



Staying on Course

Will visibility be better in 2011? The crisis was not the end of the world, as some had announced, or even the end of a world. The vast majority of businesses were able to react rapidly and reorganise in order to cope with the drop in the market and the lack of liquidity. Some were overcome by the magnitude of the loss of turnover, others swept away because their exposure made them unable to resist the ill winds. Many are though now sufficiently armed to continue their development, which could undoubtedly be stronger and more rapid in a more stable institutional environment.

It is public rather than business finances which are suffering the most. States which overspent are battling to balance the budget. They continue to believe that new and never-ending political measures can mitigate market inadequacies, even though the markets in fact suffer from over regulation and not the other way around.

More than anything else, businesses, as well as the social economy and even local authorities, depend on stable institutions and laws, the tax framework and rules of the game which will allow them to organise themselves in the long term, rather than living with continual uncertainty about the products they will be able to use in the future (Reach Directive), the resources they will be able to employ and the social laws which may be applied.

As lawyers, we cannot take a political stance, but we have to take account of this state of affairs, the instability and uncertainty, so that we can help our clients to find clear rules in the mass of regulations, to assist them in identifying stable strategies in a fluctuating environment, to favour long-term strategies in a legal world which is changing rapidly in the short-term. We need to help them stay on course in a time of upheaval, offering our clients the tools and resources needed whilst drawing up a programme of action and being able to readapt speedily.

In addition to legal techniques, which we should master completely in order to support our clients, our role is also to accompany economic and social operators, entrepreneurs, managers and the leaders of local authorities in moving ahead with their projects.

Jean-Philippe DELSOL
Chairman of the Board of Directors
and CEO



DE LA RELATION

Newsletter of DELSOL Avocats - N°3 - March 2011

Mergers and acquisitions: the firm's flagship activity

World-wide mergers and acquisitions had reached a global amount of \$ 4,500 billion in 2007. This total had dropped by some 53% in 2009, with Europe being more affected than the USA and, above all, more than Asia. International forecasts for 2011 are pointing to an amount of over \$ 3,000 billion. According to the AGEFI, by 2011 the amount generated by mergers and acquisitions will be almost double that of 2009.

The consequences of the crisis have not however disappeared, as these transactions will still represent less than one quarter of the record 2007 level of € 149.9 billion.

Each year, the firm's "Corporate – Mergers and Acquisitions" department is involved in at least twenty transactions of various sizes and in very varied business sectors.

Our role in a merger and acquisition transaction

Because of the number of operators involved (buyers, sellers, auditors, employee representatives, management teams etc), mergers and acquisitions are complex transactions, which demand that the often divergent interests of these operators, and the multiplicity of factors, be taken into account to ensure that the interest of the transaction, in terms of creating value, is protected.

When we advise the buyer we ensure

that the acquisition is completed under the best possible conditions, in the light of the objectives sought (economies of scale, control of the value chain, acquisition of technology or talent, access to new markets, reducing competition, tax optimisation etc). We are involved in the drafting and negotiation of the various contractual documents, and ensure that risks are controlled, in particular those which may arise post closing.

Prior due diligence reviews of contracts which are binding on the target company are carried out, together with a review of its tax position and the risks of tax adjustment, the social climate and key human resources management, real estate commitments, its intangible assets and their protection, any pending or potential litigation, internal procedures and the level of security they generate etc.

As a result, we are then in a better position to prepare and negotiate warranties to be provided by the sellers.

When we advise the seller we try to maximise the sale price, ensure payment, ensure that the transaction includes all assets and employees, minimise any risk of subsequent action which could challenge the terms and conditions of the acquisition, protect the position of minority shareholders, and protect the durability of the company, which is often a life's work. We also bear in mind the personal assets of the seller or sellers with the aim of tax optimisation.

We are therefore involved in all stages of the transaction: upstream, strategic advice relating to the management of the project: preparation (audits, optimisation of the takeover and competition aspects, and stock market regula-

tions); the closing (negotiation and drafting of the acquisition documents: letter of intent, transfer agreement, bank documentation, asset and liability warranties, shareholder agreements, management packages, the issuing of complex negotiable instruments, takeover bids etc); and downstream with post-acquisition follow-up, tax consolidation, acquisition disputes.

