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Financial Transactions Tax "Tobin Tax"

November 2020



After more than seven months, Spain has finally passed the Financial Transaction Tax (**FTT**) bill also popularly known as "Tobin Tax"¹. It will entry into force three months after its publication in the Spanish Official Gazette, i.e., next January 16 2021 and the first reporting will be due by February 2021.

Nature and taxable event

It is designed as an indirect tax levied on the onerous acquisitions of shares (or depositary receipts representing the shares) in Spanish companies, regardless of the residence of the persons or entities involved in the transaction, that meet the requirements foreseen in article 2:

- Spanish companies with shares admitted to trading on (i) the Spanish market, or (ii) a regulated market of another Member State of the European Union, or (iii) on an equivalent regulated third State's market.
- Spanish companies with market capitalization greater than 1,000 million euros, as of December 1 of the year prior to the acquisition².

Exemptions

The new tax is not aimed to hit the primary market. Several acquisitions are exempt from the FTT, such as those necessary for the proper functioning of the markets, derived from an Initial Public Offering (IPO), those arising from certain business restructuring transactions eligible for the special tax regime³, or carried out between companies of the same group, etc⁴.

In case the taxable person is different from the acquirer, the latter should provide the taxpayer with evidence that the transaction is eligible for the exemption. Detailed rules are provided for this purpose.

Taxpayers

The taxpayer is the purchaser of the securities subject to the FTT:

- a) As taxpayers, the investment services company or credit institution that carries out the acquisition on its own behalf, regardless of their residence; or

¹ Law 5/2020, of October 15

² An official list of these companies will be provided every year.

³ Regulated in Chapter VII of Title VII of the Corporate Income Tax Act (Law 27/2014, of November 27)

⁴ A long list of exemptions is provided in article 3.

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b) As substitutes of the taxpayers:

1. In the event that the acquisition is conducted on a trading venue, the taxable person will be the member of the market that executes it. However, when one or more financial intermediaries act on behalf of the acquirer (chain of intermediaries), the taxpayer will be the financial intermediary who receives the purchase order directly from the acquirer.
2. If the acquisition is carried out outside a trading venue but with the involvement of a systematic internaliser, the taxable person will be the systematic internaliser itself. However, when one or more financial intermediaries are involved in the acquisition on behalf of the acquirer, the taxpayer will be the financial intermediary who receives the order directly from the purchaser.
3. If the acquisition is conducted outside of a trading venue and independently of the activity of a systematic internaliser, the taxpayer will be the financial intermediary that receives the order from the acquirer of the securities, or delivers the securities to the purchaser in execution of a financial instrument or contract.
4. In the event that the acquisition is carried out outside a trading venue and without the intervention of any of the persons or entities referred to in the preceding paragraphs, the taxpayer will be the entity acting as depositary of the securities on behalf of the acquirer.

Tax base, accrual and tax rate

The tax accrues when the transaction is settled, and the shares are entered under the name of the acquirer in a securities account or register.

The tax base is the consideration paid for the shares, excluding fees, expenses or intermediation commissions. There are certain specific rules for derivative financial instruments, convertible bonds and obligations, etc.

The tax rate is 0.2%

The tax is declared by the taxpayer in a self-assessment to be settled on a monthly basis. However, the FTT regulations regarding the specific tax forms and other practicalities still need to be approved.

There are no specific penalties approved for this tax, so the general penalty system should apply.

First reporting is expected for February 2021.



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