td>
<td>Personal data of the performer - Denomination</td>
<td>AN</td>
<td>Obligatory field if the field ES001001 is present</td>
</tr>
</tbody>
</table>
### Record di tipo "C"

<table>
<thead>
<tr>
<th>Framework line column</th>
<th>Description</th>
<th>Configuration</th>
<th>Blocked controls</th>
</tr>
</thead>
<tbody>
<tr>
<td>ES001006</td>
<td>ISO Code of the residence of the performer</td>
<td>AN</td>
<td>Optional if the field ES001001 is present</td>
</tr>
</tbody>
</table>

#### OP FRAMEWORK - Transaction

<table>
<thead>
<tr>
<th>Field</th>
<th>Description</th>
<th>Format</th>
<th>Values allowed</th>
<th>Controls</th>
</tr>
</thead>
<tbody>
<tr>
<td>OP001001</td>
<td>Date of transaction - trade date</td>
<td>DT</td>
<td>For transactions 491: the day when the transaction is traded; For transactions 492: date of subscription, negotiation or amendment of the contract or the day of trading for the securitised derivatives</td>
<td>Obligatory field</td>
</tr>
<tr>
<td>OP001002</td>
<td>Date of transaction - settlement date</td>
<td>DT</td>
<td>Day of settlement (actualSD or ContractualSD) referred to in Article 3 of the Decree for transactions 491 (relevant for weight netting) and for the transactions 492 relating to securitised derivatives (for which it detects the transfer of title); not to be completed for the other transactions 492.</td>
<td></td>
</tr>
<tr>
<td>OP001003</td>
<td>Purchase or sale</td>
<td>NU</td>
<td>Allowed values: 1 = Purchase 2 = Sale</td>
<td>Obligatory field</td>
</tr>
<tr>
<td>OP001004</td>
<td>Trading capacity</td>
<td>NU</td>
<td>Allowed values: 1 = own interest 2 = Client's interest</td>
<td>Obligatory field</td>
</tr>
<tr>
<td>OP001005</td>
<td>ISIN Code of the instrument</td>
<td>AN</td>
<td>It is mandatory to indicate at least one field. If available, indicate the ISIN Code of the instrument.</td>
<td></td>
</tr>
<tr>
<td>OP001006</td>
<td>Name of the instrument</td>
<td>AN</td>
<td>In its absence, indicate the &quot;Instrument Name&quot; &quot;Unique code of the instrument&quot; and the relative &quot;Type of encoding&quot;</td>
<td></td>
</tr>
<tr>
<td>OP001007</td>
<td>Unique code of the instrument</td>
<td>AN</td>
<td></td>
<td></td>
</tr>
<tr>
<td>OP001008</td>
<td>Type of encoding</td>
<td>AN</td>
<td>Values allowed: 1 = Futures contracts, certificates, covered warrants and contracts of option on returns, measures or indices relating to shares 2 = Futures contracts, warrants, certificates, contracts of option on shares 3 = Contracts of exchange (swaps) on shares and relative yields, indices or measures</td>
<td></td>
</tr>
<tr>
<td>OP001009</td>
<td>Derived type</td>
<td>NU</td>
<td>Field to set only for 492 transactions</td>
<td></td>
</tr>
<tr>
<td>OP001010</td>
<td>Unit price in Euro</td>
<td>NU</td>
<td>For transactions 491 the unit price of the instrument expressed in Euro in accordance with Article 4, paragraph 2 of the Decree; For transactions 492 the field must not be completed.</td>
<td></td>
</tr>
<tr>
<td>Framework line column</td>
<td>Description</td>
<td>Configuration</td>
<td>Blocked controls</td>
<td></td>
</tr>
<tr>
<td>-----------------------</td>
<td>-------------</td>
<td>---------------</td>
<td>-----------------</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Format Values allowed</td>
<td>Controls</td>
<td></td>
</tr>
<tr>
<td>OP001011</td>
<td>Amount</td>
<td>NU</td>
<td>For transactions 491 the field must state the amount of financial instruments involved in the transaction. For transactions 492 the field must not be completed.</td>
<td></td>
</tr>
<tr>
<td>OP001012</td>
<td>Gross taxable base in Euro</td>
<td>NU</td>
<td>Indicates the tax base of the transaction (before calculating the net balance) and for the derivatives the notional value referred to in Article 9 of the Decree; for transactions 491 the purchase indicates the gross taxable base (i.e. before calculating the net balance), equal to the multiplication of the OP001010 and OP001011 fields; for transactions 491 for sale the field must never be completed; for transactions 492 the field must contain the notional value of the derivative referred to in Article 9 of the Decree</td>
<td></td>
</tr>
<tr>
<td>OP001013</td>
<td>Identification of the trading venue</td>
<td>AN</td>
<td>Obligatory field. The field must be completed with the identification code of the regulated market or MTF (MIC code); otherwise the field must be set with OTC, for transactions negotiated or cross order give an indication of the market where they are performed</td>
<td></td>
</tr>
<tr>
<td>OP001014</td>
<td>Block or cross-border transaction</td>
<td>NU</td>
<td>Values allowed:</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>1 = Yes</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2 = No</td>
<td></td>
</tr>
<tr>
<td>OP001015</td>
<td>Unique number identifying operation</td>
<td>NU</td>
<td>Indicates the unique number of the transaction. The field must be compiled with a unique code assigned to the same transaction by the person responsible for the tax referred to in field 2</td>
<td>Obligatory field.</td>
</tr>
<tr>
<td>OP001016</td>
<td>storno</td>
<td>CB</td>
<td>Indicates that the transaction is written-off</td>
<td></td>
</tr>
<tr>
<td>OP001017</td>
<td>A unique number identifying the transaction subject to reversal or relating to linked transactions</td>
<td>NU</td>
<td>Indicates the unique number of the transaction. The field must be compiled with a unique code assigned to the same transaction by the person responsible for the tax referred to in field 2</td>
<td></td>
</tr>
<tr>
<td>OP001018</td>
<td>Reduced tax</td>
<td>NU</td>
<td>Values allowed:</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>1 = Yes</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2 = NO</td>
<td></td>
</tr>
<tr>
<td>OP001019</td>
<td>Tax due</td>
<td>NU</td>
<td></td>
<td></td>
</tr>
<tr>
<td>OP001020</td>
<td>Rate</td>
<td>PC</td>
<td></td>
<td></td>
</tr>
<tr>
<td>OP001021</td>
<td>Netting</td>
<td>NU</td>
<td>Values allowed:</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>1 = Yes</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2 = NO</td>
<td></td>
</tr>
</tbody>
</table>

Applies only for transactions 491
<table>
<thead>
<tr>
<th>Framework line column</th>
<th>Description</th>
<th>Configuration</th>
<th>Blocked controls</th>
</tr>
</thead>
<tbody>
<tr>
<td>OP001022</td>
<td>Causal exclusions or exemptions</td>
<td>NU</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2 = Intragroup</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>3 = Riskless principal</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>4 = Sovereign bodies</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>5 = Funds and ethical portfolios</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>6 = Market making</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>7 = Liquidity support</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>8 = Pension funds</td>
</tr>
<tr>
<td>OP001019</td>
<td>Transactions 3.4</td>
<td>NU</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Filler</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Filler</td>
<td>1890</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>AN</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Set in spaces</td>
</tr>
<tr>
<td><strong>Last control characters</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Filler</td>
<td>1898</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>AN</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Set to the value 'A'</td>
</tr>
<tr>
<td>9</td>
<td>Filler</td>
<td>1899</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>AN</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Set the hexadecimal values ‘0D’ and ‘0A’ (ASCII characters ‘CR’ and ‘LF’)</td>
</tr>
</tbody>
</table>
## TYPE "D" RECORD

### POSITIONAL FIELDS (from 1 to 89 characters)

<table>
<thead>
<tr>
<th>Field</th>
<th>Description</th>
<th>Position</th>
<th>Configuration</th>
<th>Blocking controls/Values allowed</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Record type</td>
<td>1</td>
<td>1</td>
<td>AN</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Amounts to &quot;D&quot;</td>
</tr>
<tr>
<td>2</td>
<td>Tax identification number of the intermediary (as responsible for the tax or as the taxpayer) that records the transaction</td>
<td>2</td>
<td>11</td>
<td>CN</td>
</tr>
<tr>
<td>3</td>
<td>Filler</td>
<td>13</td>
<td>5</td>
<td>AN</td>
</tr>
<tr>
<td>4</td>
<td>Progressive form</td>
<td>18</td>
<td>8</td>
<td>NU</td>
</tr>
<tr>
<td>5</td>
<td>Space available to the user</td>
<td>26</td>
<td>3</td>
<td>AN</td>
</tr>
<tr>
<td>6</td>
<td>Filler</td>
<td>29</td>
<td>61</td>
<td>AN</td>
</tr>
</tbody>
</table>

### NON-POSITIONAL FIELDS (of 90 characters)

<table>
<thead>
<tr>
<th>Framework line column</th>
<th>Description</th>
<th>Configuration</th>
<th>Controls blocked</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Format</td>
<td>Values allowed</td>
</tr>
</tbody>
</table>

### CL FRAMEWORK - Client

- **CL001001**: Tax identification number of the client
  - **CF**: Coincides with the Fiscal number shown in Field 2 in the case where the person delegating is acting in his own name
  - **AN**: Alternative data

- **CL001002**: An identification code which is unique to the client
  - **AN**: |

- **CL001003**: Personal data of the client - Surname
  - **AN**: |

- **CL001004**: Personal data of the client - Name
  - **AN**: |

- **CL001005**: Personal data of the client - Denomination
  - **AN**: |

- **CL001006**: ISO Code of residence of the client
  - **AN**: |

### ES FRAMEWORK - Performer (the person to whom the person in referred to in field 2 has given the order)

- **ES001001**: Tax identification number of the performer
  - **CF**: |

- **ES001002**: Another unique identification code of the performer
  - **AN**: Unique identification code (for example: bic code or NGC)

- **ES001003**: Personal data of the performer - Surname
  - **AN**: |

- **ES001004**: Personal data of the performer - Name
  - **AN**: |

- **ES001005**: Personal data of the performer - Denomination
  - **AN**: |

- **ES001006**: ISA Code of the residence of the performer
  - **AN**: |

### OQ Framework - Transaction

- **OQ001001**: Date of transaction - trade date
  - **DT**: Obligatory field.

- **OQ001002**: Identification of the venue
  - **AN**: Single harmonised market code
  - **Obligatory field.**

- **OQ001003**: Identification algorithm
  - **AN**: Unique identification algorithm code
  - **Obligatory field.**

- **OQ001004**: ISIN Code of the instrument
  - **AN**: Obligatory field.

- **OQ001005**: Purchase, Sale, Change or Cancellation
  - **NU**: Values allowed:
    - 1 = Purchase
    - 2 = Sale
    - 3 = Change
    - 4 = Cancellation
    - **Obligatory field.**
<table>
<thead>
<tr>
<th>Framework line column</th>
<th>Description</th>
<th>Configuration</th>
<th>Controls blocked</th>
</tr>
</thead>
<tbody>
<tr>
<td>QQ001006</td>
<td>Interval between entry and modification or cancellation</td>
<td>NU</td>
<td>Values allowed:</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>1 = less than or equal to 0,5</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2 = greater than 0,5</td>
</tr>
<tr>
<td>QQ001007</td>
<td>Causal exclusions</td>
<td>NU</td>
<td>Values allowed:</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>1 = MM</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2 = LS</td>
</tr>
<tr>
<td>QQ001008</td>
<td>Relevance</td>
<td>NU</td>
<td>Values allowed:</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>1 = Yes</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2 = No</td>
</tr>
<tr>
<td>QQ001009</td>
<td>Number of securities or number of standard contracts</td>
<td>NU</td>
<td>Obligatory field.</td>
</tr>
<tr>
<td>QQ001010</td>
<td>Unit price, award for unit number of shares standard contract or notional countervalue</td>
<td>NU</td>
<td>Obligatory field.</td>
</tr>
<tr>
<td>QQ001011</td>
<td>Order code entered or deleted or changed</td>
<td>NU</td>
<td>Obligatory field.</td>
</tr>
</tbody>
</table>

**Filler**

<table>
<thead>
<tr>
<th></th>
<th>Filler</th>
<th>Format</th>
<th>Fill</th>
<th>AN</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>7</td>
<td>Filler</td>
<td>1890</td>
<td>8</td>
<td>AN</td>
<td>Set in spaces</td>
</tr>
</tbody>
</table>

**Last control characters**

<table>
<thead>
<tr>
<th></th>
<th>Filler</th>
<th>Format</th>
<th>Fill</th>
<th>AN</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>Filler</td>
<td>1898</td>
<td>1</td>
<td>AN</td>
<td>Set to the value ‘A’</td>
</tr>
<tr>
<td>9</td>
<td>Filler</td>
<td>1899</td>
<td>2</td>
<td>AN</td>
<td>Set the hexadecimal values ‘0D’ and ‘0A’ (ASCII characters ‘CR’ and ‘LF’)</td>
</tr>
</tbody>
</table>
### Type "E" Record

#### Positional Fields (from 1 to 89 characters)

<table>
<thead>
<tr>
<th>Field</th>
<th>Description</th>
<th>Position</th>
<th>Configuration</th>
<th>Blocking controls/Values allowed</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Record type</td>
<td>1</td>
<td>1</td>
<td>AN</td>
</tr>
<tr>
<td>2</td>
<td>Tax identification number of the intermediary (as responsible for the tax or as the taxpayer) that records the transaction</td>
<td>2</td>
<td>11</td>
<td>CN</td>
</tr>
<tr>
<td>3</td>
<td>Filler</td>
<td>13</td>
<td>5</td>
<td>AN</td>
</tr>
<tr>
<td>4</td>
<td>Progressive form</td>
<td>18</td>
<td>8</td>
<td>NU</td>
</tr>
<tr>
<td>5</td>
<td>Space available to the user</td>
<td>26</td>
<td>3</td>
<td>AN</td>
</tr>
<tr>
<td>6</td>
<td>Filler</td>
<td>29</td>
<td>61</td>
<td>AN</td>
</tr>
</tbody>
</table>

#### Non-Positional Fields (of 90 characters)

<table>
<thead>
<tr>
<th>Framework column</th>
<th>Description</th>
<th>Format</th>
<th>Controls blocked</th>
</tr>
</thead>
<tbody>
<tr>
<td>DL FRAMEWORK - Data of delegator</td>
<td>Denomination</td>
<td>AN</td>
<td>Data required</td>
</tr>
<tr>
<td>DL001001</td>
<td>Denomination</td>
<td>AN</td>
<td>Data required</td>
</tr>
<tr>
<td>DL001002</td>
<td>ISO Code of the residence of the delegator</td>
<td>AN</td>
<td>Data required</td>
</tr>
<tr>
<td>DL001003</td>
<td>Municipality or foreign state</td>
<td>AN</td>
<td>Data required</td>
</tr>
<tr>
<td>DL001004</td>
<td>Province</td>
<td>AN</td>
<td>Per Stato estero indicare &quot;EE&quot; Data required</td>
</tr>
<tr>
<td>DL001005</td>
<td>Address</td>
<td>AN</td>
<td>Data required</td>
</tr>
<tr>
<td>DL001006</td>
<td>Telephone number</td>
<td>AN</td>
<td>Data required</td>
</tr>
<tr>
<td>DL001007</td>
<td>E-mail address</td>
<td>AN</td>
<td>Data required</td>
</tr>
<tr>
<td>DL001008</td>
<td>Contact surname</td>
<td>AN</td>
<td>Data required</td>
</tr>
<tr>
<td>DL001009</td>
<td>Contact name</td>
<td>AN</td>
<td>Data required</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Framework column</th>
<th>Description</th>
<th>Format</th>
<th>Controls blocked</th>
</tr>
</thead>
<tbody>
<tr>
<td>VI FRAMEWORK - Tax payment data</td>
<td>Month transactions</td>
<td>AN</td>
<td>Data required</td>
</tr>
<tr>
<td>VI001001</td>
<td>Month transactions</td>
<td>AN</td>
<td>Data required</td>
</tr>
<tr>
<td>VI001002</td>
<td>Date for the payment of tax</td>
<td>AN</td>
<td>Data required</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Framework column</th>
<th>Description</th>
<th>Format</th>
<th>Controls blocked</th>
</tr>
</thead>
<tbody>
<tr>
<td>NU FRAMEWORK - Transaction data 491</td>
<td>Taxable transactions 491</td>
<td>NU</td>
<td></td>
</tr>
<tr>
<td>NU001001</td>
<td>Taxable transactions 491</td>
<td>NU</td>
<td></td>
</tr>
<tr>
<td>NU001002</td>
<td>Tax 491</td>
<td>NU</td>
<td></td>
</tr>
<tr>
<td>NU001003</td>
<td>Taxable base exclusion for Repo and securities lending</td>
<td>NU</td>
<td></td>
</tr>
<tr>
<td>NU001004</td>
<td>Number of transactions for the exclusions of Repo e securities lending</td>
<td>NU</td>
<td></td>
</tr>
<tr>
<td>NU001005</td>
<td>Taxable base exclusion for intragroup</td>
<td>NU</td>
<td></td>
</tr>
<tr>
<td>NU001006</td>
<td>Number of transactions for intragroup exclusions</td>
<td>NU</td>
<td></td>
</tr>
<tr>
<td>NU001007</td>
<td>Taxable base exclusion for Riskless principal</td>
<td>NU</td>
<td></td>
</tr>
<tr>
<td>NU001008</td>
<td>Number of transactions for Riskless principal</td>
<td>NU</td>
<td></td>
</tr>
<tr>
<td>NU001009</td>
<td>Taxable base exemption for sovereign bodies</td>
<td>NU</td>
<td></td>
</tr>
<tr>
<td>NU001010</td>
<td>Number of transactions for sovereign bodies</td>
<td>NU</td>
<td></td>
</tr>
<tr>
<td>Framework line column</td>
<td>Description</td>
<td>Configuration</td>
<td>Controls blocked</td>
</tr>
<tr>
<td>-----------------------</td>
<td>------------------------------------------------------------------------------</td>
<td>---------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>NU001011</td>
<td>Taxable base exemption for funds and ethical portfolios</td>
<td>NU</td>
<td></td>
</tr>
<tr>
<td>NU001012</td>
<td>Number of transactions for exemptions for funds and ethical portfolios</td>
<td>NU</td>
<td></td>
</tr>
<tr>
<td>NU001013</td>
<td>Taxable base exemption for market making</td>
<td>NU</td>
<td></td>
</tr>
<tr>
<td>NU001014</td>
<td>Number of transactions for market making exemptions</td>
<td>NU</td>
<td></td>
</tr>
<tr>
<td>NU001015</td>
<td>Taxable base exemption to support liquidity</td>
<td>NU</td>
<td></td>
</tr>
<tr>
<td>NU001016</td>
<td>Number of transactions for exemptions to support liquidity</td>
<td>NU</td>
<td></td>
</tr>
<tr>
<td>NU001017</td>
<td>Taxable base exemption for pension funds</td>
<td>NU</td>
<td></td>
</tr>
<tr>
<td>NU001018</td>
<td>Number of transactions for pension funds exemptions</td>
<td>NU</td>
<td></td>
</tr>
</tbody>
</table>

**ND FRAMEWORK - Data transactions 492**

| NU001001              | Number of transactions 492                                                  | NU            |                 |
| NU001002              | Tax 492                                                                     | NU            |                 |

**ND FRAMEWORK - Data transactions 495**

| NC001001              | Tax 495                                                                     | NU            |                 |

**Filler**

<table>
<thead>
<tr>
<th></th>
<th>Filler</th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>7</td>
<td>Fill</td>
<td>1890</td>
<td>8</td>
<td>AN</td>
<td>Set in spaces</td>
</tr>
</tbody>
</table>

**Last control characters**

<table>
<thead>
<tr>
<th></th>
<th>Filler</th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>Fill</td>
<td>1898</td>
<td>1</td>
<td>AN</td>
<td>Set to the value ‘A’</td>
</tr>
<tr>
<td>9</td>
<td>Fill</td>
<td>1899</td>
<td>2</td>
<td>AN</td>
<td>Set the hexadecimal values ‘0D’ and ‘0A’ (ASCII characters ‘CR’ and ‘LF’)</td>
</tr>
</tbody>
</table>
### TYPE "F" RECORD

**POSITIONAL FIELDS (from 1 to 89 characters)**

<table>
<thead>
<tr>
<th>Field</th>
<th>Description</th>
<th>Position</th>
<th>Length</th>
<th>Configuration</th>
<th>Format</th>
<th>Blocking controls/Values allowed</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Record type</td>
<td>1</td>
<td>1</td>
<td>AN</td>
<td></td>
<td>Account to &quot;F&quot;</td>
</tr>
<tr>
<td>2</td>
<td>Tax identification number of the intermediary (as responsible for the tax or as the taxpayer) that records the transaction</td>
<td>2</td>
<td>11</td>
<td>CN</td>
<td></td>
<td>Always set</td>
</tr>
<tr>
<td>3</td>
<td>Filler</td>
<td>13</td>
<td>5</td>
<td>AN</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Progressive form</td>
<td>18</td>
<td>8</td>
<td>NU</td>
<td></td>
<td>It starts from 00000001 and it must increase by a unit for every &quot;F&quot; record</td>
</tr>
<tr>
<td>5</td>
<td>Space available to the user</td>
<td>26</td>
<td>3</td>
<td>AN</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Filler</td>
<td>29</td>
<td>6</td>
<td>AN</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Identification of the transaction for which the note is shown**

- **Field 7**: Unique transaction number identification. Position 90, Length 20. Format AN. Blocking controls/Values allowed: Data required.
- **Field 8**: Nota. Position 110, Length 1780. Format AN. Blocking controls/Values allowed: Data required.

**Filler**


**Last control characters**

- **Field 10**: Filler. Position 1898, Length 1. Format AN. Blocking controls/Values allowed: Set to the value ‘A’.
- **Field 11**: Filler. Position 1899, Length 2. Format AN. Blocking controls/Values allowed: Set the hexadecimal values ‘0D’ and ‘0A’ (ASCII characters ‘CR’ and ‘LF’).
<table>
<thead>
<tr>
<th>Field</th>
<th>Description</th>
<th>Position</th>
<th>Configuration</th>
<th>Blocking controls/Values allowed</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Record type</td>
<td>1</td>
<td>1</td>
<td>AN</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Set to 'Z'.</td>
</tr>
<tr>
<td>2</td>
<td>Filler</td>
<td>2</td>
<td>14</td>
<td>AN</td>
</tr>
<tr>
<td>3</td>
<td>Number record type 'B'</td>
<td>16</td>
<td>9</td>
<td>NU</td>
</tr>
<tr>
<td>4</td>
<td>Number record type 'C'</td>
<td>25</td>
<td>9</td>
<td>NU</td>
</tr>
<tr>
<td>5</td>
<td>Number record type 'D'</td>
<td>34</td>
<td>9</td>
<td>NU</td>
</tr>
<tr>
<td>6</td>
<td>Number record type 'E'</td>
<td>43</td>
<td>9</td>
<td>NU</td>
</tr>
<tr>
<td>7</td>
<td>Number record type 'F'</td>
<td>52</td>
<td>9</td>
<td>NU</td>
</tr>
<tr>
<td></td>
<td><strong>Unused space</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Filler</td>
<td>61</td>
<td>1837</td>
<td>AN</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Set in spaces</td>
</tr>
<tr>
<td>9</td>
<td>Filler</td>
<td>1898</td>
<td>1</td>
<td>AN</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Always amount to 'A'</td>
</tr>
<tr>
<td>10</td>
<td>Filler</td>
<td>1899</td>
<td>2</td>
<td>AN</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Set the hexadecimal values '0D'</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>and '0A' (ASCII characters 'CR'</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>and 'LF').</td>
</tr>
</tbody>
</table>

