

Italian FTT: Latest developments

Global FS Tax Newsflash

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The Italian Financial Transaction Tax (“FTT”) has been in force since 1 March 2013 for the securities tax and the high frequency trading (“HFT”) tax on securities, with the derivatives tax and the HFT tax on derivatives coming into force on 1 July 2013. As with the other FTT regimes implemented recently (in particular the French FTT), many practical issues and questions of interpretation have been raised by market participants and industry professionals since the Italian FTT came into force. In recent weeks clarity has been reached on several points, whilst a number of questions remain open and under discussion. We have set out below an update on some of the key recent developments.

The black list

For the purposes of identifying the party responsible for payment of the Italian FTT, a counterparty located in a “black list” country is treated as the final investor or purchaser. This means that an intermediary transacting with such a party in a chain of intermediaries is responsible for payment of the Italian FTT.

This provision led to a number of practical issues, including the following:

- Determining the correct treatment of transactions between counterparties where both of them are located in a black list country. No market consensus appears to have been reached on this point yet.
- The potential for netting of transactions by a black list broker facing off to numerous clients, which could potentially lead to netting on a broker basis rather than by client account. This might lead to a lower tax liability for a black list broker which was clearly not the intention of this provision.

More fundamentally, a number of market participants have been concerned that the original “white list” of countries issued in March 2013 included only the EU countries, together with Norway and Iceland.

However, in a recent amendment to the Italian FTT decree, signed on 18 March 2013, the wording of Article 19.4 was amended. The effect of this change is that a state could be on the white list if either exchange of information or administrative assistance is in place between Italy and the other state (the provision had previously required both conditions to be met).

On 29 March 2013, the Italian Tax Authorities updated the white list. Australia, India and the US are now included on the white list for the purposes of the Italian FTT.

PwC observation: The addition of these three countries (and the US in particular) represents a welcome extension of the white list. It also removes uncertainty for intermediaries (both white listed and black listed) dealing with other intermediaries in these three countries. That said some significant states (such as Hong Kong) still do not appear on the list.

Application procedure for market maker relief

For the purposes of the market maker relief, parties in countries not covered by the short selling regulations (Regulation No 236/2012) can make an application to the Italian regulatory body, CONSOB, to obtain the relief, provided such parties meet the requirements and conditions set

out in the short selling regulations and the corresponding ESMA guidelines.

The CONSOB procedure was published recently and can be found at the link below:

<http://www.consob.it/mainen/documenti/english/resolutions/res18494.htm>

PwC observation: The CONSOB procedure was one of the key points of uncertainty across industry participants, so the publication of the procedure has provided welcome clarity.

Hedging OTC derivative positions

When the Italian FTT was first introduced there was some doubt as to whether the market maker relief would be available to exempt from Italian FTT the purchase of Italian cash equities to hedge over the counter equity swaps.

The position has now been clarified and the Italian Tax Authorities have confirmed that the market maker exemption is not available to exempt such purchases. In summary, this follows from the EU short selling regulations, as interpreted by the ESMA guidelines, and the fact that an OTC instrument is not admitted to trading on a regulated market.

PwC observation: This is one example that demonstrates how the market maker relief under the Italian FTT is more restrictive than the corresponding exemption under other regimes (such as the French FTT). Institutions seeking to rely on the market maker relief cannot, therefore, simply assume that transactions benefitting from the relief under other FTT regimes will be exempt from the Italian FTT.

Reduced tax rate for negotiated transactions

The Italian FTT treats “negotiated transactions” as being effected on exchange and therefore as benefitting from the reduced rate of tax. However, the Decree specifies that bilateral transactions are to be treated as effected off exchange,

irrespective of post trade reporting to an exchange.

A key issue being considered by market participants is determining which transactions will qualify as negotiated transactions and benefit from the reduced rate, and this is an issue on which further clarity has been sought from the Italian Tax Authorities by the industry. A number of institutions are seeking to rely on the negotiated transactions facilities on certain exchanges to apply a reduced rate of tax to transactions.

PwC observation: For those institutions seeking to rely on the negotiated transactions facilities on exchanges to obtain the reduced rate, it will be important to understand the precise requirements of the relevant facilities, and to ensure that these are satisfied for transactions on which the reduced rate is being applied.

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