(FRENCH TAX CODE, ART. 235 TER ZD AND 235 TER ZD BIS ; ANNEXE III TO THE FRENCH TAX CODE, ART. 58 Q, 58 R AND 58 S)

TABLE OF CONTENTS

INTRODUCTION

TITLE 1 : TAX ON ACQUISITIONS OF EQUITY SECURITIES AND SIMILAR INSTRUMENTS

CHAPTER 1 : SCOPE

I. Securities covered by the tax

II. Acquisitions of equity securities and similar instruments

III. Conditions applicable to the issuer of the securities

CHAPTER 2 : EXEMPTIONS

I. The primary market

II. Transactions by a clearing house or a central depository

III. Acquisitions in the context of market making

IV. Acquisitions in the context of liquidity agreements

V. Intra-group and restructuring transactions

VI. Temporary transfers of securities

VII. Employee savings scheme transactions

VII. Bonds exchangeable for or convertible into shares

CHAPTER 3 : TAXATION PROCEDURES

I. Persons and entities liable for the tax

II. Taxable event and due date

III. Basis of assessment

IV. Rate

CHAPTER 4: REPORTING AND PAYMENT PROCEDURES

I. Obligations of persons or entities liable for the tax

II. Obligations of central depositories established in France

III. Nature of the information transmitted

CHAPTER 5: VERIFICATION AND PENALTIES

I. Verification

II. Penalties

III. Interest on late payments

CHAPTER 6: STAMP DUTY CONSEQUENCES

CHAPTER 7: VALUE-ADDED TAX CONSEQUENCES

TITLE 2: TAX ON CANCELLED ORDERS IN HIGH-FREQUENCY TRADING

CHAPTER 1: SCOPE

I. Territorial scope

II. High-frequency trading covered by the tax

III. Securities covered by the tax

CHAPTER 2: EXEMPTION

CHAPTER 3: TAXATION PROCEDURES

I. Person or entity liable for the tax

II. Taxable event and due date

III. Basis of assessment and rate

CHAPTER 4: REPORTING, PAYMENT AND PENALTIES

INTRODUCTION

1

Article 5 of the Supplementary Budget Act for 2012 (Act No. 2012-354 of 14 March 2012) introduces a tax on financial transactions.

10

The financial transaction tax has two components:

- A tax on acquisitions of equity securities and similar instruments, as provided by Article 235 ter ZD of the French Tax Code (Title 1);

- A tax on orders cancelled in the context of high-frequency trading, as provided by Article 235 ter ZD bis of the French Tax Code (Title 2);

TITLE 1 : TAX ON ACQUISITIONS OF EQUITY SECURITIES AND SIMILAR INSTRUMENTS

This title intends to review the rules for the tax on acquisitions of equity securities and similar instruments, which is an indirect tax. It details :

- the scope (Chapter 1) ;

- the exemptions (Chapter 2) ;

- the taxation procedures (Chapter 3) ;

- the reporting and payments procedures (Chapter 4) ;

- the verification and penalties (Chapter 5) ;

- the stamp duty consequences (Chapter 6) ;

- and the value-added tax consequences (Chapter 7).

CHAPTER 1 : SCOPE

1

Pursuant to Article 235 ter ZD of the French Tax Code, the tax on acquisitions of equity securities and similar instruments applies to every acquisition for valuable consideration of an equity security or similar instrument when such security or instrument is admitted to trading on a French, European or foreign regulated market, within the meaning of Articles L. 421-4, L. 422-1 or L. 423-1 of the Monetary and Financial Code, the acquisition results in a transfer of ownership, and the security or instrument is issued by a company whose registered office is located in France and whose market capitalisation exceeds €1 billion on 1st December of the year before taxation.

I. Securities covered by the tax

10

Equity securities and similar instruments, within the meaning of Article L. 211-41 of the Monetary and Financial Code, include shares and other securities that provide or could provide access to capital or voting rights, including securities issued on the basis of foreign laws.

The tax applies especially to investment certificates [*certificats d'investissement* (CI)] and voting right certificates [*certificats de droit de vote* (CDV)].

The tax also applies to securities that provide or could provide access to capital or voting rights, including bonds convertible into shares, bonds redeemable in shares, bonds convertible into new shares or exchangeable for existing shares, bonds exchangeable for shares, bonds with subscription warrants, bonds with redeemable subscription warrants, bonds with redeemable subscription or purchase warrants, bonds redeemable in new or existing shares, bonds redeemable in cash or in new or existing shares, subscription warrants, redeemable subscription warrants and redeemable subscription or purchase warrants.

20

The tax also applies to depositary receipts [*certificats représentatifs d'actions* (CRA)] issued by an entity regardless of its place of establishment. The first acquisitions of depositary receipts that are subject to the tax are those made as of 1st December 2012.

> **Example:** American depositary receipts issued by a US financial institution are subject to the tax when they represent an equity security whose issuer has its registered office in France.

The acquisition of an equity security, the subsequent issuance and acquisition of a depositary receipt representing this equity security by an investor is considered as a single operation carried out for consideration. The acquisition of the depositary receipt is analysed within the meaning of Article 235 ter ZD of the French Tax Code as materializing the transfer of ownership of the security equity it represents. This single operation is thus in the scope of the tax. The tax is due, except when the transaction is exempted, when the depositary receipt is acquired. The other components of this single operation are outside the scope of the tax.

Outside this process of creation, the following acquisitions of the depositary receipt carried out for consideration are taxed.

The cancellation of a depositary receipt realised when the equity security is returned to the investor is not an operation in the scope of the tax.

25

The tax does not apply to debt securities, units in collective investment schemes (common funds (FCP) and open-ended investment companies (SICAV)) (including ETFs - exchange traded funds) and financial contracts (including options, futures and warrants) when they are not equity securities as defined in the Monetary and Financial Code.

30

In addition, equity securities and similar instruments are taxable when they are admitted to trading on a French, European or foreign regulated market, within the meaning of Articles L. 421-4, L. 422-1 or 423-1 of the Monetary and Financial Code. Recognised foreign regulated markets are recognised markets within the meaning of Article L. 423-1 of the Monetary and Financial Code, whose implementing provisions are specified by Article D. 423-1 et seq. of that same code. Recognised foreign market status is granted by order of the Minister for the Economy in accordance with this article.

