UNOFFICIAL TRANSLATION

Explanatory Memorandum

Article 1, paragraphs 491 to 500, of Law No 228 of 24 December 2012, hereinafter referred to the Law, has introduced a tax on financial transactions applying to the transfers of the ownership of shares and other participating financial instruments (paragraph 491), to transactions in derivative financial instruments and other transferable securities (paragraph 492) as well as to high-frequency trading as referred to in paragraph 495 of the above Law. In particular, paragraph 500 of Article 1 of the aforesaid Law provides that a Decree of the Minister of the Economy and Finance shall establish the procedures for applying the tax. This Decree is issued for the purpose of implementing the above provision and lays down the following provisions.

In Article 1, a few definitions are given that are relevant for the purposes of the application of the tax. In particular, paragraph 2 provides a clearer definition of shares, participating financial instruments and securities representing equity investment (letters c), d) and e)) whose transfer is subject to tax under paragraph 491 of the Law. As for the identification of securities representing equity investment, these consist in securities representing shares or other participating instruments issued by Italian companies (i.e. *American Depositary Receipts* and *Global Depositary Receipts*). With a view to solve any uncertainties regarding the interpretation of the Law, it must be specified that neither the units of unit trusts, nor shares in open-ended investment companies (SICAV), are included in the definition of "securities representing equity investment" relevant for the purposes of the tax.

In addition, letter f) of the same paragraph provides a definition of regulated markets and multilateral trading facilities relevant for the purposes of the tax reductions as under paragraphs 491 and 492 of the Law. For this purpose, pursuant to paragraph 493, regulated markets and multilateral trading facilities shall mean the markets and systems recognized pursuant to Directive 2004/39/EC, provided that they are established in States and territories that ensure an adequate exchange of information. In particular, for the purposes of their correct identification, a list of the above markets and systems has been drafted and published in the specific section of the European Securities and Markets Authority' website (http://mifiddatabase.esma.europa.eu/), in accordance with the data submitted by the Member States' authorities for the purposes of paragraph 2 of Article 13 of Commission Regulation (EC) No 1287/2006 of 10 August 2006. In order to prevent any potential

infringements of Article 63 of TFEU on the free movement of capital between Member States and between Member States and third countries, it is also specified that the definition of regulated markets and multilateral trading facilities, relevant for the purposes of the application of paragraphs 491 and 492, also encompasses those in regular operation and authorized by a National Public Authority with State supervision, including, in any case, the regulated markets recognized by CONSOB pursuant to Article 67, paragraph 2 of TUF, provided that they are established in States included in the list referred to in the Ministerial Decree issued in accordance with Article 168-*bis* of TUIR.

Tax referred to in paragraph 491:

Article 2 defines the objective and territorial scope of the application of the tax. In particular, it is clarified that the transfers of the ownership of stakeholdings in collective investment undertakings (as defined in Article 1, paragraph 1, letter m) of TUF), including the shares of open-ended investment companies (SICAV) and units of Exchange Traded Funds - ETF, are excluded from the scope of the tax. In addition, it is clarified that the registered office of the issuing company is relevant for the purposes of the territorial scope of the tax. In this respect, in case such office is transferred in Italy from abroad, or vice versa, the date on which the transfer becomes valid is relevant.

Article 3 clarifies that transfers of ownership of shares and financial instruments as referred to in paragraph 491, admitted to centralised securities depositories including those recognized by foreign supervisory authorities, are generally deemed to take place on the date of their settlement, which corresponds with the date of registration of the transfers. Alternatively, the person liable to the payment of tax, subject to the taxpayer's consent also in the "silence means consent" form, can assume the date of settlement stipulated in the contract as the date of the transaction.

In addition, the Article specifies that, for the purposes of the tax, the purchases made through intermediaries buying in their name but on behalf of another person are regarded as having occurred in favour of the person on behalf of whom the purchase has been made. Such principle is considered as being operative *a fortiori* when the intermediary acts on the basis of a mandate with representation. In cases of issuance of ETF units against the simultaneous contribution of shares or other participating financial instruments or securities representing equity investment, the tax is not payable by the ETF, but only by the person purchasing the shares or the other participating instruments or securities representing equity investment in order to contribute them in the ETF. In case of consideration in cash, the tax is payable by the ETF upon purchase of shares, participating financial instruments or securities representing equity investment by the ETF.

