ASSOCIATION FRANÇAISE DES MARCHÉS FINANCIERS

FRENCH FINANCIAL TRANSACTION TAX

GUIDELINES

2026

With these guidelines on the French financial transaction tax (FTT), AMAFI assessed the measures set forth in the 2012 Supplementary Budget Act and of the various legislative arrangements related to it afterwards, for the benefit of its members and foreign correspondents, especially in the United Kingdom. The current document looks at several developments that have taken place since the introduction of this scheme and the detailed responses from the tax authorities to questions posed by three industry bodies: the French Asset Management Association (AFG), the Association for Financial Markets in Europe (AFME) and AMAFI.

These clarifications mainly concern the scope of the tax, exemptions, the taxable person as well as the terms of taxation, declaration and payment of the tax. This note is published at least once a year to update the list of French companies with a market capitalisation of more than one billion euros on December 1st N-1, the links referring to the sources cited and the data on the return and allocation of the tax. If necessary, the annual publication of this guide will also include other assessment elements that it would be useful take into account (such as the tax value allocation ratio calculated based on the 31 December financial statements published each year by the relevant issuers)

This English translation is published by AMAFI for the convenience of members. It has been jointly reviewed by AMAFI and AFME.

All the translations of legal and regulatory provisions are non-official. Only the French original should be relied upon.

1. A tax on financial transactions was introduced in Article 5 of the 2012 Supplementary Budget Act 2012-354 of 14 March 2012, published in the Official Journal of the French Republic (OJ) on 15 March 2012 and has since been modified (see *Appendix 1*). With the abolition of the Tax on certain sovereign

credit default swaps, kwon as the "CDC tax"[1], the financial transaction tax (FFTT) has become a dual tax:

- A tax on acquisitions of equity securities (General Tax Code (GTC) Article *235 ter ZD*), ("**FFTT**"**)**;
- A tax on high-frequency trading (GTC Article 235 *ter* ZD bis), ("**HFT tax**"**)**;

Virtually all aspects of the mechanism, with amendments introduced by Article 7 of Supplementary Budget Act 2012-958 of 16 August 2012 published in the OJ on 17 August 2012, came into effect on 1 August 2012, and the first deferred tax payment is due on 9 November 2012 at the latest for Euroclear France affiliates.

This framework was subsequently amended by the Finance Act for 2017 (No. 2016-1917 of 29 December 2016), the Finance Act for 2018 (No. 2017-1837 of 30 December 2017), the Finance Act for 2019 (No. 2018-1317 of 28 December 2018) (see below nos. 12 and 71), and the Finance Act for 2025 (No. 2025-127).

2.This mechanism was then amended by the 2017 Budget Act 2016-1917 of 29 December 2016,the 2018 Budget Act 2017-1837 of 30 December 2017 and the 2025 Budget Act 2025-127 of 14 February 2025 (*see §*12 *and §*71).Several pieces of implementing legislation have supplemented and finalised the system.

- Decree 2012-956 of 6 August 2012 on procedures for FFTT taxpayer reporting and collection by the central depositary, published in the OJ on 7 August 2012, specified:
  - taxpayers' reporting requirements in relation to the central depositary or the tax authorities (amount of the tax owed, trade order numbers, execution dates, trade descriptions, number and value of the equities taxed, exempt trades listed by exemption categories, etc.).
  - obligations of the central depositary (keeping accounting records, checking the consistency of taxpayers' declarations, filing an annual report).
- Decree 2012-957 of 6 August 2012 on the tax on high-frequency trading in equity securities, published in the OJ on 7 August 2012, specified the procedures for levying the HFT tax and set the threshold under which the lag between the change or cancellation of previously sent orders concerning a given security qualifies a transaction as a high-frequency trade.
- The Appendix to the BOFiP giving the list of companies whose registered offices are in France and whose market capitalisation exceeded one billion euros as of 1 December 2024, pursuant to Article 235 *ter* ZD of the GTC, listed the companies whose securities are eligible for the 2025 FFTT *(see Appendix 2)*.
- Instruction 3 P-3-12 of 2 August 2012 on the FFTT, published in Official Tax Bulletin (OTB) 61 of 3 August 2012, clarified the position of the tax authorities on certain aspects of the new system. This instruction has now been repealed and incorporated in the Official Tax and Public Finance Bulletin (BOFiP), principally under BOI-TCA-FIN references, last updated on 3 May 2017.
- The draft of a letter that would be used for designating a member of central depositary to declare and pay the FFTT has been submitted to the tax authorities *(see Appendix 3)*.

[1] With effect from 1 January 2019, Article 26 of the Budget Act 2018-1317 of 28 December 2018 abolishes the tax on sovereign credit default swaps under Article 235 ter ZD ter of the General Tax Code (now repealed).

- A series of questions and answers published by the French Tax Authorities ("FTA") when the FTT was introduced in 2012. This list of questions and answers, which is no longer available online, is repeated and updated in this Guide (*see Appendix 4*).
- The tax authorities have provided answers to questions posed by three industry bodies, the French Asset Management Association (AFG), the Association for Financial Markets in Europe (AFME) and AMAFI. These answers, which clarify the mechanism, constitute an **interpretation of a tax statute, within the meaning of the Tax Procedures Manual (i.e. assurance provided by a formal** position on the interpretation of a tax rule[2]).

Furthermore[3], Euroclear France, in its capacity as central depositary keeping the issue account, published a set of FFTT Specifications on 29 October 2012. Drawn up based on work by a market-wide group set up by Euroclear, the specifications provide guidance on the conditions for implementing the operational procedures specific to Euroclear. This document, updated in March 2025 (ESES Detailed Service Description – Financial Transaction Tax), is available on the Euroclear website.

3. Accordingly, the main purpose of this paper is to provide explanations to AMAFI members – and to any institution that might be classified as a taxpayer for the French FFTT – about a system that is of particular concern to them. It thus seeks in particular to respond to queries received by AMAFI since the system was introduced by the 2012 Supplementary Budget Act.

Disclaimer

Despite the care taken by AMAFI in preparing this paper, these explanations remain subject to review by the courts, which have sole power to interpret the law. Accordingly, those who wish to use this paper are responsible for forming their own opinions as to the relevance of the analyses herein. In any event, this paper may be amended and supplemented, as new information is brought to our attention.

[2] Pursuant to paragraph 1 of Article L. 80 A of the Tax Procedures Manual, letters sent by the tax authorities to industry bodies constitute a formal position on the interpretation of tax legislation (*BOI-SJ-RES-10-10-20-20120912, §120*). Consequently, such positions are enforceable once the bodies or persons concerned have received them, as specified in the same issue of the tax bulletin (BOI).

[3] Note that France Post-Marché, a group that speaks for the French post-trade industry, also published its Financial Transaction Tax Specifications on 25 February 2013.

SOMMAIRE

I. SECURITIES ACQUISITION TAX - FFTT

4. This paper reviews the various aspects of the FFTT, before addressing a number of questions which have been put to AMAFI, in a section entitled "Supplemental Questions" (*see §123 et seq.)*, and for which it felt that some additional assessment criteria would be useful.

SCOPE

5. The FFTT is payable when five conditions are met cumulatively. There must be (i) an acquisition for consideration (ii) resulting in a transfer of ownership (iii) of shares or equivalent securities (iv) admitted to a regulated market and (v) issued by a French company with a market capitalisation of more than €1 billion.

An acquisition for consideration (i) …

> "*A tax is applied to any acquisition for consideration of a security […]*" (*GTC, Article 235 ter ZD, I, 1*).
>
> "*Acquisition, as used in the first paragraph of this article, means the purchase, including purchase by exercising an option or a forward purchase which has previously been defined in a contract, the exchange or the allotment, in consideration for contributions of equity securities as defined in said first paragraph*" (*GTC, Article 235 ter ZD, I, 2*).

6. Only acquisitions are liable for the FFTT. Note that the notion of "acquisition" would appear to include the notion of "subscription", or there would be no basis for the primary market exemption (*see §23*). Sales are not taxed.

The acquisition must be for valuable consideration[4]. Accordingly, acquisitions and allotments of bonus shares are not liable for the FFTT (*BOI-TCA-FIN-10-10-20151221, §50*). Work by the French parliament[5] has upheld this notion, confirming that the tax does not apply to allotments of bonus shares. Also, according to government guidelines, neither the payment of dividends in shares (*see §130*), nor securities lending (*see § 46 and §141*) should be considered to be transactions falling within the scope of the FFTT.

[4] In particular, "*acquisitions carried out on the OTC market whose cash settlement is conducted later and separately by means of bank transfer or in cash must be treated as acquisitions for consideration*" (*BOI-TCA-FIN-10-10-20151221, §40*).

[5] See report by G. Carrez, AN, No. 4339, 8 February 2012, p. 149.

7. The following transactions are expressly deemed to be acquisitions for the purposes of the FFTT:

- The exercise of a derivative (option or future) that results in the transfer of ownership of the underlying securities to one of the parties to the transaction (*see §16, §56 and §*153);
- The exchange or allotment of securities in consideration for contributions, although these transactions may qualify for the exemption applicable to corporate restructurings involving mergers, demergers and partial mergers (*see §41 et seq*).
- The acquisition of equity securities by subscribing for shares/units in collective investment schemes and paying for them with these securities.

On the last point, the Tax Legislation Directorate (DLF) wrote to the AFG on 5 February 2013 stating that "*under Article 235 ter ZD of the GTC, the tax is payable on acquisitions of equity securities or equity equivalents through transactions made for valuable consideration and entailing a change of ownership*" and that "paragraph 40 of the Official Public Finances and Tax Bulletin (BOI-TCA-10-10) states that "acquisition" means the purchase, exchange or allotment of equity securities for consideration". In consequence, "*the contribution of a securities portfolio coming within the scope of the tax and corresponding to an in-kind contribution constitutes a taxable acquisition for consideration"*.

8. However, deposits of securities as collateral, as governed by the provisions of Article L. 211-38 of the Monetary and Financial Code, as well as pledges of financial securities, are not treated as acquisitions for consideration (*see §135 et seq.*).

resulting in a transfer of ownership (ii) …

"*A tax is applied to any acquisition for consideration of an equity security […] when acquisition results in a transfer of ownership as defined by Article L. 211-17 of the same code […]*" (*GTC, Article 235 ter ZD, I, 1*).

"*I. - The transfer of ownership of the financial securities results from the registration of these securities in the purchaser's securities account or from the registration of these securities for the benefit of the purchaser in a shared electronic recording device mentioned in Article L. 211-3.*

II. - When financial securities are handled by a central depositary or delivered by a securities settlement system cited in Article L. 330-1, the posting provided for in (I) shall take place on the date and under the conditions set out in the General Regulation of the Autorité des Marches Financiers […]" (*MFC, Article L. 211-17*).

9. The FFTT applies when there is a transfer of ownership as defined under French law[6], meaning that the securities purchased are posted to the securities account of the buyer[7]. Transfer of ownership of securities liable for the FFTT is governed by the provisions of Article L. 211-17 of the Monetary and Financial Code, which stipulate that this transfer "*is the result of the posting of said securities to the securities account of the buyer, (…) on the date and under the conditions set out in the General Regulation of the Autorité des Marches Financiers (AMF) [...]*".

While all purchases are recorded in the client's securities account by the client's custody account-keeper "*as soon as the custody account-keeper is informed that the order has been executed*[8]", such recognition is not counted as a book entry but merely as an "*accounting record*" (*AMF GR, Art. 570-3*). It is only on the "*effective settlement date*" of the trade (*MFC, Art. L. 211-17-1, III*), i.e. when the securities are delivered to the custody account-keeper by a book entry to the account that it holds directly or indirectly[9] with the central depositary, that the accounting record is legally transformed into a book entry.

Ownership is transferred when the acquired securities are registered on the buyer's securities account, i.e. at the settlement date. If the acquisition is transacted on a platform in France, settlement generally takes place on T+2[10] (*BOI-TCA-FIN-10-10-20151221, §60*).

10. In other words, merely recognising that a purchase of securities liable for the FFTT has taken place is not sufficient for the tax to be payable. The purchase must also be evidenced by a book entry that is always linked to effective settlement of the trade, which settlement only take place later...

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[6] With financial securities, one effect of ownership transfer is that ownership status becomes enforceable vis-à-vis the issuer and comes with entitlement to vote in general meetings of the issuing company and to receive detached rights, particularly dividends and pre-emptive rights. In the case of French companies, the terms and conditions of this enforceability are set by domestic law such that even if the parties agree on different rules for transferring ownership, these will not be binding on the issuing company. This characteristic has crucial importance for a system that is supposed to be applied extraterritorially, treating parties that have no links to France as statutory taxpayers (*see also §88 et seq.*). For example, in the case of a derivative product (financial contract) between two non-residents, it is hard to see how the French authorities could claim tax income if the product results in no entitlements on French territory or with regard to a French entity. Such a claim could be made only if exercising the product resulted in the transfer of ownership of the underlying securities and hence of the rights that these securities confer with respect to a French issuer, which is why such transfers are included within the scope of the FFTT (*see §56*).

[7] Use of the notion of ownership transfer means in particular that the securities must be transferred between distinct legal entities. Thus, for example, transfer of ownership does not occur in the case of a transfer of securities between branches, between a branch and its parent company, or between the books of the same legal entity.

[8] Bearing in mind that the account-keeper is not necessarily immediately or directly informed of execution. In some cases, the client's custody account-keeper may be informed only indirectly of the purchase through the settlement that it performs on the client's behalf with an investment services provider (ISP). This type of situation arises, as described below (*see §1111*), when an institutional client deals directly with ISPs to buy and sell securities, and then asks those providers to settle the trades with a separate institution acting on its behalf solely as custody account-keeper.

[9] Indirectly, if the custody account-keeper that is legally bound to the client in this capacity does not have an account with the central depositary, but with another custody account-keeper.

[10] *Earlier, French markets operated on a three-day settlement cycle (T+3). However, since 6 October 2014 the cycle has been shortened to two days (T+2).*

Given this fact, clarification is required for two situations:

- First, a situation in which the trade is not effectively settled owing to failure to deliver the securities under the conditions provided for in the AMF General Regulation. The accounting records made at the time of purchase may not then be turned into book entries and must be cancelled[11] (*AMF GR, Art. 570-3-1*). This means that the purchase cannot be liable for the FFTT because the custody account-keeper did not recognise a transfer of ownership.
- Second, a situation in which purchases and sales carried out in the same security on the same trading day[12] give rise to the recognition of a net balance, after offsetting the purchases and sales, in the client account where the transactions are recorded (*see also §56 et seq.*) . Although each of the individual transactions results in accounting records on the credit and debit sides of the securities account, only the net balance is the subject of a book entry (*BOI-TCA-FIN-10-10-20151221, §60*).

11. The following examples seek to clarify the main possible scenarios, making the simplifying assumption that the custody account-keeper also carries out the purchases and sales on the market or is at least aware of the transactions and makes the necessary accounting records and book entries.

However, these examples also apply to situations where the client has orders executed directly or indirectly[13] via an intermediary, which is then responsible for settling the transactions with the custody account-keeper that keeps the account. In these situations, although the intermediary is acting in its own name, it is acting legally on the client's behalf (commission agreement). The first consequence of this is that the sold or purchased securities transit through a third-party account held by the intermediary, not through an own account. Another result is that, at this level, there are no book entries evidencing a transfer of ownership likely to be liable as such for the FFTT, but only accounting records reflecting the transactions that have taken place. It is solely at the level of the custody account-keeper – and only after the securities have been effectively delivered to it[14] – that the book entries are made and thus ownership transferred to the client[15], which constitutes the taxable event for the

[11] Bearing in mind that "*in the case of a partial settlement affecting multiple buyers, the accounting records shall be cancelled in proportion to the rights of each buyer*". (*AMF GR, Art. 570-3*).

[12] In reality on the same delivery day, because there may be situations (marginal from an operational standpoint) in which the net balance reflects transactions that are carried out on different days but settled on the same day.

[13] Situation where the client does not send the order directly to the intermediary that performs execution but uses another intermediary that acts in its own name but on the client's behalf (under a commission agreement) and sends the order to the intermediary for execution.

[14] Not before, because it does not know about market transactions that the client has conducted directly with the intermediary.

[15] In such situations, there is a disconnection between the party that makes the accounting records and the party that makes the book entry. The intermediary that buys securities for a client makes accounting records that evidence the acquisition and subsequent reception of the purchased securities when they are delivered to the intermediary by the market counterparty or clearing house, followed by delivery of the securities to the client's custody account-keeper. In this case, while the securities received by the intermediary may in some situations give rise to a transfer of ownership prior to delivery in order to provide a guarantee to the intermediary, they are not the subject of a book entry in the intermediary's name as long as the guarantee is not called in. Moreover, they do not give rise to a book entry in the intermediary's books if the intermediary does not perform this function on the client's behalf. In practice, the securities merely transit via the intermediary. Once received, they are immediately sent on to the client's custody account-keeper, which performs the book entries evidencing the transfer of ownership that may be liable as such for the FFTT.

FFTT[16]. In this case, however, the party that has the status of taxpayer vis-à-vis the tax authorities is the firm that carried out the purchase (*on determining the taxpayer, see §74 et seq.*), not the custody account-keeper, which, as described above, cannot determine whether the securities it receives on behalf of the client follow a FFTT-liable purchase (*on the effects of this, see §83 et seq.*).

Example 1: At T, an investor buys 100 securities and then sells 90; these trades are settled at T+3 by book entry in the account held by the custody account-keeper directly or indirectly with the central depositary.

Each trade is the subject of an accounting record in the securities account of the investor at T, with a credit of 100 securities and a debit of 90 securities. The accounting record evidencing the purchase of 100 securities is only transformed into a book entry at T+2 in respect of 10 securities because the other 90 securities were sold. The tax is payable on 10 securities.

Example 2: At T, an investor sells 90 securities before buying 100; these trades are settled at T+2 by book entry in the account held by the custody account-keeper directly or indirectly with the central depositary.

The process is the same as in Example 1. The tax is payable on 10 securities.

[16] Book entries made by the custody account-keeper, taking account of any settlements that that account-keeper may be required to manage on the same day on the client's account(s) (*see also §62)*.

Example 3: At T, an investor buys 90 securities and sells 100 (10 of which were held following a previous acquisition); these trades are settled at T+2 by book entry in the account held by the custody account-keeper directly or indirectly with the central depositary.

Each trade is the subject of an accounting record in the investor's securities account at T, with a credit of 90 securities and a debit of 100 securities. No new book entry is created however, because the existing book entry evidencing the holding of 10 securities is deleted. No tax is payable.

Example 4: A client buys 100 securities at T and sells 90 at T+1; these trades are settled at T+2 for the purchase and at T+3 for the sale by book entries in the account held by the custody account-keeper directly or indirectly with the central depositary.

Each trade is the subject of an accounting record in the investor's securities account, with a credit of 100 securities at T and a debit of 90 securities at T + 1. The accounting record evidencing the purchase of 100 securities obtains the status of a book entry at T+3. Then 90 of these book entries are deleted at T + 4 following the sale. The tax is payable on 100 securities.

Example 5: A client buys 100 securities and sells 90; these trades are settled at T+1 for the purchase and at T+3 for the sale by book entries in the account held by the custody account-keeper directly or indirectly with the central depositary.

Each trade is the subject of an accounting record in the investor's securities account, with a credit of 100 securities at T and a debit of 90 securities at T. The accounting record evidencing the purchase of 100 securities obtains the status of a book entry at T+1. Then 90 of these book entries are deleted at T+2 following the sale. The tax is payable on 100 securities.

Example 6: An investor buys 100 securities and then sells 90. Obeying best execution rules, the intermediary acting on the investor's behalf buys the securities on platform A and sells on platform B. The trades are settled at T+2 by book entries in the account held by the custody account-keeper directly or indirectly with the central depositary.

Each trade is the subject of an accounting record in the securities account of the investor at T, with a credit of 100 securities and a debit of 90 securities. The fact that the transactions are carried out on different platforms has no consequence. The accounting record evidencing the purchase of 100 securities is transformed into a book entry at T+2 only in respect of 10 securities because the other 90 securities were sold. The tax is payable on 10 securities.

Example 7: A client buys 100 securities; these trades are never settled by book entry in the account held by the custody account-keeper directly or indirectly with the central depositary.

The trade is the subject of an accounting record in the investor's securities account, with a credit of 100 securities at T. But this record never obtains the status of a book entry. No tax is payable.

12. The obligation to consider the principle of ownership transfer makes it necessary not only to calculate the net long position used to determine the base for the FFTT (*see §58 et seq.*), but also to clarify the conditions under which adjustments may be necessary if the tax is charged on one or more purchases whereas sales resulting in a net long position have been performed (*see §95 et seq.*).

As of 1st January 2018, the condition relating to the transfer of ownership remains in effect while the FFTT extension to intraday transactions is removed

With the aim of including intraday transactions within the scope of the tax, Article 62 of the Budget Act for 2017 abolished, with effect from 1 January 2018, the condition laying down the scope of the tax on the transfer of ownership

Introduced on parliamentary initiative during the budgetary debate, the original amendment provided for application from 1 January 2017, against the opinion of the Government. The practical difficulties of implementing this provision, the obvious concern not to send a negative message to the financial sector in the context of the 'Brexit', as well as the objective of consistency with the French position in the discussions initiated at European level on the EU FTT, have ultimately led to the postponement of this application until 1 January 2018.

A similar provision had already been adopted by the Parliament on the occasion of the discussion of the Finance Act for 2016[17]: it had, however, been censored by the French Constitutional Court (*AMAFI / 16-01*) on a procedural point. On the other hand, the extension of the scope to intraday operations under Article 62 of 2017 Budget Act was approved by the Constitutional Court[18], which considered that the legislator had adapted the applicable rules by providing new and sufficiently defined recovery procedures.

However, the minister, Michel Sapin, had stressed during the budget debates of late 2016 that this provision would be unenforceable.

Moreover, in a detailed argument presented to the public authorities in early July 2017 (*AMAFI / 17-44)*, AMAFI had restated the reasons why the extension of the FFTT to intraday operations, on 1st January 2018, was a not such a good idea.

Finally, this concern was taken into account in the announcement made by the Prime Minister at the Paris Europlace 2017 Days: "*The Government will reconsider the FFTT base extension to intraday transactions, voted in 2016 without preparation, whereas it is unenforceable and would penalise the Paris financial centre and affect the consistency of our tax policy* ". The FFTT extension to intraday transactions was therefore repealed by Article 39 of the 2018 Budget Act which removes Article 62 of the 2017 Budget Act. As a consequence of this removal, the condition relating to the transfer of ownership is maintained.

More recently, the subject was put back on the agenda with a legislative proposal tabled in April 2023 by a French parliamentary group (LIOT) aiming to extend the scope of FTT to intraday transactions and derivatives[19]. In this context, AMAFI was auditioned, based on its responses to a questionnaire from the Finance Committee of the Assemblée nationale (*AMAFI / 23-44)*. The legislative proposal was ultimately not adopted, as its author withdrew it during the debate in public session.

[17] On the arguments then developed against this provision see AMAFI's note (*AMAFI / 15-56*).
[18] Decision No. 2016-744 DC of 29 December 2016 – Finance Act for 2017
[19] On the illustrations of the negative effects of applying the FTT to derivatives see AMAFI's note (*AMAFI / 23-43*).

… de titres de capital ou de titres assimilés (iii) …

« *A tax is applied to any acquisition for consideration of an equity security as defined by Article L. 212-1 A of the Monetary and Financial Code, or of an equivalent security, as defined by Article L. 211-41 of the same code, […]" (GTC Article 235 ter ZD, I, 1).*

« *Securities representing those mentioned in the first paragraph and issued by a company, irrespective of the location of its registered offices, are liable for the tax" (GTC, Art. 235 ter ZD, I, §3), this provision applying "to acquisitions conducted as from 1 December 2012" (Act 2012-958, Art. 7, II, 2).*

« *Equity securities issued by joint-stock companies include shares and other securities that give, or could give, access to capital or voting rights" (MFC Article L. 212-1 A).*

« *All equivalent instruments or rights representing a financial investment in an entity and issued under foreign law shall be considered to be equivalent to the financial instruments cited in Article L. 211-1*" (*MFC Article L. 211-41*).

… of shares or equivalent securities (iii) …

"*A tax is applied to any acquisition for consideration of an equity security as defined by Article L. 212-1 A of the Monetary and Financial Code, or of an equivalent security, as defined by Article L. 211-41 of the same code, […]*" (*GTC Article 235 ter ZD, I, 1).*

"*Securities representing those mentioned in the first paragraph and issued by a company, irrespective of the location of its registered offices, are liable for the tax*" *(GTC, Art. 235 ter ZD, I, §3),* this provision applying "*to acquisitions conducted as from 1 December 2012*" (*Act 2012-958, Art. 7, II, 2*).

"*Equity securities issued by joint-stock companies include shares and other securities that give, or could give, access to capital or voting rights*" (*MFC Article L. 212-1 A*).

"*All equivalent instruments or rights representing a financial investment in an entity and issued under foreign law shall be considered to be equivalent to the financial instruments cited in Article L. 211-1*" (*MFC Article L. 211-41*).

13. This primarily means shares of any kind: ordinary shares, preferred stock, twin shares, profit-sharing certificates, preferred dividend shares, etc.

"*Other securities that give, or could give, access to capital and voting rights*" included in the tax scope include voting right certificates[20] and investment certificates (*BOI-TCA-FIN-10-10-20151221, §10*). However, this definition also covers other categories of instruments that could give access to capital:

- Warrants (*bons de souscription*), including:
  - Share subscription warrants (BSAs),
  - Redeemable share subscription warrants (BSARs),
  - Redeemable share subscription or acquisition warrants (BSAARs);

- Any bonds that may give access to shares[21]:
  - Bonds that may be converted into shares (OCAs),
  - Bonds that may be exchanged for shares (OEAs),
  - Bonds that are redeemable in shares (ORAs),
  - Bonds with share subscription warrants attached (OBSAs),
  - Bonds that may be converted into or exchanged for new or existing shares (OCEANEs),
  - Bonds that are redeemable in new or existing shares and bonds that are redeemable in new shares or cash (ORANEs),
  - Bonds that are redeemable in cash or in new or existing shares (ORNANEs),
  - Bonds with redeemable share subscription warrants attached (OBSARs),
  - Bonds with redeemable share subscription or acquisition warrants attached (OBSAARs).

14. However, while the purchase of warrants and bonds thus falls within the scope of the FFTT(*on the specific question of share subscription warrants, see §132),* Article 235 *ter* ZD II 9° provides explicit or implicit exemptions for certain categories (*see §24 and53*).

Note also that pre-emptive subscription rights, previously treated as share warrants, as well as equities or equity equivalents coming within the scope of the tax, are no longer within that scope following an BOFiP update on 15 January 2014[22]. (*BOI-TCA-FIN-10-10-20151221, §10*).

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[20] Although such certificates may be assigned only if accompanied by an investment certificate or, failing that, only to an investment certificate holder (*Commercial Code, Art. L. 228-30*).

[21] For a different view of this equivalency, see *Droit des marchés financiers*, T. Bonneau and F. Drummond, Economica, 3rd ed., 2010, §94, who stress that "making these composite securities equivalent to equity securities is an unconvincing step. It is neither fair nor fruitful".

[22] This satisfies one of the requests made by AMAFI, which argued that pre-emptive rights ought to be removed from the tax scope because they were neither equity securities as defined in Article L 212(A) MFC nor an equity-equivalent security, as per Article 211-41 ibid. Moreover, the administration's previous position had been criticised: "*This position is debatable. Unlike a warrant, a pre-emptive right is not a financial security. It is certainly tradable "as a security" but, from a legal standpoint, it is not a security as such. A financial security cannot exist unless it is issued, i.e. "created by an entity pursuant to a contract". This is not the case with pre-emptive rights* (*see G. Blanluet and N. de Boynes , Bull. Joly Bourse, Oct. 2012, p. 444, quoting M. Germain, "Traité de droit commercial, Les sociétés commerciales, Vol. II, LGDJ, 20th ed., 2011, no. 1939 and T. Bonneau, Valeurs mobilières et titres financiers en droit français, RD bancaire et fin. 2099, no. 2, case 10*).

15. Moreover, discussions were held in connection with the original system to determine whether depositary receipts[23], including the specific category of ADRs, fall within the scope of the FFTT[24].

This debate has now been settled. Act 2012-958 amended the system on this point, effective 1 December 2012[25], by providing that depositary receipts in respect of French shares come within the scope of the tax: "*Securities representing those mentioned in the first paragraph and issued by a company, irrespective of the location of its registered offices, are liable for the tax*" (*GTC, Art. 235 ter ZD, I, para. 3*). In consequence, the FFTT also applies to "*American Depositary Receipts issued by a US financial institution and representing equity securities of an issuing company with its registered office in France*[26]" (*BOI-TCA-FIN-10-10-20151221, §20*), subject to the provisions discussed below on levying the FFTTin the specific case of creating and cancelling depositary receipts (*v. see below and §148 et seq.*).

16. Conversely, the FFTT does not apply (*BOI-TCA-FIN-10-10-20151221, §25*) to debt securities (*see §*53 *et seq.)*, CIS securities (*see §142*) and financial contracts. In the latter case, however, if the contract results in physical delivery of an underlying comprised of shares or equivalent securities, such delivery is then counted as an acquisition on the part of the beneficiary (*see §56*).

… admitted to a regulated market (iv) …

> "*A tax is applied to any acquisition for consideration of an equity security […] admitted to trading on a French, European or foreign regulated market, as defined by Articles 421-4, L. 422-1 and L. 423-1 of said code, […]*" (*GTC Article 235 ter ZD, I*).

[23] Which may be defined as any securities issued by a third party, including those that may be categorised as debt securities, if they represent a share held by that party and if the holder of the receipt may obtain delivery with full title of the underlying share on demand, in exchange for the security issued by the third party. See also "*Depositary receipts: securities embodying an entitlement to specific rights attaching to an underlying security, issued by an entity other than the issuer of the underlying security*" (*Euronext Rule Book, Book I: Harmonised Rules, Chapter 1, 1.1. Definitions)*.

[24] While the classification of "equivalent equity securities" provided in MFC Article L. 211-41 gets round the legal nature of depositary receipts, which cannot be categorised as equity securities because they are "*securities that confer upon their owners a particular right of claim on the depositary bank, comprising a set of rights set out in the contract of issuance*" (*See T. Bonneau and F. Drummond, cited above, §109*), it nevertheless seems necessary to consider that such "*equivalent equity securities*" would be subject to the FFTT only if they meet all the criteria set out in Article 235 *ter* ZD, I, and particularly the requirement that they be issued by a French company with a market capitalisation of more than €1 billion (*see §20*). This requirement should therefore exclude the most common forms of foreign depositary receipts for French shares, which are issued in practice by companies whose registered offices are not in France, although this was not apparently the lawmakers' intention. An amendment calling explicitly for the tax to apply to acquisitions of foreign depositary receipts for French shares, as defined by Article R. 211-7 of the Monetary and Financial Code, was rejected during the parliamentary debate on the grounds that this objective "*had already been met*" (*public debate in the National Assembly, second session, Tuesday 28 February 2012*).

[25] Indicating that acquisitions of ADRs carried out between 1 August and 30 November 2012 are not liable for the FFTT.

[26] Provided that the issuing company has a market capitalisation greater than €1 billion, which should be the case in practice.

