

## FINANCIAL TRANSACTION TAX FAQ (DERIVATIVES)

Unless otherwise specified, legal references are made to the Decree of the Minister of Economy and Finance of 21 February 2013.

**Q.** *Please clarify the rules for the application of the tax in the case of "dynamic" portfolio swap contracts on a basket of indices, where the composition of the indices is not determined by the parties (e.g. indices such as FTSE MIB), while the parties may choose to change the weight of the indexes within the basket or to vary the type of indices included in the basket.*

A. In the case of "dynamic" swaps on a basket of indices, as specified in FAQ (Derivative instruments and other securities) No. 8 of 26 August 2013, the tax is applied separately to the positions of each index, considering each position as the underlying asset of a separate financial instrument. Clearly, since the contract concerns indices, it will necessary to assess for each index the predominance of the securities or financial instruments referred to in paragraph 491, provided for in Article 7(2) of the Decree of the Minister of Economy and Finance. As already specified in the explanatory memorandum to the amending Decree of the Minister of Economy and Finance of 16 September 2013, also in the case of dynamic swaps on a basket of indices, where the composition of each index is modified by changes not determined by the parties, the predominance test should be carried out not only at the closing of the swap, but also later if the predominance test has not previously resulted in a payment of the tax.

**Q.** *Please clarify how to calculate the tax base for a swap contract on a "dynamic" basket of shares, securities, instruments and/or indices, referred to in paragraphs 491 and 492, and in particular, if each individual share, security, instrument and/or index determines a single and separate taxable event.*

A. It is reiterated, as already specified in FAQ (Derivative instruments and other securities) No. 8 of 26 August 2013 that the tax is applied separately to the positions of each share, security, instrument and/or index referred to in paragraphs 491 and 492, considering each position as the underlying asset of a separate financial instrument. For example, consider a swap on a "dynamic" basket of shares made up of one share X (falling within the scope of the FTT, notional value €

15,000), one share Y (falling within the scope of the FTT, notional value 490,000 Euros) and one share Z (not falling within the scope of the FTT, notional value €550,000). The tax referred to in paragraph 492 will be due on the individual positions: for the swap on share X, the tax due is 5 Euros, for share Y is 50 Euros, while no tax is due for the swap on share Z. Of course, the same considerations apply if, for example, the "dynamic" basket consists not only of shares, but also of indices, securities or other financial instruments referred to in paragraphs 491 and 492 falling within the scope of the FTT.

If the swap involves "short" and "long" positions on the same security, as specified in FAQ (Derivative instruments and other securities) No. 8 of 26 August 2013, the tax base for each counterparty and for each security is equal to the sum of the absolute value of the notional value of the "short" position and of the "long" position. Consider the following example: a swap on a dynamic basket of shares which, among others, includes a "long" position on share X (notional value: 90,000 Euros) and a "short" position on the same share X (notional value: 55,000 Euros) with the same counterparty; in this case, the tax base for the position on share X is equal to 145,000 Euros.

Finally, again in the case of swaps on a "dynamic" basket, where only one position is closed in advance, if the early closing is provided for in the contract as an option of the parties, it is confirmed, as explained in FAQ (Derivatives instruments and other securities) No. 15 of 26 August 2013, that the exercise of this option does not involve any changes to the contract pursuant to Article 8 and, therefore, is not subject to tax.

**Q. *Swap agreements may provide that in order to manage counterparty risk the contract is not reset at fixed dates but upon reaching a certain level of risk. Please clarify whether the conclusions set out in FAQ (Derivative instruments and other securities) No. 16 of 26 August 2013 apply also in these cases.***

A. It is believed that a taxable event does not arise, as explained in FAQ (Derivative instruments and other securities) No. 16 of 26 August 2013, even in cases where the contract does not provide for fixed dates for the reset, but that in any case the partial exchange in advance of the final overall performance occurs on the basis of predetermined procedures fulfilling the conditions set out in the same FAQ No. 16.

**Q. *Please clarify how to calculate the tax for static swap contracts that provide for an exchange of flows determined for each leg of the contract – i.e. for “long” and “short” positions -***

*with reference to securities, financial instruments or indices referred to in paragraph 491 and/or 492.*

A. If the swap agreement provides for the exchange of flows determined both for the "long" position and for the "short" position based on the performance of one of the financial instruments referred to in paragraph 491 and/or 492 (or a basket of such instruments), first the predominance of these securities for each of the two "legs" of the contract (i.e. for the "long" position and for the "short" position) will have to be assessed. Where the predominance test is passed by both the two positions, the reference notional value for the calculation of the tax is equal to the sum of the absolute value of the notional amount of the "legs"; in the other cases, it is equal to the notional value of the position that passes the predominance test.

**Q. *Please clarify how to calculate the tax base for a swap contract on a "static" basket made up of securities falling only partly within the scope of the tax envisaged by paragraph 491.***

A. Art. 9 of the Decree of the Minister, setting the rules for determining the tax base for the financial instruments covered by the tax referred to in paragraph 492, provides in paragraph 3 that "if the notional value is represented also by instruments other than shares, participating financial instruments and securities representing equity investment, for the purposes of this paragraph, only the notional value of these shares, instruments and securities shall be taken into consideration." For this purpose it should be highlighted that, once the test under Article 7(2) of the Decree is passed, only the total notional value of shares, participating financial instruments and securities representing equity investment shall be considered for the purposes of the tax application, and thus the tax should apply to the notional value of such instruments even if other than those covered by paragraph 491 (for example, shares issued by non-residents or issued by resident companies with average market capitalization of less than 500 million Euros).

**Q. *With reference to the table annexed to Law No. 228 of 24 December 2012, please clarify which tax bracket is to be taken into account if the notional value of the contract coincides with the upper limit of a bracket and the lower limit of the following bracket.***

A. As can be seen from the heading of the last column of the table, the value specified as the minimum value is defined as "higher than". For example, contracts with notional value from 0 to 2,500 Euros fall within the first bracket, those with a value exceeding 2,500 Euros and up to 5,000 Euros fall within the second.