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## New challenges in tax law on the example of subsidiary taxation of financial markets in French law

### Abstract

This article raises the issue of new challenges related to the application of tax law on the example of subsidiary taxation of financial markets in French law. Technological progress, which is often revealed first in the financial market, generates the need to take into account new types of transactions shaped by trading practices also in the tax law dimension. This analysis has been divided into two main parts, the first of which analyzes the issue in question from the perspective of the financial transaction tax contained in the Monetary and Financial Code (fr. *Taxe sur les transactions financières* (Article 235 ter ZD), while the second refers to the high frequencies trade tax (fr. *Taxe sur les opérations à haute fréquence* (Article 235 ter ZD bis). As part of this study, using primarily the dogmatic-legal method and, additionally, the comparative method, the basic regulatory challenges of the modern financial market were identified in the tax law dimension. This analysis, made on the example of French law regulations, may constitute an interesting source of inspiration for reflection on the state of regulations in other countries, in particular the countries of Central and Eastern Europe, that very often modeled themselves on French law and, consequently, may benefit from the knowledge about the French regulations in the discussed matter.

**Keywords:** French law, financial market, tax law, financial transaction tax, high-frequency trading.

### Introduction

The challenges related to the application of tax law on the example of subsidiary taxation of financial markets in French law are particularly important, as in today's global economy is marked by fast technological progress. This technological progress, which is often revealed first in the financial market, gener-

ates the need to take into account new types of transactions developed by trading practices in many different fields<sup>1</sup>.

As the tax law is also trying to cover the new financial market transactions, the present analysis, apart from the introduction and conclusions, has been divided into two main parts. The first part will present the financial transaction tax contained in the French Monetary and Financial Code (*fr. Taxe sur les transactions financières*), while the second part will refer to the high frequencies trade tax (*fr. Taxe sur les opérations à haute fréquence*), also being regulated in the above mentioned Code. This analysis, made on the example of French law regulations, may constitute an interesting source of inspiration for other countries, and may be one of the arguments in the discussion about the compatibility of tax regulations with the current economic practice. The article may also be considered as theoretical basis for the response to the question related to the appropriateness of taxing all transactions on the financial market and its impact on the complexity of the tax system.

The author, to achieve the goals of this paper, makes use of the functional approach of the comparative legal method, the historical-descriptive and the dogmatic method, with particular emphasis on the French law regulations. The methodology that is used should help to understand presented issues not only in much broader context but also in the context of a very specific legal environment of financial market that is marked by cross border and supranational nature<sup>2</sup>. The new challenges related to financial market taxation are being analysed also in the current geopolitical situation, where the need to ensure the state security, as well as the legal certainty is much more important than before<sup>3</sup>. In this field, the latest publications indicate that financial market may be considered as the common good being one of the most important elements of the functioning of a State<sup>4</sup>.

As for the specificity of legal environment covering financial market, it is worth to underline, that the regulations in this field are not only marked by the influence of economic science, but also have the interdisciplinary character. The above is related to the fact, that within financial market we can select different components, being regulated both by public and private law measures, like for example: banking law, capital market law, insurance law, payment institutions

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<sup>1</sup> A. Popovič, J. Sábo, *Taxation of Robots and AI – Problem of Definition*, "Financial Law Review" 2022, Issue 25, s. 1 i n.

<sup>2</sup> M. Mariański, *Transgraniczność jako podstawowa cecha prawa rynków finansowych*, [w:] E. Feret, P. Majka (red.), *Księga Zjazdu Katedr i Zakładów Prawa Finansowego i Prawa Podatkowego „Misja prawa finansowego – wyzwania współczesności”*, Rzeszów 2023, s. 283

<sup>3</sup> M. Krzykowski, M. Mariański, J. Zięty, *Principle of reasonable and legitimate expectations in international law as a premise for investments in the energy sector*, "International Environmental Agreements: Politics, Law and Economics" 2021, nr 1, s. 75 i n.

