Agencia Tributaria

FREQUENTLY ASKED QUESTIONS ABOUT FINANCIAL TRANSACTION TAX

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1. TAXABLE EVENT

1.1. In relation to the conditions for liability to tax, defining the moment at which the purchase of shares in a specific company is no longer subject to taxation under Financial Transaction Tax. In turn, the moment from which tax will be payable in the case of foreign companies, whose stock market value at 1 December the preceding year came to more than 1 billion euros, transferring their company address to Spain.

The stock market value requirement on a specific date, 1 December of the year preceding the purchase, is effective for the following calendar year, regardless of any variations over the course of said year.

Therefore, the fall in stock market value to below the threshold of 1 billion euros, after the reference date, shall have no impact on the applicability of the tax, except when the company's stock market value is less than 1 billion euros on 1 December, in which case the tax will not be applicable the following year.

The purchase or loss of other conditions, consisting of shares representative of share capital in Spanish companies and being admitted to trading under the terms of Article 2.1.a) of the Tax Law, shall result in the purchase of these shares being included or excluded from the taxable event, respectively, effective the date on which these circumstances occur.

In particular, the transfer of the company address outside Spain during the course of a year will result in the purchase of shares in said company no longer being subject to the tax, effective from the time at which said transfer takes place.

In turn, the transfer of the company address to Spain during the course of a year will result in the purchase of shares in said company being subject to taxation from that moment, provided that the company's stock market value at 1 December in the year preceding the change of nationality was more than 1 billion euros and its shares are admitted to trading under the terms provided for in Article 2.1.a) of the Tax Law.

A check must be performed to ensure whether the conditions provided for by law at the time of the tax accrual are met.

Finally, it should be noted that during the period running from the entry into force of the Tax Law, 16 January 2021 and 31 December 2021, the requirement of having a stock market value of more than 1 billion euros shall refer to the company's stock market value at 16 December 2020.

1.2. In relation to companies whose shares are subject to taxation the first year that the tax applies, are purchases of shares in companies admitted for trading the first time between 16 January 2021 (entry into force of the Financial Transaction Tax) and 31 December 2021 subject to the accrual of this tax in 2021?

The sole temporary provision of the Tax Law establishes that between the entry into force of the Tax Law and the following 31 December, the requirement set out under Article 2.1.b) of the Law shall be understood as referring to Spanish companies whose stock market value one month prior to the entry into force of this Law was more than 1 billion euros.

The requirement indicated in Article 2.1.b) of the Tax Law shall be understood as applying to Spanish companies whose stock market value at 16 December 2020 was more than 1 billion euros.

Pursuant to the foregoing, for the case in question, with the admission to trading taking place in 2021, the temporary aspect set out in Article 2.1.b) of the Law on Financial Transaction Tax is not satisfied, as on 16 December of the year preceding the purchase, the company did not have a stock market value.

As a result, the purchase of shares in companies admitted to trading in a regulated market for the first time between 16 January 2021 and 31 December 2021 shall not be subject to the tax during 2021.

1.3. In relation to the applicability of the tax, handling shares in companies traded on the stock market for the first time as a result of an initial public offering.

In this case, in which the admission to trading takes place during the calendar year, the temporary aspect set out in Article 2.1.b) of the Tax Law is not satisfied, as the company would not have a stock market value on 1 December of the year preceding the purchase.

As a result, the shares would not be subject to taxation until the following year, provided that the other conditions are satisfied: the shares in question represent the share capital of Spanish companies and are admitted to trading under the terms of Article 2.1.a) of the Tax Law, in addition to satisfying the stock market value requirement at 1 December of the year preceding the purchase, of more than 1 billion euros.

1.4. Does the purchase of the following financial instruments constitute a taxable event?

a) Convertible or exchangeable bonds or debentures

b) Derivative financial instruments on the shares regulated in Article 2.1 of the Tax Law

c) Warrants

d) Pre-emptive subscription rights

e) Preferred shares

The stipulations regarding the taxable event in the Tax Law are clear and only purchases of shares for consideration as defined under the terms of Article 92 of the revised text of the Capital Companies Law and purchases of marketable securities for consideration constituted in certificates of deposit representative of these shares are subject to the tax.

