

Italy's Stability Law Introduces the Financial Transaction Tax

by Piergiorgio Valente and Federico Vincenti

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Italy's 2013 Stability Law, which became effective on January 1, 2013, introduced the financial transaction tax (the so-called Tobin tax).

The new tax is levied on transfers of ownership of shares or other participating financial instruments, transactions involving financial derivatives and securities that have underlying participating financial instruments, and high-frequency trading.

The tax is due regardless of where the transaction takes place and the country of residence of the parties involved. Therefore, the tax is levied even if neither party is resident in Italy and the transaction occurs abroad, provided the shares are issued by companies resident in Italy. Transfers resulting from inheritance or donations are exempt from the tax, as specifically set forth in the law. The tax also does not apply to:

- the issuance and cancellation of shares;
- the conversion of shares into newly issued shares;
- the temporary acquisition of securities such as securities lending agreements and repurchasing agreements; and
- transfers of shares listed in regulated markets and issued by companies with a net market value (as of November of the year preceding the transfer) below €500 million.

The amount of tax due is proportional to the value of the transaction. The tax is reduced by half if the transfer takes place in regulated markets.

Rates in 2013 are increased. In short, the tax applies as follows:

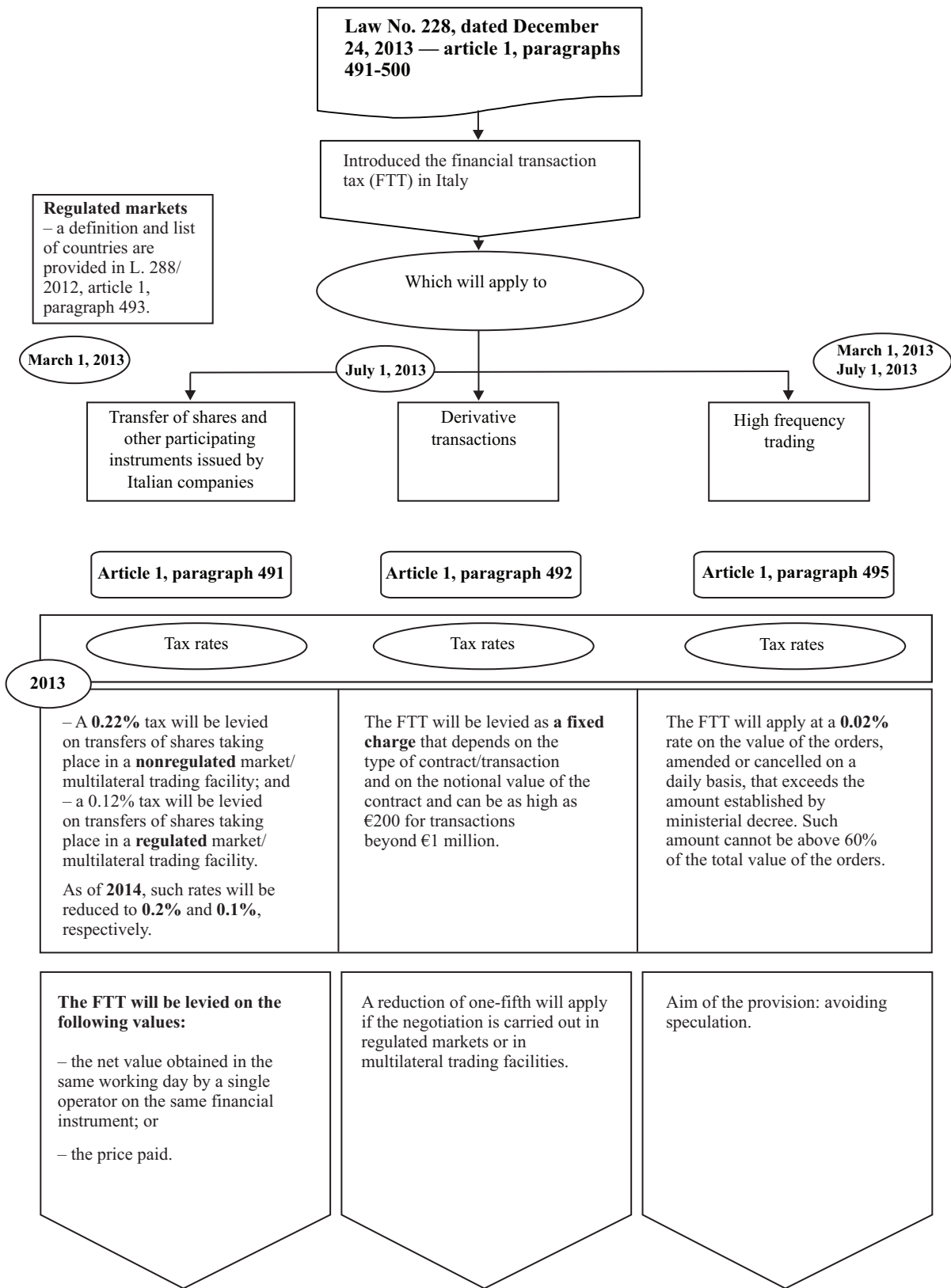
- In 2013:
 - 0.22 percent for transfers that do not take place in regulated markets; and
 - 0.12 percent for transfers that take place in regulated markets.
- Starting in 2014:
 - 0.20 percent for transfers that do not take place in regulated markets; and
 - 0.10 percent for transfers that take place in regulated markets.