<sup>4</sup> T. Nieborak, *Rynek finansowy jako dobro wspólne*. „Ruch Prawniczy, Ekonomiczny i Socjologiczny 2017, nr 79(3), s. 162.

and payment service providers law, or electronic money institutions<sup>5</sup>. As a consequence the financial market law may be characterized by above-average role of soft-law norms<sup>6</sup>, interconnection of public law and private law<sup>7</sup> as well as a cross border nature of the majority of transactions<sup>8</sup>.

The particular emphasis on the French law regulations, as key element of comparative analysis within the present work, is related to the fact that a lot of EU member state systems were often modeled on French law, mainly in the field of civil regulations and capital market regulations<sup>9</sup>. This was related to the fact, that from the times of Napoleon the spread of French law was considered as one of the elements of geopolitical consolidation and the creation of international community that shares the esprit of the Napoleon's codes<sup>10</sup>.

In this context, the specificity of French law is compatible with the specificity of modern financial market<sup>11</sup>. The financial market has always been a place where different innovations appeared first and a place where new legal concepts were introduced. This innovative character of financial market law is also underlined by the crucial role of *soft law* regulations, that in the form of recommendations, interpretations, or guidelines are often more important than traditional hard law measures. These type of regulations considered as subsidiary elements of the traditional sources of law, are also giving additional impulse for the creation of new normative solutions<sup>12</sup>, including tax law regulations. In this context the legislative initiatives at the level of the European Union and national laws indicate that there is an effort to adopt a certain basic regulatory framework, including tax law, that would solve some issues related to modern economy<sup>13</sup>. Of course we should not ignore the fact, that we have some regulatory limitations on

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<sup>5</sup> Sz. Balcerek, *Nadzór Komisji Nadzoru Finansowego nad działalnością zarządzających alternatywnymi spółkami inwestycyjnymi*, „Przegląd Prawa i Administracji” 2022, nr 130, s. 142 i n.

<sup>6</sup> Z. Ofiarski, *Rola soft law w regulacji rynku finansowego na przykładzie rekomendacji i wytycznych Komisji Nadzoru Finansowego*, [w:] A. Jurkowska-Zeidler, M. Olszak (red.), *Prawo rynku finansowego. Doktryna, instytucje, praktyka*, Warszawa 2016, s. 39.

<sup>7</sup> M. Mariański, *Rynek finansowy jako miejsce przenikania się norm prawa prywatnego i prawa publicznego*, „Studia Prawno-Ekonomiczne” 2016, nr 100, s. 123.

<sup>8</sup> M. Mariański, *Transgraniczność jako ...*, s. 283 i n.

<sup>9</sup> M. Mariański, *Problematyka regulacji rynku finansowego w ujęciu transgranicznym. Analiza na przykładzie prawa polskiego i prawa francuskiego*, Olsztyn 2020, s. 14.

<sup>10</sup> B. Lewaszkiewicz-Petrykowska, *Współczesne prawo cywilne a Code civil Napoleona jako dziedzictwo wielowiekowej kultury prawnej*, „Czasopismo Prawno-Historyczne” 2005, nr 2, s. 121.

<sup>11</sup> H. Causse, *Droit bancaire et financier*, Paryż 2015, s. 23.

<sup>12</sup> G. Sęga, *Soft law jako instrumentarium zabezpieczające ochronę uczciwej konkurencji na rynku kapitałowym – zagadnienia wybrane*, „Internetowy Kwartalnik Antymonopolowy i Regulacyjny” 2021, nr 1(10), s. 113.

<sup>13</sup> L. Hrabčák M. Štrkolec *EU Regulation of the Crypto-Assets Market*, „Białostockie Studia Prawnicze” 2024, nr 29, s. 28.

the financial market related to the phenomenon of fragmentation of law, that is reinforced by the horizontal model of law-making, the mutual and consensual nature of obligations, the interactivity, diversity and informality of sources<sup>14</sup>.

## 1. French General Tax Code

The General Code of Taxes (*fr. code général des impôts - hereinafter referred to as CGI*) is an act regulating the material aspects of tax law in France, which, together with the Code of Tax Procedures (*fr. Code de procédure fiscale*), constitutes the most important legal act of French financial law.

The current method of regulating French substantive tax law is the result of gradual evolution, where previously existing separate codes regulating specific types of taxes were merged into one legal act, which took place under four decrees and one regulation in 1950<sup>15</sup>.

