

## PROPOSAL FOR A LAW ON THE FINANCIAL TRANSACTIONS TAX (FTT)

On 23 October 2018, the Spanish Government made public its proposal for a Law on Financial Transactions Tax (the "FTT Proposal"). The FTT Proposal will now follow the relevant legal procedures and will be submitted to Parliament for discussion and enactment. The FTT Proposal is currently subject to the "public audience" procedure until 15 November 2018.

### Key issues

- The proposed new tax will affect certain acquisitions of shares in Spanish listed companies.
- Certain transactions made in the stock markets would be exempt.
- The FTT Proposal is currently subject to the "public audience" procedure until 15 November 2018.

### 1. BACKGROUND

A proposal for a Directive for a common Financial Transaction Tax was published by the European Commission on 14 February 2013 together with Belgium, Germany, Estonia, Greece, Spain, France, Italy, Austria, Portugal, Slovenia and Slovakia (the "participating Member States"). However, the proposed Directive remains subject to negotiation between participating Member States.

In view of the lack of agreement, the Spanish Government has unilaterally decided to publish a Draft Bill of FTT. According to the Preamble of the FTT Proposal, the new tax would be construed in terms similar to those of the existing tax in France or Italy.

The main principles of this new tax are as follows:

- It is applied according to the so-called "issuance criterion": the tax will apply to the acquisition of shares in Spanish resident entities, irrespective of the residence of the financial intermediaries involved in the transaction.
- It would only apply to shares listed on a regulated market, regardless of the place where they are traded, even if outside of Spain.
- There is a size threshold whereby only the acquisition of shares in companies having a total stock market capitalisation value exceeding Euros 1,000 MM would be liable for the tax.
- There are certain exemptions on transactions related to the primary market and those carried out by the entities managing the stock markets.
- The basis of assessment is, as a general rule, the total amount paid in exchange, and the tax rate is 0.2%.

### 2. SCOPE OF APPLICATION

The tax would be levied on the acquisition of shares in Spanish companies meeting the following requirements:

- The shares are traded on a Spanish regulated stock market in accordance with Directive 2014/65/EU dated 15 May 2014, or the equivalent market of a third country.

- The capitalisation value of the entity at 1 December of the preceding year exceeds Euros 1,000 MM following a list to be published by the Ministry of Finance before 31 December on each year.

Also, any acquisition of certificates of deposit representing the above shares, as well as any acquisition derived from the exchange or conversion of bonds, would be subject to the tax.

It is important to note that any acquisition complying with the above requirements would be subject to the tax (unless an exemption applied), irrespective of whether the transaction is carried out in the relevant stock market by an investment service entity or as a result of a direct agreement between the intervening parties.

### **3. EXEMPTIONS**

The FTT Proposal includes a long list of transactions involving shares that are excluded from the tax.

The main exemption relates to the acquisition of shares in the primary market (offers and IPOs), including instrumental acquisitions made by placement agents or underwriters working for the issuers and offerors with the purpose of making a final placement among the final investors.

Acquisitions made by financial intermediaries acting for the issuer as liquidity providers and acquisitions made by financial intermediaries in charge of the stabilisation of prices would also be exempt.

The FTT Proposal also excludes the acquisition of shares between entities belonging to the same group as per Article 42 of the Spanish Commercial Code and any acquisition to which the special regime for corporate reorganisations (mergers, spin offs) could apply.

Any acquisition derived from a merger or spin off of collective investment institutions or a compartment in such institutions would also be excluded.

The application of the above exemptions would require that the purchaser or the person or entity placing the order notify the taxpayer that the conditions for such exemption to apply are met. It would also require that certain additional information, such as the liquidity agreement, be provided.

### **4. TAXPAYERS**

As a general rule, if the acquisition is made in a trading venue as defined in Directive 2014/65/EU (i.e. any regulated market, multilateral trading facility or organised trading facility), the taxpayer would be the member of the market that has executed the transaction, regardless of whether it is acting in its own name or on behalf of third parties.

If the acquisition is made outside of the market but with the involvement of an investment service entity or a credit entity (systematic internaliser), the latter would become the taxpayer.

In absence of the above, the taxpayer would be the financial intermediary receiving the order from the purchaser of the securities and if no such intermediary exists, the entity acting as depository on behalf of the purchaser.

### **5. TAX BASE AND APPLICABLE RATE**

As mentioned, the tax base would be the total amount paid, excluding transaction costs, the intermediary's fees and any other expense related to the acquisition.

The following exceptions to the above rule would apply:

- If the acquisition of the shares derived from the conversion of bonds, the tax base would be the value established in the deed of issuance of such bonds.
- If the acquisition is the result of the execution of a settlement of options or other derivative instruments, the tax base would be the exercise price agreed.

The applicable rate is 0.2% of the tax base, as per the above rules.

## **6. ACCRUAL**

The tax would be accrued:

- If the acquisition is made in the stock market or with the involvement of an investment service entity or a credit entity, at the time when the settlement takes place.
- In any other case, at the time when the securities are registered in the purchaser's favour.

## **7. FORMALITIES**

The taxpayers would be required to assess the tax due in accordance with the procedure to be established by the Ministry of Finance which may include the filing of an annual tax return.

However, the FTT Proposal contemplates that the taxpayers may settle the tax through a Spanish based central depository in charge of the accounting registry of the securities.

## **8. NEXT STEPS**

As mentioned, the FTT Proposal has not yet been submitted to Parliament for discussion and is subject to the so-called "public audience" procedure until 15 November 2018. This procedure allows any person or entity to make any comment or remark (which can be accepted or not by the Government) before a definitive version is produced. Accordingly, future changes in the current text can take place.

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