Therefore, purchases of equity securities or similar securities are covered by the tax regardless of the place of establishment of the regulated market on which the security is traded, regardless of the place of establishment or residence of the parties to the transaction, and regardless of the place where the contract was entered into.

II. Acquisitions of equity securities and similar instruments

40

The tax is owed on acquisitions of equity securities or similar instruments for valuable consideration resulting in a transfer of ownership.

Pursuant to paragraph 2 of section I of Article 235 ter ZD of the French Tax Code, acquisition means the purchase (including in connection with the exercise of an option or a forward purchase under an existing forward contract), the swap or the grant of equity securities in exchange for a contribution.

The exercise of a derivative product that involves the transfer of ownership of the underlying security to one of the parties to the contract constitutes an acquisition covered by the tax.

An acquisition is taxed if it is for valuable consideration, regardless of the amount.

Acquisitions made on the over-the-counter market that are settled subsequently and separately by wire transfer or in cash shall be considered acquisitions for valuable consideration.

50

On the other hand, acquisitions or grants other than for valuable consideration are not covered by this tax.

60

An acquisition is taxed if it results in a transfer of ownership of the equity security or similar instrument within the meaning of Article L. 211-17 of the Monetary and Financial Code. Transfer of ownership results from the registration of the securities acquired in the securities account of the purchaser, which corresponds to the day of settlement (generally in D+2 when the acquisition is realised on an organized platform located in France).

This registration is different from the record of the security in the purchaser's securities account made by the custodian upon execution of the buy order, which is a simple accounting entry.

Thus, acquisitions of a security that are not materialised by a book entry, to the extent that they are preceded or followed by sales of the same security in the course of same day, are not covered by the tax. Only the net position of the acquisitions at the end of the day is subject to the tax in this case.

Similarly, in the context of a deferred settlement service that permits settlement and delivery to be deferred until a certain settlement date, i.e. at the end of the month, only the net long position at month end is subject to the tax.

65

In case of an acquisition of a dismembered security equity or similar instrument in the scope of the tax, the acquisition of bare ownership of property as the acquisition of the right to the use and enjoyment of the property are both taxed.

70

On the other hand, a transfer of ownership in the context of furnishing or depositing securities as collateral within the meaning of Article L. 211-38 of the Monetary and Financial Code does not constitute an acquisition of equity securities or similar instruments, even when the guarantee constituted by the collateral is enforced because the debtor defaults and the securities become the property of the creditor.

It is the same in case of realization of a pledge of securities.

III. Conditions applicable to the issuer of the securities

80

The equity securities and similar instruments covered by the tax are those issued by a company with its registered office in France.

A move of the company's registered office to or from France during the year will cause the company's securities to be subject to the tax (as long as other conditions are met) or not subject to the tax, beginning on the date of the move.

90

When the issuer does not have its registered office in France, its securities are not covered by the tax, even if they are admitted to trading on a French trading platform or their issue account is held by a central depository in France.

On the other hand, the tax applies to securities that are issued by an issuer whose registered office is not in France and that represent securities whose issuer has its registered office in France.

100

Finally, the taxed securities are those whose issuer has a market capitalisation in excess of €1 billion.

Market capitalisation means the multiplication of the number of issued securities by the closing price on the most relevant market in terms of liquidity as defined in Article 9 of Regulation (EC) No. 1287/2006 of the Commission of 10 August 2006 implementing Directive 2004/36/EC of the European Parliament and of the Council as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive which provides that in principle, the most relevant market is the State where the equity security or similar instrument was first admitted to trading on a regulated market.

It is thus the primary market of the security.

110

The capitalisation threshold must be evaluated on 1st December of the year before taxation, by reference to the last known price at the close of this day of trading or, if appropriate, by reference to the last know price of the last day of trading before this date. Changes in the market capitalisation of a company during the year have no effect on the application of the tax.

> **Example:** The market capitalisation of a company A changes in the following manner: it is less than €1 billion between 1st December Y-1 and 3 March Y, then greater than €1 billion between 4 March Y and 15 November Y, then again lower than €1 billion between 16 November N and 8 January Y+1. In this case, the condition regarding the capitalisation threshold is not met over the course of Y or over the course of Y+1. Transactions involving this company's securities are thus not subject to the tax.

CHAPTER 2: EXEMPTIONS

1

As a general rule, foreign law persons and entities that do business or engage in transactions on terms governed by similar provisions of foreign law and that comply with the terms of the legal and regulatory provisions mentioned in this chapter are entitled to the exemptions provided for herein.

I. Primary market

10

In accordance with Article 235 ter ZD (II) (1°) of the French Tax Code, the following are exempt from the tax:

- subscriptions or purchases as part of the issuance of equity securities or similar instruments under paragraph 2 of Article 5 of Directive 2008/7/EC of the Council of 12 February 2008 concerning indirect taxes on the raising of capital;

It is stated that the subsequent acquisition to its creation of a depositary receipt may be exempted in the case of the issuance of the underlying equity security. It is the case when the depositary receipt is "sponsored" by the issuer of the underlying equity security. In this case, the newly created equity security by the issuer is the underlying equity security of the depositary receipt which materializes the transfer of ownership of the equity security and is transferred to the investor.

- acquisitions from an investment service provider (ISP) that purchased the securities on the primary market as part of a guaranteed placement or firm commitment underwriting as defined in Articles L. 321-1 and D. 321-1 of the Monetary and Financial Code;

- acquisitions made as part of a stabilisation transaction as defined in Regulation (EC) No. 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments, when this transaction is related to an issuance on the primary market. Share buy-backs on the secondary market are not covered by the exemption.

II. Transactions by a clearing house or a central depositary

20

In accordance with Article 235 ter ZD (II) (2°) of the French Tax Code, transactions by a clearing house or central depository as part of their respective activities are exempt from the tax.

These activities are defined in Article L. 440-1 of the Monetary and Financial Code for clearing houses and Article L. 621-9 of the Monetary and Financial Code and Article 550-1 of the General Regulation of the Autorité des marchés financiers (AMF), ratified by the order of 30 July 2009 (published in *Journal Officiel* No. 0178 of 4 August 2009) for the central securities depository.

