



# CBSS

## Cross Border Securities Services

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## NEW 0,2% TRANSACTION TAX (FTT) ON FRENCH BLUE CHIPS - UPDATE

Monte Titoli is pleased to provide its customers with AN UPDATE on information regarding the forthcoming Financial Transaction Tax (FTT).

### Disclaimer

The content of the present announcement is provided for information purposes only and is subject to change as a result of the on going work executed by the competent actors. The document aims at offering guidelines to Monte Titoli's participants managing French securities to which the new law applies.

The present document does not have the purpose of providing in any manner legal or fiscal advice in terms of application of the FTT.

### Introduction

The below information has to be read in conjunction with Monte Titoli previous announcement of 12<sup>th</sup> June 2012.

The below is the result of Monte Titoli intense work of coordination with:

- European CSDs/ICSDs,
- Receipt of advice from the French advisory company "Francis Lefebvre",
- The "Direction de la législation Fiscale" at the Ministry of Finance in France.

The information hereunder shall be considered as quasi-final waiting only for the approval from the French Parliament of the Project law expected during the first weeks of August. The approved law is expected to have retroactive effect.

### 1. Application of the tax.

It is confirmed that a Financial Transaction Tax will be applied on the purchasing value of the transactions on most liquid French equities. The project, under revision at the French

Parliament, is expected to be approved during the first weeks of August with retroactive effect to the 1<sup>st</sup> August 2012.

The amount of the levied tax is expected to be raised up to 0,2% as per the request of the Government as well as the text of the Project law.

The tax will apply on all purchases on blue chips as executed from Trade Date 1st August 2012 with first Settlement Date of 6<sup>th</sup> August 2012.

## 2. Accountable parties

The French Project law at "*Chapitre 3, Section 1, Art.11*" (Monte Titoli participated to the public consultation issued by the Direction de la Legislation Fiscale) identifies as Accountable parties ("*Redevable de la taxe*") those financial institutions offering services according Art. L,321-1 of French the Monetary and Financial Code regardless the fact they operate either for third parties or for themselves.

As a result, "Accountable parties" are exclusively those institutions which are legally obliged to produce the declarations and to pay the FTT.

These can be either:

- The investment service provider or "Broker", which has executed the transaction on its behalf or on behalf of its client;
- The securities account holder of the investor (when the transaction is not executed by a broker). An important clarification brought by the Direction de la Legislation Fiscale has allowed to clarify that neither Monte Titoli nor other infrastructures fall under this category.

As a result, other entities participating to the chain of intermediaries between the accountable party and Euroclear France (including Monte Titoli) will only assume responsibilities in terms of transmission of the declarations and payments to Euroclear France.

## 3. Impacted transaction types and securities

The FTT will be applied on transactions on French equities according to the following criteria:

- Capital instruments ("titres de capital") and assimilated securities (mainly equities)
- Listed on a French or Foreign regulated market
- Issued by companies with more than 1 EUR Bio of capitalization
- Having headquarters in France since at least 1 January 2012

The French Ministry of Finance has made available a list of companies subject to the law. A link to the official list is available on the Monte Titoli website at the following page:

<http://www.montetitoli.it/cross-border/mercatifinanziari/francia/francia.en.htm>

The list is expected to be updated on an annual basis. The Ministry of Finance will not make available a list of ISINs, though this may be made available by a local market service provider.

The list is expected also to be amendable under the following conditions:

- The issuer transferring the headquarters outside France
- An issuer transfers the headquarters into France
- An issuer creates a temporary non-fungible tranche of an existing taxable security

The tax will be applied on onerous acquisitions<sup>i</sup> (“acquisition à titre onéreux”), regardless where these have been negotiated, and irrespective where the transaction settles. All purchases shall be disclosed, both those submitted to the tax, and those exempted. For the latter, reason for exemption shall be provided, though no specific “reason code” has been identified yet to qualify these transactions as exempted.

**IMPORTANT:** Amongst onerous acquisitions are included also free of payment acquisitions implying a transfer of ownership for which a cash countervalue is settled separately. The criteria of calculation of the tax are currently not explicit, the Project law under approval not being specific in this respect and leaving to the accountable party the calculation of the due tax amount.

For netted positions, the tax is due only on the acquired resulting amount.

#### 4. Exempted transactions

The Project law refers to different categories of transactions that are exempted from the payment of the tax.