Currently, the French General Tax Code consists of two main books. The first book, concerning the tax base and the payment of particular types of taxes, and the much shorter second book (the entries of which often refer to acts on tax proceedings), concerning the collection of taxes. The key aspects of substantive tax law in France are therefore found in Book One of the CGI, which is further divided into three main parts. The first part is devoted to the so-called state taxes (*fr. impôts d'Etat*) such as PIT, CIT or VAT, the second part - taxes collected by local government units, while the third part contains dispositions common to all types of taxes. Additionally, each of the three above-mentioned parts are divided into titles (*fr. titres*) and chapters (*fr. chapitres*).

In the first book of CGI, in its first title called Direct taxes and assimilated taxes, we can find the Chapter III titled diverse taxes, in which we find, in section XX, tax on financial transactions (*fr. Section XX: Taxe sur les transactions financières*) and in section XXbis high frequencies trade tax (*fr. Section XX bis: Taxe sur les opérations à haute fréquence*).

The above mentioned Chapter III titled diverse taxes, is one of the most developed part of French General Tax Code. It is worth noting that in this chapter we can find twenty three sections, where every section is referred to a different tax. Among these chapter, apart from the taxes analyzed in this paper, we can find the regulation referred especially to: exceptional contribution on high incomes (*Section 01 : Contribution exceptionnelle sur les hauts revenus*)<sup>16</sup>, tax on

<sup>14</sup> M. Mariański, *Freedom of establishment and freedom of capital movement as a limitation to excessive regulation of the financial market*, "Prawo i Więź" /2024, nr 2(49), s. 30.

<sup>15</sup> Arrêté du 6 avril 1950 portant refonte et codification des arrêtés pris pour l'application des lois réunies dans le code général des impôts, JORF n°0103 du 30 avril 1950.

<sup>16</sup> M. Popławski, B. Pahl, M. Mariański, *Wpływ francuskiego Trybunału Konstytucyjnego (Conseil constitutionnel) na krajowy system podatkowy. Analiza na przykładzie podatku od bardzo wysokich dochodów (taxe sur les très hauts revenus)*, „Przegląd Prawa Konstytucyjnego” 2023, nr 5, s. 327 i n.

salaries<sup>17</sup>, annual tax on vacant housing<sup>18</sup>, tax on high rents for small-scale housing<sup>19</sup>, annual contribution on rental income<sup>20</sup>, tax on information or interactive services of a pornographic nature<sup>21</sup>, tax on excess provisions of damage insurance companies<sup>22</sup>, special levy relating to conversion differences on loans in foreign currency<sup>23</sup>, exceptional contribution on corporate tax<sup>24</sup>, social contribution on corporate tax<sup>25</sup>, additional contribution to corporate tax in respect of the amounts distributed<sup>26</sup>, tax on state default swap contracts<sup>27</sup>, tax for financing the support fund for local authorities<sup>28</sup>, tax on the results of railway companies<sup>29</sup>, or preventive archeology tax<sup>30</sup>.

The above mentioned list of diverse taxes shows, what is very often articulated in French doctrine, that the multiplicity and diversity is considered as the main feature of the French tax system<sup>31</sup>.

## 2. French tax on financial transactions

As it was written in previous point of this work, in the Chapter III of General Tax Code titled diverse taxes, we can find the Section XX, where the tax on financial transactions is regulated. This tax originally called *Taxe sur les transactions financières* is described in only one article – namely art. 235 ter ZD of General Tax Code.

This article is composed of twelve points, and their actual version is a result of two legal acts: first from 29 December 2016<sup>32</sup> and second from 28 December 2018<sup>33</sup>.

<sup>17</sup> Section II : Taxe sur les salaires.

<sup>18</sup> Section III : Taxe annuelle sur les logements vacants.

<sup>19</sup> Section V : Taxe sur les loyers élevés des logements de petite surface.

<sup>20</sup> Section V bis : Contribution annuelle sur les revenus locatifs.

<sup>21</sup> Section VI : Taxe sur les services d'informations ou interactifs à caractère pornographique.

