



WTS Tax Update for the Digital Economy

Spanish Digital Services Tax - Update

On 16 October 2020, the Spanish Official State Gazette published Law 4/2020, of 15 October 2020, on the Tax on Certain Digital Services (known as the 'Digital Service Tax' or, by its acronym, 'DST').

The Law was approved without any amendment to the Draft, which had been approved by the Spanish Parliament on 30 July 2020. The DST's most significant aspects have been analysed in our previous alerts ([click here](#)).

SUMMARY MAIN FEATURES

The DST will apply to services where a user's participation in a digital activity constitutes input for a business and such activity enables that business to obtain revenues from it.

The scope of the DST is determined by a double turnover threshold: an annual worldwide revenue over € 750 million and more than € 3 million Spanish sourced income from digital services.

In particular, the tax is imposed on the provision of the following digital services:

- 1) The placing on a digital interface of advertising targeted at users of that interface ('online advertising services').

The notion of 'targeted advertising' has been defined as any form of digital commercial communication whose purpose is to promote a product, service or brand, and that is directed to users of a digital interface based on the data collected from them.

In addition, the Law also includes a presumption that all advertising will be considered as 'targeted advertising' unless proved otherwise.

- 2) Services consisting of making available multi-sided digital interfaces to users that allow users to find and to interact with other users, and that may also facilitate the provision of underlying supplies of goods or services directly among users ('online intermediation services').

- 3) The transmission of data collected about users that has been generated from such users' activities on digital interfaces ('data transfer services').

Activities that are not subject to taxation in general

match the ones outlined in the European Commission's proposal and include:

- 1) Online sales of goods or services through their supplier's website, in which the supplier does not act as an intermediary (i.e. e-commerce related to retail activities), are excluded. In such cases, the value creation for the retailer lies with the goods or services provided and the digital interface is simply used as a means of communication.

The Law expressly excludes from its scope the sale of goods or services between end-users within an online intermediation service.

- 2) Online intermediation services are also excluded when the main objective is to provide digital content to users or provide them with communication or payment services.

- 3) Transactions when there is a direct or indirect 100% shareholding of the group entities involved.

- 4) Regulated financial services provided by regulated financial entities.

- 5) The provision of data transmission services by regulated financial entities.

Please note that 'regulated financial services' are defined as financial services for which a regulated financial entity is authorised.

According to the final text, the DST enters into force three months after its publication in the Official State Gazette, which means that it will come into force on 16 January 2021. Consequently, the first assessment period will be the first quarter of 2021. However, since the regulations on the DST Law have not yet been approved, not even in a draft version, there are no guidelines to help businesses deal with this new tax.

Following the Law's approval, it is now worth recalling the **formal obligations** that must be met, regardless of the taxpayer's tax residence, which include:

- Obtaining a Spanish Tax ID number;
- Non-EU taxpayers must appoint a Spanish tax-resident representative;
- A declaration of the start of operations;
- The DST's self-assessment on a quarterly basis;
- Setting-up a mechanism, system or agreement that enables the determination of the location of users'

- devices in Spain;
- Taxpayers must maintain all relevant records and documents to support service transactions located in Spain and, only when required, translate them into Spanish.

Now that the Law has been published and the date of entry into force is known, companies must take the necessary measures to comply with their obligations in the initial implementation, if any, as soon as possible, in order to avoid: surcharges (ranging from 5% to 20% of the taxable amount); and penalties (ranging from 50% to 150% of the taxable amount depending on the severity of the case).

For this reason, a prior impact-analysis of the DST is highly-recommended to determine whether your digital business is liable to it, and if so, what steps to take to manage this new tax. Feel free to contact us if any assistance is needed.

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