This is why we think that a law firm working on a merger and acquisition transaction needs to have a structured multi-disciplinary team, which has the ability to take up all of these challenges. The team needs to mobilise its cutting-edge and varied skills: company law, contract law and tax law, employment law, real estate law, intellectual property, public law and banking law, stock market law, competition law etc. The team will also need to be fully aware of economic and financial mechanisms and company valuation methods, and understand its client's strategic stakes and its economic environment. Anticipation, the ability to transmit information and to negotiate, together with a sense of perspective and determination, are important skills.

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Le Magazine des Affaires ranks DELSOL Avocats number 2 in the Smid Cap sector

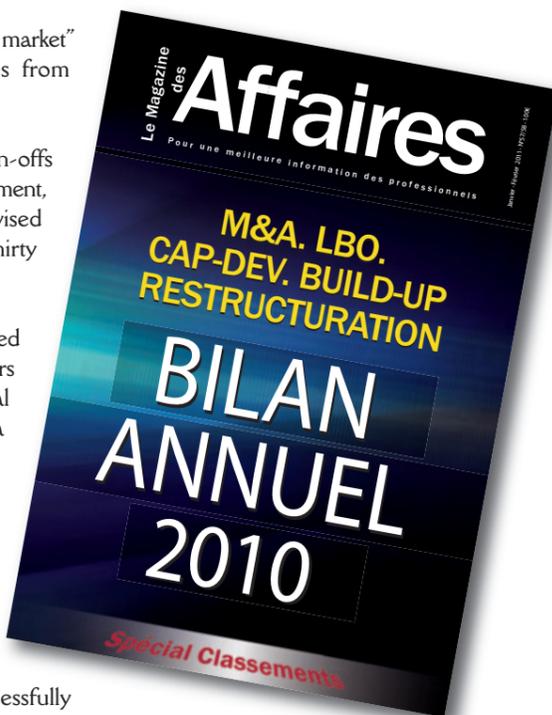
Our mergers and acquisitions team is mainly involved in “small and mid market” transactions, in other words companies whose valuation ranges from € 300,000 to € 100 million.

Those transactions entrusted to us concern external growth or spin-offs by industrial groups, LBOs by financial investors and/or company management, and private equity transactions. Some of the companies we have advised are listed companies. In 2010, the firm was involved in around thirty transactions, involving a global amount of some € 350 million.

Le Magazine des Affaires, an independent monthly magazine dedicated to corporate finance, organises an annual ranking of service providers involved in the various investment, financing, financial advice, legal and accounting services in France, with the cooperation of a professional in economic analysis and intelligence.

In its annual report for 2010 “M&A – LBO – Cap-Dev – Build-up”, published in its issue number 57/58 of January-February 2011, Le Magazine des Affaires ranked DELSOL Avocats second of the international law firms working in the Smid Cap sector in France (valuations from € 0 to 150 million).

Transactions officially announced in 2010, or announced and successfully completed in 2010, were taken into account, involving mergers and acquisitions (with a base of a 20% stake), LBO/OBO/LMBO/MBI and capital development, joint ventures and “distressed LBO” (in the case of a change of control of a company in difficulty).



MERGERS AND A

Our Mergers & Acquisitions department brings Bravard and Caroline Wach), together with involved with international groups. Philippe corporate groups, and Amaury Nardone works (Frédéric Subra), social law (Anne Imbert

Franck BUFFAUD has developed acknowledged expertise in cross-border operations including investments in France (mergers/acquisitions, due diligence, letters of intent, sale agreements, asset and liability warranties, corporate restructuring, mergers, spin-offs and contributions), investments abroad (business set-ups – creation of subsidiaries – corporate acquisitions – joint ventures) and international contracts (distribution, license agreements etc).

Operations managed by Franck BUFFAUD in 2010 include



Let's talk about the law

Waiting for the spring – the 2011 Finance Act!

The end of 2010 brought in its lot of tax measures through the 2011 Finance Act and the amended 2010 Finance Act. Compared with last year, which saw the reform of the business tax, and while awaiting for the reform of asset taxation announced for the spring (removal of the tax cap, of the wealth tax?), the 2010 vintage was limited to a hotchpotch of austerity measures.

Personal income tax

Strengthening of income and capital gains taxation:

- the tax rate on capital gains on personal and real estate has been harmonised at 19%, the same as the levy at source on dividends and interest,
- taxation of capital gains on the sale of securities, as from the first Euro,
- social security contributions on annual income generated by the “euros” compartment of life insurance policies.

