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INTRODUCTION

Article 5 of the Supplementary Budget Act for 2012 (Act No. 2012-354 of 14 March 2012), published in the Official Gazette (*Journal Officiel*) on 15 March 2012, introduces a tax on financial transactions.

The financial transaction tax has three components:

- A tax on acquisitions of equity securities and similar instruments, as provided by Article 235 ter ZD of the French Tax Code;
- 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;
- A tax on purchases of credit default swaps on sovereign debt, as provided by Article 235 ter ZD ter of the French Tax Code.

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

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 January of the year of taxation.

Section 1: Securities covered by the tax

2. 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.

3. The tax applies to investment certificates [*certificats d'investissement* (CI)] and voting right certificates [*certificats de droit de vote* (CDV)] and depositary receipts [*certificats représentatifs d'actions* (CRA)] issued by an entity regardless of its place of establishment.

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 first acquisitions of depositary receipts that are subject to the tax are those made as of 1st December 2012.

4. 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, redeemable subscription or purchase warrants and pre-emptive rights.

5. 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.

6. 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.

7. 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.

Section 2: Acquisitions of equity securities and similar instruments

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

9. 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.

10. 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.

11. 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.

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

12. 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.

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.

13. 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.

14. 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.

Section 3: Conditions applicable to the issuer of the securities

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

16. 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.

17. 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.

18. 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 2006¹ 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.

19. The capitalisation threshold must be evaluated on 1st December of the year preceded the year of taxation², by reference to the last known price at the close of the last day of trading. 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 November 2012 and 3 March 2013, then greater than €1 billion between 4 March 2013 and 12 November 2013, then again lower than €1 billion between 13 November 2013 and 8 January 2014. In this case, the condition regarding the capitalisation threshold is not met over the course of year 2013 or over the course of year 2014. Transactions involving this company's securities are thus not subject to the tax.

¹ implementing Directive 2004/39/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.

² Except for the year 2012 for which the reference is set at 1 January (see the list of companies in Arrêté du 12 juillet under : <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000026178804&dateTexte=&categorieLien=id>).

CHAPTER 2: EXEMPTIONS

20. 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.

Section 1: The primary market

21. 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;

- 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.

Section 2: Transactions by a clearing house or a central depository

22. 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.

23. 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.

Section 3: Acquisitions in the context of market making

24. 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.

25. 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.

26. The second condition relates to the intermediation activity exercised. The firm, institution or entity must do the following with respect to a financial instrument:

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

This covers two situations:

The first situation is where liquidity is provided on a trading platform on which the securities are traded. The following conditions must be met:

1) 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;

2) 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;

3) the orders for providing liquidity must be clearly identified.

The second situation is where liquidity is provided to the market through over-the-counter activities. 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.

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.

In these two situations, 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.

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

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.

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.

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.

c) or by hedging positions arising from the fulfilment of tasks under points (a) and (b)

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.

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.

Examples: 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.

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, where necessary by adjusting the level of its hedge through purchases and sales in the course of performing this contract, is entitled to the exemption.

27. 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.

28. 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 obligations³.

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.

³Cf. Article 17 et seq. of Regulation No. 97-02 of 21 February 1997 on internal control at credit institutions and investment firms.

Section 4: Acquisitions in the context of liquidity agreements

29. 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 practices⁴ pursuant to Directive 2003/6/EC of the European Parliament and of the Council⁵, and Directive 2004/72/EC of the Commission⁶, 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.

Section 5: Intra-group and restructuring transactions

30. 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.

31. 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.

Section 6: Temporary transfers of securities

32. 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.⁷

33. 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.

34. 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.

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.

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.

35. 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 paragraph 28.

⁴Cf. Accepted market practice No. 2011-07 regarding liquidity agreements of 24 March 2011.

⁵Directive of 28 January 2003 on insider dealing and market manipulation (market abuse).

⁶Directive of 29 April 2004 implementing Directive 2003/6/EC 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.

⁷Regulation implementing Directive 2004/39/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.

Section 7: Employee savings scheme transactions

36. 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. 214-39 et seq, of the Monetary and Financial Code and by employee share ownership open-ended investment companies as defined in Article L. 214-41 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.