The above rates are applied to the value of the transaction, which the 2013 Stability Law specifically defines as the net value obtained in the same working day by a single operator on the same financial instrument or the consideration paid.

Although payment is made, in principle, by intermediaries (banks, trust companies, investment companies, and so forth), the taxable entity is the buyer of the shares or participating instruments. In fact, the tax is due by the entity ultimately acquiring shares (that is, the buyer) and does not apply to entities that are merely interposed. The law establishes that the tax on transfers of ownership of shares and financial instruments is paid:

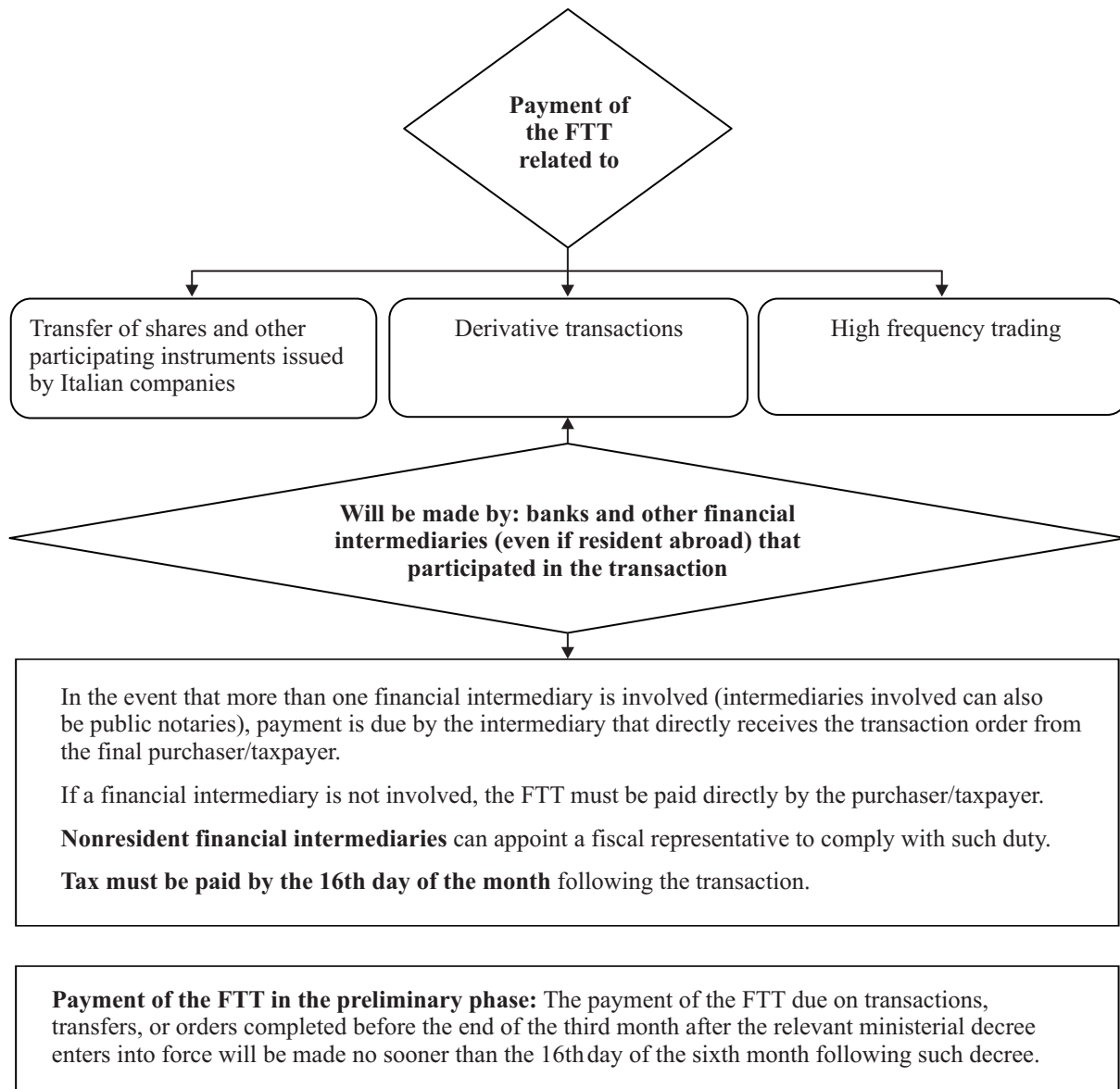
- by banks;
- by trust companies and investment companies authorized to perform professional services and investment activities;
- by other parties that are involved in the execution of the transactions (for example, notaries); and