On the other hand, a clearing house or a central securities depository that purchases securities for its own account, which bear no relation with the activities as defined in the previous paragraph, is not exempt from the tax.

III. Acquisitions in the context of market making

30

In accordance with Article 235 ter ZD (II) (3°) of the French Tax Code, acquisitions made in the context of market-making activities are exempt if they satisfy the following two cumulative conditions.

A. Condition relating to the quality of the person exercising market-making activities

40

The first condition relates to the exercise of these activities by an investment firm, a credit institution, an entity from a foreign country or a local enterprise that is a member of a trading platform or a market in a foreign country.

The firm or institution or entity must act as an intermediary that is a party to transactions on a financial instrument within the meaning of Article L. 211-1 of the Monetary and Financial Code.

B. Condition relating to the intermediation activity exercised

50

The firm, institution or entity must do the following with respect to a financial instrument:

- either posting firm, simultaneous two-way quotes of comparable size, with the result of providing liquidity for a financial instrument to the market, on a regular and continuous basis (1);

- or, as part of its usual business, by fulfilling orders initiated by clients or in response to clients' requests to trade (2);

- or by hedging positions arising from the fulfilment of tasks mentioned above (3).

1. The simultaneous communication of firm two-way quotes of comparable size, with the result of providing liquidity for a financial instrument to the market on a regular and continuous basis

60

This covers two situations.

a. The liquidity provision on a trading platform on which the securities are traded

70

The following conditions must be met.

Firstly, the liquidity provider must be continuously present on the market or have a minimal presence on the relevant market, for the financial securities, at least 95% of the time on both sides of the order book during the continuous trading session over one day.

For financial contracts, the liquidity provider must be present at least 80% of the time on both sides of the order book during the continuous trading session over the month.

However, a participant who ensures a presence on both sides of the order book at least 80% of the time evaluated over the month, on two "in the money" strike prices (i.e. for a call option, when the price of the underlying asset is higher than the strike price) and over five "out of the money" strike prices (i.e. for a call option, when the price of the underlying asset is lower than the strike price) over expiries of up to 13 months is considered a market maker for the options on a French share.

Secondly, the quote provided by the liquidity provider must ensure a minimum of transactions may be realised at such a level, thereby providing efficiently liquidity of the security. Thus, on a continuously traded financial instrument, the liquidity provider must agree to position a range of firm buy/sell quotes throughout the entire trading day.

Thirdly, the orders for providing liquidity must be clearly identified.

b. The liquidity provision to the market through over-the-counter activities

80

In this situation, in order to be entitled to the exemption, the intermediary must meet the conditions governing the activities of a systematic internaliser set out in Article L. 425-2 of the Monetary and Financial Code.

90

If the intermediary does not engage in systematic internaliser activities within the meaning of Article L. 425-1 of the Monetary and Financial Code, for transactions not exceeding the standard market size, the liquidity provider must be able to prove that it advertises a firm quote for the financial instrument for which the exemption is requested, or when there is no liquid market, that it discloses its quote to clients upon request.

100

In these two situations (§ 70 et § 80), the provision of liquidity is evaluated on the basis of the spread between the bid and ask prices (market spread) offered by the market maker, compared, when the security is listed, to the market spread observed on the most relevant market as defined in Article 9 of Regulation (EC) No. 1287/2006 of the Commission of 10 August 2006. The spread offered by the market maker must remain low enough for the market maker to effectively play its role with respect to the financial instrument in question, whether or not such instrument is admitted to trading on a regulated market.

2. The fulfilment of orders initiated by clients or in response to clients' requests to trade

110

The market participant's activity is to facilitate the execution of client orders by interposing its own account. The objective is to provide liquidity in addition to the liquidity immediately available on the market.

120

Constituting shares inventories in order for the intermediary to meet potential demand from clients is not exempt.

The intermediary must be able to make the proof of a link between a client request and the acquisition made for its account.

125

Is not exempted the acquisition of a basket of equity securities by an ISP, which is then returned to a UCITS in order to deliver a share of the UCITS to the ISP's client in response to its request. The acquisition of a basket of shares does not respond to the request of the client which is to acquire a share of UCITS.

130

Finally, the exemption only applies if the intermediary engages in regular activity. The regular nature of the activity is evaluated on the basis of the factual circumstances, including the number and frequency of transactions, how they are spread out over time, and the size in terms of value of the transactions.

3. The hedging of positions arising from the fulfilment of tasks under points 1 and 2

140

These hedging transactions are transactions to hedge positions resulting from transactions or issues of financial instruments, including financial contracts, by acquiring securities in the scope of the tax.

150

When these hedging transactions cannot be individualised, the intermediaries must make the proof of the link between acquisitions made in connection with hedging activities and the market making activities referred to in paragraphs a and b.

> **Example 1:** A market maker acting in the circumstances defined in paragraph a does not owe the tax when it makes purchases on the market for the underlying security to hedge positions taken as part of its activity.

> **Example 2:** An intermediary who responds to a client request in the circumstances defined in paragraph b by entering into a financial contract with the client and must hedge positions on the stock market, when necessary by adjusting the level of its hedge through purchases and sales in the course of performing this contract, is entitled to the exemption.

160

In any case, acquisitions of securities do not qualify for the market making exemption in any of the foregoing situations if they:

- correspond to purely directional positions, by which an intermediary acquires an increasing number of securities (or sells an increasing number of securities) because the intermediary detects a trend (upwards or downwards), in order to generate a margin by the gain realised on the shares.

- are pure arbitrage activities to take advantage of market inefficiencies between two assets of a different kind or between one asset traded on several markets, because these activities are not intended to provide additional liquidity to the intermediary's clients.

170

Finally, to be entitled to the exemption for market making transactions, investment firms and credit institutions may refer to their internal organisation of services as described by the mapping of activities that they must implement in order to meet their risk monitoring obligations under the article 17 et seq. of Regulation No.97-02 of 21 February 1997 on internal control at credit institutions and investment firms.

In this case, this mapping must clearly distinguish activities subject to FTT from exempt activities. Taxed activities and exempt activities, or activities exempt under different exemptions provided for by the law, must not coexist in a single unit of activities identified in the mapping.