"Recognition as a regulated market for financial instruments is decided by order of the Minister for the Economy on a proposal from the Autorité des Marchés Financiers. […]" (*MFC Article L. 421-4*).

"Any regulated market of a European Union Member State or a State Party to the Agreement on the European Economic Area that operates without requiring the effective presence of natural persons may provide means of access to that market within the territory of Metropolitan France, the Overseas Departments and Saint-Barthélemy and Saint-Martin. […]" (*MFC Article L. 422-1*).

"The public may only be approached, in any form whatsoever and by whatever means, directly or indirectly, in connection with transactions relating to a foreign market for financial securities other than a regulated market of a State Party to the Agreement on the European Economic Area, for negotiable futures contracts or any other financial product, if that market has been recognised as determined by decree, and subject to reciprocity" (*MFC Article L. 423-1*).

17. In accordance with Article 56 of Directive 2014/65/EC on Markets in Financial Instruments, "Each Member State shall draw up a list of the regulated markets for which it is the home Member State and shall forward that list to the other Member States and ESMA. A similar communication shall be effected in respect of each change to that list. ESMA shall publish and keep up-to-date a list of all regulated markets on its website. That list shall contain the unique code established by ESMA in accordance with Article 65(6) identifying the regulated markets for use in reports in accordance with point (g) of Article 65(1) and point (g) of Article 65(2) of this Directive and with Articles 6, 10 and 26 of Regulation (EU) No 600/2014."

This list is available at:

https://registers.esma.europa.eu/publication/searchRegister?core=esma_registers_upreg

An updated version as of 28 January 2026 is also available in the Appendix to this Guide *(see Appendix 5)*.

18. The list of AMF-recognised foreign markets is available on the authority's website[27]. For example, the Swiss exchange, Eurex Zurich AG, and the main commodities markets are among the recognised markets. By contrast, the Hong Kong Stock Exchange is not on the list.

19. The fact that the security must be admitted to a regulated market or a recognised market to be liable for the FFTT, however, has no bearing on the conditions under which the acquisition is performed. Whether the purchase is made on a regulated market or off-market (e.g. on a multilateral trading facility or over-the-counter), if the different conditions mentioned here are satisfied, the FFTT is payable, irrespective of the place of establishment or residence of the parties and regardless of the place where the contract organising the transfer of ownership was concluded (*BOI-TCA-FIN-10-10-20151221, §30*).

[27] AMF, List of foreign markets recognized in France, updated to 31 January 2023

… issued by a French company with a market capitalisation of more than €1 billion (v) …

"*A tax is applied to any acquisition for consideration of an equity security […] when the said security is issued by a company with registered offices in France and with a market capitalisation that exceeds one billion euros as of 1 December of year preceding the tax year. An order from the Ministers of the Economy and the Budget provides the list of the relevant companies*" (*GTC Article 235 ter ZD, I, 1*).

20. Only securities of companies with registered offices in France are concerned[28]. Since the notion of registered office is kept separate from that of the listing venue, the fact that a company is listed on or off Euronext Paris is not enough to determine whether the FFTT applies to securities issued by that company.

Moreover, if the location of the registered office changes during the year, for example as part of a merger, this might cause the company to be removed from or included in the scope, as from the date of the change (*BOI-TCA-FIN-10-10-20151221, §80*).

21. For the securities of a company to be included within the scope of the FFTT, the company must also have a market capitalisation of more than €1 billion[29]. *This capitalisation threshold shall be assessed as at 1 December prior to the tax year, based upon the last known price at the close of that trading day or, where applicable, upon the last known price on the last trading day prior to that date. Changes in the market capitalisation of a company occurring after 1 December prior to the tax year have no impact on the application of the tax in respect of the tax period in question" (BOI-TCA-FIN-10-10-20151221, §110)*.

Example: The market capitalisation of a company changes such that it falls below €1 billion between 1 December of year Y-1 and 3 March of year Y, then rises above €1 billion between 4 March and 15 November of year Y before dropping back below €1 billion between 16 November of year Y and 8 January of year Y+1.
In this case, the capitalisation threshold condition is not satisfied either during year Y or during year Y+1. Accordingly, trades in the company's securities are not liable for the tax (*BOI-TCA-FIN-10-10-20151221, §110*).

[28] "*If the issuer does not have its registered office in France, its securities are not subject to the tax, even if they are admitted to trading on a French trading platform or if their issue account is kept by a central depositary established in France*" (*BOI-TCA-FIN-10-10-20151221, §90*).

[29] "*Market capitalisation means the number of securities issued multiplied by their closing price on the most relevant market in terms of liquidity, as defined by Article 9 of Commission Regulation (EC) 1287/2006 of 10 August 2006, which states that, in principle, the most relevant market is that of the State in which the equity or equivalent security was initially admitted to trading on a regulated market, i.e. the security's primary listing market*" (*BOI-TCA-FIN-10-10-20151221, §100*).

Initially, under an amendment introduced by the National Assembly during the initial parliamentary debate, an order was to be issued with the list of affected companies, to "*simplify and strengthen the monitoring arrangements, particularly for foreign investors*[30]". The 2014 order was published on 31 December 2013 in the OJ *(see Appendix 2)*. However, this annual ministerial order will no longer be published as of 2015. Indeed, this list should from then on appear, still for information only, in the BOFiP which is modified each year in December[31].

EXEMPTIONS

22. There are nine exemptions to the FFTT.

In many instances, these exemptions are defined with reference to domestic law. However, since this is a system that applies regardless of the place of establishment or residence of the parties to the transaction and no matter where the contract organising the transfer of ownership was concluded (*see §19*), it cannot be deduced from this that comparable foreign situations are mostly ineligible for the exemptions. In fact, the tax authorities are at pains to specify that "*in general, foreign persons and companies that carry on their business or conduct transactions under terms governed by similar foreign-law provisions and that comply with the legal and regulatory provisions mentioned in this chapter will be covered by the exemptions provided*" (*BOI-TCA-FIN-10-20-20141118, §1*).

Exemption 1 - Primary market transactions

> "*The tax shall not apply to: […]*
> *1°Purchase transactions executed in the context of an issue of equity securities, including when said issue gives rise to the investment service of underwriting or placing of financial instruments on a firm commitment basis as defined by Article L. 321-1 of the Monetary and Financial Code […]*" (*GTC Article 235 ter ZD, II*).

23. Purchases[32] made during the issue of new securities on the primary market are not subject to the FFTT[33]. All transactions that lead to the first-time purchase of a newly issued security are thus exempt from the FFTT (*for details of how this exemption will apply to depositary receipts in respect of shares, see §148 et seq*.).

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[30] This order was thus provided for information only and could not relieve taxpayers of their liability in the event of an error in the list: see amendment No. 428 proposed by G. Carrez, who had indicated that "this is an informational, not a legislative order" (*Full minutes, second session of Wednesday 15 February 2012*).

[31] This modification results from Article 53 of Article 53, I, 10° of Law n° 2014-1545 of 20 December 2014 relating to the simplification of company life.

[32] Noting that these should properly be termed subscriptions.

[33] "*Pursuant to 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*" (*BOI-TCA-FIN-10-20-20141118, §10*).

According to the law, this exemption applies even to underwriting (*prise ferme*) and stand-by underwriting (*placement garanti*) (provided that these transactions involve newly issued shares), whose distinctive characteristic is that they lead the underwriter to subscribe securities in its capacity as an intermediary, since its objective is not to hold the securities on own account but to resell them to end investors. Underwriters either subscribe the securities at issue and resell them later, or under a stand-by underwriting agreement, they subscribe only the underwritten securities that they are unable to place with end investors, but with the same objective of reselling them later (*MFC Article D 321-1*). This means that a purchaser who buys securities from an ISP holding them as part of underwriting or stand-by underwriting arrangements is not subject to the FFTT.

24. Furthermore, in accordance with the request made by AMAFI (*see also §145*), the tax authorities have agreed to include under the primary market exemption "*acquisitions conducted as part of a stabilisation trade, as provided for by Regulation (EC) 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buyback programmes and stabilisation of financial instruments, provided the transaction is associated with a primary market issue*" (*BOI-TCA-FIN-10-20-20141118, §10*).

25. Evidence of eligibility for the primary market exemption will most often be provided by publicly available documents, such as the AMF-approved issue prospectus.

In the case of a resale by an ISP that acquired securities in connection with underwriting or stand-by underwriting arrangements, evidence of eligibility for the exemption will come from information provided by the ISP that the securities acquired by the buyer are securities that the ISP held as a result of underwriting or stand-by underwriting arrangements. This means that there must be a direct link between the selling ISP and the buyer, and hence that the transaction must be executed off a multilateral trading facility[34].

[34] On such a facility, the potential interposition of a clearing house means that the securities delivered to the buyer are often not those of the seller with which the transaction was conducted.

Exemption 2 - Transactions by clearing houses and central depositaries

"The tax shall not apply to: […]

2°Transactions performed by a clearing house, as defined by Article L. 440-1 of the same code, within the framework of the activities defined in said Article L. 440-1, or by a central depositary as defined by point 3 of II of Article L. 621-9 of said code in the context of the activities defined in the same Article L. 621-9 […]" (GTC Article 235 ter ZD, II).

"Clearing houses are the central counterparties defined in Article 2 (1) of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and central repositories.

They shall be approved by the Autorité de contrôle prudentiel et de resolution (Authority for Prudential Supervision and Resolution) after consultation with the Autorité des marchés financiers and the Banque de France.

When justified by the nature, volume or complexity of their activities the French Prudential Supervisory Authority (ACPR), after consulting the French Financial Markets Authority (AMF) and the Banque de France, may require, under conditions specified by decree that clearing houses be subject to approval by the European Central Bank as credit institutions within the meaning of Article 4 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012.

Any modification of the constituent elements of their authorization shall be subject to the prior authorization of the European Central Bank, on a proposal from the Autorité de contrôle prudential et de resolution after consultation with the Autorité des marchés financiers and the Banque de France.

When the Autorité de contrôle prudentiel et de resolution receives the information provided for in Article 31 of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 aforementioned or is seized under the draft of an Interoperability agreement referred to in Article 54 of that Regulation, it shall also consult the Autorité des Marchés Financiers and the Banque de France

The operating rules of the clearing houses are approved by the Autorité des marchés financiers.

These rules are drafted in French or, in the cases defined by the General Regulation of the Autorité des Marchés Financiers, in another language commonly used in financial matters.
A decree in the Conseil d'Etat determines the conditions for the application of this article (MFC Article L. 440-1).

26. The transactions performed by a clearing house or a central depositary that are exempt from the FFTT would appear to be confined to those carried out "*in the course of their normal business*"[35]. These activities "*are defined in Article L.440-1 of the MFC for clearing houses and in Articles L. 621-9 of the MFC and 550-1 of the AMF General Regulation, approved by the Order of 30 July 2009 (published in OJ 0178 of 4 August 2009), for the central depositary*" (BOI-TCA-FIN-10-20-20141118, §20).

The exemption definitely covers purchases of securities by a clearing house as part of buyback procedures implemented to manage a failed delivery by one of its members. The same is true for securities that may be transferred as collateral to a clearing house (guarantee deposits, margin calls) to cover the transactions that it handles[36]. By contrast, "*a clearing house or a central depositary that acquires securities for its own account, but not in connection with its activities as defined in the preceding paragraph, is not exempt from the tax*" (BOI-TCA-FIN-10-20-20141118, §20).

27. Clearing houses and central depositaries are responsible for providing evidence of eligibility for the exemption as regards the transactions that they perform.

Exemption 3 - Market making transactions

The tax shall not apply to: […]

3° Acquisitions made in the context of market making activities. These activities are defined as the activities of an investment firm or a credit institution or an entity in a foreign country, or a local company that is a member of a trading platform, or a market in a foreign country when the firm, institution or entity in question acts as intermediary and participates in transactions on financial instruments as defined by Article L. 211-1 of the same code:

a) either in the simultaneous quoting of firm, competitive bid and ask prices, of comparable size, with the result of ensuring market liquidity on a regular and continuous basis;

b) or, in the course of its normal business, when executing the orders given by clients or in response to client buy and sell requests;

c) or to hedge the positions related to the transactions cited in points a and b […]" (GTC Article 235 ter ZD, II).

"I. Financial instruments include financial securities and financial contracts.
II. – Financial securities are:
1. Equity securities issued by joint-stock companies;
2. Debt securities;
3. Units or shares of collective investment schemes
III. – Financial contracts, also known as forward financial instruments, are forward contracts included on a list established by decree
IV. – Bills of exchange and certificates of deposit are not financial instruments" (MFC, Art. L. 211-1).

[35] See report by N. Bricq, Senate No. 390, 21 February 2012, p. 235.
[36] Provided these transactions qualify as purchases for consideration (*see §135*).

28. This exemption covers market making activities. Taking a different approach from that adopted elsewhere (*see in particular §45*), here the legislation does not refer to an external definition provided by European or French legislation, but gives its own definition of the activities classified as "market making".

In consequence, the definition provided must therefore be considered to be a purely tax-based definition adopted solely for the purpose of implementing the FFTT. Its goal is to identify the activities that are covered by the exemption, but solely from a tax standpoint. Other aspects, notably operational, are ignored. In this sense, it is pointless to attempt to assess the scope of the market making exemption based on the objectives of the two definitions for market making that currently exist at European level[37].

29. Since this is a stand-alone definition under tax law, the scope of the activity targeted here needs to be assessed by considering the goal pursued by the government, which was not challenged by lawmakers during parliamentary debates, namely that "*targeted exemptions* [should be] *provided to prevent double taxation and to avoid taxing transactions that are inherently non-speculative*[38]".

Accordingly, an important criterion to consider when analysing transactions that may be eligible for the market making exemption is whether they are conducted to satisfy a client's need. All transactions carried out with such an aim cannot be inherently speculative, even if the counterparty is pursuing such an objective. As before, then, in the case of underwriting and placing of financial instruments on a firm commitment basis (*see §23*), the exemption concerns "intermediate transactions", in which the market maker's own account is interposed temporarily between the buyer and seller with the aim of providing enhanced liquidity relative to what is available on the market or markets[39].

[37] See Directive 2014/65/EC of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments, amending the Directive 2002/92/EC and the Directive 2011/61/EU, Article 4-7: "*1. For the purposes of this Directive, the following definitions apply: (…) 7) 'market maker' means a person who holds himself out on the financial markets on a continuous basis as being willing to deal on own account by buying and selling financial instruments against that person's proprietary capital at prices defined by that person"; Regulation (EU) N° 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps, Article 2-1-k: "1. For the purpose of this Regulation, the following definitions apply: (…) k) 'market making activities' means the activities of an investment firm, a credit institution, a third-country entity, or a firm as referred to in point (l) of Article 2 of Directive 2004/39/EC, which is a member of a trading venue or of a market in a third country, the legal and supervisory framework of which has been declared equivalent by the Commission pursuant to Article 17 where it deals as principal in a financial instrument, whether traded on or outside a trading venue, in any of the following capacities: i) by posting firm, simultaneous two-way quotes of comparable size and at competitive prices, with the result of providing liquidity on a regular and ongoing basis to the market; (ii) as part of its usual business, by fulfilling orders initiated by clients or in response to clients' requests to trade; (iii) by hedging positions arising from the fulfilment of tasks under points (i) and (ii).*"

[38] See report setting out the arguments for the Bill.

[39] Which the tax instruction seems to want to convey by exercising an interim activity (*BOI-TCA-FIN-10-20-20141118, §160*).

30. This client satisfaction criterion means in particular that pure arbitrage activities, whereby a person or entity seeks solely to profit from market inefficiencies between two assets of different types or between the same asset traded on several markets, cannot claim to be eligible for this exemption (*BOI-TCA-FIN-10-20-20141118, §160*). Such activities are inherently speculative activities liable for the FFTT[40].

In this context, the fact that a market maker may seek better terms (including price terms) under which to unwind positions taken vis-à-vis clients or the market through transactions in the opposite direction does not mean such transactions may be considered as arbitrage. These transactions are a direct extension of the activity of market making because without this ability to unwind positions, not only would market makers significantly increase the risk incurred through their activity, but in addition they might quickly find themselves unable to meet the needs of their clients or the market by providing the requested liquidity. Furthermore, it must be considered that in this respect such transactions are covered by c) of Article 235 ter ZD, II, 3° of the General Tax Code (*see §37 et seq.*).

31. Market making activities eligible for the exemption are determined with reference to a broad definition of financial instruments encompassing not only equity securities but also debt securities, CIS units or shares and financial contracts (*MFC, Art. L. 211-1*).

As a result, purchases of securities liable for the FFTT that are conducted as part of market making in such a financial instrument are covered by the exemption, provided that they relate to an activity referred to in a), b) or c) of Article 235 ter ZD, II, 3° of the General Tax Code.

32. Market making activities covered by the exemption are, as provided for in the legislation, exclusively those conducted by "*an investment company or* [a] *credit institution or* [an] *entity in a foreign country or* [a] *local company that is a member of a trading platform or a market in a foreign country*". Other persons and entities do not qualify for this exemption, even if their activities come under the definition provided here (*BOI-TCA-FIN-10-20-20141118, §40*).

Since the exemption is tied to the performance of market making activities as defined in a), b) or c) and not to the status of the person carrying out the activities, the fact that an investment company, credit institution or market member exercises one of these activities does not mean that all their transactions are eligible for the exemption. Only transactions that meet one of the definitions provided are exempt.

[40] Note that the tax authorities also consider that the market making exemption does not cover "*securities acquisitions* [...] *corresponding to purely directional positions whereby an intermediary acquires (sells) a growing number of securities based on observation of a trend (upward or downward) with the aim of generating margin through capital gains*" (*BOI-TCA-FIN-10-20-20141118, §160*). However, if this strategy is implemented in accordance with the rules set out in a market making contract concluded with a market operator or inherent to systematic internaliser status, we do not see how this could result in the transaction being reclassified.

Exemption 3a

33. Transactions that rely on "simultaneous quoting of firm, competitive bid and ask prices, of comparable size, with the result of ensuring market liquidity on a regular and continuous basis" mean in particular transactions executed under two sets of conditions.

- First, liquidity provision transactions carried out under a contractual framework in which the firm makes certain commitments (generally vis-à-vis a market operator) in terms of quoting prices for given quantities on a trading platform.

  The tax authorities consider (*BOI-TCA-FIN-10-20-20141118, §70*) that in this respect "*the following three conditions must be met:*

  Firstly, the liquidity provider must be present on the market continuously or have a minimum presence on the market amounting, in the case of financial securities, to at least 95 % of the time on both sides of the order book during the continuous trading session over the day. In the case of financial contracts, the liquidity provider must have a presence amounting to at least 80 % of the time on both sides of the order book during continuous trading sessions over the month. However, with regard to options on a French share, a firm is considered to be a market maker in options on French stocks if it maintains a presence on both sides of the order book, amounting to at least 80 % of the time assessed over the month, in two "in the money" strike prices (i.e. for a call option, when the price of the underlying is higher than the strike price) and in five "out of the money" strike prices (i.e. in the case of a call option, when the price of the underlying is lower than the strike price) on maturities ranging up to thirteen months;

  Secondly, the liquidity provider must offer a price that makes it possible to carry out a minimum amount of transactions in order to ensure the liquidity of the security. Thus, in the case of a continuously traded financial instrument, the liquidity provider must undertake to offer a firm bid/ask spread throughout the trading day;

  Thirdly, orders within the scope of the liquidity provision activity must be clearly identifiable."

- Second, liquidity provision transactions in the context of OTC activities. Here, the tax authorities consider that, "to qualify for the exemption, the intermediary must comply with the criteria for carrying on the activity of systematic internaliser set out in Article L. 425-2 of the Monetary and Financial Code" (BOI-TCA-FIN-10-20-20141118, §80), and stipulate that, "in a situation where the intermediary does not carry on the activity of systematic internaliser as defined by Article L. 425-1 of the MFC, in the case of transactions that do not exceed standard market size, the liquidity provider must provide proof that it publishes a firm price for the financial instrument for which it is requesting an exemption, or, if there is no liquid market, that it provides its price to clients on demand" (BOI-TCA-FIN-10-20-20141118, §90).

In any event, "*in both these situations, liquidity provision is assessed as a function of the spread between the bid and ask prices (market spread) offered by the market maker, compared, when the security is quoted, with the market spread observed on the most relevant market as defined by Article*

9 of Commission Regulation (EC) 1287/2006 of 10 August 2006. The spread proposed must remain sufficiently narrow for the market maker to play an effective role" (*BOI-TCA-FIN-10-20-20141118, §100*).

34. Note however that neither a liquidity provision contract on a trading platform nor systematic internaliser status is formally required by law[41]. Their absence does not necessarily mean, therefore, that the above criteria are not met although it would certainly make it harder to demonstrate due eligibility for exemption 3a. Eligibility for the exemption is thus linked, subject to review by the courts, to the recognition that the activities in question satisfy the given definition, whether the activities are exercised on a regulated market, a multilateral trading facility or over-the-counter.

Exemption 3b

35. Transactions that a firm carries out, "*in the course of its normal business*", and that lead it to "[execute] *orders given by clients or* [in response] *to client buy or sell requests*" mean in particular "facilitation" activities, whereby a firm "*carries on a activity consisting, through the interposition of its own account, in facilitating the execution of client orders*", whose "*objective is to supply enhanced liquidity relative to immediate market liquidity* "(*BOI-TCA-FIN-10-20-20141118, §110*) to prevent price movements that would be unfavourable to the client (*for application to deferred settlement services, see §133 et seq.)*. However, the exemption cannot be limited to these activities alone. Rather, this definition covers more generally all activities in all financial instruments, including financial contracts, conducted to satisfy a client need (*see §*29), with this objective of supplying "*enhanced liquidity relative to immediate market liquidity*".

Note in particular that the tax authorities consider that "*the establishment of inventory by the intermediary to serve potential client needs is not exempt*". To qualify for Exemption 3b, the firm "*must be able to demonstrate the link between a client's demand and the purchase made on behalf of the client*" (*BOI-TCA-FIN-10-20-20141118, §120*). Moreover, the BOFiP update of 15 January 2014, specified: *"No exemption applies to the acquisition of a basket of shares by an investment services provider that remits it to a collective investment scheme so that the latter issues the share/unit which is then delivered to the client at his request, since the share basket was acquired in response to a request by that client, who is seeking only to acquire a share/unit in the scheme."*(*BOI-TCA-FIN-10-20-20141118, §125*).

[41] In the draft tax instruction put out to public consultation on the website of the High-Level Committee on Financial Services on 22 June, the authorities seem to require such a contract or status, but the wording of the instruction actually published simply refers to situations of the same nature.

36. The use of this exemption 3b implies at any rate that such transactions are carried out in the course of the firm's normal business. "*The normal nature of business is assessed based on factual circumstances, including the number and frequency of trades, how they are spread out over time, and the size of executed trades in terms of value*" (*BOI-TCA-FIN-10-20-20141118, §130*).

Exemption 3c

37. Transactions conducted "*to hedge positions associated with the execution of transactions referred to in 1 and 2*" concern all transactions carried out in securities liable for the FFTT to hedge positions taken by the firm as part of the abovementioned activities (*see §33 and §35*). These positions may result "*from transactions or the issuance of any financial instrument, including financial contracts*" (*BOI-TCA-FIN-10-20-20141118, §140*).

For example, "*a market maker in options acting under the terms described in a) is not liable for the tax if it makes purchases by trading on the market in the underlying equity to hedge positions taken within the framework of its activity*". The same applies to "*a firm that responds, under the terms described in b), to a client's need by entering into a financial contract with the client and that is led to set up a hedge on the equity market, which it periodically adjusts by means of purchases or sales during the term of the contract*" (*BOI-TCA-FIN-10-20-20141118, §150*). The same may also be considered to be true for a market maker in equities that, even in the absence of a formally expressed client need, is led to make purchases to update its inventory.

38. Hedging should be understood in its economic, rather than accounting, sense here. All transactions carried out to fully or partly hedge the risk incurred in respect of an activity mentioned in a) or b) should be taken into account. One important result of this is that, in certain situations, it is possible to create the hedge by using a different underlying from the one used for the financial contract in question.

Another result is that a transaction carried out under c) cannot necessarily be linked to a single transaction carried out under a) or b). In many cases, one or more transactions carried out under c) are linked to one or more transactions carried out under a) or b). The tax authorities have thus specified that "*if these hedging transactions cannot be individually identified, firms must provide evidence of the link between acquisitions carried out as part of these hedging activities and the market making activities mentioned in a and b*" (*BOI-TCA-FIN-10-20-20141118, §150*).

Letter from the DLF to AFME, 19 February 2013

"[…] you asked whether the market making exemption applies in the following instances:
In the first instance, having traded a derivative on tax-liable French equities with a client, an investment services provider (ISP) based outside the European Union (EU) sets up a hedge by arranging another derivatives trade with an EU-based ISP which, in turn, hedges itself by acquiring the shares underlying the contracts;
In the second instance, a structured product issuer hedges itself by trading another derivative with an ISP, which hedges itself by acquiring the shares underlying the previously traded financial contracts.
Under paragraph BOI-TCA-FIN-10-20 [150 in the updated version] of BOFiP-Impôts, a trader qualifies for exemption if it meets a client's need, as per section 2 (§110 to §130), by dealing a financial contract with the client and then hedges its position on the equity market, adjusting the level of the hedge where necessary by buying and selling during the term of the contract.
Consequently, the tax exemption provided for in 3° of section II of Article 235 ter ZD of the GTC applies in both cases".

39. Evidence of eligibility for the market making exemption may be based on the audit trail used by financial institutions via their internal maps to identify the terms under which the transactions in question are classified under a), b) or c) (*see §112 et seq.)*.

Exemption 4 - Transactions under liquidity contracts

The tax shall not apply to: […]
4° Transactions executed on behalf of issuers in order to promote the liquidity of their shares within the framework of authorized market practices accepted by the French Autorité des Marchés Financiers pursuant to Regulation (UE) 596/2014 of the European Parliament and Council of 16 April 2014, concerning market abuse (regulation on market abuse) and repealing Directive 2003/6 / EC of the European Parliament and of the Council and Directives 2003/124 / EC, 2003/125 / EC and 2004/72 / EC of the EC and of the Commission (GTC Article 235 ter ZD, II).

40. Purchases of shares under liquidity contracts implemented in compliance with the AMF's Accepted Market Practice 2011-07 on liquidity contracts are exempt (*BOI-TCA-FIN-10-20-20141118, §180*). The basis for this exemption is similar to the one granted for market making, the difference being that, in this case, the firm is acting not on its own account, but on behalf of an issuer, by carrying out "intermediate" transactions whose objective is to address a structural or occasional need for liquidity, for the benefit of the market.

Only transactions carried out on behalf of an issuer are exempt. Thus, if the liquidity contract is entered into with non-issuers[42], the exemption does not apply to transactions carried out by such persons. As the tax authorities emphasise, this "*situation covers contracts concluded by investment firms or credit institutions directly with the companies issuing the securities in question*" (*BOI-TCA-FIN-10-20-20141118, §180*).

Exemption 5 - Intra-group and restructuring transactions

The tax shall not apply to: [...]
5° Acquisitions of securities between companies that are members of the same group, as defined by Article L. 233-3 of the Commercial Code, at the time of the relevant acquisition of securities, acquisitions of securities between companies that are members of the same tax group, as defined by Article 223 A of this code, and acquisitions made under the conditions stipulated in Articles 210 A, 210 B, 220 quater, 220 quater A and 220 quater B [...]" (GTC Article 235 ter ZD, II).

41. Acquisitions of securities during certain intra-group transactions or restructuring transactions (mergers, demergers, partial mergers) are exempt in order to avoid hindering business growth (*BOI-TCA-FIN-10-20-20141118, §190 to §200*). Three main categories are covered[43]

- Acquisitions of securities during intra-group transactions:
  - between companies that are members of a group and comply with the requirements of Article L. 233-3 of the Commercial Code (control of at least 40 % of the voting rights);
  - between companies that are members of a group and comply with the requirements of Article 223 A of the General Tax Code (at least 95 % owned or a mutual banking group that qualifies for the tax consolidation regime).

  The exemption for transactions between members of the same group applies regardless of where the companies concerned are established, provided they comply with the conditions described above (*BOI-TCA-FIN-10-20-20141118, §200*). This exemption applies regardless of whether the transaction is a "vertical" one between the parent and a subsidiary or a horizontal one between subsidiaries, on condition that these companies belong to the same group, in accordance with at least one of the above legal provisions.

[42] Usually individual shareholders.
[43] On this question, see also "Premières réflexions autour de la taxe sur les transactions financières", G. Blanluet and N. de Boynes, above mentioned.

- Acquisitions of securities during restructuring transactions that are, from an economic perspective, merely interim transactions:
  - merger between a merging company and an acquiring company (merger complying with the requirements of Article 210 A of the GTC);
  - partial merger where the merging company contributes a complete business and signs an undertaking to hold securities (partial contribution of assets involving a complete business or equivalent elements, complying with the requirements of Article 210 B of the GTC);
  - demerger of a company with at least two businesses, if the partners in the demerged company sign an undertaking to hold securities (demerger complying with the requirements of Article 210 A of the GTC).

42. Acquisitions of securities during management buyouts as provided for by Articles 220 *ter*, 220 *ter* A and 220 *ter* B of the GTC (management buyouts and repurchases of securities for allocation to a company savings scheme). The FTA specified in its BOFiP update on 15 January 2014 that fund restructurings (i.e. mergers between two common funds (FCPs) or between an FCP and an open-ended fund (SICAV), transfers of securities from a feeder fund to a master fund) also qualify for the exemption granted to intra-group transactions. However, this entitlement applies only if the conditions applicable to special regimes (except for the legal personality condition), as per Articles 210 A and 210 B of the GTC, are satisfied (*BOI-TCA-FIN-10-20-20141118, §195*).

Moreover, internal restructuring by collective investment schemes involving transfers of securities between subfunds and subfund mergers are not deemed to come within the scope of the tax (BOI-TCA-FIN-10-20-20141118, §195).

43. As regards groups, of which the parent company is a legal person governed by public law which is not incorporated as a company, within the meaning of article 1832 of the Civil Code, the tax authorities have indicated that they may benefit from the exemption provided they meet the requirements regarding direct or indirect holding set out in article 233-3 of the French commercial code (*BOI-TCA-FIN-10-20-20141118, §193*)[44].

44. In the aforementioned cases, the exemption is based on the classification of the transaction with regard to the situation of the acquirer; the acquirer is responsible for providing notification and documentation on the claimed exemption to the taxpayer, which is the ISP or the custody account-keeper, depending on the case.

[44] This modification of the BOFiP follows the insertion, in Article 235 ter ZD, II, 5, of a reference to Article 223 A bis of the General Tax Code which concerns the groups of which the parent company is an entity governed by public law. This legislative modification was introduced for the first time by the 2014 Supplementary Budget Act of 8 August 2014.

Exemption 6 - Securities financing transactions

"The tax shall not apply to: [...]
6° Temporary assignments of securities cited in point 10 of Article 2 of (EC) Regulation 1287/2006 of the European Commission dated 10 August 2006, defining the measures to enforce Directive 2004/39/CE of the European Parliament and the Council governing the filing obligations of investment firms, transaction records, market transparency, the listing of financial instruments for trading and the definition of terms under said directive [...]" (GTC Article 235 ter ZD, II).