<sup>22</sup> Section XIV : Taxe sur les excédents de provisions des entreprises d'assurances de dommages.

<sup>23</sup> Section XIV bis : Prélèvement spécial relatif aux écarts de conversion sur les prêts en monnaie étrangère.

<sup>24</sup> Section XVII bis : Contribution exceptionnelle sur l'impôt sur les sociétés.

<sup>25</sup> Section XIX : Contribution sociale sur l'impôt sur les sociétés.

<sup>26</sup> Section XIX bis : Contribution additionnelle à l'impôt sur les sociétés au titre des montants distribués

<sup>27</sup> Section XX ter : Taxe sur les contrats d'échange sur défaut d'un Etat

<sup>28</sup> Section XXI bis : Taxe pour le financement du fonds de soutien aux collectivités territoriales.

<sup>29</sup> Section XXII : Taxe sur le résultat des entreprises ferroviaires.

<sup>30</sup> Section XXIII : Taxe d'archéologie préventive.

<sup>31</sup> M. Mariański, *Inne obowiązkowe podatki gminne we Francji według francuskiego Generalnego Kodeksu Podatków*, „Studia Iuridica Toruniensia” 2021, nr 29, s. 194.

<sup>32</sup> Fr. loi n° 2016-1917 du 29 décembre 2016 de finances pour 2017, JORF n°0303 du 30 décembre 2016

<sup>33</sup> LOI n° 2018-1317 du 28 décembre 2018 de finances pour 2019, JORF n°0302 du 30 décembre 2018

In the first point of art. 235 ter ZD, we can read that this tax applies to any acquisition for consideration of a capital security, within the meaning of Article L. 212-1 A of the Monetary and Financial Code (*fr. Code monétaire et financier*), or of an assimilated capital security, within the meaning of article L. 211-41 of the same code, as long as this security is admitted to trading on a French, European or foreign regulated market, within the meaning of Monetary and Financial Code, and that its acquisition gives rise to a transfer of ownership, and that this security is issued by a company whose head office is located in France and whose capitalization stock market exceeds one billion euros on December 1 of the year preceding the tax year<sup>34</sup>. It is also precised that acquisition, within the meaning of the first paragraph, means the purchase, including in the context of the exercise of an option or in the context of a forward purchase having previously been the subject of a contract, exchange or allocation, in return for contributions, of capital securities mentioned in the same first paragraph<sup>35</sup>.

The second point of art. 235 ter ZD, gives a list of nine situations where the tax is not applicable. This list contains among others purchase operations carried out as part of an issue of equity securities, including when this issue gives rise to a firm underwriting and guaranteed placement service<sup>36</sup>; operations carried out by a clearing house or by a central depository<sup>37</sup>; acquisitions carried out as part of market making activities<sup>38</sup>; transactions carried out on behalf of issuers with a view to promoting the liquidity of their shares within the framework of accepted market practices accepted by the Financial Markets Authority<sup>39</sup>; acquisitions of securities between member companies of the same group<sup>40</sup>; temporary

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<sup>34</sup> In terms of security, it should be underlined that the French doctrine has developed the concept of titre negotiable that is wider than the classical securities. M. Mariański, M. Lemonnier, *Francuska koncepcja tytułu zbywalnego (titre négociable) a regulacje rynków finansowych*, [w:] W. Rogowski (red.) *Regulacje finansowe. FinTech - nowe instrumenty finansowe – resolution*, Warszawa 2017, s. 181

<sup>35</sup> The French legislator also added that securities representing those mentioned in the first paragraph issued by a company, regardless of the place of establishment of its head office, are subject to tax.

<sup>36</sup> Within the meaning of Article L. 321-1 of the French Monetary and Financial Code

<sup>37</sup> M.M. Kosińska, *Mechanizmy stabilizowania centralnych kontrpartnerów*, „Studia Ekonomiczne. Zeszyty Naukowe Uniwersytetu Ekonomicznego w Katowicach” 2017, nr 346, s. 37.

