to a reduced duty of 0.5 percent or less as of July 1, 1984, are now wholly exempt. Effectively, the concept behind the claimed exemption was that if the entirety or a part of a business of another EC Member State company on which duty had previously been paid was transferred, the transaction should not be taxed yet again.

This decision is of particular relevance in connection with the expected wave of transborder mergers and reorganizations in post-1992 Europe. Although the Directive on tax-free mergers[8] is supposed to be in force and effect as from January 1, 1992, it only covers income taxes, leaving the capital duty impact entirely open. Thus, for the time being, intra-EC share-for-share transactions may still be subject to some levy until the EC Commission achieves its goal of eliminating all capital duties.

France*

Law number 91-650, enacted on July 9, 1991, and effective on August 8, 1992, determines new requirements to collect from an insolvent debtor. The general principle is that the creditor may constrain payment. However, the insolvent debtor may request a delay of up to two years.[1] In awarding the delay the court must consider the debtor's financial situation.

When the insolvent debtor does not benefit from a delay, the creditor may request the following measures from the court: (a) A fine (*astreinte*); (b) attachment (*saisie conservatoire*); (c) judicial sale (*saisie-vente*); and (d) garnishment (*saisie attribution*). Only liquid and past due debts, documented in an executory title (*titre executoire*), can be the object of forced execution. *Titre executoire* include judgments, notarial documents, and documents served through a constable or bailiff (*delivres par huissier*). The following paragraphs offer some detail on the four basic ways in which the creditor can collect.

The court may include an *astreinte* (fine) in its order. The *astreinte* is a special measure aimed at weakening the debtor's resistance to pay. It can be categorized

8. Council Directive 90/434, 1990 O.J. (L 225) 1.

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1. This delay can reach up to five years in the case of consumer debts covered by Law No. 89-1010 (Dec. 31, 1989).

as a pecuniary penalty, or fine, ancillary to the principal obligation. Typically this fine accrues when the debtor does not comply with the payment order. The fine usually increases while the debtor resists paying. An accrued *astreinte* that is not paid allows a *saisie conservatoire* (attachment) of the debtor's personal property.

Saisie conservatoire (attachment) immobilizes a sum of money or personal property when specifically requested. An attachment is obtainable only when assets are in danger of disappearing. The attached assets are frozen and the measure remains in force until specifically lifted by the court or until a judicial sale takes place.

A third method of collection is a *saisie-vente* (judicial sale). According to this procedure, the debtor's personal property is sold by court order. Once the expenses of the sale are paid, the proceeds are used to pay the creditors. Only those creditors approved by the court and who have attached the debtor's assets are entitled to share in the proceeds, proportionately to the amount of their credit. The balance, if any, reverts to the debtor.

As an initial requirement the creditor must notify the debtor that execution will issue based on a *titre executoire*. The judicial sale takes the form of a public auction and occurs no sooner than one month after the assets were attached.

The final measure is a *saisie attribution* (garnishment). To garnish a debt its payment is first judicially prevented. The garnished debtor has one month to challenge such measure. If the debtor fails to challenge, or if it is overruled, the garnished debt must be paid to the garnishing creditor.

The issues expounded above are intimately connected with the question of when a situation of default arises. Unlike American law default does not normally arise automatically by the mere passage of time. For default to trigger all legal consequences under French law, special notice must be given to the debtor that payment is due and owing. This procedure is known as putting in default (*las mise en demeure*).

The requirement of putting in default may only be dispensed with in exceptional circumstances. Two such examples include: when a clause in the contract so specifies; and when performance becomes impossible. Putting in default may be achieved merely by a letter to the debtor requesting performance or by filing a lawsuit.

Only after putting in default do the consequences of nonperformance arise, for instance, payment of interest on a debt, damages, and the like. When the law requires putting in default, but it is not done, the creditor is supposed to waive his rights until the debtor receives notice of default.