"'securities financing transaction' means an instance of stock lending or stock borrowing or the lending or borrowing of other financial instruments, a repurchase or reverse repurchase transaction, or a buy-sell back or sell-buy back transaction" (Commission Regulation (EC) 1287/2006, Article 2, 10°).

45. In contrast to the approach taken with market making (*see §28 et seq.)*, the definition for exempt securities financing transactions refers to European Regulation 1287/2006 of 10 August 2006 implementing MiFID, particularly by establishing the requirements for ISPs in terms of market transparency and reporting for transactions performed on their own account or on behalf of third parties.

The three main types of securities financing transaction[45] identified by the regulation are thus exempt:

- securities lending;
- repos ("repurchase agreements");
- buy-sell backs and sell-buy backs.

46. As regards securities lending or repos, the categories of transactions referred to in the European regulation cannot mean only transactions meeting the criteria set out in Article L. 211-22 of the Monetary and Financial Code for securities lending and in Article L. 211-27 for repos. Accordingly, all transactions of this type that fall within the scope of the European regulation are thus concerned (*see also §141*).

[45] *Cessions temporaires de titres*. Note that these transactions were covered until 31 December 2012 by special dispensation meaning that they did not have to be reported (*see §99*).

47. Specifically regarding securities lending transactions, however, and even if, paradoxically, the tax authorities do not seem to think that such transactions should fall *ipso jure* outside the FFTT scope[46], the question of whether such transactions should be liable for the tax is open for debate – under the supervision of the courts, which have sole competence on this point – since no price is paid in return for the loaned securities, and hence no acquisition for consideration takes place[47].

Payment for lending/borrowing is provided in return for making the loaned securities available for a given period; it is therefore calculated based on the value of the loaned securities and the duration of the loan[48]. As such, however, this payment cannot be treated as the payment of a purchase price (at any rate it is far less than what would be expected from an economic perspective), even if lending/borrowing leads to a transfer of ownership between the lender and the borrower. The objective of both parties is to carry out a temporary transfer of ownership for guarantee purposes, with full ownership reverting to the lender once the lending/borrowing arrangement is over.

48. As regards buy-sell backs and sell-buy backs, the exemption concerns transactions "whose acquisition is combined with a facility, set out by contract, for the seller to repurchase at the initial selling price and within an pre-agreed timeframe" (BOI-TCA-FIN-10-20-20141118, §210). Accordingly, sales with a repurchase facility (ventes à réméré), in which "the seller reserves to himself the taking back of the thing sold, through restitution of the purchase price and the reimbursement of [certain costs]" (Civil Code, Art. 1659), are covered by the exemption for securities financing transactions.

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[46] This position is inconsistent with that set out in a guidance document issued in response to a joint request by AMAFI and the FBF (*RES 2012/7 ENR, 21/02/2012*) as regards "Rules governing transfers for valuable consideration, whether or not these are recorded in an instrument, of shares, owners' shares or ownership units in listed and unlisted joint-stock companies". In that document, the tax authorities specify that securities lending and borrowing transactions do not count as sales of shares *stricto sensu* and confirm this point in the tax instruction on the system of duties for transfers of ownership rights (*BOI-ENR-DMTOM-40-10-10-20120912, §50*): "*[…] The sale of shares should be understood* stricto sensu*. Thus, transactions that are not equivalent to sales are excluded from the scope of the tax (case of deposits of collateral with or without transfer of ownership when they are not conducted for consideration, equity derivatives contracts). The same applies to borrowing and lending of securities as referred to in Articles L. 211-22 and following of the Monetary and Financial Code and to the transactions referred to in Articles 1892 to 1904 of the Civil Code*".

[47] The situation is thus fundamentally different from that of a buy-sell back or a sell-buy back, which inherently includes an acquisition with payment of a price. The same is true for repos, which, at least under French law, provide for payment of a price: "*A repo is a transaction through which a legal entity [...] assigns to another legal entity [...], with full title and at an agreed price, financial securities, and through which the assignor and the assignee respectively and irrevocably undertake, the former, to take back the securities, and the latter, to sell them back at an agreed price and on an agreed date.*" (*MFC, Art. L. 211-27*).

[48] Lending generally gives rise to the posting of collateral as a guarantee, in the form of cash or securities (bonds in particular). Appropriation of this collateral (where it exists) in a case where the lending transaction is not settled "normally" by the return of securities to the lender, which thus remain with the borrower, may qualify as an acquisition for consideration within the meaning of the FFTT, even if appropriation of the collateral has a compensatory aspect that is difficult to equate to a sale or purchase (*see §135 et seq.)*. Note in this regard that the tax authorities specify that "*where a securities financing transaction is guaranteed by a deposit of collateral and where this guarantee is called in owing to a default by the debtor with the result that the securities are definitively acquired by the creditor, this definitive appropriation of the collateral shall qualify for the exemption*" (*BOI-TCA-FIN-10-20-20141118, §230*), which appears to suggest indirectly that this collateral is exempt because it could constitute an acquisition price.

In the case of buy-sell backs and sell-buy backs with a standard buy back facility, this facility must be exercised for a sell-buy back to be recognised[49] (*on this point, see also §57*). In such a case, payment of the tax is deferred until the term of the buy back facility expires, because it is at that moment that it will be recognised, where applicable, that the transaction is not in fact a securities financing transaction. Thus, "*in the case of a sale with a repurchase facility, the taxable event shall correspond to the end of the period during which the seller held the right to repurchase the transferred securities*" (*BOI-TCA-FIN-10-20-20141118, §240*).

49. Since securities that benefit from the financing transaction exemption are fungible, it does not matter if the securities returned by the beneficiary of the temporary sale are the same as those originally received. What matters is that returning the securities extinguishes the redelivery obligations arising from the financing transaction.

Letter from the DLF to AFME, 19 February 2013

"[..] you asked for details about what would happen in the situation where the beneficiary of a securities financing transaction and, in parallel, of a transaction in the same securities (newly issued by the company that temporarily transferred the initial securities), having regard to the exemption provided in point 6° of Article 235 ter ZD of the GTC where the seller receives back the same number of securities as those it temporarily transferred, regardless of their origin.

For example, this could occur in the following situation: Company A temporarily sells 100 securities of X to Company B and, in parallel, issues 25 X securities for the benefit of B; B returns 100 X securities to A, including 25 of those newly issued for its benefit.

Here, if the delivery of 100 X securities to Company A extinguishes the redelivery requirements arising from the securities financing transaction, then the fact that one-quarter of these 100 securities are those issued for Company B's benefit is immaterial.

Naturally, any subsequent sale by Company B for the benefit of Company A (e.g. arising from the purchase by A of 25 securities) would be taxed, regardless of how A originally acquired these securities."

50. Evidence of eligibility for the securities financing transactions exemption will thus be based on contracts demonstrating the temporary nature of transfers of ownership, with the stipulation that the taxpayer must report such transactions to the tax authorities. Further, regarding investment firms and credit institutions in particular, these companies may refer to their internal organisational arrangements (*see §112 et seq.*).

[49] "*As regards buy-sell backs and sell-buy backs, the exemption is linked to the fact that the acquisition of temporarily loaned securities does not become definitive*" (*BOI-TCA-FIN-10-20-20141118, §240*).

Exemptions 7 and 8 - Employee savings scheme transactions

"The tax shall not apply to: [...]
7° Acquisitions, governed by Book III of the third section of the Labour Code, of equity securities by company mutual funds governed by Articles L. 214-39 and L. 214-40 of the Monetary and Financial Code and by open-ended employee shareholder investment mutual funds governed by Article L. 214-41 of the same code and acquisitions of equity securities issued by the company or by a company belonging to the same group as defined by Articles L. 3344-1 and L. 3344-2 of the Labour Code, made directly by the employees pursuant to the seventh paragraph of Article L. 3332-15 of the same code;
8° Purchases of their own equity securities by companies when these securities are intended to be sold to the participants in an employee savings scheme pursuant to Title III of Book III of the third part of the Labour Code[...]" (GTC Article 235 ter ZD, II).

51. Purchases and buybacks of securities for use in an employee savings scheme are exempt. The exemption covers all schemes that give employees a financial stake in the success of their company and/or an opportunity to build up their savings with the help of their employer (*BOI-TCA-FIN-10-20-20141118, §260 and §270*).

By contrast, the exemption does not apply to acquisitions of taxable securities by a common fund (FCP) that is fully held by an employee profit sharing fund (FCPE) (*BOI-TCA-FIN-10-20-20141118, §275*).

52. Evidence of eligibility for the employee savings scheme exemption is based on the allocation of acquired securities to an employee savings scheme. As a result, it is up to the managers of such schemes to provide notification and documentation on the claimed exemption to the entity that is responsible for the tax vis-à-vis the tax authorities[50], namely the ISP or the custody account-keeper, depending on the case.

Exemption 9 - Transactions in bonds that can be exchanged or converted for shares

"The tax shall not apply to: [...]
9° Acquisitions of bonds redeemable for or convertible into shares [...]" (GTC Article 235 ter ZD, II).

[50] Accordingly, listed shares that management companies purchase on behalf of employee profit sharing funds (FCPEs), which are used as investment vehicles for company savings schemes and company pension funds (PERCOs), are exempt from the FFTT. Evidence of eligibility for the exemption must be provided by the management company. In this regard, the AMF has said that management companies may obtain the list of all the company investment schemes that they manage under the FCPE tab of the AMF's GECO database. The AMF has also said that it is introducing the option of publishing authorisation statements for company investment schemes similar to what already exists for other collective investment schemes. Shares bought directly by a company in order to sell them afterwards to employees within the framework of a company savings scheme are also eligible for an exemption, but this is based on a disclosure made by the company.

53. Acquisitions of bonds that can be exchanged or converted for shares, as well as callable bonds, are exempt from the FFTT. As mentioned above (*see §13*), this provision applies to the following: bonds that may be converted into shares (OCAs), bonds that are redeemable in shares (ORAs), bonds that may be converted into or exchanged for new or existing shares (OCEANE), bonds that may be exchanged for shares (OEA), bonds with share subscription warrants attached (OBSA), bonds with redeemable share subscription warrants attached (OBSAR), bonds with redeemable share subscription or acquisition warrants attached (OBSAAR), bonds that are redeemable in new or existing shares and bonds that are redeemable in new shares or cash (ORANE), and bonds that are redeemable in cash or in new or existing shares (ORNANE).

This exemption, applicable to equivalent securities under foreign law *BOI-TCA-FIN-10-20-20141118, §280*, was introduced by an amendment made during the second reading of the bill and passed by the French parliament[51]. The exemption is designed to account for the "*hybrid legal nature of bonds that can be exchanged or converted for shares, which are issued as debt securities, but give the holder the right to acquire shares*". The purpose of the exemption is to prevent acquisitions of such securities from being taxed[52], "*otherwise, they would be taxed twice with the tax paid when they are converted*". In this respect, note however that conversion, redemption and exchange are liable for the FFTT (*BOI-TCA-FIN-10-20-20141118, §290*) unless these transactions result in the issuance of new shares. In this case, the exemption for primary market transactions (*see §23 et seq.)* applies[53].

54. To avoid making the reporting arrangements unnecessarily cumbersome, it is provided that "by way of an exception to the provisions of I of this article, exempt acquisitions pursuant to point 9 of II of Article 235 ter ZD do not have to be reported to the central depositary" (GTC, Appendix III, Art. 58 Q, II).

Thus, evidence of eligibility for the exemption may be based simply on documentation identifying the acquisition as relating to a bond.

TAX BASE

"*The tax is based on the acquisition value of the security. In the case of an exchange, if no acquisition value is expressed in a contract, the acquisition value corresponds to the quoted price of the securities on the most relevant market in terms of liquidity, as defined by Article 9 of Commission Regulation (EC) 1287/2006 of 10 August 2006 cited above, at the close of trading on the day preceding the exchange. In the case of an exchange of securities of unequal value, each party to the exchange shall be taxed on the basis of the value of the securities it acquires*" (*GTC Article 235 ter ZD, III)*.

[51] See Amendment 9, G. Carrez, General Rapporteur for the National Assembly Finance Commission.
[52] The term "acquisition" definitely encompasses secondary market transactions, which thus qualify for the exemption. But it must also be considered to cover primary market transactions, although the term "subscription" would have been more appropriate: any other interpretation would remove the basis for the primary market exemption, rendering it meaningless, because only acquisitions for valuable consideration are liable for the FFTT *(see §6 et seq.*).
[53] Confirmed by the DLF in a letter to AFME dated 19 February 2013.

55. In addition to stating the general principles that apply in this area, it is necessary to clarify the conditions under which the net long position and reference purchase price are determined, taking into account exempt purchases, for the purposes of establishing the tax base. It is similarly necessary to clarify the situation of ISPs that carry out transactions on own account and for clients as well as the conditions under which they are required to manage these transactions.

General principles

56. The FFTT is based on the acquisition value of the securities as expressed in the contract resulting in the transfer of ownership to the buyer. The tax base is thus determined by:

- The execution price of the transaction for trades on a market or with a counterparty;
- The exercise price of a derivative that gives rise to a delivery (excluding the premium paid to purchase the contract);
- The price agreed in the issue contract for the conversion or exchange of a bond.

"*The purchase price paid, the exercise or conversion price set in the contract means the price excluding transaction fees (such as brokerage, intermediation, transfer, processing, notary or bank fees)*" (*BOI-TCA-FIN-10-30-20170503, §100*). Furthermore, "*if the acquisition is carried out on a non-euro area stock exchange, the taxable value is determined based on the closing price on the currency market of the currency in question on the day before the acquisition*"[54] (*BOI-TCA-FIN-10-30-20170503, §140*).

57. When shares are exchanged[55], the value used is the one set out in the contract or, failing that, the value of the securities resulting from their quotation on "*the most relevant market in terms of liquidity at the close of trading on the day preceding the exchange*" (*BOI-TCA-FIN-10-30-20170503, §90*).

In the case of buy-sell backs and sell-buy backs "*of securities that are definitively acquired by the assignee*", the tax authorities state that "*the tax base comprises the value of the securities as determined by the contract that was used as the basis for the initial purchase or sale*" (*BOI-TCA-FIN-10-30-20170503, §120*).

[54] The "*day before the acquisition"* means the day before the settlement date, including for over-the-counter transactions. To simplify matters, however, it is accepted that the day before the security is traded can be used as the date for determining the taxable value of acquisitions made on a foreign stock exchange. Whichever date is chosen (the day before the trade or the day before settlement), it must be the same for all transactions executed during a monthly tax period (*BOI-TCA-FIN-10-30-20170503, §140*).

[55] However, "*in the case of an exchange of securities of unequal value, each party to the exchange is taxed on the value of the securities that it acquires. Example: Company A owns X securities, which it exchanges for Y securities held by Company B. Since X securities have a value of €140,000 and Y securities have a value of €150,000, the exchange contract provides that Company A will pay an additional amount of €10,000 to Company B. Consequently, the tax base for the exchange is €150,000 for Company A and €140,000 for Company B, based on their respective acquisitions*" (*BOI-TCA-FIN-10-30-20170503, §110*).

Calculating the net long position, taking into account exempt purchases

58. As has already been stressed (*see §9 et seq.*), the principle that only transactions resulting in a transfer of ownership are taxable makes it necessary to determine the net long position used as the base to calculate the FFTT. Insofar as the same order-giver may be led to carry out buy and sell transactions whose net balance alone will result in a transfer of ownership evidenced by book entry, the FFTT shall be applied only to that net balance.

The first principle must however be combined with another, according to which certain types of acquisition transactions are eligible for an exemption from the tax under II of Article 235 *ter* ZD of the General Tax Code. It is therefore necessary to consider each acquisition to determine whether it qualifies for one of the nine exemptions, in order to exclude it from the tax base.

59. Considering the objectives pursued by France's legislators in adopting the 2012 Supplementary Budget Act, the system has to be implemented in a manner that accommodates the specific scope of the tax (acquisition of securities resulting a transfer of ownership) combined with exemptions based on the nature of financial transactions. Consequently, it is necessary to think in terms of blocks of transactions, considering whether each purchase or sale belongs to an exempt category or not[56].

General Tax Code, Appendix III, Art. 58 Q, I, h

"*The value of transactions (…) means the number of securities multiplied by the unit value of the securities acquired.*
If a portion of the transactions does not result in a transfer of ownership and only the net long position of the acquirer is subject to the tax, the amount of acquisitions is equal to the number of securities whose ownership is transferred multiplied by the average value of the securities acquired during the period at the close of which the net long position is calculated.
The net long position used as the base for the tax is calculated for each security and per acquirer, excluding acquisitions that are exempted under II of Article 235 ter ZD of the GTC and the sales associated with these exemptions.
The taxpayer subtracts from the number of securities of a company subject to the tax as defined in I of Article 235 ter ZD of the GTC acquired by an acquirer during a period the number of securities of the same company sold by the same acquirer during the same period.

[56] One method for calculating the taxable base used to determine the FFTT would have been to take a three-stage approach: (i) Calculate the number of securities to be taken into account, excluding any exempt purchases and adding up all the other purchase and sale transactions to determine the balance resulting in a transfer of ownership evidenced by book entry; (ii) Calculate the average execution price for non-exempt purchases; (iii) Calculate the taxable base by multiplying the number of securities to take into account by the average price. While this method seems to comply with the legislation establishing the tax's scope and exemptions, it nevertheless would have had the drawback of reducing the taxable base to a much greater or lesser extent, which was not the legislators' intention. This is because the base is automatically reduced not only by exempt purchases but also by all sale transactions, whether or not they are associated with exempt activities, since the notion of exempt sales is not recognised by the law. To take an extreme example, in the simplified case of a non-exempt purchase of a given number of securities of X that is totally offset by a sale of the same number of securities of X under an exempt activity, no tax would be due.

The number obtained, which corresponds to the number of securities whose ownership is transferred to the acquirer, is multiplied by the average unit price for non-exempt purchases of the security over the period at the close of which the net long position is calculated.
The sum of the net long positions calculated in this manner for each security and each acquirer shall constitute the taxpayer's tax base.".

This allocation of a sale transaction to a block of exempt transactions is performed in the same way as for purchase transactions. To calculate the amount of FFTT owing, it is therefore necessary to determine whether, with regard to the activity conducted by the beneficiary of the transfer of ownership[57], a given sale is carried out under one of the categories of exempt transactions[58]. In the case of a market making activity, for example, both purchase and sale transactions are carried out. The same is true for securities financing transactions[59], which may place the beneficiary of the transfer of ownership in a situation equivalent to a purchase transaction or to a sale transaction, depending on the case[60]. The same is also true for transactions performed under a liquidity contract, although these, as has already been pointed out (*see §40*) are naturally identifiable as such.

60. The following example[61] identifies the three steps that need to be taken for transactions settled at the same settlement date:

i. Calculate the number of securities to be taken into account:

- exclude all exempt transactions, whether they involve purchases or sales;
- second, add up the other purchase and sale transactions to determine the balance resulting in a transfer of ownership evidenced by book entry.

ii. Calculate the average execution price for non-exempt purchases.

[57] The objective pursued by the counterparty is not to be taken into account in this context.
[58] This is confirmed by the tax authorities: "*For a given security, the taxpayer calculates net long positions at the end of the day (or month) based on the transactions carried out on behalf of each client and on own account, first excluding all exempt acquisitions and sales associated with exempt activities (market making, primary market, securities financing transactions, etc.). It thus calculates the number of securities of company X acquired by an order-giver over the course of the day, or, in the case of deferred settlement, in the course of the month, from which it subtracts the number of securities of company X sold by the same order-giver over the course of the day, or, in the case of deferred settlement, in the course of the month. The number obtained, which corresponds to the number of securities whose ownership is transferred on behalf of an order-giver (third party or own account) must be multiplied by the average acquisition value for the securities (rounded up to the nearest cent) over the daily or monthly period*" (*BOI-TCA-FIN-10-30-20170503, §137*).
[59] Note that since securities financing transactions are conceived of as blocks, it could be that one type of transaction can be offset against another type: for example, securities lending transactions (*provided they fall within the scope of the FFTT, see §*47) could be offset against repos.
[60] Conversely, this means that a person that is always in a situation equivalent to a sale could use its securities financing transactions to offset them against purchases and so reduce its FFTT base.
[61] Note that the tax authorities have also provided examples (*BOI-TCA-FIN-10-30-20170503, §133 et seq.*).

iii. Calculate the taxable base by multiplying the number of securities to be taken into account by the average price, rounded "up to the next cent" (BOI-TCA-FIN-10-30-20170503, §137).

No.	Transaction	Quantity	Price	Average purchase price	Taxable base
1	Purchase	+ 100	10	-	-
2	Sale	- 50	11	-	-
3	Exempt purchase	+ 180	12	-	-
4	Purchase	+ 120	11	-	-
5	Exempt purchase	+ 150	10	-	-
6	Purchase	+ 50	11	-	-
7	"Exempt" Sale	- 100	12	-	-
8	Sale	- 60	11	-	-
(i.)	***Number of securities to be taken into account (1 + 2 + 4 + 6 + 8)***	**160**	-	-	-
(ii.)	***Average purchase price (1 + 4 + 6)***	-	-	**10.629629**	-
(iii.)	***Taxable base ((i.) * (ii.))***	-	-	-	**1,700.74**

This means that:

FFTT base = NnTa x (PabTass / NbTass)[62]

61. The net long position is calculated on the settlement date. It is assessed relative to all the transactions that have been executed and are due to settle, actually or theoretically, on the same date.

[62] Where NnTa = Net number of securities purchased; PabTass = Gross purchase price of taxable securities purchased; NbTass = Gross number of taxable securities purchased.

(Administrative Documentation, BOI-TCA-FIN-10-30-20170503, No. 133)

Example 1: On the same day, an ISP trading for its own account buys 30 Company A securities on the French regulated market and 20 Company A securities on the New York Stock Exchange, and it sells 50 Company A securities on the French regulated market, without having opted for theoretical settlement.

In this case, the acquisition on the French market settles at T+2 and the one on the US market at T+3. In consequence, the ISP is unable to calculate a single net long position for all these trades but only for those executed on the French regulated market, which settled the same day.

The ISP pays the tax on the 20 Company A securities acquired on the New York Stock Exchange. By contrast, its net long position would have been null if it had opted for the theoretical settlement date.

Example 2: The trades are the same as above except that the 20 Company A securities acquired in New York are settled at T+2.

In this case, the ISP calculates a net long position for all its trades because the securities all settle on the same day, in this case T+2.

62. The tax base is calculated at the level of each tax-liable ISP. As a result, the FTA considers that when the same client acquires and sells securities through different ISPs, it may not aggregate the transactions made by the ISPs on its behalf (*BOI-TCA-FIN-10-30-20170503, §133 and §135*). However, this is debatable in view of the principle of ownership transfer, which governs this mechanism[63].

Situation of taxpayers that carry out transactions on behalf of third parties or for own account

63. Subject to the comments below on identifying the taxpayer (*see §73 et seq.*), the latter should apply the abovementioned method to calculate the net long position for each beneficiary of a transfer of ownership. To this end, the taxpayer is required to manage, for each security:

- A tax base for each client on behalf of which the taxpayer carries out transactions.
  In fact, however, if the taxpayer also acts as the client's custody account-keeper, it must manage a base for each account held by the client. The rules for transfer of ownership, as discussed above (*see §9 et seq.*), mean that the book entry evidencing transfer of ownership is made at the account level. Thus, it seems infeasible to consider that a sale made on one account might offset a purchase on another account.

[63] In most of these situations, and in light of what has been said above (see §9), the book entry that materialises the transfer of ownership is made solely at the level of the custody account-keeper, who, if classified as a taxpayer, has to take into consideration only the net balance of the various settlement flows it receives.

- A tax base for own account transactions.
  Since proprietary purchases and sales made in connection with exempt activities are removed from the taxable base using the methodology described above, the base is calculated solely from the net volume of purchased and sales that are included in the scope of the FFTT and unrelated to an exempt activity.

Requirements for managing transactions on behalf of clients

Formally calculating and reporting the FFTT to the client

64. As mentioned in the section on chargeability (see §67), "The taxable event is the acquisition of the security, which takes place on the date on which ownership of the security is transferred, i.e. the date on which the acquired security is entered in the securities account of the acquirer" (BOI-TCA-FIN-10-30-20170503, §50). Based on this principle, the FFTT should not be calculated and reported to the client until the securities have been entered in the client's account after being effectively delivered. But this is not possible.

Pursuant to the provisions that apply to them, ISPs must send their clients "*adequate reports*" on the services provided. These reports include, "*where applicable, the costs associated with the transactions and services undertaken on behalf of the client*[64]". Since the objective is to inform clients of the cost that they will incur in having the transaction performed, the trade notices that they receive specify, in addition to the acquisition price of the securities, the remuneration paid to the intermediary as well as any costs and taxes[65]. Moreover, in dealings with institutional clients, providers use these trade notices to implement rapid processes to confirm with clients the parameters of the transactions conducted on their behalf[66], which will provide the basis for subsequent settlement[67].

65. As a result, in the case of client transactions, it is not possible to wait until the end of the day to calculate a net long position. The FFTT must therefore be applied on an ongoing basis to each acquisition that the client does not report as being part of an exempt transaction when placing the order. Only at a later stage may the ISP potentially make an adjustment by calculating a net long position, if it appears that sale transactions should offset purchase transactions (see §95).

[64] Provided for in Article 25 paragraph 6 of Directive 2014/65/EU of 15 May 2014, this requirement is included at national level in the MCF (arts. L. 533-12 and D. 533-15).
[65] Thus, if an intermediary has opted to charge VAT, the amounts debited as a result will be reported. Similarly, if there were a tax on stock market transactions, the trade notice would give information on the amount debited in this respect.
[66] Speed is of the essence for the client and ISP alike. They must be able to make sure promptly that the execution terms of the trade match the order that was placed so that, in the event of an error, the responsible party can manage the resulting position while minimising market risk.
[67] The FFTT will lead to an increase in the amount that must be paid to the intermediary in return for delivery of the securities: if the tax is not factored in, settlement system participants will not be able to make the necessary adjustments.

Managing documentation proving eligibility for exemptions

66. For most transactions performed for third parties, the firm required to debit the tax (*see §74*) does not have the means to determine whether a given transaction is truly eligible for an exemption, since eligibility is frequently linked to the personal situation of the client. In such situations, the client is therefore required to send the ISP or custody account-keeper responsible for debiting the FFTT all the documentation required to prove eligibility for an exemption (see §111).

If this information is not provided, in view of its obligations towards the tax authorities, it would seem necessary for the taxpayer, whether it be an ISP or a custody account-keeper, to debit the FFTT (*see also §73 et seq.*).

The DLF has specified that evidence of eligibility for an exemption may be provided by any and all of the methods of proof accepted under ordinary law, the only stipulation being that a written procedure should be used. This means that oaths and, in some cases, oral evidence are not admissible (BOI-CTX-DG-20-20-40). The DLF confirmed this point in its letter of 19 February 2013 to AFME.

February 2013.

"(…) You requested information about the procedures for reporting transactions in a situation where a taxpayer's client has not provided evidence of eligibility for exemption and where the taxpayer does not have the information required to assess the tax.

In the second example, you wanted to know whether a taxpayer could use a statement from the counterparty indicating that it is an ISP.

In general, evidence for the exemptions under the provisions of II of Article 235 ter ZD of the GTC should be provided by the taxpayer, who is allowed to use all the methods of proof accepted under ordinary law.

The GTC imposes no formal procedures for the administration of proof, on condition that a written procedure is used. This excludes oaths and, barring exceptions, oral evidence.

In your first example, the taxpayer ISP may rely on any relevant documentation provided by its client to demonstrate eligibility for exemption. The ISP must ensure that the client provides sufficient evidence if it is responsible for the exemption that it reports in the capacity of taxpayer.

In your second example, as you mention, it is not up to the tax authorities to publish the official lists of authorised ISPs."

CHARGEABILITY

"*The tax is payable on the first day of the month after the month in which the security is acquired*" (*GTC Article 235 ter ZD, IV)*.

67. The FFTT is payable on the first day of the month after the month in which the security is acquired. Since acquisition is deemed to occur at the time of transfer of ownership of the securities (*see §9 and seq.)*, this seems to be the date that should be used: "*The taxable event shall be the acquisition of the security, which takes place on the date on which ownership of the security is transferred, i.e. the date on which the acquired security is entered in the securities account of the acquirer, i.e. at the settlement date*" (*BOI-TCA-FIN-10-30-20170503, §50*). For example:

- When securities are acquired on a market or from a counterparty with settlement at T+2, trades made on the 30th of the month will not be delivered until two days later, meaning the following month. The FFTTis therefore payable on the first day of the month after the delivery date (*BOI-TCA-FIN-10-30-20170503, §60*).
- When securities are acquired by exercising a derivative, the FFTT must also be deemed payable on the first day of the month after the delivery dateuivant leur date de livraison que la TTF doit être réputée exigible.

68. To make the FFTT easier to manage with regard to transfer of ownership procedures, it is provided that "taxpayers may opt, by sending notification to the central depositary (if the taxpayer is not in a situation, as provided for in the last two paragraphs of VII of Article 235 ter ZD of the General Tax Code, of reporting to and paying the tax authorities directly) and to the tax authorities before the 25th of the month, to select, for the purposes of determining the due date, a theoretical settlement date, i.e. the second day following the transaction for acquisitions carried out a regulated market or the agreed date in the contract for OTC acquisitions, without taking account of potential fails that might delay the effective settlement day[68]. This option will take effect as from the transaction on the first day of the month following notification" (BOI-TCA-FIN-10-30-20170503, §80).

The request to opt for the theoretical settlement date option is made in a letter sent with acknowledgement of receipt (or equivalent) to the central depositary in France and to the tax authorities *(see Appendix 3)*.

[68] *« The French Tax Authorities have amended the BOFiP, on 18th November 2014, to take into account the modification of the settlement date changed from T+3 to T+2 on the 6th October 2014. As regards the effects of this modification on the options system for the theoretical date of settlement, the French Tax Authorities specify that transactions taking place before the 1st January 2015 remain subject to the theoretical delivery date of T+3. Transactions occurring after the 1st January 2015 are subject to the theoretical delivery date of T+2. Outstanding options do not need to be renewed. For instance, an ISP which has opted for the theoretical settlement date and which purchases securities the 29th December 2014 will only report and pay the tax in January 2015 (T+3 due to the transaction taking place before the 1st January 2015). ».*

69. This option offers major benefits in terms of simplifying management of the FFTT because taxpayers that exercise it no longer have to take account of delivery delays that could, if they occur, affect the net long position as it was originally calculated[69]. However, the risk was that exercising this option would mean that the FFTT was due even if securities were not delivered and ownership was not therefore transferred[70].

This is not the case, however, as the DLF has specified that in this situation "*a taxpayer has paid the tax unduly, since if securities are not delivered, ownership is not transferred. Under the provisions of IV of Article 58 Q of Appendix III of the GTC, adjustments to taxes paid in error or not paid should be conducted through offsets or corrections mentioned in subsequent returns filed before 31 December of the second year following wrongful payment or failure to pay. This adjustment should be the subject of a separate reporting entry specifying the transactions and the relevant period").*

70. Since the law entered in effect on 1 August 2012, only acquisitions resulting from trades carried out from that date are liable for the FFTT, "*provided that these transactions precede the transfer of ownership (delivery of the security) by less than four business days*" (*BOI-TCA-FIN-10-30-20170503, §70*). This has consequences particularly for deferred settlement transactions (*see §133 et seq.*).