IV. Acquisitions in the context of liquidity agreements

180

In accordance with Article 235 ter ZD (II) (4°) of the French Tax Code, acquisitions of securities for the account of issuers to ensure the liquidity of their shares as part of AMF accepted market practices No 2011-07 regarding liquidity agreements of 24 March 2011 pursuant to Directive 2003/6/EC of the European Parliament and of the Council on insider

dealing and market manipulation and Directive 2004/72/EC of the Commission implementing Directive 2003/6/CE of the European Parliament and of the Council as regards accepted market practices, the definition of inside information in relation to derivatives on commodities, the drawing up of lists of insiders, the notification of managers' transactions and the notification of suspicious transactions, are exempt from the tax.

This situation involves contracts entered into by investment firms or credit institutions directly with the issuers of the securities in question.

V. Intra-group and restructuring transactions

190

In accordance with Article 235 ter ZD (II) (5°) of the French Tax Code, the following are exempt from the tax:

- acquisitions of securities between companies in the same group that meet the conditions of Article L. 233-3 of the Commercial Code or between companies in the same tax-consolidated group that meet the conditions of Article 223 A of the French Tax Code;

- acquisitions of securities in connection with a merger or spin-off, on the terms set out in Article 210 A of the French Tax Code;

- acquisitions in connection with a partial contribution of an entire branch of activity or similar assets on the terms set out in Article 210 B of the French Tax Code;

- acquisitions in connection with the buy-out of a company by its employees, as provided by Articles 220 quater, 220 quater A and 220 quater B of the French Tax Code.

193

The exemption also applies to the group whose head, and optionally one or several members, are public entities, when their conditions of detention, direct or indirect, are met as provided by Article L. 233-3 of the Commercial Code, even if these entities are not a company on the terms set out in Article 1832 of the French Civil Code.

195

Regarding UCITS restructuring transactions, provided that conditions under Articles 210 A and 210 B of the French Tax Code are met except the condition relating to the legal entity, the exemption is allowed :

- for mergers between two common funds and between a common fund and an open-ended investment company,

- for equity security contributions by a feeder fund to a master fund if one of funds (or both) is a common fund.

It is allowed that UCITS internal restructuring transactions as transfer of equity securities between subfunds or mergers of subfunds be considered as outside the scope of the tax.

200

This exemption applies regardless of the place of establishment of the companies in question, as long as they meet the conditions in the above-mentioned articles of the French Tax Code and the Commercial Code.

VI. Temporary transfers of securities

210

In accordance with Article 235 ter ZD (II) (6°) of the French Tax Code, acquisitions of securities in the context of temporary transfers of securities, as defined in Article 2(10°) of Regulation (EC) No. 1287/2006 of the Commission of 10 August 2006, are exempt from the tax.

There are three primary categories of such transactions:

- securities lending within the meaning of Article L. 211-22 of the Monetary and Financial Code;

- sale and repurchase agreements within the meaning of Article L. 211-27 of the Monetary and Financial Code;

- buy/resell and sell/buy transactions. These are transactions constituting temporary transfers, i.e. the acquisition comes with a contractually agreed right for the transferor to buy back the security at the initial price, within a pre-established deadline. This is the case with sales with a repurchase option within the meaning of Articles 1659 et seq. of the Civil Code.

220

Any transfer of ownership made under conditions similar to those provided for in Articles L. 211-22 and L. 211-27 of the Monetary and Financial Code is deemed to constitute a temporary transfer of ownership giving rise to an exemption.

230

In this connection, when the temporary transfer is secured by collateral and the security interest is enforced because the debtor defaults, and therefore the securities become the property of the creditor, this acquisition of the collateral is entitled to the exemption.

240

With regard to buy/resell or sell/buy transactions, the exemption is linked to the fact that the acquisition of the securities transferred temporarily does not become permanent.

If the acquisition of the securities ultimately becomes permanent, then it is taxed.

Thus, for a sale with a repurchase option, the taxable event is the expiry of the period in which the seller retains the right to buy back the transferred securities.

250

Finally, to be entitled to the exemption for temporary transfers of securities, investment firms and credit institutions may refer to their internal organisation of services on the terms defined in III-B-3 § 170.

VII. Employee savings scheme transactions

260

Pursuant to Article 235 ter ZD (II) (7°) of the French Tax Code, acquisitions of equity securities by employee investment funds within the meaning of Article L. 214-164 et seq, of the Monetary and Financial Code and by employee share ownership open-ended investment companies as defined in Article L. 214-166 of the Monetary and Financial Code are exempt from the tax.

Acquisitions by an employee of an equity security issued by his company or a company in the same group as defined by Articles L. 3344-1 and L. 3344-2 of the Labour Code as part of an employee savings scheme, pursuant to the seventh paragraph of Article L. 3332-15 of the Labour Code are also exempt.

270

Pursuant to Article 235 ter ZD (II) (8°) of the Fre nch Tax Code, purchases by the issuer of the securities when the securities will be transferred to the members of an employee savings scheme are exempt.

275

Purchases of equity securities in the scope of the tax by a common fund wholly owed by an employee investment fund are taxed.

VIII. Bonds exchangeable for or convertible into shares

280

Pursuant to Article 235 ter ZD (II) (9°) of the Fre nch Tax Code, acquisitions of bonds exchangeable for or convertible into shares are exempt, as are redeemable bonds. These include bonds convertible into shares, bonds redeemable in shares, bonds convertible into new or exchangeable for existing shares, bonds exchangeable for shares, bonds with subscription warrants, bonds with redeemable subscription warrants, bonds with redeemable subscription or purchase warrants, bonds redeemable new or existing shares, bonds redeemable in cash or in new or existing shares. This exemption applies to similar foreign securities.

290

On the other hand, an acquisition of shares by way of swap, conversion or redemption is taxed.

CHAPTER 3 : TAXATION PROCEDURES

I. Person or entity liable for the tax

1

The person or entity liable for the tax is the investment services provider (ISP) that provides services defined in Article L. 321-1 of the Monetary and Financial Code, regardless of where such provider is established, if it executes bid orders on behalf of third parties or purchases for its own account.

In France, ISPs are investment firms and credit institutions that have received an authorisation to provide all or part of the investment services within the meaning of Article L. 321-1 of the Monetary and Financial Code (issued by the *Autorité de contrôle prudentiel* and by the *Autorité des marches financiers* (AMF) for the service referred to in Article L. 321-1(4) of the Monetary and Financial Code).