In particular it shall be noted that Repo transactions, which are processed on the Italian market as back-to-back transactions, but that would be legally framed within a unique contract if settling in France, are expected to be exempted as resulting as a “temporary sale” (“pension livrée, Chapitre 2, Section 5, Art.4”).

The full list of categories of exempted transactions includes:

1. Purchases linked to an issue of securities (primary market)
2. Purchases made by a clearing house or a central securities depository (for their own account)
3. Purchases linked to market making activities
4. Purchases linked to a liquidity contract

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<sup>i</sup> Intraday transactions are subject to the tax only on the resulting net buying position at the end of the day

5. Intra-group transactions
6. Securities lending and repos
7. acquisitions by employee mutual funds, employee open-ended inv. funds or by employees directly
8. acquisitions (including purchase of company shares) for employee saving schemes
9. acquisitions of bonds that can be exchanged for or converted into shares

## 5. Corporate Actions

**IMPORTANT:** In light of the preliminary results made available by the AFTI in terms of Corporate Actions, Monte Titoli is pleased to provide hereunder the most relevant topics though still provisional:

### General principles for the application of the FTT

- 1 - Most of the Corporate events are excluded from the application of the FTT as a result of the fact that not all events imply a purchase of shares versus payment
- 2 - Amongst the Corporate events falling under the application of the FTT, an important part is exempted as it foresees the purchase (or the subscription) versus payment of newly issued shares
- 3 - For the Corporate events falling under the application of the FTT, the taxation has to be managed by
  - Custodian Banks for the final investor
  - The agent of the issuer if the event has been initiated by the latter

### Pre-requisites

The impact of the FTT on the corporate actions is still subject to the definition of final guidelines and to the interpretation of the Project law from the domestic associations (AFTI and AMAFI)

In line with the above, the general principles followed for the identification of the obligations due by the Accountable parties, still subject to the approval of the "Observatoire de la Fiscalité", are the following:

1. Interested parties must be informed of the application of the tax through the use of specific fields in the corporate action event
2. Taxable operations are those for which the allocation of new shares is foreseen as a result of a payment
3. Transactions associated to the issuance of new shares are considered, as a general rule, exempted from the tax.
4. The purchase of "rights" on the market is not falling in the area of application of the FTT as well as the allocation of newly issued shares associated to that.

As a result of the above, it is expected that any new announcement on corporate events falling on securities submitted to the FTT will provide any relevant information for the application of the tax, and the responsibility for providing this information is expected to be identified with the issuer itself, that should make available, directly or through its agent the following information.

- FTT applicability (Yes/No)
- Exemption (Yes/No)
- Reason for exemption (amongst those foreseen by the law)
- Amount (Price) based on which the FTT shall be applied.

It is expected that Euroclear France will channel the above information through to its participants via:

- The corporate action form handled by the ESES platform
- The "Euroclear Newsletters"
- Euroclear "Operational News"
- MT564 messages of Corporate Action notification

After receipt of the relevant information from Euroclear France, Monte Titoli will pass it on to its participants through its notifications

#### Open proposals for the management of the FTT

The following proposals are under way:

1. Application of the FTT only for events starting after the date of application of the law. Ongoing events should not fall in the area of application of the tax.
2. There are proposals for delaying the date of application of the law (for corporate actions) to January 2013 in light of the significant investments for taxpayers and due to the lack of clarity as of how would Euroclear France plan to transmit the preliminary information to be used by the custodian banks.
3. The amount expected to be collected from the corporate events would not seem so significant if compared with the expected investments for the implementation process. This leaves room for the total exclusion of corporate events from the area of the application of the tax.

It seems improbable, in light of the above, that intermediaries and accountable parties will be in condition of applying the FTT from the announced effective date.

#### **6. Impact on investors**

Accountable parties (or their intermediaries) can liaise with Monte Titoli to fulfil their obligations towards the French Tax authorities. The obligations of the Accountable parties are:

- Periodical declaration of the all transactions executed on the taxable securities both for those submitted to the tax and those exempted.

- Monthly payment of the amount due as a result of the tax.

As a reminder,

- ⇒ Accountable parties with two or less intermediaries between themselves and Euroclear France, must channel their declaration to the French Tax Authorities through Euroclear France. Monte Titoli, as Euroclear France participant, is part of this process.
- ⇒ Accountable parties with more than two intermediaries between themselves and Euroclear France, must go directly to the French Tax Authorities to fulfil their obligations, or may pay and declare the tax through a Euroclear France member, provided they have granted a PoA to the appointed Euroclear France member and informed the French Tax Authorities through a dedicated declaration. To these Accountable parties Monte Titoli has decided to offer the same service offered to its direct participants.