37. Pursuant to Article 235 ter ZD (II) (8) of the French 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.

Section 8: Bonds exchangeable for or convertible into shares

38. Pursuant to Article 235 ter ZD (II) (9) of the French 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.

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

CHAPTER 3: TAXATION PROCEDURES

Section 1: Person or entity liable for the tax

40. 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.

41. 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 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.

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

1) 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: When an ISP does not have an authorisation to provide third-party order execution services referred to in Article L. 321-1(3) 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.

2) 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: 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 owing the tax on the first transaction is ISP B. The person owing the tax on the second transaction is ISP A.

43. 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. 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.

Section 2: Taxable event and due date

44. 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.

45. 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.

46. The first acquisitions subject to the tax are those resulting from transactions realised as of 1st August 2012, provided that these transactions precede the transfer of ownership (delivery of the security) by at least four business days.

47. 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 third 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.

Section 3: Basis of assessment

48. 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.

49. 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.).

50. First, 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.

51. Then, 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.

52. Finally, 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.

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.

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;

- 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;
- sale of 80 securities A;
- sale of 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 0.2 % = €75.901, rounded to €75.90.

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.

Section 4: Rate

53. The tax rate is set at 0.2%.

CHAPTER 4: REPORTING AND PAYMENT PROCEDURES

Section 1: Obligations of the person or entity liable for the tax

54. 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 DEPOSITORY IS ESTABLISHED IN FRANCE

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

- The delivery of the security is realised on the books of the central securities depository

When the delivery of the security is realised on the books of the central securities depository, 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.

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

- The delivery of the security is realised on the books of one of the members of the central depository

When the delivery is realised on the books of one of the members of the central securities depository, 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.

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

- The delivery of the security is realised on the books of one of the clients of a member of the central securities depository

When the delivery is realised on the books of one of the clients of a member of the central securities depository, 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.

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

- The delivery of the security is realised in circumstances other than those described above

When the delivery of the security is realised in circumstances other than those described above, 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.

However, the person or entity liable for the tax may elect to have a member of the central securities depository report and pay the tax. In this case, the person or entity liable for the tax transmits to the member of the central securities depository 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. 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 central securities depository before the fifth of the month following the settlement/delivery of the securities.

56. 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.

For acquisitions made between 1st August 2012 and 1st November 2012, the option must be indicated in a letter sent to the *Direction des Grandes Entreprises* before 1st November 2012.

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.

57. 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 CENTRAL SECURITIES DEPOSITORY HOLDING THE ISSUER'S ACCOUNT OF THE SECURITY IN QUESTION IS ESTABLISHED OUTSIDE FRANCE

58. When the security is acquired at a central securities depository established outside of France, the person or entity liable for the tax must file Form No. 3374-SD with the *Direction des Grandes Entreprises* along with its payment, by the 25th of the month following the settlement of the securities.

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.

Section 2: Obligations of central securities depositories established in France

59. The central depository subject to Article L. 621-9(II)(3) of the Monetary and Financial Code is required to file Form No. 3374-SD 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, a template for which is attached to Form No. 3374-SD.

60. The amounts paid per transaction to the central depository 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.

61. Moreover, the payment of the tax to the central depository, 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.

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

Section 3: Nature of the information transmitted

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

64. 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.

65. 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

66. 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.

Section 1: Verification

67. 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).

Section 2: Penalties

A. IF PERSONS OR ENTITIES LIABLE FOR THE TAX AND MEMBERS FAIL TO MEET THEIR REPORTING AND PAYMENT OBLIGATIONS

68. 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.

69. 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.

70. 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.

71. 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.

72. 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.

73. 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 CENTRAL SECURITIES DEPOSITORY THAT COLLECTS THE TAX

74. 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.

75. 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.

76. 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.

77. In accordance with Article 1731 of the French Tax Code, the central securities depository 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.

78. In any event, the imposition of the fine punishes a failure by the central securities depository 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 central securities depository.

Section 3: Interest on late payments

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

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 1727 (VII) of the French Tax Code), and, through no fault of the person or entity liable for the tax, the central securities depository 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.