Intermediaries providing equivalent services outside France are subject to the tax on the same terms.

> **Note :** The person or entity liable for the tax may regularly give a mandate to a third person acting on his name and on his behalf to declare and to pay the tax. The principal remains the person or entity liable for the tax administration to declare and to pay the tax and eventually the default interest and penalties.

10

If there is a chain of intermediations, two situations must be distinguished:

- When several ISPs participate in the execution of a buy order, the tax is determined and owed by the first ISP who receives the bid order from the final purchaser.

> **Note 1:** When an ISP does not have an authorisation to provide third-party order execution services referred to in Article L. 321-1 (2) of the Monetary and Financial Code, receives and transmits an order from its client to another ISP in charge of executing the order (and therefore has this authorisation), the person or entity liable for the tax is the second ISP.

> **Note 2:** When an ISP has an authorisation to provide third-party order execution services referred to in Article L. 321-1 (2) of the Monetary and Financial Code, receives and transmits an order from its client to another ISP in charge of executing the order (and therefore has this authorisation), the person or entity liable is exceptionally the second ISP if the following conditions are met : the first ISP is not a party to the chain of settlement, it does not issue an execution report as defined in Article 314-86 of the AMF general regulation or in any other equivalent regulation for the relevant transaction, it is not a member of the market place on which the transaction takes place and it represents the party acquiring with the second ISP. In France, this first ISP is usually called “table d’intermédiation”.

- When an ISP transmits a bid order for its own account to another ISP for execution, the tax is owed by the ISP that purchased the securities.

> **Example 1:** An ISP B receives two orders for execution : one order for the account of one of its clients (first transaction) and one order for the own account of an ISP A (second transaction). ISP B in turn transmits the two buy orders to an ISP C, which physically executes the orders on the trading platform. The person liable for the tax on the first transaction is ISP B (except that he fulfils the conditions mentioned above in note 2, in which case the person liable is ISP C) and the one liable for the tax on the second transaction is ISP A.

> **Example 2:** When a depositary receipt is issued, the ISP liable for the tax is the one authorised to provide third-party order execution directly related with the investor for whom the ISP acquires the depositary receipt (which materializes the transfer of property of the underlying equity security). When no ISP intervened, the person or entity liable for the tax is the custodian.

20

If there is no chain of intermediations, the single ISP is liable for the tax when it is admitted as a market member, even if it is not authorised to provide third-party order execution.

In this case, the ISP must be considered, for the purposes of the tax, as authorised to provide third-party order execution.

30

For acquisitions made without the intervention of an ISP, the tax is owed by the custodian within the meaning of Article L. 321-2(1) of the Monetary and Financial Code, regardless of its place of establishment.

> **Note:** When the equity securities are pure registered, the issuer is the custodian and is thus liable for the tax for purchases made without the intervention of an ISP.

40

The purchaser must transmit the information needed to determine the tax.

The custodian must assume that acquisitions are taxable when the purchaser does not inform it of exempt acquisitions of securities.

II. Taxable event and due date

50

The taxable event is the acquisition of the security, which is deemed to occur on the date of transfer of ownership of the security, i.e. the date on which the security is recorded in the purchaser's securities account (which is the date of settlement/delivery).

60

The tax is due on the first day of the month following the occurrence of the taxable event.

> **Example:** An investment firm executes a bid order on a regulated market on 30 October. The trade is recorded in the securities account on 2 November. The tax is thus due on 1st December.

(70)

80

By giving notice to the central securities' depository (if the person or entity liable for the tax is not in a situation set out in the last two paragraphs of Article 235 ter ZD (VII) of the French Tax Code on reporting and direct payment to the tax administration) and to the tax administration by the 25th of the month, the person or entity liable for the tax may take the option to determine the due date based on the theoretical date of settlement/delivery, i.e. the second day following the transaction for acquisitions on a regulated market or the date agreed in the contract for over-the-counter acquisitions, without taking into account any buy-in that could delay the actual date of settlement/delivery.

This option takes effect as of the transaction of the first day of the month following such notification.

Regarding transactions prior to January 1st 2015, the date of the taxable event regarding persons or entities liable for the tax who took the option for the theoretical date of settlement/delivery is fixed on the third day following the transaction.

> **Example:** An ISP who took the option for the theoretical date of settlement/delivery and acquired securities on december 29th 2014, declares and pays the tax for the month of January 2015. The theoretical date of settlement/delivery which applies in this case is in D+3. Only transactions realised from January 1st 2015 are considered to have occurred, on the purpose of determining the taxable event, in D+2.

III. Basis of assessment

A. Determination of the tax base

90

Pursuant to Article 235 ter ZD (III), the tax is based:

- on the price paid for the security, in the case of a spot purchase;

- on the strike price established in the contract, when a derivative instrument is exercised;

- on the price established in the bond indenture, in the case of conversion, redemption or exchange of a bond;

- in other cases, including swaps, on the amount indicated in the contract, and if no such amount is indicated, on the price of the security on the most relevant market in terms of liquidity at closing of the trading day preceding the day on which the swap occurs.

100

The purchase price paid or the strike price or conversion price indicated in the contract is the price not including the transaction fees (e.g. brokerage fees, intermediation fees, transfer fees, file fees, recording fees, bank fees, etc.).

110

If securities of unequal value are exchanged, each party to the exchange is taxed on the value of the securities that it acquires.

> **Example:** Company A owns securities X that it exchanges for securities Y of Company B. Since the securities X have a value of €140,000 and the securities Y have a value of €150,000, the swap agreement provides that Company A will pay a cash adjustment of €10,000 to Company B. Consequently, the basis for the assessment on the swap is €150,000 for Company A and €140,000 for Company B in respect of their respective acquisitions.

120

With respect to buy/resell or sell/buy transactions of securities that become the property of the transferee, the tax is based on the value of the securities as determined by the contract on which the initial purchase or sale was based.

When the exercise of an option results in delivery of a basket of equity securities in which some securities are taxed and others are not taxed, only the strike price of taxed securities determines the tax base.