RATE

The rate of the tax is set at 0.3 %" (*GTC Article 235 ter ZD, V*).

71. Initially set at 0.1%, this initial tax rate was never enforced: Indeed, the rate was raised to 0.2 % by Article 7 of Supplementary Budget Act 2012-958 of 16 August 2012 which has notably specified that the rate change would apply from 1 August 2012, thereby giving it retroactive effect[71].

Article 25 of the Finance Act for 2017 once more raises the FFTT rate to 0.3 %. In the absence of a specific provision setting out the terms and conditions of this rate increase, this rate should be applied to acquisitions made on or after 1 January 2017. Questioned by AMAFI, the FTA adopted an unexpected

[69] For example an acquisition that should be delivered at T+ 3 but that is not delivered until T + 5. When it comes to determining net long positions, this delay actually affects two NLPs: the NLP at T+3 and the NLP at T + 5 both have to be recalculated to reflect the transactions actually settled at those times.

[70] In this case, unless the agreement of the beneficiary of the transfer of ownership is obtained, the disconnection between the statutory taxpayer and the economic taxpayer (*see §74*) will distort the calculation of the FFTT base at the expense of the statutory taxpayer, which cannot compel the economic taxpayer to accept tax base calculations resulting from the theoretical settlement date when they are less favourable than those resulting from actual settlement; but, of course, in the reverse situation, the statutory taxpayer must pass on any resulting benefits to the economic taxpayer.

[71] However, from a practical point of view, the first transactions submitted at the rate of 0.20 % were those made on or after 1 August 2012, the transfer of ownership (settlement and delivery) in principle took place on D + 3 on Monday 6 August 2012. The FTA stated: "The first acquisitions subject to tax are those resulting from transactions made on or after August 1, 2012, provided that these transactions precede the transfer of ownership (delivery of title) of less of four working days "(BOI-TCA-FIN-10-30-20141118, §70),

position, different from the one previously taken, considering that "the settlement which would take place at the beginning of January 2017, even when they relate to transactions carried out in 2016, would fall within the 0.3 % rate[72]". In these circumstances, it is for the legal taxpayer to assess, in light of the contractual conditions binding it to customers/economic debtor, whether it is in a position to apply and then pass on this rate increase to the transactions under question, carried out at the end of 2016.

Article 98 of the Finance Act for 2025 has once again amended the tax rate, raising it to 0.4% for acquisitions made as of 1 April 2025. In line with the position adopted by the French tax authorities (DLF) in 2016, this increase should therefore apply to settlements and deliveries taking place from 1 April 2025 onwards, even when they relate to transactions executed before that date.

ASSESSMENT, DECLARATION AND PAYMENT OF THE TAX

72. Clarification is required on a number of points.

Taxpayers

> "*The tax shall be assessed and paid by the firm providing investment services, as defined in Article L. 321-1 of the Monetary and Financial Code, having executed the order to buy the securities or having traded in the securities for its own account, regardless of its location.*
> *If several firms mentioned in the first paragraph of this VI are involved in executing a security purchase order, the tax shall be assessed and paid by the firm that received the purchase order directly from the end buyer.*
>
> *If the acquisition is made without the involvement of a firm providing investment services, the tax shall be assessed and paid by the institution acting as the custody-account-keeper, as defined in 1 of Article L. 321-2 of the same code, regardless of its location. The buyer must provide the institution with the information cited in VIII of this article*" (*GTC Article 235 ter ZD, VI).*
>
> "*The tax on acquisitions made between 1 August and 31 October 2012 shall be declared, assessed and paid by 30 November 2012. Taxpayers are required to retain the information necessary for the assessment of the tax on these transactions. They shall provide the central depositary keeping the issue account with the information cited in VII of Article 235 ter ZD of the General Tax Code before 10 November 2012.*" (*2012 Supplementary Budget Act Article 5, I, C, 2*).

73. Having made the general observation that, since only purchases of shares and equivalent transactions are liable for the FFTT, taxpayer status is linked solely to transactions of this nature, i.e. excluding sales and equivalent transactions, the following factors should be taken into account.

[72] See DLF's letter to AMAFI, 21st December 2016.

Statutory taxpayer and economic taxpayer

74. The FFTT is assessed and paid by the investment services provider that executed the buy order[73] or, failing that, by the institution acting as the custody-account-keeper for the buyer, which in the case of pure registered securities will be the issuer[74]. While these entities are thus the statutory taxpayers of the FFTT vis-à-vis the tax authorities, "*regardless of their location*", (*see §88 et seq.*), they are not however the economic (i.e. actual) taxpayers: the real reason for the tax – indeed, the taxable event – is the transaction that is decided on and carried out by the acquirer on whose behalf the ISP acts and, in the case of the custody account-keeper, legally evidences the ownership right or rights acquired in this respect by the purchasing client.

This distinction between the statutory taxpayer and the economic taxpayer of the FTT is further supported by the parliamentary records, which state that "*while the ultimate taxpayer of the levy is indeed the purchaser of the shares, who will incur a higher cost in executing the financial transaction, the mechanism for collecting the tax rests with the financial institution (…)*"[75].

Taxpayer categories

75. The law recognises three categories of potential taxpayers:

- "the firm providing investment services, as defined by Article L. 321-1 of the Monetary and Financial Code, which has executed the order to purchase the security", hereafter the Broker;
- "the firm providing investment services, as defined by Article L. 321-1 of the Monetary and Financial Code, which has traded on its own behalf", hereafter the Dealer;
- "the institution acting as account custodian as defined by point 1 of Article L. 321-2 of the same code", hereafter the Custody account-keeper.

In contrast with the Broker or Dealer, the Custody account-keeper merely has the status of alternate taxpayer. It is liable for the tax only if a Broker or Dealer is not involved in the FFTT-liable purchase: "When the acquisition takes place without the participation of a firm providing investment services, the tax shall be paid and owed by [the Custody account-keeper]" (*see also §83*).

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[73] "*The taxpayer is the investment services provider (ISP) that provides the services defined in Article L. 321-1 of the MFC, regardless of its location, when it executes buy orders on behalf of third parties or when it trades on the buy-side on its own account*" (*BOI-TCA-FIN-10-30-20170503, §1*). "*In France, ISPs are investment firms or credit institutions that have been authorised to provide some or all of the investment services defined in MFC Article L. 321-1 (authorisation issued by the ACP and the AMF for the service referred to in 4 of MFC Article L. 321-1)*". Note that "*firms providing equivalent services outside France are liable for the tax under the same conditions*" (*BOI-TCA-FIN-10-30-20170503, §1*).

[74] "*If the acquisition is made without the involvement of an ISP, the tax shall be paid by the institution acting as the custody-account-keeper, as defined in 1 of Article L. 321-2 of the MFC, regardless of its location. If the securities are recorded in pure registered form, the company that issues the securities performs the role of custody-account-keeper and is hence liable for the tax as regards acquisitions made without the involvement of an ISP*" (*BOI-TCA-FIN-10-30-20170503, §30*).

[75] Carrez Report, op. cit., p. 153.

76. Note in this regard that in "the absence of a chain of intermediaries" (see 78 et seq.), "the sole ISP is liable for the tax, even if it is not authorised to perform third-party order execution services, once it is admitted as a market member. In such situations, the ISP shall be considered, for the purposes of the tax, as directly executing orders for third parties" (BOI-TCA-FIN-10-30-20170503, §20).

77. Since only equity purchases and equivalent transactions are liable for the FFTT, it may be deduced from this that a broker, dealer or custody account-keeper participating in a sale of equities or an equivalent transaction will never be considered as a taxpayer.

Moreover, the DLF confirmed this point when asked about the tax arrangements applicable to acquisitions of securities where several ISPs are involved in executing a sell order: "*Pursuant to Article 235 ter ZD of the GTC, the tax is applied to any acquisition for consideration of an equity security or equivalent security. Consequently, a client sell order that is executed directly by an ISP or indirectly through a chain of intermediaries falls outside the scope of the tax. Accordingly, the seller is not subject to any disclosure obligations*" (letter from the DLF to AFME, 19 February 2013).

Identifying the taxpayer in a chain of intermediaries acting on behalf of a third party

78. Through an amendment introduced in the Senate as part of the debate on the second draft 2012 Supplementary Budget Act, paragraph VI of Article 235 *ter* ZD of the GTC was changed to clarify the situation of chains of intermediaries. The law now states that: "*If several of the firms mentioned in the first paragraph are involved in executing a security purchase order, the tax shall be assessed and paid by the firm that received the purchase order directly from the end buyer*"[76] (*for application to depositary receipts, see §146 et seq.*).

In the positions that they have disseminated, the tax authorities have clarified the requirements for identifying the taxpayer in a chain of intermediaries acting on behalf of a third party (*for the approach applicable to own account orders, see §85 et seq.*). The authorities thus consider that for a firm "*that executed the security purchase order"* to qualify as the taxpayer, it merely has to be authorised for the service of order execution and act to enable an order to be executed, even if in practice its involvement occurs solely as part of an order reception/transmission service[77].

[76] The General Rapporteur for the Senate Finance Commission, who presented this amendment on behalf of the commission, said: "*This amendment is intended to identify the FFTT taxpayer in a situation where several firms are involved in the acquisition of a share or equivalent security. Under the current arrangements, the tax is owed by the ISP that executed the purchase order, most often a bank or management company. But between the purchase order issued by the client – the end buyer – and the actual purchase of the security, it is not uncommon for several firms to be involved and to pass the order from one to the next in a "chain of intermediaries". Accordingly, and for practical reasons, it is necessary to specify that the taxpayer is the ISP that transmits the order that it has received directly from the end buyer or that it is trading on its own account. In other words, the taxpayer is the provider that is closest to the initial issue of the purchase order. We believe it is necessary to include this technical clarification in Article 6"* (*Senate, debates, 26 July 2012*).

[77] This conclusion derives, on the contrary, from the statement that "*when an ISP that is not authorised to perform the third-party order execution services referred to in point 3 of Article L. 321-1 of the MFC receives and transmits an order*

79. This means that the definition of Broker as given above (*see §*75) applies not only to firms that act within the framework of an order execution service, but also to firms that act within the framework of an order reception/transmission service, if they are authorised to provide order execution services.

This position is important when it comes to ensuring appropriate treatment of chains of intermediaries. In such situations, for the FFTT to be implemented in accordance with lawmakers' objectives (*see also §59*), it is essential that the NLP used to determine the FFTT is calculated as close as possible to the end buyer on whose behalf ownership of the securities is transferred[78].

80. But this solution also and above all has the merit of being simple. Subject to appropriate treatment of chains of intermediaries comprising non-residents (*see §92*), the need to be authorised for order execution is an objective criterion that may be determined on principle, whereas it is difficult, even impossible, from an operational perspective to determine whether individual trades are carried out under such authorisations.

Furthermore, the position set out by the tax authorities appropriately captures a number of particular situations, such as cases where a firm, which is responsible towards an end client for executing orders and therefore sends the client a trade notice reporting on execution, uses another firm to perform execution, often because it does not have access to the trading platform on which the transaction is executed[79].

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from its client to another ISP in charge of executing the order (which therefore has that authorisation), the taxpayer is the second ISP" (*BOI-TCA-FIN 10-30-20170503, §10*). It seems necessary to consider that if an ISP that "*receives and transmits an order from its client to another ISP in charge of executing the order"*, has "*an authorisation to perform the third-party order execution services referred to in point 3 of Article L. 321-1 of the MFC"*, then it would be recognised as the taxpayer by the tax authorities. The authorities has also confirmed this interpretation in a set of FAQ on the financial transaction tax that was posted on the Impots.gouv.fr website when the system was introduced in 2012, because the answer to the question "*Who is the taxpayer in the case of purchases of equity securities?*", was "*In accordance with point VI of Article 235 ter ZD of the GTC: the ISP (broker) or custody account-keeper. The ISP that acquires the securities for its own account is always the taxpayer. If several ISPs are involved in executing an order for a buyer that is not an ISP, the taxpayer is the ISP that is authorised to perform order execution services and that is closest to the end buyer in the chain of intermediaries. Cf. §40 to 43 of Tax Instruction 3 P-3-12 No. 61 of 3 August 2012*"

[78] Assessing the NLP as initially planned, at the level of the firm that actually carries out the purchase, would have considerably reduced the FFTT base in a number of scenarios. These include a situation where a firm that is further down the chain acts on behalf of a firm that is further up the chain ("as close as possible to the initial issue of the purchase order", as proposed during parliamentary debates). This upstream firm acts in its own name but on behalf of a third party and does not therefore disclose the identity of the client in whose name it is acting to the downstream firm. Qualifying legally as commission agreements, these types of situations occur frequently and may result in the upstream firm's sales and purchases being netted, regardless of actual transfers of ownership effected for the benefit of clients, whose identities are known solely to the upstream firm. In this situation, in the absence of a mechanism provided for by law, it would be impossible to make any adjustments for this "downstream netting" based on information held by the firm higher up in the chain.

[79] These situations apply particularly to retail banking networks and private banks, which, generally speaking, act as custody account-keepers or at least initiate settlement with the custody-account keeper of the client that is the beneficiary of the ownership transfer. This solution therefore captures all firms that, in providing ancillary portfolio management services in addition to other investment services, issue orders on behalf of the portfolios that they manage, since in this case the end buyer under the approach proposed by the tax authorities is indeed the client on whose behalf the account is managed, which is the sole beneficiary of the ownership transfer, even if it has not issued an order.

81. However, as the tax authorities confirmed, this solution does not prevent the taxpayer ISP from entering into an agreement with a third party to fulfil tax reporting and payment obligations in its name and on its behalf. In this case, however, because the client remains the statutory taxpayer, it also remains solely answerable to the tax authorities for reporting and paying the tax, along with any penalty interest and other penalties (*BOI-TCA-FIN-10-30-20170503, §9*).

For details on the practical arrangements for implementing this principle, see the Standard Agreement on Dealing with FFTT in a Situation Involving a Chain of Intermediaries *(see Appendix 6).*

82. In order to take into account the operational challenges involved in identifying the taxpayer in the case of an "intermediation desk", the Tax Legislation Directorate and the French Treasury have been consulted with a view to finding a suitable solution. After discussion with the Industry, the French tax authorities' guidelines were updated in August 2014 to outline conditions under which it is possible to derogate from the rule on identifying the taxpayer when the first ISP is an "intermediation desk".

Thus "*When an ISP, that is authorized to perform the third-party order execution services referred to in point 2 of Article L.321-1 of the MFC, receives and transmits an order from its client to another ISP in charge of executing the order (which therefore also has that authorization), the taxpayer is, by exception, the second ISP if the following cumulative requirements are met : the first ISP is not a party to the settlement system, it does not issue any performance report defined in Article 314-86 of the General Regulation of the AMF or in any equivalent regulation, it is not a member of a regulated market on which securities could be subject to the tax, and it acts as agent for the ultimate purchaser vis-à-vis the second ISP. In France, the first ISP is usually referred to as "intermediation desk*" (*BOI-TCA-FIN-10-30-20170503 § 10*).

Ainsi, « *lorsqu'un PSI qui dispose d'un agrément pour exercer les prestations d'exécution d'ordres pour le compte de tiers visées au 2 de l'article L. 321-1 du CoMoFi, reçoit et transmet un ordre de son client à un autre PSI en charge de l'exécution de l'ordre (et disposant donc aussi de cet agrément), le redevable de la taxe est par exception ce second PSI si les conditions cumulatives suivantes sont remplies : le premier PSI n'est pas partie à la chaîne de règlement-livraison, il n'émet pas de compte-rendu d'exécution défini à l'article 314-86 du règlement général de l'AMF ou dans une autre réglementation équivalente au titre de l'opération concernée, il n'est pas membre d'un marché réglementé sur lequel sont traités des titres dont l'acquisition est susceptible d'être soumise à la taxe et il intervient en tant que mandataire de l'acquéreur final auprès du second PSI. En France, ce premier PSI est usuellement dénommé "table d'intermédiation"* » (*BOI-TCA-FIN-10-30-20170503 § 10, remarque 2*).

Situation of the custody account-keeper

83. Note that in many cases the custody account-keeper may be unable to determine whether a delivery that leads it to record securities in the account of a client and thus to recognise rights on that client's behalf is a transaction for which it is required to debit the FFTT. In particular, the account-keeper may not know whether this delivery follows an acquisition for consideration resulting in a transfer of ownership, and in this case whether the ISP that executed the order has already debited the FFTT.

In such situations, the custody account-keeper can fulfil its obligations as statutory taxpayer only if the buyer, which is the economic taxpayer, provides on its own initiative the information needed to prepare the tax. This is what the law provides (*GTC, Art. 235 ter ZD, VI*), thus implying that if the information is not supplied by the holder of the account in which book entries are made following a delivery of securities, the custody account-keeper is not required to apply the FFTT. The custody account-keeper is thus entitled to presume either that the FFTT was debited by a service provider acting on its own account or for a third party, or that the transaction is not liable for the tax because no transfer of ownership took place.

84. Cases may arise where the buyer sends the custody account-keeper the information needed to collect and report the FFTT but omits to inform the account-keeper that the transaction is covered by one of the exemptions provided for by law.

According to clarification provided by the tax authorities, in such instances, the custody account-keeper is required to assume by default that the transaction is taxable: "*The institution acting as custody account-keeper shall assume that acquisitions are taxable if the buyer does not provide information about exempt securities acquisitions*" (*BOI-TCA-FIN-10-30-20170503, §40*).

ISPs that trade on own account

85. ISPs that engage in own account transactions in which, dealing with a counterparty, they sell securities or enter into financial contracts that lead them to deliver underlying securities are not deemed to have to assess and pay the FFTT: "*The taxpayer is the investment services provider (ISP) that […] trades on the buy-side on its own account*" (*BOI-TCA-FIN-10-30-20170503, §1*).

In this situation, and provided that the buyer, which itself does not have ISP status, is not represented by another ISP, the taxpayer should be the custody account-keeper, subject to comments made earlier (*see §83*).

86. Furthermore, while the law does not deal directly with the question of identifying the taxpayer in situations where a Dealer conducts acquisitions via a Broker, it may nevertheless be considered to do so indirectly. It seems necessary to consider that the legal clarification provided should be read as follows: "*If several [Brokers and/or Dealers] are involved in executing a security purchase order, the tax shall be assessed and paid by the firm that received the purchase order directly from the end buyer".*

Since the end buyer is the Dealer, it may be deduced that as the order issuer it is also the first potential taxpayer to receive the order, thus making it the sole taxpayer. In any event, the position set out by the tax authorities leaves no ambiguity: "*If an ISP sends another ISP an own account purchase order for execution, the tax shall be payable by the acquiring ISP*" (*BOI-TCA-FIN 10-30-20170503, §10*), no matter how long the chain of intermediaries involved in the acquisition.

87. Any Broker that acts on the instructions of a Dealer will therefore never be treated as the taxpayer. The taxpayer will always be the Dealer.

Territorial scope of taxpayer status

88. Aside from the general matter of identifying the taxpayer, there is also the question of whether the taxpayer must be necessarily and exclusively based in France or whether firms in other European Union (EU) Member States or even outside the EU could also treated as taxpayers and, if so, according to what criteria.

While the law contains some ambiguities, the legislator's intent is clear, to the point that the territorial scope cannot be considered to be limited to Europe.

89. On the one hand, the law clearly affirms the principle whereby taxpayer status does not depend on the place where the firm is established: "*irrespective of the place of establishment*" is the phrase used.

On the other hand, however, it defines this status using references that are meaningful only for firms that established in France: "*the firm providing investment services, as defined by Article L. 321-1 of the Monetary and Financial Code*", for the Broker and Dealer; and "*the institution acting as account custodian as defined by point 1 of Article L. 321-2 of the same code*", for the Custody account-keeper.

90. Given this ambiguity in the wording of the legislation, it is necessary to attempt to remove the confusion by considering the legislator's intent. Based on the various available documents, the intent is clearly to establish a territorial scope that is not limited to France[80].

The tax authorities uphold this interpretation: "*In France, ISPs are investment firms and credit institutions that have been authorised to provide some or all of the investment services defined in MFC Article L. 321-1 (authorisation issued by the ACP and the AMF for the service referred to in 4 of MFC*

[80] The preliminary evaluation report that accompanied the draft Supplementary Budget Act submitted by the government on 8 February 2012 explains this decision as follows: "*Only companies whose registered offices are in France would have their listed shares taxed, irrespective of the trading venue. This territoriality criterion has the advantage of not discouraging foreign companies from choosing Paris as their listing venue, since the listing venue is not used as the territorial criterion. There is no incentive for financial intermediaries to relocate outside France, because, unlike with the tax on stock market transactions, the place of residence of the intermediary has no bearing on the tax. The only way to remove their securities from the scope of the tax would be for issuing companies to move their registered offices outside France, a decision that would not be taken solely based on a 0.1 % tax on secondary market trading. The only way for an investor to avoid the tax would be to refrain from trading in the securities of French companies*" (p. 168). Meanwhile, the National Assembly's Finance Commission presided by Mr Carrez stressed that: "*The new tax on financial transactions does not place financial intermediaries in the Paris markets at a disadvantage because the tax is due even if the trade is carried out by a firm that is established outside the country*" (Carrez Report, op cit., p. 154). While the report compiled on behalf of the Senate's Finance Commission questions the extraterritorial nature of the arrangements, it does so on operational – not legal – grounds, because the approach is based on a disclosure mechanism: "*Moreover, the government has opted for a entirely disclosure-based mechanism, including for transactions in French shares recorded with a foreign central depositary. Is it really possible to have confidence in the extraterritorial scope of these provisions?*" (Bricq Report, op cit., p. 241).

Article L. 321-1). Firms providing equivalent services outside France are liable for the tax under the same conditions" (*BOI-TCA-FIN 10-30-20170503, §1*).

91. In this context, it should be noted that the extraterritorial scope of the FFTT cannot be limited to Europe by considering that taxpayer status may be held only by firms that are authorised by a European country as Dealers, Brokers or Custody account-keepers, on the grounds that the notions of investment and custody account-keeping services used to identify taxpayers are defined with reference to the Monetary and Financial Code, which itself is taken directly from Europe's Markets in Financial Instruments Directive (MiFID 2)[81].

Here again, there is no possible ambiguity about the intent, which is clearly stated by France's lawmakers, who at no point suggested that such a limitation could be justified. Moreover, had they wanted to limit the scope to Europe, they could have referred to European legislation – MiFID 2 – rather than to the MFC, as indeed they did for the exemption for securities financing transactions (*see §45 et seq.*). This analysis is not challenged by the French tax authorities' use of the notion of investment services provider, even though this notion has meaning only in the French – not European – legal context (*MFC, Art. L 531-1*).

Chain of intermediaries including a non-resident firm that may qualify as a taxpayer

92. Despite the stated determination to give the FFTT extraterritorial scope, the tax authorities' resources to conduct tax inspections and adjustments, while in no doubt as regards firms resident in France, will be more stretched for non-resident firms (*see §109 et seq.*).

It is therefore probable that in situations where several firms could qualify as taxpayers but where one of them is established in France, the authorities will be likely to consider that, based on the information in its possession, the firm established in France is the taxpayer. In practical terms, this may mean that the firm in question has to demonstrate that the evidence pertaining to it is not valid owing to factors allowing it to reasonably consider that another firm is the taxpayer, and that the tax authorities should therefore pursue this other firm. A judge asked to consider such matters would probably follow a similar line of reasoning.

93. For resident firms, the question is therefore under what conditions, when faced with a request from the tax authorities, they can prove that they are dealing as part of a chain of intermediaries with a non-resident firm that is higher up in the chain, that is authorised to execute orders and that has sole taxpayer status.

For this, the firm must be able to prove that the non-resident firm is acting in the context of own account trading or third party order execution services under conditions that are at least equivalent to

[81] Directive 2004/39/EC of 21 April 2004 (MIFiD 1), which harmonised the legal framework applicable to certain financial market activities to enable the introduction of a European passport, and which replaced the Investment Services Directive. MiFID 1 Directive was amended by Directive 2014/65/EU of 15 May 2014 (MIFiD 2).

those applicable in France as regards the provisions of such services. This means that the firm in question must be authorised by a competent national authority to exercise one or both of these activities.

94. The Appendix therefore include a decision tree summarising the taxpayer's situation in different scenarios *(see Appendix 7)*. This approach must, of course, be supplemented by review of the conditions under which foreign operators can be considered as ISPs liable to pay the FFTT. This involves determining how a firm further down in the chain can justify, for example in the event of a tax audit, that it was right to consider that a firm further up in the chain established outside France, which is closer to the client, was legally liable to pay the FFTT, given its status as an ISP under the regulations applicable to it. This is therefore an analysis that must be made on a case-by-case basis by each operator concerned.

Management of adjustments

"Adjustments to tax paid in error or unpaid tax should be conducted through offsets or corrections mentioned in subsequent returns filed with the central depositary before 31 December of the second year following the wrongful payment or failure to pay. This adjustment should be the subject of a separate reporting entry specifying the transactions and the relevant period.
*If the amount of tax paid by the taxpayer exceeds the amount of the tax owing, excess tax that cannot be deducted during the month when the excess tax was recognised may either be deducted from the tax owing in the following month or refunded by the tax authorities in accordance with the conditions set out in Article R*196-1 of the Tax Procedures Manual"* (*GTC, Ann. III, Art. 58 Q, IV*).

95. A number of adjustments may be necessary, either to adjust the tax debited during an acquisition that subsequently gave rise to an NLP (*see §64*) or in the case of a purchase covered by an exemption for which evidence could not be provided before the order was executed (*see §66*).

The conditions for these adjustments, which may be made up until the end of the second year following the wrongful payment or failure to pay, were set out by decree and codified in Article 58 Q of Appendix III of the GTC.

General Tax Code, Appendix III, Art. 58 Q, IV

"Adjustments to tax paid in error or unpaid tax should be conducted through offsets or corrections mentioned in subsequent returns filed with the central depositary before 31 December of the second year following the wrongful payment or failure to pay. This adjustment should be the subject of a separate reporting entry specifying the transactions and the relevant period.

*If the amount of tax paid by the taxpayer exceeds the amount of the tax owing, excess tax that cannot be deducted during the month when the excess tax was recognised may either be deducted from the tax owing in the following month or refunded by the tax authorities in accordance with the conditions set out in Article R*196-1 of the Tax Procedures Manual."*».

Reporting the information necessary for collecting the tax

"If the central depositary keeping the issue account of the equity security is subject to point 3 of II of Article L. 621-9 of the Monetary and Financial Code and delivers the security, the taxpayer cited in VI of this article shall provide the central depositary with the information stipulated in point VIII before the 5th of the month after the acquisitions cited in point I and shall designate the depositary member whose account may be debited for the tax.

If the central depositary keeping the issue account of the equity security is subject to point 3 of II of Article L. 621-9 of the Monetary and Financial Code, and neither the depositary nor any of its members delivers the security, which is delivered by book entry to a client of one of its members, said client shall provide the information stipulated in point VIII to the member, which shall forward it to the central depositary before the 5th of the month after the acquisitions cited in point I.

If the central depositary keeping the issue account of the equity security is subject to point 3 of II of Article L. 621-9 of the Monetary and Financial Code, and delivery is made under conditions that are different from those cited in the first three paragraphs of VII, the taxpayer cited in VI shall make a declaration to the tax authorities, using the form provided by the authorities, and pay the tax to the Treasury before the 25th of the month after the acquisitions mentioned in I. The taxpayer may also pay the tax through a member of the central depositary, to whom the taxpayer directly or indirectly provides the information cited in VIII. The central depositary member shall forward this information to the central depositary before the 5th of the month after the acquisitions cited in I. If the taxpayer chooses to pay the tax through a central depositary member, it must make a declaration to this effect to the Treasury before 1 November. The declaration shall be valid for one year and shall be renewed tacitly.

If the central depositary keeping the issue account of the equity security is subject to point 3 of II of Article L. 621-9 of the Monetary and Financial Code, and neither the depositary nor any of its members delivers the security, which is delivered by book entry to a client of one of its members, said client shall provide the information stipulated in point VIII to the member, which shall forward it to the central depositary before the 5th of the month after the acquisitions cited in point I. If the central depositary keeping the issue account of the equity security is not subject to point 3 of II of Article L. 621-9 of the Monetary and Financial Code, the taxpayer cited in VI shall make a declaration to the tax authorities, using the form provided by the authorities, and pay the tax to the Treasury before the 25th of the month after the acquisitions mentioned in I. The taxpayer shall make the information cited in VIII available to the tax authorities." (GTC Article 235 ter ZD, VII).

96. The various channels for reporting the information needed to pay the FFTT are listed here. The central depositary keeping the issue account plays a key role when it is subject to AMF supervision – in this case, Euroclear France.

The deadlines for filing information about the relevant taxable or exempt transactions with the central depositary and for declaration and payment are set at before the 5th and the 25th respectively of the month after the acquisition of the securities.

97. The reporting and payment obligations of taxpayers depend on the place where the central depositary keeping the issue account of the security is established (*BOI-TCA-FIN-10-40-20150304*).

- Central depositary is established in France

  Four situations may arise.

  - Delivery of the security is made by book entry to the central depositary

    The taxpayer is required to provide the depositary with the information referred to in Article 58Q of Appendix III of the General Tax Code and to name the member that is responsible for paying the tax in its name.

    This information and payment of the associated tax must be sent to the central depositary before the 5th of the month following settlement of the securities.

  - Delivery of the security is made by book entry to a member of the central depositary

    The member is required to provide the depositary with the information referred to in Article 58Q of Appendix III of the General Tax Code and to pay the tax.

    This information and payment of the associated tax must be sent to the central depositary before the 5th of the month following settlement of the securities.

  - Delivery of the security is made by book entry to a client of a member of the central depositary

    The client taxpayer is required to provide the information referred to in Article 58Q of Appendix III of the General Tax Code and to name the member that is responsible for paying the tax in its name.

    This information and payment of the associated tax must be sent to the central depositary before the 5th of the month following settlement of the securities.

  - Delivery of the security is made under conditions other than those cited above

    The taxpayer reports and pays the tax directly to the Large Corporations Division before the 25th of the month following the acquisitions of taxable securities.

    However, the taxpayer may opt to report and pay the tax through a member of the central depositary. In this case, the taxpayer sends the member the information referred to in Article 58Q of Appendix III of the General Tax Code stating the amount of tax to be paid. If the security is not delivered by book entry to a member or to a client of a member, the taxpayer may opt to report and pay the tax via the member

of its choice, although it must use the same member throughout the one-year validity period applicable to this option.

The information referred to in Article 58Q of Appendix III of the General Tax Code must be sent to the central depositary before the 5th of the month following settlement of the securities.

If the taxpayer wishes to exercise this option, it must inform the Large Corporations Division by post before the 25th of the month before the one in which it wishes to exercise the option. The option shall take effect as from the first trade on the first day of the month following notification[82]. The option shall be valid for one year and shall be renewed tacitly. The Large Corporations Division must be notified of the decision to cease exercising the option before the 25th of the month before the one in which the taxpayer wishes to stop exercising the option.