<sup>38</sup> These activities are defined as the activities of an investment firm or credit institution or entity of a foreign country or a local firm that is a member of a trading venue or a market of a foreign country when the company, establishment or entity concerned acts as an intermediary taking part in transactions in a financial instrument,

<sup>39</sup> On the French Financial market authority see more: M. Mariański, *Instytucje konsultacyjne wspomagające pracę organów nadzoru nad rynkiem finansowym we Francji*, „Przegląd Ustawodawstwa Gospodarczego” 2023, nr 11, s. 8.

<sup>40</sup> M. Mariański, *The specificity of the French concept of a group of companies — analysis based on the judgment of the French Supreme Court of 4th February 1985 in the Rozenblum case*, „Przegląd Ustawodawstwa Gospodarczego” 2022, nr 11, s. 24.

transfers of securities mentioned in point 10° of Article 2 of Regulation (EC) No. 1287/2006 of the European Commission; acquisitions of capital securities by company mutual funds<sup>41</sup>; the repurchases of their capital securities by companies when these securities are intended to be transferred to members of a company savings plan within the framework of Labor Code; and finally to acquisitions of bonds exchangeable or convertible into shares.

The third point of art. 235 ter ZD states that, the tax is based on the acquisition value of the title. In the event of an exchange, in the absence of an acquisition value expressed in a contract, the acquisition value corresponds to the listing of the securities on the most relevant market in terms of liquidity<sup>42</sup> at the close of the trading day preceding that on which the exchange occurs. In the event of an exchange between securities of unequal value, each party to the exchange is taxed on the value of the securities it acquires.

In the point four the French legislator precised that this tax is due on the first day of the month following that during which the acquisition of the title occurred. The tax rate is set at 0.3%, according to point five of art. 235 ter ZD.

The point six of art. 235 ter ZD describes the liquidation procedure that is done by the operator providing investment services, having executed the order to purchase the security or having negotiated for its own account, regardless of its place of establishment<sup>43</sup>. This regulation is developed in the next point, where we can read that if the central depository holding the issue account for the capital security is subject to 3° of II of Article L. 621-9 of the Monetary and Financial Code and delivers the security, the debtor provides the central depository with the needed information before the 5th of the month following the acquisitions and designates the member from whose account the tax can be deducted. As for the needed information, in point eight of the art. 235 ter ZD, it is detailed that if the central depository holding the capital security issue account collects from its members or those liable to pay, information relating to operations falling within the scope of the tax - which includes the amount of tax due for the tax period, the serial numbers of the operations concerned, the date of their completion, the designation, number and value of the securities the acquisition of which is taxable and the transactions exempt.

According to point nine of art. 235 ter ZD, the central depository holding the issue account for the security sends the declaration to the tax administration, before the 25th of the month following the acquisitions mentioned in point I of this article. The declaration specifies in particular the amount of tax due and

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<sup>41</sup> Within the framework of Book III of the third part of the French Labor Code.

<sup>42</sup> Within the meaning of Article 9 of the regulation ( CE) 1287/2006 of the Commission, of August 10, 2006.

<sup>43</sup> But when several operators are involved in the execution of the purchase order for a security, the tax is liquidated and due by the person who receives the purchase order directly from the final purchaser.

paid by each taxpayer. In point ten of the present article it is detailed that the central depository holds a separate accounting for the registration of operations linked to the collection of the tax. It ensures a consistency check between the declarations it receives and the information in its possession as a central depository<sup>44</sup>.

In the last point of art. 235 ter ZD, the French legislator made reference to the procedures and sanctions, guarantees and privileges as already it was regulated in case of turnover taxes (*fr. taxes sur le chiffre d'affaires*), especially in terms of the way the tax is collected and controlled.

### 3. French tax on high frequencies trade

As it was written before, in the Chapter III of General Tax Code titled diverse taxes, we can also find the Section XX bis, where the tax on high frequencies trade tax is regulated. This tax originally called *Taxe sur les opérations à haute fréquence* is described in only one article – namely art. 235 ter ZD bis of General Tax Code. This article is composed of seven points, and their actual version is a result of the law from December 2013<sup>45</sup>.

The first provisions of above mentioned article indicate that companies operating in France, are subject to a tax on high-frequency transactions relating to capital securities, within the meaning of art. L. 212-1 A of the Monetary and financial code, if these transactions are carried out for own account via automated processing devices.

