

ClientAlert

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How Tobin Tax and certain regulatory duties affect Block Trades in Italy

Italian Law No. 228 dated December 24, 2012, which approved the 2013 budget, contemplates, among others, a new tax applicable to certain financial transactions (the "**Tobin Tax**").

The Tobin Tax will apply to transactions, even if executed abroad, involving shares and equity-like financial securities issued by both listed and non-listed companies resident in Italy and derivatives substantially underlying such securities. The tax will also apply to high-frequency trades relating to the above securities and derivatives occurring on the Italian financial markets. Issuance of new shares and transactions on debt securities will be outside the scope of the Tobin Tax.

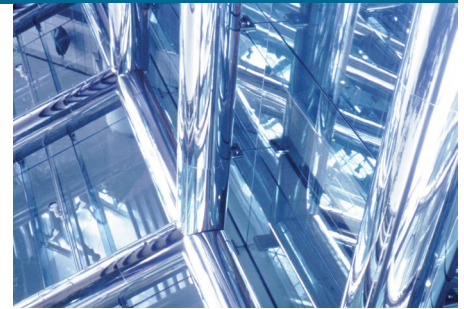
1. The Tobin Tax applicable to Block Trades

As of March 1, 2013, Block Trades of shares issued by Italian companies will be subject to the Tobin Tax at the rate of 0.22% (i.e. the tax rate applicable to over-the-counter transactions), levied on the transaction value. As of 2014, the tax rate will decrease to 0.20%. The Tobin Tax will be due irrespective of whether the Block Trades are executed outside of Italy and all the parties involved (other than the issuer) are not resident in Italy.

The Tobin Tax will not apply to Block Trades of listed shares issued by companies having, in the month of November of the year prior to the relevant transaction, an average market capitalization of less than Euro 500 million.

While the cost of the Tobin Tax will be borne by the purchaser, the banks and the other financial intermediaries involved in the execution of Block Trades, namely the intermediaries that receive orders from clients, will be liable for the payment of the Tax. In the event that several financial intermediaries are involved in a Block Trade, the duty to make the payment will fall on the intermediary that directly receives the order from the ultimate purchaser. Non-resident financial intermediaries will be entitled to appoint a fiscal representative to comply with such duty. If no financial intermediary is involved, the purchaser will be directly liable for the payment of the tax.

Payment technicalities of the Tobin Tax shall be detailed by implementing regulation to be issued in the next months by the Ministry of Economy and Finance and the Director of the Italian Tax Authority.



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2. Certain duties on Block Trades

While recent amendments to Article 114 of the Italian Financial Act repealed the duty for the controlling shareholder to publish press releases at the launch and close of a Block Trade, financial intermediaries, buyers, sellers and issuers are still required to comply with certain disclosure duties.

Duties of financial intermediaries

Financial intermediaries executing transfers of shares in the course of a Block Trade are subject to certain transparency and disclosure duties vis-à-vis both the Italian Securities Commission ("**CONSOB**") and the market with regards to the details of the transaction (such as, inter alia, number of shares transferred and price).

As per the duties vis-à-vis CONSOB, the relevant intermediary is required to comply with such duties as soon as practicable and, in any event, by no later than the working day following the closing of the transaction.

As per the duties vis-à-vis the market, the relevant intermediary is required to comply with such duties as close to real-time as possible and, in any event, within three minutes from the execution of the transaction. However, under certain circumstances, the intermediary is allowed to delay the disclosure to the market up to the third day following the day of the transaction.

Duties of buyers and sellers

Depending on the volume of shares transferred, buyer and seller may be subject to communicate the Block Trade to CONSOB and the relevant issuer.

In particular, if the stake held exceeds or falls below certain thresholds (2%, 5%, 10%, 15%, 20%, 25%, 30%, 50%, 66,6%, 90% and 95% of the issuer's share capital), the transaction and the new stake will have to be disclosed within five trading days from the date of the relevant transaction. Further thresholds are set forth by law where the stake held also includes derivatives underlying the same shares.

Further, if the transaction involves shareholders owning a stake higher than 10% of the issuer's share capital (and the value of the transaction is equal or higher than Euro 5,000), the internal dealing regulations shall also apply, requiring specific disclosure by no later than the fifteenth day of the month following the month in which the transaction occurred. Finally, a shorter disclosure period of five trading days applies for other persons (including directors of the issuer) subject to the internal dealing regulations.

Duties of issuers

In addition to the duty of making available on its web site the information received pursuant to the internal dealing regulations, issuers should evaluate, from time to time, whether a Block Trade is relevant under price sensitive regulations and requires the publication of a press release.