- Central depositary is established outside France

The taxpayer must send return No. 3374-SD along with payment to the Large Corporations Division before the 25th of the month following settlement of the securities. This rule does not apply to the acquisition of a depositary receipt during its creation process. In this situation, the tax is reported and, where applicable, paid under the conditions stipulated for a central depositary established in France if the receipt evidences the transfer of the share it represents. In situations other than creation or cancellation (see §148 et seq.), the acquisition of a depositary receipt is reported and, where applicable, payment is made to the Large Corporations Division before the 25th of the month following the acquisitions of taxable securities (BOI-TCA-FIN-10-40-20150304, §120). The taxpayer may also opt to report and, where applicable, make payment to the Euroclear France member of its choice.

Information to be provided to the central depositary under AMF supervision

"*If the central depositary keeping the issue account of the equity security is subject to point 3 of II of Article L. 621-9 of the Monetary and Financial Code, it shall collect from its members or taxpayers, under the conditions stipulated in VII of this article, information concerning the transactions falling within the scope of application of the tax. A decree shall specify the nature of this information, which includes the amount of the tax due for the tax period, the order numbers of the transactions concerned, the date of execution, the description, number and value of the securities for which the acquisition is taxable, and the exempt transactions, distributed in accordance with the exemption categories cited in II*" (*GTC, Art. 235 ter ZD, VIII*).

98. This information is specified by decree and codified in Article 58 Q of Appendix III of the General Tax Code. The tax authorities have also provided clarification on this point (*BOI-TCA-FIN-10-40-20150304, §180 to 190*). Members of Euroclear France are required to supply it with exhaustive and precise

[82] For acquisitions carried out between 1 August 2012 and 1 November 2012, the request to exercise this option must be sent by post to the Large Corporations Division before the second date.

declarations in timely fashion. The data requested in the header must be filled in and valid (i.e. the field format must be respected) in order for the declaration to be accepted by Euroclear France. However, on receiving the declaration, Euroclear France does not check the transaction details given in the repetitive section of the document. It carries out ex-post checks once the declaration has been received, and it sends reports to the tax authorities that serve as a basis for those authorities to examine the details of the declarations and decide whether to apply the legal penalties for missing, inaccurate or incomplete information.

General Tax Code, Appendix III, Art. 58 Q

"I. The following information shall be sent pursuant to VIII of Article 235 ter ZD, whether it concerns taxed or exempt transactions:

a. the name or business name of the taxpayer and, if the taxpayer has one, a bank identifier code (BIC), intracommunity VAT number or, failing that, its identity number, as defined in the first paragraph of Article R. 123-221 of the Commercial Code;

b. the address of the registered offices or main establishment of the taxpayer;

c. if the central depositary keeping the issue account of the equity security is subject to point 3 of II of Article L. 621-9 of the Monetary and Financial Code, the code assigned by the depositary to the member in charge of paying the tax pursuant to VII of Article 235 ter ZD of the General Tax Code;

d. the identification code for the equity security or equivalent security (ISIN) whose acquisition is liable for the tax;

e. the date of the transaction;

f. the settlement date of the equity security or equivalent security;

g. the reference given in the taxpayer's internal management system to acquisitions or, where some of the transactions do not give rise to a transfer of ownership and only the net long position of the acquirer is subject to the tax, the reference given to this net long position;

h. the value of the transactions, which means the number of securities multiplied by the unit value of the securities acquired.

Where some of the transactions do not give rise to a transfer of ownership and only the net long position of the acquirer is subject to the tax, the amount of the acquisitions is equal to the number of securities whose ownership is transferred multiplied by the average value of the securities acquired during the period at the end of which the net long position is calculated.The net long position used as a base for the tax is calculated for a given security and for each acquirer, excluding exempt acquisitions as provided in II of Article 235 ter ZD of the General Tax Code and the sales associated with those exemptions.

The taxpayer takes the number of securities of a company liable for the tax, as defined by I of Article 235 ter ZD of the General Tax Code, and acquired by an acquirer during a period and then subtracts the number of securities of that company sold by the same acquirer during the same period.

The resulting number, which corresponds to the number of securities whose ownership is transferred to the acquirer, is multiplied by the average unit price of non-exempt acquisitions of the security during the period at the end of which the net long position is calculated.

The sum of the net long positions calculated in this manner for each security and each acquirer shall form the taxpayer's tax base.

i. for each acquisition that is exempt in accordance with II of Article 235 ter ZD, the exemption category to which it is assigned;

j. any adjustments mentioned in III;

k. the amount of tax to be paid under the return, rounded to the nearest cent for each acquisition;

II. By way of an exception to the provisions of I of this article, exempt acquisitions pursuant to point 9 of II of Article 235 ter ZD do not have to be reported to the central depositary.

III. If the information mentioned in a, c and k of I is not provided, the return shall be rejected."

99. Two temporary dispensations are permitted under these arrangements because it is "permissible to report only exempt securities financing transactions carried out as from 1 January 2013" and "the same dispensation applies to corporate events whose purpose is the issuance of new securities" (BOI-TCA-FIN-10-40-20150304, §190)

Obligations of the central depositary under AMF supervision

IX. - The central depositary keeping the issue account of the equity security and subject to point 3 of II of Article L. 621-9 of the Monetary and Financial Code shall declare the tax to the tax authorities, using the model it has established, clear and pay the tax to the Treasury before the 25th of the month following the acquisitions cited in I of this article. In particular, the declaration shall specify the amount of the tax due and paid by each taxpayer.

In the cases described in the first three paragraphs of VII, or in the case of the taxpayer's option cited in the penultimate paragraph of VII, the member who has sent the information stipulated in VIII or who has been designated by the taxpayer pursuant to the first paragraph of VII shall authorise [the central depositary] to withhold the amount of the tax from his account before the 5th of the month following the acquisitions cited in I.

X. – The central depositary subject to point 3 of II of Article L. 621-9 of the Monetary and Financial Code shall keep separate accounts to record the transactions associated with collecting the tax. It shall oversee the consistency between the declarations it receives and the information in its possession as central depositary. The information collected by the central depositary pursuant to VII of this Article shall be provided to the tax authorities on request. An annual report shall be sent to the authorities on the type and extent of the audit performed. A decree shall define the conditions for enforcing this section X shall be set forth in a decree" (GTC, Art. 235 ter ZD).

100. The central depositary "shall declare [...], clear and pay the tax to the Treasury", while keeping "a separate accounting to record the transactions associated with collecting the tax".

These obligations have been set out by decree and codified in Article 58 R of Appendix III of the General Tax Code and commented on by the tax authorities (*BOI-TCA-FIN-10-40-20150304, §140 to 170*)..

Obligation to keep a separate accounting system for FFTT collection

101. It is provided that "transactions linked to collection of the tax by the central depositary subject to point 3 of II of Article L. 621-9 of the Monetary and Financial Code shall be recorded in a separate ledger that forms part of the accounting records of the central depositary. Costs and income directly or indirectly linked to these transactions must be covered by an annual report that the tax authorities reserve the right to audit" (GTC, Ann. III, Art. 58R, I)

Obligation to deposit the funds with Agence France Trésor and pay the tax proceeds to the Large Corporations Division

102. It is provided that "the amounts of tax collected by the central depositary before the 6th of the month following the taxed acquisitions shall be paid into the Banque de France account opened by the central depositary for the purpose of collecting the tax and then be deposited with Agence France Trésor until they are paid over to the Large Corporations Division before the 25th of the same month" (GTC, Ann. III, Art. 58R, II).

Monthly statement from the central depositary, Euroclear France

103. It is provided that "the statement provided for in IX of Article 235 ter ZD of the General Tax Code shall be prepared monthly in accordance with a model prepared by the authorities (GTC, Ann. III, Art. 58R, III). Accordingly, for "each taxpayer, the information sent electronically by the central depositary shall include, inter alia:

a. *the name or business name of the taxpayer and, if the taxpayer has one, its bank identifier code and intracommunity VAT number or, failing this, its number [SIREN];*
b. *the address of the registered office or main establishment of the taxpayer;*
c. *the tax period;*
d. *the tax base, the amount of the tax due and paid for the month concerned;*
e. *the date of filing of the return and the payment with the central depositary;*
f. *the monthly amount of exempt transactions, grouped by motive for exemption;*
g. *the monthly amount and the motive for the adjustments referred to in III of Article 58 Q."*

Consistency checks

104. In this regard, the central depositary draws up a list of taxpayers whose returns show inconsistencies. Before "the 25th of the second month following the acquisition of the equity security or the equivalent security, the central depositary shall draw up a list of the taxpayers whose returns exhibit [certain characteristics]" (GTC, Ann. III, Art. 58R, IV, 1):

- The tax base is inconsistent with the amount of the tax declared or paid;
- No acquisitions reported in the thirty securities reported most frequently by the taxpayer as acquisitions, on average, during the previous month;
- Payments made by taxpayers that are direct members of the central depositary in the settlement system of an amount in excess of the reported acquisitions.

The list gives the reasons why each of the taxpayers concerned has been included in this list.

105. In addition, statistical and dynamic analytical ratios are put in place for taxpayers' returns and for taxable and exempt acquisitions (*GTC, Ann. III, Art. 58R, IV, 2*). "*Before the 25th of the second month following the acquisition of the equity security or equivalent security, the central depositary shall calculate, for each taxpayer and as an average for all taxpayers:*

a. The rate of change, relative to the previous month, in the number and amount of reported acquisitions. Taxpayers that filed a return in the previous month but that did not file one for the current month shall be deemed to have reduced their reported acquisitions by 100 %;
b. The share, in terms of number and amount, of exempt acquisitions relative to all reported acquisitions and the relative share of each exemption category for exempt acquisitions;
c. The change in the exemption rate relative to the previous month, in terms of number and amount."

106. Cross-checks are carried out: "The central depositary shall cross-check the transactions reported to it against the known transactions of the trading platforms and clearing houses, regardless of where they are established, with which the central depositary has previously entered into an agreement for that purpose". (GTC, Ann. III, Art. 58R, IV, 3).

SUPERVISION, DISPUTES, PENALTIES

"*In the event the central depositary fails, through its action, to meet the payment obligations stipulated in point IX, it shall pay the late penalty stipulated by Article 1736 of this code.*
If the taxpayer fails to meet the payment obligations stipulated in point VII of this article, the taxpayer shall pay the late penalty stipulated in said Article 1736.
If the taxpayer or member fails to perform the declaration obligations stipulated in point VII of this article, the member shall pay the fine stipulated in Article 1788 C" (GTC, Art. 235 ter ZD, XI).

"*1. If it fails to perform its declaration obligations stipulated in point IX of Article 235 ter ZD, the central depositary shall pay a fine of €20,000 for failure to file the declaration and €150 per omission or inaccuracy in the declaration, up to a maximum of €20,000 per declaration.*
2. If it fails to meet its obligation to provide to the authorities the information stipulated in point X of said Article 235 ter ZD, the central depositary shall pay a fine of €20,000" (GTC, Art. 1736, VII).

"I. *– Failure to transmit the information stipulated in point VII of Article 235 ter ZD shall result in the application of an increase of 40 % of the amount of the tax owed, which may not be less than €1,000 or, when no tax is due, a fine of €1,000.*
II. – Late transmission of the information stipulated in point VII of Article 235 ter ZD shall result in the application of an increase of 20 % of the amount of the tax due, which may not be less than €500 or, when no tax is owed, a fine of €500.
III. – Inaccuracies or omissions found in the information stipulated in point VII of Article 235 ter ZD shall result in the application of a fine of €150 per omission or inaccuracy found in the declaration, which may not exceed 40 % of the tax omitted" (GTC, Art. 1788 C).

"The tax shall be collected and audited in accordance with the procedures and subject to the same sanctions, guarantees and liens as taxes on revenues. Claims shall be submitted, investigated and judged in accordance with the rules applicable to said taxes" (GTC, Art. 235 ter ZD, XII).

"As regards taxes on revenues, the authorities have the right to correct errors and omissions until the end of the third year following the year in which the tax became payable in accordance with the provisions of point 2 of Article 269 of the GTC" (Tax Procedures Manual, Art. L176).

"*To be admissible, claims relating to taxes other than direct local taxes and associated levies must be submitted to the tax authorities no later than 31 December of the second year following the year […] b) of payment of the contested tax where this tax did not give rise to the establishment of a roll or to notification of a collection notice"* (Tax Procedures Manual, Art. R. 196-1).

"*In the case where a taxpayer is the subject of correction or adjustment procedures on the part of the tax authorities, said taxpayer shall have the same time as that given to the authorities to present its own claims"* (Tax Procedures Manual, Art. R. 196-3)

107. The collection and auditing procedures for the FFTT are the same as those applicable to VAT. The authorities have the right to correct errors and omissions until the end of the third year following the year in which the tax was due.

However, claims (such as, for example, requests to recover FFTT that was initially paid) must be made by the deadline set out in Article R 196-1 of the Tax Procedures Manual, i.e. no later than 31 December

of the second year following the year in which the tax was paid. There is therefore a one-year difference between the period afforded to the authorities to correct errors and omissions and the period allowed to taxpayers to submit claims. The time period for submitting a claim is extended to three years in the event that the tax authorities have exercised their correction or adjustment rights (until the end of the third year following the year in which the adjustment was proposed).

Organisation of tax inspections for the FFTT Firms based in France

108. As was the case with the former tax on stock market transactions, the obligations for reporting and paying the FFTT will be subject to a tax inspection as part of accounting audit procedures. The inspections will be based on the electronic checks carried out by out by specialised inspection teams (BVCIs) and can be effected at the central depositary and at firms based in France.

Organisation of tax inspections for the FFTT Firms based outside France

109. Furthermore, since the sole territoriality criterion for the FFTT is the location of the registered office of the company whose securities are being acquired (*see §20*), the tax applies regardless of where the acquirer resides or where its service providers are established (*see §88*). In view of this particularity, the French tax authorities will adopt arrangements for controlling firms based outside France. The arrangements will be based on the provisions of international treaties concerning information exchange, administrative cooperation and, where appropriate, assistance with collection.

For example, in the case of France and the UK, the arrangements for information exchange, cooperation and oversight will likely be based on the UK/France double tax convention of 19 June 2008[83] and the transposition[84] of the Directive 2011/16/EU of 15 February 2011[85] on administrative cooperation in the field of taxation.

[83] UK/France Double Tax Convention of 19 June 2008 covers all taxes imposed on behalf of the State or its local authorities, irrespective of the manner in which they are levied, on total income or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amount of wages or salaries paid by enterprises, as well as taxes on capital appreciation. This list is not exhaustive, meaning that the FFTTcomes under the convention as a tax imposed on behalf of the French State. Article 27 of the convention provides in particular for the exchange of information between competent authorities in the field of taxation, especially for the enforcement of the domestic laws of the contracting States concerning taxes of every kind and description imposed on behalf of the Contracting States. Accordingly, the UK authorities will be required to pass on all information useful for the French State to collect the FFTT insofar as this is not prohibited by their domestic legislation. To put this cooperation into practice, the UK authorities will rely on the same powers as those they would use if pursuing their own interests.

[84] As EU legislation was only applicable in the United Kingdom until 31 December 2020 as a result of BREXIT, UK domestic law, which has been adapted to implement the exchange, cooperation and control mechanisms between the EU and the UK, is subject to adjustments since that date.

[85] Directive 2011/16/EU on administrative cooperation in the field of taxation comes into force on 1 January 2013. Pursuant to Article 2, it applies to all taxes of any kind levied by, or on behalf of, a Member State or the Member State's

Organisation of tax inspections for the FFTT Supervision and cross-checking by the central depositary on all firms

110. When scheduling and organising inspections, the tax authorities will probably rely not only on the lists of inconsistencies drawn up by the central depositary in accordance with its legal obligations (*see §104 et seq.)* to identify taxpayers whose returns show discrepancies but also on its own consistency checks and cross-checks. Further, the central depositary is legally bound to "assist" the authorities' management and inspection departments. This consists, among other things, in reporting annually on the procedures it has undertaken and providing the authorities with all the data and analyses that relate to the task of checking the FFTT.

Managing the audit trail of client transactions

111. As mentioned earlier (*see §66*), as taxpayer vis-à-vis the tax authorities, the ISP or custody account-keeper is required to keep the evidence provided by the client to show that it is entitled to an exemption or to demonstrate that a transaction falls outside the scope of the tax.

In practice, the taxpayer is responsible for determining the nature and source of this evidence and for collecting and keeping or organising such evidence in accordance with contractual terms with the clients or firms with which it has dealings. The tax authorities have yet to specify the types of evidence that may be submitted in the event of a tax inspection.

Managing the audit trail for proprietary transactions

112. If an ISP is inspected to see how it applies the FFTT to its proprietary business, it must be able to show that it has calculated its tax base correctly, in particular by stripping out purchase and sale transactions relating to its exempt activities (*see §58 et seq.)*.

For this, firms should rely on the risk management systems they have put in place to comply with their risk supervision requirements. Companies in the banking, payment services, and investment services sectors that are subject to the supervision of the Autorité de Contrôle Prudentiel et de Résolution

territorial or administrative subdivisions, including local authorities, notwithstanding provisions excluding VAT and customs duties among other things. Accordingly, the FFTT comes within the scope of the directive and is therefore affected by its provisions on tax cooperation and exchange of information. The directive provides for spontaneous exchange of information, mandatory automatic exchange of information and effective cooperation between competent authorities through simultaneous controls and administrative enquiries. Consequently, as regards collection of the FFTT and oversight of the tax in the London markets, the UK tax authorities will be required to cooperate with the French tax authorities within the meaning of the directive. Further, aside from the exchanges of information covered by the bilateral tax convention, the directive provides for effective cooperation between authorities in the field. Subject to an agreement from the UK tax authorities, the French authorities could assign personnel to help with administrative enquiries into firms on British territory and to be present in the offices of their UK counterparts.

(ACPR)[86] are required to "*set up risk analysis and measurement systems that are suited to the nature and volume of their transactions to assess the different types of risk to which these transactions expose them, particularly credit and counterparty risks, residual, concentration, market, global interest rate, base, intermediation, settlement-delivery, liquidity, securitisation, excessive leverage risks, as well as systemic risks, model-related risks, operational risk, and security risk or, where applicable, client risks, the risks for the market and the risks for the company as defined in Regulation (EU) No 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements for investment firms amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 806/2014*". They are also required to have "*systems and procedures that enable them to gain an overall understanding of all risks associated with banking and non-banking activities, particularly credit and counterparty risk, residual risk, concentration risk, market risk, global interest rate risk, basic interest rate risk, intermediation risk, settlement risk, liquidity risk, securitisation risk, excessive leverage risk, as well as systemic risks, risks associated with the model, operational risk, as well as client risks, market risks, and the risks for the company as defined in Regulation (EU) No 2019/2033 of the European Parliament and of the Council of 27 November 2019 (...)*". These systems and procedures must be "*regularly updated and evaluated*" and should enable them to "*draw up a risk map that identifies and evaluates exposure to risk in the light of internal and external factors*". (*Order of 3 November 2014 relating to internal control of companies in the banking, payment services and investment services sector subject to supervision by the Autorité de contrôle prudentiel et de résolution, arts. 94, 99, 100 and 103*).

These requirements mean in particular that firms have to map their activities in order to properly identify the risks involved. For capital market activities, they have to determine and demarcate the activities of each desk in sufficient detail, for example by using activity descriptions and/or trading mandates[87].

113. One potential way to meet the oversight requirements of the FFTT framework would be for firms to make appropriate adjustments to the map that they are required to prepare in this context. This would entail the following:

- The map and trading mandates must be sufficiently granular to distinguish the activities undertaken, so that activities liable for the FFTT and activities that are exempted under one of the exemptions cannot fall within the same scope[88] (*see also §115*).

  This granularity should of course be revised in the event of a change in activities that might affect eligibility for an exemption

- Documentation should be provided, via activity descriptions, of the reasons why classification under one of the exemptions is deemed appropriate.

[86] For foreign firms not subject to ACPR supervision see §116.

[87] A trading mandate specifies the framework within which a trader operates, the financial instruments it is authorised to deal in, and the ledgers in which its transactions are recorded. It is inspected independently by the trader's front office teams. Under ACPR supervision in accordance with the Order of 3 November 2014, the same teams also perform regular checks to ensure that the terms of the mandate are complied with.

[88] As regards market making exemptions, depending on the level of granularity adopted, this might also lead the firm to separately identify the books in which transactions are recorded.

- These elements (risk map, trading mandates, documentation) must be kept throughout the relevant limitation period, along with any changes made.

114. Inclusion of this audit trail in a wider framework established to meet the needs of prudential oversight would provide substantial guarantees as regards the needs of tax inspection. Although the prudential supervisor[89] is not responsible for directly inspecting firms' compliance with the FFTT system, the supervisor is indirectly concerned, via the consistency of firms' risk supervision and management, pursuant to the rules reiterated above. Thus, a firm that adjusts its risk map to meet FFTT obligations must still ensure that the map is consistent with its risk supervision and management obligations. In other words, it may not distort its risk map to classify non-exempt activities as exempt, without breaching its professional obligations.

The audit trail thus provided to tax inspectors would therefore be truly material.

115. Note also that the tax authorities allow firms to use their risk maps to claim eligibility for Exemption 3 (market making) (*see §39)* and Exemption 5 (securities financing transactions) *(see §50*).

Thus, "*to be eligible for the market making exemption, investment firms and credit institutions may refer to their internal service organisation as described by the activities map that they are required to prepare to comply with risk supervision requirements (…). In this case, the map must make it possible to distinguish the various activities that are subject to and exempt from the FFTT. Taxed and exempt activities should not appear together within a given area identified in the map, nor should activities that qualify as exempt under different exemptions provided for by the law*" (*BOI-TCA-FIN-10-20-20141118, §170*). The same arrangement may be used to claim the exemption for securities financing transactions (*BOI-TCA-FIN-10-20-20141118, §250*).

116. For foreign firms, which are not supervised by the ACPR and to which the Order of 3 November 2014 does not apply, an arrangement of the same sort is possible insofar as the requirement to monitor and manage risk through an appropriate map stems from provisions at European level, which state that "*institutions shall have in place sound, effective and comprehensive strategies and processes to assess and maintain on an ongoing basis the amounts, types and distribution of internal capital that they consider adequate to cover the nature and level of the risks to which they are or might be exposed. Those strategies and processes shall be subject to regular internal review to ensure that they remain comprehensive and proportionate to the nature, scale and complexity of the activities of the institution concerned*" (*Dir. 2013/36/EU du 26 June 2013, art. 73*).

The tax authorities have, moreover, confirmed this possibility, indicating, as regards the market making exemption, that "*qualification (…) is conditional on compliance with the conditions set out in point 3 of II of Article 235 ter ZD of the GTC. The possibility for ISPs to refer to their internal department-based organisation, as described by the activities map they are required to prepare in order to comply with risk supervision requirements, constitutes a simple form of evidence for qualifying for the exemption (see §170 of BOFiP under BOI-TCA-FIN-10-20). In this case, the map must make it possible to distinguish*

[89] Autorité de Contrôle Prudentiel et de Résolution in France.

between the FFTT-taxable activities and exempt activities and also to distinguish exempt activities according to the different exemption categories provided for by law. Any internal document similar to an activities map as described above and presented by an ISP not regulated by the AMF shall be able to properly document correct application of the exemption" (*Letter from the DLF to AFME, 19 February 2013*).

Penalties

"*The tax shall be collected and audited in accordance with the procedures and subject to the same sanctions, guarantees and liens as taxes on revenues. Claims shall be submitted, investigated and judged in accordance with the rules applicable to said taxes*" (*GTC, Art. 235 ter ZD, XII*).

117. Failure to meet the obligations to pay the tax to the Treasury, whether by the central depositary or by the taxpayer, incurs penalty interest[90] at a currently rate of 0.20 % per month. This applies to the amount of tax claims payable by the taxpayer or for which payment has been deferred.

Failure by the taxpayer to send the required information to the central depositary (or directly to the tax authorities) results in a 40 % increase in the amount of the tax owed, which may not be less than €1,000 per monthly report, or a €1,000 fine per monthly report if no tax is owing. Late transmission of the information results in a 20 % increase in the amount of the tax owed, which may not be less than €500 per monthly report, or a €500 fine per monthly report if no tax is owing. Moreover, there is a €150 fine per inaccuracy or omission found in the information provided, which may not exceed 40 % of the omitted tax. The central depositary is directly liable for penalties if it fails to perform the tasks entrusted to it.[91].

118. The collection and auditing procedures for the FFTT are the same as those applicable to VAT.

COORDINATION WITH THE TRANSFER DUTY OF GTC ARTICLE 726

119. The **2012 Finance Act amended the regime for transfer duty (*droit d'enregistrement*) applicable to transfers of shares and ownership units for valuable consideration, which is codified in Article 726 of the General Tax Code. The entry into force of the amendment on** 1 January 2012 created a major upheaval on the market, chiefly owing to uncertainty about whether the changes applied to foreign firms dealing in French stocks.

In part, the uncertainty stemmed from confusion between the transfer duty and the new FFTT announced by the government. Confusion also arose from difficulties in assessing the actual scope of

[90] GTC Article 1727-III.
[91] On comments regarding penalties by the tax authorities see BOI-TCA-FIN-10-50-20140120, §20 to 60.

the changes to the transfer duty regime, particularly in terms of the removal of the cap on the amount of duty and the extension of the duty to disposals of equities carried out by means of an instrument drawn up outside France and covering the securities of companies headquartered in France.

120. To address these concerns, AMAFI and the French Banking Federation (FBF) jointly approached the tax authorities on 18 January 2012 to ask for clarification. This led to publication of a guidance document.

121. Furthermore, aware of the need to coordinate the new FFTT mechanism with the amended system of transfer duties on equity disposals, the government and legislature took further steps to enable the two systems to be run together. As part of this, the 2012 Supplementary Budget Act provides that trades taxed under the FFTT are exempt from the transfer duty.

In addition, the exemptions allowed under the FFTT and the transfer duty regimes have been coordinated. Accordingly, the following acquisitions of securities are exempt under both systems (*see also §41 et seq.*):

- Acquisitions of securities during intra-group transactions:
  - Between companies that are members of a group as defined by the Commercial Code (control of at least 40 % of the voting rights) ;
  - Between companies that are members of a group as defined by the General Tax Code (at least 95 % owned under the tax consolidation system) ;
  - Between members of a mutual banking group that qualifies for the tax consolidation regime.
- Acquisitions of securities during restructuring transactions that are, from an economic perspective, merely interim transactions:
  - merger between a merging company and an acquiring company ;
  - partial merger where the merging company contributes a complete business and signs an undertaking to hold securities ;
  - Demerger of a company with at least two businesses, if the partners in the demerged company sign an undertaking to hold securities.
- Acquisitions of securities during management buyouts and if securities are purchased in order to be allocated to a company savings scheme.

122. In an instruction published in the Official Tax Bulletin of 4 August 2012 (BOI-ENR-DMTOM-40-20150805), the tax authorities commented on the revised system of duties on transfers of ownership rights applicable as from 1 August 201292 (GTC Article. 726).

[92] AMAFI's note (*AMAFI / 12-58a and its appendix AMAFI / 12-58b*) provides guidance on the updating of the two taxation regimes (transfer duties / FFTT) in respect of 4 types of financial transactions.

SUPPLEMENTAL QUESTIONS

123. The following section deals with some of the additional questions received by AMAFI.

Treatment of the FFTTin the accounting systems of intermediaries

124. When a firm acts as an intermediary for a third party, the FFTT is assessed on the securities acquired by the client, based on the client's specific characteristics, which are used to determine whether the acquisition is treated as a taxable or exempt transaction. From an accounting point of view, the FFTT is thus ancillary to the transaction and should receive the same accounting treatment, i.e. be recorded in the balance sheet in third party accounts[93].

Provided the FFTT does not count as an operating expense incurred by the intermediary for the purposes of the intermediate transaction, but as an external cost to the transaction, the tax may be treated as a disbursement.

FFTT and VAT taxable amount

125. Under the VAT rules as set down by Article 73 of Directive 2006/112/EC, including the FFTT in the VAT taxable amount would be inconsistent with the letter of the European directive, which states "*the taxable amount shall include everything which constitutes consideration obtained or to be obtained by the supplier, in return for the supply, from the client or a third party [...]*". In the specific case of financial intermediation, repayment of the FFTT by an acquirer of French securities is not "consideration" for intermediation or custody account-keeping services provided by the supplier.

VAT legal framework

"*In respect of the supply of goods or services, other than as referred to in Articles 74 to 77, the taxable amount shall include everything which constitutes consideration obtained or to be obtained by the supplier, in return for the supply, from the client or a third party, including subsidies directly linked to the price of the supply. The taxable amount shall include [...] taxes, duties, levies and charges, excluding the VAT itself [...]*" (*Dir. 2006/112/EC, Art. 73*).

"*The taxable amount shall not include [...] amounts received by a taxable person from the client, as repayment of expenditure incurred in the name and on behalf of the client, and entered in his books in a suspense account. [...] The taxable person must furnish proof of the actual amount of the expenditure referred to [...] and may not deduct any VAT which may have been charged*" (*Dir. 2006/112/EC, Art. 79*).

[93] When contacted on this question in June 2012, the technical department of PWC (Claude Lopater and Anne-Lyse Blandin), co-authors of *Mémento Comptable*, Editions Francis Lefebvre, supported this analysis, which reflects the economics of the transaction, as established by the debates within the French Parliament.

"*I. - The taxable amount shall include [...] taxes, duties, levies and charges of all types, excluding VAT itself.*
"*II. - The taxable amount shall not include [...] amounts repaid to intermediaries, other than travel agencies and tour operators, that incur expenditure in the name and on behalf of their principals, insofar as these intermediaries report to their principals, enter the expenditures in their books in suspense accounts and furnish proof to the tax authorities of the nature and actual amount of such expenditure*" (*GTC, Art. 267, II*).

126. More specifically, according to interpretations by the European Court of Justice (ECJ)[94], for a tax to be included in the taxable amount, Europe's VAT rules require there to be a direct link between the tax and delivery of the good sold or the service provided. Two criteria are particularly important to the ECJ in determining the existence of a direct link and deciding whether to include a tax in the taxable amount for VAT:

- The supplier of the good or service must be the economic taxpayer of the tax;
- The chargeable event for the tax must lie with the delivery of the goods or the provision of the service, not with the details of the financial transaction that are specific to the client.

Based on these criteria, the FFTT is not directly linked to the service of order execution for third parties or custody account-keeping provided to the client by the financial intermediary, which acts on behalf of the client by executing orders and recording, where applicable[95], the client's ownership rights over the securities by book entry in the securities accounts. This means that including the FFTT in the VAT taxable amount would be inconsistent with Community law, and particularly with Article 78 of the directive.

127. As regards repayments of FFTT by clients to their ISPs or custody account-keepers, the disbursements regime provided for in Article 267-II-2° of the GTC, which would allow these repayments to be excluded from the taxable amount, applies subject to compliance with the implementation requirements. Financial institutions that carry out purchase transactions on behalf of their clients or that recognise their clients' ownership of equity securities by book entry are treated as intermediaries acting in their own name as described by tax guidelines.