TYPE "Z" RECORD: END RECORD
### Annex 8

**Detailed statement of transactions referred to in paragraphs 491 and 492 of Article 1 of the Financial Stability Law**

<table>
<thead>
<tr>
<th>Description</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 type of tax (491; 492)</td>
<td></td>
</tr>
<tr>
<td>2 company identification: tax identification number</td>
<td></td>
</tr>
<tr>
<td>3 tax identification number of the client</td>
<td></td>
</tr>
<tr>
<td>4 other unique identification code of the client</td>
<td></td>
</tr>
<tr>
<td>5 surname of the client</td>
<td></td>
</tr>
<tr>
<td>6 name of the client</td>
<td></td>
</tr>
<tr>
<td>7 denomination of the client</td>
<td></td>
</tr>
<tr>
<td>8 ISO code of client’s residence</td>
<td></td>
</tr>
<tr>
<td>9 tax identification number of the person aware of the identity of the client</td>
<td></td>
</tr>
<tr>
<td>10 other unique identification code of the person aware of the identity of the client</td>
<td></td>
</tr>
<tr>
<td>11 denomination of the person aware of the identity of the client</td>
<td></td>
</tr>
<tr>
<td>11bis ISO code of the person aware of the identity of the client</td>
<td></td>
</tr>
<tr>
<td>12 tax identification number of the person to whom the order was transmitted or of the seller or the purchaser</td>
<td></td>
</tr>
<tr>
<td>13 other unique identification code of the person to whom the order was transmitted or of the seller or the purchaser</td>
<td></td>
</tr>
<tr>
<td>14 surname of the person to whom the order was transmitted or of the seller or the purchaser</td>
<td></td>
</tr>
<tr>
<td>15 name of the person to whom the order was transmitted or of the seller or the purchaser</td>
<td></td>
</tr>
<tr>
<td>16 denomination of the person to whom the order was transmitted or of the seller or the purchaser</td>
<td></td>
</tr>
<tr>
<td>17 ISO code of the person to whom the order was transmitted or of the seller or the purchaser</td>
<td></td>
</tr>
<tr>
<td>18 trade date</td>
<td></td>
</tr>
<tr>
<td>19 settlement date</td>
<td></td>
</tr>
<tr>
<td>20 purchase or sale from the perspective of the client referred to in point 3 or, for the transactions in his own account, from the perspective of the company referred to in point 2</td>
<td></td>
</tr>
<tr>
<td>21 trading capacity: his own account or in the client’s account</td>
<td></td>
</tr>
<tr>
<td>22 ISIN code of the instrument</td>
<td></td>
</tr>
<tr>
<td>23 name of the instrument</td>
<td></td>
</tr>
<tr>
<td>24 unique code of the instrument</td>
<td></td>
</tr>
<tr>
<td>25 type of encoding</td>
<td></td>
</tr>
<tr>
<td>26 type of derivatives</td>
<td></td>
</tr>
<tr>
<td>27 unit price in euro</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>28</td>
<td>quantity</td>
</tr>
<tr>
<td>29</td>
<td>gross taxable basis in euro</td>
</tr>
<tr>
<td>30</td>
<td>Identification of the venue where the transaction was executed. (unique harmonised identification code - MIC - otherwise the code OTC)</td>
</tr>
<tr>
<td>31</td>
<td>block trades or cross order</td>
</tr>
<tr>
<td>32</td>
<td>Transaction’s unique identifying number</td>
</tr>
<tr>
<td>33</td>
<td>write-off</td>
</tr>
<tr>
<td>34</td>
<td>Transaction’s unique identifying number for written-off transaction or for linked transaction</td>
</tr>
<tr>
<td>35</td>
<td>reduced tax</td>
</tr>
<tr>
<td>36</td>
<td>tax due</td>
</tr>
<tr>
<td>37</td>
<td>tax rate in %</td>
</tr>
<tr>
<td>38</td>
<td>netting (yes/no)</td>
</tr>
<tr>
<td>39</td>
<td>reason for exclusion / exemption (see table below)</td>
</tr>
<tr>
<td>40</td>
<td>transactions under article 3 paragraph 4 of the Decree</td>
</tr>
<tr>
<td>41</td>
<td>free field</td>
</tr>
<tr>
<td></td>
<td>Description</td>
</tr>
<tr>
<td>---</td>
<td>----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>1</td>
<td>type of tax</td>
</tr>
<tr>
<td>2</td>
<td>tax identification number of the intermediary who registers the transaction:</td>
</tr>
<tr>
<td>3</td>
<td>tax identification number of the client</td>
</tr>
<tr>
<td>4</td>
<td>other unique identification code of the customer</td>
</tr>
<tr>
<td>5</td>
<td>surname of the client</td>
</tr>
<tr>
<td>6</td>
<td>name of the client</td>
</tr>
<tr>
<td>7</td>
<td>denomination of the client</td>
</tr>
<tr>
<td>8</td>
<td>ISO Code of the residence of the client</td>
</tr>
<tr>
<td>9</td>
<td>tax identification number of the person aware of the identity of the client</td>
</tr>
<tr>
<td>10</td>
<td>other unique identification code of the person aware of the identity of the client</td>
</tr>
<tr>
<td>11</td>
<td>denomination of the person aware of the identity of the client</td>
</tr>
<tr>
<td>11_bis</td>
<td>ISO Code of the person aware of the identity of the client</td>
</tr>
<tr>
<td>12</td>
<td>tax identification number of the person to whom the order was transmitted or of the seller or purchaser</td>
</tr>
<tr>
<td>No.</td>
<td>Description</td>
</tr>
<tr>
<td>-----</td>
<td>------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>13</td>
<td>Other unique identification code of the person to whom the order was transmitted or of the seller or purchaser</td>
</tr>
<tr>
<td>14</td>
<td>Surname of the person to whom the order was transmitted or of the seller or purchaser</td>
</tr>
<tr>
<td>15</td>
<td>Name of the person to whom the order was transmitted or of the seller or purchaser</td>
</tr>
<tr>
<td>16</td>
<td>Denomination of the person to whom the order was transmitted or of the seller or purchaser</td>
</tr>
<tr>
<td>17</td>
<td>ISO Code of the person to whom the order was transmitted or of the seller or purchaser</td>
</tr>
<tr>
<td>18</td>
<td>Trade date</td>
</tr>
<tr>
<td>19</td>
<td>Settlement date</td>
</tr>
<tr>
<td>20</td>
<td>Purchase or sale: buy or sell</td>
</tr>
<tr>
<td>21</td>
<td>Trading capacity:</td>
</tr>
<tr>
<td>22 ISIN code of the instrument</td>
<td>ISIN code of the instrument</td>
</tr>
<tr>
<td>--------------------------------</td>
<td>----------------------------</td>
</tr>
<tr>
<td>23 name of the instrument</td>
<td>Name of the instrument</td>
</tr>
<tr>
<td>24 unique code of the instrument</td>
<td>Unique code of the instrument</td>
</tr>
<tr>
<td>25 type of encoding of the instrument</td>
<td>encoding type of the instrument</td>
</tr>
<tr>
<td>26 type of derivatives</td>
<td>N/A</td>
</tr>
<tr>
<td>27 unit price:</td>
<td>indicate the unit price in EURO</td>
</tr>
<tr>
<td>28 quantitative:</td>
<td>refers to the number of instruments</td>
</tr>
<tr>
<td>29 gross taxable basis in euro</td>
<td>refers to the gross taxable basis (before calculating the net balance)</td>
</tr>
<tr>
<td>30 identification of the venue</td>
<td>MIC code or OTC</td>
</tr>
<tr>
<td>31 block trades or cross order</td>
<td>refers to if the transaction is an agreed transaction (Article 6 paragraph 4 of the Decree) or a cross-order</td>
</tr>
<tr>
<td>32 transaction’s unique identifying number</td>
<td>refers to the transaction’s unique identifying number</td>
</tr>
<tr>
<td>33 storno</td>
<td>refers to that the transaction is written-off</td>
</tr>
<tr>
<td>34 transaction’s unique identifying number for written-off transaction or for linked transaction</td>
<td>refers to transaction’s unique identifying number for written-off transaction or for linked transaction</td>
</tr>
<tr>
<td>35 reduced tax:</td>
<td>refers to if the tax is reduced (YES/NO)</td>
</tr>
<tr>
<td>36 tax due</td>
<td>refers to the tax due in euro, before the net balance is calculated</td>
</tr>
<tr>
<td>37 rate in %</td>
<td>refers to the tax rate expressed in %</td>
</tr>
<tr>
<td>38 netting</td>
<td>refers to that the transaction is used to calculate the net balance</td>
</tr>
<tr>
<td>39 reason of exclusion / exemption</td>
<td>refers to the reason for exclusion or exemption (see table below)</td>
</tr>
<tr>
<td>40 transactions under article 3 paragraph.4 of the Decree</td>
<td>refers to that the transaction falls within article 3 paragraph.4 of the Decree</td>
</tr>
<tr>
<td>41 free field</td>
<td>Free field for any communication with the Revenue Agency by the person referred to in field 2</td>
</tr>
</tbody>
</table>

Field 39 For the exemptions/exclusions the reasons are as follows:

exclusions (Article 15):

<table>
<thead>
<tr>
<th>reason</th>
<th>source</th>
<th>description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>15.1 letter e</td>
<td>repo and securities lending</td>
</tr>
<tr>
<td>2</td>
<td>15.2 letter g</td>
<td>intragroup</td>
</tr>
<tr>
<td>3</td>
<td>15.2 letter a</td>
<td>riskless principal</td>
</tr>
</tbody>
</table>

Exemptions (Article 16):

<table>
<thead>
<tr>
<th>reason</th>
<th>source</th>
<th>description</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th></th>
<th>16.1 a.1, a.2, a.3, a.4</th>
<th>sovereign entities</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>16.1 letters b and c</td>
<td>funds and ethic portfolios</td>
</tr>
<tr>
<td>6</td>
<td>16.3 letter a</td>
<td>market making</td>
</tr>
<tr>
<td>7</td>
<td>16.3 letter b</td>
<td>liquidity support</td>
</tr>
<tr>
<td>8</td>
<td>16.5</td>
<td>pensions fund</td>
</tr>
</tbody>
</table>
Field 1 = refers to the type of tax: value 491 or value 492
Field 2 = tax identification number of the intermediary (as responsible for the tax or as the taxpayer) who registers the transaction.
Field 3 = tax identification number of the person (a physical person or a legal person: can be the taxpayer or other intermediary) who has given or sent the order; in the case where the person referred to in field 2 acts in own interest the field must show his tax identification number
Field 4 = In the absence of a tax identification number please fill in a unique identification code (even internal to information systems of the person responsible for the tax –); for confidentiality reasons, in the event the intermediary referred to in paragraph 1 does not know the identity of the person and this is known to another person referred to in paragraph 2.1 letter b) and letter c) of the measure located in States or territories which allow the exchange of information (to show in fields 9, 10 and 11), the field shows the unique identification code communicate by the latter.
Field 5: = refers to the surname of the client referred to in field 3
Field 6: = refers to the name of the client referred to in field 3
Field 7: = refers to the denomination of the client referred to in field 3
Field 8 = ISO code of the client
Field 9 = tax identification number of the person aware of the identity of the client
Field 10 = in the absence of a tax identification number, give a unique identification code of the person aware of the identity of the client (even inside information systems of the person responsible for the tax – for example: ndg)
Field 11 = refers to the denomination of the person referred to in field 10
Field 11_bis = ISO Code of the person referred to in fields 9 or 10
Field 12 = tax identification number of the person to whom the order was given or of the seller or purchaser
Field 13 = in the absence of a tax identification number, give a unique identification code of the person to whom the order was given or of the seller or purchaser (even inside information systems of the person responsible for the tax – for example: ndg)
Field 14 = surname of the person to whom the order was given or of the seller or purchaser
Field 15 = name of the person to whom the order was given or of the seller or purchaser
Field 16 = denomination of the person to whom the order was given or of the seller or purchaser
Field 17 = ISO Code of the person to whom the order was given or of the seller or purchaser
Field 18 = gives the trade date for 491 transactions; for 492 transactions it gives the date of subscription, negotiation or modification of the contract or the trade date for securitised derivatives
Field 19 = settlement date (actualSD or ContractualSD) referred to in Article 3 of the Decree for transactions 491 and for transactions 492 involving securitised derivatives; it must not be completed for other 492 transactions
Field 20 = for transactions 491 indicate 1 (purchase) or 2 (sale) on the basis of the role taken by the person referred to in field 3 or, for transactions in own interest, by the subject referred to in field 2;
the same for transactions 492. For these latter transactions, unless the counterpart is other intermediary referred to in paragraph 1 of the measure, the whole procedure must be compiled twice, one as a purchase and one as a sale. Finally, where derivatives exchange flows (for example: CFD) purchase or sale are to be determined on the basis of a constant convention taken up and held by the person referred to in field 2.

Field 21 = refers to the trading capacity of the intermediary named in field 2: code 1: own interest; code 2: in the interest of others or third parties. In own interest must be used in the case of proprietary trading, market making and riskless principal.

Field 22 = ISIN code of the instrument; in the absence of the ISIN code it is necessary to fill in fields 23, 24 and 25

Field 23 = in the absence of the ISIN code indicate the denomination of the instrument

Field 24 = in the absence of the ISIN code indicate other market code of the instrument or a internal code

Field 25 = indicate the source (for example: Bloomberg, Reuters etc.) of the market code of the instrument; if the code is internal indicate “internal”.

Field 26: only for derivatives (492) indicate 1 or 2 or 3; 1 = Futures contracts, certificates, covered warrants and option contracts on returns, measures or indices relating to shares; 2 = Futures contracts, certificates, covered warrants and option contracts on shares; 3 = Exchange contracts (swaps) on shares and relative yields, indices or measures. Forward contracts relating to shares and relative yields, indices or measures. Financial contracts for differences related to shares and relative yields, indices or measures. Any other instrument which involves a cash settlement determined by reference to shares and relative yields, indices or measures. The combinations of contracts and shares indicated above

Field 27 = for 491 transactions the unit price of the instrument expressed in euro in accordance with Article 4, paragraph 2 of the Decree; for 492 transactions the field must not be completed

Field 28 = for 491 transactions the field must contain the number of the financial instruments involved in the transaction; for 492 transactions the field must not be completed

Field 29 = for 491 purchase transactions refers to the gross taxable basis (before calculating the net balance), equal to the multiplication of fields 27 x 28; for 491 sale transactions the field must not be completed; for transactions 492 the field must carry the notional value of the derivative referred to in Article 9 of the Decree

Field 30 = the field must be completed with the identification code of the regulated market or MTF (MIC code); otherwise, the field must be set to OTC

Field 31: if the transaction is a negotiated transaction (see Article 6 paragraph 4 – 491 – and Article 11 of the Decree – 492) or a cross order indicate: YES, otherwise NO

Field 32 = the field must be compiled with a unique code assigned to the transaction by the person responsible for the tax in field 2; [Note for written-off transactions: both have the same code; the new transaction has a new code which is not connected – there remains the possibility to keep track of the link between the transactions attributing to the new transaction a new code and indicating the original code in field 34]

Field 33 = if the transaction is a reversed transaction the field must be set with Y; otherwise the field should not be valued;
Field 34 = unique code for written-off transactions or a linked transaction;
Field 35 = Y refers to that the tax is reduced; N refers to that the tax is not reduced;
Field 36 = refers to the tax; for transactions 491, if field 38 is valued with YES indicate the tax due for the transaction before calculating the net balance; if field 38 is NO, indicate the tax due; for transactions 492 indicate the tax due;
Field 37 = for transactions 491 the field must be completed specifying the rate of tax to apply to the transaction; for transactions 492 the field must not be completed;
Field 38 = to use only for transactions 491: indicate YES if the transaction is used to calculate the net balance; indicate NO if the transaction is not used to calculate the net balance
Field 39 = indicate the reason for the exclusion or exemption [note: if this field is valued then field 38 must have the value = NO, and field 36 the value zero]
Field 40: transactions 3.4 [field to be used only by intermediaries not subject to MIFID directive]
Field 41 = free field for notes, clarifications or otherwise available to the person referred to in field 2

Illustrative note related to fields from 3 to 11.

In case where the intermediary responsible for the tax in field 1 receives an order from other person referred to in paragraph 2.1 letter b) and letter c) of the measure who is acting on behalf of a taxpayer and, for reasons of commercial confidentiality this other intermediary is not keen to reveal the identity of the above-mentioned client it is possible, based on the premise that this other person is resident in Italy or located in a state or territory which allows the exchange of information, to indicate in field 4 the unique identification code (c.d. anonymous identification code) attributed to the client by such other person.

In the above case, the person responsible for the tax referred to in field 1 must fill in field 4 by inserting the anonymous identification code and fill in field 9 (indicating the fiscal code of such other intermediary) or field 10 (unique identification code of the person aware of the identity of the client), 11 (denomination of the person aware of the identity of the client) and 11-bis (ISO Code of the person referred to in fields 9 or 10).

Explanatory note relating to Fields 30 and 31.

For purposes of the applicable tax rate to the transaction (field 30), the negotiated transactions and cross orders shall be recorded as having been made on regulated markets or MTF. However, with respect to the role of person responsible for the payment tax and the recognition of the corresponding transaction thereof, the negotiated transactions or cross orders are deemed to be treated as OTC transactions, as the identity of the counterparty is available.
**Annex 9**

**Detailed statement of transactions referred to in paragraph 495 of Article 1 of the Financial Stability law, 2013**

<table>
<thead>
<tr>
<th>Field</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Tax identification number of the intermediary</td>
</tr>
<tr>
<td>2</td>
<td>Tax identification number of the taxable person</td>
</tr>
<tr>
<td>3</td>
<td>Other unique identification code of the taxable person</td>
</tr>
<tr>
<td>4</td>
<td>Surname of the taxable person</td>
</tr>
<tr>
<td>5</td>
<td>Name of the taxable person</td>
</tr>
<tr>
<td>6</td>
<td>Denomination of the taxable person</td>
</tr>
<tr>
<td>7</td>
<td>ISO Code of the residence of the taxable person</td>
</tr>
<tr>
<td>8</td>
<td>Tax identification number of the entity to whom the order was sent</td>
</tr>
<tr>
<td>9</td>
<td>Other unique identification code of the person to whom the order was sent</td>
</tr>
<tr>
<td>10</td>
<td>Surname of the person to whom the order was sent</td>
</tr>
<tr>
<td>11</td>
<td>Name of the person to whom the order was sent</td>
</tr>
<tr>
<td>12</td>
<td>Denomination of the entity to whom the order was sent</td>
</tr>
<tr>
<td>13</td>
<td>ISO Code of the residence of the person to whom the order was sent</td>
</tr>
<tr>
<td>14</td>
<td>Trade date</td>
</tr>
<tr>
<td>15</td>
<td>Identification code of the market MIC code</td>
</tr>
<tr>
<td>16</td>
<td>Identification algorithm</td>
</tr>
<tr>
<td>17</td>
<td>ISIN instrument</td>
</tr>
<tr>
<td>18</td>
<td>Type of transaction (purchase or sale) or modification or cancellation</td>
</tr>
<tr>
<td>19</td>
<td>The interval between the input and the modification or cancellation</td>
</tr>
<tr>
<td>20</td>
<td>Causal exclusions of the transactions (market making/best execution)</td>
</tr>
<tr>
<td>21</td>
<td>Relevance or otherwise of the transaction</td>
</tr>
<tr>
<td>22</td>
<td>Number of shares or number of standard contracts</td>
</tr>
<tr>
<td>23</td>
<td>Unit price titles, premium unit options * number of shares forming the standard contract or the notional countervalue</td>
</tr>
<tr>
<td>24</td>
<td>Order code entered, modified or cancelled</td>
</tr>
<tr>
<td>25</td>
<td>Empty field</td>
</tr>
</tbody>
</table>

**Key**

- **Field 1** = Tax identification number of the intermediary who registers the transaction
- **Field 2** = Tax identification number of the taxable person; in the case where the person referred to in field 1 is the taxpayer, repeat field 1.
Field 3 = in the absence of the tax identification number of the taxable person (who is different from the intermediary referred to in field 1) indicate a unique identification code (even internal to information systems of the person responsible for the tax – for example: ndg)
Field 4: surname of the taxable person referred to in field 2;
Field 5: name of the taxable person referred to in field 2;
Field 6: denomination of the taxable person referred to in field 2; in the case where the subject referred to in field 1 acts as taxable person give his denomination;
Field 7 = ISO code of the taxable person
Field 8 = in the case where the subject referred to in field 1 has sent the order to another person indicate the tax identification number of the person to whom the order was sent
Field 9 = in the absence of a tax identification number of the person referred to in field 8 indicate a unique identification code (even internal to information systems of the person responsible for the tax – for example: ndg) of the person to whom the order was given
Field 10 = surname of the person to whom the order was given
Field 11 = name of the person to whom the order was given
Field 12 = denomination of the person to whom the order was given
Field 13 = ISO code of the person to whom the order was given
Field 14 = refers to the trade date referred to in Article 13 paragraph 1 of the Decree
Field 15 = refers to the identification code of the regulated market or MTF (MIC code);
Field 16 = refers to the unique identification code of the algorithm attributed by the same person as that in field 2.
Field 17 = ISIN code of the instrument involved in the transaction;
Field 18 = refers to: purchase (1), sale (2), modification (3), annulment (4) from the perspective of the person referred to in field 2
Field 19: refers to the interval between input and modification or annulment and in particular if this interval between input and modification/annulment is $\leq 0.5$ seconds or $>0.5$ seconds
Field 20: refers to the reason for exclusion; market making (MM) o best execution (BE)
Field 21 = refers to the relevance (1) or non relevance (2) of the transaction for the purpose of calculating the tax
Field 22 = refers to the number of shares or the number of standard contracts
Field 23: refers to the unit price (for instruments 491 and for securitised derivatives 492); refers to the unit price multiplied by the number of shares in the standard contract (for the options); refers to the notional counter-value of the standard contract (for the other derivatives)
Field 24 = refers to the code of the order entered or cancelled or modified; the code of those that modify or cancel must be equal to that of the orders entered which are modified or cancelled
Field 25 = empty field for any notes, clarifications or otherwise available to the person referred to in field 1;
# CONTENT

## B. Italian Model

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>I.</td>
<td>Italian Tax Code Translation (unofficial, English)</td>
</tr>
<tr>
<td>II.</td>
<td>Ministerial Decree Translation (English) March 2013</td>
</tr>
<tr>
<td>III.</td>
<td>Draft Ministerial Decree Translation (English) August 2013</td>
</tr>
<tr>
<td>IV.</td>
<td>Administrative Decree Translation (English) August 2013</td>
</tr>
<tr>
<td>V.</td>
<td><strong>Italian Issuer list with market cap. &lt; 500 million €</strong></td>
</tr>
<tr>
<td>VI.</td>
<td>Explanatory Memorandum Translation (English)</td>
</tr>
<tr>
<td>VII.</td>
<td>Instructions for communications and certifications</td>
</tr>
<tr>
<td>VIII.</td>
<td>Minister of Economy and Finance - FAQ – Shares</td>
</tr>
<tr>
<td>IX.</td>
<td>Minister of Economy and Finance - FAQ – Derivative Instruments</td>
</tr>
<tr>
<td>X.</td>
<td>English Form yearly FTT return</td>
</tr>
<tr>
<td>XI.</td>
<td>Appendix</td>
</tr>
<tr>
<td>i.</td>
<td>Regulation on short selling – Market-Making (Engl./Germ.)</td>
</tr>
<tr>
<td>ii.</td>
<td>MiFID Directive – Regulated Market, MTF (Engl./Germ.)</td>
</tr>
<tr>
<td>iii.</td>
<td>EU-Regulation Nr. 1287/2006 – Securities Financing Transaction (Engl./Germ.)</td>
</tr>
<tr>
<td>iv.</td>
<td>Legislative Decree Nr. 58 – Art. 113 ff. (English)</td>
</tr>
<tr>
<td>v.</td>
<td>Codice Civile – Art. 2359 (Italian)</td>
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<td>EMITTENTE</td>
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Explanatory Memorandum

Article 1, paragraphs 491 to 500, of Law No 228 of 24 December 2012, hereinafter referred to as the Law, has introduced a tax on financial transactions applying to the transfers of the ownership of shares and other participating financial instruments (paragraph 491), to transactions in derivative financial instruments and other transferable securities (paragraph 492) as well as to high-frequency trading as referred to in paragraph 495 of the above Law. In particular, paragraph 500 of Article 1 of the aforesaid Law provides that a Decree of the Minister of the Economy and Finance shall establish the procedures for applying the tax. This Decree is issued for the purpose of implementing the above provision and lays down the following provisions.

In Article 1, a few definitions are given that are relevant for the purposes of the application of the tax. In particular, paragraph 2 provides a clearer definition of shares, participating financial instruments and securities representing equity investment (letters c), d) and e)) whose transfer is subject to tax under paragraph 491 of the Law. As for the identification of securities representing equity investment, these consist in securities representing shares or other participating instruments issued by Italian companies (i.e. American Depositary Receipts and Global Depositary Receipts). With a view to solve any uncertainties regarding the interpretation of the Law, it must be specified that neither the units of unit trusts, nor shares in open-ended investment companies (SICAV), are included in the definition of “securities representing equity investment” relevant for the purposes of the tax.

In addition, letter f) of the same paragraph provides a definition of regulated markets and multilateral trading facilities relevant for the purposes of the tax reductions as under paragraphs 491 and 492 of the Law. For this purpose, pursuant to paragraph 493, regulated markets and multilateral trading facilities shall mean the markets and systems recognized pursuant to Directive 2004/39/EC, provided that they are established in States and territories that ensure an adequate exchange of information. In particular, for the purposes of their correct identification, a list of the above markets and systems has been drafted and published in the specific section of the European Securities and Markets Authority’ website (http://mifiddatabase.esma.europa.eu/), in accordance with the data submitted by the Member States’ authorities for the purposes of paragraph 2 of Article 13 of Commission Regulation (EC) No 1287/2006 of 10 August 2006. In order to prevent any potential
infringements of Article 63 of TFEU on the free movement of capital between Member States and between Member States and third countries, it is also specified that the definition of regulated markets and multilateral trading facilities, relevant for the purposes of the application of paragraphs 491 and 492, also encompasses those in regular operation and authorized by a National Public Authority with State supervision, including, in any case, the regulated markets recognized by CONSOB pursuant to Article 67, paragraph 2 of TUF, provided that they are established in States included in the list referred to in the Ministerial Decree issued in accordance with Article 168-bis of TUIR.

Tax referred to in paragraph 491:

Article 2 defines the objective and territorial scope of the application of the tax. In particular, it is clarified that the transfers of the ownership of stakeholdings in collective investment undertakings (as defined in Article 1, paragraph 1, letter m) of TUF), including the shares of open-ended investment companies (SICAV) and units of Exchange Traded Funds - ETF, are excluded from the scope of the tax. In addition, it is clarified that the registered office of the issuing company is relevant for the purposes of the territorial scope of the tax. In this respect, in case such office is transferred in Italy from abroad, or vice versa, the date on which the transfer becomes valid is relevant.

Article 3 clarifies that transfers of ownership of shares and financial instruments as referred to in paragraph 491, admitted to centralised securities depositories including those recognized by foreign supervisory authorities, are generally deemed to take place on the date of their settlement, which corresponds with the date of registration of the transfers. Alternatively, the person liable to the payment of tax, subject to the taxpayer’s consent also in the “silence means consent” form, can assume the date of settlement stipulated in the contract as the date of the transaction.

In addition, the Article specifies that, for the purposes of the tax, the purchases made through intermediaries buying in their name but on behalf of another person are regarded as having occurred in favour of the person on behalf of whom the purchase has been made. Such principle is considered as being operative a fortiori when the intermediary acts on the basis of a mandate with representation. In cases of issuance of ETF units against the simultaneous contribution of shares or other participating financial instruments or securities representing equity investment, the tax is not payable by the ETF, but only by the person purchasing the shares or the other participating instruments or securities representing equity investment in order to contribute them in the ETF. In case of consideration in cash, the tax is payable by the ETF upon purchase of shares, participating financial instruments or securities representing equity investment by the ETF.
Article 4 establishes the criteria to determine the value of the transaction to which the tax applies. In particular, such value shall be determined on the basis of the net balance of the transactions regulated daily and the relevant methods of calculation are identified. In this respect, it is clarified that the person liable for payment of the tax shall in the first place calculate separately the number of purchases net of sales carried out on regulated markets or in multilateral trading facilities, as well as those made “over the counter” and shall, at a later stage, sum up algebraically the relevant results. After this calculation (and only in case of positive result), the tax base is determined as the product of the number of securities representing the final net balance multiplied by the weighted average price of the purchases. In the calculation of the net balance, the purchases and sales of Depositary Receipts cannot be summed up with the purchases and sales of the securities represented by them. Furthermore, the purchases or sales excluded or exempt from this measure are not taken into consideration. For example: a person X purchases on the same day 10 securities A at € 50 (on a regulated market); 20 securities A at € 49 (exempt purchase); 15 securities A at € 51 (purchase “over the counter”). The same person sells on the same day: 15 securities (on a regulated market); 5 securities (“over the counter”). The net balance of the relevant purchases on regulated markets is -5; the net balance of the relevant purchases “over the counter” is 10. The net balance between the two is 5. The weighted average price for the purchase of the securities is: (10x50+15x51)/25=50.6. The tax base is equal to euro: 5x5x50.6=253.

Finally, for the sake of clarity, Article 6 sets out the tax rate applicable to the different taxable events. According to paragraph 1 of this provision the tax rate is halved for purchases taking place on regulated markets or in multilateral trading facilities. It is specified that, where purchases do not take place on a regulated market or in a multilateral trading facility, but, upon the intermediary’s request, the transactions are registered by the market or multilateral trading facility operator (so-called “on exchange transactions”), by relying upon the option provided for by Directive 2004/39/EC, such purchases are subject to a tax rate reduced by half provided for the transactions on a regulated market or in a multilateral trading facility. Paragraph 3 of the same Article specifies that if the tax base is determined as the net balance between purchases and sales executed on regulated markets or in multilateral trading facilities, and other purchases and sales, the tax rate to be applied to this taxable base is equal to the average of the weighted rates by the number of securities purchased on the different markets. By referring to the previous example, the average tax rate is: (15x15x0.2%+10x% +10 x 0.1%)/25=0.16%. The tax due is therefore equal to: 253x253x0.16%=%=0.40 euro.
Finally, paragraph 5 of Article 6 clarifies that the purchase of shares, participating financial instruments and securities representing equity investment resulting from the settlement of derivative financial instruments or other transferable securities referred to in paragraph 492 of the Law, is always subject to 0.2 per cent tax rate.

**Tax referred to in paragraph 492:**

Article 7 specifies the definition of financial derivatives and other transferable securities as referred to in paragraph 492, having regard also to the prevalence criterion for the purposes of the above provision.

Under Article 8, signature, negotiation or modification of the contracts relating to the instruments referred to in Article 7, letter a) of the Decree, as well as the transfer of the ownership of transferable securities referred to in Article 7, letter b) (securitized derivatives) are regarded as taxable events for the purposes of the tax referred to in paragraph 492. In this respect, even if there is no specific provision, it is clarified that, in case of modification of one of the parties, the tax is payable by the party taking over the contract, as well as by the relevant counterparty (and not by the party that has been replaced). The tax applies also to the instruments already subscribed and to the transferable securities already issued on the 1st of July 2013, as well as to negotiations and modifications taking place after this date. Finally, the last sentence of Article 8 makes clear that, in order to establish the time when the transfer of the ownership of transferable securities can be considered as having taken place, reference must be made to the time of the transfer of ownership as identified under Article 3.

With respect to the different types of financial derivatives and other transferable securities, Article 9 describes the criteria for determining the notional value to apply for the purposes of identifying the taxable base.

For the sole purposes of this Decree and of the calculation of the tax payable, it was chosen to consider the premium as the notional value for financial instruments, both derivatives and not, which have an optional component: essentially, it is the price an investor is ready to pay (or receive) to subscribe an option. Therefore, regardless of the complexity relating to construction of the reference value of the option (or of the security that includes one or more options), this value is always known to investors and intermediaries and can be easily assessed by Tax Administration.

