

## Italy Introduces a Financial Transaction Tax as of 2013

On December 21, 2012, the Italian Parliament approved the budget law for 2013 (the "Budget Law") contemplating, among other things, the introduction of a new tax applicable to certain financial transactions (the "Financial Transaction Tax" or "FTT").

While the Budget Law includes an articulate regime of the FTT, some of its features will be set with a Ministerial Decree to be issued by the Ministry of Economy and Finance (the "Ministerial Decree") within 30 days from the entry in force of the Budget Law (which is subject to its publication in the Official Gazette, expected to occur in the coming days).

### Which Transactions Will Be Hit by the FTT?

The FTT will apply to transactions involving shares, equity-like financial instruments and derivatives, as well as on high-frequency trades, as follows:

#### *1. Shares and Equity-Like Financial Instruments*

##### *o Which Trades on Which Securities?*

The FTT will apply to all trades entailing the transfer of title of (i) shares or equity-like financial instruments issued by companies resident in Italy; and (ii) securities representing the shares and financial instruments under (i), regardless of the residence of the issuer (such shares, financial instruments and securities, altogether the "Securities"). The FTT will also apply to any transfer of shares resulting from the conversion of convertible bonds.

The rules specifically state that the FTT will apply to any such trades even if executed abroad and if all parties involved are not resident in Italy.

##### *o At Which Tax Rate and on Which Tax Base?*

For 2013 only (on the specific date of effectiveness in 2013, please see below under "When Will the Financial Transaction Tax Become Effective?"), the FTT will apply at a 0.22% rate for over-the-counter ("OTC") transactions, reduced to 0.12% for trades executed on a regulated market or multilateral trading facility in a EU Member State, or a State that is a member of the European Economic Area (namely, Iceland, Liechtenstein and Norway), included in the list of States and

territories allowing an adequate exchange of information with the Italian tax authorities (a “Regulated Market”).

As of 2014, such rates will be reduced to 0.2% and 0.1%, respectively.

With respect to these types of transactions, the FTT will be levied on a base equal to (i) the value resulting from the net balance of daily trades on the same Security; or (ii) the consideration paid for each trade.

## 2. *Derivatives*

### ○ *Which Derivatives?*

The FTT will apply to derivatives, such as swaps, futures, options, cash notional forward agreements and credit default swaps, having as a main underlying, or the value of which is mainly linked to, a Security (including warrants, covered warrants and certificates), regardless of whether they are physically or cash-settled (the “Derivatives”).

As it is the case with the Securities, the FTT will apply to any Derivatives even if executed abroad or if all parties involved are not resident in Italy.

### ○ *At Which Tax Rate and on Which Tax Base?*

The FTT on OTC Derivatives will apply at fixed rates, which vary depending on the type of Derivative concluded and its notional value, up to Euro 200 for transactions exceeding Euro 1 million. The FTT due on Derivatives executed on Regulated Markets will be equal to 20% of the ordinary fixed rate and its base may be set with reference to standard agreements, to be indicated in the Ministerial Decree.

Physically-settled Derivatives will be subject to the FTT at the rates indicated under 1., above, upon the transfer of the underlying Securities occurring. Conceivably, as the technical explanations seem to maintain, the FTT paid upon execution of the Derivative shall be deducted from the FTT due upon physical settlement.

## 3. *High-Frequency Trades*

### ○ *Which Trades?*

The FTT will also apply on high-frequency trading occurring on the Italian financial markets and relating to Securities and Derivatives, as generated by a computer algorithm that automatically determines the decisions related to the

relevant orders or metrics, their amendment or cancellation (the “High-Frequency Trading”), in a time frame shorter than the one to be set by the Ministerial Decree, which, in any event, cannot be higher than half a second.

o *At Which Tax Rate?*

The FTT will apply at a 0.02% rate on any portion of the orders that are modified or cancelled on a daily basis, as determined by the Ministerial Decree, which, in any event, shall not be lower than 60% of the orders inserted.

Who is Liable for the Financial Transaction Tax?

The FTT cost on Securities will be borne by the purchaser, while the FTT on Derivatives will be borne by both parties of the relevant transactions. The FTT on High-Frequency Trading will be borne by the person on whose behalf the relevant orders are executed.

The FTT will be due by the financial intermediary intervening in the trading activities, namely the intermediary that receives an order from a client, including non-resident financial intermediaries (enabled to appoint a fiscal representative). Financial intermediaries will be entitled to defer the execution of the trades until their clients provide the funds necessary to pay the FTT. In all other cases, FTT is paid directly by the relevant parties.