Application of the disbursement regime
to intermediaries acting in their own name
(*Administrative Documentation BOI-TVA-BASE-10-20-40-20-20120912, No. 40*)

"*The regime for these intermediaries does not impede application of the provisions of Article 267-II-2° of the GTC (cf. BOI-TVA-BASE-10-10-30). These provisions apply to the repayment of expenses*

[94] ECJ: De Danske Bilimportorer, 1st June 2006; Commission vs. Poland, 20 May 2010; Commission vs. Austria, 22 December 2010.
[95] On these points, see §11.

incurred by the intermediary in another's name and that are not in reality linked to the intermediate transaction:

- *the intermediary must make it clear to the supplier of the good or service subject to the repayment that it represents the person in whose name it is acting under the terms specified in BOI-TVA-CHAMP-10-10-40-40;*
- *the expenditures must not be operating expenses incurred by the intermediary for the purposes of the intermediate transaction but costs that are external to the transaction.*

Furthermore, the repaid fees must be clearly separable from the delivery of the goods or services in the transaction in which the intermediary interposes itself.

For example, the taxable amount of an intermediary whose sole task is to purchase goods on behalf of a principal shall not include storage costs incurred on behalf of the principal where the contract with the storage operator clearly identifies the principal as the actual beneficiary of the service.

The other terms set down by Article 267-II-2° of the GTC must obviously be satisfied as well (exact repayment, record in suspense accounts, preparation of report to principal, proof to the tax authorities of the nature and actual amount of such expenditure).".

128. Based on this reasoning, AMAFI asked the DLF to confirm that the FFTT was excluded from the taxable amount for VAT on services provided by the intermediary collecting the tax. In its 15 January 2014 policy update, the FTA incorporated the position adopted in a letter sent in July 2012 stating that VAT did not apply if the tax was rebilled by the ISP or custody account-keeper to the end client acquiring the securities (BOI-TVA-BASE-10-10-30-20220511, §445).

However, the DLF stipulated that: "Rebilling of the tax to the end client is not covered by the legislative provisions that designate the ISP or *custody account-keeper as the statutory taxpayers*" (*BOI-TVA-BASE-10-10-30-20220511 §445)*.

Allotments of bonus shares

129. Allotments of bonus shares are excluded from the scope of the FFTT because they do not correspond to an acquisition for consideration (*see § 6*).

Payments of dividends in shares

130. Shares received as dividend payments are excluded from the scope of the FFTT because they do not correspond to an acquisition for consideration[96].

[96] In response to questions from AMAFI, the DLF gave unofficial confirmation in March 2014 that dividends paid in shares were not subject to the FFTT. This point is expected to be clarified in a future update of the BOFiP.

This approach stems from a ruling by the Cour de Cassation on 31 May 1988. Although this ruling concerns the payment of a dividend using equities held by the paying company in its portfolio (rather than equities issued by the company), the grounds for the decision are expressed in very general terms: "*Whereas the payment of dividends, pursuant to Article 347 of the Act of 24 July 1966, to holders of the shares of a company in the form of equities held in a portfolio does not constitute a sale of shares; whereas, accordingly, in ruling as it did, the court acted in breach of the abovementioned Act"*. Thus, it makes no difference whether portfolio securities paid out are the securities of another company or of the issuing company itself. The guidelines provided by the tax authorities draw on this ruling to establish the same approach, again using very general terms, to transfer duties: "*[…] the payment of dividends, pursuant to Article 347 of the Act of 24 July 1966, to holders of the shares of a company in the form of equities held in a portfolio does not constitute a sale of shares (Com. 31 May 1988, Bull. IV, No. 181, p. 126)*" (*BOFiP BOI-ENR-DMTOM-40-10-10, §70*). It is difficult to imagine the authorities adopting a different approach, given the close relationship between the transfer duty and FFTT systems.

131. In this context, the specific procedures used to pay dividends in shares where such payment is optional[97] do not appear to alter this analysis[98]. Since the Commercial Code (*Art. 232-18*) merely establishes the principle of an option without describing the operational mechanism used, it may be considered from a legal point of view that there is no difference between a cash payment and an optional payment in shares.

Purchases of pre-emptive subscription rights and share subscription warrants

132. In line with AMAFI's request, pre-emptive subscription rights have been removed from the scope of the tax (*see §14*).

Conversely, share subscription warrants[99] (BSA), redeemable share subscription warrants (BSAR) and redeemable share subscription or acquisition warrants (BSAAR) do fall within the tax scope (*see §13*).

[97] Three steps are involved: a cash dividend is paid into the holder's account; at the same time, this amount is used to pay for the number of shares to which the option grants entitlement; any fractional units are managed through additional payments or unused amounts remain as credit in the holder's account.

[98] Any other approach would have had consequences in terms of shareholder disclosures: if the option of receiving dividends in shares led to the delivery of treasury stock, shareholders would have to be informed in advance that they would be liable for the SAT.

[99] There was surely justification for the primary market exemption to apply to share subscription warrants. These instruments are used in different situations to enable companies to raise the funds needed for their development under optimal conditions. This is the case when warrants are used as an alternative to pre-emptive subscription rights in situations where one or more major shareholders cannot or do not want to be part of a capital increase.
This is particularly the case when share subscription warrants are used as an alternative to preferential subscription right in situations where one or more significant shareholders are unable or unwilling to participate in the capital increase, which has led the AMF to consider that the terms of such transactions should be similar to those carried out by means of a preferential subscription right (see Position - *Position - Recommandation DOC-2020-06* - Guide to the drafting of prospectuses and disclosures in the event of a public or admission to trading of financial securities,

However, when the exercise of this type of warrant results in the subscription of a newly issued security, this transaction comes within the scope of the FFTT but qualifies for the primary market exemption.

Deferred settlement service

133. Deferred settlement service transactions are defined as follows: "the market rules may authorise a buyer or a seller, following execution of such buyer's or seller's order on the market, to defer the payment of the funds or the delivery of the financial instruments until a date set by those rules. The buyer, who is irrevocably bound to pay for the financial instruments once his order has been executed, shall not be required to disburse the funds until the date, set by the market rules, on which the financial instruments are registered in his account. The financial instruments shall belong to the market member, in whose account they are registered at the date set by the market rules, pending registration in the buyer's account. The seller, who is irrevocably bound to deliver the financial instruments once his order has been executed, shall deliver them only at the date set by the market rules on which his account is debited. He retains title to the financial instruments as long as they are registered in his account" (AMF GR, Art. 516-1).

The question is whether the tax is payable at the moment of the transfer of ownership evidenced by the cash purchase by the market member to execute the deferred settlement order and/or at the moment of the transfer of ownership effected later[100] between the market member and the buyer that placed the deferred settlement order.

134. In this regard, the cash acquisition made by the market member to execute the deferred settlement order must be considered to fall within the scope of the exemption provided for under b) of Article 235 ter ZD II 3 (*see §35*) because it is a transaction that the firm carries out, "*in the course of its normal business*" through which it "[executes] *orders given by clients or* [responds] *to client buy or sell requests*".

However, if the deferred settlement transaction is settled by delivery to the client of the securities acquired by the market member (generally at the end of the month), then there is a transfer of ownership to the client who, as such, is liable for the FFTT. In this situation, however, "*only the net long position at the end of the month is liable for the tax*[101]" (*BOI-TCA-FIN-10-10-20151221, §60*).

applicable from 28 July 2023). It is also the case when a struggling company needs to bring in one or more new shareholders, and where share subscription warrants are allocated to existing shareholders to allow them to benefit from the higher share prices likely to follow the capital injection, in return for the huge dilution arising from their waiving their pre-emptive subscription rights.

[100] Except in situations where the investor settles its deferred settlement position by means of an order in the opposite direction, in which case no transfer of ownership is recognised.

[101] Deferred settlement transactions liable for the FFTT are those carried out as from 1 August 2012 (see §68), "*provided that these transactions precede the transfer of ownership (delivery of the security) by less than four business days*" (BOI-TCA-FIN-10-30, §70). As a result, in the case of deferred settlement transactions, transactions concluded from 26 July 2012 onwards are liable for the FFTT, provided they do not give rise to a transfer of ownership before 1 August.

Collateral deposits and calling in of guarantees potentially leading to a transfer of ownership of FFTT-liable securities

135. FFTT-liable securities can be posted as collateral with a counterparty, who acquires ownership of them by way of security. However, the purpose of such transfers is purely temporary: the collateralised securities are to be returned to their initial owner once the transaction for which they have been posted is complete.

Even so, a collateral deposit cannot be considered to be equivalent to a securities financing transaction. Moreover, there has never been any doubt that collateralisation transactions are not included in the scope of the European regulation that is used as a reference to define exempt securities financing transactions (*see §45*). Accordingly, collateralisation transactions are not subject to the regulation's requirements in terms of record-keeping, reporting and information exchange.

136. If the counterparty defaults and the FFTT-liable securities posted as collateral are definitively appropriated, then the question may arise as to whether this appropriation should be treated as an acquisition for consideration and thus come within the scope of the FFTT. On this point, however, the tax authorities clearly state their position: "*a transfer of ownership that takes place as part of the posting or depositing of securities as collateral as defined by Article L. 211-38 of the MFC, including when the guarantee represented by the collateral is called in owing to a default by the debtor and the securities are definitively acquired by the creditor, shall not constitute an acquisition of equity securities or equivalent securities*" (*BOI-TCA-FIN-10-10-20151221, §70*). As a result, the posting or depositing of collateral, and any appropriation of such collateral, falls outside the scope of FFTT and does not need to be reported.

In this case, appropriation of the collateralised securities is considered to be compensation for damage, not an acquisition for consideration, and thus does not fall within the scope of the FFTT. It should also be noted that if the FFTT were charged on such appropriations, the direct effect would be to raise the cost of transactions that make a major contribution to protecting business between market participants and hence to preventing systemic risk.

137. Note, however, that in the case of securities financing transactions, the tax authorities take a somewhat contradictory position by allowing that: "*where a securities financing transaction is guaranteed by a deposit of collateral and where this guarantee is called in owing to a default by the debtor with the result that the securities are definitively acquired by the creditor, this definitive appropriation of the collateral shall qualify for the exemption*" (*BOI-TCA-FIN-10-20-20141118, §230*).

Linking collateral appropriation to the securities financing transaction exemption (*see §*45) would seem to refute the fact that appropriation falls outside the scope of the tax. However, this ambiguity has no practical consequences because, from a disclosure perspective, the final transfer of ownership has already been reported (*see §140*).

Pledges

138. The above analysis (*see §135 et seq.*) was extended *mutatis mutandis* in the January 2014 policy update to pledges of securities. Thus, the ownership transfer effected in the case of a pledge does not constitute an acquisition, even when the securities are acquired permanently by the creditor (*BOI-TCA-FIN-10-10-20151221, §70*).

Legal and beneficial interest ownership

139. According to the authorities, acquiring either the legal or the beneficial ownership interest in an equity strip or equivalent security constitutes a taxable transaction (*BOI-TCA-FIN-10-10-20151221, §65*).

This position seems legally dubious: since the tax is linked to the transfer of ownership, only the acquisition of the legal ownership interest ought to be liable for the tax.

Identifying the taxpayer in securities financing transactions

140. In the case of these transactions[102], the FFTT-liable party should be identified in relation to the beneficiary of the transfer of ownership, who is in the same situation as the buyer. If this party is not an ISP, it needs to provide the necessary information to enable its custody account-keeper, as the alternate taxpayer, to charge, report and pay the FFTT (*see §83 et seq.*).

In this context, note that, although one transaction occurs, it is evidenced by two successive transfers of ownership, each of which must be reported, according to the tax authorities: "*in accordance with i of I of Article 58 Q of Appendix III of the GTC, both the initial transfer of ownership of the temporarily transferred security and the transfer of ownership that enables the security to be returned to the original transferor should be reported for the relevant tax periods*" (*BOI-TCA-FIN-10-40-20150304, §190*).

Securities lending transactions and repos that do not meet the conditions of the Monetary and Financial Code

141. It is important to note that, insofar as they may be considered to come within the scope of the tax (*see §*47), all securities lending transactions, including those executed under the ISLA agreement that do not meet the conditions set forth in Articles L. 211-22 and following of the Monetary and Financial

[102] Repos, buy-sell backs and securities lending transactions, although in the case of securities lending only if such transactions may be considered to constitute an acquisition for consideration (*see above §47*).

Code, seem to be exempted from the FFTT (*see §45 et seq.)*. In other words, it does not appear to be possible to exclude from the scope of the exemption transactions that are *"likely to be the subject, during the term of the loan, of the detachment of dividend entitlements or payment of interest subject to withholding tax as provided for in 1° of Article 119 bis or in Article 1678 bis of the GTC or giving entitlement to the tax credit provided for in b of 1 of Article 220 of the same code, or of amortisation, or a lottery potentially leading to redemption or an exchange or a conversion provided for in the issue contract*" (*MFC, Art. L. 211-22, 2*) provided such conditions are not set out in the European regulation.

The same applies to repos, and the fact that the tax authorities exclusively use references to the Monetary and Financial Code[103] to characterise these transactions appears meaningless given that the legislation refers to the European regulation as the basis for creating the FFTT system. This wording should probably be interpreted as indicating that a safe harbour is created for transactions carried out "*under similar conditions*", which does not preclude other transactions from also being covered by the exemption, provided they can be demonstrated to fall within the scope of the European regulation.

Shares and units in collective investment schemes, including ETFs

142. Some collective investment schemes are incorporated as joint-stock companies under French law (SICAVs). These may be listed as exchange traded funds (ETFs) and, in some cases, have a market capitalisation of more than €1 billion. This raised the question of whether purchases of shares in such SICAVs were liable for the FFTT.

The answer is no. This is based on Article L. 211-1 of the Monetary and Financial Code, which distinguishes clearly between three categories of financial securities: equity securities issued by joint-stock companies, debt securities with the exception of bills of exchange and interest-bearing notes, and units or shares in undertakings for collective investment. In consequence, SICAV securities are not considered as equity securities and do not therefore come within the scope of the FFTT[104]. Moreover, debates in the French parliament provide further proof, if such were needed, that this was the intention of the legislature[105]. In any event, the tax authorities have specified (*see §16*) that "*the scope of the tax excludes […] shares in collective investment schemes (i.e. FCPs and SICAVs, including ETFs)*" (*BOI-TCA-FIN-10-10-20151221, §25*).

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[103] *"Any transfer of ownership carried out under conditions similar to those provided for in Articles L. 211-22 and L. 211-27 of the Monetary and Financial Code may qualify for an exemption"* (*BOI-TCA-FIN-10-20-20141118, §220*).

[104] Since CIS as buyers of shares coming into their portfolios are liable for the FFTT, doing anything else would have resulted in double indirect taxation for holders of the shares of such schemes.

[105] "*Only equity securities issued by listed joint-stock companies (i.e. shares and other securities that give or could give access to a company's share capital or voting rights) are liable for the tax. Accordingly, the tax does not apply to debt securities (particularly bonds, even if convertible into shares) or to collective investments (collective investment schemes or securitisation funds)*" (*Carrez report, op cit., p. 150).*

Determining the taxpayer in case of creation of a "physical replication" ETF

143. Some market participants have questioned the FTA on the determination of the person liable for the FFTT in the case of delivery of securities allowing the creation in kind of an "Exchange Traded Fund" (ETF) known as "physical replication"[106]. Since the selected solution is of interest to other structures in the same situation, the FTA may include it in the BOFiP in a future update of the administrative comments.

Warrants and other structured securities exhibiting similar characteristics

144. Although warrants are sometimes treated as transferrable securities, notably as complex debt securities, a substantial body of doctrine[107] considers them to be derivative securities because of their characteristics. A warrant is a financial instrument that entitles the holder to buy or sell an asset for a predetermined price. The asset, which can be a share, a basket of securities, a bond, a currency, a good or an index, is the warrant's underlying.

Consequently, warrants are subject to the same principles as those mentioned earlier for financial contracts (*see §7*): Purchasing a warrant is not subject to the FFTT, but exercising it is, if the acquirer benefits from a transfer of ownership of securities coming within the scope of the FFTT.

Price stabilisation

145. Price stabilisation transactions executed after a public offering of securities, by way of issuance or disposal of securities, play a direct part in the success of these offerings. In this context, an ISP trades in the open market for a limited time on behalf of the issuer[108] in order to offset short-term selling pressure and reduce volatility, both of which frequently occur. The way in which stabilisation transactions are carried out is precisely 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 buyback programmes and stabilisation of financial instruments.

As urged by AMAFI, the tax authorities have confirmed this interpretation, by including this technique, which has the same aim as liquidity contracts[109], under the primary market exemption (*see §24)*, "*provided the transaction is linked to a primary market issue*" (*BOI-TCA-FIN-10-20-20141118, §10*).

[106] By definition, a "physical replication" ETF is an ETF that owns the securities that make up the fund's basket or benchmark (as opposed to a "synthetic replication" ETF, which does not own the securities but is exposed to their value and performance return through foward financial instruments that have the index or basket as their underlying).
[107] See T. Bonneau and F. Drummond, op cit., No 140 and following.
[108] In particular, this type of measure may be conducted through over-allotment facilities, which consist, relative to the number of securities effectively covered by the offer, in providing the stabiliser with the option of allocating a larger number of securities to the market at the time of the placing, generally between 10 % and 15 % of the offer size.
[109] But during a limited period and linked to a placing.

Share buybacks

146. Share buybacks must be considered to come within the scope of the FFTT, since the tax authorities have said that "*share buybacks on the secondary market are not covered by the* primary market *exemption*" (*BOI-TCA-FIN-10-20-20141118, §15*). Nor can they be considered to qualify for the liquidity contract exemption, if they do not comply with the market practice accepted by the AMF (*see §40*).

Non-residents and eligibility for exemptions

147. As has already been mentioned (*see §22*), exemptions are defined in many cases with reference to domestic law. But as the tax authorities point out, these exemptions also cover "*foreign persons and companies that carry on their business or conduct transactions under terms governed by similar foreign-law provisions and that comply with the legal and regulatory provisions mentioned*" (*BOI-TCA-FIN-10-20-20141118, §1*).

Treatment of depositary receipts (including ADRs) in the event of creation and cancellation

148. The question of whether depositary receipts are liable for the FFTT was settled, as indicated above (*see §15*), by Act 2012-958 of 16 August 2012, which stated that these securities would be liable from 1 December 2012. However, there is the question of how to treat the transaction whereby depositary receipts are created and cancelled.

149. Depositary receipts are created by delivering the underlying shares to a sponsor institution, which, in return, issues depositary receipts that represent these underlying shares. Depositary receipts may be delivered in three ways:

- By the issuer itself, which issues new shares;
- By the issuer itself, which holds treasury stock;
- By an investor, which, in order to hold depositary receipts, directly or indirectly[110] acquires the underlying shares, which are delivered to it in the form of depositary receipts created by the sponsor.

Depositary receipts can then circulate on the secondary market by being traded by buyers and sellers. The holder of depositary receipts can ask for the underlying shares to be delivered in return for delivering the ADRs to the sponsor.

[110] Indirectly if the purchase order is for the ADRs themselves, which, instead of being acquired on the secondary market, are obtained by acquiring the underlying shares, which are converted into ADRs at the request of the institution executing the order.

150. The rule established by the authorities in this respect is straightforward: "The acquisition of a share, and the subsequent creation and acquisition of a depositary receipt representing this share by an investor, constitute a single transaction carried out for consideration if the acquisition of the depositary receipt is deemed, with respect to Article 235 ter ZD of the GTC, to evidence the transfer of ownership of the represented share. This single transaction thus falls within the scope of the tax. The tax is payable, barring exemptions, only when the depositary receipt is acquired; the other components of the transaction (notably acquisition of the share) do not come within the scope of the tax" (BOI-TCA-FIN-10-10-20151221, §20).

In this case, "*the taxpayer ISP is the ISP which is authorised to execute orders for third parties and which is in a direct relationship with the investor, on whose behalf it acquires the depositary receipt (which evidences the transfer of ownership of the share represented). If no ISP is involved in the acquisition of the depositary receipt, then the taxpayer is the investor's custody account-keeper*" (*BOI-TCA-FIN-10-30-20170503, §10*).

151. The FFTT is due once only, even if the process of creating a depositary receipt comprises three separate stages. However, liability for the tax arises only where an exemption does not apply. In this situation, it is primarily the primary market exemption that should be considered. If the depositary receipt is created not through the acquisition of an existing share but through the issue of a new share, then the single nature of the transaction means that the acquisition of the depositary receipt should also be covered by the primary market exemption.

Similarly, "*cancellation of a depositary receipt through delivery of the underlying share to the investor is not a transaction that falls within the scope of the tax*" (*BOI-TCA-FIN-10-10-20151221, §20*).

Cost of FFTT-liable securities

Since the official tax bulletin on the FFTT does not provide clarification, it is necessary to refer to the general guidelines on capital gains. In *BOI-RPPM-PVBMI-20-10-20191220* the tax authorities detail the taxation rules for capital gains from sales for consideration by individuals of securities and rights of ownership.

Addition of acquisition costs

(*Administrative Documentation, BOI-RPPM-PVBMI-20-10-20-10-20230525, §40 & 50*)

"40. The acquisition costs shall be added to acquisition price, not only for transferrable securities and rights of ownership acquired for consideration but also for those acquired free of charge.

In any case, only the portion of costs that are incurred in connection with the transaction which generated the capital gain and that correspond to the securities sold shall be taken into consideration when determining the net taxable gain; and, save when assessed on a standard basis, these costs shall be added to the acquisition price only if they are actually borne by the taxpayer and if the interested party can provide proof thereof (by presenting any and all documents that can serve as proof and may be requested by the department where necessary).

To determine these costs, the taxpayer shall in principle use their real value. Only in exceptional circumstances can they be assessed on a standard basis.

1. Recognising the real amount of costs

***50.** Acquisition costs include, in general, the remuneration paid to intermediaries, experts' fees, brokerage commissions, trading fees, subscription fees, allotment fees, deferred settlement fees, and the taxes borne by the transferor on the acquisition of the securities sold and, where such is the case, notary fees.*

For securities trades carried out on the stock exchange, these costs are generally added to the acquisition price on the transaction slips that intermediaries send to their clients

In the case of acquisitions for consideration, the tax authorities consider that, as a rule, acquisition costs include the remuneration paid to intermediaries, experts' fees, brokerage commissions, trading fees, subscription fees, allotment fees, deferred settlement fees, and the tax on stock market transactions and, where such is the case, transfer duties and notary fees.

152. Accordingly, like the tax on stock market transactions, the FFTT should be added to the acquisition price of the securities on the transaction slip.

Exercise of an option resulting in delivery of a basket of shares

153. Some options may be based on baskets of shares including some securities that fall within the scope of the FFTT and some that do not. This raises the question of how to determine the base for the tax.

In this regard, the authorities have said that when the exercise of an option gives rise to the delivery of a basket containing some securities that fall within the scope of the FFTT and some that do not, only the exercise price for securities that are covered by the scope of the FFTT can be used to determine the tax base (*BOI-TCA-FIN-10-30-20170503, §120*).

FFTT liability of international institutions

154. When international organisations eligible for tax immunity or privileged tax treatment acquire French securities, they can ask their intermediaries to be exempted from French financial transaction tax (FFTT). International organisation status is governed, inter alia, by the 1946 and 1947 United Nations Conventions, the 1965 Protocol for European institutions, as well as headquarters agreements. In addition, the fundamental principles for international civil servants are set forth in Articles 34 and 38 of the 1961 Vienna Convention on Diplomatic Relations.

Asked for their position on this issue, the French tax authorities responded in a letter dated 19 February 2013 to the Association for Financial Markets in Europe that "Article 235 *ter* ZD of the CGI [general tax code] does not grant a framework exemption for international organisations; moreover, the only parties legally liable for the tax are the organisations' investment services providers or custody account keepers. As the ultimate acquirer, the international organisation is economically liable for the tax charged to it by its legal taxpayer. Accordingly, international organisations should examine their headquarters agreement to ascertain the extent of their tax exemption entitlements, on the understanding that the tax is equivalent to an indirect tax".

155. Consequently, organisations should determine with their legal taxpayer whether they are exempt from indirect taxation.

In practice, however, implementing FFTT exemptions depends on an individual analysis that is both cumbersome and unclear. For that reason, a number of firms have asked the Tax Legislation Directorate (DLF) for an official ruling in order to lock in exemptions applicable to any Buy orders placed for French securities by a particular international organisation. The DLF replied that it was perfectly willing to issue rulings to international organisations, provided they applied for them, but that it had no plans to issue comprehensive exemption criteria at the present time.

156. When an international organisation asks a firm to waive FFTT on its purchases of French securities coming within the scope of the tax, there are two possibilities[111]:

1. With a DLF/IBRD-type ruling (or DLF/UNJSPF; DLF/IMF), the legal taxpayer applies the exemption on principle, provided it has a copy of the ruling and is able to prove that the buyer of the securities is the international organisation specified in it. For the exemption to apply, ownership of the securities cannot be transferred to a fund or to a legal entity separate from the international organisation.

[111] These recommendations on best practices for firms dealing with international organizations have been issued by the AMAFI Tax Committee which, during its meeting of October 2015, addressed this issue in light of a DLF ruling issued on 19 December 2014 in favour of the International Bank for Reconstruction and Development (IBRD). They were updated in April 2016, in the light of another ruling issued by the DLF on 10 March 2016 in favor of the UNJSPF (United Nations Joint Staff Pension Fund). These recommandations are not intended to replace the contractual allocation of responsibilities among the parties concerned but to make it easier to put the arrangements into practice, in principle to the benefit of the international organizations concerned.

2. Where an international organisation acts as a final client purchasing French securities but does not have a DLF ruling and wants to be tax-exempted on principle, the legal taxpayer must first verify that the two conditions are met:
    a. Proof of the international organisation's status is available as well as the details of its tax privileges, which have to include exemption from indirect tax (since the FFTT is considered as such);
    b. The beneficiary of the transfer of ownership may only be the international organisation: no other entity with a separate legal personality is entitled to the waiver.

157. Regarding the reporting requirements for the legal taxpayer in the event of exemptions granted under the tax privileges enjoyed by the acquirer of the securities, i.e. the economic taxpayer, the rules are set forth in Article 58 Q of Appendix III of the CGI, as commented by the DLF (*BOI-TCA-FIN-10-40-20150304, § 180 - 190*). Under these rules, for every transaction exempted pursuant to Section II of Article 235 *ter* ZD of the CGI, the category of the exemption must be declared. Specifically, where an international organisation is exempt under a framework exemption and does not therefore fall into one of the exemption categories covered by Section II of Article 235 *ter* ZD of the CGI, the organisation would not be subject to the FFTT specific reporting requirement. Be that as it may, firms are strongly recommended to configure their computer systems so that they are able to keep track of securities purchases exempted on the grounds of the purchasers' tax privileges and also to provide the corresponding proof, especially at the request of the tax authorities when conducting an inspection.

To facilitate the implementation of the FFTT exemption on principle for qualifying international organisations, the best practice recommendations discussed in this memorandum will be incorporated into the next update of AMAFI's practical guide to the tax. In addition, firms that are aware of any DLF rulings on this issue are urged to bring them to AMAFI's attention so that it can disseminate them more widely. The corresponding documentation can then be made available to firms.

When the exemption has not been applied *a priori* and the tax has been paid, the corresponding charges may be claimed for reimbursement. Accompanied by supporting documents, claims must be made to the protocol of the Ministry of Foreign Affairs and International Development which will transmit them to the competent department of the FTA.

158. In addition, in order to ensure that the DLF rulings are known and spread, the firms are asked to inform AMAFI of the rulings they know. It will thus be possible to put the corresponding documentation at their disposal.

Treatment of corporate events

159. The following table summarises the main types of corporate events[112].

Corporate event	FFTT-liable?	Exempt (Declaration but no payment)
Options for new shares	Grant: Non-liable*	N/A
	Exercised by employees: Liable	Exemption 1
Dividend paid by remitting portfolio shares	Non-liable (the shares are not acquired for consideration. Ditto. Ref DB7D5112 §7; ENR VI 32620)	N/A
Options for existing shares	Grant: Non-liable	N/A
	Share buyback to cover the company's stock option plan: Liable	No
	Exercised by employees: Liable	No (Except Exemption 7 for exercises carried out using savings scheme's blocked assets)
Bonus share plan	Grant: Non-liable	N/A
	Share buyback to cover the company's BSP (in the case of existing shares): Liable	No
	Remise des actions : HC (indifférent si actions nouvelles ou existantes)	N/A

[112] Noting that these transactions were covered until 31 December 2012 by special dispensation whereby they did not have to be reported (*see §99*).

Corporate event	FFTT-liable?	Exempt (Declaration but no payment)
Share buyback	Liable	Exemption 8 if the buyback is to cover a company savings scheme (If the allocation of the repurchased securities is subsequently changed: Liable for FFTT) No in other cases
Capitalisation of reserves	Non-liable (free grant of new shares)	N/A
Option for dividend to be paid in new shares of the issuing company	Non-liable (Admin. guidelines + case law: Share payouts are not share disposals)	N/A
Takeover bid	Liable	No in general Yes for intra-group transactions
Share exchange offer	Liable in both directions	No in general Yes Exemption 1 if new shares Yes Exemption 5 for intragroup transactions
Purchase of convertible / redeemable bonds	Liable	Exemption 9 + CSD reporting waiver (GTC, Appendix III, Art. 58 Q, II)

*** Non-liable = No payment or declaration**

TAX ON HIGH-FREQUENCY TRADING (HFT TAX)

SCOPE

160. The scope of the HFT tax is determined on the basis of four criteria.

A transaction carried out by a company operated in France (i) …

> "*Companies operating in France, as defined by point I of Article 209, are subject to a tax on high-frequency transactions [...]*" (*GTC, Art. 235 ter ZD bis, I*)..

161. Companies operating in France are those that, in accordance with previous Senate rulings interpreting Article 209-I of the GTC, customarily do business in France (*BOI-TCA-FIN-20-20150204, §1*):

- within the framework of an independent establishment (including branches[113]);
- or, if no establishment is in place, via representatives with no independent professional personality;
- or resulting from operations that form a full business cycle.

… in equity securities (ii) …

> *Companies [...] are subject to a tax on high-frequency transactions in equity securities, as defined by Article L. 212-1 A of the Monetary and Financial Code [...]" (GTC, Art. 235 ter ZD bis, I*).

162. Unlike the FFTT, only transactions in equity securities referred to in Article L. 212-1 A of the Monetary and Financial Code are subject to the HFT tax (*see §13*). However, there are no restrictions on scope based on the country where the share issuer's headquarters are located or market capitalisation. In other words, all transactions in equity securities are affected (*BOI-TCA-FIN-20-20150204, §50*).

[113] "*However, foreign branches of French companies that carry on a high-frequency brokerage business are not liable for the tax*" (*BOI-TCA-FIN-20-20150204, §70*).

… executed on own account (iii) …

"*Companies [...] are subject to a tax on high-frequency transactions [...] executed on own account [...]*" (GTC, Art. 235 ter ZD bis, I).

163. Transactions are necessarily executed on own account, other than transactions executed for third parties.

Accordingly, all algorithms used to manage client orders are excluded from the scope of the HFT tax (*see §164*).

… through automated processing (iv)

"*Companies [...] are subject to a tax on high-frequency transactions [...] executed [...] through automated processing*" (GTC, Art. 235 ter ZD bis, I).

