I. GENERAL PROVISIONS

HEAD OF STATE

12356 *Law 5/2020 of 15 October on the Financial Transaction Tax.*

FELIPE VI,

KING OF SPAIN

To all who should see and hear this.

May it be known: That the General Courts have approved, and I come to pass the following law:

PREAMBLE

Since 2013, Spain is one of the group of European Union countries in the procedure of reinforced cooperation for the adoption of a Directive on the harmonised implementation of a Financial Transaction Tax, together with Germany, France, Austria, Belgium, Slovakia, Slovenia, Greece, Italy and Portugal.

Over the course of these years, despite the progress made in shaping the tax, it has not been possible to reach an agreement leading to the adoption of the Directive. In view of the time that has elapsed since then, and still within the framework of the procedure for enhanced cooperation with a view to the establishment of a harmonised tax, it is considered appropriate to establish the Financial Transaction Tax at national level, in order to contribute to the objective of consolidating public finances, and to strengthen the principle of fairness in the tax system, given that transactions that are now subject to general taxation are not effectively subject to any tax in the field of indirect taxation.

The shaping of the tax follows the line taken by our neighbouring countries, including France and Italy, thus contributing to greater coordination of these taxes across Europe.

Thus, the taxable event is the acquisition of shares in Spanish companies for valuable consideration, regardless of the residence of the persons or entities involved in the transaction.

Therefore, the so-called issue principle is established as the taxation principle, since it is considered that this minimises the risk of relocation of financial intermediaries in comparison with the residence principle, given that shares in Spanish companies are subject to taxation, regardless of the residence or place of establishment of the financial intermediary or the place where they are traded.

The certificates of deposit representing the above-mentioned shares are also subject to tax.

However, the tax does not apply to all acquisitions of shares in Spanish companies, but is limited to shares in companies that have shares admitted to trading on a regulated market, regardless of whether the transaction is executed in a trading centre or not, and that also have a market capitalisation value in excess of 1 billion euros. This threshold is intended to ensure that the tax affects market liquidity as little as possible, while guaranteeing a very high percentage of potential tax revenue.

Certain transactions in the primary market, those necessary for the proper functioning of the markets, those arising from corporate restructuring operations or from resolution measures, those between companies in the same group and temporary assignments are exempted.

cve: BOE-A-2020-12356
Verifiable at https://www.boe.es

The accrual of the tax is established at the moment when the entry in favour of the taxpayer of the securities which are the object of the acquisition for consideration that constitutes the taxable event is made, whether this entry is made in a securities account or in the books at a financial institution that provides the deposit or custody service, or in the records of a central securities depository or those kept by its participating institutions.

The taxable base is the amount of the consideration, excluding the costs associated with the transaction. However, certain special rules are established in those cases in which the acquisition of the securities derives from the execution or settlement of convertible or exchangeable debentures or bonds, of derivative financial instruments, or of any financial instrument or contract, as well as in the case of acquisitions and transfers made on the same day.

The purchaser of the securities should pay the tax. The financial intermediary that transmits or executes the acquisition order is generally a taxable person, either acting on its own account, in which case it is a taxable person as a taxpayer, or on behalf of third parties, in which case it is a substitute for the taxpayer.

Finally, with regard to the declaration and payment of the tax, the Law provides for the regulatory development of the procedure and the cases in which a central securities depository established in Spanish territory is the one who, in the name and on behalf of the taxpayer, files the tax return and pays the tax debt. This allows a high degree of automation in its management.

For cases in which the above procedure is not applicable, the system of self-assessment by the taxable person is generally established.

To this end, and in order to guarantee the effectiveness of the tax regardless of where the taxable transactions are carried out, the Spanish tax authorities will use all the legal instruments for obtaining information provided for by the regulations. In particular, those provided for in international treaties and conventions as well as in the EU acquis, such as those covered by Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC.

Finally, it should be stressed that, pursuant to the above, this regulatory text is in line with the principles of necessity, effectiveness, proportionality, legal certainty, transparency and efficiency provided for in Article 129 of Law 39/2015 of 1 October on the Common Administrative Procedure of Public Administrations.

Article 1. *Nature and scope of application.*

1. The Financial Transaction Tax is an indirect tax on the acquisition of shares under the terms of Article 2 of this Law.

2. The tax will be applied regardless of the place where the acquisition is made and regardless of the residence or place of establishment of the persons or entities involved in the transaction, without prejudice to the provincial tax systems of concert and economic agreement in force, respectively, in the Historical Territories of the Basque Country and in the Autonomous Region of Navarre.