Increase of the personal income tax marginal rate from 40% to 41%.

Increase in social contributions, from 12.1% to 12.3%.

Toughening of the conditions to benefit from tax relief on personal income or wealth tax exemption for subscriptions to the share capital of small or medium-sized businesses.

Some activities are now excluded, such as financial or real estate activities or activities which provide guaranteed income. There are new restrictions on investments made through holding companies; the period during which any reimbursement is prohibited is increased from 5 to 10 years.



Frédéric SUBRA
Partner of
« Tax Law »
Département

Major changes have been made to conditions for investing in FIP or FCIP.

10% reduction for the majority of tax exemptions which are also subject to an overall cap (only tax credits for child care, the employment of domestic workers and investments in social housing for rent in the DOM-TOM are spared).

Strengthening of the overall cap on tax exemptions which for 2011 have dropped to € 18 000 for the fixed part (compared with € 20 000 for last year), and 6% of taxable income for the variable part (compared with 8% last year).

Corporate taxation

Sole proprietorship: charges which are not incurred for the purpose of the business, and income which is not derived from it, can no longer be counted as business income, but must be calculated as separate results depending on their nature (real estate income, income from securities etc).

Removal of certain provisions deemed abusive by

the legislator:

- removal of the accumulation of the exemption on dividends paid under parent-subsiary rules and the deduction of short term capital losses on the distributing subsidiary's shares (distribution of dividends followed by a transfer or merger),
- strengthening of provisions relating to under-capitalisation by extending them to all loans from outside the group for which a personal security or collateral is provided either directly or indirectly by a group company (except for loans negotiated in the context of a takeover),
- neutralisation of inter-group transfers in order to determine whether or not a capital loss is short-term (transfers within the group taking place within the first two shareholding years),
- limitation on the amount of tax credits to be set off, in the case of round trip transactions ex coupon.

Parent subsidiary rules: removal of the cap on the share in expenses and costs at the actual amounts incurred. In all cases, this share is now set at 5% of the amount of dividends.

Research tax credit: exclusion of certain sums paid to intermediaries as remuneration for consulting services (“success fees”) and reduction of operating expenses taken into account.

Lease-back operations: possibility to benefit from the reduced 19% rate under certain conditions, and perenity of the spreading of capital gains.

VAT

Introduction of a consolidated payment system for company groups, so that one of them is the sole taxpayer for the entire group. Contrary to the tax consolidation system, this will not allow for tax savings, but is intended to improve group cash flow by

ACQUISITIONS: Complementarity in the face of complexity

together 16 lawyers, including 4 partners (Franck Buffaud, Jean-Philippe Delsol, Philippe Dumez and Amaury Nardone) and 2 of counsel (Séverine 11 paralegals. Even though each partner deals with a variety of projects, there are certain areas of specialisation. Franck Buffaud is mainly Dumez has recognised experience in advising Italian businesses and businesses in difficulty, Jean-Philippe Delsol in the advising of family regularly on LBOs and for listed companies. They also rely on the complementary expertise of other partners, in particular for tax matters Philippe Pacotte and Camille Rousset), and real estate (Nathalie Peyron).

the following:

LINPAC	Sale of all share capital of the company Ident SAS	FB, MJS
Natural person shareholders	Legal and tax assistance concerning the transfer of a corporate group (installation of photovoltaic systems – turnover of € 90 million) to a leading French company in the power industry	FB, GB
Bank pool	LBO with investment funds, bank financing of € 10 million	FB, SB, MJS
VENTA HOLDING	Legal, social and tax assistance for the acquisition of all shares in SEDIL (wholesale food distribution)	FB, CSW, SH
WAHU MANAGEMENT Inc.	Legal and social assistance for the acquisition of the remaining shares in SGS PROMECA by its majority US shareholder, Manufacturers Group International Inc	FB, CSW, MJS

Apart from the classic tax and company law activity (incorporation, legal follow-up, long-term financing), **Jean-Philippe DELSOL**, a tax lawyer, has developed an acknowledged practice in **mergers and acquisitions** (due diligence, letters of intent, share transfer agreements, asset and liability warranties etc), **LBOs** (issuing of complex securities, shareholders' agreements etc), **corporate restructuring** (mergers, spin-offs, contributions), **takeovers of distressed companies** (bank negotiations, takeover plans etc), **corporate and asset taxation**, **asset management** for groups and family companies, asset structuring for company heads, internal group organisation.

