

Italian Financial Act for 2013 (Law 228/2012) introduces a financial transaction tax also known as “Tobin Tax”

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The financial transaction tax (“FTT”) applies to (i) transfers of equity (*azioni*) and equity-like instruments executed starting as of 1 March 2013 and (ii) derivative transactions executed starting as of 1 July 2013.

Details and technical instructions for applying the FTT to be provided through the issuance of an *ad hoc* Ministerial Decree within 30 days from the entering into force of the Financial Act (1 January 2013).

The Italian FTT provides for different tax rates for transactions executed on regulated stock exchanges or multilateral trading facilities, from one side, and for transactions executed OTC (over the counter), on the other side.

A number of exclusions applies.

The FTT applies to:

1. Share transactions and equity-like instruments transactions;
2. Equity and equity-like derivatives and more generally derivatives with equity underlying;
3. High-frequency trading of securities under 1 and 2 above.

1. Share Transactions

1.1 Taxable Transactions

FTT applies to:

- (a) transfers of shares and equity-like instruments issued by Italian resident companies;
- (b) transfers of securities representing the instruments indicated under a) above (e.g. ADRs and GDRs), regardless the residence of the issuer;
- (c) transfers of shares through convertible bonds. Based on the current wording of the law and awaiting the official interpretation of the Italian tax authorities, FTT should be due only upon conversion of the relevant convertible bond into treasury shares; no FTT should be due where the conversion of the bond causes an increase of capital of the issuer (*i.e.*, an issuance of new shares).

With respect to the equity-like instruments mentioned in (a) above, please note that it is not clear whether all the equity-like instruments issued pursuant to Article 2346(6) of the Italian Civil Code are subject to FTT or only those securities (whether issued pursuant to Article 2346(6) of the Italian Civil Code) that are treated as “shares” for Italian income tax purposes.

1.2 Non-Taxable Transactions

FTT does not apply to:

- (a) conversion of a bond into either newly issued shares or newly issued equity-like instruments;
- (b) issuance and redemption of shares and equity-like instruments;
- (c) shares and equity-like instruments transfers upon death and donations;

- (d) securities transactions with financing purposes (e.g. stock lending, repurchases, reverse repurchase transactions, buy/sell back transactions as per Article 2(10) EC Regulation 1287/2006);
- (e) transfers of shares and equity-like instruments (i) listed in regulated markets or in multilateral trading facilities¹ and (ii) issued by companies with a market capitalization (based on the net market value as at November of the previous fiscal year) lower than Euro 500 million;
- (f) bonds and fund units.

1.3 Territoriality

Whether the FTT applies or not depends exclusively on the residence of the issuer; the place where the transaction is executed as well as the residence of the relevant parties are not relevant.

1.4 Rates

Ordinary FTT rate is 0.20% of the transaction value. The rate is reduced to 0.10% for transactions executed on regulated markets and on multilateral trading facilities².

Only for 2013, the mentioned 0.20% rate is 0.22% and the rate for transactions executed on regulated markets and on multilateral trading facilities is 0.12%.

1.5 Taxable Base

The taxable amount (value of the transactions) should equal the daily aggregate amount of the relevant purchases, net of any disposals, carried out by the same entity with respect to the same financial instrument; intraday transactions should not be included in the FTT taxable base.

1.6 Who Pays the FTT

Pursuant to the relevant provision, FTT shall be borne by the effective purchaser of the relevant shares/equity instruments.

Interposed persons such as brokers are not affected by FTT.

The actual payment of the due amount as well as the relevant formalities for the FTT shall be made by the financial intermediary where involved in the transaction. Absent the financial intermediary, payments and formalities should be made by the purchaser.

1.7 Payment of the FTT

The amount of FTT due shall be paid not later than the 16th of the month following the one in which the transaction was executed.

As an exception to the above indicated rule, for those transactions to occur up to the third month after the issuance of the mentioned Ministerial Decree, the payment of the FTT shall be made as at the 16th day of the sixth month following the date of publication in the official Gazette of the Ministerial Decree (not earlier).

1.8 Exemptions

FTT does not apply, *inter alia*, to the following transactions:

- (a) transactions falling within the scope of the "market making activities" as defined under Article 2(1)(k) of the EU Regulation No. 236/2012 dated 14 March 2012;
- (b) transactions executed by financial intermediaries acting in a market making capacity on behalf of an issuer with the aim of providing liquidity within the limitation as out in EC Directive 2003/6/CE dated 28 January 2003 and EC Directive 2004/72/CE dated 29 April 2004;
- (c) transactions executed by entities managing pension schemes (e.g. pension funds);

¹ As both defined in Article 4(1)(14) and (15) of the Directive 2004/39/EC dated 21 April 2004.