Therefore, the purchase of financial instruments that, given their nature, are not considered shares pursuant to the revised text of said Law or certificates of deposit representative of these shares, are not considered as being subject to the tax. Only when the execution or settlement of these financial instruments results in the delivery of shares or marketable securities constituted by certificates of deposit representative of these shares shall they be subject to the tax.

1.5. Does the purchase of shares resulting from a split or reverse split constitute a taxable event?

Insofar as these operations do not constitute purchase of shares for consideration, pursuant to the provision of Article 2 of the Tax Law, purchases resulting from the split or reverse split of shares shall not be subject to the tax.

2. EXEMPTIONS

2.1. Is the scope of the exemption in relation to purchases resulting from an initial public offering (Article 3.1.b) of the Tax Law) limited to the cases regulated under Article 35.1 of the revised text of the Securities Market Law or, is it also applicable to the cases regulated in Article 35.2 and 35.3 of the revised text of the Securities Market Law?

Article 3.1.b) of the Law on Financial Transaction Tax stipulates that the exemption from the tax shall apply to *"purchases resulting from an initial public offering as defined in Article 35.1 of the revised text of the Securities Market Law, approved by Royal Legislative Decree 4/2015, of 23 October, as part of their initial placement among investors"*.

The reference to Article 35.1 of the revised text of the Securities Market Law is made for the purposes of definition, meaning that an initial public offering (or subscription of securities) is considered in Paragraph 1 as all communications to persons, regardless of the form or means used, that provides sufficient information on the terms of the offering and the securities

offered, allowing the investor to make a decision concerning the purchase or subscription of these securities.

In light of the above, the exemption shall also apply to all cases regulated in Article 35.2 and 35.3 of the revised text of the Securities Market Law.

2.2. In relation to the exemption for purchases of treasury shares undertaken as part of a repurchase scheme that seeks to ensure compliance with the obligations set out in share option programmes and other allocations of shares to employees (Point 3 of Article 3.1.i) of the Tax Law), does this exemption apply to purchases of shares by employees as part of their company's remuneration plan?

This exemption does not apply to subsequent purchases of shares by employees, even when they form part of their company's remuneration plan.

The taxable base, in this case, shall be calculated pursuant to the provisions of Article 5 of the Tax Law. The rules for calculating the applicable taxable base will depend on the method used by the employee to purchase the shares.

2.3. Bearing in mind that the securities market regulations allow orders to be sent via direct electronic access to the market provided by a member of the market or by a customer of a member of the market, based on a prior agreement between the person sending the order and the investment services company offering the service, does the exemption in relation to market making activities (Article 3.1.g) of the Tax Law) extend to customers of members of trading venues or third country markets declared as being equivalent to trading venues?

In the securities market regulations, no provisions are made that cover the performance of market making activities by customers of market members who use a direct electronic access service provided by the member. Having said that, these customers are subject to supervision and control by the investment services company, a market member, providing said service.

As a result, the exemption in relation to market making activities does not apply to customers of market members merely on account of the fact that they use a direct electronic access to the market service provided by a member.

2.4. Is the exemption on purchases made as part of market making activities applicable to the purchase of shares subject to the tax that seek to cover operations involving derivatives performed by financial intermediaries as part of their normal activities? To this end, does it matter whether these derivatives are admitted to trading or not (in other words, whether they are traded derivatives or over the counter)?

Pursuant to the provisions of Paragraph 2 of Article 3.1.g) of the Tax Law, purchases made by financial intermediaries to cover derivative positions held as a result of "market making" activities, including over the counter, whose underlying element are shares subject to the tax, are included in the exemption.

Purchases made by financial intermediaries corresponding to the exercise or settlement of derivative positions of which they are market makers or whose positions derive from their activities are also exempt.

2.5. As regards the documentation requirements for operations regulated under Article 3.2.e) of the Law, is reference to the competent authority only to be made when companies involved in the merger or division are unit trust institutions and not in other cases? As regards Spanish unit trust institutions, is the CNMV the competent authority?