He mainly advises industrial and service companies, family company groups and company heads.

permitting the direct set off of the VAT credit of a company against tax due by another.

Contribution économique territoriale (Regional economic contribution)

A number of clarifications or adjustments have been made to this contribution and to the CVAE (*Cotisation sur la Valeur Ajoutée des Entreprises* – contribution based on the added value of a business), which was created last year to replace the business tax, with no major change to the system, even if it has become stricter.

Urban planning taxes

There have been major changes to urban planning taxes for building permit applications filed from 1 March 2012. The local facilities tax and the various ancillary taxes and contributions have been replaced by **two additional taxes**: the development tax and the under-occupation contribution.

Review of property valuation

The **rental value of commercial premises** and premises used for non-commercial activities is to be reviewed on the basis of a tariff method which reflects the rental market. This review, whose reference date is 1 January 2012, will be taken into account for the calculation base as from 2014, after preparatory simulations carried out in 2011 in the test departments.



Operations managed by Jean-Philippe DELSOL during 2010 include the following:

COMPAGNIE DES MATIERES PREMIERES	Sale to the PAPREC group	JPhD, MZ
Famille Charrier, FINADIN	Sale of the Compagnie Lyonnaise de Cinéma	JPhD, HLD
GL EVENTS	Acquisition of the companies Sodem System and Action Développement	JPhD, HLD
GL EVENTS	Acquisition of Eurover shares held by Première Vision, stake increased from 24.5% to 49%	JPhD
Energy company	Sale of 51% of share capital of an energy company to a CAC 40 company	JPhD, HLD
ICMI	Acquisition of all shares in Argrema	JPhD, SB
KING JOUET	Sale of 25% of share capital to Giocchi Prezisi	JPhD, HLD, GB, SB
PLM	Acquisition of Résidence Maxim's/Espace Pierre Cardin	JPhD, MZ

In addition to classic company law activities (incorporation, legal follow-up, long-term financing), **Philippe DUMEZ** has developed an acknowledged practice in **corporate restructuring**, **rapprochement**, **business transfers** (agreements, leveraged operations – LBO, OBO, fund raising, shareholders' agreements etc), drafting of **contracts** (distribution, sale of goodwill), **collective procedures** (takeovers of distressed companies, transfer plans) and assistance to **Italian companies**. He is mainly involved with French and Italian industrial and service companies.



Operations managed by Philippe DUMEZ in 2010 include the following:

Clinic	Partial contribution of assets – several operations	PhD, FS, LB
Retirement fund	Share capital increase – several operations	PhD, JPhD, FS, XD
Food industry	Transfer of control in 2 stages	PhD, JPhD
UNILENS	Merger/absorption, capital increase and issuing of share warrants	PhD
PLM	Cross-border merger with a Luxembourg company	PhD, JPhD

Apart from the classic company law activities (incorporation, legal follow-up, long-term financing) and contract law (licenses, distribution agreements, leases etc), **Amaury NARDONE** has developed a recognised practice in **mergers & acquisitions** (external growth, spin-offs, due diligence, letters of intent, transfer agreements, asset and liability warranties etc), **LBOs** (acquisitions and sales, due diligence, issuing of complex securities, shareholders' agreements, management packages, senior and mezzanine loans etc), **stock market law** (admissions for trading, prospectus, public offers, follow-up and holding of annual general meetings, buy back programmes, securities issues etc), and **corporate restructuring** (mergers, spin-offs, contributions).



His practice mainly concerns industrial and service companies, including some listed companies, investment funds and managers.