² As both defined in Article 4(1)(14) and (15) of the Directive 2004/39/EC dated 21 April 2004.

- (d) transactions executed by and between companies where one of them can exercise the control as defined under Article 2359(1) numbers 1) and 2) and Article 2359(2) of the Italian Civil Code³ or transactions qualifying as corporate reorganization under the conditions to be specified by the forthcoming Ministerial Decree;
- (e) transactions in which one of the counterparts is the European Union, the European Central Bank, a Central Bank of an EU member State, Central Banks of other States and entities managing the relevant state official reserves, as well as international entities or organizations established under international agreements executed in Italy.

1.9 Entry into force

FTT applies to taxable transactions executed as from 1 March 2013.

2. Derivatives transactions

2.1 Taxable Transactions

FTT applies to:

- (a) transactions on derivatives whose underlying asset is mainly represented by one or more shares and equity-like instruments (“Shares”);
- (b) transactions on derivatives whose value mainly depends on one or more Shares;
- (c) transactions on any other security, allowing to purchase or to sale Shares or transactions that allow for cash regulations based on the Shares (e.g. equity-settled derivatives, including warrants, covered warrants and certificates).

Securities and contracts mentioned under (a) through (c) above are referred to as “Derivatives”.

2.2 Territoriality

Same territoriality principle as per the shares and equity-like instruments.

2.3 Taxable Base and amounts due

Amounts of FTT due in connection with Derivatives vary depending on the notional value of the transaction as shown in the table below:

Type of Derivative Contract	Notional Value of the transaction (amount in Euro/000)							
	0 - 2.5	2.5 - 5	5 - 10	10 - 50	50 - 100	100 - 500	500 - 1,000	Above 1,000
Futures, certificates, covered warrants and options on share-related yields and indexes	0.01875	0.0375	0.075	0.375	0.75	3.75	7.5	15
Futures, warrants, certificates, covered warrants and options on shares	0.125	0.25	0.5	2.5	5	25	50	100
Swaps, repos and financial derivatives on share-related yields and indexes (and any combination of the above)	0.25	0.5	1	5	10	50	100	200

³ Pursuant to Article 2359(1) of the Italian Civil Code the following are considered controlled companies:

1) companies in which another company has the majority of the votes exercisable at ordinary shareholders' meetings (so called internal *de iure* control);

2) Companies in which another company has sufficient votes to exercise a dominant influence (“*influenza dominante*”) at ordinary shareholders' meetings (so called internal *de facto* control).

Pursuant to Article 2359(2) of the Italian Civil Code, for the purposes of the application of numbers 1) and 2) of the first paragraph, the voting rights held by controlled companies, fiduciary companies and nominee (“*interposta persona*”) must be included in the computation of the votes held by the controlling company.

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Please note that the applicable rate is reduced by 20% with respect to transactions executed in regulated markets and in multilateral exchange facilities.

Special criteria may be determined by the forthcoming Ministerial Decree in connection with above mentioned types of derivatives.

In case of physically settled derivatives (as opposed to the cash settled ones), the relevant transaction may trigger the payment of FTT not only in connection to the derivative itself but also in connection with the transfer of the underlying shares or equity-like instruments.

2.4 Who Pays the FTT

FTT is borne by each of the parties involved in the transaction. Those acting as financial intermediaries would be responsible for the payment of the FTT.

If no financial intermediary is involved, the parties to the relevant transaction shall pay directly the FTT.

2.5 Payment and Exemptions

Same criteria and modalities as per FTT applicable to shares and equity-like instruments (see above).

2.6 Entry into Force

FTT applies to taxable transactions to occur as from 1 July 2013.

3. High-frequency trading

High-frequency trading transactions occurred in the Italian financial market relating to the same types of securities mentioned above are subject to FTT ("HFT FTT") at the rate of 0.02%.

HFT FTT applies to the counter-value of orders automatically generated (including revocations or changes to original orders) by a computerized mathematical algorithm within a time frame that will be established by the forthcoming Ministerial Decree.

Further aspects of HFT FTT shall have to be defined by the forthcoming Ministerial Decree.