Article 2. *Taxable event.*

1. Acquisitions for valuable consideration of shares defined in the terms of Article 92 of the consolidated text of the Law on Corporations, approved by Legislative Royal Decree 1/2010 of 2 July, representing the share capital of Spanish companies, shall be subject to the tax when the following conditions are met:

a) The company has its shares admitted to trading on a Spanish market, or on a market in another European Union state, which is considered to be regulated in accordance with the provisions of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments, or on a market considered to be an equivalent market in a third country in accordance with Article 25.4 of that Directive.

b) The stock market capitalisation value of the company is, at 1 December of the year prior to the acquisition, more than 1 billion euros.

The acquisitions referred to in this paragraph shall be subject to tax irrespective of whether they are made in a trading venue as defined in Article 4.1.24 of said Directive; in any other market or procurement system; by a systematic internaliser, as defined in Article 331 of the consolidated text of the Securities Market Law, approved by Legislative

cve: BOE-A-2020-12356
Verifiable at https://www.boe.es

Royal Decree 4/2015 of 23 October; or by direct agreements between the contracting parties.

2. The following are also subject to tax:

a) Purchases for consideration of transferable securities constituted by certificates of deposit representing the shares referred to in Paragraph 1 of this Article, irrespective of the place of establishment of the institution issuing these securities.

However, acquisitions of shares made for the sole purpose of issuing the securities referred to in the previous paragraph shall not be subject to the tax. Nor shall tax be payable on purchases of the certificates of deposit referred to in this point (a) made in exchange for the delivery by the acquirer of the shares that they represent, or on transactions carried out for the cancellation of such certificates of deposit by delivery to their holders of the shares which they represent.

b) The acquisitions of the securities referred to in Paragraph 1 of this article and Point a) of this paragraph resulting from the execution or settlement of convertible or exchangeable debentures or bonds, of derivative financial instruments, as well as any financial instrument, or of the financial contracts defined in Article 2.1.4 of Order EHA/3537/2005, of 10 November, developing Article 27.4 of Law 24/1988, of 28 July, on the Securities Market.

3. The list of Spanish companies with a market capitalisation value at 1 December of each year in excess of 1 billion euros will be published before 31 December of the same year at the electronic headquarters of the Tax Agency.

Article 3. *Exemptions.*

1. The following acquisitions of shares will be exempt from the tax:

a) Acquisitions resulting from the issue of shares.

Also exempted are acquisitions resulting from the issue of the deposit certificates referred to in Article 2.2.a) of this Law representing shares issued exclusively to create such securities.

b) Acquisitions arising from a public offering of shares as defined in Article 35.1 of the consolidated text of the Securities Market Law, approved by Legislative Royal Decree 4/2015 of 23 October, as part of their initial placement among investors.

c) Acquisitions prior to those referred to in Points a) and b), made in an instrumental manner by underwriters and insurers engaged by issuers or offerors for the purpose of making the ultimate distribution of such shares to final investors, as well as acquisitions in fulfilment of their obligations as underwriters and in particular as insurers, where applicable, of such transactions.

d) Acquisitions in the context of the admission of shares to the stock exchange by financial intermediaries in charge of price stabilisation in the framework of a stabilisation order as provided for in Regulation (EU) 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC.

cve: BOE-A-2020-12356
Verifiable at https://www.boe.es

e) Acquisitions resulting from purchase or loan transactions and other transactions carried out by a central counterparty or central securities depository in respect of financial instruments subject to this tax in the exercise of their respective functions in the field of securities clearing or settlement and registration.

This item covers the central counterparty's own novation transactions and transactions conducted as part of a repurchase transaction due to a failure of settlement under Regulation (EU) 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) 236/2012.

f) Acquisitions made by financial intermediaries on behalf of the issuer of the shares in the exercise of their functions as liquidity providers, by virtue of a liquidity contract that meets the requirements of National Securities Market Commission Circular 1/2017 of 26 April, whose sole objective is to promote the liquidity of transactions and the regularity of the listing of their shares, within the scope of market practices accepted by the National Securities Market Commission pursuant to the provisions of Regulation 596/2014 (EU) of the European Parliament and of the Council of 16 April 2014 on market abuse.

g) Acquisitions made in the framework of market-making activities.

For this purpose, the activities of an investment firm, a credit institution, or an equivalent entity in a third country, which is a member of a trading venue or a third country market whose legal and supervisory framework has been declared equivalent by the European Commission, are considered as such if any of these entities acts as an intermediary on its own account in relation to a financial instrument, whether traded inside or outside a trading venue, in any of the following ways:

1.º By posting firm, simultaneous two way quotes of comparable size and at competitive prices, with the result of providing liquidity on a regular and permanent basis to the market.

