

**October 2020**

**Tax Law Department**

**APPROVAL OF TAXES ON DIGITAL SERVICES AND FINANCIAL  
TRANSACTIONS**

Last Friday, Law 4/2020 of 15 October, on The Taxation of Certain Digital Services and Law 5/2020 of 15 October, on the Financial Transactions Tax, were published in the Official State Gazette.

Although both laws will not come into force until 16 January 2021, we set out below the main characteristics of each of these taxes.

**I. Tax on Certain Digital Services** (commonly known as the "*Google Tax*")

This is an indirect tax taxing the provision of the following digital services, in which there is user intervention located in the territory of application of the tax:

- Online advertising services: those consisting of the inclusion, in a digital interface, whether their own or that of a third party, of advertising aimed at the users of that interface.
- Online intermediation services: those made available to users of a multifaceted interface.
- Data transmission services: those of transmissions with consideration, including the sale or transfer, of data collected about users, generated by the latter through their digital interface activities.

For the purposes of this tax, the digital services referred to in the preceding paragraph shall be construed as being made in the territory of application of the tax where any user (anyone using a digital interface), is located in that territory, irrespective of whether the user has satisfied any consideration contributing to the generation of revenue derived from the service.

**The taxpayer** under this tax are legal persons, recumbent inheritances, communities of goods and other entities which, devoid of legal personality, constitute a separate economic unit or assets subject to taxation where, on the first day of the liquidation period:

- The net amount of turnover in the previous calendar year exceeds EUR 750 million, and
- The total amount of its revenue deriving from providing digital services subject to the tax, once the rules for determining the taxable amount have been applied (in order to determine the share of that revenue corresponding to users located in the territory of Spain), corresponding to the previous calendar year, exceeds EUR 3 million.

**The tax will accrue** when digital services are provided and **will be paid** quarterly. However, in transactions subject to tax giving rise to advance payments prior to the provision of digital services, the tax shall be accrued at the time of full or partial collection of the price for the amounts actually paid.

**The taxable amount** shall consist of the amount of income, excluding, where appropriate, Value Added or other equivalent taxes, obtained by the taxpayer for each of the digital services subject to the tax, carried out in the territory of application thereof. The applicable **tax rate** is 3%.

## **II. Financial Transaction Tax** (also known as the *"Tobin Tax"*).

It is an indirect tax taxing the onerous acquisition of shares of Spanish companies, irrespective of the residence of the persons or entities involved in the transaction.

The tax is levied exclusively on the acquisition of shares of those Spanish companies whose shares have been admitted for trading on a regulated market, irrespective of whether or not the transaction is executed in a trading venue, and which, furthermore, as of 1 December of the preceding year, have a market capitalisation value of more than EUR 1 billion.

Certain transactions specific to the primary market, those necessary for the proper functioning of the market, those originating from business restructuring operations or winding up measures, those between companies in the same group and temporary assignments, are exempt.

**The taxpayer** is the acquirer of the stocks and the taxable person shall, in general, be the financial intermediary transmitting or implementing the purchase order, whether they are acting on their own account, in which case they shall be taxable as a taxpayer, or on behalf of third parties, in which case they shall have the status of replacing the taxpayer.

The tax **accrues** at the time an entry is made in the taxpayer's favour of the stocks subject to the onerous acquisition which constitutes the taxable event.

The **taxable amount** is the amount of the consideration, not including any associated transaction costs, and the **tax rate** is 0.2%.

Finally, regarding declaring and paying the tax, the Law provides for the regulatory development of the procedure and cases in which a central depository of stocks established in Spanish territory is the person who, in the name and on behalf of the taxable person, makes the declaration and pays the tax debt. This allows a high degree of automation to be achieved when managing it.

Taking into account the stock market capitalization ranking of Spanish companies, we can conclude that, from 16 January 2021, the Financial Transactions Tax will accrue when shares are acquired from, among others, the following companies: INDITEX, IBERDROLA, BANCO SANTANDER, ENDESA, CELLNEX TELECOM, AMADEUS IT GROUP, TELEFONICA, BBVA, AENA, NATURGY ENERGY GROUP, FERROVIAL, etc.