Figure 1. Italy's Financial Transaction Tax: Key Issues



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Figure 2. Italy's Financial Transaction Tax: Payment



- nonresident intermediaries.

Whenever more than one of the parties indicated above intervene in the transaction, the tax is paid by the party that receives the order of execution directly from the final buyer or his counterpart. In other cases (that is, when the transaction takes place without the involvement of third parties), the tax is paid by the taxpayer.

Intermediaries and other nonresident entities involved in the transaction may appoint a tax representative who, on the same terms and with the same responsibilities as the nonresident person, is responsible for

complying with all requirements concerning transactions on shares or other participating financial instruments.

The 2013 Stability Law establishes that transactions with the following parties are exempt from the financial transactions tax:

- the European Union;
- the European Central Bank;
- the central banks of the EU member states;
- central banks and other bodies managing the official reserves of other states; and

- international bodies or organizations established under international agreements executed in Italy.

Also, the financial transactions tax does not apply to:

- entities carrying out taxable transactions in the market-making sector;
- entities carrying out taxable transactions in order to support the liquidity of shares, provided that it is accepted by market practices; and
- public and private pension funds and similar entities.

The tax must be paid by the 16th day of the month following the transfers of ownership of shares or other participating financial instruments.

The tax on transfers of ownership of shares and participating financial instruments applies to financial transactions concluded as from March 1, 2013.

Transactions on Derivatives

The 2013 Stability Law establishes a tax on financial derivatives as well. A fixed tax applies to:

- transactions on financial derivatives involving shares or other participating financial instruments; and
- movable property transactions allowing to buy or sell shares or other participating financial instruments including warrants, covered warrants, and certificates.

The following is a list of transactions subject to the fixed tax:

- futures, certificates, covered warrants, and options on share-related yields and indexes;
- futures, warrants, certificates, covered warrants, and options on shares;
- swaps on shares and related yields;
- forward contracts on shares and related yields;
- financial contracts on shares and related yields; and
- a combination of the above-mentioned contracts or instruments.