2.º as part of its usual business, by fulfilling orders initiated by clients or in response to clients' requests to trade, and by hedging positions arising out of those dealings.

3.º Covering the positions resulting from the execution of the activities referred to in Points 1 and 2 above.

This exemption shall also apply on the same terms as provided for in this point where the acquisitions relate to the securities referred to in subparagraph 1 Article 2.2.a) of this Law.

h) Acquisitions of shares between entities forming part of the same group under the terms of Article 42 of the Commercial Code.

i) Acquisitions to which the special system for mergers, divisions, contributions of assets, exchange of securities and change of registered office of a European company or a European cooperative society from one Member State to another of the European Union regulated in Chapter VII of Section VII of Law 27/2014 of 27 November on Corporation Tax is applicable.

In addition, acquisitions resulting from mergers or divisions of collective investment schemes or subfunds of collective investment schemes carried out in accordance with the provisions of the relevant regulatory legislation.

j) Securities financing transactions, as referred to in Article 3.11 of Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on the transparency of securities financing transactions and the re-use of securities and amending Regulation (EU) 648/2012, as well as title transfer collateral transactions resulting from a title transfer financial collateral arrangement, as defined in Article 3.13 of that Regulation.

cve: BOE-A-2020-12356
Verifiable at https://www.boe.es

k) Acquisitions resulting from the implementation of resolution measures adopted by the Single Resolution Board, or the competent national resolution authorities, under the terms provided for in Regulation (EU) 806/2014 of the European Parliament and of the Council of 15 July 2014, laying down uniform rules and a uniform procedure for the resolution of credit institutions and certain investment service undertakings within the framework of a single resolution mechanism and a single resolution fund and amending Regulation (EU) 1093/2010 and Law 11/2015 of 18 June on the recovery and resolution of credit institutions and investment service undertakings.

l) Acquisitions of own shares, or shares of the parent company made by any other entity that forms part of its group under the terms of Article 42 of the Commercial Code, carried out within the framework of a buyback programme that has as its sole purpose any of the following objectives:

1.º The reduction of the issuer's capital.

2.º Compliance with the obligations inherent in financial instruments of debt convertible into shares.

3.º The fulfilment of obligations arising from share option programmes or other allocations of shares to employees or members of the administrative or supervisory bodies of the issuer or an entity of the group.

2. In order for the taxable person acting on behalf of a third party to apply the exemptions provided for in Paragraph 1 of this Article, the customer must inform them of the facts giving rise to such application and of the following information:

a) For the exemptions referred to in Points a), b) and c) of Paragraph 1, it shall identify the relevant issues or the public offer of sale of shares to which it refers.

b) With respect to the exemption in Point e) of Paragraph 1, the identification of the entity carrying out the securities clearing, settlement and registration transactions.

c) With respect to the exemption in Point f) of Paragraph 1, the identification of the entity carrying out the transactions as a liquidity provider. The notice will also have to be provided to the market for the liquidity contract.

d) With regard to the exemption in Point h) Paragraph 1, the identification of the group of companies

e) With respect to the exemption in Point i) of Paragraph 1, the identification of the entities affected by the corporate restructuring process, or the collective investment undertakings involved in the merger or the division, together with the authorisation of the transaction by the relevant competent authority.

f) With respect to the exemption in Point j) of Paragraph 1, the identification of the entities involved in the financing transaction or in the collateral transactions with change of ownership.

g) With regard to the exemption in Point k) of Paragraph 1, the identification of the agreement adopting the termination measures.

h) With regard to the exemption in Point l) of Paragraph 1, the identification of the buy-back programme in which the transactions are integrated.

For the identification of the entities referred to in this paragraph, it will be necessary, where appropriate, to communicate the Legal Entity Identifier (LEI).

The taxpayer and the acquirer must keep at the disposal of the tax authorities the supporting documents that prove the execution and content of the communication.

Article 4. *Accrual.*

The tax shall be due at the time when the registration of the securities is made in favour of the acquirer in a securities account or register, either with an entity providing the custody service or in the system of a central securities depository, resulting from the settlement of the transaction or the financial instrument giving rise to the acquisition of the securities.

Article 5. *Taxable base.*

cve: BOE-A-2020-12356
Verifiable at https://www.boe.es

1. The taxable base shall be the amount of consideration for the transactions subject to tax, excluding transaction costs arising from market infrastructure prices, brokerage commissions and any other expenses associated with the transaction.