Paragraph 2 sets out how to identify the notional value where the structure of the derivative transaction has a leverage effect that amplifies the nominal notional value of the underlying. In this case, the actual notional value of reference, for the purposes of the application of tax, is equal to the reference notional value of the underlying multiplied by the leverage effect (for example, swaps for
which the settlement of differential amounts takes place with reference to a notional value of 100 and the same differential is then multiplied by 10; in this case, the actual notional value of reference is 1000).

Article 10 identifies the persons liable to tax.

For the sake of clarity, Article 11 specifies the tax applicable to the different taxable events.

Tax referred to in paragraph 495:

Article 12 clearly outlines the criteria according to which transactions are deemed to be high-frequency trading when they are generated by a computer algorithm that automatically determines the decisions relating to the sending, modification and cancellation of orders and of the relevant parameters that occur at intervals not exceeding half a second. In addition, it is specified that the following transactions are excluded from the definition of high-frequency trading: algorithm trading used when performing market-making activities, smart order routing algorithm, as well as algorithms fulfilling orders in a way designed to obtain transactions at execution prices that are equal or better than the weighed average market price collected at an interval, predetermined by the parties, not exceeding the day in which the order was placed. Finally, paragraph 2 of the same Article clarifies the concept of “Italian financial market” which is relevant for the purposes of the territorial scope for applying the tax. More specifically, “Italian financial market” means the regulated markets and multilateral trading facilities authorized by CONSOB.

Article 13 clarifies the criteria to calculate the tax and fixes the percentage threshold of cancelled or modified orders beyond which the tax applies.

Article 14 identifies the persons liable to tax. In this respect, it should be specified that for the purposes of this tax, the taxable person is the person who, in case the orders entered were to be concluded, would purchase or sell the ownership of shares and other financial instruments or would become the counterpart of a financial derivative; the obligation to pay, as well as other obligations referred to in Article 19 of this Decree, remain in charge of the persons identified by such Article. The latter shall calculate the tax due separately for each of the taxable persons. If the taxable person carries out high-frequency trading involving several intermediaries, the tax on such transactions shall be paid separately by each intermediary.

Article 15 et seq. include general provisions. In particular, Article 15 includes a punctual description of the transactions excluded from the scope of the tax. More in detail, under letter b) in order to solve possible construction doubts (in particular with reference to convertible debt securities and bonds with embedded derivatives) it is established that transactions in bonds and debt securities shall be excluded from the scope of the tax. Letters b), c) and d) of this Article reinstate
that transactions executed on the primary market shall be excluded from the scope of the tax. Under letter b) – in compliance with Community law - it is highlighted that the transactions specified in Article 5, paragraph 2, letter b) of Council Directive 2008/7/EC of 12 February 2008 shall be excluded from the scope of the tax. Under letter d), it is also clarified that the purchase of the ownership of newly issued shares also through the conversion of bonds or the exercise of an option by the shareholder, or if it constitutes a mode of settlement of derivative transactions shall be also excluded from the scope of the tax. In this respect, in the absence of any explicit provision of law, the allocation of securities or participating financial instruments against distribution of profits or reserves as well as the allocation of newly issued shares against stock options plans are deemed to be exempt from the tax. As to the issue of Depositary Receipts (as, for instance American Depositary Receipts and Global Depositary Receipts), the definition of “issue” shall include the following transactions: purchase of shares by the depositary bank issuing the instrument, issuing of the securities representing equity investment, first placement where executed on newly-issued underlying securities (although the issue is temporarily guaranteed by a collateral, if it is certain and provable from the date of issue of the above-mentioned Depositary Receipts that the securities underlying the first underwriting are newly issued) Also cancellation transactions are considered excluded from the scope of the tax, as with the other financial instruments as of paragraphs 491 and 492.. Letter e) provides in detail for the exclusion of temporary transfers of ownership. In this reference it is pointed out that – as regards securities financing transactions – the wording of the provision follows article 2, point 10 of (EC) Commission Regulation No 1287/2006 of 10 August 2006. Letter e) clarifies as well that temporary transfers of ownership which are excluded from the scope of the tax include also including the transfers in the framework of financial collateral transactions arising from an arrangement under which a collateral-provider transfers full ownership of the instruments referred to in paragraph 491, for the purpose of securing or otherwise covering the performance of relevant financial obligations, including the repayment at the end of the collateral. In this regard, in the absence of any explicit provision of law, the collaterals made up of shares or participating financial instruments (or other temporary transfers) which do not entail the transfer of full ownership shall also be deemed to be excluded from the scope of the tax. The following transactions shall be also excluded from the scope of the tax: acquisitions by persons purchasing with standby commitments to immediately resell within the same offer, where the transaction is executed within thirty days; acquisitions performed within a stabilisation of shares and participating financial instruments provided for by Commission Regulation (EU) No 2273/2003 of 22 December 2003. Finally, letter h) –implementing letter d), paragraph 494 of the Law –
clarifies that the restructuring operations to be excluded are those referred to in Article 4 of Council Directive 2008/7/EC of 12 February 2008.

Lastly, paragraph 2 of the Article expressly specifies therefore that the tax does not apply to “entities that interpose themselves in a transaction” (the same notion was referred to in the second sentence of paragraph 494 of the Law).

Article 16 outlines more clearly the exemptions from tax by drawing a distinction between transactions that shall be wholly exempt (paragraph 1) and transactions that shall be exempt only with respect to a single party to the transaction (paragraphs 3 and 5) with the result that the counterparty may be liable to payment of the tax. In this respect, it is appropriate to underline that, with respect to the exemption provided for in letter a) No 4 of paragraph 1, pending a measure to be issued by the Director of Agenzia delle Entrate indicated therein, reference should be made to the (not exhaustive) list included in Circular Letter No 11/E of 28 March 2012. In addition, under paragraph 5 of the Article, the subjective exemption referred to in letter c) of paragraph 494 of the Law shall be deemed to be also applicable to European pension funds as well as to pension fund pooling vehicles, provided that such funds are fully participated by the aforesaid funds. The inclusion of the European pension funds is necessary so as to bring the provisions of the Law into line with Community law.

Article 17 determines the criteria to identify issuing companies with average capitalisation lower than 500 million euro that shall be included in a list - attached in the first year to the Decree itself - annually published on the website of the Ministry of Economy and Finance. For the purposes of the identification of the regulated market or foreign trading facility issuing an ad-hoc certification on the capitalisation value, for the countries to which Directive 2004/39/EC is not applicable, the “relevant” market shall be understood as a regulated market or a foreign multilateral trading facility having similar characteristics to those requested by the above-mentioned Directive.

Article 18 is aimed at specifying that non-deductibility of the financial transaction tax from income taxes also concerns the substitute taxes thereof. As a consequence, the tax is not taken into account when determining the purchase cost for the purposes of capital gains calculation.

Article 19 identifies the persons liable for payment of the tax and stipulates the terms and conditions to comply with tax return and payment obligations; for matters not expressly covered therein, reference should be made to a subsequent measure issued by the Director of the Agenzia delle Entrate. In particular, paragraph 4 of the Article identifies the person liable for payment of the tax in those cases where more persons are involved in the execution of the transaction. In this respect, it is useful to specify that, in the case of transactions executed in the framework of collective asset or portfolio management services, where the operator does not rely on an
intermediary (a broker, for example,) for executing the negotiation orders, the person liable for payment of the tax is the operator itself. Furthermore, always with respect to the transactions executed in the framework of collective asset or portfolio management services – considering that, for collective asset management services, the owner of the securities (or the counterparty, in the case of derivative financial instruments) is the collective investment undertaking (“OICR” in Italy), whereas in the case of portfolio management services it is the management contract holder – it should be clarified that, for the purpose of payment of the tax, the net balance of daily transactions, in these cases, shall be calculated with reference to each OICR or management contract holder, respectively. Moreover, paragraph 5 of this Article enables persons liable for payment of the tax to apply to the Centralised Management Company referred to in Article 80 of TUF for the purposes of settlement of tax and compliance with tax return obligations. Such provision takes into account the specific role of the aforesaid company in the centralised management of financial instruments in accordance with TUF and the availability of the information in its possession by reason of its institutional activity. In this paragraph, there is also provision for the need to facilitate the collection and control activities of the Agenzia delle Entrate, in particular when the tax is applied for the first time, by means of the possibility to concentrate the payments from the same person. In addition, this paragraph specifies the terms for the persons liable for payment and calculation of the tax to send the information needed by the Centralised Management Company for the purposes of paying such tax, with particular reference to the transactions of the month of November.

Article 20 concerns the penalty system applying in case of delayed, insufficient or omitted payment of the tax, as well as in case of violations of tax return obligations. It is made clear that, although penalties for omitted, insufficient or delayed payment of the tax are applicable only with respect to persons responsible for such obligations as well as for payment of the tax, the Tax Administration has the authority to recover the tax and the related interest also against the taxpayer concerned.

Lastly, Articles 21 and 22 lay down the transitional provisions for implementation of the tax as well as the general criteria for entitlement to the refund of tax, if any.
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FINANCIAL TRANSACTION TAX

Identification of companies resident in the State territory whose shares are traded on a regulated market or in a foreign multilateral trading facility, with an average capitalization lower than 500 million euro.

Instructions for transmitting communications and certifications

(Decree of the Minister of Economy and Finance of 21 February 2013, Article 17, paragraphs 2, 3 and 4)

Paragraphs from 491 to 499 of Article 1 of Law No. 228 of 24 December 2012 introduced a financial transaction tax which applies to the transfer of the ownership of shares and other participating financial instruments (paragraph 491), to transactions on derivative financial instruments and other transferable securities (paragraph 492), as well as to high-frequency trading as defined in paragraph 495 of the Law.

Paragraph 500 of the above Article 1 provides that a Decree of the Minister of Economy and Finance shall set out the procedures for applying the aforesaid tax. This provision was implemented by a Decree of the Minister of Economy and Finance of 21 February 2013, published in the Official Gazette No. 50 of 28 February 2013.

In particular, Article 15, paragraph 1, letter f) of the Decree provides that “the transfer of the ownership of shares traded on regulated markets or in multilateral trading facilities issued by the companies mentioned in the list referred to in Article 17” is excluded from the scope of the tax. Further, Article 17 of the Decree provides under paragraph 2 that “the companies resident in the State territory complying with the capitalisation limit as of paragraph 1 and whose shares are traded on a regulated market or in a foreign multilateral trading facility shall send to the Ministry of Economy and Finance, by the 10th of December of each year, a written communication certifying the value of their own capitalisation, enclosing thereto an ad-hoc certification issued by the relevant regulated market under Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 or by the operator of a multilateral trading facility, if more relevant in terms of exchange value”: Under the following paragraph 3 of the same Article “for the first year of application […] for the companies referred to in paragraph 2 of this Article, the communication referred to in the same paragraph 2 must be sent by the 20th of February 2013; a list including these latter companies shall be later issued by the 1st of March 2012 by the Ministry of Economy and Finance”.

In order to implement the above provisions, the companies whose shares are traded on a regulated market or in a foreign multilateral trading facility, for the purposes of being entitled to the exclusion referred to in Article 15, paragraph 1, letter f) of the Decree, shall send the relevant communication, with appropriate certification enclosed thereto, to the Ministry of Economy and Finance – Department of Finance, by one of the following means:

E-mail address: df.dltff.fittocapitalizzareestere@finanze.it

The communication and enclosed certification shall include the following:

Company information:

- Company name;
- Registered office;
- Tax Code/VAT registration number;
- Indication of regulated markets or multilateral trading facilities in which the company was admitted to trading;

- “Relevant” regulated market under Directive 2004/39/EC issuing the certification (or the operator of a multilateral trading facility, if more relevant in terms of exchange value);

- Average capitalization of the company referred to the month of November of the year prior to that for which the exemption is requested.

Information used for the purposes of calculating the average capitalization referred to each day of the month of November of the year prior to that for which the exemption is requested:

- number of shares in the share capital;
- weighted average price of the transactions effected (on the major trading venue);
- indication of whether in the month at issue transactions have been effected which may affect the number of shares and indication of the days concerned;
- indication of the days in which no transactions were effected.

If the company issued different classes of shares, such information shall be clearly provided with reference to each class of shares.
B. Italian Model

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Financial Transaction Tax
(Shares and other financial instruments subject to the tax)

Unless otherwise specified, legal references are made to the Decree of the Minister of Economy and Finance of 21 February 2013.

ARTICLE 1 - Definitions

1) Does the definition of "shares" referred to in Article 1(2)(c) also include the shares of consortia as joint venture companies for the purpose of Article 2615-ter of the Civil Code, where the consortium is constituted as società per azioni or società in accomandita per azioni?

Pursuant to Article 2615-ter of the Italian Civil Code, the definition of consortia may include società per azioni, società in accomandita per azioni, società a responsabilità limitata, società in accomandita semplice and società in nome collettivo having the consortium activities as their business purpose. Only consortia having the legal form of società per azioni and società in accomandita per azioni may issue shares covered by the definition in Article 1(2)(c) of the Decree, with the consequence that they are subject to tax in case of transfer of ownership.

2) For the purposes of the definition of "regulated markets and multilateral trading facilities" referred to in Article 1(2)(f) for markets established in Countries which are not covered by Directive 2004/39/EC (MiFID Directive) is an application for prior authorization from CONSOB required for the platform to be regarded as "regulated"?

No prior authorization is required from Consob since the Decree clarifies that for Member States not covered by the MiFID Directive, if included in the list referred to in the Ministerial Decree issued pursuant to Article 168-bis of TUIR (“Consolidated Act on Income Taxes”), regulated markets and multilateral trading facilities mean those systems that function regularly and are authorized by a national public authority (namely of the State concerned) and subject to public supervision, including those authorized by Consob pursuant to Article 67(2) of TUF (“Consolidated Law on Financial Intermediation”). According to this provision, Consob - subject to prior agreements with the relevant authorities - may authorize markets in financial instruments, other than those recognized under EU law, for the (specific) purpose of extending its operations to the territory of the Italian Republic and not, therefore, in order to define them as "regulated".

ARTICLE 2 - Objective scope
3) Is the transfer of equity securities from one securities account to another with a different holder relevant for the application of the financial transaction tax? If so, does it also cover the transfer of bearer shares?

The transfer of shares between securities account with different holders is a pre-requisite for the application of the tax if resulting from the transfer of ownership. The same holds true for bearer shares.

4) Pursuant to Article 2 of Decree Law No 143 of 16 September 2008, converted with amendments into Law No 181 of 13 November 2008, the securities seized in the course of criminal proceedings or for the application of the preventive measures referred to in Law No 575 of 1965, as well as other securities subject to other preventive measures prescribed by law, are headed for the Fund referred to in Article 61(23) of Decree Law No 112 of 25 June 2008, converted with amendments by Law No 133 of 6 August 2008, called *Fondo unico giustizia* (“Single Fund Justice”), managed by Equitalia Giustizia S.p.A.

Pursuant to the provisions of Article 10 of subsequent Decree Law No 98 of 6 July 2011, converted with amendments into Law No 111 of 15 July 2011, the above securities may be sold in accordance with certain principles laid down by the relevant legislation. What treatment should be reserved for the purposes of the financial transaction tax to the equity securities held for the *Fondo unico giustizia*?

According to the principle of continuity of taxation in the case of property subject to seizure, which is stated - albeit for direct taxation purposes – in Article 51 of Legislative Decree No 159 of 6 September 2011, according to which the taxation applicable to goods seized is to be regarded as provisional until the time of final confiscation, it is considered that the mere condition of being headed for the FUG is not a relevant event for the purposes of the financial transaction tax, bearing in mind that it will be applicable in the case when equity securities seized and headed for the FUG are sold pursuant to the procedures established by the above Decree Law No 98 of 2011, as well as in the event that these securities are permanently subjected to confiscation.

**ARTICLE 3 - Transfer of ownership**

5) Article 3(1) provides that the person responsible for the payment, subject to prior consent of the taxpayer, can take the settlement date stipulated in the contract in alternative to the date of registration of transfers at the end of settlement as the transaction date. Can that consent from the taxpayer be acquired by means of a communication to the customer, with the application of the “silence means consent” rule? If so, is it possible to make only one communication applying to all transactions conducted in future by a single customer (and not for each transaction)?

Communications can be made only once for multiple operations for each taxpayer with notice to the customer that it would be valid until revoked. It should also be noted that the rule does not only provide for the “silence means consent” rule; the customer may also explicitly express his/her intention.
6) Is it possible to use both the trading date and either the actual settlement date or the date contractually provided as the date of purchase? How should the intermediary choose the market exchange rate?

As provided for by Article 3(1), the date of purchase shall mean the settlement date or, as an alternative, the settlement date contractually provided for. Therefore, the trading date is irrelevant. As for the choice of the exchange rate, the provisions of Article 3(1) are of interest.

7) The cases of refund or exchange of bonds with securities (ADR) representing equity investment are not listed among the operations in the first sentence of Article 3(3), according to which also the exchange or refund of bonds by means of shares or other participating financial instruments. Is the provision also applicable to the latter?

For the sake of systematic coherence, it is believed that ADRs should be included among the securities to which Article 3(3) applies, and that the date of transfer of ownership is that provided for in the second sentence of that paragraph.

ARTICLE 4 - Value of the transaction

8) For the purposes of netting, is it possible to consider transactions carried out on different trading dates?

It is possible to consider also transactions carried out on different trading dates if they are settled on the same date.

9) The tax shall be paid on the net purchases determined by settlement date; moreover, netting can be conducted also between purchases and sales made on different markets, only where the settlement date is the same (e.g. a purchase made on the Italian Stock Exchange at t=0, settled at Monte Titoli at t+3, can be offset against sales made at t=1 on markets with settlement date at t+2). In this respect, please clarify whether it is possible to choose between the actual settlement date and the date stipulated in the contract.

As already explained, netting between different transactions is conducted according to the settlement date; therefore, it is possible to compensate also for transactions taking place on different trading dates provided they are settled on the same day. The choice between the actual settlement date and settlement date stipulated in the contract is reserved, pursuant to provisions in the third sentence of Article 3(1), to the cases where the person in charge of the payment is different from the taxpayer; in the other cases, the settlement date is always that referred to in the second sentence of that paragraph, namely that "made at the end of settlement of the relevant transaction."

10) In the case of market purchases, is the exchange value paid for acquiring the securities to be considered also taking account of additional charges?
The purchase price is not considered as including additional charges.

11) In case of earn out clauses how is the financial transaction tax applied? For instance, if the closing price amounts to 100 and an earn out clause envisages a variable price (upward or downward) integration of 20, on certain conditions, how is the tax applied?

In case of acquisition of shareholdings, due to perspective contract clauses, the closing price can be upward or downward revised according to the attainment of certain future economic-property and/or financial goals (profits, EBITDA, turnover, etc.). This is due to the so-called earn-out clauses according to which the payment of a part of the price is conditioned and/or dependent on a certain result or situation of the company purchased in a moment or period of time after the transfer.

The financial transaction tax is to be applied also on the variable part of the price, deriving from the above-mentioned clauses, which is an integration of the closing price. The tax is due on the date on which the payment of the price integration is contractually due. In case of downward price revision, the taxpayer is entitled to be refunded of the overpaid tax.

12) Please clarify if for the purposes of price determination in the case of endorsement authentication, the intermediary involved in the endorsement has to make reference to the provision referred to in Article 4(2)(d) (value stipulated in the contract).

In such a case the intermediary involved in the endorsement (usually the seller’s one), responsible for the application of the tax, considers as purchase price the value paid for the purchase of the security which cannot be lower than the value stipulated in the contract if the endorsement determines a market purchase. Article 4(2)(d) refers to the value stipulated in the contract (or, failing that, the normal value determined under Article 9(4) of TUIR) and applies to all cases other than market purchase.

ARTICLE 5 – Persons liable to tax

13) In the case of an exchange of shares for shares, is the tax paid by both parties?

In this case the taxable event takes place for both parties unless the shares exchanged are, in one or both cases, newly issued.

ARTICLE 6 – Tax rate

14) In the case of share ownership transfer following the use of a derivative financial instrument between 1 March 2013 and 1 September 2013, is the tax referred to in Article 1(491) of Law No 228 of 24 December 2012 applied? Are the shares so purchased to be considered to determine the daily net balance?

Article 6(5) explicitly sets forth that “a 0.2 percent tax rate shall apply to the purchase of shares, participating financial instruments and securities representing equity investment
resulting from the settlement of the financial instruments referred to in paragraph 492”. Such a rate is the one envisaged by Article 1(491) of Law No 228 of 2012, for the transfers not taking place in regulated markets and multilateral trading facilities. Therefore, if a share ownership transfer takes place after 1 March, it is still subject to the tax referred to in paragraph 491 even if following the exercise of derivative contracts; such purchases are considered when calculating the daily net balance.

ARTICLE 15 - Exclusions from the tax

15) Please clarify if the purchase of own shares is always outside the scope of the tax or it is so only in the case in which the shares are purchased and cancelled. In this respect, if the cancellation is decided after the purchase of own shares, should this be anyhow excluded from the FTT application?

The purchase of own shares is not excluded from taxation if aimed at the cancellation of the shares. If the cancellation is decided after the purchase of own shares, the purchase is subject to tax because when it was performed it was not aimed at the cancellation of shares.

16) Article 3(3) in conjunction with Article 15(1)(d) could lead to think that the exclusion envisaged by the latter provision for primary market issues operates only for “conversions of bonds” in newly issued shares and not also for the “exchanges” of bonds with shares or other newly issued participating instruments, which are not explicitly mentioned in Article 15. Although the ratio legis of the provision leads to think that the tax always and only applies to already circulating shares with exemption of newly issued ones, please confirm such interpretation.

Even if Article 15(1)(d) mentions only the conversion of bonds in shares, due to the ratio legis to exclude newly issued shares in order to favour the raising of capital, it is deemed that the exclusion from the tax refers also to the exchange and refund of bonds with newly issued shares. Therefore, the exclusion refers to all cases of issues of new shares, in line with the directive on the raising of capital.

17) Please clarify the procedures for applying the tax in case of units of ETF. In particular, in the case of purchase of shares in order to contribute them in the ETF

As specified in the explanatory memorandum to the decree, in the case of ETF creation in kind, the tax is due by the subject (creation agent) purchasing the shares (or participating instruments) in order to contribute them in the ETF. In case of creation in cash, the tax is due by ETF at the time of the share purchase (or participating instruments or securities representing equity investment). In case of redemption in kind, the same procedure as creation in kind applies: only the sale of shares on the market by the creation agent is subject to tax.

18) The explanatory memorandum to the decree identifies as an exclusion from the tax transactions such as the allocation of newly issued shares against distribution of
profits or reserves and the allocation of newly issued shares against stock option schemes not explicitly laid down by Article 15 of the decree. Please confirm the cases falling in those to be reported.

The allocation of newly issued shares is covered by the concept of transaction on the primary market; therefore it is excluded from tax in any case. As far as the transactions on capital (so-called corporate actions) are concerned the explanatory memorandum specifically indicates that the distribution of profits or reserves through the allocation of shares, even if not newly issued ones (e.g. own shares in portfolio by the issuer) is anyhow excluded from tax. This is due to the fact that the choice as to the collection method of profits and/or reserves is not left to the discretion of the subject becoming owner (and who should therefore pay the tax). The measure of 18 July 2013 issued by the Director of the Agenzia delle Entrate gave indications on excluded (and exempt) transactions that are to be recorded by the intermediaries in the summary and condensed statements.

19) Please clarify the rules for the determination of the tax base in the case of temporary transfer of securities ending with a final transfer (paragraph 1, letter e)).

In the cases outlined the tax is to be calculated according to the provision of Article 4(2). In particular, the following clarifications are given distinguishing the tax base as envisaged by Article 15(1)(e) for the cases of enforcement of the collateral taking place through the sale or appropriation of the securities, set-off of the collateral against the relevant financial obligations or application of the collateral in discharge of the relevant financial obligations. In the case of sale of securities the tax base is given by the value paid. In the case of appropriation of securities or set-off against the relevant financial obligation the tax base coincides with the value attributed in the financing contract to the securities given as collateral or, failing that, their normal value.

20) Does the exclusion set forth for intra-group transactions apply also to transactions between companies indirectly controlled by the same company?

The Decree clarifies that the exclusion from tax referred to in Article 1(491) and (492) of Law No 228 of 2012 refers also to transfers and transaction performed between companies controlled by the same company. Without any specific provision explicitly laying down that the control of the two or more companies between which the transfer takes place must be direct or indirect by the only controlling company, it is deemed that the control over the sister companies by the controlling company can be both direct and indirect.

21) Please clarify whether the notion of relationship of control referred to in Article 15(1)(g) also applies when companies are resident in different States.

The notion of relationship of control mentioned for the purposes of the exclusion of certain transactions from the scope of the tax refers to Article 2359(1) numbers 1) and 2) of the Civil Code as well as to the case of companies controlled by the same company. The rule in question does not preclude the application of this notion to non-resident companies. It is therefore considered that the exclusion also applies in cases of transfer of ownership between non-residents in the same State.
22) For the purposes of the exclusion from tax stipulated in Article 15(2)(a) (for purchases and transactions entered into by a financial intermediary interposed between two parties acting as a counterparty to both sides), should the requirement set by the rule whereby for both operations the price must coincide, be understood in the sense that the fees for the intermediaries are not considered to this end? Can the above requirement be considered as met also where the coincidence of price/total quantity and date is referred to groups of customers?

In relation to the first question, the interpretation that the price should not take into account the fees for the intermediaries can be agreed with. As far as the exclusion is concerned, this does not apply in the case of groups of customers.

23) The exclusion provided for the systems of clearing and collateral (Article 15(2)(b)) requires that they be authorized under Regulation (EU) No 648/2012 (EMIR). Given that the authorization will not be granted by an explicit Regulation provision before 2014, is it still possible at this stage to consider the Cassa di Compensazione e Garanzia SpA (CCG) as excluded, along with the persons performing similar roles in regulated markets in white-list States?

The EMIR stipulates in its transitional provisions (Article 89) that “until a decision is made under this Regulation on the authorisation or recognition of a CCP, the respective national rules on authorisation and recognition of CCPs shall continue to apply and the CCP shall continue to be supervised by the competent authority of its Member State of establishment or recognition.” The CCG and other persons who perform similar roles in regulated markets in white-list Member States are, therefore, excluded from the financial transaction tax, provided that they are authorized and recognized under domestic rules that continue to apply until the decision of authorization/recognition is made, pursuant to the EMIR Regulation.

24) Please clarify how the capitalisation threshold should be verified in the case of transfer, from abroad to Italy, during the year of the registered office of a company listed in the Stock Exchange.

In such cases, a rule similar to that in last sentence of Article 17(2) concerning the first admission to trading, can be applied: for the year (or two years) for which it is not possible to communicate by 10 December the average market capitalisation for the preceding month of November, a market capitalization of less than 500 million is assumed.

25) Please clarify whether the exclusion provided for in Article 15(1)(g) may also apply to transactions between unit trusts between which there exists a relationship of control similar to that provided for by Article 2359 of the Civil Code.

For the sake of systematic coherence, it is believed that Article 15(1)(g) also applies to unit trusts that are not in corporate form, also with a view to avoid discrimination between fondi costituiti come patrimonio autonomo (funds with equities raised independently) and SICAVs (investment companies with variable capital).
26) In relation to the common market practice for the negotiation of Depositary Receipts (DRs) - which provide several stages between the purchase order placed by the customer and the delivery of the securities to him – please clarify at which stage the tax should be applied, since the different stages are part of the same transaction, and also the rate to be applied.

Transactions relating to the negotiation of DRs should be treated in the same way as the transfer of the shares represented by those securities. This means that all the steps required to get to the delivery of the DRs to the person requesting their purchase are taxed only once. More specifically, the financial transaction tax applies on the transfer of DRs to the purchaser. The person liable to the payment of the tax is the intermediary receiving the request by the purchaser to purchase the DRs. In other words, the purchase of the shares on the market, the subsequent transfer of the shares to the custodian bank and the issuing of DRs by the custodian bank are not taxed.

The rate to be applied to the first placement for the underlying securities that are not newly-issued depends on the place where such placement takes place (OTC/market). The application of the reduced rate for DRs is envisaged where transactions take place on regulated markets and multilateral trading facilities.