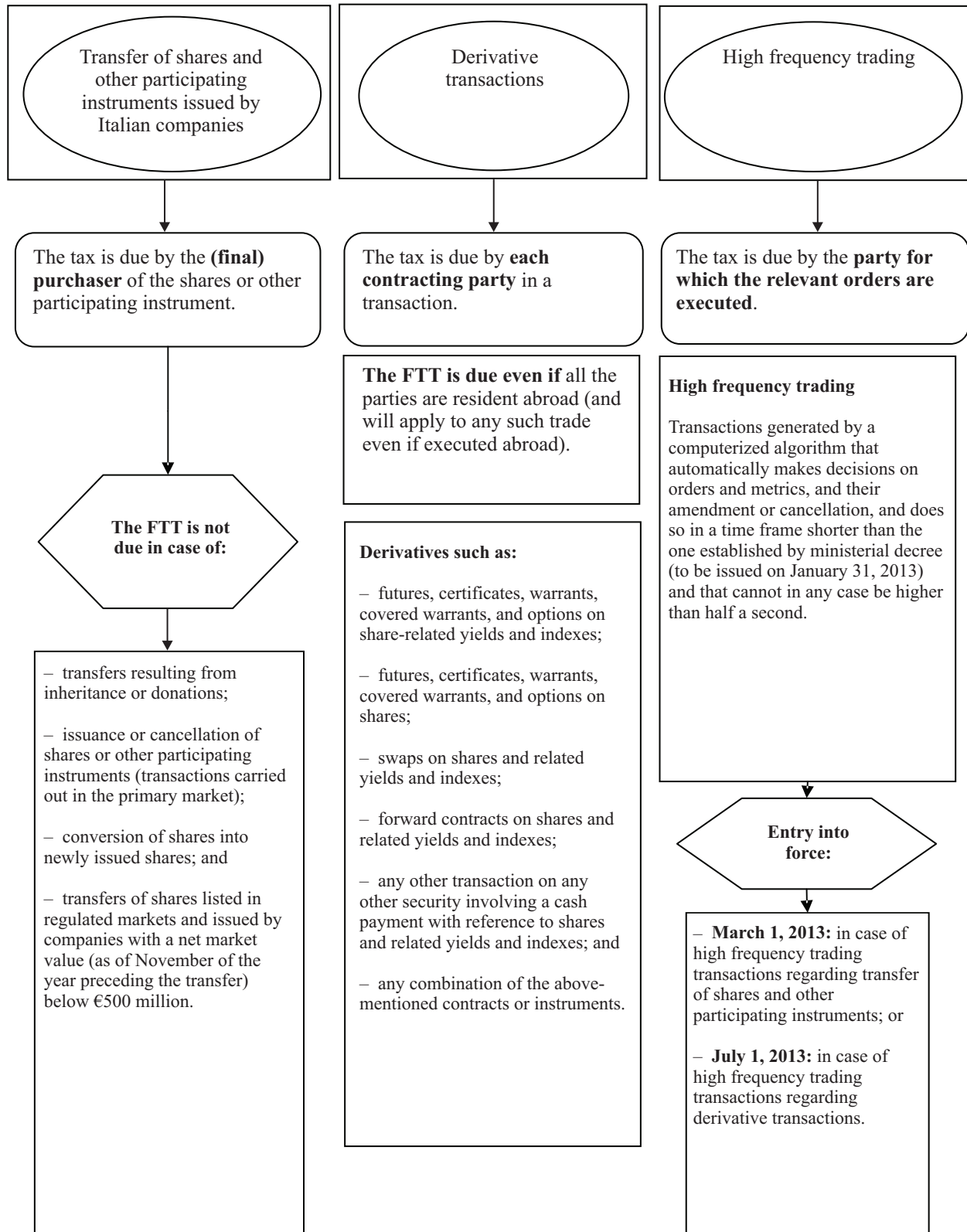
For transactions carried out in regulated markets, the same fixed tax, reduced to one-fifth, will be calculated based on the value of a standard contract determined by a decree of the Ministry of Economy and Finance taking into account the average value of a standard contract in the prior quarter.

Finally, the 2013 Stability Law establishes a tax on high frequency transactions that applies to transactions conducted electronically in very short periods of time. It applies to sending, canceling, and modifying orders that exceed a certain threshold to be determined by a decree of the Ministry of Economy and Finance.

The tax applies at the rate of 0.02 percent on the value of canceled or changed orders that, on a stock exchange day, exceed the above-mentioned threshold.

(Figure 3 is on the following page.)

Figure 3. Italy's Financial Transaction Tax: Transaction Flowchart



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