In the event that the amount of the consideration is not expressed, the taxable amount shall be the value corresponding to the close of the most relevant regulated market in terms of liquidity of the security in question on the last trading day prior to that of the transaction. For this purpose, the most relevant market in terms of liquidity shall be determined in accordance with Article 4 of Commission Regulation (EU) 2017/587 of 14 July 2016 supplementing Regulation (EU) 600/2014 of the European Parliament and of the Council on markets in financial instruments as regards technical regulatory standards relating to transparency requirements applicable to trading venues and investment services firms in respect of shares, depository receipts, listed funds, certificates and other similar financial instruments and obligations to execute transactions in respect of certain shares on a trading venue or by a systematic internaliser.

2. By way of derogation from Paragraph 1 of this article, the following special rules shall apply for the determination of the taxable base:

a) Where the acquisition of the taxable securities is made from convertible or exchangeable bonds or other negotiable securities giving rise to such acquisition, the taxable amount shall be the value set out in the document of issue of the securities.

b) Where the acquisition results from the exercise or settlement of options or other derivative financial instruments that give a right to acquire or transfer the taxable securities, the taxable amount shall be the strike price set out in the contract.

c) When the acquisition comes from a derivative instrument that constitutes a forward deal, the taxable base will be the agreed price, unless said derivative is traded on a regulated market, in which case the taxable base will be the delivery price said acquisition must have at maturity.

d) Where the acquisition results from the settlement of a financial contract referred to in Point b) of Paragraph 2 of Article 2 of this Law, the taxable base shall be determined in accordance with the Subparagraph 2 of Paragraph 1 of this article.

In order for the taxable person acting on behalf of third parties to be able to apply the special rules provided for in this paragraph, the acquirer must inform them of the facts which give rise to such application and of the factors determining the amount of the taxable amount in each case.

3. In the event that on the same day acquisitions and transfers of the same taxable value, ordered or executed by the same taxable person, are made in respect of the same acquirer and, moreover, settled on the same date, the taxable amount in respect of such acquisitions shall be calculated by multiplying the positive difference resulting from subtracting from the number of securities acquired those transferred on the same day, by the quotient resulting from dividing the sum of the consideration for the said acquisitions by the number of securities acquired. In order to make this calculation, the exempted acquisitions provided for in Article 3 of this Law shall be excluded, as well as the transfers made within the framework of the application of these exemptions.

Article 6. *Taxpayers, taxable persons and persons responsible.*

1. The purchaser of the securities referred to in Article 2 of this Law should pay the tax.

cve: BOE-A-2020-12356
Verifiable at https://www.boe.es

2. They should pay the tax, regardless of where they are established:

a) The investment services firm or credit institution making the acquisition for its own account.

b) If the acquisition is not made by an investment firm or credit institution acting on its own account, the following persons will be taxable as substitutes for the taxpayer:

1.º In the event that the acquisition is made in a trading venue, the taxable person will be the member of the market that executes it. However, where the transmission of the order to the market member involves one or more financial intermediaries on behalf of the customer, the taxable person shall be the financial intermediary who receives the order directly from the customer.

2.º If the acquisition is made outside a trading venue, within the scope of the activity of a systematic internaliser, the taxable person will be the systematic internaliser themselves. However, where the acquisition involves one or more financial intermediaries on behalf of the customer, the taxable person shall be the financial intermediary who receives the order directly from the customer.

3.º If the acquisition is made outside a trading venue and outside the activity of a systematic internaliser, the taxable person shall be the financial intermediary who receives the order from the person acquiring the securities, or makes the delivery to the latter by virtue of the execution or settlement of a financial instrument or contract.

4.º In the event that the acquisition is made outside a trading venue and without the intervention of any of the persons or entities referred to in the preceding paragraphs, the taxable person shall be the entity that provides the service of depositing the securities on behalf of the acquirer.

For this purpose, the acquirer must notify the entity providing the deposit service of the circumstances that determine the obligation to pay the tax, as well as its quantification.

3. The acquirer of the securities who has communicated to the taxpayer erroneous or inaccurate information that is decisive for the improper application of the exemptions provided for in Article 3 of this Law, or for a lower taxable base resulting from the incorrect application of the special rules for determining the taxable base provided for in Paragraph 2 of Article 5 of this Law, shall be jointly and severally liable for the tax debt.

Liability will extend to the tax debt corresponding to the improper or incorrect application of the exemptions or the special rules for determining the taxable base.

Likewise, in the case referred to in Subparagraph 4 of Point b) of Paragraph 2 of this article, the acquirer of the securities who has not made the notification referred to in the aforementioned Subparagraph 4, or has made it in an erroneous or inaccurate manner, shall be jointly and severally liable.