Article 4 establishes the criteria to determine the value of the transaction to which the tax applies. In particular, such value shall be determined on the basis of the net balance of the transactions regulated daily and the relevant methods of calculation are identified. In this respect, it is clarified that the person liable for payment of the tax shall in the first place calculate separately the number of purchases net of sales carried out on regulated markets or in multilateral trading facilities, as well as those made "over the counter" and shall, at a later stage, sum up algebraically the relevant results. After this calculation (and only in case of positive result), the tax base is determined as the product of the number of securities representing the final net balance multiplied by the weighted average price of the purchases. In the calculation of the net balance, the purchases and sales of Depositary Receipts cannot be summed up with the purchases and sales of the securities represented by them. Furthermore, the purchases or sales excluded or exempt from this measure are not taken into consideration. For example: a person X purchases on the same day 10 securities A at € 50 (on a regulated market); 20 securities A at € 49 (exempt purchase); 15 securities A at € 51 (purchase "over the counter"). The same person sells on the same day: 15 securities (on a regulated market); 5 securities ("over the counter"). The net balance of the relevant purchases on regulated markets is -5; the net balance of the relevant purchases "over the counter" is 10. The net balance between the two is 5. The weighted average price for the purchase of the securities is: (10x50+15x51)/25=50.6. The tax base is equal to euro: 5x5x50.6=253.

Article 5 identifies the persons liable to tax.

Finally, for the sake of clarity, Article 6 sets out the tax rate applicable to the different taxable events. According to paragraph 1 of this provision the tax rate is halved for purchases taking place on regulated markets or in multilateral trading facilities. It is specified that, where purchases do not take place on a regulated market or in a multilateral trading facility, but, upon the intermediary's request, the transactions are registered by the market or multilateral trading facility operator (so-called *"on exchange transactions"*), by relying upon the option provided for by Directive 2004/39/EC, such purchases are subject to a tax rate reduced by half provided for the transactions on a regulated market or in a multilateral trading facility. Paragraph 3 of the same Article specifies that if the tax base is determined as the net balance between purchases and sales executed on regulated markets or in multilateral trading facilities, and other purchases and sales, the tax rate to be applied to this taxable base is equal to the average of the weighted rates by the number of securities purchased on the different markets. By referring to the previous example, the average tax rate is: (15x15x0.2%+10x% +10 x 0.1%)/25=0.16%. The tax due is therefore equal to: 253x253x0.16%=%=0.40 euro.

Finally, paragraph 5 of Article 6 clarifies that the purchase of shares, participating financial instruments and securities representing equity investment resulting from the settlement of derivative financial instruments or other transferable securities referred to in paragraph 492 of the Law, is always subject to 0.2 per cent tax rate.

Tax referred to in paragraph 492:

Article 7 specifies the definition of financial derivatives and other transferable securities as referred to in paragraph 492, having regard also to the prevalence criterion for the purposes of the above provision.

Under Article 8, signature, negotiation or modification of the contracts relating to the instruments referred to in Article 7, letter a) of the Decree, as well as the transfer of the ownership of transferable securities referred to in Article 7, letter b) (securitized derivatives) are regarded as taxable events for the purposes of the tax referred to in paragraph 492. In this respect, even if there is no specific provision, it is clarified that, in case of modification of one of the parties, the tax is payable by the party taking over the contract, as well as by the relevant counterparty (and not by the party that has been replaced). The tax applies also to the instruments already subscribed and to the transferable securities already issued on the 1st of July 2013, as well as to negotiations and modifications taking place after this date. Finally, the last sentence of Article 8 makes clear that, in order to establish the time when the transfer of the ownership of transferable securities can be considered as having taken place, reference must be made to the time of the transfer of ownership as identified under Article 3.

With respect to the different types of financial derivatives and other transferable securities, Article 9 describes the criteria for determining the notional value to apply for the purposes of identifying the taxable base.

For the sole purposes of this Decree and of the calculation of the tax payable, it was chosen to consider the premium as the notional value for financial instruments, both derivatives and not, which have an optional component: essentially, it is the price an investor is ready to pay (or receive) to subscribe an option. Therefore, regardless of the complexity relating to construction of the reference value of the option (or of the security that includes one or more options), this value is always known to investors and intermediaries and can be easily assessed by Tax Administration.

Paragraph 2 sets out how to identify the notional value where the structure of the derivative transaction has a leverage effect that amplifies the nominal notional value of the underlying. In this case, the actual notional value of reference, for the purposes of the application of tax, is equal to the reference notional value of the underlying multiplied by the leverage effect (for example, swaps for

which the settlement of differential amounts takes place with reference to a notional value of 100 and the same differential is then multiplied by 10; in this case, the actual notional value of reference is 1000).

