

# ***Newsflash – Transfer taxes on listed shares: what are the changes?***

Paris, January 19, 2012

The French Finance Bill for 2012 (the “**Bill**”) has introduced new provisions regarding transfer taxes. Amongst others, the Bill has amended the provisions regarding the disposal of listed shares. In this alert, we aim to briefly describe the new rules introduced by the Bill applicable as from 1<sup>st</sup> January 2012 and suggest some guidelines to clarify areas of concern.

## **1. New provisions as from 1<sup>st</sup> January 2012**

Prior to 1<sup>st</sup> January 2012, the sale (“*cession*”) of listed shares (within the meaning of article 726-I) was only subject to French transfer taxes if a written deed (a so-called “*acte*”) was executed in France.

In such a case, a sale of listed shares would then have been subject to a 3% transfer tax capped at €5,000.

### **1.1. Reminder of the scope of taxable transactions on listed shares**

Transactions involving listed shares are subject to transfer taxes if all the following conditions are met:

- (i) the transfer of the ownership of the shares is realized for consideration (“*cession à titre onéreux*”);
- (ii) the agreement is documented by a written deed, which is binding upon the parties;
- (iii) the agreement is executed in France.

### **1.2. Changes**

#### **1.2.1 Extension of the territoriality scope for listed shares in French companies**

Firstly, the Bill has extended the territorial scope of transfer taxes applicable to the transfer of listed shares in companies having their head office in France (SA, SAS, SCA). All sales of listed shares issued by such corporations that are documented by a written deed are taxable, irrespective of whether that deed is executed in France or outside of France.

A tax credit will be available (up to the extent of the transfer taxes triggered in France) in order to shelter the foreign transfer tax liability (if registration is also required under foreign law).

### *1.2.2 New tax rates and no capping*

Secondly, the Bill has :

- (i) removed the €5,000 cap on transfer taxes (which applied per transaction); and
- (ii) introduced the following new rates of transfer taxes:
  - 3% for the portion of the value below €200,000;
  - 0.5% for the portion of the value between €200,000 and €500,000,000 and;
  - 0.25% for the portion of the value above €500,000,000.

## **2. Suggested guidelines**

### **2.1. Criteria**

#### *(1) Transfer of the ownership realized for consideration*

Only transactions which result in a transfer of legal ownership and which give rise to the payment of a purchase price would be subject to transfer taxes, as set out above.

In our view, the following transactions are therefore outside the scope of these transfer taxes :

- stock lending transactions;
- collateralization of listed shares (to the extent the collateral is not enforced);
- distributions of listed shares as dividends in kind;
- subscription of shares upon an increase of share capital

#### *(2) Existence of a written deed binding upon the parties*

The concept of a written deed is interpreted by both case law and the French Tax Authorities by reference to French civil law.

As such, a written deed may only be evidenced as being in place to the extent that:

- it reflects the agreement of both parties to the terms and conditions of the sale (number of shares/purchase price); and
- it constitutes a binding title on the basis of which the parties may enforce their rights.

In that respect, it is worth mentioning that there is case law supporting the existence of a written deed in the event that several documents combine to constitute a deed of transfer.

Transactions made directly on a regulated market or on a multilateral trading facility which, as interpreted by French administrative guidelines 7 D-2-08, do not imply the conclusion of any agreement between the seller and the buyer (mere execution of orders by the financial intermediary) should not be subject to transfer taxes (same situation as before the modification of the law).

For over-the-counter (OTC) transactions, determining whether a transfer of listed shares derives from a written deed will require a detailed analysis of the transaction.

## 2.2 Examples

*The schedule below should be read so that transactions are only taxable if the condition set out in each column is met (i.e., answer is "Yes" for both)*

Transaction	Transfer of listed shares for consideration	Existence of a written deed ("acte")
Sale/acquisition of block of shares	Yes	Case by case analysis
Stock lending transactions	No: the ownership of the shares is not transferred in exchange for the payment of a purchase price.	N/A
Equity swap Physically settled	Case by case analysis	Case by case analysis
Equity swap Cash settled	No	N/A
"Repurchase agreement" governed by the French Monetary and Financial Code	No: Specific exemption applies	Specific exemption applies
"Repurchase agreement" governed by foreign law	If the repurchase agreement has the same features as a French repurchase agreement governed by the French Monetary and Financial Code: it is likely that the exemption will apply. Otherwise, the analysis should be made on a case by case basis.	Case by case analysis
Put/call option	Yes upon exercise of the put/call options	Case by case analysis
Cross put/call options	Yes	Yes (documentation usually considered as written deed)



Please note that following transactions benefit from a specific tax exemption:

- share buy-back by the issuing company;
- transfer of shares in companies placed under a safeguard or receivership procedure;
- share-for-share exchanges which fall within the scope of roll-over relief under the EU Merger Directive, as implemented in France;
- transfer of shares between companies that are members of a French tax consolidation group.

## Conclusion

Even though the new provisions could, as a matter of principle, potentially result in the payment of transfer taxes for some OTC transactions on listed shares, the way these provisions could effectively be enforced is still questionable and might significantly reduce the impact of the new regulations.


Professional organizations have jointly asked the French Tax Authorities to promptly provide clarifications on the detailed scope of the new provisions and the conditions for implementing these new rules.

For more detailed information, please do not hesitate to contact your local PwC contact person or alternatively any of the people listed below.

### Landwell & Associés

Philippe Vaysse	+ 33 1 56 57 40 36	philippe.vaysse@fr.landwellglobal.com
Virginie Louvel	+ 33 1 56 57 40 80	virginie.louvel@fr.landwellglobal.com
Séverine Defert	+ 33 1 56 57 45 88	severine.defert@fr.landwellglobal.com
Maud Poncelet	+ 33 1 56 57 18 35	maud.poncelet@fr.landwellglobal.com
Chloë Sebaoun- Nessim	+ 33 1 56 57 44 25	chloe.sebaoun-nessim@fr.landwellglobal.com

This publication has been prepared for general guidance on matters of interest only, and does not constitute professional advice. You should not act upon the information contained in this publication without obtaining specific professional advice. No representation or warranty (express or implied) is given as to the accuracy or completeness of the information contained in this publication, and, to the extent permitted by law, Landwell & Associés does not accept or assume any liability, responsibility or duty of care for any consequences of you or anyone else acting, or refraining to act, in reliance on the information contained in this publication or for any decision based on it. This publication (and any extract from it) must not be copied, redistributed or placed on any website, without Landwell & Associés' prior written consent. © 2011 Landwell & Associés

Landwell & Associés is a member of the PwC international network, of which each member is a separate legal entity.  
 is the brand under which these members conduct their activities.