CHAPTER 6: STAMP DUTY CONSEQUENCES

80. Acquisitions on which financial transaction tax is imposed are exempt from the stamp duty provided for by Article 726 of the French Tax Code.

CHAPTER 7: VALUE-ADDED TAX CONSEQUENCES

81. Any passing along of the tax by the ISP or custodian to the end client that acquired the securities is not subject to VAT⁸.

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

CHAPTER 1. SCOPE

Section 1: Territorial scope

82. 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.

Section 2: High-frequency trading covered by the tax

83. 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.

84. 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.

85. 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.

86. 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.

Section 3: Securities covered by the tax

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

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

CHAPTER 2: EXEMPTION

89. 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 4: TAXATION PROCEDURES

Section 1: Person or entity liable for the tax

⁸ The passing along of the tax to the end client does not release the ISP or the custodian from the legal provisions designating them as the persons legally responsible for the tax.

90. 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.

Section 2: Taxable event and due date

91. 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.

92. 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.

93. 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.

94. 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.

Section 3: Basis of assessment and rate

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

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 section 2) 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: $(200 + 35,000) / (200 + 40,000) \times 100 = 87.56\%$

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) $\times 80\%) = 35,200 - 32,160 = 3,040 \times €45$ (average unit value) = €136,800.

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

CHAPTER 5: REPORTING, PAYMENT AND PENALTIES

96. The tax is reported, calculated and paid before the tenth of the month following the transmission of orders by companies operated in France on Form No. 3375-SD.

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

TITLE 3: TAX ON CREDIT DEFAULT SWAPS ON SOVEREIGN DEBT

CHAPTER 1: SCOPE

Section 1: Territorial scope

98. The tax applies to any purchase, by an individual domiciled in France within the meaning of Article 4 B of the French Tax Code, a company operated in France within the meaning of Article 209(I) or a legal entity established or organised in France.

Section 2: Transactions covered by the tax

99. As provided by Article 235 ter ZD ter of the French Tax Code, the tax on credit default swaps (CDS) of a European State applies to all purchases of a naked CDS whose underlying is sovereign debt.

100. CDSs are financial protection contracts by which the buyer of protection pays a premium to the seller of protection in exchange for which the buyer receives the right, in the event of a credit event affecting the State, either to obtain a sum corresponding to the difference between the nominal value and the market value of the sovereign bonds, or to deliver these bonds against the payment of a price corresponding to their nominal value.

101. The contracts are considered naked when the purchaser of the CDS does not hold a long position on the sovereign debt of a European State and does not hold assets or liabilities whose value is correlated, in an unequivocal manner, to the value of the sovereign debt of the State covered by the CDS.

Example: a credit default swap on Irish sovereign debt entered into by an individual residing in France will be exempt from the tax if this individual holds one or more bonds issued by the Irish Treasury in an amount corresponding to the value covered by the swap.

CHAPTER 2: EXEMPTION

102. 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

Section 1: Person or entity liable for the tax

103. Every individual domiciled in France within the meaning of Article 4 B of the French Tax Code, every company operated in France within the meaning of Article 209(I) of the French Tax Code, and every entity established or organised in France, must pay the tax.

Section 2: Taxable event and due date

104. The tax is due upon entering into the swap.

Section 3: Basis of assessment and rate

105. The amount of the tax is equal to 0.01% of the notional amount of the swap, which is the nominal or face amount used to calculate swap-related payments.

CHAPTER 4. REPORTING, PAYMENT AND PENALTIES

106. The tax is reported, recovered and verified using the same procedures and under the same penalties, guarantees, security interests and liens as value-added tax.

107. The tax is reported by persons or entities liable for the tax on their VAT return (Form No. 3310 A; annexe to the TVA CA3 return) and paid by persons or entities liable for the tax to their tax office.

Until electronic filing is available, a hard copy of the return shall be filed for the period in question, accompanied by the payment. "Taxe sur les contrats d'échange sur défaut d'un État" (tax on credit default swaps on sovereign debt) must be handwritten in Line 77 reserved for this tax.