27) With regard to the transactions referred to in Article 15(2)(a) (so-called “riskless principal trading”), for the purposes of calculating the tax base and the tax rate please clarify how the transactions where the intermediary purchases the securities partly on the markets and partly OTC should be treated.

The intermediary adopting this mode of operation is excluded from the tax, just like the intermediary that is interposed without buying and then reselling the securities. Since the activities are considered, in substance, as equivalent, the same treatment shall result for the purchaser, whether the intermediary is acting in a riskless mode, or is interposed without buying the securities. For the purpose of calculating the tax base (Article 4(1)) and for the purpose of determining the tax rate (Article 6(3)), the transactions are considered to be executed on regulated markets and multilateral trading facilities or OTC according to the actual conditions of purchase followed by the intermediary. More specifically, with reference to Article 6(1), “total quantity” is meant to refer to the entire customer order, but if such order is executed with purchases both on the regulated market and OTC, the rate reduction provided for in Article 6(1) shall be applicable only to the part of the order executed on regulated markets and multilateral trading facilities.

ARTICLE 16 - Exemptions

28) Can sovereign wealth funds be exempted from the application of financial transaction tax under Article 16(1)(a)(3) of the Decree?

Sovereign wealth funds are exempt from the tax, according to Article 16(1)(a)(3), where they invest the official reserves of the State.
29) Please clarify the treatment for FTT purposes of the purchases of shares or of derivative transactions made by ethical investment funds or as part of portfolio management described as ethical or socially responsible.

The purchases of shares or of derivative transactions made by ethical investment funds or as part of portfolio management described as ethical or socially responsible are subject to FTT as no exemptions has been envisaged in these cases.

30) Last sentence of Article 16 (5) provides for the exemption from tax for persons and entities receiving solely pension funds. Please clarify whether the exemption can be applied to these persons regardless of their State of establishment.

The exemption in question applies to all persons and bodies receiving pension funds, provided that the pension funds have the features required by the Decree for exemption. The residence of such persons and bodies shall not be relevant for these purposes.

31) Last sentence of Article 16(5) provides for the exemption from tax for persons and bodies receiving solely pension funds. Please clarify whether the exemption can be applied also to persons and bodies of the same kind receiving other forms of supplementary pension schemes.

In view of the aim of the provision, it is believed that also persons and bodies of the same kind receiving other forms of supplementary pension schemes are entitled to the exemption.

**ARTICLE 21 - Tax implementation in 2013**

32) Paragraph 5 provides that for 2013 the tax on the transfers of the ownership of shares and other participating financial instruments be set at the rate of 0.22%, reduced to 0.12 per cent for the transfers taking place on regulated markets and in multilateral trading facilities. Please clarify whether in the case of transfer of the ownership of shares as a result of settlement of a derivative contract made in 2013, the applicable rate shall be that of 0.22 per cent.

If the transfer of shares as a result of the settlement takes place in 2013, the 0.22 per cent tax rate applies, while if the same happens in 2014 the rate will be of 0.20 per cent.
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FINANCIAL TRANSACTION TAX
(DERIVATIVE INSTRUMENTS AND OTHER SECURITIES)

Unless otherwise specified, legal references are made to the Decree of the Minister of Economy and Finance of 21 February 2013.

Article 7 - Objective scope

1) Do variance swaps, volatility swaps, correlation swaps, dividend swaps, index dividend futures and credit default swaps fall within the scope of application of the tax?

Derivatives whose underlying assets are represented by indices, measures, returns on shares or indices to which the measures or returns refer fall within the objective scope of application of the tax. In this regard, it should be noted that dividend swaps, credit default swaps and index dividend futures are not subject to FTT, since the scope of the tax is considered to include the financial derivatives where the underlying is represented by measures or returns on shares or indices, when such measures are related to the value of the shares (which is their market price), so that the change in the said price results in a change of the underlying measure or return.

2) Please clarify whether the scope of the tax referred to in paragraph 492 also covers the transactions in derivative financial instruments and transferable securities referred to in Article 7(1) having shares of the "undercapitalized" companies in the list referred to in Article 17 as underlying assets.

The law provides that the tax shall apply to derivative financial instruments having as their underlying primarily one or more financial instruments referred to in paragraph 491 or the value of which depends primarily on these financial instruments; the same is envisaged for securities that are subject to IFTT pursuant to paragraph 492. Therefore, the tax shall not apply to financial derivatives whose underlying assets are shares or other participating...
financial instruments or securities representing equity investment issued by entities with average market capitalisation of less than EUR 500 million.

3) **With reference to the transferable securities referred to in Article 7(1)(b), please clarify if the tax is due in the following cases: a) repurchase of securities by the issuer; b) cash settlement when due, on predetermined exercise dates, or an early termination by the issuer.**

The repurchase of securities by the issuer, under the provision of Article 15(1)(c) is not subject to tax only if the repurchase is connected to the following cancellation of the securities purchased, otherwise the tax is applied to the repurchase of such securities. The cash settlement when due or on predetermined exercise dates, and the early termination by the issuer are not taxed. Such exclusion applies for both counter-parties.

4) **Pursuant to Article 7(2), for financial derivative instruments traded on regulated markets or in multilateral trading facilities, a review to assess that they have as underlying primarily Italian shares (hereinafter referred to as “predominance test”) should be carried out at the time of issue. If the derivative instrument is not traded on such platforms, then predominance should be assessed each time a transaction is concluded. Please clarify whether this provision also applies to the transferable securities referred to in Article 7(1)(b) that are traded on a secondary market.**

The provision included in Article (7)(2) does not draw a distinction between the two categories of instruments indicated in paragraph 1 of the same Article. Thus, also for the transferable securities referred to in Article 7(1)(b), predominance should be assessed by the person obliged to pay with reference to the date of issuance if the transferable securities are traded on regulated markets and in multilateral trading facilities, or with reference to the date on which the transaction on these instruments was concluded in the other cases.

5) **Since the process for issuing transferable securities referred to in Article 7(1)(b) may involve persons other than the issuer before placement of such securities on the market, are these stages subject to tax?**

According to Article 15(1)(c), the issue of such transferable securities is excluded from FFT as for securities representing shares or participating financial instruments. Such exclusion
involves all stages needed for the placement of securities to the final investor. This exclusion applies also to any subsequent increase in the issue amount.

6) Please clarify whether, regardless of the modalities governing the delivery (e.g. the so-called assignment), the purchase of shares, participating financial instruments and securities representing equity investment against physical delivery as a result of the exercise of derivative financial instruments and transferable securities falls within the scope of the tax.

The tax is payable on the transfer of ownership of shares, participating financial instruments and securities representing equity investment, including those resulting from the settlement of the financial instruments referred to in paragraph 492. Therefore, any case of delivery of the securities referred to in paragraph 491 resulting from the settlement of the financial instruments referred to in paragraph 492 falls within the scope of the tax, regardless of the delivery modalities.

7) In accordance with Article 7(2), for the financial instruments and transferable securities referred to in paragraph 492, not traded on regulated markets or multilateral trading facilities, a predominance test should be carried out each time a transaction is concluded. According to Article 8, the time of conclusion is to be understood as the time of subscription, negotiation or modification of the contract. Where the underlying value changes according to market trends, thus affecting the economic result of the financial instrument or transferable security, please clarify whether the predominance test should be carried out also in the absence of variations of its parties and of maturity.

In the case above, no event requiring the test under Article 7(2) has occurred, since the counterparties have not modified any of the essential components of financial instruments and transferable securities referred to in Article 8. Contrariwise, when one of the variations under Article 8 occurs, the predominance test under Article 7(2) must be conducted. With reference to the variation of the notional value, and solely for the purposes of such test, the latter should not be carried out where the notional value is modified upwards or downwards, without changing the proportions, in terms of quantity, of the shares or securities making up the index or basket.
8) Please clarify the rules for the application of the tax in the case of contracts that regulate exchange derivative financial instruments ("swaps") on a dynamic basket of shares or securities or indices and which, in other words, provide for the possibility to modify the notional value of the underlying and/or the basket composition (e.g. so-called “equity portfolio swap”, "index basket swap" etc.).

In such cases, the tax is applied separately to the positions of each share or security referred to in paragraph 491, considering each position as the underlying asset of a separate financial instrument. Accordingly, the tax base shall be calculated, at each trading date, for each counterparty and for each security making up the basket, distinguishing between positions involving "long" exposures and those involving "short" exposures; there shall be no compensation either between "long" and "short" positions, or between positions on different securities.

The tax base for each counterparty and for each security is therefore equal to the sum of the absolute value of the notional amount for each transaction.

Given that for the tax purposes there shall be a separate calculation of the tax base for each share underlying the derivative financial instrument, Article 7(2) shall not apply to the contracts in question; therefore, it is not necessary to carry out the predominance test on the basket of financial instruments referred to in paragraph 491.

The above explanations do not apply to the above transactions where they refer to a "static" basket, not providing for the possibility to modify the basket composition; the latter shall instead undergo the predominance test provided for in Article 7(2).

9) The second part of Article 7(1)(a) - "financial derivative instruments the value of which depends primarily on one or more of these financial instruments" - and of Article 7(1)(b) - "securities giving rise to a cash settlement determined mainly by reference to one or more securities referred to in paragraph 491" - do not seem to exclude from the list of taxable financial derivative instruments those whose underlying assets are ETFs or, more generally, shares in CIUs, which primarily invest in shares subject to FTT. Please clarify whether the conclusion of such contracts shall be subject to FTT.

Where financial derivative instruments or transferable securities whose underlying assets are ETFs or CIUs which invest primarily in one or more of the financial instruments referred to in paragraph 491, it is deemed that the value of the financial derivative instruments or transferable securities, as provided for by Article 7(2), depends primarily on one or more of
the financial instruments referred to in paragraph 491 in which the ETF or CIU invest; this is why the financial instruments or transferable securities in question are subject to the tax referred to in paragraph 492.

Article 9 - Notional value

10) **Stock futures:** pursuant to provisions in paragraph 1, No 2, the notional value is given by the number of standard contracts multiplied by the price of the futures by the standard contract size. Please clarify the definition of "standard contract size".

The definition on the website of *Borsa Italiana* (Italian Stock Exchange) within the contractual specifications of the financial instrument, provides that the size of the contract is equal to the "product between the future price and the minimum unit of transaction". However, if such a definition would apply in the calculation of the notional value for the purposes of applying the tax, the effect would be to charge the price twice, amplifying erroneously the value of the tax base. Therefore, it is deemed that the proper procedure for calculating the tax base is that of considering for contract size only the "minimum unit of transaction of the securities underlying a single futures contract". Accordingly, for equity futures, the notional amount is given by the product between the number of standard contracts purchased/sold multiplied by the price of the future for the single standard contract multiplied by the number of shares ("minimum unit of transaction") underlying each single contract (standard contract size). The tax base so established (and the related tax) shall be calculated for each individual transaction concluded during the trading day; the conclusion occurs at the time of negotiation of each order to buy or sell.

11) **Stock options (paragraph 1, No 4):** a clarification similar to that relating to equity futures is also required for stock options for which the notional value for applying the tax is defined as the number of standard contracts multiplied by the contract price (premium) multiplied by the standard contract size.

The explanatory memorandum states that *a choice was made to consider the premium as the notional value for financial instruments, whether derivative or not, which have an optional component (...) because that is always known (...).* The premium alone does not constitute the notional value of the contract but must be multiplied by the minimum unit of transaction of the underlying as well as by the number of standard contracts purchased/sold.
As for futures, also for options the tax base so determined (and the related tax) shall be calculated for each individual transaction concluded during the trading day, the conclusion occurs at the time of negotiation of each order to buy or sell.

12) OTC Options: please clarify if in paragraph 1, No 5 this category encompasses all OTC options.

The answer is yes. The category "other options" includes all OTC options and other listed options not specifically classified in the categories of options referred to in paragraph 1, numbers 3 and 4.

13) Forward on an index (paragraph 1, No 6): please clarify the method of calculating the notional value. Since the forward is the OTC equivalent of the future, by analogy it is plausible to assume:
   • "forward unit value of the index": the monetary value of the numerical entity of the index at maturity;
   • "number of units of the index under the contract": how many times the index is bought/sold in the contract.

An official confirmation seems appropriate.

As regards forward contracts on indexes, it is deemed that the forward unit value of the contract is equivalent to the conventionally fixed multiplier (e.g. EUR 5 per index point for the FTSE MIB index) multiplied by the number of the forward index units to which the contract relates (as to the above example, if the September 2013 index value is equal to 17,280 points, the notional unit value of the contract is EUR 86,400).

14) Residual category of financial derivative instruments (paragraph 1, No 12): the reference to securities giving rise to cash settlement identifies a residual class of derivatives in relation to the others. The "securities" referred to here seem to be securitized derivatives, but it is difficult to identify specifically which are the derivatives that fall within that classification. Please provide therefore further examples besides that mentioned in the explanatory memorandum to the decree.

The securities referred to in paragraph 1, No 12 are the same as those mentioned in TUF in Article 1(1-bis)(d) that fall within the definition of financial derivative instruments provided for by TUF in Article 1(3).
15) Please clarify whether the early termination of a derivative contract entered into outside of the regulated markets (over the counter), for the full amount of the notional value, or part thereof (so-called full or partial early termination), constitutes a modification of the contract and therefore is subject to tax.

Where the early termination of the derivative contract (so-called full or partial early termination) is envisaged by the contract as a right of the parties, the exercise of this right does not imply a modification of the contract pursuant to Article 8 and, therefore, is not subject to tax. On the other hand, where the early termination of the contract, for the full amount of the notional value, or a part thereof, occurs for reasons not covered in the contract, such termination is a conclusion of the transaction pursuant to Article 8 of the Decree.

16) Derivative contracts called "swaps" may provide that, during the life of the contract, at fixed intervals, the counterparties pay the sums based on the performance of the underlying asset, without making any changes to the underlying asset itself (so-called "reset" of the contract). Please clarify whether these payments imply a modification of the contract and, consequently, the application of the tax.

A "reset" of the contract resulting from a mere advance of the exchange of flows between counterparties to avoid excessive exposure to counterparty risk is not a pre-requisite for the application of the tax. It is deemed that no tax event arises where the sum of the overall flows received/paid by each counterparty on the instrument (so-called swap overall "performance") does not change as a result of the reset, and where the dates and modalities of the reset are predetermined.

17) Please clarify if the calculation of the notional value referred to in Article 9 is always applied to warrants, covered warrants and certificates regardless of their settlement method (cash settlement or assignment of the underlying).

For the purposes of the application of Article 9 the settlement method of derivatives is irrelevant. The notional value of the transactions regarding transferable securities as of Article 9(9), (10) and (11), to be used to determine the tax to apply to such transactions, does not vary if the transactions on such transferable securities are settled by cash or with the assignment of the underlying.
Futures not traded on regulated markets or multilateral trading facilities: please clarify the relevant taxation methods according to the table annexed to the law provision.

In the case in which futures are not traded on regulated markets and multilateral trading facilities, but have the same characteristics as to uniformity and predetermination of contract conditions regarding object, underlying, denomination, maturity and settlement method, as well as the impossibility for the parties to change them, the tax applicable is the one indicated in the first or second line of table 3 annexed to Law No 228 of 24 December 2012, depending on the fact the futures are on relative indexes, yields or measures or on shares. Such taxation method applies only if the above-mentioned instruments are offered by the intermediary to the majority of customers.

In all other cases, i.e. in case of over-the-counter forward contracts which are not standardised according to the requirements referred to above, the tax indicated in the third line of the above-mentioned table is applied.

**Article 15 – Exclusions from the tax**

Article 15(1)(g) envisages the exclusion from the tax for the transactions referred to in paragraph 492 performed between companies either linked by a control relationship as of Article 2359(1)(1) and (2), and under the Civil Code or controlled by the same company. Article 8 provides for the taxation of contract modifications deriving from contract variations by the parties. Please clarify if the exemption for such transactions involves or not the tax applicable to the counterparty of the transaction.

The exclusion laid down for intra-group transactions applies to any transaction referred to in paragraph 492. Given that it is an objective transaction-related exclusion, the tax is not applicable to counterparties not belonging to the group.

**Article 19 – Payment of the tax**

In the case of derivative financial instruments traded on regulated markets, the functions of order execution (performed by a so-called executing broker) are distinct from those performed by the person in charge of the clearance of orders (so-called
clearing broker). Please clarify which of the two parties is responsible for paying the tax.

In such cases, considering the particular functioning of the derivatives market, which entrusts the clearing broker with the final allocation to the customer of contracts in connection with settlement, it is deemed appropriate to attribute to the latter the responsibility of the payment, being the clearing broker at any rate involved in the execution of the transaction. Similarly, whenever the settlement implies physical delivery of the underlying asset, the clearing broker is also responsible for the payment of tax pursuant to paragraph 491.

21) In case of the exercise of derivative financial instruments or securities (as defined in Article 7 of the Decree) involving the delivery of shares, participating financial instruments or securities representing equity investment, where the buyer of the shares or securities is a person other than banks or investment firms and delivery is made by a bank, an investment firm or other person in charge of clearing not carrying out any intermediation activity in the performance of the transaction, please clarify which person is required to pay the tax.

The person liable for payment of the tax, if no intermediaries "are involved in the execution of the transaction", coincides with the taxpayer. In the above cases, where the delivery of shares or securities is carried out directly by the clearing house (for listed instruments) or by persons referred to in Article 19(1) of the Decree, whenever they only deal with the delivery of shares or securities, the taxpayer is the person liable for payment of the tax.

If, however, the person making the delivery coincides with the person in charge of clearing of derivatives or transferable securities against which the securities are delivered (see question No 20.), the latter shall be liable for payment of the tax.
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**Informativa sul trattamento dei dati personali ai sensi dell’art. 13 del decreto legislativo n. 196 del 2003**

**Legislative Decree No. 196 of the June 30, 2003 "The code for the protection of personal data", provides for a system of protection for the processing carried out on personal data.**

| Purposes of processing | The Ministry of the Economy and Finance and the Revenue Agency wish to inform you, on their behalf and on behalf of other persons obliged to do so, that the form contains several items of personal data that will be processed by the Ministry of the Economy and Finance and the Revenue Agency, as well as by intermediaries identified by legislation (Tax Assistance Centres, banks, postal agencies, trade associations and professionals) for the purposes of payment, assessment and collection of taxes and that, to this end, certain data may be published pursuant to the combined provisions of article 69 of Presidential Decree no. 600 of 29 September 1973 as amended by Law no. 133 of 6 August 2008, and by article 66-bis of Presidential Decree no. 633 of 1972.

The data in the possession of the Ministry of the Economy and Finance and the Revenue Agency may be communicated to other public entities where legislation provides for this, or when such communication is necessary in order for them to carry out their institutional functions, subject to this being communicated to the Privacy Commissioner (Data Protection Commissioner) beforehand. The same information may also be communicated to private or public economic entities where the legislation provides for this. |
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<td>Personal data</td>
<td>The data requested in the form must be supplied to prevent the application of administrative and, in some instances, criminal sanctions. It is not compulsory to provide a telephone number, mobile phone number, fax number and email address. Providing these makes it possible to receive, free of charge, from the Revenue Agency, information and updates regarding final payment dates, news, obligations and services offered.</td>
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| Method of processing | The form may be delivered to an intermediary provided for by legislation (Tax Assistance Centres [CAF], trade associations, professionals) who sends the data to the Ministry of the Economy and Finance and the Revenue Agency. Any data provided is mainly processed electronically and using appropriate procedures for the purpose, including checks on the data contained in the form:

- with other data in the possession of the Ministry of the Economy and Finance and the Revenue Agency, also if provided, as required by law, by other subjects;
- with data in the possession of other entities |
| Data controllers | When the said data is made available to them and falls under their direct control, the Ministry of the Economy and Finance, the Revenue Agency and the intermediaries become "the data controllers for the processing of the personal data". In particular the following persons are "data controllers":

- the Ministry of the Economy and Finance and the Revenue Agency, at whose offices a list of the "data processors" is kept and this list may be viewed on request;
- if they take advantage of the right to appoint "data processors", the intermediaries must supply details as to the identity of the data processors, to the person concerned. |
| Persons responsible for data processing | "Data controllers" may make use of the services of others designated "responsible". In particular, the Revenue Agency makes use of the services of the company So.ge.i. S.p.a. as the external entity responsible for data processing, in its capacity as technological partner to which the management of the information system of the Tax Register is entrusted. |
| Taxpayer’s rights | The person (taxpayer) concerned, in terms of article 7 of Legislative Decree No. 196/2003, may view his personal data at the premises of the data controller or the person responsible for data processing in order to verify the use to which it is being put or if necessary, to correct or update it within the limits provided for by law, or to cancel it or oppose its processing, where it is being processed illegally.

These rights may be exercised upon request to:

- Ministry of the Economy and Finance, Via XX Settembre 97 – 00187 Rome;
| Consent | The Ministry of the Economy and Finance and the Revenue Agency, in their capacity as public entities, do not need to acquire the consent of the persons concerned in order to process their personal data. Intermediaries do not need to acquire consent for processing of personal data, as their conferment is required by law.

This information is given generally on behalf of all the data controllers referred to above. |
## FTT FORM
### FINANCIAL TRANSACTION TAX

<table>
<thead>
<tr>
<th>TYPE OF RETURN</th>
<th>Correction of existing return</th>
<th>Supplementary return</th>
<th>Relationship</th>
<th>Taxpayer</th>
<th>Intermediary</th>
<th>Reference year</th>
</tr>
</thead>
</table>

### INDIVIDUALS
- **Surname**: 
- **Name**: 
- **Date of birth**: day month year
- **Town (or foreign Country) of birth**:  
- **Province (initial)**:  
- **Gender**: M [ ] F [ ]

### TAXPAYERS OTHER THAN INDIVIDUALS
- **Name or company name**:  
- **Legal nature**:  

### NON-RESIDENT TAXPAYERS
- **Foreign Country code**:  

### INFORMATION REGARDING REPRESENTATIVE SIGNING THE RETURN
- **Tax code**:  
- **Appointment code**:  
- **Company tax code**:  
- **Surname**:  
- **Name**:  
- **Gender**: M [ ] F [ ]
- **Date of birth**: day month year
- **Town (or foreign Country) of birth**:  
- **Province (initial)**:  
- **Foreign Country code**:  
- **Federated state, province, county**:  
- **Place of residence**:  

### CONTACT DETAILS
- **Telephone dialling code number**:  
- **Mobile phone dialling code number**:  
- **Fax dialling code number**:  
- **Email address**:  

### SIGNATURE
- **Send electronic notice to intermediary**:  
- **SIGNATURE**:  

### UNDERTAKING TO ELECTRONIC SUBMISSION
- **Tax code of the intermediary**:  
- **Reception of electronic notice**:  
- **C.A.F. roll registration number**:  
- **Signature of intermediary**:  
- **Date of the undertaking**: day month year
## DATA ON TRANSACTIONS CARRIED OUT

### JANUARY

<table>
<thead>
<tr>
<th>TT1</th>
<th>Number of transactions</th>
<th>Taxable amount</th>
<th>Amount owed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Holdings</td>
<td>1</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>Derivatives</td>
<td></td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>High frequency trades</td>
<td></td>
<td>0.00</td>
<td>Use of credit from previous return</td>
</tr>
<tr>
<td>Payments</td>
<td></td>
<td>0.00</td>
<td>0.00</td>
</tr>
</tbody>
</table>

### FEBRUARY

<table>
<thead>
<tr>
<th>TT5</th>
<th>Number of transactions</th>
<th>Taxable amount</th>
<th>Amount owed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Holdings</td>
<td>1</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>Derivatives</td>
<td></td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>High frequency trades</td>
<td></td>
<td>0.00</td>
<td>Use of credit from previous return</td>
</tr>
<tr>
<td>Payments</td>
<td></td>
<td>0.00</td>
<td>0.00</td>
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</table>

### MARCH

<table>
<thead>
<tr>
<th>TT9</th>
<th>Number of transactions</th>
<th>Taxable amount</th>
<th>Amount owed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Holdings</td>
<td>1</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>Derivatives</td>
<td></td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>High frequency trades</td>
<td></td>
<td>0.00</td>
<td>Use of credit from previous return</td>
</tr>
<tr>
<td>Payments</td>
<td></td>
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### APRIL

<table>
<thead>
<tr>
<th>TT13</th>
<th>Number of transactions</th>
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<th>Amount owed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Holdings</td>
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<td>0.00</td>
</tr>
<tr>
<td>Derivatives</td>
<td></td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>High frequency trades</td>
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<td>0.00</td>
<td>Use of credit from previous return</td>
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<tr>
<td>Payments</td>
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### MAY

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<th>TT17</th>
<th>Number of transactions</th>
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<td>Holdings</td>
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<tr>
<td>Derivatives</td>
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<td>0.00</td>
</tr>
<tr>
<td>High frequency trades</td>
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<td>0.00</td>
<td>Use of credit from previous return</td>
</tr>
<tr>
<td>Payments</td>
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### JUNE

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<th>TT21</th>
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<th>Amount owed</th>
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<tr>
<td>Derivatives</td>
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<td>0.00</td>
</tr>
<tr>
<td>High frequency trades</td>
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<td>0.00</td>
<td>Use of credit from previous return</td>
</tr>
<tr>
<td>Payments</td>
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### PART TT

#### Section I

Data on transactions carried out

<table>
<thead>
<tr>
<th>Month</th>
<th>Holdings 1 Number of transactions</th>
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<tr>
<td>JULY</td>
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<td></td>
<td>TT26 Derivatives</td>
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<tr>
<td></td>
<td>TT27 High frequency trades</td>
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<tr>
<td></td>
<td>TT28 Payments</td>
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<td></td>
</tr>
<tr>
<td>AUGUST</td>
<td>TT29 Holdings 1</td>
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<tr>
<td></td>
<td>TT30 Derivatives</td>
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<tr>
<td></td>
<td>TT31 High frequency trades</td>
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<tr>
<td></td>
<td>TT32 Payments</td>
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<td></td>
</tr>
<tr>
<td>SEPTEMBER</td>
<td>TT33 Holdings 1</td>
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<td>TT34 Derivatives</td>
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</tr>
<tr>
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<td>TT35 High frequency trades</td>
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<tr>
<td></td>
<td>TT36 Payments</td>
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<td></td>
</tr>
<tr>
<td>OCTOBER</td>
<td>TT37 Holdings 1</td>
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<tr>
<td></td>
<td>TT38 Derivatives</td>
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<td>TT39 High frequency trades</td>
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<td></td>
<td>TT40 Payments</td>
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<td>NOVEMBER</td>
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<td>TT43 High frequency trades</td>
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<td></td>
<td>TT44 Payments</td>
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<tr>
<td>DECEMBER</td>
<td>TT45 Holdings 1</td>
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<td></td>
<td>TT46 Derivatives</td>
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<td>TT47 High frequency trades</td>
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<td></td>
<td>TT48 Payments</td>
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</table>
### Section II
**Summary**

<table>
<thead>
<tr>
<th>TT49</th>
<th>Credit from previous return</th>
<th>Excess amounts paid, current return</th>
<th>Amount used</th>
<th>Credit to carry forward</th>
<th>Credit requested as refund</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1</td>
<td>2</td>
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### Section III
**Partecipazioni**

<table>
<thead>
<tr>
<th>TT50</th>
<th>Repo and Security Lending</th>
<th>Number of transactions</th>
<th>Taxable amount</th>
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<tbody>
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<table>
<thead>
<tr>
<th>TT51</th>
<th>Intragroup</th>
<th>Number of transactions</th>
<th>Taxable amount</th>
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<tbody>
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<table>
<thead>
<tr>
<th>TT52</th>
<th>Riskless Principal</th>
<th>Number of transactions</th>
<th>Taxable amount</th>
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<table>
<thead>
<tr>
<th>TT53</th>
<th>Sovereign entities</th>
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<th>Taxable amount</th>
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<tbody>
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</table>

<table>
<thead>
<tr>
<th>TT54</th>
<th>Ethical funds and portfolios</th>
<th>Number of transactions</th>
<th>Taxable amount</th>
</tr>
</thead>
<tbody>
<tr>
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</table>

<table>
<thead>
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<th>TT55</th>
<th>Market-Making</th>
<th>Number of transactions</th>
<th>Taxable amount</th>
</tr>
</thead>
<tbody>
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</tbody>
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<table>
<thead>
<tr>
<th>TT56</th>
<th>Liquidity support</th>
<th>Number of transactions</th>
<th>Taxable amount</th>
</tr>
</thead>
<tbody>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>TT57</th>
<th>Pension funds</th>
<th>Number of transactions</th>
<th>Taxable amount</th>
</tr>
</thead>
<tbody>
<tr>
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</tr>
</tbody>
</table>
INTRODUCTION

This form must be used to provide the Revenue Agency with information relating to the Financial Transaction Tax (FTT) introduced by article 1, paragraphs 491-500 of Law no. 228/2012. FTT application methods are set out in the decree of 21 February 2013 issued by the Ministry of the Economy and Finance, which is supplemented by its decree of 16 September 2013.