Article 3.2.e) of the Tax Law stipulates, in relation to the exemption provided for in Article 3.1.i), that the purchases must inform the taxpayer acting on behalf of third parties, in addition to the circumstances giving rise to its application, of the following information: the identity of the companies affected by the corporate restructuring process, or the unit trust institutions involved in the merger or division, in addition to the authorisation of the operation by the corresponding competent authority.

It must be understood that the reference to authorisation by the competent authority is limited to purchases as a result of mergers or divisions of unit trust institutions or subfunds of unit trust institutions made pursuant to the provisions of their corresponding regulations. The competent authority for Spanish unit trust institutions will be the CNMV.

2.6. Is the application of exemptions limited to the purchaser informing the taxpayer of the determining circumstances of the exemption and the information indicated in Article 3.2 of the Tax Law?

The purpose of the purchaser having to inform the taxpayer of the determining circumstances of the exemption and the information indicated in Article 3.2 of the Tax Law is to make the taxpayer aware of the existence of the exemption and justify its application.

However, the failure to make this communication shall not prevent the application of the exemption by the taxpayer, who may use any means of proof admitted by law to accredit the determining circumstances of said exemption.

3. ACCRUAL

3.1. Bearing in mind that in the case of purchases made at trading venues, generally speaking, operations are settled on the second working day after the execution date, will the first purchases taxed be those executed and settled from the date of entry into force of the Tax Law or those settled from that date onwards, regardless of the date on which they were executed?

The first purchases made at trading venues to be subject to taxation shall be those whose settlement, and therefore, entry into the securities register, takes place effective the date of entry into force of the Tax Law, regardless of the date on which they were executed, pursuant to the provisions of Article 58/2003, of 17 December, on General Taxation. Generally speaking, the first purchases taxed correspond to those performed in the two business days prior to the entry into force of the Tax Law.

3.2. For purchases made on an official secondary securities market or other trading venue, is the tax accrued at the time of the settlement?

The tax is accrued when the operation is entered in the securities register, which, in the case of purchases made on an official secondary securities market or other trading venue, will be understood as occurring on the settlement date of the operation, pursuant to the provisions of Article 94 of the revised text of the Securities Market Law, approved by Royal Legislative Decree 4/2015, of 23 October, which is also referred to, in relation to trading venues other than official secondary markets, by Article 37.3 of Royal Decree-Law 21/2017, of 29 November, on urgent measures to adapt Spanish Law to the European Union regulations on the securities market.

3.3. For operations performed as part of the special and optional financial intermediary procedure referred to in Article 33 of the revised text of the Systems Company Regulation, at what time is the tax accrued?

Pursuant to this article, this special procedure is made up of different phases for the communication, acceptance and execution of transfer orders that sustain it, meaning that a transitory entry is made for securities subject to the orders in the special accounts of financial intermediaries (transitory phase or phases) before the securities are entered in the definitive accounts (final phase).

If purchases subject to the tax are made as part of this procedure, the tax will be accrued in the final stage, when the operation is registered in the definitive account in favour of the purchaser.

4. TAXABLE BASE

4.1. What exchange rate should be used to determine the taxable base of the tax?

Objective criteria must be applied consisting of the exchange rate of the currency into euros published by the European Central Bank for the last business day prior to the date on which the tax is accrued in relation to the securities purchased. Therefore, the exchange rate agreed by the contracting parties in the operation does not apply.

4.2. Explanation of the "same purchaser" concept referred to in Article 5.3 of the Tax Law when regulating the definition of the taxable base when purchases and transfers of the same security have been made on the same day, ordered and executed by the same taxpayer and settled on the same date.

In particular, in order to identify the operations to be netted, and whether the securities accounts of customers should be used as a starting point, what is the procedure to be followed in order to determine the taxable base when the taxpayer has more than one securities account and any of them is held jointly?

First, it must be noted that identifying a purchaser with a securities account is not necessary. Net purchases, as regards the same security subject to the tax, must be calculated for each purchaser.

The rule for calculating the taxable base set out in Article 5.3 of the Tax Law must be applied separately for each purchaser. Securities purchased and transferred by a single holder (individual account) cannot be netted with securities purchased and transferred jointly with other co-holders.

