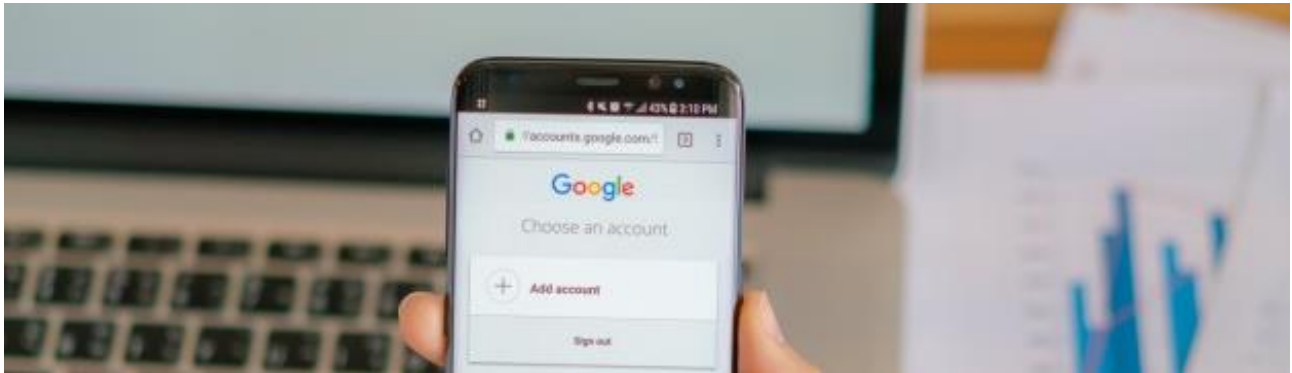


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The new Spanish Digital Service Tax "Google Tax"

November 2020



The Spanish government finally passed, on 15 October 2020, the Law 4/2020 on certain Digital Services Tax (DST), also known as "Google tax".

The approved wording does not include significant changes in comparison to the initial draft of bill.

Background

In 2017, Spain was one of the signatories to the Political Statement addressed to the European Commission, which recommended that an "equalization tax" designed to achieve "fair taxation" of the "digital giants" should be explored.

The original goal was to reach a consensus on a multilateral tax reform within the Organisation for Economic Co-operation and Development (OECD). However, as a result of the lack of the consensus mentioned, Spain decided, as other European countries had already done, to move ahead on its own and approve a Spanish DST.

The government expects to collect around 968 million euros from this new tax.

Spain's DST

In line with the Council Directive Proposal¹, the Spanish DST is defined as an 'indirect' tax, 'compatible' with Value Added Tax (VAT). As such, it claims to be outside the scope of the tax treaties that Spain has signed, although some treaties deserve special attention, such as the one in force with the United States.

The DST targets and tax with up to 3 percent the following specific types of services:

3%

The placing of advertisement on a digital interface – **"online advertising"**.

The making available of multi-sided digital interfaces – **"online intermediation"**

The transferring of user's data – **"data transfer"**.

¹ Proposal for a Council Directive on a common system for a digital services tax on revenues resulting from certain digital services 2018/0073 (CNS) (Mar. 21, 2018).

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By way of example, the first group of services (online advertising) would include those provided by *Facebook*, *YouTube* and search engines such as *Google*. The second group of services (online intermediation) would capture those provided by, among others, *Airbnb*, *Uber* and *eBay*. On the contrary, the DST would not hit platforms providing audiovisual content (*Netflix*) and music (*Spotify*), or to e-commerce platform (*Amazon and Alibaba*).

The tax subjects are both, resident and non-resident companies with (group) revenues exceeding the following thresholds:

Worldwide revenues:

- **750 million euros**
- a "strong market position"

Taxable revenues in Spain:

- **3 million euros**
- a "significant digital footprint" in Spain

In order to determine the allocation of DST's taxing rights to Spain, the location or geolocalization of the user's device is key:

- Online advertising should be subject to the Spanish DST when the user's device on which the advertising appears is located in Spain;
- Online intermediation should be regarded as occurring in Spain and therefore subject to the Spanish DST when: either the underlying transaction takes place through a digital interface using a device located in Spain; or the user's account is operated with a device located in Spain; and
- Data transfer should be subject to the Spanish DST when the data transferred was generated by a user through a digital interface using a device located in Spain

Regarding DST's taxable base, this would depend on the targeted digital service. In general terms, it is proportionally calculated over the company's total income and depending mainly on the IP address.

All in all, the determination of the *where* and the *what* to be taxed revolves around the **users** and their location.

Like VAT, the DST accrues on a transaction-by-transaction basis (or at the time when there is and advance payment for the provision of a digital service that is within its scope), although the corresponding tax returns should be filed on a quarterly basis. The DST will be levied as of the first quarter of 2021, where all services rendered from 16 January onwards should be included. However, the soon to come regulation of this tax should bring more light on the compliance requirements.

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It is worth highlighting that the final wording of the Law has excluded intra-group transactions (i.e. transactions between companies directly or indirectly owned by the same shareholder) that could have been hit by the DST.

Last but not least, it should also be noted that, to encourage taxpayers to comply and cooperate in fulfilling these obligations, the DST features a rigorous penalty regime: penalties can be as high as 0.5% of the turnover of a company that attempts to disguise the geolocalization of the relevant devices.

The DST presents relevant challenges in terms of compliance and collection, not to mention potential conflicts with user's data protection and tax treaties. All in all, it represents an undesirable unilateral 'temporary' shortcut for addressing a complex global tax matter.



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