"*A high-frequency equity transaction, as described in point I of this article, is the act of habitually transmitting orders using an automated processing system for these orders, characterised by the transmission, modification or cancellation of successive orders on a given security, which are separated by a time period shorter than a threshold set by decree. This threshold may not exceed one second. An automated processing system, as used in this article, is any system that permits transactions on financial instruments in which a computer algorithm automatically determines the various parameters of the orders, such as the decision to place the order, the date and time at which to transmit the order, as well as the price and number of the financial instruments in question.*
The following are not automated processing systems, as described in this article: the systems used in order to optimise the conditions for executing orders or transmitting orders to one or more trading platforms, or to confirm orders.

A decree shall define the conditions for the application of this point II" (GTC, Art. 235 ter ZD bis, II).

164. Two positive criteria are used to identify automated order processing systems subject to the HFT tax:

- A computer algorithm determines whether to issue, modify or cancel orders and determines price and quantity parameters;
- Orders for a given security produced by the algorithm are issued, modified or cancelled according to a time period set by the General Tax Code by virtue of Decree 2012-957 of 6 August 2012, which "*may not exceed one second*".

GTC, Appendix III, Art. 58 S

"I. – The threshold mentioned in II of Article 235 ter ZD bis of the General Tax Code is set at half a second.

Threshold crossing shall be assessed with regard to the latency customarily separating two events affecting a given security, understood as the period separating an instruction to buy or sell the security and an instruction to modify or cancel said buy or sell instruction."

The tax authorities have clarified the terms for assessing threshold crossing (*BOI-TCA-FIN-20-20150204, §20*). Thus, threshold crossing is assessed not only "*for a given security, with regard to a median duration, calculated over the month preceding the taxed transactions, between buy or sell instructions relating to a given security and instructions to modify or cancel these instructions*", but also "*for a trading desk*", with the explanation that "*assuming that a trading desk performs transactions other than HF trades, it must demonstrate that the transactions in question are not covered by the scope of the tax*".

165. These two positive criteria are combined with one negative criterion because even if they are used for own account, "systems used in order to optimise the conditions for executing orders or to confirm orders, often known as *smart order routers,* are not treated as automated processing systems for the purposes of the tax" (BOI-TCA-FIN-20-20150204, §30). The companies that use them are not liable for the HFT tax.

EXEMPTION

"*The companies cited in point I are not subject to the tax for the market making activities described in point 3 of II of Article 235 ter ZD*" (*GTC, Art. 235 ter ZD bis, III*).

166. Just one exemption is provided, for companies that use automated order processing systems for market making activities as defined for the FFTT (*see §***Erreur ! Source du renvoi introuvable.**).

TAX BASE AND RATE

"*Once the rate of cancellation or modification of orders for high-frequency transactions, with the exception of the transactions described in point III of this article, exceeds a threshold defined by decree on one trading day, the tax due is equal to 0.01 % of the amount of the orders cancelled or modified that exceed this threshold. This threshold may not be less than two-thirds of the orders transmitted*" (*GTC, Art. 235 ter ZD bis, IV*).

167. The HFT tax is set at 0.01 % of the amount of orders cancelled or modified over a percentage of the orders issued on one trading day. This percentage, which may not be less than two-thirds, is set by the General Tax Code by virtue of Decree 2012-957 of 6 August 2012.

GTC, Appendix III, Art. 58 S

" II. – The threshold mentioned in IV of Article 235 ter ZD bis of the General Tax Code is set at 80 %."

As the tax authorities have indicated[114], "*the tax base is equal to the number of securities that were the subject of cancellations and/or modifications in excess of the threshold set in II of Article 58 S of Appendix II of the GTC multiplied by the average unit value of the security over a trading day (rounded up to the nearest cent)*" (*BOI-TCA-FIN-20-20150204, §120*). The cancellation rate "*corresponds to the following formula: (nominal size of cancellation instructions + nominal size of modification instructions) / (nominal size of transmission instructions (initial orders) + nominal size of modification instructions). The rate is calculated on the basis of instructions sent, after excluding exempt activities*" (*BOI-TCA-FIN-20-20150204, §90*). "*The nominal size refers to the number of securities covered by an order. Thus one order to acquire 1,000 securities means a nominal size of transmission instructions of 1,000*" (*BOI-TCA-FIN-20-20150204, §90*).

168. If the same automated process system is also used for market making, any orders modified or cancelled in the context of that activity are not taken into account when determining the threshold.

[114] Providing an example.

CHARGEABILITY

"*The tax is payable the first day of the month following the month in which the cancelled or modified orders were transmitted*" (*GTC, Art. 235 ter ZD bis, V*).

169. Crossing the threshold set by decree makes the HFT tax payable on the first day of the month following the month in which the breach was recorded.

TAXPAYER

"*Companies operating in France, as defined by point I of Article 209, are subject to a tax on high-frequency transactions [...]*" (*GTC, Art. 235 ter ZD bis, I*).

170. The taxpayer is a company operating in France that carries on a high-frequency trading business in accordance with the aforementioned criteria (*see §160 et seq.)* without entitlement to an exemption (*see §166*).

DECLARATION AND PAYMENT OF THE TAX

"*The tax shall be declared and settled in the appendix to the return referred to in paragraph 1 of Article 287, corresponding to the month or quarter during which the transmission of the orders referred to in paragraph II of this Article took place. The tax shall be paid upon filing of the return.*" (*GTC, Art. 235 ter ZD bis, VI*).

SUPERVISION, DISPUTES, PENALTIES

The tax shall be collected and audited in accordance with the procedures and subject to the same sanctions, guarantees and liens as taxes on revenues. Claims shall be submitted, investigated and judged in accordance with the rules applicable to said taxes" (*GTC, Art. 235 ter ZD bis, VII*).

APPENDIXES

APPENDIX 1

ARTICLE 235 TER ZD OF THE GENERAL TAX CODE AS AMENDED BY ARTICLE 39 OF ACT 2017-1837 OF 30 DECEMBER 2017 (2018 FINANCE ACT), ARTICLE 83 (V) OF ACT 2018-1317 OF 28 DECEMBER 2018 (2019 BUDGET ACT) AND ARTICLE 98 OF ACT 2025-127 OF 14 FEBRUARY 2025 (2025 BUDGET ACT)

(UNOFFICIAL TRANSLATION FOR INFORMATION ONLY)

Current version

I. - A tax is applied to any acquisition for consideration of an equity security as defined by Article L. 212-1 A of the Monetary and Financial Code, or of an assimilated security, as defined by Article L. 211-41 of the same code, once said security is listed for trading on a French, European or foreign regulated market, as defined by Articles L. 421-4, L. 422-1 and L. 423-1 of said code, when acquisition results in a transfer of ownership as defined by Article L. 211-17 of the same code, and when said security is issued by a company with registered offices in France and with a market capitalization that exceeds one billion euros as of 1 December of the year prior to the tax year.

Acquisition, as used in the first paragraph, means the purchase, including purchase by exercising an option or a forward purchase which has previously been defined in a contract, the exchange or the allotment, in consideration for contributions of equity securities as defined in said first paragraph.The securities representing those referred to in the first paragraph, issued by a company, regardless of its place of establishment, shall be subject to the tax.

II – The tax shall not apply to:

1. Purchase transactions executed in the context of an issue of equity securities, including when said issue gives rise to the investment service of underwriting or placing of financial instruments on a firm commitment basis as defined by Article L. 321-1 of the Monetary and Financial Code;

2. Transactions performed by a clearing house, as defined by Article L. 440-1 of the same code, within the framework of the activities defined in said Article L. 440-1, or by a central depositary as defined by point 3 of II of Article L. 621-9 of said code in the context of the activities defined in the same Article L. 621-9;

3. Acquisitions made in the context of market making activities. These activities are defined as the activities of an investment firm or a credit institution or an entity in a foreign country, or a local company that is a member of a trading platform, or a market in a foreign country when the firm, institution or entity in question acts as intermediary and participate in transactions on financial instruments as defined by Article L. 211-1 of the same code:

a) either in the simultaneous communication of firm, competitive buy and sell prices, of comparable size, with the result of providing liquidity to the market on a regular and continuous basis;

b) or, in the context of its normal activity, when executing the orders given by clients or in response to client buy and sell requests;
c) or to hedge the positions related to the execution of the transactions cited in points a and b;

4. Transactions executed on behalf of issuers in order to promote the liquidity of their shares within the framework of authorized market practices accepted by the French *Autorité des Marchés Financiers* pursuant to Regulation (UE) 596/2014 of the European Parliament and Council of 16 April 2014, concerning market abuse (regulation on market abuse) and repealing Directive 2003/6 / EC of the European Parliament and of the Council and Directives 2003/124 / EC, 2003/125 / EC and 2004/72 / EC of the EC and of the Commission.

5. Acquisitions of securities between companies members of the same group, as defined by Article L. 233-3 of the Commercial Code, at the time of the relevant acquisition of securities, acquisitions of securities between companies members of the same tax group, as defined by Article 223 A of this code, and acquisitions made under the conditions stipulated in Articles 210 A, 210 B, 220 *quater*, 220 *quater* A and 220 *quater* B;

6. Temporary assignments of securities cited in point 10 of Article 2 of (EC)Regulation 1287/2006 of the European Commission dated 10 August 2006, defining the measures to enforce Directive 2004/39/CE of the European Parliament and the Council governing the filing obligations of investment firms, transaction records, market transparency, the listing of financial instruments for trading and the definition of terms under said directive;

7. Acquisitions, governed by Book III of the third section of the Labour Code, of equity securities by company mutual investment undertakings governed by Articles L. 214-164 and L. 214-165 of the Monetary and Financial Code and by employee shareholder mutual funds governed by Article L. 214-166 of the same code and acquisitions of equity securities of the company or of a company belonging to the same group as defined by Articles L. 3344-1 and L. 3344-2 of the Labour Code, made directly by the employees pursuant to the seventh paragraph of Article L. 3332-15 of the same code;

8. Purchases of their own equity securities by companies when these securities are intended to be sold to the participants in a company savings plan pursuant to Title III of Book III of the third part of the Labour Code;

9. Acquisitions of bonds redeemable for or convertible into shares.

III. - The tax is based on the acquisition value of the security. In the case of an exchange, if no acquisition value is expressed in a contract, the acquisition value corresponds to the listing price of the securities on the most relevant market in terms of liquidity, as defined by Article 9 of (EC) Regulation 1287/2006 of the Commission of 10 August 2006 cited above, at the closing of the trading day preceding the day of the exchange. In the case of an exchange between securities of unequal value, each party to the exchange shall be taxed on the value of the securities it acquires.

IV. - The tax is payable the first day of the month following the month in which the security is acquired.

V. – The rate of the tax is set at 0.4 %.

VI. – The tax shall be assessed and paid by the firm providing investment services, as defined in Article L. 321-1 of the Monetary and Financial Code, having executed the order to buy the securities or having traded in the securities for its own account, regardless of its location.

If several firms mentioned in the first paragraph of this VI are involved in executing a security purchase order, the tax shall be assessed and paid by the firm that received the purchase order directly from the end buyer.

If the acquisition is made without the involvement of a firm providing investment services, the tax shall be assessed and paid by the institution acting as the custody-account-keeper, as defined in 1 of Article L. 321-2 of the same code, regardless of its location. The buyer must provide the institution with the information cited in VIII of this article.

VII. - If the central depositary-issue account holder of the equity security is subject to point 3 of II of Article L. 621-9 of the Monetary and Financial Code and delivers the security, the taxpayer cited in VI of this article shall provide to the central depositary the information stipulated in point VIII before the 5th of the month following the acquisitions cited in point I and shall designate the person on behalf of which the tax may be withheld.

If the central depositary-issue account custodian is subject to point 3 of II of Article L. 621-9 of the Monetary and Financial Code and does not make delivery of the security, which is performed in the books of one of its members, said member shall provide the central depositary with the information stipulated in point VIII of this article before the 5th of the month following the acquisition cited in point I.

If the central depositary-issue account custodian of the equity security is subject to point 3 of II of Article L. 621-9 of the Monetary and Financial Code, and neither this depositary nor any of its members make delivery of the security, which is performed in the books of the client of a member of the central depositary, this client shall provide the information stipulated in point VIII of this article to the member, which shall transmit it to the central depositary before the 5th of the month following the acquisitions cited in point I.

If the central depositary-issue account custodian of the equity security is subject to point 3 of II of Article L. 621-9 of the Monetary and Financial Code and the delivery is made under conditions different from those described in the first three paragraphs of this point VII, the taxpayer cited in point VI shall declare the tax to the FTA, based on the model it has established, and pay the tax to the Treasury before the 25th of the month following the acquisitions described in point I. The taxpayer may also pay the tax through a member of the central depositary, to which it shall directly or indirectly transmit the information stipulated in point VIII. The member shall transmit this information to the central depositary before the 5th of the month following the acquisitions described in point I. If the taxpayer opts to pay the tax through a member of the central depositary, he shall so inform the Treasury by declaration before November 1. This declaration is valid for one year and is renewed by tacit renewal.

If the central depositary-issue account custodian of the equity security is not subject to point 3 of II of Article L. 621-9 of the Monetary and Financial Code, the taxpayer described in point VI of this article shall declare the tax to the FTA, using the model it has established, and shall pay the tax to the Treasury

before the 25th of the month following the acquisitions described in point I. The taxpayer shall make available to the administration the information stipulated in point VIII.

VIII. - If the central depositary-issue account custodian of the equity security is subject to point 3 of II of Article L. 621-9 of the Monetary and Financial Code, it shall collect from its members or taxpayers, under the conditions stipulated in point VII of this article, information concerning the transactions falling within the scope of application of the tax. A decree shall specify the nature of this information, which includes the amount of the tax due for the tax period, the order numbers of the transactions concerned, the date of execution, the description, number and value of the securities for which the acquisition is taxable, and the exempt transactions, distributed in accordance with the exemption categories cited in point II.

IX. - The issue central depositary-account custodian of the security subject to point 3 of II of Article L. 621-9 of the Monetary and Financial Code shall declare the tax to the FTA, using the model it has established, clear and pay the tax to the Treasury before the 25th of the month following the acquisitions cited in point I of this article. In particular, the declaration shall specify the amount of the tax due and paid by each taxpayer.

“In the cases described in the first three paragraphs of VII, or in the case of the taxpayer's option cited in the next to last paragraph of point VII, the member who has transmitted the information stipulated in point VIII or who has been designated by the taxpayer pursuant to the first paragraph of VII shall authorize it to withhold the amount of the tax from his account before the 5th of the month following the acquisitions cited in point I.

X. – The central depositary subject to point 3 of II of Article L. 621-9 of the Monetary and Financial Code shall keep a separate accounting to record the transactions associated with collecting the tax. It shall oversee the consistency between the declarations it receives and the information in its possession as central depositary. The information collected by the central depositary pursuant to point VII of this article shall be provided to the FTA on request. An annual report shall be transmitted to the administration on the type and magnitude of the audit performed. A decree shall define the conditions for the application of this point X.

XI. - In the event the central depositary fails, through its action, to meet the payment obligations stipulated in point IX, it shall pay the late penalty stipulated by Article 1727.

If the taxpayer fails to meet the payment obligations stipulated in point VII of this article, the taxpayer shall pay the late penalty stipulated in said Article 1727.

If the taxpayer or member fails to perform the declaration obligations stipulated in point VII of this article, the member shall pay the fine stipulated in Article 1788 C.

XII. - The tax shall be collected and audited in accordance with the procedures and subject to the same sanctions, guarantees and liens as tax on revenues. Claims shall be submitted, investigated and judged under the rules applicable to these same taxes.”

XIII. – Repealed

APPENDIX 2

LIST OF COMPANIES WHOSE SECURITIES ARE SUBJECT TO THE FFTT IN 2026

See BOFiP giving the list of companies with their registered offices in France and a market capitalisation exceeding €1 billion at 1 December 2025, pursuant to Article 235 ter ZD of the GTC (*BOI-ANNX-000467-20251217*).

74Software / 74SW	COMPAGNIE ODET / ODET	JC Decaux SA / DEC	Sanofi / SAN
Abivax / ABVX	Covivio / COV	Kering / KER	Sartorius Sted Bio / DIM
Accor / AC	Covivio Hôtels / COVH	Klepierre / LI	Schneider Electric / SU
ADP / ADP	Crédit Agricole / ACA	L'Oréal / OR	Scor Se / SCR
Air France-KLM / AF	Danone / BN	Lagardère SA / MMB	Société Générale / GLE
Air Liquide / AI	Dassault Aviation / AM	LDC / LOUP	Sodexo / SW
Alpes (Compagnie) / CDA	Dassault Systèmes / DSY	Legrand / LR	Sopra Steria Group / SOP
Alstom / ALO	Edenred / EDEN	Lisi / FII	SPIE / SPIE
Altamir / LTA	Eiffage / FGR	LVMH / MC	Stef / STF
Altarea / ALTA	Elec.Strasbourg / ELEC	Mercialys / MERY	Tarkett / TKTT
Alten / ATE	Elis / ELIS	Metropole TV / MMT	Teleperformance / TEP
Amundi SA / AMUN	Emeis / EMEIS	Michelin / ML	TF1 / TPI
Antin Infra Partn / ANTIN	Engie / ENGI	Moncey (Fin.) Nom./ FMONC	Thalès / HO
Argan / ARG	Eramet / ERA	Neurones / NRO	Tikehau Capital / TKO
Arkema / AKE	EssilorLuxottica / EL	Nexans / NEX	TotalEnergies / TTE
Artois Nom. / ARTO	Eurazeo / RF	Opmobility / OPM	Trigano / TRI
AXA / CS	Eutelsat Communic. / ETL	Orange / ORA	Unibail-Rodamco-WE[115] / URW
Ayvens / AYV	Exail Technologies / EXA	OVH / OVH	Valéo / FR
Bic / BB	Exosens / EXENS	Pernod Ricard / RI	Vallourec / VK
Biomérieux / BIM	FDJ UNITED / FDJU	Peugeot Invest / PEUG	Veolia Environ. / VIE
BNP Paribas Act. A / BNP	Forvia / FRVIA	Planisware / PLNW	Verallia / VRLA
Bolloré / BOL	Gecina / GFC	Publicis Groupe SA / PUB	Vicat / VCT
Bouygues / EN	GetLink SE / GET	Rémy Cointreau / RCO	Viel Et Compagnie / VIL
Bureau Veritas / BVI	GTT / GTT	Renault / RNO	Vinci / DG
Cambodge Nom. / CBDG	Hermès Int / RMS	Rexel / RXL	Virbac / VIRP
CapGemini / CAP	Icade / ICAD	Robertet / RBT	Vivendi SE / VIV
Carmila / CARM	ID Logistics Group / IDL	Rubis / RUI	VusionGroup / VU
Carrefour / CA	Imerys / NK	S.E.B / SK	Wavestone / WAVE
Christian Dior / CDI	Interparfums / ITP	Safran / SAF	Wendel / MF
Clariane / CLARI	Ipsen / IPN	Saint Gobain / SGO	
Coface / COFA	Ipsos / IPS		

[115] **Unibail-Rodamco**: FR–NL stapled share subject to the FTT following application of a tax value allocation ratio calculated on the basis of the financial statements as at 31 December, published annually by the issuer:

- For acquisitions carried out up to 28 February 2026, the applicable ratio calculated on the basis of the financial statements as at 31/12/2024 and published by the issuer is 100%.
- For acquisitions carried out from 1 March 2026 onwards, the applicable ratio calculated on the basis of the financial statements as at 31/12/2025 was communicated by the issuer on 12 February 2026. It is also 100%.

APPENDIX 3
TEMPLATE FOR THE EXERCISE OF OPTION LETTER PUBLISHED ON THE FFTT PORTAL AT IMPOTS.GOUV.FR

On headed notepaper of **Taxpaying ISP**

[Taxpayer]

[Address]

[Postal Code/City]

BIC [ABCDEFGHXXX]

A l'attention du Ministère de l'Economie et des Finances [*For the attention of the Minister for the Economy and Finance*]

Direction des Grandes Entreprises [*Large Corporations Division*]

8 rue Courtois

93505 Pantin Cedex

Subject: option to file and pay the FFTT through a member of the central depositary, Euroclear France.

Paris, [*date*]

Pursuant to paragraph 90 of the *Bulletin Officiel des Finances Publiques – Impôts* reference no. BOI-TCA-FIN-10-40, we hereby inform you that [the taxpayer] is taking the option, as taxpayer of the financial transactions tax (FFTT) of filing and paying the tax through [intermediary] in its capacity as member of the central depositary, Euroclear France.

In accordance with the instruction, this option, which is valid for one year and tacitly renewable, shall take effect as from ……

Yours truly,

Name and position of the signatory

SIGNATURE

The signatory hereby declares that he or she is duly authorised to exercise this option in the name and on behalf of [taxpayer].

(The same option letter must be addressed to Euroclear France – Direction des Opérations, Department Règlement / Livraison – Service TTF – 66 rue de la Victoire – 75009 Paris – France).

APPENDIX 4

Q&A PUBLISHED BY THE FRENCH TAX AUTHORITIES WHEN THE FFTT WAS INTRODUCED IN 2012 AND UPDATED BY AMAFI

The questions and answers listed below were put online by the tax authorities in 2012 on the "impôts.gouv.fr" portal with the objective of providing assistance to operators when the FFTT was introduced.

These FAQs are no longer available online but the answers they provide are still relevant and are mainly included in the administrative comments on the general FFTT system published after the BOFiP.

This appendix provides an updated version of these answers.

GLOSSARY

SIGLE	SIGNIFICATION
FFTT	French Financial Transaction Tax.
GTC	General Tax Code.
BOFiP	Official Tax and Public Finance Bulletin.
ISP	Investment Services Provider.
MFC	Monetary and Financial Code.
DGFiP	General Direction of the Public Finances.
LCD	Large Corporations Division.
VAT	Value-added tax
Intraday	Transactions carried out during the same trading day.
Intra-month	Transactions (benefiting from the deferred settlement service) carried out in the same trading month.
Net long position	This is the number of securities whose ownership has been definitively transferred at the end of the trading day or month (benefiting from the deferred settlement service) by a taxpayer for a given originator.
DSS	Deferred Settlement Service.
ISIN	(International Securities Identification Number) Numéro d'identification international des valeurs mobil
OTC	Over the counter.

N°	QUESTIONS / ANSWERS : TAX ON ACQUISITIONS OF EQUITY SECURITIES OR SIMILAR	
1	**Q**	*Where can questions about the FFTT be addressed?*
	A	Questions about the FFTT can be sent to the following address: « dge@dgfip.finances.gouv.fr ». For faster processing of the question, it is recommended to use the following subject line: "FFTT. Question on the French Financial Transaction Tax".
2	**Q**	*Who is liable for the tax on acquisitions of equity securities?*
	A	By application of VI of Article 235 ter ZD of the French General Tax Code: the ISP or the custodian. An ISP that acquires securities for its own account is always liable for the tax. When several ISPs are involved in executing an order from a purchaser who is not an ISP, the ISP that is closest to the final purchaser in the intermediation chain and is authorised to provide order execution services is liable for the tax. See BOI-TCA-FIN-10-30, nos. 1 to 40 of 3 May 2017.
3	**Q**	*How to calculate the tax for non-euro transactions?*
	A	Where the acquisition is made on a foreign stock exchange outside the euro zone, the taxable value is determined on the basis of the closing rate on the foreign exchange market of the relevant currency on the day before the day of acquisition. The "day before the day of acquisition" means the day before the settlement day. This rule shall apply even where transactions are effected over-the-counter. However, by way of simplification, it is accepted that the day before the day on which the security is traded may constitute the day for determining the taxable value for acquisitions made on a foreign stock exchange. The date used (day before the trading day or day before the settlement-delivery day) must be the same for all transactions carried out in a monthly tax period. Cf. BOI-TCA-FIN-10-30, n° 140 of 3 May 2017.
4	**Q**	*With regard to the net long position, what is the taxable base when the quantities bought are greater than the quantities sold? Is it the difference in amounts?*
	A	The net long position is not calculated on a difference of amounts but on a difference of numbers of securities. When the net long position (the difference between taxable acquisitions and sales of a security excluding exempt acquisitions and sales associated with those exempt activities) has been determined for a given security, the number of securities corresponding to the net long position is multiplied by the average value of the non-exempt acquisitions of the securities, rounded up to the next cent. The average acquisition value of the securities is equal to the total acquisition cost of the security divided by the number of securities acquired. Example: purchase of 550 A shares at €49, then further purchase of 100 A shares at €50 and resale of 80 A shares at €50.50. By assumption, no transaction is exempt from tax. At the end of the day, the net long position is (550 + 100 - 80) = 570 shares. The average acquisition cost of A shares is (550*49 + 100*50) / 650 = 31,950 / 650 = €49.1538 rounded to €49.16. The tax due is then 570*49.16*0.3 % = 28,021.20*0.3 % or €84.0636 rounded up to €84.06. See BOI-TCA-FIN-10-30, n° 135 to 139 of 3 May 2017.
5	**Q**	*What is the taxable basis for the net long position, when the quantities bought and sold are identical but the amounts are different?*
	A	If the quantities bought and sold are identical for a given security, for a given originator on the same trading day or over the same trading month (transactions benefiting from the deferred settlement

		service), then there is no net long position but a zero net position which means, in this case, that no amount of tax is due even if the acquisition and sale amounts are different. See BOI-TCA-FIN-10-10, no. 60 of 21 December 2015.
6	**Q**	*The taxable event is the change of ownership. Are transfers of securities between spouses therefore taxable? Are transfers between parents and children (donation) also taxable? Are transfers between collaterals also taxable?*
	A	The taxable event is the acquisition of the security, which means the date of transfer of ownership of the security, i.e. the date of registration of the acquired security in the purchaser's securities account, regardless of the holder of this securities account or his relationship with the seller. On the other hand, acquisitions or grants free of charge (e.g. donations) are excluded from the scope of the tax, since only acquisitions for consideration are concerned. See BOI-TCA-FIN-10-10, no. 50 of 21 December 2015.
7	**Q**	*Are taxpayers who go through the central depositary relieved of their liability as soon as the CSD debits their account or are they still liable even if the central depository does not pay the tax to the tax authorities?*
	A	Taxpayers who pass through Euroclear France are responsible for: - the subscription dates and amounts shown on the declarations that they send to Euroclear France - the dates and amounts of payments they make to Euroclear France. Euroclear France is, for its part, responsible for the date and amount of the payment of the tax it has collected. See Article 235 ter ZD, XI of the French General Tax Code.
8	**Q**	*The tax is due on net long positions per ISIN code, per client and per day. Is it correct to say that the tax is due on net long positions per client or for orders executed by the same ISP? If the client has more than one ISP, is the tax amount calculated on the net long position per ISP?*
	A	Since the taxpayer is the ISP, the amount of tax due on the net long position must be calculated for each ISP. See BOI-TCA-FIN-10-30, No. 1 of 3 May 2017.
9	**Q**	*If purchases of securities are not made on a regulated market but over the counter (OTC), is the client obliged to provide the central depository with the information necessary for taxation?*
	A	When acquisition of securities are made over the counter, the taxpayer is either the acquiring ISP or, failing that, the custodian. The information needed for taxation and the amount of tax due must be sent to the tax authorities via the central depository when the securities are delivered to its books, those of its members or those of the members' clients. Otherwise, the declarations and payments are transmitted directly to the tax authorities (unless the option is given to transmit via a member of the central depository). See BOI-TCA-FIN-10-40, n° 20 to 100 of 4 March 2015.
10	**Q**	*If an ISP trades in its own name, it will have to report its net long position to the central depository and make the corresponding payment.* *Do taxpayers have to charge tax to each other?*
	A	An ISP that acquires securities for its own account is liable for the tax. It remains liable even if it has the acquisition carried out by another ISP. Since the latter is not liable, it does not have to re-invoice the tax to the acquiring ISP. See BOI-TCA-FIN-10-30, No. 1 and 10 of 3 May 2017.

11	**Q**	*The list of companies whose securities are subject to the FFTT is published by ministerial order. What happens if a company is not on the list but meets the conditions that make the acquisition of its securities taxable under the FFTT?* *What does the ISP risk if no transaction in the securities not on the list has been reported or subjected to the tax?* *Does the ISP still have to pay the FFTT and, if so, can it claim it from its clients after the fact?*
	A	The Ministerial Order setting the list of companies whose securities are subject to the FFTT was replaced by a publication in the BOFiP: see BOI-ANNX-000467 published on 29/12/2021 The publication of this list simplifies the procedures for taxpayers and makes them more secure, particularly for those established abroad. However, the conditions of taxation are governed by the law and not by the list published in the BOFiP. The tax is due as soon as a company falls within the scope of the tax in accordance with the conditions set by the law.
12	**Q**	*Should the taxpayer's declaration follow the flow of settlement instructions or is it possible to report everything directly to the Central Depository, including transactions settled on foreign markets?*
	A	The reporting obligations depend on the place of establishment of the central depository holding the account for the issue of the security in question. If the custodian is established outside France, the taxpayer is required to file its declaration directly with the tax authorities (LCD), along with its payment. If the central depository holding the issuing account of the security in question is established in France, then four cases must be considered. 1. The delivery of the security is carried out in the books of the central depository. ➢ The taxpayer must send the central depository the information mentioned in Article 58 Q of Appendix II to the French General Tax Code and, ➢ Designate the member of the central depository responsible for paying the tax if the taxpayer does not pay it itself to the central depository. 2. The delivery of the security is carried out in the books of one of the members of the central depository. ➢ The participant must transmit to the central depositary the information referred to in Article 58 Q of Appendix II to the French General Tax Code and, ➢ Designate the central depository's member to pay the tax on its behalf if it does not make the payment itself. 3. The delivery of the security is carried out in the books of one of the clients of a participant of the central depository. ➢ The customer liable for the tax must provide the information mentioned in Article 58 Q of Appendix II to the French General Tax Code and, ➢ Designate the central depository's member to pay the tax on its behalf if it does not make the payment itself. 4. The delivery of the security is carried out under conditions other than those described in points 1 to 3. ➢ The taxpayer declares and pays the tax directly to the tax authorities (DGE). However, it may opt to declare and pay the tax through a member of the central depository. For cases 1 to 3 and 4 in case of option, the information and the corresponding payment must reach the central depository before the 5th of the month following the settlement/delivery of the securities. When the taxpayer declares and pays the tax directly (case 4 in the absence of an option), it must do so before the 25th of the month following the acquisitions of taxable securities. See BOI-TCA-FIN-10-30, n° 1 and 170 of 3 May 2017.

APPENDIX 5

LIST OF THE REGULATED MARKETS PUBLISHED BY ESMA AS AT 28 JANUARY 2026

Below is a link to ESMA's list of regulated markets as at 28 January 2026:

Liste des marchés réglementés reconnus par l'AEMF.pdf

APPENDIX 6

AMAFI'S STANDARD AGREEMENT

ON DEALING WITH FFTT IN A SITUATION INVOLVING A CHAIN OF INTERMEDIARIES

This Standard Agreement was initially published on 29th January 2013 (*AMAFI / 13-05EN*).

NOTICE

for users of the AMAFI Standard Agreement

on dealing with FFTT in a situation involving a chain of intermediaries

Users should note that this Standard Agreement is simply a template provided to AMAFI members. Members should modify it to suit their specific circumstances and concerns and ensure that the proposed arrangements comply with current legal and regulatory requirements.

To understand the contractual framework set out below, users should consult the tax regulations and the memos published by AMAFI on the FFTT, in particular Memo 12-52 of 8 November 2012 assessing the measures introduced by the 2012 Supplementary Budget Act..