B. Calculation of the net long position

130

If a net long position results, at the end of the day or the month, from intraday or intra-month transactions (entitled to deferred settlement) for the purchase and then sale of securities, the basis for assessment of the tax is calculated as follows.

133

The net long position is calculated the day of equity security settlement. The net long position is assessed in relation to all transactions whose settlement (theoretical or real) must take place on the same day.

> **Example 1:** An ISP purchases for its own account the same day 30 securities A on the French stock exchange, 20 securities A on the New-York stock exchange and sales 50 securities A on the French stock exchange. It has not opted for the theoretical settlement date. The settlement date on the French stock exchange is in D+2 and on the American one, in D+3. In this case, the ISP cannot calculate a single net long position for all transactions. It must thus calculate a net long position for all transactions whose settlement date is in D+2 (French stock

exchange) and another one for the transactions whose settlement date is in D+3 (New-York stock exchange). Consequently, the ISP is liable for tax under the 20 securities A purchased on the New-York stock exchange. However, the ISP's net long position would have been zero if it has opted for the theoretical settlement date (II § 80).

Example 2: Same example as example 1 except that the 20 securities A purchased on the American stock exchange are delivered in D+2. In this case, the ISP calculates a single net long position for all transactions whose settlement date is finally the same day, in D+2.

135

The tax base is calculated at each ISP liable for tax.

Under these conditions, transactions made by several ISP on behalf of the same client cannot be aggregated.

137

For a given security, the person or entity liable for the tax calculates the net long positions at the end of the day (or the month) on the sales and purchases carried out for the account of each of its clients and for its own account, first subtracting from this calculation all exempt purchases and sales associated with exempt activities (market making, primary market transactions, temporary transfer of securities, etc.).

The person or entity liable for the tax thus calculates the number of securities of Company X acquired by a client in the course of the day or, in the event of a deferred settlement, in the course of the month, from which the person or entity liable for the tax subtracts the number of securities of Company X sold by the same client in the course of the day, or in the event of a deferred settlement service, in the course of the month.

The number thus obtained, which is the number of securities the ownership of which is transferred for the account of a client (third party account or own account), must be multiplied by the average purchase value of the securities (rounded up to the nearest cent) over the course of the day or month in question.

139

The basis of assessment is obtained by adding the net long positions.

Example : A person or entity liable for the tax executes the following purchases and sales of securities in the course of a trading day:

- for its own account: purchase of 1,000 securities A at €50, 500 securities A at €49. The purchase of 1,000 securities A is exempt as part of its market making activities and sale of 800 securities A at €50.50, as part of its market making activities;

- for its client X: purchase of 100 securities A at €50, then 50 securities A at €49; neither purchase is exempt;

- for its client Y: acquisition of 1,500 securities B at €12; this purchase is not exempt, sales of 80 securities A and 1,000 securities B.

The basis of assessment is calculated as the sum of the net long positions of the own account activities and the activities for each of its two clients, i.e.: 500 securities A x €49 [own account] + (100 + 50 securities A) x €49.67 [client X] + (1,500 – 1,000 securities B) x €12 [client Y] = €37,950.50.

The tax owed is €37,950.50 x 0.3 % = €113.8515, rounded to €114.

C. Acquisition on a foreign stock exchange outside the euro zone

140

When the purchase is made on a foreign stock exchange outside the euro zone, the taxable value is established on the basis of the closing price on the currency market of the currency in question on the eve of the date of purchase.

The « eve of the date of purchase » means the eve of the settlement day.

This rule also applies to over-the-counter transactions.

However, as a simplification, it is recognized that the eve of the negotiation day of the equity security may constitute the date to determine the tax base for transactions made on foreign stock exchange outside euro zone.

The set date (eve of the negotiation day or eve of the settlement day) must be the same for all transactions made under a monthly tax period.

IV. Rate

150

The tax rate is set at 0.3 %.

CHAPTER 4 : REPORTING AND PAYMENT PROCEDURES

I. Obligations of the person or entity liable for the tax

1

The reporting and payment obligations of the person or entity liable for the tax depend on the place of establishment of the central securities depository that holds the issuer's account for the security in question.

A. The central securities depositary (CSD) is established in France

10

When the central depository holding the issuer's account is established in France, four situations must be distinguished:

1. The delivery of the security is realised on the books of the CSD

20

When the delivery of the security is realised on the books of the CSD, the person or entity liable for the tax must transmit to the depository the information referred to in Article 58 Q of Annexe III to the French Tax Code and designate the member who will pay the tax on its behalf.

30

This information and the payment of the related tax must be transmitted to the CSD before the fifth of the month following the settlement of the securities.

2. The delivery of the security is realised on the books of one of the members of the CSD

40

When the delivery is realised on the books of one of the members of the CSD, this member must transmit to the central securities depository the information referred to in Article 58 Q of Annexe III to the French Tax Code and must pay the tax.

50

This information and the payment of the related tax must be transmitted to the CSD before the fifth of the month following the settlement of the securities.

3. The delivery of the security is realised on the books of one of the clients of a member of the CSD

60

When the delivery is realised on the books of one of the clients of a member of the CSD, the client who is liable for the tax must furnish the information referred to in Article 58 Q of Annexe III to the French Tax Code and designate this member, who will pay the tax on its behalf.

70

This information and the payment of the related tax must be transmitted to the CSD before the fifth of the month following the settlement of the securities.

4. The delivery of the security is realised in circumstances other than those described in I-A-1 to I-A-3 § 20 to 70

80

When the delivery of the security is realised in circumstances other than those described in I-A-1 to I-A-3 § 20 to 70, the person or entity liable for the tax reports and pays the tax directly to the *Direction des Grandes Entreprises* prior to the twenty-fifth of the month following the acquisitions of taxable securities.

90

However, the person or entity liable for the tax may elect to have a member of the CSD report and pay the tax.

In this case, the person or entity liable for the tax transmits to the member of the CSD the information referred to in Article 58 Q of Annexe III to the French Tax Code and indicates the amount of tax to be paid.

100

As long as the settlement of the security is not realised on the books of a member or the books of a client of a member, the person or entity liable for the tax may choose to have the member of its choice report and pay the tax, but such member must remain the same throughout the course of the annual validity of the option exercise.