Liability will extend to the tax debt arising from the failure to notify or from erroneous or inaccurate notification.

Article 7. *Tax rate.*

The tax will be levied at the rate of 0.2 percent.

Article 8. *Obligation to declare and pay in and obligations of documentation.*

1. Taxpayers must submit a self-assessment and pay the amount of the resulting tax debt with the content and in the place, form and time periods established by regulation.

2. Under the terms and conditions established by regulation, taxpayers will submit the self-assessment and pay the resulting tax debt through a central securities depository established in Spanish territory.

cve: BOE-A-2020-12356
Verifiable at https://www.boe.es

To this end, taxpayers shall be obliged to communicate to the central securities depository all the information required in the self-assessment and to pay to it the amount of the resulting tax liability, either directly or through the institutions participating in the self-assessment in the case of taxpayers who do not have such status.

The central securities depository shall submit, in the name and on behalf of the taxpayer, a self-assessment for each taxpayer and shall pay the amount of tax due for the settlement period with the content and in the place, manner and time period established by regulation.

The procedure for the presentation and payment of self-assessments for this tax referred to in this paragraph may be extended to other central securities depositories established in other European Union States, or in third States that are recognised to provide services in the European Union, by means of collaboration agreements signed with a central securities depository established in Spanish territory.

3. The settlement period will coincide with the calendar month.

The tax debt corresponding to this tax may not be subject to deferment or instalments.

4. The filing of self-assessments and the collection of the tax debt by the central securities depository pursuant to the provisions of Paragraph 2 of this Article shall not give rise to any specific tax liability for it or its participating entities as a result of such filing and collection.

5. The central securities depository established in Spanish territory, its participating entities and the taxpayers, in order to facilitate the control and management of the tax, must keep at the disposal of the tax authorities the documentation or files relating to the transactions subject to the tax.

The central securities depository and its participating institutions may use the information communicated by the taxable person pursuant to Paragraph 2 of this Article only for the purposes of complying with the obligation to submit a self-assessment and to make the payment referred to in that paragraph. This information must be communicated to the tax authorities in the cases provided for in the tax regulations. Except as provided for in the previous paragraph, the above-mentioned information is reserved. The central securities depository and its participating entities are subject to the strictest and most complete secrecy with respect thereto.

Article 9. *Infringements and penalties.*

Tax infringements arising from failure to comply with the provisions of this Law and its implementing regulations will be qualified and penalised in accordance with the provisions of Law 58/2003 of 17 December, General Tax Law.

Sole transitional provision. *Companies whose shares are taxed in the first year of application of the tax.*

1. During the period between the date of entry into force of this Law and the following 31 December, the requirement set out in Article 2.1.b) of this Law shall be understood to refer to those Spanish companies whose stock market capitalisation value one month before the date of entry into force of this Law is greater than 1 billion euros.

2. The list of the aforementioned companies will be published before the entry into force of this Law on the Tax Agency's e-Office.

Final provision one. *Competence title.*

This Law is issued under the exclusive jurisdiction of the State in matters of the General Treasury provided for in Article 149.1.14 of the Spanish Constitution.

cve: BOE-A-2020-12356
Verifiable at https://www.boe.es

Final provision two. *Regulatory development and implementation.*

The Government shall adopt such provisions as may be necessary for the development and implementation of this Law.

Final provision three. *Modification by the General State Budget Act.*

The General State Budget Act may modify the tax rate and tax exemptions.

Final provision four. *Adaptation of the Economic Agreement with the Autonomous Community of the Basque Country and the Economic Agreement between the State and the Autonomous Community of Navarre.*

Within three months of its publication in the “Official State Bulletin”, the Joint Commission of the Economic Agreement with the Basque Country and the Commission of the Economic Agreement with Navarre will meet to agree on the corresponding adaptation of the Economic Agreement with the Autonomous Community of the Basque Country, approved by Law 12/2002, of 23 May, in accordance with the provisions of its additional provision two, and of the Economic Agreement between the State and the Autonomous Community of Navarre, approved by Law 28/1990, of 26 December, in accordance with the provisions of its Article 6.

Final provision five. *Entry into force.*

This Law shall enter into force three months after its publication in the “Official State Bulletin”.

Therefore,
I command all Spaniards, individuals and authorities, to keep and enforce this law.

Madrid, 15 October 2020.

FELIPE R.

The President of the Government,
PEDRO SÁNCHEZ PÉREZ-CASTEJÓN

cve: BOE-A-2020-12356
Verifiable at https://www.boe.es