In this regard, if the purchaser is a natural person, the rule for calculating the tax provided for in Article 5.3 of the Tax Law shall apply to all securities accounts that are held solely by that

person and provided that the purchases and transfers of the same security subject to tax are organised and executed by the same taxpayer.

In turn, if the securities accounts used to enter purchases and transfers belong to multiple co-holders, the "same purchaser" of securities shall be understood as meaning all persons whose name these accounts are in, provided that the percentage ownership is the same for all securities accounts; therefore, netting shall only apply to this group of people.

4.3. Calculation of the taxable base when the consideration is made in kind.

This case is covered by the provisions of Article 5.1.2 of the Tax Law, which indicates that *"in the event that the value of the consideration is not indicated, the taxable base shall be the value corresponding to the closure of the most relevant regulated market in relation to the liquidity of the security in question on the last day of trading prior to the operation taking place*".

This case would include a consideration made in kind.

For example, in the event that the consideration of an operation is made in the form of other shares, the cost price of the shares subject to the tax will be the market price of these shares the previous day. If the shares received by the counterparty in consideration are also subject to the tax, the counterparty will also be required to pay tax for the market value of these shares on the day previous to the operation taking place.

5. TAXPAYER

5.1. Which companies can be considered taxpayers under the provisions of Article 6.2.b) of the Tax Law?

Companies considered taxpayers in this case are credit institutions and investment service companies that, authorised for proprietary trading, Article 140.1.c) of the revised text of the Securities Market Law, approved by Legislative Royal Decree 4/2015, of 23 October), undertake purchases subject to tax on their own behalf, regardless of the financial intermediary executing the operation.

In the case of Spanish firms, credit institutions and securities traders may be considered taxpayers. Therefore, securities dealers, portfolio management firms and financial advice companies are excluded, including in the case that they undertake proprietary purchases of securities subject to the tax as part of the administration of their own assets, pursuant to the provisions of the final paragraph of Article 143.5 of the revised text of the Securities Market Law.

5.2. Which financial intermediaries can be considered taxpayers under the provisions of Points 1, 2 and 3 of Article 6.2.b) of the Tax Law?

The financial intermediaries that can be considered taxpayers are Spanish or foreign credit institutions and investment service companies authorised to execute orders on behalf of customers, Article 140.1.b) of the revised text of the Securities Market Law, approved by Legislative Royal Decree 4/2015, of 23 October). In the case of Spanish firms, based on this criterion, credit institutions, securities traders and securities brokers may be considered taxpayers.

5.3. Can the management companies of unit trust institutions be considered taxpayers?

No. Although they may be authorised to receive and transfer customer orders in relation to one or more financial instruments, Article 40.2.c) of Law 35/2003, of 4 November, on unit trust institutions, they are not authorised to execute orders on behalf of customers as referred to in Article 140.1.b) of the revised text of the Securities Market Law, approved by Legislative Royal Decree 4/2015, of 23 October.

Furthermore, although they may also be authorised for the safekeeping and administration of holdings in investment funds. Article 40.2.b) of Law 35/2003, of 4 November, on unit trust institutions, they are not authorised for the deposit and safekeeping of securities, cash and, generally speaking, assets used in the investments of UTIs; this responsibility corresponds to the trustee (Article 57 of Law 35/2003, of 4 November, on unit trust institutions).

5.4. For purchases of shares entered into an omnibus account, who is the contributor and who is the taxpayer?

If the securities subject to the tax are purchased by a financial intermediary using an omnibus account and the purchase is entered in the aforementioned account, the determination of the taxpayer and the contributor shall follow the rules set out in Article 6 of the Tax Law.

If the intermediary, who may or may not be the holder of the omnibus account into which the securities are entered, performs the purchase on behalf of third parties, the entry of the purchase in the omnibus account shall not affect the rules for determining the contributor and the taxpayer; to this end, the omnibus account should be considered another link in the chain of intermediation as regards the holding of shares and it must be understood, based on the characteristics of the omnibus account, that the registration of ownership in the purchaser's name is reflected in the intermediary's books, notwithstanding the tax being accrued at the moment at which the entry is made in said omnibus account, as it will be at this time that the entry shall be considered as having been made on behalf of the purchasing customer.