BACKGROUND

A number of members asked AMAFI to develop a market-wide contractual framework for dealing with FFTT in a situation involving a chain of intermediaries.

This Standard Agreement covers a situation where an investment services provider (ISP) that qualifies as the FFTT statutory taxpayer under the tax regulations because it is authorised to perform third-party order execution services (hereinafter called "Taxpaying ISP") transfers a client or on own account purchase order to another ISP (hereinafter called "Service Providing ISP") for execution (trading desks, for example, would fall into this category). In some cases, for operational reasons, Taxpaying ISP may ask Service Providing ISP to meet its statutory filing or transmission and payment obligations as FFTT taxpayer in its name and on its behalf.

The aim of the Standard Agreement is to precisely define the services relating to FFTT treatment which are provided by Service Providing ISP to Taxpaying ISP, as well as the terms under which these services are provided and the respective responsibilities that may arise as a result.

BETWEEN

[**XXX**], a [*corporate form*] with capital of EUR [*to be completed*] and registered offices at [*to be completed*], registered on the [*to be completed*] Trade and Companies Register under number [*to be completed*]

Represented by [*to be completed*], acting in his/her capacity as [*to be completed*]

And duly authorised for these purposes

Hereafter "**Taxpaying ISP"** [*alternatively, the name of the Party may be used here and throughout the Agreement*]

The Party of the First Part

AND

[**YYY**], a [*corporate form*] with capital of EUR [*to be completed*] and registered offices at [*to be completed*], registered on the [*to be completed*] Trade and Companies Register under number [*to be completed*]

Represented by [*to be completed*], acting in his/her capacity as [*to be completed*]

And duly authorised for these purposes

Hereafter "**Service Providing ISP**" *[alternatively, the name of the Party may be used here and throughout the Agreement]*

The Party of the Second Part,

Hereafter together the "**Parties**"

PREAMBLE:

1.Investment Services Providers ("ISPs") are firms defined in Article L.531-1 of the Monetary and Financial Code ("MFC"). They include investment firms and credit institutions that have received authorisation to provide investment services as defined by Article L.321-1 of the same Code, namely reception and transmission of orders on behalf of third parties, execution of orders on behalf of third parties, own-account trading, portfolio management on behalf of third parties, investment advice,

underwriting, stand-by underwriting, placement without a firm commitment and operation of a multilateral trading facility.
As defined by this agreement (the "Agreement"), ISPs are considered to be any firms, including foreign firms, authorised to carry on one of the abovementioned activities under terms equivalent to those set out in the MFC.

2.The 2012 Supplementary Budget Act 2012-354 of 14 March 2012, amended by the second 2012 Supplementary Budget Act 2012-958 of 16 August 2012, supplemented by implementing measures (Decrees 2012-956 and 2012-957 of 6 August 2012, the Executive Order of 12 July 2012 and the Tax Instruction of 2 August 2012, later repealed and incorporated in the Official Tax and Public Finance Bulletin "BOFIP" under reference no. BOI-TCA-FIN) (the "Tax Regulations") created a financial transactions tax ("FFTT") that is actually made up of three taxes:

- A tax on acquisitions of shares or equivalent securities ("FFTT") under General Tax Code ("GTC") Article 235 *ter ZD*;
- A tax on high-frequency trading under GTC Article 235 *ter ZD bis*;Au sens de la présente convention (la « **Convention** »), sont considérés comme **PSI** tous les opérateurs, y compris étrangers, dès lors que dans des conditions équivalentes à celles définies par le **Comofi**, ces opérateurs bénéficient d'un agrément pour exercer l'une des activités ainsi précisées.
- A tax on sovereign credit default swaps (CDS) under GTC Article 235 *ter ZD ter*.

3.Under the Tax Regulations, the FFTT applies to any acquisition for consideration of shares or equivalent securities admitted to trading on a French, European or foreign regulated market (as defined by Articles L. 421-4, L. 422-1 and L. 423-1 MFC) issued by a company having its registered offices in France and market capitalisation exceeding EUR 1 billion on 1 December of the year preceding the tax year. Acquisitions that meet these criteria are defined below as "Acquisitions within the FFTT scope".

4.To determine the taxpayer's tax base, the Tax Regulations specify the procedures for calculating the net long position ("NLP").To do this, the taxpayer must identify, for each end client , acquisitions that are covered by an exemption ("Exempt acquisitions") and sales associated with exempt activities ("Sales associated with exempt activities"), which are to be deducted from total transactions to obtain the NLP, which determines the "Taxed acquisitions", as defined in the Tax Regulations. The NLP used as the base for the FFTT is worked out for each security and for each buyer.

5.The Tax Regulations provide that the FFTT owing on Taxed acquisitions shall be assessed and paid by the ISP that executed the purchase order or that traded on its own account.

- If several ISPs are involved in executing a share purchase order <u>for a third party</u>, the tax must be assessed and paid by the ISP that received the purchase order directly from the end buyer.

In the **BOFIP**, the tax authorities clarified the conditions for assessing taxpayer status in a situation involving a chain of intermediaries. Thus, if an **ISP** that is not authorised to perform third-party order execution services receives and transmits an order from its client to another **ISP** in charge of executing

the order (which therefore has the necessary authorisation), then the taxpayer is the second **ISP**. But if the **ISP** that receives and transmits an order from its client to another **ISP** in charge of executing the order is authorised to perform third-party order execution services, then it would be recognised as the statutory **FFTT** taxpayer, even if its involvement is limited to order reception/transmission.

- If an ISP transmits an own-account purchase order for execution to another ISP, then the FFTT is always payable by the first ISP.

6.The ISP that qualifies as the FFTT taxpayer according to the above principles is subject as such to the filing and payment obligations as set forth in the Tax Regulations.

7.Taxpaying ISP is an ISP with the necessary authorisation(s) to provide the services of third-party execution (provided for in Article L. 321-1, 2° MFC) and own-account trading (provided for in Article L. 321-1, 3° MFC) [*adapt as necessary*]. According to the Tax Regulations and particularly the principles described in § 5 above, Taxpaying ISP recognises having taxpayer status vis-à-vis the tax authorities in relation to purchase orders that it processes for third parties and/or own account in the context of Acquisitions within the FFTT scope.

8.Service Providing ISP is an ISP that routinely delivers, under its general terms and conditions, investment services to Taxpaying ISP, either for it or its clients [*to be confirmed/adapted as necessary*]. In the context of Taxed acquisitions, Service Providing ISP may be part of a chain of intermediaries that is involved in executing a third-party and/or proprietary order and as such may receive, with a view to execution, orders for which Taxpaying ISP has taxpayer status vis-à-vis the tax authorities. In this situation, Service Providing ISP may, in addition to the services routinely provided to Taxpaying ISP, provide various services intended to facilitate Taxpaying ISP's compliance with the tax obligations incumbent on it as FFTT taxpayer with regard to Acquisitions within the FFTT scope.

9.For this reason, the Parties have agreed the following, including the fact that the provisions in §1 to §8 of the Preamble are considered to form an integral part of this Agreement.

WHEREBY THE FOLLOWING HAS BEEN AGREED:

ARTICLE 1 – SCOPE

1.1 The scope of the Agreement is limited to the tax obligations placed on Taxpaying ISP in respect of third-party and/or own-account financial transactions for which it sends execution orders to Service Providing ISP (the "Transactions"). Within the framework of the Transactions, the Parties agree that Service Providing ISP will provide Taxpaying ISP with the services defined in Articles 2 to 4 below (the "Services") under the terms set forth herein.

1.2 The scope of the Agreement does not include any other service that may be rendered by Service Providing ISP to Taxpaying ISP in respect of transactions other than the Transactions and any filing and/or payment obligations vis-à-vis the tax authorities that may be placed on Service Providing ISP in respect of transactions carried out in its capacity as an ISP outside the framework of the Transactions.

ARTICLE 2 – SERVICES SUPPLIED BY SERVICE PROVIDING ISP ***[to be adapted based on the services provided]***

2.1 To enable **Taxpaying ISP** to meet its transmission and filing obligations, as the case may be, and the payment obligations incumbent on it as FFTT taxpayer for the **Transactions**, **Service Providing ISP** undertakes, in the name and on behalf of **Taxpaying ISP,** in accordance with the **Tax Regulations,** to:

(i) Debit the FFTT owing on the Transactions at settlement according to operational procedures determined by the Parties;
(ii) Collect the information to be transmitted pursuant to the Tax Regulations and calculate the FFTT in accordance with Article 3;
(iii) Send the reportable information to the central depositary (or the tax authorities, as applicable) and pay the FFTT, in accordance with Article 4.

2.2 To enable **Service Providing ISP** to perform the tasks assigned to it, **Taxpaying ISP** (i) undertakes, as needed, to inform any third party and the tax authorities about the assignment entrusted to **Service Providing ISP** to act on its behalf and (ii) authorises **Service Providing ISP** to disclose the information needed to send **FFTT**-related information, prepare the **FFTT** return and/or pay the tax, to any entity, within or outside the group to which **Service Providing ISP** belongs, whose involvement is required to conduct said transmission, filing and/or payment.

ARTICLE 3 – COLLECTION OF INFORMATION, FFTTCALCULATION [*To be adapted based on the services provided]*

3.1 To enable **Service Providing ISP** to perform the tasks assigned to it under the **Agreement**, **Taxpaying ISP** provides it with the information needed to calculate the **FFTT** due in respect of each transaction, either before or during transmission of the order or, if need be, after the order has been executed.

Taxpaying ISP therefore provides **Service Providing ISP** with information:

(i) about whether the order is for own account or a third party;
(ii) so that all the transactions carried out on behalf of a third party can be associated with that third party;
(iii) about whether the transaction is an Exempt acquisition or a Sale associated with an exempt activity and if so, under what exemption.

Failing such disclosures, it is agreed that **Service Providing ISP** is entitled to consider that:

(i) the transactions are carried out on behalf of Taxpaying ISP;
(ii) the purchase transactions are Taxed acquisitions;
(iii) the sale transactions are not Sales associated with an exempt activity.

3.2 In respect of information collection and FFTT calculation, and based on the information provided by **Taxpaying ISP**, **Service Providing ISP** undertakes, in accordance with Article 3.3, to:

(i) Calculate the amount of FFTT applicable to each non-exempt Transaction, given the information provided by Taxpaying ISP according to Article 3.1;
(ii) Include in the confirmation (trade notice) sent to Taxpaying ISP the amount of FFTT to debit for each non-exempt Transaction;
(iii) Calculate, as applicable, the NLP for each security and buyer based on the information provided by Taxpaying ISP and under the terms set out in BOI-TCA-FIN-10-30-20121127, no. 130 *et seq*. and make the necessary adjustments. Thus, for each security, Service Providing ISP will calculate, as applicable, NLPs at the end of the day (or month) for Transactions carried out on behalf of each client and on Taxpaying ISP's own account, after first excluding all Exempt acquisitions and Sales associated with exempt activities, such as market making, primary market activities and securities financing transactions;
[**Alternative to (iii)**: Calculate, as applicable, the **NLP** under the terms set out in BOI-TCA-FIN-10-30-20121127, no. 130 *et seq*. and make the necessary adjustments];

(iv) Make any adjusting payments, in accordance with Article 5.

3.3. It is agreed that the above calculations are made solely on the basis of the information provided by **Taxpaying ISP**, which alone is responsible for determining and providing evidence of any exemptions that may apply to a **Transaction**, both to the tax authorities and to any third party whose involvement may be necessary to carry out the tasks assigned to **Service Providing ISP**.

3.4 That **Service Providing ISP** gathers the information and calculates the **FFTT** on behalf of **Taxpaying ISP** does not relieve **Taxpaying ISP** of its responsibility as the **FFTT** taxpayer, pursuant to the provisions of the **Tax Regulations**. However, **Service Providing ISP** is fully responsible to **Taxpaying ISP** for properly discharging the task assigned to it under the **Agreement**, based on the information provided to it in accordance with Article 3.1.

ARTICLE 4 –TRANSMISSION OF FFTT - RELATED INFORMATION - PAYMENT OF THE FFTT

4.1Transmission of information and payment of the FFTT

4.1.1 Depending on the circumstances, pursuant to the **Tax Regulations**, **Service Providing ISP** undertakes, in the name and on behalf of **Taxpaying ISP**, to:

(i) Send the central depositary keeping the issue account of the security concerned, (Euroclear), the information mentioned in Article 58Q of Appendix III of the GTC, and name, where applicable, according to the terms described in Article 4.1.2, the member it has appointed to pay the FFTT in the name and on behalf of Taxpaying ISP.
This information and payment of the associated FFTT must be sent by Service Providing ISP to the central depositary before the 5th of the month following securities settlement; or

(ii) File return no. 3374-SD along with payment of the FFTT with the Large Corporations Division before the 25th of the month following securities settlement, while making available to the tax authorities the information mentioned in Article 58Q of Appendix III of the GTC.

At the same time as the transmission or filing referred to in (i) and (ii) above, **Service Providing ISP** will send a copy of the transmission file/return to **Taxpaying ISP** for information. It will also provide in a computer file [*format to be specified*] all the information needed to calculate the **FFTT** paid in its name and on its behalf.

4.1.2 Where it deems necessary, **Service Providing ISP** is authorised by **Taxpaying ISP** to exercise, in its name and on its behalf, following the template provided in the Appendix, the option provided for in BOI-TCA-FIN-10-40-20120912, no. 100 for the benefit of another entity in its group acting as a member of the central depositary ("**Member**"). In this case, **Service Providing ISP** makes sure that the **Member** (a) sends the information mentioned in Article 58 Q of Appendix III of the **GTC** in the format indicated by the central depositary in France based on the information provided by **Taxpaying ISP** and (b) sends by return acceptance of the transmission notified to it by the central depositary on receipt of the said transmission.

4.2FFTT payment methods

4.2.1Service Providing ISP uses the amounts debited in accordance with Article 2.1 (i) to pay the **FFTT** as provided for in Article 4.1.

If it is necessary to make adjustments between the amounts initially debited and the amounts due, the **Parties** agree, before the 7th of the month in the situation described in Article 4.1.1 (i) and before the

27th of the month in the situation described in Article 4.1.1 (ii), on the practical approach used to process these adjustments.

Service Providing ISP will always provide **Taxpaying ISP** with the documentation required to explain any adjustments made.

4.2.2Service Providing ISP ensures that the **Member,** in the situation described in Article 4.1.2, pays the **FFTT** in the name and on behalf of **Taxpaying ISP**, within the allowed time and following the procedure provided for by the central depositary, by debiting the account(s) of **Service Providing ISP** in its books and crediting the cash account of the central depositary opened for the purpose of **FFTT** collection in the amount of the **FFTT**.

If **Service Providing ISP** pays the **FFTT** directly to the central depositary, this payment is made in the name and on behalf of **Taxpaying ISP** within the allowed time and following the procedure provided for by the central depositary, by crediting the cash account of the central depositary opened for the purpose of **FFTT** collection in the amount of the **FFTT**.

Service Providing ISP immediately informs **Taxpaying ISP** of any event or circumstance that could affect its tax status or the **Services** to be provided under the **Agreement**.

ARTICLE 5 – POSSIBLE ADJUSTMENTS

If it is necessary to make an adjustment because the **FFTT** has been wrongfully paid or has not been paid, **Taxpaying ISP** informs **Service Providing ISP** of this so that **Service Providing ISP** can make, in the name and on behalf of **Taxpaying ISP**, the required corrective disclosures either to the **Member** of the central depositary or directly to the central depositary, subject to the time periods allowed for adjusting payments under the **Tax Regulations**.

Any adjusting payment that **Service Providing ISP** is asked to make may be performed only if it complies with the requirements and time periods provided for in the **Tax regulations**.

ARTICLE 6 – REMUNERATION

The **Parties** agree that the **Services** rendered by **Service Providing ISP** to **Taxpaying ISP** under the **Agreement** are provided for the sole benefit of **Taxpaying ISP.** They are ancillary services to the services mentioned in paragraph 8 of the Preamble, whose remuneration is included with that paid for the aforementioned services.

[Clause to be adapted depending on the links between the Parties, notably if the situation referred to in § 8 of the Preamble (Service Providing ISP routinely provides execution services to Taxpaying ISP) is not reflective of the actual situation].

ARTICLE 7 – INDEMNIFICATION

7.1Service Providing ISP undertakes to indemnify **Taxpaying ISP** for the amount of any tax adjustment, penalty or charge of any kind, including reasonable fees and expenses paid to any counsel involved in defending its interest, that **Taxpaying ISP** may have to pay in the event of a tax adjustment relating to the **Transactions,** insofar as the adjustment, penalty or charge imposed on **Taxpaying ISP** originates from a failure by **Service Providing ISP** to perform its obligations under the **Agreement**.

7.2**Taxpaying ISP** undertakes to indemnify **Service Providing ISP**, under the terms defined by the **Parties**, in the event that **Service Providing ISP** is asked to make an adjustment that originates from a failure by **Taxpaying ISP** to provide timely information or an error attributable to **Taxpaying ISP** during transmission of the information referred to in Article 3.1.

ARTICLE 8 – TAX INSPECTIONS, DEALINGS WITH THE AUTHORITIES: RECIPROCAL DUTY OF DISCLOSURE

If **Taxpaying ISP** is the subject of a tax inspection concerning the transmission, filing and payment of the **FFTT** by **Service Providing ISP** (or the **Member**) in the name and on behalf of **Taxpaying ISP**, it shall promptly inform **Service Providing ISP** of this**.** Similarly, **Service Providing ISP** undertakes to promptly provide **Taxpaying ISP**, on its request, with all appropriate information and documentation relating to the period being inspected that may help to demonstrate that it has properly discharged its transmission, filing and payment obligations as set forth herein and which it has retained in accordance with the terms of Article 9.

Similarly, if the tax authorities exercise their right to obtain information from **Service Providing ISP** in respect of **Transactions** that may be **FFTT**-liable, **Service Providing ISP** promptly informs **Taxpaying ISP** of this.

ARTICLE 9 – RETENTION AND TRANSMISSION OF INFORMATION

Service Providing ISP undertakes to retain and to send to **Taxpaying ISP**, on its request, all appropriate information and documentation in respect of the **Transactions** that may aid to demonstrate [within the statutory timeframe/for a period of ten years] that it has properly discharged its transmission, filing and payment obligations as set forth herein.

ARTICLE 10 – MODIFICATION OF THE AGREEMENT

10.1 The **Agreement** is concluded in accordance with the **Tax Regulations** in force at the date of signature.

10.2 Where an amendment to the **Tax Regulations** materially affects the terms of the **Agreement**, the **Parties** agree to work together to decide on any modifications that may be necessary.

10.3 Aside from a legal or regulatory change imposed on the **Parties**, any amendment affecting a provision of the **Agreement** must be expressly accepted by the **Parties** and incorporated in the **Agreement** through an amendment.

ARTICLE 11 – OBLIGATION TO MAINTAIN CONFIDENTIALITY

11.1 Each **Party** shall keep confidential all the information concerning the **Services** provided and shall refrain from sharing it with a third party without the prior consent of the other **Party**.

11.2 However, this confidentiality obligation does not apply in respect of: (i) companies belonging to the same group as **Service Providing ISP** insofar as this information needs to be sent to these companies to ensure proper execution of the **Services** provided under the Agreement, and these companies are bound by a similar confidentiality requirement (ii) supervisory, judiciary, administrative and tax authorities, in the event of a request by these authorities.

ARTICLE 12 – ENTRY INTO FORCE – TERM – TERMINATION

12.1 This **Agreement** will come into effect on [-----] for a period of [------] months/years. It will be tacitly renewed for successive periods of one (1) year, unless one **Party** gives the other notice of termination in a registered letter with acknowledgement of receipt, subject to a notice period of at least three (3) months before the initial expiry date of the **Agreement** or the expiry date of the **Agreement** following a period during which the **Agreement** has been tacitly renewed. Termination conducted under these circumstances will not give rise to compensation.

12.2 Notwithstanding the provisions of Article 12.1, the **Agreement** may be terminated automatically by either of the **Parties** under the following circumstances:

(i) false disclosure by the other **Party**;
(ii) occurrence of any event evidencing a state of insolvency of either of the **Parties**;
(iii) a substantial modification that could adversely affect the ability of one of the **Parties** to meet its commitments under the **Agreement,** notably the withdrawal of the third-party order execution authorisation of one or other of the **Parties**;
(iv) failure by one of the **Parties** to meet its contractual commitments or legal obligations.

In all cases of automatic termination referred to in this Article, said termination will take effect on receipt of written notification given by one **Party** to the other.

12.3 Any notification under Articles 12.1 or 12.2 is considered to be duly made if provided by registered letter with acknowledgement of receipt at the addresses of the **Parties** given at the beginning of this document or at any address provided in the same fashion by one **Party** to the other following the signature of the **Agreement**.

12.4 The **Parties** expressly agree that if the **Agreement** is terminated, the provisions of the **Agreement** remain applicable to the **Services** rendered pursuant to the **Agreement** until the termination date. Furthermore, the obligations of the **Parties** resulting from Articles 7, 8, 9 and 11 of the **Agreement** shall subsist beyond the termination date until the expiry of the limitation period applicable to them.

ARTICLE 13 –TRANSFER OF THE AGREEMENT

No rights or obligations under the **Agreement** may be duly transferred without the agreement of the **Parties.** However, **Service Providing ISP** may transfer the rights and obligations arising from the **Agreement** to a company belonging to its group without the agreement of **Taxpaying ISP** but on condition that it informs **Taxpaying ISP** of this at least [---] days in advance.

ARTICLE14 – APPLICABLE LAW – JURISDICTION

The **Agreement** is governed by and shall be interpreted in accordance with French law.

The *Tribunal de Commerce de Paris* shall have sole jurisdiction over any dispute involving the interpretation or execution of these provisions.

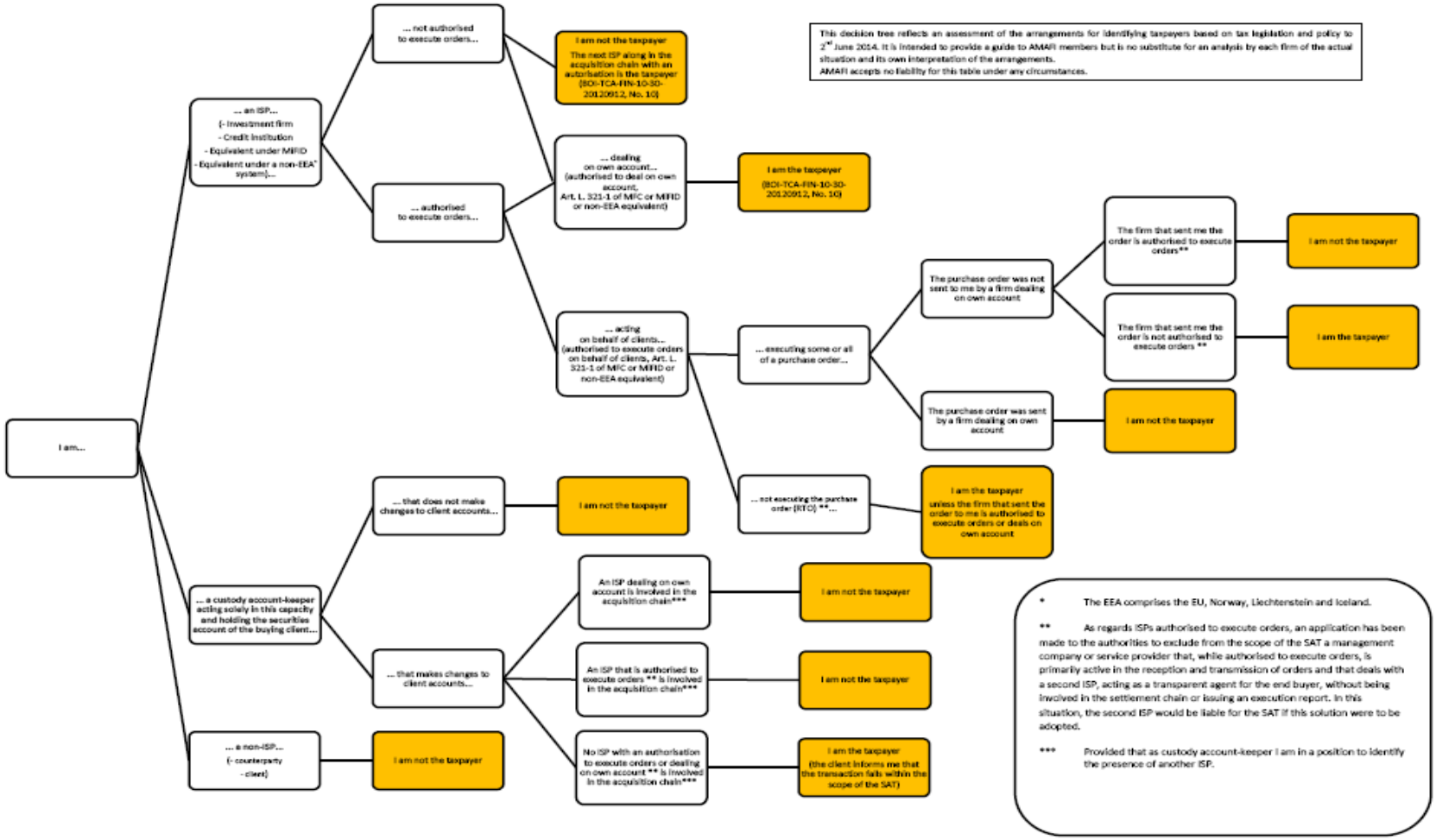
Done in Paris, on _____, in two original copies.

[TAXPAYING ISP] **[SERVICE PROVIDING ISP]**

_____ _____

APPENDIX 7

"AM I THE TAXPAYER?" DECISION TREE



APPENDIX 8
RETURN & ALLOCATION OF THE FFTT

In 2023, the actual total yield of the tax amounted to €1.6 billion.

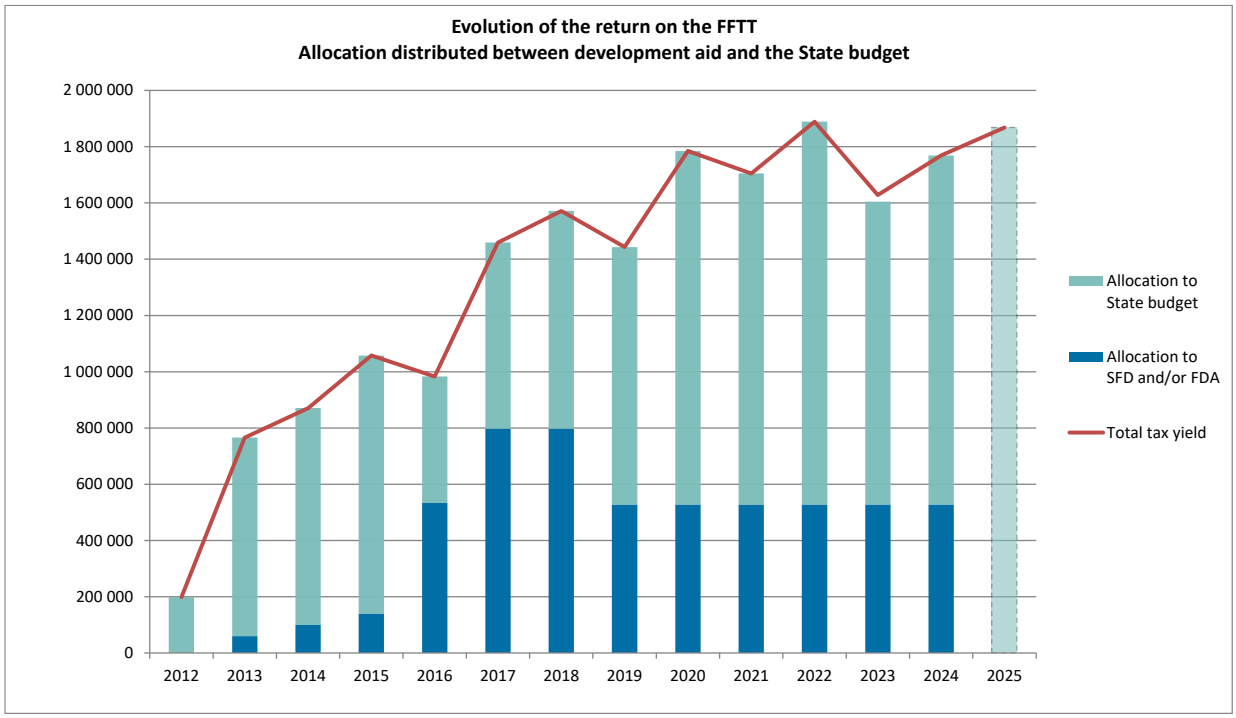
For 2024, the revised budget projections at the end of the year forecast an increase in revenue, raising the yield to €1.77 billion, representing a 10.2% rise in revenue compared to 2023.

For 2025, the budget forecasts set out in the Finance Act also anticipate an increase in the tax yield, to €1.89 billion.

It should be noted that in recent years, the number of companies whose share acquisitions are subject to the tax has decreased significantly, falling from 147 in 2022 to 130 in 2023, and then stabilising at 121 in both 2024 and 2025.

Monitoring of the Financial Transaction Tax (FTT) yield and its allocation since August 2012 shows that, up to 2019, an increasing share of the revenues generated by the tax was allocated to development aid (FSD and AFD). This share, which approached €800 million in 2017 and 2018, remained fixed at €528 million between 2019 and 2024, notably due to the rebudgeting of the portion of the FTT allocated to the AFD for an amount of €270 million.

In 2025, the allocation of a portion of the tax revenue to development aid (FSD) is abolished, with all such revenue now being fully allocated to the State budget.



Monitoring of the projected and actual return of the FFTT														
In thousand of euros	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**	**2020**	**2021**	**2022**	**2023**	**2024**	**2025**
Initial total assessment (Y-1)	537 000	1 600 000	801 823	831 600	1 092 750	1 646 048	1 491 000	1 650 000	1 658 000	1 572 000	1 656 000	2 240 000	1 728 000	1 868 000
Revised total *(1)* assessment (Y)	537 000	750 000	818 000	1 050 000	1 097 500	1 450 000	1 600 000	1 443 000	1 745 000	1 738 000	2 054 000	1 628 000	1 769 000	*1 868 000*
Actual return (Y+1)	**199 054**	**765 996**	**870 648**	**1 057 499**	**983 138**	**1 459 232**	**1 571 551**	**1 443 000**	**1 784 628**	**1 705 000**	**1 889 000**	**1 628 000**	***1 769 000***	***1 868 000***
Including allocation to SFD or FDA	0	60 000	100 000	140 000	533 000	798 000	798 000	528 000	528 000	528 000	528 000	528 000	528 000	*0*
Including allocation State Budget	199 054	705 996	770 648	917 499	450 138	661 232	773 551	915 000	1 256 628	1 177 000	1 361 000	1 077 000	*1 241 000*	*1 868 000*
Monitoring of the allocation of the FFTT income to development aid														
Allocation to SFD	-	0	0	0	260 000	528 000	528 000	528 000	528 000	528 000	528 000	528 000	528 000	*0*
Ceiling	0	60 000	100 000	140 000										
Allocation to FDA	0	0	0	0	273 000	270 000	270 000	0	0	0	0	0	0	*0*

** Data in italics are provisional.*

(1) State budget: development aid (SFD and AFD).