Exemptions

The FTT will not apply to:

- Transactions involving the European Union, the European Central Bank, central banks of EU Member States as well as other central banks and authorities managing official State reserves, and other international organizations set up pursuant to international agreements executed by Italy;
- Market making activities (as defined under Article 2(1)(k) of the EU Regulation No. 236/2012 of March 14, 2012);
- Those entities acting on behalf of the issuer to support the liquidity of its shares, in accordance with EU Directive 2003/6/CE of the European Parliament and Council, and of Directive 2004/72/CE of the European Commission;
- Italian pension funds;
- Transactions among certain related parties, or in connection with reorganization operations meeting the requirements to be determined with the Ministerial Decree;
- Trades in ethical finance products and services as defined pursuant to applicable regulatory rules;
- The following trades relating to Securities:

- trades of shares that are (i) negotiated on Regulated Markets, and (ii) issued by companies the average market capitalization of which in the month of November of the year preceding the year of the relevant trade was lower than Euro 500 millions;
- transfers by reason of death or gift;
- the issuance or cancellation of shares and equity-like financial instruments;
- securities financing transactions, including 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; and
- the conversion of securities resulting in the issuance of new shares

When Will the Financial Transaction Tax Become Effective?

The FTT will apply on transactions executed (i) as of March 1, 2013, with respect to trades on Securities and High-Frequency Trading on Securities, and (ii) as of July 1, 2013, with respect to Derivatives and High-Frequency Trading on Derivatives.

The rules contemplate a grace period for the payment of FTT due on trades that will be finalized within three months from the publication of the Ministerial Decree: the tax will become payable after six and a half months from such publication.

\*\*\*\*\*

Should you have any questions with respect to the new Italian FTT, please do not hesitate to contact Vania Petrella (tel.: + 39 06 695 22 204; e-mail: vpetrella@cgsh.com) or Gianluca Russo (tel.: + 39 06 695 22 680; e-mail: grusso@cgsh.com) in the Rome office or any of your regular contacts in the Tax, Capital Markets or other practice groups at the firm.

CLEARY GOTTLIEB STEEN & HAMILTON LLP

NEW YORK

One Liberty Plaza  
New York, NY 10006-1470  
T: +1 212 225 2000  
F: +1 212 225 3999

WASHINGTON

2000 Pennsylvania Avenue, NW  
Washington, DC 20006-1801  
T: +1 202 974 1500  
F: +1 202 974 1999

PARIS

12, rue de Tilsitt  
75008 Paris, France  
T: +33 1 40 74 68 00  
F: +33 1 40 74 68 88

BRUSSELS

Rue de la Loi 57  
1040 Brussels, Belgium  
T: +32 2 287 2000  
F: +32 2 231 1661

LONDON

City Place House  
55 Basinghall Street  
London EC2V 5EH, England  
T: +44 20 7614 2200  
F: +44 20 7600 1698

MOSCOW

Cleary Gottlieb Steen & Hamilton LLC  
Paveletskaya Square 2/3  
Moscow, Russia 115054  
T: +7 495 660 8500  
F: +7 495 660 8505

FRANKFURT

Main Tower  
Neue Mainzer Strasse 52  
60311 Frankfurt am Main, Germany  
T: +49 69 97103 0  
F: +49 69 97103 199

COLOGNE

Theodor-Heuss-Ring 9  
50688 Cologne, Germany  
T: +49 221 80040 0  
F: +49 221 80040 199

ROME

Piazza di Spagna 15  
00187 Rome, Italy  
T: +39 06 69 52 21  
F: +39 06 69 20 06 65

MILAN

Via San Paolo 7  
20121 Milan, Italy  
T: +39 02 72 60 81  
F: +39 02 86 98 44 40

HONG KONG

Cleary Gottlieb Steen & Hamilton (Hong Kong)  
Bank of China Tower, 39<sup>th</sup> Floor  
One Garden Road  
Hong Kong  
T: +852 2521 4122  
F: +852 2845 9026

BEIJING

Twin Towers – West (23<sup>rd</sup> Floor)  
12 B Jianguomen Wai Da Jie  
Chaoyang District  
Beijing 100022, China  
T: +86 10 5920 1000  
F: +86 10 5879 3902

BUENOS AIRES

CGSH International Legal Services, LLP-  
Sucursal Argentina  
Avda. Quintana 529, 4to piso  
1129 Ciudad Autonoma de Buenos Aires  
Argentina  
T: +54 11 5556 8900  
F: +54 11 5556 8999

SÃO PAULO

Cleary Gottlieb Steen & Hamilton  
Consultores em Direito Estrangeiro  
Rua Funchal, 418, 13 Andar  
São Paulo, SP Brazil 04551-060  
T: +55 11 2196 7200  
F: +55 11 2196 7299

ABU DHABI

Al Odaid Tower  
Office 1105, 11<sup>th</sup> Floor  
Airport Road; PO Box 128161  
Abu Dhabi, United Arab Emirates  
T: +971 2 414 6628  
F: +971 2 414 6600

SEOUL

Cleary Gottlieb Steen & Hamilton LLP  
Foreign Legal Consultant Office  
19F, Ferrum Tower  
19, Eulji-ro 5-gil, Jung-gu  
Seoul 100-210, Korea  
T: +82 2 6353 8000  
F: +82 2 6353 8099