The tax applies to:
• the transfer of ownership of shares and other participating financial instruments (paragraph 491);
• transactions on derivative financial instruments and other securities (paragraph 492);
• high-frequency trading (paragraph 495).

The following table summarises the amounts of the tax provided for by law for each transaction.

Paragraph 491 - Transfer of ownership of shares and other participating financial instruments, issued by companies that are resident within the territory of the State, as well as securities that are representative of such instruments, irrespective of the residence of the issuing party, is subject to a financial transaction tax equal to 0.2% (0.22% for 2013) of the value of the transaction. The tax is 0.1% (0.12% for 2013) for transfers which take place following transactions carried out on regulated markets and in multilateral trading systems.

Paragraph 492 - Transactions on derivative financial instruments. As provided for by article 1, paragraph 3, of Legislative Decree no. 58/1998, concerning financial intermediation (TUF), transactions on derivative financial instruments are subject, upon being concluded, to a flat-rate tax, which is determined with reference to the type of instruments and the value of the contract, in accordance with Table 3 of Law no. 228/2012 (provided at the end of these instructions). They are subject to the FTT in the manner described in paragraph 492: transactions which are based principally on one or more of the financial instruments set out in paragraph 491, or the value of which depends principally on one or more of said financial instruments, and transactions on securities set out in article 1, paragraph 1-bis, letters c) and d) of the TUF, which enable the purchase or sale primarily of one or more of the financial instruments set out in paragraph 491 or which entail a cash payment determined primarily by one or more of the financial instruments set out in the same paragraph, including warrants, covered warrants and certificates.

For transactions which take place on regulated markets or in multilateral trading systems, the same fixed-rate tax is reduced to one fifth of the amount.

The tax provided for by paragraphs 491 and 492 is payable irrespective of the place in which the transaction is concluded and the State in which the trading parties are resident.

Paragraph 495 - Transactions carried out on the Italian financial market are subject to a tax on high-frequency transactions relating to the financial transactions set out in paragraphs 491 and 492 irrespective of the issuing party or the residence of the issuing party. High-frequency transactions are defined as those transactions generated by computer-based algorithms which automatically make decisions with regard to the confirmation, modification or cancellation of orders and the parameters concerned, when the transmission, modification or cancellation of orders concerning such financial instruments are carried out at an interval of not more than half a second. The tax is applied at a rate of 0.02% of the exchange value of the cancelled or modified orders which in one day of stock market trading exceed the numerical threshold established by article 13 of the Ministerial Decree of 21 February 2013.
Persons obliged to submit the return

The return must be submitted by the “Declarants”, that is, by the intermediaries or by other persons responsible for paying the tax as set out in points 1 and 2 of the Ordinance issued by the Director of the Revenue Agency on 18 July 2013.

If the amount paid is less than 50 euros, no return needs to be submitted.

Non-resident persons submit the return:
– through a permanent organisation in Italy as provided for by article 162 of the Consolidated Law on Income Tax (TUIR)
– through an appointed tax representative chosen from among the categories set out in article 23 of Presidential Decree no. 600/1973 and representing the person concerned at the time the return is submitted
– directly, in the absence of a permanent organisation in Italy or a tax representative, after having applied for a tax code (unless already in possession of one).

The Central Depository Company (article 80, TUF) submits the return in the name and on behalf of the delegating parties, who nonetheless remain responsible for the correct payment of the tax and fulfillment of related obligations (article 19, paragraph 5 of the Ministerial Decree of 21 February 2013).

Methods and terms for filing return

The return must be sent to the Revenue Agency electronically, using this form, by March 31 every year.

The return may be sent:
• directly, by persons authorised by the Revenue Agency
• through one of the following with authorisation to send the return:
  – a company in the group, if the taxpayer submitting the return belongs to a group of companies (the controlling entity or company and the subsidiary companies are considered to belong to the group; public limited companies, limited share partnerships and limited liability companies of whose capital 50% or more is owned in the form of stocks and shares by the controlling company or entity or through another subsidiary company are considered to be subsidiary companies)
  – one of the appointed persons set out in article 3, paragraph 3 of Presidential Decree no. 322/1998 and subsequent amendments and additions (professionals, trade associations, Tax Assistance Centres, other persons).

The intermediary authorised to submit the return electronically must issue the declarant, simultaneously with the receipt of the return or the acceptance of the instruction to prepare it, an undertaking to submit the data contained in it electronically to the Revenue Agency.

The intermediary must also issue the declarant with a copy of the return containing the data submitted electronically on a form that is analogous to the official form together with a copy of the confirmation of receipt from the Revenue Agency. The documentation is deemed to have been submitted on the date on which the reception of the data on the part of the Revenue Agency is completed and proof that the return has been submitted is provided by the confirmation of receipt issued by the Revenue Agency.

The declarant must keep the documentation after signing the declaration confirming the data indicated.

The declaration may be submitted using the computerised product “FTT Form” which is available for free on the Revenue Agency’s website www.agenziaentrate.it in the section “Strumenti > Modelli > Modelli di dichiarazione” (“Tools > Forms > Declaration forms”).

Non-residents without a permanent organisation in Italy who have not appointed a tax representative and who are directly identified in Italy for tax purposes, instead of submitting the form electronically may submit it by sending it from abroad using registered post or another equivalent method which provides proof of date sent. In this case, the return must be placed in an envelope large enough to place it in without folding it addressed to Agenzia delle Entrate - Centro Operativo di Venezia, via Giorgio De Marchi n. 16, 30175 Marghera (VE), Italy. The envelope must bear the declarant’s tax code and the sentence “Contiene dichiarazione Modello FTT”.

Where to find the form

The form and accompanying instructions are available in electronic form and can be downloaded from the Revenue Agency’s website at www.agenziaentrate.it or from other websites as long as the form complies with the graphical layout and sequence of data in the original. The form may be printed in black and white.

Completing the form

All of the amounts specified in the return must be expressed in whole euros: for example, €55.50 becomes €56, €55.51 becomes €56, €55.49 becomes €55).
Tax code
This field must be filled in with the declarant’s tax code. If the form is submitted by a tax representative appointed in accordance with article 19, paragraph 7, of the Ministerial Decree of 21 February 2013, the field must be filled in with the tax code of the non-resident person being represented.

Type of return
• Correction of existing return
Cross this box if the return is to correct an existing return. It is pointed out that it is possible, before the final date for submission, to correct or supplement a return that has already been submitted, taking care to complete a new form in all of its parts (Correction of existing return).

• Supplementary return
Cross this box if the return is a supplementary return. A supplementary return may be submitted only if a valid original return has been submitted. Returns submitted within 90 days of the final date of submission are also considered valid. In this case, penalties apply (article 13, paragraph 1, letter c), of Legislative Decree no. 472/1997). Supplementary returns may be submitted by completing a new form in all of its parts, after the final date for submission of the return to be corrected or supplemented (i.e. it is no longer possible to submit a correction of an existing return).

Specifically, the return can be supplemented:
– by the final date for submission of the return for the following year (for corrections provided for by article 13, paragraph 1, letter b), of Legislative Decree no. 472/1997). The return may be submitted only if access, inspections or audits have not commenced and enables penalties to be applied at a lower rate than the legal interest rate
– by 31 December of the fourth year following submission of the return in order to correct errors or omissions leading to a greater amount of tax owed. In this case, penalties apply (article 2, paragraph 8, of Presidential Decree no. 322/1998)
– by the final date for submission of the return for the following year in order to correct errors or omissions leading to a greater amount of tax owed or a lower tax credit (article 2, paragraph 8-bis, of Presidential Decree no. 322/1998, supplementary return in favour of taxpayer).

Relationship
The box marked “Taxpayer” must be crossed if the transactions declared in part TT were carried out:
– without the action of intermediaries or other persons responsible for the payment (set out in points 1 and 2.1 of the Ordinance issued by the Director of the Revenue Agency on 18 July 2013)
– by intermediaries or other persons responsible for the payment acting as final purchasers or counterparties (article 19, paragraph 4, second sentence, of the Ministerial Decree of 21 February 2013).

The box marked “Intermediary”, in contrast, must be crossed if the transactions declared in part TT were carried out through intermediaries or other persons responsible for the payment. If an intermediary or other person responsible for the payment carried out transactions also as a taxpayer, both boxes must be crossed.

Reference year
Indicate the year to which the return refers.

Taxpayer identification details
Details identifying the taxpayer must be indicated. The tax representative appointed in accordance with article 19, paragraph 7, of the Ministerial Decree of 21 February 2013 must indicate the details identifying the non-resident person being represented.

Individuals
Individuals must indicate: surname, name, gender, date of birth, municipality of birth and the initials of the province. Individuals born overseas must indicate only the foreign country of birth, and not the province, in the space provided for the municipality.

Taxpayers other than individuals
For taxpayers other than individuals the company name must be indicated without abbreviations, with the exception of the company’s legal status (e.g. S.a.s. for limited partnership).
The code corresponding to the company's “legal status” can be found in the table provided in the instructions for completing the UNICO return forms published on the Revenue Agency's website www.agenziaentrate.it in the section “Strumenti > Modelli > Modelli di dichiarazione” (“Tools > Forms > Declaration forms”).

Non-resident taxpayers
In the case of taxpayers not residing in Italy, the “Foreign country code” field must be completed. The “Foreign country code” can be found in the list of foreign countries provided in the Appendix to the instructions for completing the UNICO return forms published on the Revenue Agency’s website www.agenziaentrate.it in the section “Strumenti > Modelli > Modelli di dichiarazione” (“Tools > Forms > Declaration forms”).

Informations regarding representative signing the return
This box must be completed only if the individual signing the return is different from the declarant, in which case the tax code of the person signing the return (if in possession of one), the corresponding “Appointment code” and the required details of the person must be indicated. Details concerning the person’s residence must be provided exclusively by those residing abroad.

The “Appointment code” can be found in the instructions for completing the UNICO return forms published on the Revenue Agency’s website www.agenziaentrate.it in the section “Strumenti > Modelli > Modelli di dichiarazione” (“Tools > Forms > Declaration forms”).

If the return is submitted by a company on behalf of the declarant, the “Company tax code” must be indicated as well as the “Appointment code” corresponding to the relationship between the company submitting the return and the declarant (e.g. an incorporating company which submits the return for the subsidiary company must indicate appointment code 9, while a company which submits the return as the declarant’s trading representative must indicate appointment code 1).

If the declarant is a tax representative appointed in accordance with article 19, paragraph 7, of the Ministerial Decree of 21 February 2013, the details of the tax representative must be indicated, specifying code 6 in the “Appointment code” field. If the tax representative is a person other than an individual, informations of the individual signing the return must be indicated, also specifying the tax code of the tax representative in the “Company tax code” field.

Contact details
The declarant’s (or representative’s) telephone numbers and email addresses can be indicated for the purpose of possible requests for clarifications by the Revenue Agency regarding the information provided in the return.

Signature of the return
Returns submitted electronically must be duly signed and completed on a form which is compliant with the official form.

Returns sent by post from abroad by non-resident declarants – or by their legal or trading representatives or other individuals indicated in the “Appointment code” table – must be signed.

Reception of electronic notice
If, from an inspection of the return (article 54-bis of Presidential Decree no. 633/1972), a payable amount or lesser refund emerges, the tax Authorities ask the taxpayer to provide the necessary clarifications (article 2-bis of Legislative Decree no. 203/2005), by post or electronically.

The declarant may ask the Revenue Agency to send requests for clarifications to the intermediary appointed to submit the return electronically (electronic notice). If the electronic notice option is not chosen, the request for clarifications (communication of irregularity) will be sent by registered letter. The penalty payable on amounts owed resulting from inspection of returns, i.e. 30 percent of the tax amount that is not paid or paid late, is reduced to a third if paid within 30 days of receipt of the communication of irregularity. This 30 day limit, in the case of notice of electronic filing being chosen, takes effect from the sixtieth day after the day on which notice was sent electronically to the intermediary. The choice to have the notice sent to the authorised intermediary also allows a qualified professional to verify the results of the check conducted on the return. The option can be chosen by crossing the box marked “Send electronic notice to intermediary” in the space marked “SIGNATURE”. The intermediary, in turn, agrees to receive electronic notice by crossing the box marked “Reception of electronic notice” in the space marked “UNDERTAKING TO ELECTRONIC SUBMISSION”.

Undertaking to electronic submission
The intermediary’s tax code, CAF (Tax Assistance Centre) roll registration number, and date on which the obligation to submit the return electronically was undertaken, must be indicated.

Central Depository Company (article 80, TUF)
If the taxpayers responsible for payment of the tax have delegated the task to the central depository
Company (article 80, TUF), in accordance with article 19, paragraph 5, of the Ministerial Decree of 21 February 2013, the latter submits the return in the name and on behalf of the delegating taxpayer by indicating on the front cover:
— details of the delegating taxpayer in the part for taxpayer identification details; if the delegating party is a tax representative, details of the taxpayer being represented must be indicated
— details of the delegating taxpayer’s representative and signer of the return must be indicated in the part marked “Information regarding representative signing the return”; if the delegating party is a tax representative, details of the tax representative must be indicated
— the tax code and signature of the central depository Company (article 80, TUF) in the part marked “Undertaking to electronic submission”.

The central depository Company is considered an intermediary with authorisation to use the Entratel service for the purpose of submitting returns electronically.

PART TT

In Part TT, Section I, for each month of the year to which the return refers, details of transactions for which tax is payable on transfer of ownership of shares and of financial instruments, on derivative financial instruments and on high-frequency trading operations must be indicated. In Section II details summarising excess payments requested as refunds or to be carried over to the following year must be indicated. Finally, Section III is for summarising details of the transactions indicated in paragraph 491, exempted or excluded, carried out during the year.

PLEASE NOTE Taxpayers who on the first final date for payment (16 October 2013) paid the taxes owed for the month of September and for the preceding months in cumulative form by tax type — in accordance with the instructions provided in the Revenue Agency’s press release of 4 October 2013 — must complete Section I by carrying forward the data for the initial payment solely to the line for the month of September, without completing the preceding lines.

SECTION I

Section I is for indicating details of transactions for which tax is payable on financial transactions for each month of the year to which the return refers.

Specifically, the following information must be indicated in line TT1:
• column 1, the number of significant transactions carried out in the month concerned for which tax is payable on transfer of ownership of shares and of financial instruments (paragraph 491)
• column 2, the total taxable amount for the month concerned
• column 3, the tax amount payable.

Line TT2 must indicate the tax payable for transactions on derivative financial instruments (paragraph 492).

Line TT3 must indicate the tax payable on high-frequency transactions (paragraph 495).

The following must be indicated in line TT4:
• column 3, the total amount of tax payable for the month concerned, i.e. the total of the amounts indicated in column 3, lines TT1, TT2 and TT3
• column 4, the amount of credit carried over from the return for the previous year (column 4 of line TT49) used to set off against and deduct from the amount of tax payable (column 3)
• column 6, tax paid using the “F24” payment form
• column 7, tax paid by bank transfer by non-residents (point 3.2.4 of the Ordinance issued by the director of the Revenue Agency on 18 July 2013)
• column 8, any excess tax paid equal to the sum (if positive) of the following columns: (6 + 7) – (3 – 4).

The instructions for lines TT1-TT4 also apply to lines TT5-TT48, with the exception of column 8. In lines TT8, TT12, TT16, TT20, TT24, TT28, TT32, TT36, TT40, TT44, TT48 the following must be indicated:
• in column 5, the amount of excess tax paid during the preceding months and for the year to which the current return refers used to set off against and deduct from the amount of tax payable (column 3)
• column 8, any excess tax paid equal to the sum (if positive) of the following columns: (6 + 7) – (3 – 4 – 5).

SECTION II

Summary

The following information must be indicated in line TT49:
• column 1, the credit indicated in column 4 of line TT49 in the return for the previous year
• column 2, the total amount of excess tax paid indicated in Section I. The amount is calculated by adding together the excess payments made for each month, i.e. the sum of the amounts indicated in column 8 of lines TT4, TT8, TT12, TT16, TT20, TT24, TT28, TT32, TT36, TT40, TT44 and TT48
• column 3, the total amount of excess payments indicated in columns 1 and 2 and used in Section I to deduct from amounts payable
column 4, the credit which the taxpayer intends to use to deducted from payments for the following year, i.e. column 1 + column 2 – column 3 – column 5

• column 5, credit requested as a refund, i.e. column 1 + column 2 – column 3 – column 4.

Communication of IBAN
In order to communicate the IBAN code identifying the current bank or post office account to which the refund should be credited, refer to the instructions set out on the Revenue Agency’s website (“Strumenti > Modelli > Modelli per domande/istanze > Rimborsi > Accredito rimborsi su c/corrente” or “Servizi online > Servizi con registrazione > Rimborsi web”).

SECTION III
Holdings - Exclusions/exemptions
Lines TT50-TT57
For each of the eight categories of exemption/exclusion regarding the transactions set out in paragraph 491, the number of transactions carried out during the year and the corresponding amount must be indicated. Specifically:
• in line TT50, details of “Repo and security lending” transactions (article 15, paragraph 1, letter e), del Ministerial Decree of 21 February 2013)
• in line TT51, details of “Intragroup” transactions (article 15, paragraph 1, letter g), Ministerial Decree of 21 February 2013)
• in line TT52, details of “Riskless principal” transactions (article 15, paragraph 2, letter a), Ministerial Decree of 21 February 2013)
• in line TT53, details of “Sovereign entities” (article 16, paragraph 1, letter a), Ministerial Decree of 21 February 2013)
• in line TT54, details of “Ethical funds and portfolios” transactions (article 16, paragraph 1, letters b) and c), Ministerial Decree of 21 February 2013)
• in line TT55, details of “Market making” transactions (article 16, paragraph 3, letter a), Ministerial Decree of 21 February 2013)
• in line TT56, details of “Liquidity support” transactions (article 16, paragraph 3, letter b), Ministerial Decree of 21 February 2013)
• in line TT57, details of “Pension fund” transactions (article 16, paragraph 5, Ministerial Decree of 21 February 2013).

TABLE: FINANCIAL TRANSACTION TAX FOR DERIVATIVE FINANCIAL INSTRUMENTS
(Values in euros for each counterparty)

<table>
<thead>
<tr>
<th>Notional value of contract (thousands of euros)</th>
<th>0-2.5</th>
<th>2.5-5</th>
<th>5-10</th>
<th>10-50</th>
<th>50-100</th>
<th>100-500</th>
<th>500-1000</th>
<th>over 1000</th>
</tr>
</thead>
<tbody>
<tr>
<td>FINANCIAL INSTRUMENT</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Futures contracts, certificates, covered warrants and option contracts based on yields, measurements or indices relating to shares</td>
<td>0.01875</td>
<td>0.0375</td>
<td>0.075</td>
<td>0.375</td>
<td>0.75</td>
<td>3.75</td>
<td>7.5</td>
<td>15</td>
</tr>
<tr>
<td>Futures contracts, warrants, certificates, covered warrants and option contracts on shares</td>
<td>0.125</td>
<td>0.25</td>
<td>0.5</td>
<td>2.5</td>
<td>5</td>
<td>25</td>
<td>50</td>
<td>100</td>
</tr>
<tr>
<td>Swap contracts on shares and related yields, indices or measurements</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Forward contract connected with shares and with related yields, indices or measurements</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
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<tr>
<td>Financial contracts connected with shares and with related yields, indices or measurements</td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Any other security which entails payment in cash, determined with reference to shares and related yields, indices and measurements</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Combinations of abovementioned contracts or securities</td>
<td></td>
<td></td>
<td></td>
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[For the purpose of this Regulation, the following definitions apply:]

**Market making activities:** means the activities of an investment firm, a credit institution, a third-country entity, or a firm as referred to in point (I) of Article 2(1) of Directive 2004/39/EC, 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 pursuant to Article 17(2) 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);\(^1\)

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\(^1\) Regulation (EU) Nr. 236/2012 of the European Parliament and on the Council of 14 March 2012 on short selling and certain aspects of credit default swaps, Chapter 1, Art. 2 para. 1 letter k.
[Im Sinne dieser Verordnung bezeichnet der Ausdruck]

**Market-Making-Tätigkeit:** die Tätigkeiten einer Wertpapierfirma, eines Kreditinstituts, einer Körperschaft eines Drittlands oder einer lokalen Firma gemäß Artikel 2 Absatz 1 Buchstabe 1 der Richtlinie 2004/39/EG, die Mitglied eines Handelsplatzes oder eines Drittlandmarktes ist, dessen Rechts- und Aufsichtsrahmen von der Kommission gemäß Artikel 17 Absatz 2 für gleichwertig erklärt wurde, wenn diese in Bezug auf ein an einem Handelsplatz oder außerhalb eines Handelsplatz gehandeltes Finanzinstrument als Eigenhändler auftreten und dabei eine oder beide der folgenden Funktionen wahrnehmen:

i) Stellen fester, zeitgleicher An- und Verkaufskurse vergleichbarer Höhe zu wettbewerbsfähigen Preisen, so dass der Markt regelmäßig und kontinuierlich mit Liquidität versorgt ist,

ii) Ausführung von Kundenaufträgen oder Aufträgen, die sich aus einem Handelsauftrag des Kunden ergeben, *im Rahmen ihrer normalen Tätigkeiten*,

i) Absicherung der Positionen, die sich aus den unter den Ziffern i) und ii) genannten Tätigkeiten ergeben;²

Regulated market: means a multilateral system operated and/or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments – in the system and in accordance with its nondiscretionary rules – in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with the provisions of Title III. 

Multilateral trading facility (MTF): means a multilateral system, operated by an investment firm or a market operator, which brings together multiple third-party buying and selling interests in financial instruments – in the system and in accordance with non-discretionary rules – in a way that results in a contract in accordance with the provisions of Title II.

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RICHTLINIE 2004/39/EG DES EUROPÄISCHEN PARLAMENTS UND DES RATES
vom 21. April 2004
über Märkte für Finanzinstrumente, zur Änderung der Richtlinien 85/611/EWG und 93/6/EWG des Rates und der Richtlinie 2000/12/EG des Europäischen Parlaments und des Rates und zur Aufhebung der Richtlinie 93/22/EWG des Rates


Multilaterales Handelssystem (MTF): ein von einer Wertpapierfirma oder einem Marktbetreiber betriebenes multilaterales System, das die Interessen einer Vielzahl Dritter am Kauf und Verkauf von Finanzinstrumenten innerhalb des Systems und nach nichtdiskretionären Regeln in einer Weise zusammenführt, die zu einem Vertrag gemäß den Bestimmungen des Titels II führt.⁴


COMMISSION REGULATION (EC) Nr. 1287/2006

of 10 August 2006


[For the purposes of this Regulation, the following definitions shall apply:]

“securities financing transaction” means 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.1

AUSZUG

Verordnung (EG) Nr. 1287/2006 DER KOMMISSION

vom 10. August 2006

zur Durchführung der Richtlinie 2004/39/EG des Europäischen Parlaments und des Rates betreffend die Aufzeichnungspflichten für Wertpapierfirmen, die Meldung von Geschäften, die Markttransparenz, die Zulassung von Finanzinstrumenten zum Handel und bestimmte Begriffe im Sinne dieser Richtlinie

[Für die Zwecke dieser Verordnung gelten die folgenden Begriffsbestimmungen:]

„Wertpapierfinanzierungsgeschäfte“ bezeichnen beispielsweise Leih- und Verleihgeschäfte in Aktien oder anderen Finanzinstrumenten, die Repogeschäft oder umgekehrtes Repogeschäft oder ein „Bully-sell back“- bzw. ein „Sell-buy back“-Geschäft.2


**Legislative text**

**Article 113**

Listing particulars

1. Before the date set for the start of trading in the financial instruments on a regulated market, issuers shall publish listing particulars containing the information specified in Article 94 subsections 1, 2, 3, 4, 5, 8, 10 and 11 and 94-bis, subsections 1, 2, 3 and 5 also for a person requesting admission to trading.

2. Any new and significant fact or material error in relation to information contained in the prospectus and likely to influence the assessment of financial instruments, and which still exist or are discovered between the time of approval of the prospectus and the start of trading on a regulated market must be mentioned in a supplement to the prospectus.

3. Consob:
   a) shall lay down in a regulation the contents of listing particulars and the manner of their publication, with specific provisions for cases in which admission to listing on a regulated market is preceded by a public offering;
   b) may require issuers to include supplementary information in the listing particulars and lay down specific procedures for their publication;
   c) shall issue a regulation to coordinate the functions of the stock exchange company with its own and, taking account of the characteristics of the individual markets, at the request of such company, may entrust it with tasks concerning the examination of listing particulars.
   d) shall govern the obligation to file a document with Consob concerning the information published or made available to the public by issuers during the year;
   e) shall establish the conditions for the transfer of approval of a prospectus to the competent authority of another member state;
   f) shall exercise powers pursuant to article 114, subsections 5 and 6 and article 115 in relation to the issuer, person requesting admission to trading and other persons indicated in said provisions.
   g) may suspend the admission to trading on a regulated market for a maximum of ten consecutive working days each time there is reason to suspect that the provisions of this article and related enactment regulations have been violated;

---

1 **LEGISLATIVE DECREE Nr. 58 OF 24 FEBRUARY 1998 Consolidated Law on Finance pursuant to Articles 8 and 21 of Law no. 52 of 6 February 1996, TITLE III – ISSUERS, Chapter I - Company information**
h) without prejudice to the powers envisaged under article 64, subsection 1-bis, paragraph c), may as a preventive measure and for a period not exceeding ten consecutive working days on each occasion, request that the stock exchange company suspend trading on a regulated market in the case of grounds for suspected violation of the provisions of this article and related enactment regulations;

i) without prejudice to the powers envisaged under article 64, subsection 1-bis, paragraph c), may request that the stock exchange company prohibits trading on a regulated market in the case of confirmed violation of the provisions of this article and related enactment regulations.

l) shall inform the competent authority of the home member state if, as competent authority for the host member state, it should discover that violations of issuer obligations have been committed in relation to the admission of financial instruments for trading on a regulated market;

m) after informing the competent authority of the home member state, shall adopt appropriate investor protection measures if, despite measures adopted by the competent authority of the home member state, or if such measures prove inadequate, the issuer continues to violate relevant legal or regulatory provisions. The European Commission shall be informed as soon as possible of the adoption of such measures;

n) shall make public the fact that the issuer or person requesting admission to trading has failed to meet obligations.

4. For the advertising of an admission to listing of financial instruments on a regulated market, article 10 shall apply.

5. For the prospectus concerning admission to trading on a regulated market, articles 98 and 98-bis shall apply.

Article 113-bis
Admission to trading of open-end UCITS units or shares

1. Prior to the established date for the start of trading of open-end UCITS units or shares on a regulated market, the issuer shall publish a prospectus containing the information pursuant to article 98-ter, subsection 2.

2. Consob:

a) shall by regulation determine the content of the prospectus, related publication methods, without prejudice to the need to arrange media publication through national daily newspapers, and updating of the prospectus, dictating specific measures in cases in which admission to listing on a regulated market coincides with the timing of the public offering;

b) may indicate information to be inserted by the issuer as integrations to the prospectus and specific advertising methods;

c) shall dictate provisions to coordinate stock exchange company functions with its own and, on request from said company, may assign tasks relating to control of the prospectus, also taking into account the characteristics of the individual markets.
3. The prospectus approved by the competent authority of another EU member state shall be recognised by Consob, under the terms and conditions established in subsection 2 of the regulation, as a prospectus for admission to trading on a regulated market. Under subsection 2 of the regulation, Consob may request the publication of a document for the listing.