5.5. If the purchase does not take place at a trading venue, as part of the activities of a systematic internaliser, who is the taxpayer when the systematic internaliser transfers shares?

If the counterparty is a credit institution or investment services company that may be considered a taxpayer under the terms of these FAQs and undertakes the purchase on a proprietary basis, the credit institution or investment services company will be the taxpayer.

If the counterparty is a credit institution or investment services company undertaking the purchase on behalf of a customer, the taxpayer will be the financial intermediary that may be considered a taxpayer under the terms of these FAQs who receives the order directly from the purchaser.

If the counterparty is not a credit institution or investment services company that may be considered a taxpayer under the terms indicated in these FAQs, the taxpayer will be the systematic internaliser.

5.6. When a financial intermediary brokers derivative operations, but not in the execution with delivery of the derivatives upon maturity, is the financial intermediary the taxpayer?

The taxpayer shall be determined pursuant to the provisions of Article 6.2 of the Tax Law. For purchases of securities subject to the tax that are made without a credit institution or investment services company that may be considered the taxpayer under the terms of these FAQs who is purchasing on a proprietary basis, not at a trading venue or as part of the activities of a systematic internaliser, pursuant to Article 6.2.b).3 of the Tax Law, the taxpayer shall be the financial intermediary, as defined in these FAQs, delivering the underlying securities to the purchaser by virtue of the settlement of the derivative financial instrument.

5.7. Who is the taxpayer in purchases of securities subject to the tax resulting from non-monetary contributions to companies? And in the case of the winding up of companies when the liquidation preference is paid to the shareholder in the form of shares subject to the tax?

If the person making the proprietary purchase is a credit institution or investment services company that may be considered the taxpayer under the terms of these FAQs, they will be the taxpayer pursuant to the provisions of Article 6.2.a) of the Tax Law. Otherwise, the taxpayer will be the company providing the security depositary service on behalf of the purchaser, pursuant to the provisions of Article 6.2.b).4 of the Tax Law, provided that said purchase does not involve a financial intermediary as per Points 1, 2 and 3 of Article 6.2.b) of the Tax Law.

5.8. In the case of corporate events at which the sole intermediary is the agent appointed by the issuer and the trustee, who is the taxpayer?

When the corporate event takes place without a trading venue or as part of the activities of a systematic internaliser and entails the purchase of securities subject to the tax, the taxpayer will be the financial intermediary (that may be considered the taxpayer under the terms of these FAQs) who is the agent appointed to manage the corporate event and involved in the purchase of shares pursuant to Point 3 of Article 6.2.b) of the Tax Law, or, in the absence of said agent, the taxpayer will be the company providing the securities depository service on behalf of the purchaser pursuant to point 4 of Article 6.2.b) of the Tax Law, unless the conditions set out in Article 6.2.a) are met.

5.9. In the case of the execution or settlement of convertible or exchangeable bonds or debentures, who is the taxpayer?

In relation to the purchase of shares subject to the tax resulting from the execution or settlement of convertible or exchangeable bonds or debentures, when the purchase takes place without a trading venue or as part of the activities of a systematic internaliser, the taxpayer will be the financial intermediary (that may be considered the taxpayer under the terms of these FAQs) delivering the shares subject to the tax to the purchaser pursuant to point 3 of Article 6.2.b) of the Tax Law.

If a financial intermediary is not involved in the delivery of the shares, the taxpayer will be the company providing the depository services for the shares on behalf of the purchaser referred to in Point 4 of the aforementioned article . However, the taxpayer will be the purchaser when this is a credit institution or investment services company (that may be considered the taxpayer under the terms of these FAQs), pursuant to the provisions of Article 6.2.a) of the Tax Law.

6. TAX RETURN AND DEPOSIT

6.1. If a taxpayer only performs operations that are exempt during a settlement period, are they required to file a self-assessed tax return?

Yes. They must file the self-assessed tax return corresponding to the settlement period containing the information required to this end, without having to make a deposit in relation to the exempt operations.