What is important, the French legislator introduced in point two of art. 235 ter ZD bis, the legal definition of high-frequency trade. Namely, constitutes a high-frequency transaction on capital securities, the fact of habitually sending orders using an automated processing device for these orders characterized by the sending, modification or the cancellation of successive orders on a given security separated by a period less than a threshold fixed by decree. However, this threshold cannot exceed one second. As for automated processing device, the French legislator defines it as any system allowing 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 of placing the order as well as the price and quantity of the financial instruments concerned. But the systems used for the purposes of optimizing order execution conditions or routing orders to one or more trading platforms or to confirm orders - the do not constitute automated processing devices.

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<sup>44</sup> The information collected by the central depository is made available to the administration upon simple request. An annual report is submitted to the administration on the nature and extent of the controls implemented.

<sup>45</sup> LOI n° 2013-1279 du 29 décembre 2013 de finances rectificative pour 2013, JORF n°0303 du 30 décembre 2013.



According to point IV of art. 235 ter ZD bis, as soon as the rate of cancellation or modification of orders relating to high-frequency operations, with the exception of operations mentioned in point III of this article, exceeds a threshold, defined by decree, over a trading day, the tax due is equal to 0.01% of the amount of canceled or modified orders exceeding this threshold. This threshold cannot be less than two thirds of the orders transmitted. The tax on high frequencies trade is due on the first day of the month following that during which the canceled or modified orders were transmitted.

In the light of the instruction contained in point VI of art. 235 ter ZD bis, the tax is declared and liquidated on two possible basis. First basis is related to the annex to the declaration mentioned in point 1 of art. 287 relating to the month or quarter during which the transmission of orders was carried out. Second basis, for those liable for value added tax subject to the simplified tax regime<sup>46</sup>, is related to the annual declaration filed during the year from which the tax is due. In every case the most important regulation is that the tax is paid when the declaration is submitted.

In the last point of art. 235 ter ZD bis, related to the collection and control of the tax, the French legislator made the reference, like in case of the *taxe sur les transactions financières*, to the same sanctions, guarantees and privileges as turnover taxes.

## Conclusion

The technological progress, that is often quickly taken into consideration by the financial market and that is related to the creation of new types of transactions is also a subject of analysis from the tax law perspective. The French tax law created one of the first attempts to cover the new financial market transactions by financial transaction tax (*fr. taxe sur les transactions financières*), and high frequencies trade tax (*fr. taxe sur les opérations à haute fréquence*).

This analysis, made on the example of French law regulations, is not only an interesting source of inspiration for other countries, but also a theoretical basis for the response to the question if taxation of all transactions on the financial market is not increasing too much the complexity of the tax system.

Already in the French doctrine, in terms of discussion about the effectiveness of the tax system<sup>47</sup>, the questions about the necessity of financial market taxation are raised<sup>48</sup>. Namely, the taxation of all the innovations on the financial market

<sup>46</sup> That is provided for in Article 302 septies A of CGI.

<sup>47</sup> T. Bourveau, F. Brochet, A. Garel *The Capital Market Consequences of Tenure-Based Voting Rights: Evidence from the Florange Act*, "Management Science" 2022, nr 68 (12), 2022, s. 9107 i n.

<sup>48</sup> J.-É. Colliard, *Les taxes sur les transactions financières : un outil dépassé ?*, "Revue d'économie financière" 2018, nr 131, s. 135 i n.

may have more disadvantages than benefits, as it may create even more complicated tax system<sup>49</sup>. Also the questions related to the limiting effect of excessive taxation are raised, as we may block the development of the market by taxing it<sup>50</sup>.

In the authors' opinion the response for above mentioned questions cannot be one dimensional. On the one hand, indeed, the financial market taxation is making the tax law even more complicated, that is especially visible on the example of French financial transaction tax. On the other hand, the tax regulation may be an impulse to introduce the definition of very specific constructions on the financial market – like in case of high frequencies trade tax where this type of trade was defined. In this context the doctrine already underlined that the digitalisation, as permanent element of our daily life, is both a big support as well as source of certain risks, mostly related to the uncontrolled use and transmission of data<sup>51</sup>.