Operations managed by Amaury NARDONE in 2010 include the following:

ABRAXA	Acquisition of Proteis Viandes from the Gastronomes Group	AN, SC
CEGID	Acquisition of Vedior Front RH	AN, SC, FS, VD
CEGID	Acquisition of VISA Informatique	AN, SC, FS, LG, PP, JB, AS, LK
CEGID	Acquisition of Axeteam	AN, SC
ERYTECH PHARMA	Raising of funds/share capital increase	AN, HLD
MARIETTON INVESTISSEMENTS	Takeover of the travel agency MNV-Messagerie Nationale Voyages	AN, SC, PP
PRODEO	Share capital increase	AN, EB
SIPAREX, CAPZANINE management de SOLICE	Secondary LBO over the SOLICE Group	AN, SC, FS
SOGREAH	Parity-based merger of the SO-GREAH and COTEBA groups to create ARTELIA	AN, JPhD, MZ, FS, VD

AN : Amaury NARDONE
AS : Aldo SEVINO
CSW : Caroline STEPHANE-WACH
EB : Estelle BY
FB : Franck BUFFAUD
FS : Frédéric SUBRA
GB : Guillaume BUFFLER
HLD : Henri-Louis DELSOL
JB : Jérôme BUSCH
JPhD : Jean-Philippe DELSOL
LB : Laurent BUTSTRAËN

LG : Laure GAYBELLILE
LK : Lorraine KLEIN
MJS : Marlène-Johanne SUBERVILLE
MZ : Michel ZAVALICHINE
PhD : Philippe DUMEZ
PP : Philippe PACOTTE
SB : Séverine BRAVARD
SC : Stéphanie CARACOSTAS-GUILLOT
SH : Sabrina HENOCQ
VD : Violaine DIEUDONNE
XD : Xavier DELSOL

Lauren BUTSTRAEN, partner of the “Not-for-profit organisations” department, led a conference in Lyon on 25 October 2010 organised by ADECC (*Association pour le développement des entreprises culturelles et créatives*) on partnerships between the cultural sector and the business world.

Since November 2010 **Xavier DELSOL**, partner in the “Not-for-profit organisations” department has been a member of a group of experts brought together by the Institut Pasteur to lead its think tank on new provisions relating to philanthropic trusts.

Laurent BUTSTRAEN (partner) and **Wilfried MEYNET** (of counsel) of the “Not-for-profit organisations” department led a conference in Marseille on 25 November with the law firm Deloitte and the Caisse d'Épargne Provence-Alpes-Corse, on the theme “*Les fonds de dotation, deux ans après, quel bilan?*”

They also signed a partnership agreement in the name of the firm at the end of 2010 with the Marseille Provence World Trade Centre, to accompany French or foreign companies wishing to set up in the Marseille area.



In Shanghai from 7 to 12 November 2010, **Alexis BECQUART**, partner in the “Not-for-profit organisations” department supervised preparatory work groups, commissions and general meetings held during the 22nd conference of the ICOM association, which brings together international operators involved in the cultural sector, including a number of museums. 3,600 professionals from around the world attended this event, whose main theme was “Museums for social harmony”. They formed cooperation projects between museums, renewed the professional committees and elected the association's new 2010-2013 executive committee. **Alexis BECQUART** explains: “As ICOM is an association regulated by the 1901 law, the general meeting must comply with French law, even though the members have the legal systems of their own countries in mind. My role, during these preparatory work meetings and during the general meeting itself, is to transcribe the contributions of each participant to ensure that they comply with French law, ensure that these contributions are expressed in their own language and simultaneously translated into French, English and Spanish. Exhausting but fascinating.”

Frédéric SUBRA, partner in the Tax department, made a contribution to the IACF (Institute of tax lawyers) conference in Lyon on 17 February concerning the tax aspects of international operations involving small and medium sized businesses, in cooperation with the regional public finances authority and the regional customs and indirect taxes authority.

At a conference organised in Paris on 6 December by Demeure Historique relating to sponsorship for the restoration of private historical monuments, **Lionel DEVIC**, of counsel in the “Not-for-profit organisations” department, spoke about endowment funds.

Wilfried MEYNET, of counsel in the “Not-for-profit organisations” department, led a seminar in Aix-en-Provence at the beginning of January 2011, with the IDA (Business Law Institute) and the AFJE (French Association of In-house Lawyers) for Provence-Alpes-Côte d'Azur-Corse, whose theme was the social responsibility of businesses: value and perception. His contribution concerned the social economy and the social responsibility of businesses.

