

Solidarity wealth tax for high-net-worth individuals: key aspects

As had been previously announced, last week the *PSOE* and *Unidas Podemos* political parties presented a series of amendments to the *Draft Law for the establishment of temporary taxes on energy and on credit institutions and financial credit establishments* in which they propose, among other measures, the creation of a new tax: the Solidarity Wealth Tax For High-Net-Worth Individuals (“**Solidarity Tax**”).

The Solidarity Tax, which will be temporary, is designed to demand more from taxpayers with higher economic capacity in order to tackle the energy and inflationary crisis, and to harmonise wealth taxation among Spain’s autonomous regions.

This memo addresses the key points of the Solidarity Tax.

1. TAXABLE EVENT AND TEMPORARY SCOPE

The Solidarity Tax is designed as a national, direct and personal tax that complements the Net Wealth Tax (“**NWT**”). The corresponding taxable event is a natural person’s ownership of at least EUR 3 million in net assets (i.e. total assets less total liabilities).

The Solidarity Tax is designed to be temporary and will remain in force for two fiscal years, although the draft bill includes a review clause allowing the legislator to assess whether to extend it at the end of the initial period. The Solidarity Tax will accrue on 31 December of each year and will be subject to a self-assessment and payment period between May and June of the year following that in which it accrues. The Solidarity Tax will enter into force in 2022 if the law is ultimately approved (as the coalition Government intends) before 31 December 2022. In that event, the first self-assessment period would be open between May and June 2023.

2. ESSENTIAL QUANTITATIVE ELEMENTS

The Solidarity Tax is consistent with the provisions of the NWT in most essential aspects (exemptions, taxable and net taxable bases, tax rates, limit on amount of tax payable, etc.).

The taxable base is the taxpayer’s net wealth (i.e. total value of assets less any personal debts and obligations for which the taxpayer is liable). For calculation purposes, the text of the draft bill refers to the valuation rules established in Law 19/1991 of 6 June on the Net Wealth Tax (“**NWT Law**”).

Taxpayers resident in Spain for tax purposes (and therefore subject to a personal tax obligation) can reduce their taxable base given that the first EUR 700,000 are tax-exempt.

The following rate will be applied to the net taxable base, with the lowest marginal rate being zero:

Net taxable base	Tax rate
Up to EUR 3,000,000	0 %
Between EUR 3,000,000 and 5,347,998.03	1,7 %
Between EUR 5,347,998.03 and 10,695,996.06	2,1 %
Onwards	3,5 %

In order to avoid double taxation, the current wording of the draft bill allows the taxpayer to deduct amounts paid for NWT from the Solidarity Tax.

3. IDENTICAL EXEMPTIONS AS FOR NWT

The current wording of the draft bill explicitly refers to the exemptions established in the NWT Law. Thus, among other assets and rights, the habitual residence (up to EUR 300,000), the family business and specific works of art, among other assets, will be exempt from the Solidarity Tax pursuant to the same conditions and requirements as established in the NWT Law.

4. AGGREGATE LIMIT WITH PERSONAL INCOME TAX AND NET WEALTH TAX

The current wording of the draft bill establishes a limit on the amount of tax payable on the same terms as in article 31 of the NWT Law. Essentially, the amount payable as Solidarity Tax, summed with the amounts payable for Personal Income Tax (“PIT”) and NWT, may not exceed, in cases of personal tax obligations, 60% of the sum of the PIT taxable bases. If that limit is exceeded, the tax payable will be reduced until that threshold is reached, although the reduction may not exceed 80% of the original amount.

Making reference to the NWT Law, capital gains with a generation period of more than one year are excluded for the purposes of calculating this limit.

5. TAXPAYERS

The taxpayers of the Solidarity Tax are the same as those subject to NWT.

In practice, as the current wording of the draft bill allows the NWT amount payable to be deducted, the Solidarity Tax will have a greater impact on taxpayers residing in autonomous regions in which the NWT is not paid (in essence, the Autonomous Region of Madrid and Andalusia), thus indirectly harmonising wealth taxation among Spain’s autonomous regions.

Taxpayers subject on their local assets need only to submit the self-assessment if the tax payable is positive.

6. CONSTITUTIONALITY

The specific current wording of the Solidarity Tax has created some doubt as to whether it complies with the Spanish Constitution and the distribution of tax competences between the central State and Spain's autonomous regions and the principles of tax fairness that must govern Spain's fiscal system. This could lead to possible challenges against Solidarity Tax self-assessments to request the refund of amounts paid.

7. MITIGATION

As with all property-tax planning, any recommendation to legally mitigate the impact of a tax is highly dependent on a comprehensive analysis of the client's personal, family, property and tax circumstances. Such circumstances include sources of income, the location and nature of assets, the members of the family group, the economic and personal circumstances of those family members, potential capital losses or tacit capital gains in connection with the taxpayer's assets, and whether the taxpayer has previously carried out transactions under the tax-neutrality regime. These are some of the numerous issues to be analysed when assessing planning measures in relation to the fundamental elements of the tax in question: its objective and subjective scope of application and quantitative aspects.

The text of the draft bill that was recently announced must go through the parliamentary procedure and could be modified. The approval of the Solidarity Tax itself is not guaranteed, nor is its permanence in the Spanish legal system.

There have also been reasonable concerns regarding the constitutionality of the current drafting of the bill and its compatibility with legislation regulating the authority of Spain's autonomous regions regarding the NWT. It is therefore foreseeable that, if approved, the Solidarity Tax will give rise to considerable litigation in the future.

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