## 7. Periodicity

The French Project law envisages that declarations are received by Euroclear France before the 5<sup>th</sup> calendar day.

In order to allow smooth implementation of the FTT, the French Tax Authorities have considered a two-step approach:

- Interim Period: Transactions related to the period 1<sup>st</sup> August – 31<sup>st</sup> October shall be declared all together at the end of the period. The exact date in early November to transmit the declaration to Monte Titoli will be communicated soon.
- Standard schedule: Transactions related to the following months (so effective November 2012), shall be declared on monthly basis according to the criteria described hereunder.

## 8. Service offering

Accountable parties using Monte Titoli to fulfil their tax obligations will be requested to:

Obligation / Standard Schedule	Deadline	Process
Provide MONTHLY a Tax declaration	1 <sup>st</sup> business day after the end of the month of reference	The declaration must be provided exclusively according to the format requested.
Pay Tax MONTHLY	2 <sup>nd</sup> business day after the end of the month of reference	All Accountable parties will have to give Power of Attorney to Monte Titoli to debit their account with the amount due in their declaration.

In particular:

- Monte Titoli, at regular intervals, forwards to Euroclear France (EF) all declarations received from its customers during the day and waits for their acceptance by EF

- Monte Titoli sets as a condition for the payment to be performed in due time that declarations are in an “accepted by EF” status by the deadline of 9:00 pm on the 1<sup>st</sup> business day after the end of the month of reference
- During the morning of the following day (i.e. 2<sup>nd</sup> business day after the end of the month of reference) Monte Titoli debits the cash accounts of the accountable parties for the amount specified in the declarations, performing two debiting cycles (at 9:00 am and noon)
  - In case debiting is not successful during both cycles for one or more participants, Monte Titoli will keep declarations as valid, recycling them in further debiting cycles on the following days, until debiting is successful. Those declarations will be considered and processed as ‘late declarations’ (see further below) and may incur in fines
- Following the collection of all amounts (a few minutes after noon on the 2<sup>nd</sup> business day after the end of the month of reference) Monte Titoli sends an “FTT payment advice” to EF and waits for its acceptance
- Following acceptance of the “FTT payment advice” by EF, Monte Titoli sends a message MT202 (by 4:00 pm, as per the Blueprint)
  - In case acceptance by EF is received after the deadline, payment through MT202 is performed in the morning of the following business day

#### Late Declarations management

Late declarations (i.e. all declarations not in status “accepted by EF” by the above-mentioned deadline) will undergo the same processing as described above, with the exception of timings for payment, which will be performed on a daily (as opposed to monthly) basis. In other words, Monte Titoli will perform debiting and payment operations for all late declarations which are in an “accepted by EF” status by 9:00 pm of the previous business day.

#### Tax Declaration

The declaration must be submitted to Monte Titoli according to the CSV format as indicated in in our announcement of 12 June 2012.

Monte Titoli will request its customers to send the declaration ONLY through the MT-X platform. Further details will follow soon.

#### Tax payment

In order to avoid cumbersome manual processing, the tax will be levied directly on the Accountable Party’s account thanks to an authorization granted by Power of Attorney. Monte Titoli will levy the tax based upon the information included in the tax declaration. Templates for Power of Attorneys will be made available at a later stage.

### 9. Fees

The applicable tariff is not available yet as dependent on eventual charges passed on by Euroclear France to its participants.

### 10. Additional information

Monte Titoli is making available on the Cross Border section of its website all the official documentation published by Euroclear France and the Delegation de la Legislation Fiscale.

<http://www.montetitoli.it/cross-border/mercatafinanziari/francia/francia.en.htm>

A third announcement will follow as soon as the open points will be clarified as a result of the approval of the project law by the French Parliament.

### FOR ADDITIONAL INFORMATION

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#### Monte Titoli S.p.A

Monte Titoli is a leading provider of efficient and secure financial market post-trade services, across presettlement, settlement, custody and asset services. Monte Titoli operates a sophisticated platform providing on-exchange and OTC trade matching and confirmation as well as offering a highly efficient European settlement system and custody service for safe keeping across asset classes. Monte Titoli has an extensive international customer base of over 400 banks and brokers, CCPs and trading venues and offers its services to more than 2,000 issuers. Monte Titoli S.p.A is owned by the international diversified exchange business, London Stock Exchange Group.