Article 10 identifies the persons liable to tax.

For the sake of clarity, Article 11 specifies the tax applicable to the different taxable events.

Tax referred to in paragraph 495:

Article 12 clearly outlines the criteria according to which transactions are deemed to be high-frequency trading when they are generated by a computer algorithm that automatically determines the decisions relating to the sending, modification and cancellation of orders and of the relevant parameters that occur at intervals not exceeding half a second. In addition, it is specified that the following transactions are excluded from the definition of high-frequency trading: algorithm trading used when performing market-making activities, smart order routing algorithm, as well as algorithms fulfilling orders in a way designed to obtain transactions at execution prices that are equal or better than the weighed average market price collected at an interval, predetermined by the parties, not exceeding the day in which the order was placed. Finally, paragraph 2 of the same Article clarifies the concept of "Italian financial market" which is relevant for the purposes of the territorial scope for applying the tax. More specifically, "Italian financial market" means the regulated markets and multilateral trading facilities authorized by CONSOB.

Article 13 clarifies the criteria to calculate the tax and fixes the percentage threshold of cancelled or modified orders beyond which the tax applies.

Article 14 identifies the persons liable to tax. In this respect, it should be specifed that for the purposes of this tax, the taxable person is the person who, in case the orders entered were to be concluded, would purchase or sell the ownership of shares and other financial instruments or would become the counterpart of a financial derivative; the obligation to pay, as well as other obligations referred to in Article 19 of this Decree, remain in charge of the persons identified by such Article. The latter shall calculate the tax due separately for each of the taxable persons. If the taxable person carries out high-frequency trading involving several intermediaries, the tax on such transactions shall be paid separately by each intermediary.

Article 15 *et seq.* include general provisions. In particular, Article 15 includes a punctual description of the transactions excluded from the scope of the tax. More in detail, under letter b) in order to solve possible construction doubts (in particular with reference to convertible debt securities and bonds with embedded derivatives) it is established that transactions in bonds and debt securities shall be excluded from the scope of the tax. Letters b), c) and d) of this Article reinstate

that transactions executed on the primary market shall be excluded from the scope of the tax. Under letter b) – in compliance with Community law - it is highlighted that the transactions specified in Article 5, paragraph 2, letter b) of Council Directive 2008/7/EC of 12 February 2008 shall be excluded from the scope of the tax. Under letter d), it is also clarified that the purchase of the ownership of newly issued shares also through the conversion of bonds or the exercise of an option by the shareholder, or if it constitutes a mode of settlement of derivative transactions shall be also excluded from the scope of the tax. In this respect, in the absence of any explicit provision of law, the allocation of securities or participating financial instruments against distribution of profits or reserves as well as the allocation of newly issued shares against stock options plans are deemed to be exempt from the tax. As to the issue of Depositary Receipts (as, for instance American Depositary Receipts and Global Depositary Receipts), the definition of "issue" shall include the following transactions: purchase of shares by the depositary bank issuing the instrument, issuing of the securities representing equity investment, first placement where executed on newly-issued underlying securities (although the issue is temporarily guaranteed by a *collateral*, if it is certain and provable from the date of issue of the above-mentioned Depositary Receipts that the securities underlying the first underwriting are newly issued) Also cancellation transactions are considered excluded from the scope of the tax, as with the other financial instruments as of paragraphs 491 and 492.. Letter e) provides in detail for the exclusion of temporary transfers of ownership. In this reference it is pointed out that – as regards securities financing transactions – the wording of the provision follows article 2, point 10 of (EC) Commission Regulation No 1287/2006 of 10 August 2006. Letter e) clarifies as well that temporary transfers of ownership which are excluded from the scope of the tax include also including the transfers in the framework of financial collateral transactions arising from an arrangement under which a collateral-provider transfers full ownership of the instruments referred to in paragraph 491, for the purpose of securing or otherwise covering the performance of relevant financial obligations, including the repayment at the end of the collateral. In this regard, in the absence of any explicit provision of law, the collaterals made up of shares or participating financial instruments (or other temporary transfers) which do not entail the transfer of full ownership shall also be deemed to be excluded from the scope of the tax. The following transactions shall be also excluded from the scope of the tax: acquisitions by persons purchasing with standby commitments to immediately resell within the same offer, where the transaction is executed within thirty days; acquisitions performed within a stabilisation of shares and participating financial instruments provided for by Commission Regulation (EU) No 2273/2003 of 22 December 2003. Finally, letter h) –implementing letter d), paragraph 494 of the Law –

clarifies that the restructuring operations to be excluded are those referred to in Article 4 of Council Directive 2008/7/EC of 12 February 2008.

