

SPANISH FINANCIAL TRANSACTIONS TAX (FTT)

The Spanish Parliament has approved Act 5/2020, of 15 October, on the Financial Transactions Tax (the "FTT Act"). It will enter into force on 16 January 2021.

1. BACKGROUND

The FTT Act essentially replicates the Spanish Government's proposal sent to Parliament in February 2020.

According to the Stated Purpose of the FTT Act, 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 EUR 1,000 MM would be liable for the tax.
- The basis of assessment is, as a general rule, the total amount paid in exchange, and the tax rate is 0.2%.
- There are certain exemptions for transactions related to the primary market and those carried out by the entities managing the stock markets.

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 EUR 1,000 MM, according to a list of entities to be published by the Ministry of Finance before 31 December of 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.

Key issues

- The new tax will affect certain acquisitions of shares in Spanish listed companies.
- The tax rate is 0.2%.
- The FTT Act establishes several exemptions

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 Act includes a list of transactions involving shares that are exempt 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.

Other exempt acquisitions are:

- Acquisitions made by financial intermediaries acting for the issuer of the shares as liquidity providers and acquisitions made by financial intermediaries in charge of the stabilisation of prices.
- The acquisition of shares by and between entities belonging to the same group, as per Article 42 of the Spanish Commercial Code.
- Those acquisitions to which the special tax regime on mergers, spin offs, assets contributions and share for share transactions, as regulated in Chapter VII of Title VII of the Corporate Income Tax Act (Act 27/2014), is applicable.
- Any acquisition deriving from a merger or spin-off of collective investment institutions or a compartment in such institutions would also be excluded.
- The acquisition of treasury shares (*autocartera*) or shares in the dominant entity, in the case of companies belonging to the same group according to Article 42 of the Spanish Commercial Code, with the purpose, among others, of reducing the share capital or complying with the obligations derived from stock option plans and other delivery of shares to employees,

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 AND TAXABLE ENTITIES

As a general rule, the taxpayer would be the purchaser of the securities.

However, the FTT Act establishes which entities must file the relevant tax return before the Tax Authorities (taxable entities) irrespective of the place where they are established. In summary, such entities would be:

- The investment services entity or credit entity making the acquisition on its own behalf.
- If the acquisition is made in a trading venue, the taxable entity would be the member of the market that has executed the transaction.
- If the acquisition is made outside of the market but with the involvement of a financial intermediary, the latter would become the taxable entity.

- In absence of the above, the taxable entity would be the entity acting as depositary of the securities 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 will accrue at the moment when the securities are registered in the purchaser's favour.

7. FORMALITIES

Taxpayers will be required to assess the amount of tax that is due according to the procedure to be established by the Ministry of Finance.

However, the FTT Act establishes that taxpayers may settle the tax through a Spanish-based central depositary in charge of the accounting registry of the securities.

8. ENTRY INTO FORCE

The FTT Act was published in the BOE (Spain's Official State Gazette) on 16 October 2020 and will enter into force three months following that date (16 January 2021).

CONTACTS



Pablo Serrano de Haro
Partner

T +34 91 590 94 70

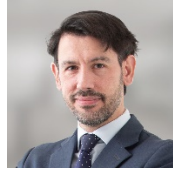
E pablo.serrano
@cliffordchance.com



Roberto Grau
Counsel

T +34 91 590 75 12

E roberto.grau
@cliffordchance.com



Fernando Escribano
Senior Associate

T +34 91 590 75 54

E fernando.escribano
@cliffordchance.com



Julia Villalón
Associate

T +34 91 590 41 16

E julia.villalon
@cliffordchance.com

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www.cliffordchance.com

Clifford Chance, Paseo de la Castellana 110,
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