4. For the advertising of an admission to listing of open-end UCITS units or shares on a regulated market, article 101 shall apply.

**Article 113-ter**
General provisions on regulated disclosures

1. Regulated disclosures shall mean disclosures published by listed issuers, listed issuers for which Italy is the home member state or their controlling bodies, pursuant to the provisions of this Title, Chapters I and II, Sections 1, I-bis, and V-bis, and to related enactment regulations or provisions established by non-EU country authorities considered the equivalent of Consob.

2. Regulated disclosures shall be filed with Consob and the stock exchange company for which the issuer has requested or received approval for admission to trading of its securities or closed-end funds, in order to guarantee that said company may exercise its duties pursuant to article 64, subsection 1.

3. In exercising powers attributed under this Title, Consob shall establish the terms and conditions for public dissemination of regulated disclosures, without prejudice to the need to arrange media publication through national daily newspapers, taking into account the nature of such information so as to ensure rapid, non-discriminatory and reasonably suitable access, guaranteeing effective dissemination throughout the entire European Union.

4. Consob shall:
   a) authorise third parties to the issuer to provide disclosure services for regulatory information;
   b) authorise centralised archive services for regulatory information;
   c) organise and manage centralised information archive services in the absence of authorised persons pursuant to paragraph b).

5. By regulation and in relation to regulatory information, Consob shall establish:
   a) filing terms and methods pursuant to subsection 2;
   b) requirements and conditions for the release of authorisation to exercise disclosure services, and measures for the provision of such services given the objectives of subsection 3;
   c) requirements and conditions for the release of authorisation to exercise archive services, and measures for the provision of such services to guarantee security, data source certainty, time and date stamps of the receipt of regulatory information, easy access for end users and filing procedures aligned with those of Consob;
   d) the language to be used in the notices;
e) any exemptions from filing, disclosure and archiving obligations in compliance with EU law.

6. If a party has requested admission to trading of securities or closed-end funds on a regulated market, without permission from the issuer, disclosure obligations for regulatory information are observed by that party, except where the issuer, in accordance with provisions established in its home member state, discloses regulatory information to the public as required under EU law.

7. Parties obliged to disclose regulatory information to the public may not claim payment for such disclosure.

8. Consob may make public the fact that parties obliged to disclose regulatory information do not comply with such obligations.

9. Without prejudice to the provisions of article 64, subsection 1-bis, Consob may:

a) suspend or demand that the regulated market concerned suspends the trading of securities or closed-end funds for a maximum ten days on each occasion, if there are grounds to suspect that disclosures regarding regulatory information have been violated by the party under obligation, pursuant to this article, to disclose such regulatory information;

b) prohibit trading on a regulated market if it is confirmed that the provisions of paragraph a) have been violated.

Article 114
Information to be provided to the public

1. Without prejudice to the information requirements established by specific provisions of law, listed issuers shall make available to the public, without delay, the inside information referred to in Article 181 that directly concerns such issuers and their subsidiaries. By regulation, Consob shall establish the terms and conditions for the disclosure of information, without prejudice to the need to arrange for media publication through national daily newspapers, dictate measures to coordinate duties attributed to stock exchange companies with its own, and may identify duties to be delegated for the correct performance of duties envisaged in article 64, subsection 1, paragraph b).

2. Listed issuers shall issue appropriate instructions for subsidiaries to provide all the information necessary to comply with the information requirements established by law. Subsidiaries shall transmit the information required in a timely manner.

3. Listed issuers may, under their own responsibility, delay the communication of privileged information to the public, in order to avoid prejudice to their legitimate interests, in the cases and under the conditions established by Consob with regulation, always providing this cannot mislead the public relative to essential facts and circumstances and providing the said subjects are able to guarantee confidentiality. Consob may issue a regulation establishing that an issuer shall without delay inform it of the decision to delay the public disclosure of inside information and may identify the measures necessary to ensure the public is correctly informed.
4. Where persons referred to in subsection 1, or persons acting on their behalf or for their account, disclose information referred to in subsection 1 in the normal exercise of their employment, profession or duties to a third party who is not subject to a confidentiality requirement based on a law, regulations, Articles of Association or a contract, they shall make complete public disclosure thereof, simultaneously in the case of an intentional disclosure and promptly in the case of a non-intentional disclosure.

5. Consob, on a general basis or otherwise, may require to the issuers, to the subjects which control them, listed issuers for which Italy is the home Member State, the members of the board of directors, the members of the internal control body, managers and persons who hold a major holding pursuant to Article 120 or who are parties to a shareholders’ agreement pursuant to Article 122 to publish, in the manner it shall establish, the information and documents needed to inform the public. Where such persons fail to comply, Consob shall publish the material at their expense.

6. Where the issuers, the subjects which control them and listed issuers with Italy as their home member country submit justified claim to the effect that public disclosure of information pursuant to subsection 5 could seriously damage the issuer, the disclosure obligations shall be suspended. Within seven days Consob may waive the requirement to disclose all or part of the information permanently or temporarily, provided this is not likely to mislead the public with regard to essential facts and circumstances. On expiry of said deadline, the claim shall be deemed accepted.

7. Persons performing administrative, supervisory and management functions in a listed issuer and managers who have regular access to inside information referred to in subsection 1 and the power to make managerial decisions affecting the future development and prospects of the issuer, persons who hold shares amounting to at least 10 per cent of the share capital, and any other persons who control the issuer must inform Consob and the public of transactions involving the issuer’s shares or other financial instruments linked to them that they have carried out directly or through nominees. Such disclosures must also be made by the spouse, unless legally separated, dependent children, including those of the spouse, cohabitant parents and relatives by blood or affinity of the persons referred to above and in the other cases identified by Consob in a regulation implementing Commission Directive 2004/72/EC of 29 April 2004. In the same regulation Consob shall identify the procedures and time limits for such notifications, the procedures and time limits for the disclosure of the information to the public and the cases in which such obligations also apply with reference to companies in a control relationship with the issuer and any other entities in which the persons specified above perform functions referred to in the first sentence of this subsection.

8. Persons producing or disseminating research or evaluations, excluding credit rating agencies, regarding financial instruments specified in Article 180 (1)(a), or issuers of such instruments, and persons producing or disseminating other information who recommend or suggest investment strategies intended for distribution channels or for the public must present the information fairly and disclose any interest or conflict of interest they may have with respect to the financial instruments to which the information refers.

9. Consob shall lay down in a regulation:

a) provisions implementing subsection 8;
b) the manner of disseminating research and information referred to in subsection 8 produced or disseminated by listed issuers, intermediaries authorised to provide investment services or persons in a control relationship with them.

10. Without prejudice to subsection 8, provisions issued pursuant to subsection 9, paragraph a) shall not apply to journalists subject to equivalent self-regulatory rules provided their application achieves similar effects. Consob shall evaluate, preliminarily and on a general basis, that such conditions are satisfied.

11. Institutions that disseminate data or statistics liable to have a significant effect on the price of financial instruments referred to in Article 180(1)(a) shall disseminate such information in a fair and transparent way.

12. The provisions of this article shall also apply to Italian and foreign persons who issue financial instruments for which an application has been made for admission to trading on Italian regulated markets.

**Article 114-bis**

Information to be provided to the market concerning the allocation of financial instruments to corporate officers, employees and collaborators

1. Compensation plans based on financial instruments in favour of members of the board of directors or the management board, employees and collaborators not linked to the company by an employment contract and of members of the board of directors or the management board, employees and collaborators of parent companies or subsidiaries shall be approved by the ordinary shareholders’ meeting.

In accordance with the terms and conditions envisaged in Article 125-ter, subsection 1, the issuer makes the report available to the public with information concerning the following:

a) the reasons for the adoption of the plan;

b) the members of the Board of Directors, that is the management board of the company, of the controlling or controlled companies which benefit from the plan;

b-bis) the categories of employees or collaborators of the company and controlling companies or controlled companies which benefit from the plan;

c) the procedures and clauses for the implementation of the plan, specifying whether its implementation is subject to the satisfaction of conditions and, in particular, to the achievement of specific results;

d) whether the plan enjoys any support from the special fund for encouraging worker participation in firms referred to in Article 4(112) of Law 350/2003;

e) the procedures for determining either the prices or the criteria for determining the prices for the subscription or purchase of shares;
f) the restrictions on the availability of the shares or options allocated, with special reference to the time limits within which the subsequent transfer of shares to the company or third parties is permitted or prohibited.

2. This article shall also apply to listed issuers and to issuers of financial instruments widely distributed among the public in accordance with Article 116.

3. Consob shall lay down in its regulation information concerning matters specified in subsection 1 which should be provided in relation to the various procedures for implementing the plan, providing more detailed information for plans of special importance.

**Article 115**

Information to be disclosed to Consob

1. For the purposes of monitoring the accuracy of information provided to the public, Consob, on a general basis or otherwise, may:

   a) require listed issuers, listed issuers with Italy as home Member State, the persons that control them and companies controlled by them to provide information and documents, establishing the related procedures;

   b) gather information, including by means of hearings, from members of governing bodies, general managers, managers charged with preparing companies’ financial reports and other managers, statutory auditors, independent statutory auditors and companies and persons referred to in paragraph a);

   c) carry out inspections at the offices of persons referred to in paragraphs a) and b) to check company documents and obtain copies thereof.

   c-bis) exercise the other powers provided by Article 187-octies.

2. The powers provided for in subsection 1, paragraphs a), b) and c) may be exercised with respect to persons who hold a major holding pursuant to Article 120 or who are parties to a shareholders’agreement pursuant to Article 122.

3. Consob may also require companies or entities with direct or indirect holdings in companies with listed shares to provide, on the basis of the available information, the names of their members or, in the case of trust companies, of their beneficiaries.

**Article 115-bis**

Lists of persons having access to inside information

1. Listed issuers and their subsidiaries and persons acting on their behalf or for their account shall draw up, and keep regularly updated, a list of the persons who, in the exercise of their employment, profession or duties, have access to information referred to in Article 114(1). Consob shall establish the procedures for drawing up, keeping and updating such lists.
Article 116
Financial instruments widely distributed among the public

1. Article 114, except for subsection 7, and Article 115 shall also apply to issuers of financial instruments that, although not listed on a regulated market in Italy, are widely distributed among the public. Consob shall lay down in a regulation the criteria for identifying such issuers and may disapply the aforementioned articles, in whole or in part, for issuers of financial instruments listed on regulated markets in other EU countries or on markets in non-EU countries in consideration of the information requirements they are subject to by virtue of being listed.

2. The provisions of Part IV, Title III, Chapter II, Section VI, except for Articles 157 and 158, shall apply to the issuers indicated in subsection 1.

2-bis. Article 114, except subsection 7, and Article 115 shall apply also to issuers of financial instruments admitted to trading on multilateral trading systems meeting the characteristics established by Consob regulation, and provided that admission is requested or authorised by the issue.

2-ter. ...omissis...

Article 117
Accounting information

1. The exemptions from the obligation to prepare consolidated accounts provided in Article 27 of Legislative Decree 127/1991, Article 27 of Legislative Decree 87/1992 and Article 61 of Legislative Decree 173/1997 shall not apply to Italian companies with shares listed on regulated markets in Italy or other EU countries.

2. The Minister of Justice, in concert with the Minister of the Economy and Finance, shall lay down in a regulation the internationally accepted accounting standards compatible with those laid down in Community accounting directives that issuers of financial instruments listed on regulated markets in Italy, other EU countries or non EU countries may use, by way of derogation from the rules in force, in preparing their consolidated accounts, provided such principles are accepted by the markets of non-EU countries. The standards shall be identified on the basis of a proposal from Consob, to be formulated in agreement with the Bank of Italy for banks and the financial companies referred to in Article 1(1) of Legislative Decree 87/1992 and with Siva for the insurance and reinsurance undertakings referred to in Article 1 of Legislative Decree 173/1997.

Article 117-bis
Mergers between listed and unlisted companies

1. Article 13 shall apply to mergers in which a company with unlisted shares is merged into a company with listed shares when the latter’s assets, other than liquid balances and financial assets that are not fixed assets, are significantly less than the assets of the company to be merged.
2. Without prejudice to the powers referred to in Article 13.2, Consob shall lay down specific rules in a regulation for transactions referred to in subsection 1.

**Article 117-ter**
Provisions concerning ethical finance

1. Consob, after consulting all the interested parties and consulting with the competent supervisory authorities, shall lay down in a regulation the specific disclosure and reporting obligations applicable to authorised intermediaries and insurance companies that promote products and services described as ethical or socially responsible.

**Article 118**
Provisions not applicable

1. The provisions of this section shall not apply to the financial instruments referred to in Articles 100(1)(d) and 100(1)(e).

2. Subsections 1 and 2 of article 116 shall not apply to financial instruments issued by banks, other than shares or financial instruments with the option to purchase or subscribe shares.

**Article 118-bis**
Checking information provided to the public

1. By regulation and taking into account international principles on the supervision of corporate disclosures, Consob shall establish the terms and conditions for its control over public disclosures issued in accordance with law, including information contained in accounting records, by listed issuers and listed issuers with Italy as its home member country.
Articolo 2359. Società controllate e società collegate.

Sono considerate società controllate:

1) le società in cui un'altra società dispone della maggioranza dei voti esercitabili nell'assemblea ordinaria;

2) le società in cui un'altra società dispone di voti sufficienti per esercitare un'influenza dominante nell'assemblea ordinaria;

3) le società che sono sotto influenza dominante di un'altra società in virtù di particolari vincoli contrattuali con essa.

Ai fini dell'applicazione dei numeri 1) e 2) del primo comma si computano anche i voti spettanti a società controllate, a società fiduciarie e a persona interposta; non si computano i voti spettanti per conto di terzi.

Sono considerate collegate le società sulle quali un'altra società esercita un'influenza notevole. L'influenza si presume quando nell'assemblea ordinaria può essere esercitato almeno un quinto dei voti ovvero un decimo se la società ha azioni quotate in borsa.
C. French Model

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Please note: The provisions dealing with the French financial transaction tax are set out in Article 235 ter ZD of the French Code General des Impôts (CGI). There is no official translation of the CGI, however the subsequent text contains a non-official guidance on the core rules of the CGI with respect to the French financial transaction tax and has been made available by the French tax authorities.

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INTRODUCTION


The financial transaction tax has three components:
- A tax on acquisitions of equity securities and similar instruments, as provided by Article 235 ter ZD of the French Tax Code;
- A tax on orders cancelled in the context of high-frequency trading, as provided by Article 235 ter ZD bis of the French Tax Code;
- A tax on purchases of credit default swaps on sovereign debt, as provided by Article 235 ter ZD ter of the French Tax Code.

TITLE 1: TAX ON ACQUISITIONS OF EQUITY SECURITIES AND SIMILAR INSTRUMENTS

CHAPTER 1: SCOPE

1. Pursuant to Article 235 ter ZD of the French Tax Code, the tax on acquisitions of equity securities and similar instruments applies to every acquisition for valuable consideration of an equity security or similar instrument when such security or instrument is admitted to trading on a French, European or foreign regulated market, within the meaning of Articles L. 421-4, L. 422-1 or L. 423-1 of the Monetary and Financial Code, the acquisition results in a transfer of ownership, and the security or instrument is issued by a company whose registered office is located in France and whose market capitalisation exceeds €1 billion on 1st January of the year of taxation.

Section 1: Securities covered by the tax

2. Equity securities and similar instruments, within the meaning of Article L. 211-41 of the Monetary and Financial Code, include shares and other securities that provide or could provide access to capital or voting rights, including securities issued on the basis of foreign laws.

3. The tax applies to investment certificates [certificats d'investissement (CI)] and voting right certificates [certificats de droit de vote (CDV)] and depositary receipts [certificats représentatifs d'actions (CRA)] issued by an entity regardless of its place of establishment.

   Example: American depositary receipts issued by a US financial institution are subject to the tax when they represent an equity security whose issuer has its registered office in France.

   The first acquisitions of depositary receipts that are subject to the tax are those made as of 1st December 2012.

4. The tax also applies to securities that provide or could provide access to capital or voting rights, including bonds convertible into shares, bonds redeemable in shares, bonds convertible into new shares or exchangeable for existing shares, bonds exchangeable for shares, bonds with subscription warrants, bonds with redeemable subscription warrants, bonds with redeemable subscription or purchase warrants, bonds redeemable in new or existing shares, bonds redeemable in cash or in new or existing shares, subscription warrants, redeemable subscription warrants, redeemable subscription or purchase warrants and pre-emptive rights.

5. The tax does not apply to debt securities, units in collective investment schemes (common funds (FCP) and open-ended investment companies (SICAV)) (including ETFs - exchange traded funds) and financial contracts (including options, futures and warrants) when they are not equity securities as defined in the Monetary and Financial Code.

6. In addition, equity securities and similar instruments are taxable when they are admitted to trading on a French, European or foreign regulated market, within the meaning of Articles L. 421-4, L. L. 422-1 or 423-1 of the Monetary and Financial Code. Recognised foreign regulated markets are recognised markets within the meaning of Article L. 423-1 of the Monetary and Financial Code, whose implementing provisions are specified by Article D. 423-1 et seq. of that same code. Recognised foreign market status is granted by order of the Minister for the Economy in accordance with this article.

7. Therefore, purchases of equity securities or similar securities are covered by the tax regardless of the place of establishment of the regulated market on which the security is traded, regardless of the place of establishment or residence of the parties to the transaction, and regardless of the place where the contract was entered into.
Section 2: Acquisitions of equity securities and similar instruments

8. The tax is owed on acquisitions of equity securities or similar instruments for valuable consideration resulting in a transfer of ownership.

9. Pursuant to paragraph 2 of section I of Article 235 ter ZD of the French Tax Code, acquisition means the purchase (including in connection with the exercise of an option or a forward purchase under an existing forward contract), the swap or the grant of equity securities in exchange for a contribution.

10. The exercise of a derivative product that involves the transfer of ownership of the underlying security to one of the parties to the contract constitutes an acquisition covered by the tax.

11. An acquisition is taxed if it is for valuable consideration, regardless of the amount.

Acquisitions made on the over-the-counter market that are settled subsequently and separately by wire transfer or in cash shall be considered acquisitions for valuable consideration.

On the other hand, acquisitions or grants other than for valuable consideration are not covered by this tax.

12. An acquisition is taxed if it results in a transfer of ownership of the equity security or similar instrument within the meaning of Article L. 211-17 of the Monetary and Financial Code. Transfer of ownership results from the registration of the securities acquired in the securities account of the purchaser.

This registration is different from the record of the security in the purchaser's securities account made by the custodian upon execution of the buy order, which is a simple accounting entry.

Thus, acquisitions of a security that are not materialised by a book entry, to the extent that they are preceded or followed by sales of the same security in the course of same day, are not covered by the tax. Only the net position of the acquisitions at the end of the day is subject to the tax in this case.

13. Similarly, in the context of a deferred settlement service that permits settlement and delivery to be deferred until a certain settlement date, i.e. at the end of the month, only the net long position at month end is subject to the tax.

14. On the other hand, a transfer of ownership in the context of furnishing or depositing securities as collateral within the meaning of Article L. 211-38 of the Monetary and Financial Code does not constitute an acquisition of equity securities or similar instruments, even when the guarantee constituted by the collateral is enforced because the debtor defaults and the securities become the property of the creditor.

Section 3: Conditions applicable to the issuer of the securities

15. The equity securities and similar instruments covered by the tax are those issued by a company with its registered office in France.

16. A move of the company's registered office to or from France during the year will cause the company's securities to be subject to the tax (as long as other conditions are met) or not subject to the tax, beginning on the date of the move.

17. When the issuer does not have its registered office in France, its securities are not covered by the tax, even if they are admitted to trading on a French trading platform or their issue account is held by a central depository in France.

On the other hand, the tax applies to securities that are issued by an issuer whose registered office is not in France and that represent securities whose issuer has its registered office in France.

18. Finally, the taxed securities are those whose issuer has a market capitalisation in excess of €1 billion. Market capitalisation means the multiplication of the number of issued securities by the closing price on the most relevant market in terms of liquidity as defined in Article 9 of Regulation (EC) No. 1287/2006 of the Commission of 10 August 2006 which provides that in principle, the most relevant market is the State where the equity security or similar instrument was first admitted to trading on a regulated market. It is thus the primary market of the security.

19. The capitalisation threshold must be evaluated on 1 December of the year preceded the year of taxation, by reference to the last known price at the close of the last day of trading. Changes in the market capitalisation of a company during the year have no effect on the application of the tax.

Example: The market capitalisation of a company A changes in the following manner: it is less than €1 billion between 1 November 2012 and 3 March 2013, then greater than €1 billion between 4 March 2013 and 12 November 2013, then again lower than €1 billion between 13 November 2013 and 8 January 2014. In this case, the condition regarding the capitalisation threshold is not met over the course of year 2013 or over the course of year 2014. Transactions involving this company's securities are thus not subject to the tax.


2 Except for the year 2012 for which the reference is set at 1 January (see the list of companies in Arrêté du 12 juillet under: http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000026178804&dateTexte=&categorieLien=id).
CHAPTER 2: EXEMPTIONS

20. As a general rule, foreign law persons and entities that do business or engage in transactions on terms governed by similar provisions of foreign law and that comply with the terms of the legal and regulatory provisions mentioned in this chapter are entitled to the exemptions provided for herein.

Section 1: The primary market

21. In accordance with Article 235 ter ZD (II) (1) of the French Tax Code, the following are exempt from the tax:
   - subscriptions or purchases as part of the issuance of equity securities or similar instruments under paragraph 2 of Article 5 of Directive 2008/7/EC of the Council of 12 February 2008 concerning indirect taxes on the raising of capital;
   - acquisitions from an investment service provider (ISP) that purchased the securities on the primary market as part of a guaranteed placement or firm commitment underwriting as defined in Articles L. 321-1 and D. 321-1 of the Monetary and Financial Code;

Section 2: Transactions by a clearing house or a central depository

22. In accordance with Article 235 ter ZD (II) (2) of the French Tax Code, transactions by a clearing house or central depository as part of their respective activities are exempt from the tax.

   These activities are defined in Article L. 440-1 of the Monetary and Financial Code for clearing houses and Article L. 621-9 of the Monetary and Financial Code and Article 550-1 of the General Regulation of the Autorité des marchés financiers (AMF), ratified by the order of 30 July 2009 (published in Journal Officiel No. 0178 of 4 August 2009) for the central securities depository.

23. On the other hand, a clearing house or a central securities depository that purchases securities for its own account, which bear no relation with the activities as defined in the previous paragraph, is not exempt from the tax.

Section 3: Acquisitions in the context of market making

24. In accordance with Article 235 ter ZD (II) (3) of the French Tax Code, acquisitions made in the context of market-making activities are exempt if they satisfy the following two cumulative conditions.

25. The first condition relates to the exercise of these activities by an investment firm, a credit institution, an entity from a foreign country or a local enterprise that is a member of a trading platform or a market in a foreign country.

   The firm or institution or entity must act as an intermediary that is a party to transactions on a financial instrument within the meaning of Article L. 211-1 of the Monetary and Financial Code.

26. The second condition relates to the intermediation activity exercised. The firm, institution or entity must do the following with respect to a financial instrument:

   a) either posting firm, simultaneous two-way quotes of comparable size, with the result of providing liquidity for a financial instrument on a regular and continuous basis to the market, on a regular and continuous basis;

   This covers two situations:

   The first situation is where liquidity is provided on a trading platform on which the securities are traded. The following conditions must be met:

   1) the liquidity provider must be continuously present on the market or have a minimal presence on the relevant market, for the financial securities, at least 95% of the time on both sides of the order book during the continuous trading session over one day. For financial contracts, the liquidity provider must be present at least 80% of the time on both sides of the order book during the continuous trading session over the month. However, a participant who ensures a presence on both sides of the order book at least 80% of the time evaluated over the month, on two "in the money" strike prices (i.e. for a call option, when the price of the underlying asset is higher than the strike price) and over five "out of the money" strike prices (i.e. for a call option, when the price of the underlying asset is lower than the strike price) over expiries of up to 13 months is considered a market maker for the options on a French share;
2) the quote provided by the liquidity provider must ensure a minimum of transactions may be realised at such a level, thereby providing efficiently liquidity of the security. Thus, on a continuously traded financial instrument, the liquidity provider must agree to position a range of firm buy/sell quotes throughout the entire trading day;

3) the orders for providing liquidity must be clearly identified.

The second situation is where liquidity is provided to the market through over-the-counter activities. In this situation, in order to be entitled to the exemption, the intermediary must meet the conditions governing the activities of a systematic internaliser set out in Article L. 425-2 of the Monetary and Financial Code.

If the intermediary does not engage in systematic internaliser activities within the meaning of Article L. 425-1 of the Monetary and Financial Code, for transactions not exceeding the standard market size, the liquidity provider must be able to prove that it advertises a firm quote for the financial instrument for which the exemption is requested, or when there is no liquid market, that it discloses its quote to clients upon request.

In these two situations, the provision of liquidity is evaluated on the basis of the spread between the bid and ask prices (market spread) offered by the market maker, compared, when the security is listed, to the market spread observed on the most relevant market as defined in Article 9 of Regulation (EC) No. 1287/2006 of the Commission of 10 August 2006. The spread offered by the market maker must remain low enough for the market maker to effectively play its role with respect to the financial instrument in question, whether or not such instrument is admitted to trading on a regulated market.

b) or, as part of its usual business, by fulfilling orders initiated by clients or in response to clients’ requests to trade;

The market participant's activity is to facilitate the execution of client orders by interposing its own account. The objective is to provide liquidity in addition to the liquidity immediately available on the market.

Constituting shares inventories in order for the intermediary to meet potential demand from clients is not exempt. The intermediary must be able to make the proof of a link between a client request and the acquisition made for its account.

Finally, the exemption only applies if the intermediary engages in regular activity. The regular nature of the activity is evaluated on the basis of the factual circumstances, including the number and frequency of transactions, how they are spread out over time, and the size in terms of value of the transactions.

c) or by hedging positions arising from the fulfilment of tasks under points (a) and (b)

These hedging transactions are transactions to hedge positions resulting from transactions or issues of financial instruments, including financial contracts, by acquiring securities in the scope of the tax.

When these hedging transactions cannot be individualised, the intermediaries must make the proof of the link between acquisitions made in connection with hedging activities and the market making activities referred to in paragraphs a and b.

Examples: A market maker acting in the circumstances defined in paragraph a does not owe the tax when it makes purchases on the market for the underlying security to hedge positions taken as part of its activity.

An intermediary who responds to a client request in the circumstances defined in paragraph b by entering into a financial contract with the client and must hedge positions on the stock market, where necessary by adjusting the level of its hedge through purchases and sales in the course of performing this contract, is entitled to the exemption.

27. In any case, acquisitions of securities do not qualify for the market making exemption in any of the foregoing situations if they:

- correspond to purely directional positions, by which an intermediary acquires an increasing number of securities (or sells an increasing number of securities) because the intermediary detects a trend (upwards or downwards), in order to generate a margin by the gain realised on the shares

- are pure arbitrage activities to take advantage of market inefficiencies between two assets of a different kind or between one asset traded on several markets, because these activities are not intended to provide additional liquidity to the intermediary’s clients.

28. Finally, to be entitled to the exemption for market making transactions, investment firms and credit institutions may refer to their internal organisation of services as described by the mapping of activities that they must implement in order to meet their risk monitoring obligations.

In this case, this mapping must clearly distinguish activities subject to FTT from exempt activities. Taxed activities and exempt activities, or activities exempt under different exemptions provided for by the law, must not coexist in a single unit of activities identified in the mapping.

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1Cf. Article 17 et seq. of Regulation No. 97-02 of 21 February 1997 on internal control at credit institutions and investment firms.
Section 4: Acquisitions in the context of liquidity agreements

29. In accordance with Article 235 ter ZD (II) (4) of the French Tax Code, acquisitions of securities for the account of issuers to ensure the liquidity of their shares as part of AMF accepted market practices⁴ pursuant to Directive 2003/6/EC of the European Parliament and of the Council⁵, and Directive 2004/72/EC of the Commission⁶, are exempt from the tax.