This information referred to in Article 58 Q of Annexe III to the French Tax Code must be transmitted to the CSD before the fifth of the month following the settlement/delivery of the securities.

If the person or entity liable for the tax wishes to exercise the option, it must inform the *Direction des Grandes Entreprises* in a letter before the twenty-fifth of the month preceding the month for which it intends to exercise this option and must designate the member selected.

The option takes effect as of the first trade on the first day of the month following the notification.

The option is valid for one year and is renewed automatically. It may be cancelled by giving notice to the *Direction des Grandes Entreprises* before the 25th of the month preceding the month for which the person or entity liable for the tax no longer intends for it to be effective.

110

The person or entity liable for the tax is discharged from the payment of the tax on the date of payment of the tax, directly or indirectly, to the central depository subject to Article L. 621-9 (II) (3°) of the Monetary and Financial Code.

B. The CSD holding the issuer's account of the security in question is established outside France

120

When the security is acquired at a CSD established outside of France, the person or entity liable for the tax must file Form No. 3374-SD / 3374-ANG-SD (CERFA No 14720) downloadable on the website www.impots.gouv.fr, rubric "*Recherche de formulaires",* with the *Direction des Grandes Entreprises* along with its payment, by the 25th of the month following the settlement of the securities.

> **Note:** When a depositary receipt is issued, its acquisition (chapter 1, §20) must be declared and, if appropriate, paid under conditions described in I-A §10 to 110 since the depositary receipt materializes the transfer of ownership of the underlying equity security, which issuer's account holder is located in France. The acquisition of a depositary receipt, outside the process of issuance, must be declared and, if appropriate, paid under the conditions described in I-A-4 § 80 to 110.

130

The person or entity liable for the tax must make the information referred to in Article 58 Q of Annexe II to the French Tax Code available to the administration.

II. Obligations of CSD established in France

140

The CSD subject to Article L. 621-9(II)(3) of the Monetary and Financial Code is required to file Form No. 3374-SD (CERFA n° 14720 – downloadable on the website, www.impôts.fouv.fr, within the rubric "Recherche de formulaires") with the *Direction des Grandes Entreprises* by the 25th of the month following the settlement/delivery of the securities, including both a hard copy and an electronic file in .csv format.

150

The amounts paid per transaction to the CSD member, directly or indirectly, by the persons or entities liable for the tax in a given month are rounded up to the nearest cent. A fraction of a euro equal to 0.005 is rounded up to 0.01.

The amounts then withheld in respect of a month by the central depository are rounded, for each person or entity liable for the tax, to the nearest euro. A fraction of a euro equal to 0.5 is rounded up to 1.

160

The payment of the tax to the CSD, by withholding from the account of the members by the depository or by direct payment to the depository, must be made by the 5th of the month following the settlement/delivery of the securities.

170

The obligations of the CSD as a tax collector as specified in Article 58 R of Annexe III to the French Tax Code.

III. Nature of the information transmitted

180

This information is specified by Article 58 Q of Annexe III to the French Tax Code.

> **Note:** The date relating to the address of the head office or the principal establishment of the person liable referred to in paragraph c of the article mentioned above includes the physical address and the email address.

190

With respect to the exemption provided for in Article 235 ter ZD (6°) of the French Tax Code, both the initial transfer of ownership of the security being temporarily transferred and the transfer of ownership permitting the return of the security to the assets of the initial transferor are reported in accordance with Article 58 Q (I) (i) of Annexe III to the French Tax Code, for each taxation period affecting them.

However, it is permissible to report only the exempt temporary transfers of securities made as of 1st January 2013. This same tolerance applies to corporate actions whose purpose is to issue new securities.

CHAPTER 5 : VERIFICATION AND PENALTIES

1

The tax is recovered and verified in accordance with the rules and procedures applicable to sales taxes.

Given the specific nature of the system used to collect this tax, access to information to enhance verification procedures has been extended and specific penalties are provided for in Articles 1788 C and 1736 of the French Tax Code.

I. Verification

10

In accordance with Article 58 R VII of Annexe III to the French Tax Code, the central securities depository must make available to the tax administration all data collected and documents drawn up as it collects the tax.

All of these data and documents must be kept for the period provided for in Article L.102 B of the *Livre des procédures fiscales* (LPF).

II. Penalties

A. If persons or entities liable for the tax and members fail to meet their reporting and payment obligations

20

If persons or entities liable for the tax fail (or cause members to fail) to transmit information necessary for the central securities depository to withhold the amount of the tax, Article 1788 C (I) of the French Tax Code imposes the following penalties on them:

- when tax is owed, a surcharge of 40% of the amount of tax owed, which shall not be less than €1,000;

- when no tax is owed, a fine of €1,000 per monthly tax return.

30

If the person or entity liable for the tax or the member, through no fault of the person or entity liable for the tax, is late in transmitting the information, then the following penalties will be applied under Article 1788 C (II) of the French Tax Code:

- when tax is owed, a surcharge of 20% of the amount of tax owed, which shall not be less than €500;

- when no tax is owed, a fine of €500 per monthly tax return.

40

Moreover, in accordance with Article 1788 C (III) of the French Tax Code, if inaccuracies or omissions are found in the information transmitted by the person or entity liable for the tax or, through no fault of the person or entity liable for the tax, by the member, a fine of €150 per omission or inaccuracy will be imposed. However, the amount of this penalty may not exceed 40% of the tax omitted.

50

The penalties provided for by Article 1788 C (I) and (III) of the French Tax Code are not cumulative. If no information is transmitted, only the penalties provided for by paragraph I apply.

60

Finally, if a person or entity liable for the tax required to file a return with the *Direction des Grandes Entreprises* fails to do so and pay taxes, Articles 1728 et seq. of the French Tax Code will apply.

In any event, the imposition of the fine punishes failure by a member when the member is not deemed to be liable for the tax, and it cannot be the consequence of a failure by a person or entity liable for the tax or an intermediary.

B. In the event of a violation by the CSD that collects the tax

70

If a central securities depository fails to comply with its reporting obligations as set out in Article 235 ter ZD (IX) of the French Tax Code, it will pay a fine of €20,000 in the case of failure to file a monthly return, in accordance with Article 1736 (VII) of the French Tax Code.

