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The new Spanish Financial Transaction Tax

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The Financial Transaction Tax

On 7 October, the Financial Transaction Tax was approved, allowing Spain to tax the acquisition of listed shares issued by Spanish companies, following the trend initiated by other countries, such as France and Italy.

› Link to the Spanish Official Gazette

While the final adoption of the Directive for the implementation of a financial transaction tax (FTT) within the European Union (EU) is still pending, Spain started the legislative process to introduce an FTT along the same lines as France and Italy. The legislative process was completed on 7 October with the approval of the draft bill by the Senate. The Spanish FTT will come into force on 16 January 2021, three months after the publication of the FTT Law in the Spanish Official Gazette (16 October 2020).

Generally speaking, the Spanish FTT will be charged at a rate of 0.2% on the acquisition of listed shares issued by Spanish companies admitted to trading on a Spanish or other EU-regulated market, or on an equivalent market of a non-EU country, with a market capitalisation exceeding EUR 1 billion on 1 December of the year prior to the acquisition. It will also apply to the acquisition of shares represented by depositary receipts or acquired by e.g. exercising an option to convert convertible bonds.

Unlike the initial proposal for an FTT set out in the Directive proposal, the Spanish FTT applies regardless of where the acquisition takes place and regardless of the place of residence of the parties involved in the transaction.

The tax base of the Spanish FTT will be determined by the consideration paid, excluding transaction costs, or, when the amount of the consideration is not known, the market value of the shares. It will accrue on the date when the shares are registered in the acquirer's name.

The FTT Law also sets out the transactions that will be exempt from the Spanish FTT, such as certain primary market transactions (e.g. the issuance of shares and public offerings of shares) as well as instrumental acquisitions made by placement agents and underwriters and those which sole objective is to promote the liquidity of transactions. During its legislative process through the Spanish Parliament, the exemption was extended to those acquisitions of own shares (treasury stock) or intra-group acquisitions of parent companies' shares carried out within the framework of a re-purchase programme which sole purpose is to (a) reduce the issuing entity's capital; (b) fulfil obligations derived from convertible financial instruments; or (c) fulfil obligations arising from stock option programmes or other allocations of shares to employees.

The taxpayer (*contribuyente*) is the acquirer of the shares on which the Spanish FTT is levied, while the taxable persons (*sujetos pasivos*) are those investment services firms or credit institutions acquiring the shares on their own account and the financial intermediaries taking part in the transaction are the substitute taxpayers (*sustitutos del contribuyente*).

Although the procedure for filing and paying the Spanish FTT is yet to be regulated, the FTT Law provides that, in the cases indicated in the regulations governing the FTT (not yet public), a Spanish central securities depository (CSD), or CSDs established in other EU Member States or permitted to provide services in the EU by means of a collaboration agreement with a Spanish CSD, will be responsible for filing the Spanish FTT forms.

In the original draft bill, involving a CSD in the filing and payment of the FTT was just an option available to taxpayers. Nevertheless, in the FTT Law it has become the specified method to be applied under certain circumstances (we assume this will be associated with the CSDs' involvement in the acquisition of the shares), thus simplifying compliance with the tax obligations, as has been done in other countries (e.g. France).

The broad scope of the Spanish FTT, which may encompass any financial intermediary participating in the acquisition of these kinds of shares, means that financial intermediaries not resident in Spain must pay close attention to the filing and payment obligations pending regulation. Its effect and implications on potential corporate transactions carried out by companies which shares are subject to the FTT will also have to be analysed.

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