This situation involves contracts entered into by investment firms or credit institutions directly with the issuers of the securities in question.

Section 5: Intra-group and restructuring transactions

30. In accordance with Article 235 ter ZD (II) (5) of the French Tax Code, the following are exempt from the tax:

- acquisitions of securities between companies in the same group that meet the conditions of Article L. 233-3 of the Commercial Code or between companies in the same tax-consolidated group that meet the conditions of Article 223 A of the French Tax Code;
- acquisitions of securities in connection with a merger or spin-off, on the terms set out in Article 210 A of the French Tax Code;
- acquisitions in connection with a partial contribution of an entire branch of activity or similar assets on the terms set out in Article 210 B of the French Tax Code;
- acquisitions in connection with the buy-out of a company by its employees, as provided by Articles 220 quater, 220 quater A and 220 quater B of the French Tax Code.

31. This exemption applies regardless of the place of establishment of the companies in question, as long as they meet the conditions in the above-mentioned articles of the French Tax Code and the Commercial Code.

Section 6: Temporary transfers of securities

32. In accordance with Article 235 ter ZD (II) (6) of the French Tax Code, acquisitions of securities in the context of temporary transfers of securities, as defined in Article 2(10) of Regulation (EC) No. 1287/2006 of the Commission of 10 August 2006, are exempt from the tax.⁷

33. There are three primary categories of such transactions:

- securities lending within the meaning of Article L. 211-22 of the Monetary and Financial Code;
- sale and repurchase agreements within the meaning of Article L. 211-27 of the Monetary and Financial Code;
- buy/resell and sell/buy transactions. These are transactions constituting temporary transfers, i.e. the acquisition comes with a contractually agreed right for the transferor to buy back the security at the initial price, within a pre-established deadline. This is the case with sales with a repurchase option within the meaning of Articles 1659 et seq. of the Civil Code.

34. Any transfer of ownership made under conditions similar to those provided for in Articles L. 211-22 and L. 211-27 of the Monetary and Financial Code is deemed to constitute a temporary transfer of ownership giving rise to an exemption.

In this connection, when the temporary transfer is secured by collateral and the security interest is enforced because the debtor defaults, and therefore the securities become the property of the creditor, this acquisition of the collateral is entitled to the exemption.

With regard to buy/resell or sell/buy transactions, the exemption is linked to the fact that the acquisition of the securities transferred temporarily does not become permanent.

If the acquisition of the securities ultimately becomes permanent, then it is taxed.

Thus, for a sale with a repurchase option, the taxable event is the expiry of the period in which the seller retains the right to buy back the transferred securities.

35. Finally, to be entitled to the exemption for temporary transfers of securities, investment firms and credit institutions may refer to their internal organisation of services on the terms defined in paragraph 28.

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⁴Cf. Accepted market practice No. 2011-07 regarding liquidity agreements of 24 March 2011.
⁶Directive of 29 April 2004 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards accepted market practices, the definition of inside information in relation to derivatives on commodities, the drawing up of lists of insiders, the notification of managers' transactions and the notification of suspicious transactions.
Section 7: Employee savings scheme transactions

36. Pursuant to Article 235 ter ZD (II) (7) of the French Tax Code, acquisitions of equity securities by employee investment funds within the meaning of Article L. 214-39 et seq. of the Monetary and Financial Code and by employee share ownership open-ended investment companies as defined in Article L. 214-41 of the Monetary and Financial Code are exempt from the tax.

Acquisitions by an employee of an equity security issued by his company or a company in the same group as defined by Articles L. 3344-1 and L. 3344-2 of the Labour Code as part of an employee savings scheme, pursuant to the seventh paragraph of Article L. 3332-15 of the Labour Code are also exempt.

37. Pursuant to Article 235 ter ZD (II) (8) of the French Tax Code, purchases by the issuer of the securities when the securities will be transferred to the members of an employee savings scheme are exempt.

Section 8: Bonds exchangeable for or convertible into shares

38. Pursuant to Article 235 ter ZD (II) (9) of the French Tax Code, acquisitions of bonds exchangeable for or convertible into shares are exempt, as are redeemable bonds. These include bonds convertible into shares, bonds redeemable in shares, bonds convertible into new or exchangeable for existing shares, bonds exchangeable for shares, bonds with subscription warrants, bonds with redeemable subscription warrants, bonds with redeemable subscription or purchase warrants, bonds redeemable new or existing shares, bonds redeemable in cash or in new or existing shares. This exemption applies to similar foreign securities.

39. On the other hand, an acquisition of shares by way of swap, conversion or redemption is taxed.

CHAPTER 3: TAXATION PROCEDURES

Section 1: Person or entity liable for the tax

40. The person or entity liable for the tax is the investment services provider (ISP) that provides services defined in Article L. 321-1 of the Monetary and Financial Code, regardless of where such provider is established, if it executes bid orders on behalf of third parties or purchases for its own account.

41. In France, ISPs are investment firms and credit institutions that have received an authorisation to provide all or part of the investment services within the meaning of Article L. 321-1 of the Monetary and Financial Code (issued by the Autorité de contrôle prudentiel and by the AMF for the service referred to in Article L. 321-1(4) of the Monetary and Financial Code). Intermediaries providing equivalent services outside France are subject to the tax on the same terms.

42. If there is a chain of intermediations, two situations must be distinguished:

1) When several ISPs participate in the execution of a buy order, the tax is determined and owed by the first ISP who receives the bid order from the final purchaser;

Note: When an ISP does not have an authorisation to provide third-party order execution services referred to in Article L. 321-1(3) of the Monetary and Financial Code, receives and transmits an order from its client to another ISP in charge of executing the order (and therefore has this authorisation), the person or entity liable for the tax is the second ISP.

2) When an ISP transmits a bid order for its own account to another ISP for execution, the tax is owed by the ISP that purchased the securities.

Example: an ISP B receives two orders for execution: one order for the account of one of its clients (first transaction) and one order for the own account of an ISP A (second transaction). ISP B in turn transmits the two buy orders to an ISP C, which physically executes the orders on the trading platform.

The person owing the tax on the first transaction is ISP B. The person owing the tax on the second transaction is ISP A.

43. For acquisitions made without the intervention of an ISP, the tax is owed by the custodian within the meaning of Article L. 321-2(1) of the Monetary and Financial Code, regardless of its place of establishment. The purchaser must transmit the information needed to determine the tax. The custodian must assume that acquisitions are taxable when the purchaser does not inform it of exempt acquisitions of securities.

Section 2: Taxable event and due date

44. The taxable event is the acquisition of the security, which is deemed to occur on the date of transfer of ownership of the security, i.e. the date on which the security is recorded in the purchaser's securities account.

45. The tax is due on the first day of the month following the occurrence of the taxable event.
Example: an investment firm executes a bid order on a regulated market on 30 October. The trade is recorded in the securities account on 2 November. The tax is thus due on 1st December.

46. The first acquisitions subject to the tax are those resulting from transactions realised as of 1st August 2012, provided that these transactions precede the transfer of ownership (delivery of the security) by at least four business days.

47. By giving notice to the central securities’ depository (if the person or entity liable for the tax is not in a situation set out in the last two paragraphs of Article 235 ter ZD (VII) of the French Tax Code on reporting and direct payment to the tax administration) and to the tax administration by the 25th of the month, the person or entity liable for the tax may take the option to determine the due date based on the theoretical date of settlement/delivery, i.e., the third day following the transaction for acquisitions on a regulated market or the date agreed in the contract for over-the-counter acquisitions, without taking into account any buy-in that could delay the actual date of settlement/delivery. This option takes effect as of the transaction of the first day of the month following such notification.

Section 3: Basis of assessment

48. Pursuant to Article 235 ter ZD (III), the tax is based:
   - on the price paid for the security, in the case of a spot purchase;
   - on the strike price established in the contract, when a derivative instrument is exercised;
   - on the price established in the bond indenture, in the case of conversion, redemption or exchange of a bond;
   - in other cases, including swaps, on the amount indicated in the contract, and if no such amount is indicated, on the price of the security on the most relevant market in terms of liquidity at closing of the trading day preceding the day on which the swap occurs.

49. The purchase price paid or the strike price or conversion price indicated in the contract is the price not including the transaction fees (e.g. brokerage fees, intermediation fees, transfer fees, file fees, recording fees, bank fees, etc.).

50. First, if securities of unequal value are exchanged, each party to the exchange is taxed on the value of the securities that it acquires.

Example: Company A owns securities X that it exchanges for securities Y of Company B. Since the securities X have a value of €140,000 and the securities Y have a value of €150,000, the swap agreement provides that Company A will pay a cash adjustment of €10,000 to Company B. Consequently, the basis for the assessment on the swap is €150,000 for Company A and €140,000 for Company B in respect of their respective acquisitions.

51. Then, with respect to buy/resell or sell/buy transactions of securities that become the property of the transferee, the tax is based on the value of the securities as determined by the contract on which the initial purchase or sale was based.

52. Finally, if a net long position results, at the end of the day or the month, from intraday or intra-month transactions (entitled to deferred settlement) for the purchase and then sale of securities, the basis for assessment of the tax is calculated as follows.

For a given security, the person or entity liable for the tax calculates the net long positions at the end of the day (or the month) on the sales and purchases carried out for the account of each of its clients and for its own account, first subtracting from this calculation all exempt purchases and sales associated with exempt activities (market making, primary market transactions, temporary transfer of securities, etc.). The person or entity liable for the tax thus calculates the number of securities of Company X acquired by a client in the course of the day or, in the event of a deferred settlement, in the course of the month, from which the person or entity liable for the tax subtracts the number of securities of Company X sold by the same client in the course of the day, or in the event of a deferred settlement service, in the course of the month.

The number thus obtained, which is the number of securities the ownership of which is transferred for the account of a client (third party account or own account), must be multiplied by the average purchase value of the securities (rounded up to the nearest cent) over the course of the day or month in question.

The basis of assessment is obtained by adding the net long positions.

Example: A person or entity liable for the tax executes the following purchases and sales of securities in the course of a trading day:

- for its own account:
  - purchase of 1,000 securities A at €50, 500 securities A at €49. The purchase of 1,000 securities A is exempt as part of its market making activities;
  - sale of 800 securities A at €50.50, as part of its market making activities;

- for its client X: purchase of 100 securities A at €50, then 50 securities A at €49; neither purchase is exempt;
- for its client Y:
- acquisition of 1,500 securities B at €12; this purchase is not exempt;
- sale of 80 securities A;
- sale of 1,000 securities B.

The basis of assessment is calculated as the sum of the net long positions of the own account activities and the activities for each of its two clients, i.e.: 500 securities A X €49 [own account] + (100 + 50 securities A) X €49.67 [client X] + (1,500 – 1,000 securities B) X €12 [client Y] = €37,950.50.

The tax owed is €37,950.50 X 0.2 % = €75.901, rounded to €75.90.

When the purchase is made on a foreign stock exchange outside the euro zone, the taxable value is established on the basis of the closing price on the currency market of the currency in question on the eve of the date of purchase.

Section 4: Rate

53. The tax rate is set at 0.2%.

CHAPTER 4: REPORTING AND PAYMENT PROCEDURES

Section 1: Obligations of the person or entity liable for the tax

54. The reporting and payment obligations of the person or entity liable for the tax depend on the place of establishment of the central securities depository that holds the issuer’s account for the security in question.

A. THE CENTRAL SECURITIES DEPOSITORY IS ESTABLISHED IN FRANCE

55. When the central depository holding the issuer’s account is established in France, four situations must be distinguished:

- **The delivery of the security is realised on the books of the central securities depository**

  When the delivery of the security is realised on the books of the central securities depository, the person or entity liable for the tax must transmit to the depository the information referred to in Article 58 Q of Annexe III to the French Tax Code and designate the member who will pay the tax on its behalf.

  This information and the payment of the related tax must be transmitted to the central securities depository before the fifth of the month following the settlement of the securities.

- **The delivery of the security is realised on the books of one of the members of the central depository**

  When the delivery is realised on the books of one of the members of the central securities depository, this member must transmit to the central securities depository the information referred to in Article 58 Q of Annexe III to the French Tax Code and must pay the tax.

  This information and the payment of the related tax must be transmitted to the central securities depository before the fifth of the month following the settlement of the securities.

- **The delivery of the security is realised on the books of one of the clients of a member of the central securities depository**

  When the delivery is realised on the books of one of the clients of a member of the central securities depository, the client who is liable for the tax must furnish the information referred to in Article 58 Q of Annexe III to the French Tax Code and designate this member, who will pay the tax on its behalf.

  This information and the payment of the related tax must be transmitted to the central securities depository before the fifth of the month following the settlement of the securities.

- **The delivery of the security is realised in circumstances other than those described above**

  When the delivery of the security is realised in circumstances other than those described above, the person or entity liable for the tax reports and pays the tax directly to the Direction des Grandes Entreprises prior to the twenty-fifth of the month following the acquisitions of taxable securities.

  However, the person or entity liable for the tax may elect to have a member of the central securities depository report and pay the tax. In this case, the person or entity liable for the tax transmits to the member of the central securities depository the information referred to in Article 58 Q of Annexe III to the French Tax Code and indicates the amount of tax to be paid. As long as the settlement of the security is not realised on the books of a member or the books of a client of a member, the person or entity liable for the tax may choose to have the member of its choice report and pay the tax, but such member must remain the same throughout the course of the annual validity of the option exercise.
This information referred to in Article 58 Q of Annexe III to the French Tax Code must be transmitted to the central securities depository before the fifth of the month following the settlement/delivery of the securities.

56. If the person or entity liable for the tax wishes to exercise the option, it must inform the Direction des Grandes Entreprises in a letter before the twenty-fifth of the month preceding the month for which it intends to exercise this option and must designate the member selected. The option takes effect as of the first trade on the first day of the month following the notification.

For acquisitions made between 1st August 2012 and 1st November 2012, the option must be indicated in a letter sent to the Direction des Grandes Entreprises before 1st November 2012.

The option is valid for one year and is renewed automatically. It may be cancelled by giving notice to the Direction des Grandes Entreprises before the 25th of the month preceding the month for which the person or entity liable for the tax no longer intends for it to be effective.

57. The person or entity liable for the tax is discharged from the payment of the tax on the date of payment of the tax, directly or indirectly, to the central depository subject to Article L. 621-9 (II) (3) of the Monetary and Financial Code.

B. THE CENTRAL SECURITIES DEPOSITORY HOLDING THE ISSUER’S ACCOUNT OF THE SECURITY IN QUESTION IS ESTABLISHED OUTSIDE FRANCE

58. When the security is acquired at a central securities depository established outside of France, the person or entity liable for the tax must file Form No. 3374-SD with the Direction des Grandes Entreprises along with its payment, by the 25th of the month following the settlement of the securities.

The person or entity liable for the tax must make the information referred to in Article 58 Q of Annexe II to the French Tax Code available to the administration.

Section 2: Obligations of central securities depositories established in France

59. The central depository subject to Article L. 621-9(II)(3) of the Monetary and Financial Code is required to file Form No. 3374-SD with the Direction des Grandes Entreprises by the 25th of the month following the settlement/delivery of the securities, including both a hard copy and an electronic file in .csv format, a template for which is attached to Form No. 3374-SD.

60. The amounts paid per transaction to the central depository member, directly or indirectly, by the persons or entities liable for the tax in a given month are rounded up to the nearest cent. A fraction of a euro equal to 0.005 is rounded up to 0.01.

The amounts then withheld in respect of a month by the central depository are rounded, for each person or entity liable for the tax, to the nearest euro. A fraction of a euro equal to 0.5 is rounded up to 1.

61. Moreover, the payment of the tax to the central depository, by withholding from the account of the members by the depository or by direct payment to the depository, must be made by the 5th of the month following the settlement/delivery of the securities.

62. The obligations of the central depository as a tax collector as specified in Article 58 R of Annexe III to the French Tax Code.

Section 3: Nature of the information transmitted

63. This information is specified by Article 58 Q of Annexe III to the French Tax Code.

64. With respect to the exemption provided for in Article 235 ter ZD (6) of the French Tax Code, both the initial transfer of ownership of the security being temporarily transferred and the transfer of ownership permitting the return of the security to the assets of the initial transferor are reported in accordance with Article 58 Q (I) (i) of Annexe III to the French Tax Code, for each taxation period affecting them.

65. However, it is permissible to report only the exempt temporary transfers of securities made as of 1st January 2013. This same tolerance applies to corporate actions whose purpose is to issue new securities.

CHAPTER 5: VERIFICATION AND PENALTIES

66. The tax is recovered and verified in accordance with the rules and procedures applicable to sales taxes.

Given the specific nature of the system used to collect this tax, access to information to enhance verification procedures has been extended and specific penalties are provided for in Articles 1788 C and 1736 of the French Tax Code.
Section 1: Verification

67. In accordance with Article 58 R VII of Annexe III to the French Tax Code, the central securities depository must make available to the tax administration all data collected and documents drawn up as it collects the tax. All of these data and documents must be kept for the period provided for in Article L.102 B of the Livre des procédures fiscales (LPF).

Section 2: Penalties

A. IF PERSONS OR ENTITIES LIABLE FOR THE TAX AND MEMBERS FAIL TO MEET THEIR REPORTING AND PAYMENT OBLIGATIONS

68. If persons or entities liable for the tax fail (or cause members to fail) to transmit information necessary for the central securities depository to withhold the amount of the tax, Article 1788 C (I) of the French Tax Code imposes the following penalties on them:

- when tax is owed, a surcharge of 40% of the amount of tax owed, which shall not be less than €1,000;
- when no tax is owed, a fine of €1,000 per monthly tax return.

69. If the person or entity liable for the tax or the member, through no fault of the person or entity liable for the tax, is late in transmitting the information, then the following penalties will be applied under Article 1788 C (II) of the French Tax Code:

- when tax is owed, a surcharge of 20% of the amount of tax owed, which shall not be less than €500;
- when no tax is owed, a fine of €500 per monthly tax return.

70. Moreover, in accordance with Article 1788 C (III) of the French Tax Code, if inaccuracies or omissions are found in the information transmitted by the person or entity liable for the tax or, through no fault of the person or entity liable for the tax, by the member, a fine of €150 per omission or inaccuracy will be imposed. However, the amount of this penalty may not exceed 40% of the tax omitted.

71. The penalties provided for by Article 1788 C (I) and (III) of the French Tax Code are not cumulative. If no information is transmitted, only the penalties provided for by paragraph I apply.

72. Finally, if a person or entity liable for the tax required to file a return with the Direction des Grandes Entreprises fails to do so and pay taxes, Articles 1728 et seq. of the French Tax Code will apply.

73. In any event, the imposition of the fine punishes failure by a member when the member is not deemed to be liable for the tax, and it cannot be the consequence of a failure by a person or entity liable for the tax or an intermediary.

B. IN THE EVENT OF A VIOLATION BY THE CENTRAL SECURITIES DEPOSITORY THAT COLLECTS THE TAX

74. If a central securities depository fails to comply with its reporting obligations as set out in Article 235 ter ZD (IX) of the French Tax Code, it will pay a fine of €20,000 in the case of failure to file a monthly return, in accordance with Article 1736 (VII) of the French Tax Code.

75. In the event of missing data or inaccuracy in a tax return, a fine of €150 is imposed per omission or inaccuracy, up to a limit of €20,000 per tax return, pursuant to Article 1736 (VII) of the French Tax Code.

76. If it fails to comply with its obligation to provide the tax administration with the information referred to in Article 235 ter ZD (X) of the French Tax Code, a fine of €20,000 applies.

77. In accordance with Article 1731 of the French Tax Code, the central securities depository incurs a surcharge of 5% for any delay in the payment of the tax that must be paid to the accountants of the tax administration.

78. In any event, the imposition of the fine punishes a failure by the central securities depository and cannot be the consequence of a failure by a person or entity liable for the tax or an intermediary (a member or client of a member) between that person or entity liable for the tax and the central securities depository.

Section 3: Interest on late payments

79. In accordance with Article 235 ter ZD (XI) of the French Tax Code, Article 1727 of the French Tax Code applies if the person or entity liable for the tax or the central securities depository fails to comply with its payment obligations.

When the person liable for the tax fails to pay the tax by the 5th of the month following its acquisitions (or by the 25th of the month following its acquisition in the situation referred to in the last paragraph of Article 1727 (VII) of the French Tax Code), and, through no fault of the person or entity liable for the tax, the central securities depository fails to
remit the tax by the 25th of the month following these acquisitions, Article 1727 of the French Tax Code applies and the late party shall pay the interest on late payments accruing as of the first day of the following month.

CHAPTER 6: STAMP DUTY CONSEQUENCES

80. Acquisitions on which financial transaction tax is imposed are exempt from the stamp duty provided for by Article 726 of the French Tax Code.

CHAPTER 7: VALUE-ADDED TAX CONSEQUENCES

81. Any passing along of the tax by the ISP or custodian to the end client that acquired the securities is not subject to VAT.

TITLE 2: TAX ON CANCELLED ORDERS IN HIGH-FREQUENCY TRADING

CHAPTER 1. SCOPE

Section 1: Territorial scope

82. The transactions covered by the tax are those carried out by a company operated in France within the meaning of Article 209(I) of the French Tax Code. An enterprise is deemed operated in France when it habitually does business in France, either as an autonomous establishment (including a branch) or through an independent representative that is unincorporated, or as the result of a complete business cycle.

Section 2: High-frequency trading covered by the tax

83. High-frequency trading is defined as the habitual addressing of orders for own account using an automated mechanism. The spacing of these orders may not exceed the duration indicated in Article 58 S I of Annexe III to the French Tax Code.

84. Whether this threshold is exceeded for a given security is assessed with respect to a median duration, calculated over the month preceding the taxed transactions, between the buy or sell instructions and the instructions to modify or cancel them, for a given security.

85. Moreover, the exceedance of this threshold is evaluated by trading desks. If the trading desk carries out transactions other than high-frequency trading, it must prove that the transactions in question are not covered by the tax.

86. The systems used to optimise the conditions for order execution or to confirm orders, often called "smart order routers", are not considered automated mechanisms for the purpose of the tax.

Section 3: Securities covered by the tax

87. The tax applies to equity securities as defined in Article L. 212-1 A of the Monetary and Financial Code.

88. The place of the issuer’s registered office and its market capitalisation do not matter.

CHAPTER 2: EXEMPTION

89. Market making activity as defined by Article 235 ter ZD (II) (3) (cf. Title 1 Chapter 2 Section 3 of this instruction) is exempt from the tax.

CHAPTER 4: TAXATION PROCEDURES

Section 1: Person or entity liable for the tax

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The passing along of the tax to the end client does not release the ISP or the custodian from the legal provisions designating them as the persons legally responsible for the tax.
The tax is owed by all companies operated in France, including autonomous establishments (including branches) of foreign companies doing business in France. On the other hand, branches of French companies established abroad that engage in high-frequency trading are not subject to the tax.

Section 2: Taxable event and due date

The tax is due when the rate of cancellation or modification of orders within the course of a day exceeds the threshold established in Article 58 S (II) of Annexe III to the French Tax Code.

This cancellation rate corresponds to the following formula: (nominal amount of cancellation instructions + nominal amount of modification instructions) / (nominal amount of transfer instructions (initial orders) + nominal amount of modification instructions). It is calculated on the basis of instructions sent, after excluding exempt activities.

The nominal amount is the number of securities covered by an order. Thus one order to buy 1,000 securities corresponds to a nominal amount of transmission instructions of 1,000.

The tax is due on the first day of the month following the month during which the orders cancelled or modified exceeding the cancellation or modification rate were transmitted to the trading platforms.

Section 3: Basis of assessment and rate

The tax rate is set at 0.01 % of the amount of orders cancelled or modified in excess of the threshold mentioned above, which may not be less than two thirds of the orders transmitted over the course of a trading day.

The basis of assessment is equal to the number of securities that were cancelled and/or modified in excess of the threshold set in Article 58 S (II) of Annexe III to the French Tax Code multiplied by the average value of the security over the course of a trading day (rounded up to the nearest cent).

Example: Let us assume that the threshold triggering the tax is 80% and the average value of this security calculated over a trading day is €45. Over the course of a trading day, a trading desk identified as having engaged in high-frequency trading (in accordance with section 2) gave the following instructions with respect to a security:

- transmission instructions corresponding to initial orders to buy or sell 40,000 securities;
- modification instructions corresponding to orders to buy or sell 200 securities;
- instructions to cancel orders to buy or sell 35,000 securities;

The cancellation rate is calculated as follows: 
(200 + 35,000) / (200 + 40,000) x 100 = 87.56%

Since this rate is higher than the 80% threshold, the basis of assessment of the tax is calculated as follows:
35,200 (orders cancelled and modified) – (40,200 (initial and modified orders) x 80%) = 35,200 – 32,160 = 3,040 x €45 (average unit value) = €136,800.

The amount of tax owed is equal to €13.68 (136,800 x 0.01%).

CHAPTER 5: REPORTING, PAYMENT AND PENALTIES

The tax is reported, calculated and paid before the tenth of the month following the transmission of orders by companies operated in France on Form No. 3375-SD.

The applicable penalties for failure to report or pay the tax are the same as those applicable to sales taxes.

TITLE 3: TAX ON CREDIT DEFAULT SWAPS ON SOVEREIGN DEBT

CHAPTER 1: SCOPE

Section 1: Territorial scope

The tax applies to any purchase, by an individual domiciled in France within the meaning of Article 4 B of the French Tax Code, a company operated in France within the meaning of Article 209(I) or a legal entity established or organised in France.

Section 2: Transactions covered by the tax
99. As provided by Article 235 ter ZD ter of the French Tax Code, the tax on credit default swaps (CDS) of a European State applies to all purchases of a naked CDS whose underlying is sovereign debt.

100. CDSs are financial protection contracts by which the buyer of protection pays a premium to the seller of protection in exchange for which the buyer receives the right, in the event of a credit event affecting the State, either to obtain a sum corresponding to the difference between the nominal value and the market value of the sovereign bonds, or to deliver these bonds against the payment of a price corresponding to their nominal value.

101. The contracts are considered naked when the purchaser of the CDS does not hold a long position on the sovereign debt of a European State and does not hold assets or liabilities whose value is correlated, in an unequivocal manner, to the value of the sovereign debt of the State covered by the CDS.

Example: a credit default swap on Irish sovereign debt entered into by an individual residing in France will be exempt from the tax if this individual holds one or more bonds issued by the Irish Treasury in an amount corresponding to the value covered by the swap.

CHAPTER 2: EXEMPTION

102. Market making activity as defined by Article 235 ter ZD (II) (3) (cf. Title 1 Chapter 2 Section 3 of this instruction) is exempt from the tax.

CHAPTER 3: TAXATION PROCEDURES

Section 1: Person or entity liable for the tax

103. Every individual domiciled in France within the meaning of Article 4 B of the French Tax Code, every company operated in France within the meaning of Article 209(I) of the French Tax Code, and every entity established or organised in France, must pay the tax.

Section 2: Taxable event and due date

104. The tax is due upon entering into the swap.

Section 3: Basis of assessment and rate

105. The amount of the tax is equal to 0.01% of the notional amount of the swap, which is the nominal or face amount used to calculate swap-related payments.

CHAPTER 4. REPORTING, PAYMENT AND PENALTIES

106. The tax is reported, recovered and verified using the same procedures and under the same penalties, guarantees, security interests and liens as value-added tax.

107. The tax is reported by persons or entities liable for the tax on their VAT return (Form No. 3310 A; annexe to the TVA CA3 return) and paid by persons or entities liable for the tax to their tax office.

Until electronic filing is available, a hard copy of the return shall be filed for the period in question, accompanied by the payment. "Taxe sur les contrats d’échange sur défaut d’un État" (tax on credit default swaps on sovereign debt) must be handwritten in Line 77 reserved for this tax.
C. French Model

I. French Tax Code (English) ................................................................. 308
II. French Decree No. 2012-956 to the FTT (English) ......................... 325

Please note: The translation hereafter does not relate to the most recent version of the French Decree, which has been amended to incorporate for the taxation of American/Global Depositary Receipts (A/GDR). Unfortunately, no updated translation has been made available by the French tax authorities.

