

May 17, 2013

Financial Transaction Tax in Italy



Article 1, paragraph 491 et seq., of Law no. 228 of December 24, 2012, has introduced a new tax (the so-called “Financial Transaction Tax”) concerning financial transactions (hereinafter, FTT). The FTT is not deductible for Income Tax (“IRPEF/IRES”) and IRAP purposes.

I. Transactions covered

According to the new provisions, the following cases are subject to the new tax:

A. Transfer of ownership (or conversion of convertible bonds into existing shares) of:

- shares issued by companies - based on registered offices — resident in Italy;
- participating financial instruments (see Article 2346 of the Italian Civil Code) issued by companies — based on registered offices — in Italy; and
- securities representing the above financial instruments regardless of residence of the issuer.

B. Transaction involving equity derivatives such as:

- transactions in derivatives, whose underlying assets are predominantly represented by one or more of the instruments indicated under point A above;
- transactions in derivatives, whose value predominantly depends on one or more of the instruments indicated under point A above; and
- transactions in other securities, which predominantly involve the purchase or sale of the instruments indicated under point A above, or a cash settlement based on the instruments indicated under point A above, including warrants, covered warrants and certificates.

C. Transactions involving high-frequency trading of the above instruments

High-frequency trading means the activity generated by a computer algorithm which automatically triggers decisions relating to the issue, amendment and cancellation of orders within a time frame of no longer than half a second.

In relation to points A and B above, the FTT is due irrespective of the place of execution of the transaction and the residence of the counterparties.

II. Taxable persons

With reference to point A, the FTT is due by the purchaser (the person on whose behalf the transfer is carried out).

With reference to point B, the FTT is due by each of the parties involved into the transaction.

With reference to point C, the FTT is due by each person on whose behalf the relevant orders are fulfilled.

Some exemptions (e.g., transfer of ownership having as counterpart the European Union or ECB) and exclusions (e.g., transactions and operations between controlling/controlled companies) are provided by law.

Please note that FTT payment is made by banks, trust companies and investment banks as well as by other intermediaries.

III. Taxable base and rates

With regards to transactions described under point A above, the taxable base is the transaction value.

The 0.20 per cent standard rate is applied to a transaction (a reduction to 0.10 per cent is provided for transactions performed through regulated markets and multilateral trading facilities).

For 2013, the standard rate is equal to 0.22 per cent (a reduction to 0.12 per cent is provided for transactions performed through regulated markets and multilateral trading facilities).

With regards to transactions described under point B above, the taxable base is the notional value. A fixed rate is applied to a transaction which varies in accordance to the type and value of the derivatives. The fixed rate is reduced to 1/5th should the transactions be made through a regulated market or multilateral facilities.

With regards to transactions described under point C above, the taxable base is the counter-value of the amended and cancelled orders that on a trading day exceed 60 per cent of the value of orders issued and amended in relation to each financial instrument.

A rate of 0.02 per cent is applied to such transactions.

IV. Payments

The FTT payment concerning transactions listed under point A must be carried out within the 16th day of the month following that of transfer of ownership.

The FTT payment concerning transactions listed under point B must be carried out within the 16th day of the month following that of the execution of the transaction.

The FTT payment concerning transactions listed under point C must be carried out within the 16th day of the month following that of the issue, modification or cancellation of orders.

V. Tax assessment, penalties, collection and litigation

The assessment, penalties, collection and litigation are governed by the Italian VAT wherever compatible.

VI. Date of entry into force

The FTT entered into force as of March 1, 2013 in relation to transactions as described under points A and C (though solely for high-frequency share trading) above, whilst it shall come into force as of July 1, 2013 with regards to transactions as described under points B and C (for the remaining transactions).

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With regards to transactions described under point B above, the taxable base is the notional value. A fixed rate is applied to a transaction which varies in accordance to the type and value of the derivatives. The fixed rate is reduced to 1/5th should the transactions be made through a regulated market or multilateral facilities.

With regards to transactions described under point C above, the taxable base is the counter-value of the amended and cancelled orders that on a trading day exceed 60 per cent of the value of orders issued and amended in relation to each financial instrument.

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