80

In the event of missing data or inaccuracy in a tax return, a fine of €150 is imposed per omission or inaccuracy, up to a limit of €20,000 per tax return, pursuant to Article 1736 (VII) of the French Tax Code.

90

If it fails to comply with its obligation to provide the tax administration with the information referred to in Article 235 ter ZD (X) of the French Tax Code, a fine of €20,000 applies.

100

In any event, the imposition of the fine punishes a failure by the CSD and cannot be the consequence of a failure by a person or entity liable for the tax or an intermediary (a member or client of a member) between that person or entity liable for the tax and the CSD.

110

In accordance with Article 1731 of the French Tax Code, the CSD incurs a surcharge of 5% for any delay in the payment of the tax that must be paid to the accountants of the tax administration.

III. Interest on late payments

120

In accordance with Article 235 ter ZD (XI) of the French Tax Code, Article 1727 of the French Tax Code apply if the person or entity liable for the tax or the central securities depository fails to comply with its payment obligations.

130

When the person liable for the tax fails to pay the tax by the 5th of the month following its acquisitions (or by the 25th of the month following its acquisition in the situation referred to in the last paragraph of Article 235 ter ZD (VII) of the French Tax Code), and, through no fault of the person or entity liable for the tax, the CSD fails to remit the tax by the 25th of the month following these acquisitions, Article 1727 of the French Tax Code applies and the late party shall pay the interest on late payments accruing as of the first day of the following month.

TITLE 2 : TAX ON CANCELLED ORDERS IN HIGH-FREQUENCY TRADING

CHAPTER 1 : SCOPE

I. Territorial scope

1

The transactions covered by the tax are those carried out by a company operated in France within the meaning of Article 209(I) of the French Tax Code. An enterprise is deemed operated in France when it habitually does business in France, either as an autonomous establishment (including a branch) or through an independent representative that is unincorporated, or as the result of a complete business cycle.

II. High-frequency trading covered by the tax

10

High-frequency trading is defined as the habitual addressing of orders for own account using an automated mechanism. The spacing of these orders may not exceed the duration indicated in Article 58 S I of Annexe III to the French Tax Code.

20

Whether this threshold is exceeded for a given security is assessed with respect to a median duration, calculated over the month preceding the taxed transactions, between the buy or sell instructions and the instructions to modify or cancel them, for a given security.

Moreover, the exceedance of this threshold is evaluated by trading desks. If the trading desk carries out transactions other than high-frequency trading, it must prove that the transactions in question are not covered by the tax.

30

The systems used to optimise the conditions for order execution or to confirm orders, often called "smart order routers", are not considered automated mechanisms for the purpose of the tax.

III. Securities covered by the tax

40

The tax applies to equity securities as defined in Article L. 212-1 A of the Monetary and Financial Code.

50

The place of the issuer’s registered office and its market capitalisation do not matter.

CHAPTER 2 : EXEMPTIONS

60

Market making activity as defined by Article 235 ter ZD (II) (3°) (cf. Title 1 Chapter 2 Section 3 of this instruction) is exempt from the tax.

CHAPTER 3 : TAXATION PROCEDURES

I. Person or entity liable for the tax

70

The tax is owed by all companies operated in France, including autonomous establishments (including branches) of foreign companies doing business in France.

On the other hand, branches of French companies established abroad that engage in high-frequency trading are not subject to the tax.

II. Taxable event and due date

80

The tax is due when the rate of cancellation or modification of orders within the course of a day exceeds the threshold established in Article 58 S (II) of Annexe III to the French Tax Code.

90

This cancellation rate corresponds to the following formula: (nominal amount of cancellation instructions + nominal amount of modification instructions) / (nominal amount of transfer instructions (initial orders) + nominal amount of modification instructions). It is calculated on the basis of instructions sent, after excluding exempt activities.

The nominal amount is the number of securities covered by an order. Thus one order to buy 1,000 securities corresponds to a nominal amount of transmission instructions of 1,000.

100

The tax is due on the first day of the month following the month during which the orders cancelled or modified exceeding the cancellation or modification rate were transmitted to the trading platforms.

III. Basis of assessment and rate

110

The tax rate is set at 0.01 % of the amount of orders cancelled or modified in excess of the threshold mentioned in III-B § 80, which may not be less than two thirds of the orders transmitted over the course of a trading day.

120

The basis of assessment is equal to the number of securities that were cancelled and/or modified in excess of the threshold set in Article 58 S (II) of Annexe III to the French Tax Code multiplied by the average value of the security over the course of a trading day (rounded up to the nearest cent).

> **Example :** Let us assume that the threshold triggering the tax is 80% and the average value of this security calculated over a trading day is €45.
>
> Over the course of a trading day, a trading desk identified as having engaged in high-frequency trading (in accordance with I-B § 10 to 30) gave the following instructions with respect to a security:
>
> - transmission instructions corresponding to initial orders to buy or sell 40,000 securities;
>
> - modification instructions corresponding to orders to buy or sell 200 securities;
>
> - instructions to cancel orders to buy or sell 35,000 securities;
>
> The cancellation rate is calculated as follows: (200 + 35,000) / (200 + 40,000) x 100 = 87.56%
>
> Since this rate is higher than the 80% threshold, the basis of assessment of the tax is calculated as follows:

35,200 (orders cancelled and modified) – (40,200 (initial and modified orders) x 80%) = 35,200 – 32,160 = 3,040 x €45 (average unit value) = €136,800.

The amount of tax owed is equal to €13.68 (136,800 x 0.01%).

CHAPTER 5 : REPORTING, PAYMENT AND PENALTIES

130

The tax is reported, calculated and paid on :

- Annex No. **3310 A** (CERFA No. 10960) to the declaration referred to in Article 287 of the French Tax Code relating to the month or quarter in which the transmission of orders referred to in Article 235 ter ZD bis (II) has been made (statement available online at www.impots.gouv.fr, within the rubric "Recherche de formulaires");
- the annual declaration No. **3517-S** (CERFA No. 11417) referred to in Article 287 (3) of the French Tax Code filed during the year in which the tax is due, for the persons liable for the value added tax subject to the simplified taxation regime (statement available online at www.impots.gouv.fr, within the rubric "Recherche de formulaires").

140

The applicable penalties for failure to report or pay the tax are the same as those applicable to sales taxes.