It is also underlined that the idea of correcting financial markets by taxing some types of transactions, historically having the basis in J. M. Keynes theory, was introduced in France already in 2012. Since this time the further technological changes have appeared and today they are progressing much faster than before. The analysis related to the French financial market transactions may give additional theoretical arguments in the discussion about the way the financial markets are or can be taxed. This may be particularly important for other EU countries like Poland, where the financial market was reestablished in early nineties of 20<sup>th</sup> century, as a part of the transition from a centrally planned economy to a capitalist economy. What is important is also the fact that on the beginning of this transition the financial market regulation in Poland was inspired by the French concepts, that is why it seems reasonable to follow the solutions adapted in France in order to discuss their applicability in other systems, including in the field of tax law. But in the authors opinion this discussion is far from being finished and as the financial market is a special legal environment where public law interacts with private law, the researches in this field should be carried out on a continuous way. In the authors opinion the main advantage of financial market taxation is the introduction of legal definitions of several types of transaction that are being taxed. However we should always be aware of the fact that due to its specificity, the tax regulation of financial market is rather an example of regulatory succession towards socio-economic phenomena, than introducing a traditional proactive legal framework for conducting business activities<sup>52</sup>.

<sup>49</sup> G. Blanluet, N. Boynes, *Premières Réflexions autour de la taxe sur les transactions financières*, "Bull Joly Bourse" 2012, nr 10, s. 444

<sup>50</sup> S. Daniel, *Trading haute fréquence et manipulation de cours*, "Revue trimestrielle de droit financier" 2012, nr 3, s. 55; M. Galland, *La régulation du trading à haute fréquence*, "Bulletin Joly Bourse" 2012, nr 3, s. 129 i n.

<sup>51</sup> T. Nieborak, *Central Bank Digital Currency as a New Form of Money*, "Białostockie Studia Prawnicze" 2024, tom 29, s. 190.

<sup>52</sup> A. Zalcewicz, *Dylematy stanowienia prawa finansowego: następcość regulacji wobec zjawisk społeczno-gospodarczych czy antycypacja regulacyjna? – przyczynek do dyskusji*, [w:] E. Feret,

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## **Nowe wyzwania w prawie podatkowym na przykładzie subsydiarnego opodatkowania rynków finansowych w prawie francuskim**

### **Streszczenie**

Niniejszy artykuł porusza kwestię nowych wyzwań związanych ze stosowaniem prawa podatkowego na przykładzie subsydiarnego opodatkowania rynków finansowych w prawie francuskim. Postęp technologiczny, który ujawnia się bardzo często w pierwszej kolejności na rynku finansowym, generuje potrzebę uwzględnienia nowych typów transakcji kształtowanych przez praktykę obrotu również w wymiarze podatkowym. Niniejsza analiza została podzielona na dwie zasadnicze części, z których pierwsza analizuje przedmiotowe zagadnienie z perspektywy zawartego w Kodeksie monetarnym i finansowym podatku od transakcji finansowych (*fr. Taxe sur les transactions financières (Article 235 ter ZD)*), natomiast druga odwołuje się do podatku od handlu wysokich częstotliwości (*fr. Taxe sur les opérations à haute fréquence (Article 235 ter ZD bis)*). W ramach niniejszego opracowania, posługując się przede wszystkim metodą dogmatyczno-prawną oraz poślikowo metodą porównawczą, dokonano wyodrębnienia podstawowych wyzwań regulacyjnych współczesnego rynku finansowego w wymiarze prawno-podatkowym. Analiza ta, dokonana na przykładzie regulacji prawa francuskiego, może stanowić interesujący asumpt do refleksji nad stanem regulacji w innych państwach w tym w szczególności państwach Europy środkowej i wschodniej, które bardzo często na prawie francuskim się wzorowały i w konsekwencji mogą skorzystać na znajomości regulacji francuskich w omawianej materii.

**Słowa kluczowe:** prawo francuskie, rynek finansowy, prawo podatkowe, podatek od transakcji finansowych, handel wysokiej częstotliwości.