Endowment fund 2010 DELSOL Avocats

The firm's endowment fund had selected the three projects it wanted to support during 2010. Its wish was to support general interest organisations, ideally new or recent, which had an innovative project whose aim was to sustain personal dignity, in particular work autonomy. From the thirty candidate files received, the fund's board preselected five. These five organisations presented their structure and their project in Paris on 28 October, during the National Forum of Associations and Foundations. They spoke for 15 minutes each before some 200 people and the jury, made up of three representatives of the endowment fund (Xavier Delsol, Laurent Butstraen, Jean-Baptiste Autric), the director of the National Forum of Associations and Foundations (Nicolas Douchement), and the representative of the association Claire Logis, the 2009 beneficiary (René Hortet).

The first prize of € 15,000 went to **Elevages sans frontières**, an association working with women raising milk goats in a rural area near Ouarzazai in Morocco: for each animal received, the family undertakes to give one animal born to another family (transmission of gift).

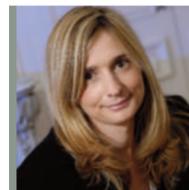
The second prize of € 6,000 went to the **Fondation Devenirs**, a foundation hosted by the Foundation Rhône-Alpes Futur, whose project concerns the housing of ex-prisoners, with the aim of finding them employment and providing assistance with the acquisition of training and people skills.

The third prize of € 3,000 went to **CIELO**, an association combating poverty in developing countries and whose project involves allowing displaced families, who are victims of armed conflict in Colombia, to return to work on their land.



In the press...

Xavier DELSOL (partner) and **Wilfried MEYNET** (of counsel) of the “Not-for-profit organisations” department, wrote an article published in **Nouvelles Fiscales** on 15 October entitled “*Le robot, la niche, le donateur et le Président*”. They also published an article in the monthly journal **AGEFI Luxembourg** of January 2011, entitled “*Le succès du fonds de dotation à la française, un enseignement pour la philanthropie luxembourgeoise?*”.



In the November 2010 edition of the monthly journal **Objectif Méditerranée**, **Camille ROUSSET**, partner in the “Employment and social protection” department gave her views as a specialist in European social law on Ryanair's decision to leave Marseille.

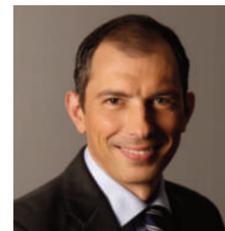
Jean-Baptiste AUTRIC, lawyer in the “Not-for-profit organisations” department wrote an article on tax rules applicable to the casino levy for the November 2010 edition of the monthly journal **Juristourisme**.

Amaury NARDONE, partner in the “Company law – Mergers & Acquisitions” department, wrote an article on “*Les dirigeants de sociétés cotées disposent d'un guide pour prévenir leurs manquements d'initiés*”, for the economic weekly **Le Tout Lyon** of 13 November.

Lionel DEVIC, of counsel in the “Not-for-profit organisations” department published seven articles in **Juris Associations** (Editions Juris, Dalloz Group): “*Fiscalité: lever les freins à la philanthropie privée*” (n° 425), “*Fonds de dotation et bonnes pratiques: le comité stratégique préconise*” (n° 426), “*T... comme titre de créance*” (n° 427), “*Valorisation immobilière: une nouvelle taxe sur les plus values*” (n° 428), “*Externaliser ses activités lucratives: mode d'emploi*” (n° 428), “*Fiscalité: une concurrence libre et non faussée*” (n° 430), “*Loi des finances: des modifications à la marge*” (n° 431).

Two articles in the daily newspaper **Le Parisien** of 5 and 10 November referred to a matter followed by **Aldo SEVINO**, partner in the “Public Law” department, concerning the recognition of a landslide as a natural disaster.

The 2010 guide to the best law firms for urban planning, published at the end of 2010 by **Décideurs Stratégie Finance Droit** placed our “Public Law” department in the “Reputed Practices” category.



Jean-Philippe DELSOL, partner in the “Company law – Mergers & Acquisitions” was acclaimed by the economic press at the beginning of 2011: the **Wall Street Journal** of 19 January published his article entitled “*The French tax lottery – in the current system economic actors have no way to rationally plan future projects*”. He also wrote a leader for the economic daily **Les Echos** on 24 January on “*La fausse bonne idée des ruptures conventionnelles*”, and for the economic daily **La Tribune** of 27 January an article entitled “*Le temps de l'incertitude et de l'incohérence fiscales*”. As director delegate of the IREF (Institute for economic and tax research), he also had an article published in **Le Figaro** of 29 November entitled “*A revenue égal, impôt égal?*”.

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