III. Draft Translation of Q&A (English) .................................................. 331
IV. English Form monthly French FTT return ....................................... 336
Decree No. 2012-956 of 06 August 2012 relating to procedures governing declaration by taxpayers and collection of the financial transaction tax by the central securities depository

NOR: EFIE1230476D

Public concerned: payers of the tax on acquisitions of equities or similar securities, the central depository subject to Paragraph 3 of Section II of article L. 621-9 of the Monetary and Financial Code and its members.

Subject: nature of the information forwarded to the central depository and the procedures for the collection and oversight of the tax by the central depository.

Entry into force: under the act, the tax applies to securities acquisitions made as from 01 August 2012.

Notice: the order specifies the procedures for the implementation of the tax on acquisitions of equities or similar securities created by article 5 of Amending Finance Bill no. 2012-354 of 14 March 2012, for 2012. In this respect, it begins by specifying the nature of the information relating to transactions falling within the scope of the tax collected by the central securities depository. Secondly, it specifies the procedures applying to its obligation to maintain separate accounting and to ensure consistency in oversight, in respect of which it must make an annual report to the administration.

References: this order is issued on the basis of article 5 of Amending Finance Bill no. 2012-354 of 14 March 2012, for 2012. Articles 58 Q and 58 R of appendix III to the General Tax Code, created by this order, can be consulted on the Legifrance website (http://www.legifrance.gouv.fr).

The Prime Minister

Following a report from the Minister of the Economy and Finance.

Having regard to the Code of Commerce, in particular its article R. 123-221.

Having regard to the General Tax Code, in particular its article 235 ter ZD and Appendix III to this code.

Having regard to the Monetary and Financial Code, in particular its article L. 621-9.

Having regard to the book of tax procedures, in particular its article L. 102 B.

Having regard to Amending Finance Bill no. 2012-354 of 14 March 2012 for 2012, in particular Paragraph C of Section I of its article 5.
Orders:

**Article 1.** - Chapter III of Part I of the first part of Book I of Appendix III to the General Tax Code is supplemented by a section VII entitled: "Taxes on financial transactions", consisting of articles 58 Q and 58 R written as follows:

*Art. 58 Q.* – I. – The information transmitted, pursuant to section VIII of article 235 ter ZD of the General Tax Code, whether it concerns transactions that are subject to tax or are tax-exempt, is as follows:

a) The taxpayer’s name or corporate name and, if the latter has one, its bank identification code (BIC code), its intercommunity VAT number or, failing that, its identity number as defined in the first paragraph of article R. 123-221 of the Code of Commerce.

b) The address of the taxpayer’s registered or head office.

c) If the central securities depository responsible for the security's issuing account is subject to paragraph 3 of section II of article L. 621-9 of the Monetary and Financial Code, the code assigned by the said depository to the member responsible for payment of the tax under VII of article 235 ter ZD of the General Tax Code.

d) The code identifying the equity or similar security (ISIN code) whose acquisition is subject to tax.

e) The transaction date.

f) The settlement/delivery date of the equity or similar security.

g) The reference assigned, in the taxpayer’s internal management system, to acquisitions or, if some of the transactions do not involve a transfer of ownership and only the purchaser’s net long position is subject to the tax, the reference assigned to this net long position.

h) The value of the transactions, meaning the number of securities multiplied by the unit value of the securities acquired.

If some of the transactions do not involve the transfer of ownership and only the buyer’s net long position is subject to the tax, the amount of the acquisitions is equal to the number of securities, the ownership of which is transferred, multiplied by the average value of the securities thus acquired during the time period at the end of which the net long position is calculated.

The net long position used as the tax base is calculated for a given security and by purchaser, excluding the tax-exempt purchases specified in section II of article 235 ter ZD of the General Tax Code and sales relating to these exemptions.

The taxpayer subtracts from the number of securities of a company, subject to the tax under I of article 235 ter ZD referred to above, purchased by a buyer over a period, the number of this company's securities sold by this same buyer during the same period.

The number thus calculated, which is equivalent to the number of securities, the ownership of which has been transferred to the buyer, is multiplied by the average unit price of the security for non-exempt acquisitions made during the period at the end of which the net long position is calculated.

The sum of the net long positions thus calculated for each security and each buyer constitutes the taxpayer’s tax base.

i) For each exempt acquisition under section II of article 235 ter ZD of the General Tax Code, the category of exemption to which it belongs.

j) The potential adjustments specified in section IV.

k) The amount of tax to be paid in respect of the declaration. The amount of tax to be paid for each acquisition is rounded to the nearest cent.
II. - By way of exception to the provisions of section I of this article, acquisitions that are exempt pursuant to paragraph 9 of section II of article 235 ter ZD of the General Tax Code need not be declared to the central securities depository.

III. - Omission of the information specified in a, c and k of section I leads to the rejection of the declaration.

IV. - Adjustments to tax paid in error or not paid must be made in subsequent tax declarations made to the central securities depository before 31 December of the second year following the year in which the overpayment or omission occurred. This adjustment is subject to a separate declaration in which, in particular, the transactions and the periods to which they relate are specified.

When the amount of tax paid by the taxpayer exceeds the amount due, the excess tax, which cannot be allocated to the month for which the overpayment is observed can either be deducted from the amount of tax due the next month or refunded by the tax administration under the terms specified by article R.* 196-1 of the book of tax procedures.

Art. 58 R. – I. – Transactions relating to the collection of tax by the central securities depository subject to paragraph 3 of section II of article L. 621-9 of the Monetary and Finance Code are recorded in a special journal that forms part of the central securities depository’s accounts. The costs and proceeds arising from these transactions must give rise to an annual presentation of accounts, which the administration reserves the right to audit.

II. - Tax collected by the central depository is transferred, prior to the 6th of the month following the acquisitions subject to tax, to the Bank of France tax collection account opened by the central depository and then deposited with Agence France Trésor until its payment to the department responsible for large companies before the 25th of this same month.

III. - The declaration specified in section IX of article 235 ter ZD of the General Tax Code is prepared monthly according to a template provided by the administration.

The information for each taxpayer forwarded by the central securities depository in dematerialised form includes:

a) The taxpayer’s name or corporate name and, if the latter has one, its bank identification code (BIC code), its intercommunity VAT number or, failing that, its identity number as defined in the first paragraph of article R. 123-221 of the Code of Commerce.

b) The address of the taxpayer’s registered or head office.

c) The taxation period.

d) The tax base, the amount of tax due and paid for the month concerned.

e) The date the declaration and payment must be made to the central securities depository.

f) The monthly amount of exempt transactions classified according to the reason for the exemption.

g) The monthly amount and reason for the adjustments specified in section IV of article 58 Q.

IV. - 1. Before the 25th day of the second month following the acquisition of the equity or similar security, the central securities depository should prepare a list of taxpayers whose tax declarations show the following characteristics:

a) The tax base is inconsistent with the amount of tax declared or paid.

b) No acquisition is declared for the thirty securities most commonly declared as acquired on average over the previous month by taxpayers.

c) Concerning deliveries of securities made by taxpayers that are direct members of the central securities depository in its books, the taxpayer has during the month paid for purchases for a greater amount than the acquisitions declared.
This list should specify, for each taxpayer concerned, the reasons referred to at a, b and c for their inclusion in this list.

2. Before the 25th day of the second month following the acquisition of the equity or similar security, the central securities depository should calculate for each taxpayer and as an average for all taxpayers:
   a) The rate of variation, as compared with the previous month, of the number and amount of acquisitions declared. Taxpayers that have made a declaration the previous month, but who have not filed one for the current month are deemed to have reduced their declared acquisitions by 100%.
   b) The proportion, in terms of the number and amount, of exempt acquisitions out of all the acquisitions declared and the relative proportion for each reason for exemption within these exempt acquisitions.
   c) The variation, as compared with the previous month, of the rate of exemption in terms of the number and amount.

3. The central securities depository should carry out cross-checks between transactions declared to it and those recorded by the trading platforms and clearing houses, regardless of their location, with which the central securities depository has concluded a prior agreement for this purpose.

V. - The central securities depository sends the department responsible for large companies the information specified in paragraphs 1 and 2 of section IV of this article at the time of the declaration specified in section IX of article 235 ter ZD of the General Tax Code.

VI. - The central depository subject to Paragraph 3 of Section II of article L. 621-9 of the Monetary and Financial Code reports to the General Directorate of Public Finances via a report submitted at the latest on the 31 March of each year, regarding due diligence exercised during the past year in the context of the inspection mechanism referred to in section IV of this article and the results of this inspection.

VII. - The central securities depository, subject to Paragraph 3 of Section II of article L. 621-9 of the Monetary and Financial Code, should supply the General Directorate of Public Finances all data collected and documents prepared while exercising its responsibilities in dematerialized form. These documents and data are retained for the time period specified in article L. 102 B of the book of tax procedures.

Access to data and documents kept available for the General Directorate of Public Finances is authorised for category A and B civil servants belonging to this Directorate, who, on simple request, may consult and copy said information by any means and on any media.

VIII. - The central securities depository may not use the information it receives pursuant to section VIII of article 235 ter ZD of the General Tax Code for purposes other than the transmission of this raw or processed data to the General Directorate of Public Finances.

The central securities depository, subject to Paragraph 3 of Section II of article L. 621-9 of the Monetary and Financial Code, should take the necessary technical measures to ensure the security and integrity of the data collected, its protection against indexing by search engines and its confidentiality. The central depository should comply with the provisions of law no. 78-17 of 06 January 1978, as amended, relating to information technology, files and civil liberties by accomplishing the formalities necessary for the data processing it implements pursuant to section VII with the National Commission for Information Technology and Civil Liberties.
Art. 2. - The Minister for the Economy and Finance and the Deputy Minister for the Economy and Finance responsible for the budget, are responsible, in so far as it concerns each of them, for the implementation of this order, which will be published in the *Official Journal* of the French Republic.

Issued 6 August 2012

JEAN-MARC AYRAULT

By the Prime Minister:
*The Minister for the Economy and Finance,*
PIERRE MOSCOVICI

The Deputy Minister
to the Minister for the Economy and Finance responsible for the budget,
JEROME CAHUZAC
C. French Model

I. French Tax Code (English) ................................................................. 308
II. French Decree No. 2012-956 to the FTT (English) ......................... 325
III. Draft Translation of Q&A (English) .............................................. 331

Please note: The translation hereafter is not official and has been made available by our colleagues from “Landwell & Associés”. Please seek individual tax advice where necessary.

IV. English Form monthly French FTT return .................................... 336
# Glossary

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Meaning</th>
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<tbody>
<tr>
<td>FTT</td>
<td>Financial Transaction Tax on acquisition of shares and assimilated instruments</td>
</tr>
<tr>
<td>FTC</td>
<td>French Tax Code</td>
</tr>
<tr>
<td>ISP/Broker</td>
<td>Investment Service Provider</td>
</tr>
<tr>
<td>FMFC</td>
<td>French Monetary and Financial Code</td>
</tr>
<tr>
<td>DGFIP</td>
<td>&quot;Direction Générale des Finances Publiques&quot; – French Tax Authorities and contact administration for tax payers.</td>
</tr>
<tr>
<td>DGE</td>
<td>« Direction des grandes entreprises » - French Tax Authorities dealing specifically with large companies and groups.</td>
</tr>
<tr>
<td>VAT</td>
<td>Value Added Tax</td>
</tr>
<tr>
<td>Intraday</td>
<td>Transactions realized on the market realized during the same day</td>
</tr>
<tr>
<td>Intra-month</td>
<td>Transactions (benefitting from a deferred settlement service) realized on the market during the same month</td>
</tr>
<tr>
<td>Net buying position</td>
<td>Number of equity stocks for which ownership has been effectively transferred, per an accountable party acting on behalf of an identified client, at the end of the day or the month (for SRD transactions)</td>
</tr>
<tr>
<td>SRD</td>
<td>“Service de règlement différé” – Deferred settlement service</td>
</tr>
<tr>
<td>ISIN</td>
<td>International Securities Identification Number</td>
</tr>
<tr>
<td>OTC</td>
<td>Over the counter</td>
</tr>
<tr>
<td>N°</td>
<td>Questions / Replies : FTT</td>
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<tr>
<td>----</td>
<td>--------------------------</td>
</tr>
<tr>
<td>1</td>
<td>Where to address questions related to FTT?</td>
</tr>
<tr>
<td>A</td>
<td>Questions related to FTT could be addressed to the FTA at «<a href="mailto:dge@dgfhp.finances.gouv.fr">dge@dgfhp.finances.gouv.fr</a>». It is recommended titling the object of your email “TTF – Question relative à la taxe sur les transactions financiers” (i.e. “FTT – Question related to the financial transaction tax”) to speed up the replying process.</td>
</tr>
<tr>
<td>2</td>
<td>Who/what is the accountable party for FTT purposes?</td>
</tr>
<tr>
<td>A</td>
<td>In application of article 235 ter ZD §VI of the FTC: the ISP (broker) or the custodian. The ISP acquiring the securities for its own accounts is always accountable party. When several ISP are involved in the execution of the order received from a non ISP buyer to purchase a security, the accountable party is the ISP benefitting from a authorization to execute orders on the market and being the closest from the final buyer in the chain of execution of the order. See §40 to 43 of the Administrative guidelines 3 P-3-12 n°61 dated 3 August 2012.</td>
</tr>
<tr>
<td>3</td>
<td>How to compute the tax when transactions are made in a different currency than euro?</td>
</tr>
<tr>
<td>A</td>
<td>When the acquisitions are made on a foreign market, outside the euro zone, the taxable value is determined according to the closing rate of the relevant currency market on the day preceding the acquisition.</td>
</tr>
<tr>
<td>4</td>
<td>With respect to the net buying position, what would be the taxable basis when the quantities of shares bought are higher than the quantities sold? Is it the difference in amounts?</td>
</tr>
<tr>
<td>A</td>
<td>The net buying position is not computed on a difference of amounts but on the difference between the numbers of shares. When the net buying position (i.e. the difference between the taxable acquisitions and the sales of shares, the tax exempt acquisition and related sales being excluded) has been determined for a given security, the number of securities corresponding to the net buying position is multiplied by the average value of the non exempt securities, rounded to the nearest excess cent. The average value of the securities acquired is equal to the overall acquisitions cost of the security divided by the number of securities acquired. Example: acquisition of 550 securities A for €49 followed by a new/additional acquisition of 100 securities A for €50 and sale of 80 securities A for €50.50. It is assumed that none of the acquisitions benefit from an FTT exemption. At the end of the day, the net buying position is (550+100-80) = 570 securities. The average acquisitions cost of the securities A amount to: (550 x 49 + 100 x 50) / 650 = 31,950/650 = €49.1538 rounded to €49.16. The effective FTT due would amount to: 570 x 49.16 x 0.2% = 28,021.20 x 0.2% = €56.0424 rounded to €56.04. See n°52 of the Administrative guidelines 3 P-3-12 n°61 dated 3 August 2012.</td>
</tr>
<tr>
<td>5</td>
<td>With respect to the net buying position, what is the taxable basis when the quantities bought and sold are the same but the amounts are different?</td>
</tr>
<tr>
<td>A</td>
<td>Should the quantities bought and sold are identical for a given security, for a given ordering party over the same market day or the same market month (for SRD transactions), then there is no net buying position but a nil net position. This implies that no tax is due, even if the purchase prices and sale prices of the securities on the acquisitions and sales differ.</td>
</tr>
<tr>
<td>6</td>
<td>The causal event for FTT is the change of ownership. Consequently, are the transfers of securities between spouses taxable? Are the transfers among parents and children (donation) taxable as well? Are the transfers between collaterals taxable?</td>
</tr>
</tbody>
</table>

1 Landwell comment : in our view, this sentence should me mitigated in certain cases, e.g. management company acquiring shares.
2 Landwell comment : since 12 September 2012, the old administrative doctrine has been replaced/cancelled by new commentaries. It is thus not possible to rely on the provisions of the doctrine mentioned in this Q&A. However, the new comments published by the FTA do not differ from the one published in the guidelines 3 P-3-12 on this point.
3 See comment on footnote 2 above
4 i.e. family members
The taxable event for FTT consists in the acquisition of the security which is to be understood as the date of transfer of ownership of the security, i.e. the date when the security is registered in the securities account of the buyer, whatever be the identity of the owner of the securities account and its relationship with the seller. On the other hand, the acquisitions or allocation of securities without consideration (e.g. donations) fall out of the scope of the tax considering that only onerous acquisitions ("acquisitions à titre onéreux" – i.e. acquisition for consideration) are aimed.

**Q7** Are the accountable parties paying the tax through the central depository, discharged from their responsibility when the central depository debit their accounts or are they still responsible even when the central depository would not effectively pay the tax to the FTA?

**A** The accountable paying the tax through Euroclear France are responsible:
- for the dates of filing and for the amounts indicated on the FTT returns transmitted to Euroclear France, and
- for the dates and amounts of payments made to Euroclear France.
Euroclear France is responsible for the payment's date and amount of the tax previously collected from the accountable parties.

**Q8** The tax is due on the net buying positions per ISIN code, per client and per day. Is it correct to consider that the tax is due on the net buying positions per client for orders executed by the same ISP? Should the client have several ISP, is the amount of the tax due computed on the net buying position per ISP?

**A** Considering that the accountable party for the FTT is the ISP, one should effectively compute the amount of the tax due on the net buying position per ISP.

**Q9** When the acquisitions are not made on a regulated market but an OTC one, does the client have the obligation to transfer the elements necessary to the taxation to the central depository?

**A** When acquisitions of securities are made on an OTC market, the accountable party for FTT is either the acquiring ISP or, in absence of ISP, the custodian. The necessary elements for taxation and the amount of the tax due must be transmitted to the FTA via the central depository when the delivery of the securities is recorded in its books, in those of its members or in those of its members' clients. Otherwise, the tax returns and payments are directly transmitted to the French tax Administration (save for the case of option for a transmission made via a member of the central depository).

**Q10** Should an ISP realize transactions for its own account, it will have to declare its net buying position to the central depository and to make the corresponding payment. Do the accountable parties have to charge FTT among themselves?

**A** The ISP acquiring the securities for its own account is the accountable party for FTT purposes. This is still the case even if that acquisition is executed through another ISP. The later not being accountable party, has not to charge FTT to the acquiring ISP.

**Q11** The list of companies for which securities are subject to FTT has been published by a Ministry bill. What would happen should a company not be mentioned on the list but fulfils the conditions triggering the FTT upon acquisitions of its securities? What would be the risk for the ISP in case none of the transactions on the said securities has neither been declared nor effectively taxed? Do the ISP remain the accountable party and, should the answer be positive, is it possible for the ISP to claim the tax to its clients a posteriori?

**A** The publication of the Ministry bill facilitates the procedures for the accountable parties and provides more comfort, notably for those established in a foreign jurisdiction. This being said, the conditions of application of the tax are provided by the law and not by the Ministry bill. The tax will thus be due when a company falls within the scope of the tax in application of the criteria encompassed within the law.

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5 No distinction is made by the FTA between the concept of beneficial ownership and legal ownership. Though we believe the legal ownership is aimed by the law, it could not be excluded that the beneficial ownership could be considered in specific cases.

6 However see our comment above on footnote 1.
Does the FTT return of the tax payer have to follow the flow of payments' instructions or is it possible to declare everything directly to the central depositary, including the transactions settled on foreign markets?

The obligations of the taxpayers, in terms of declarations and payment, depend on the location of the central securities depository (CSD) which manages the account of the issuer of the security concerned.

When the CSD is located abroad, the accountable party must file its FTT return together with the payment of the tax directly with the FTA (DGE).

When the CSD is established in France, four situations must be distinguished:

1) The delivery of the security is implemented in the books of the central depository:
   - The liable party to tax is required to transmit the information mentioned in article 58 Q of Appendix II of the FTC to the CSD, and
   - to appoint the member of the CSD in charge of paying the tax should the liable party is not paying it itself.

2) The delivery of the security is implemented in the books of a member of the CSD:
   - The CSD’s member must send to the CSD the information referred to in article 58 Q of Appendix II of the FTC and,
   - to appoint the member of the CSD in charge of paying the tax on its behalf if it does not make the payment itself.

3) The delivery of the security is entered in the books of one of the clients of a member of the CSD:
   - The client which is liable for the tax is required to provide the information referred to in article 58 Q of Appendix II of the FTC, and
   - to appoint the member of the CSD in charge for paying the tax on its behalf if the client does not make the payment itself.

4) The delivery of the security is realized in other conditions than those described above in §1 to §3.
   - In this situation, the taxpayer declares and pays the tax directly to the French tax authorities (department of large companies = DGE). However, the taxpayer can opt for a declaration and payment made through a member of the CSD.

For cases 1 to 3 and case 4 (in case of option), the information as well as the corresponding payment must be provided to the CSD before the 5th of the month following the settlement/delivery date of securities.

When the taxpayer declares and pays the tax directly (case n°4 without option), both declaration and payment must be done before the 25th of the month following the purchases of the taxable securities.
C. French Model

I. French Tax Code (English) ................................................................. 308
II. French Decree No. 2012-956 to the FTT (English) ............................... 325
III. Draft Translation of Q&A (English) ..................................................... 331
IV. **English Form monthly French FTT return** .................................... 336

Please note: The yearly return is similar to the monthly return but no English translation has yet been made available. The computation of the taxable amounts follows from the reporting system operated by Euroclear.
TAX ON ACQUISITIONS OF EQUITY SECURITIES
AND SIMILAR INSTRUMENTS
(Article 235 ter ZD of the French Tax Code)

A single copy of this return must be filed with the Direction des Grandes Entreprises 8 rue Courtois, 93505 PANTIN CEDEX no later than the 24th day of the month following the acquisitions referred to in Article 235 ter ZD I of the French Tax Code. You may also send a scanned copy of this signed document at the following e-mail address: dge@dgfip.finances.gouv.fr (including in the mail subject “FTT” followed by the name of the institution).

Return for the month of:

IDENTIFICATION

NAME AND ADDRESS OF THE INSTITUTION

NAME OF THE CONTACT PERSON AND MAILING ADDRESS
(if different from the contact person’s address)

INDICATE YOUR TELEPHONE NUMBER
(which may the number of a correspondent)

FILE NO.: SIRET NO.

TOTAL AMOUNT PAYABLE €

METHOD OF PAYMENT

Wire transfer to the Treasury’s account at the Banque de France:
IBAN: FR6530001009344929T05515195 BIC: BDFEFRPPCCT.
Please indicate in the payment reference number area (9 digits) “FTTMMYYYY” where MM stands for the month and YYYY stands for the year of the considered tax period (e.g.: FTT032012 stands for the FTT due for March 2012).

DATE AND SIGNATURE

Date: Signature:

FOR OFFICIAL USE ONLY

Date of receipt

Tax due

Penalties

No.

Date

PAYMENT RECEIVED

Tax due

Penalties

No.

Date

PAYMENT OUTSTANDING

Taxpayer’s Charter: relations between the tax authorities and the taxpayer are based on principles of simplicity, respect and fairness. It is available at www.impots.gouv.fr and from your tax service.

The provisions of Articles 39 and 40 of Act 78-17 of 6 January 1978 on data processing, computer records and privacy, as modified by Act 2004-801 of 6 August 2004, protect the rights of individuals in relation to the processing of their personal data.
D. Contacts

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**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:

<table>
<thead>
<tr>
<th>Contact</th>
<th>Position</th>
<th>Contact Information</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>David Newton</strong></td>
<td>Global FS Tax Leader</td>
<td>T: +44 (0)207 804 2039</td>
</tr>
<tr>
<td></td>
<td></td>
<td><a href="mailto:david.newton@uk.pwc.com">david.newton@uk.pwc.com</a></td>
</tr>
<tr>
<td><strong>Hans-Ulrich Lauermann</strong></td>
<td>Global Banking and Capital Markets Tax Leader</td>
<td>T: +49 69 9585 6174</td>
</tr>
<tr>
<td></td>
<td></td>
<td><a href="mailto:hansulrich.lauermann@de.pwc.com">hansulrich.lauermann@de.pwc.com</a></td>
</tr>
<tr>
<td><strong>Bob van der Made</strong></td>
<td>EU Public Affairs Brussels</td>
<td>T: +31 (0) 88 792 3696</td>
</tr>
<tr>
<td></td>
<td></td>
<td><a href="mailto:bob.van.der.made@nl.pwc.com">bob.van.der.made@nl.pwc.com</a></td>
</tr>
<tr>
<td><strong>Peter Barrow</strong></td>
<td>Global Insurance Tax Leader</td>
<td>T: +44 (0) 207 904 2062</td>
</tr>
<tr>
<td></td>
<td></td>
<td><a href="mailto:peter.barrow@uk.pwc.com">peter.barrow@uk.pwc.com</a></td>
</tr>
<tr>
<td><strong>William Taggart</strong></td>
<td>Global Asset Management Tax Leader</td>
<td>T: +1 646 471 2780</td>
</tr>
<tr>
<td></td>
<td></td>
<td><a href="mailto:william.taggart@us.pwc.com">william.taggart@us.pwc.com</a></td>
</tr>
<tr>
<td><strong>Frans Oomen</strong></td>
<td>PwC Netherlands</td>
<td>T: +31 (0) 88 792 5156</td>
</tr>
<tr>
<td></td>
<td></td>
<td><a href="mailto:frans.oomen@nl.pwc.com">frans.oomen@nl.pwc.com</a></td>
</tr>
<tr>
<td><strong>Matthew Barling</strong></td>
<td>PwC UK</td>
<td>T: +44 (0) 207 212 5544</td>
</tr>
<tr>
<td></td>
<td></td>
<td><a href="mailto:matthew.barling@uk.pwc.com">matthew.barling@uk.pwc.com</a></td>
</tr>
<tr>
<td><strong>Joseph Foy</strong></td>
<td>PwC US</td>
<td>T: +1 (646) 471 8628</td>
</tr>
<tr>
<td></td>
<td></td>
<td><a href="mailto:joseph.foy@us.pwc.com">joseph.foy@us.pwc.com</a></td>
</tr>
<tr>
<td><strong>Peter Yu</strong></td>
<td>PwC China/HK</td>
<td>T: +852 2289 3122</td>
</tr>
<tr>
<td></td>
<td></td>
<td><a href="mailto:peter.sh.yu@hk.pwc.com">peter.sh.yu@hk.pwc.com</a></td>
</tr>
<tr>
<td><strong>Simon Leach</strong></td>
<td>PwC UK</td>
<td>T: +44 (0)20 7213 4381</td>
</tr>
<tr>
<td></td>
<td></td>
<td><a href="mailto:simon.j.leach@uk.pwc.com">simon.j.leach@uk.pwc.com</a></td>
</tr>
<tr>
<td><strong>Peter Churchill</strong></td>
<td>PwC UK</td>
<td>T: +44 (0)20 7804 0865</td>
</tr>
<tr>
<td></td>
<td></td>
<td><a href="mailto:peter.j.churchill@uk.pwc.com">peter.j.churchill@uk.pwc.com</a></td>
</tr>
<tr>
<td><strong>Maud Poncelet</strong></td>
<td>PwC France</td>
<td>T: +33 (1) 56 58 18 35</td>
</tr>
<tr>
<td></td>
<td></td>
<td><a href="mailto:maud.poncelet@fr.landwellglobal.com">maud.poncelet@fr.landwellglobal.com</a></td>
</tr>
<tr>
<td><strong>Christian Altvater</strong></td>
<td>PwC Germany</td>
<td>T: +49 (0)69 9585 6113</td>
</tr>
<tr>
<td></td>
<td></td>
<td><a href="mailto:christian.altvater@de.pwc.com">christian.altvater@de.pwc.com</a></td>
</tr>
<tr>
<td><strong>Oliver von Schweinitz</strong></td>
<td>PwC Germany</td>
<td>T: +49 (0)40 6378 2935</td>
</tr>
<tr>
<td></td>
<td></td>
<td><a href="mailto:oliver.von.schweinitz@de.pwc.com">oliver.von.schweinitz@de.pwc.com</a></td>
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