Lastly, paragraph 2 of the Article expressly specifies therefore that the tax does not apply to "entities that interpose themselves in a transaction" (the same notion was referred to in the second sentence of paragraph 494 of the Law).

Article 16 outlines more clearly the exemptions from tax by drawing a distinction between transactions that shall be wholly exempt (paragraph 1) and transactions that shall be exempt only with respect to a single party to the transaction (paragraphs 3 and 5) with the result that the counterparty may be liable to payment of the tax. In this respect, it is appropriate to underline that, with respect to the exemption provided for in letter a) No 4 of paragraph 1, pending a measure to be issued by the Director of *Agenzia delle Entrate* indicated therein, reference should be made to the (not exhaustive) list included in Circular Letter No 11/E of 28 March 2012. In addition, under paragraph 5 of the Article, the subjective exemption referred to in letter c) of paragraph 494 of the Law shall be deemed to be also applicable to European pension funds as well as to pension fund pooling vehicles, provided that such funds are fully participated by the aforesaid funds. The inclusion of the European pension funds is necessary so as to bring the provisions of the Law into line with Community law.

Article 17 determines the criteria to identify issuing companies with average capitalisation lower than 500 million euro that shall be included in a list - attached in the first year to the Decree itself - annually published on the website of the Ministry of Economy and Finance. For the purposes of the identification of the regulated market or foreign trading facility issuing an ad-hoc certification on the capitalisation value, for the countries to which Directive 2004/39/EC is not applicable, the "relevant" market shall be understood as a regulated market or a foreign multilateral trading facility having similar characteristics to those requested by the above-mentioned Directive

Article 18 is aimed at specifying that non-deductibility of the financial transaction tax from income taxes also concerns the substitute taxes thereof. As a consequence, the tax is not taken into account when determining the purchase cost for the purposes of capital gains calculation.

Article 19 identifies the persons liable for payment of the tax and stipulates the terms and conditions to comply with tax return and payment obligations; for matters not expressly covered therein, reference should be made to a subsequent measure issued by the Director of the *Agenzia delle Entrate*. In particular, paragraph 4 of the Article identifies the person liable for payment of the tax in those cases where more persons are involved in the execution of the transaction. In this respect, it is useful to specify that, in the case of transactions executed in the framework of collective asset or portfolio management services, where the operator does not rely on an

intermediary (a broker, for example,) for executing the negotiation orders, the person liable for payment of the tax is the operator itself. Furthermore, always with respect to the transactions executed in the framework of collective asset or portfolio management services – considering that, for collective asset management services, the owner of the securities (or the counterparty, in the case of derivative financial instruments) is the collective investment undertaking ("OICR" in Italy), whereas in the case of portfolio management services it is the management contract holder – it should be clarified that, for the purpose of payment of the tax, the net balance of daily transactions, in these cases, shall be calculated with reference to each OICR or management contract holder, respectively. Moreover, paragraph 5 of this Article enables persons liable for payment of the tax to apply to the Centralised Management Company referred to in Article 80 of TUF for the purposes of settlement of tax and compliance with tax return obligations. Such provision takes into account the specific role of the aforesaid company in the centralised management of financial instruments in accordance with TUF and the availability of the information in its possession by reason of its institutional activity. In this paragraph, there is also provision for the need to facilitate the collection and control activities of the *Agenzia delle Entrate*, in particular when the tax is applied for the first time, by means of the possibility to concentrate the payments from the same person. In addition, this paragraph specifies the terms for the persons liable for payment and calculation of the tax to send the information needed by the Centralised Management Company for the purposes of paying such tax, with particular reference to the transactions of the month of November.

Article 20 concerns the penalty system applying in case of delayed, insufficient or omitted payment of the tax, as well as in case of violations of tax return obligations. It is made clear that, although penalties for omitted, insufficient or delayed payment of the tax are applicable only with respect to persons responsible for such obligations as well as for payment of the tax, the Tax Administration has the authority to recover the tax and the related interest also against the taxpayer concerned.

Lastly, Articles 21 and 22 lay down the transitional provisions for implementation of the tax as well as the general criteria for entitlement to the refund of tax, if any.