



Announced, proposed and implemented: Key features of Spain's DST

Global Tax Alert

9 February 2021

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The Spanish government has enacted its Ley 4/2020 a DST as a unilateral measure following the path of other European countries. Spain's DST, which became effective as of January 16, 2021, targets those digital services in the course of which the participation of an end-user in a digital activity constitutes an essential input for the business, enabling the business to obtain revenue from such activity.

Affected taxpayers

The threshold to become a DST taxpayer is that annual worldwide revenue exceeds €750 million during the previous calendar year and total amount of taxable revenue obtained in Spain exceeds €3 million. It is important to point out that the €750 million threshold is *not limited to revenues generated by the provision of digital services*; therefore, non-tech businesses may also meet this requirement. The €3 million threshold seems low compared with those applied by other EU countries.

The point of connection for the localization of services in Spain is that the user's computer is located in Spanish territory. This circumstance will be accredited by means of the IP address or any other geolocation mechanism.

Covered services – qualified digital services

The applicable DST in Spain is 3 percent and is due on gross income (excluding VAT) derived from the provision of the following digital services:

1. The placing of targeted advertising on a digital device, defined as specific advertising directed at users based on data collected from them in the digital interface.

The taxable base is calculated by the proportion of global revenue represented by the number of times that advertising appears on devices in Spain with respect to the total number of devices in the world.

2. Services consisting in making available multi-sided digital interfaces to users ("intermediation services") which either i) facilitate the provision of underlying supplies of goods or services directly between them or ii) allow users to find other users and to interact with them.

The tax base for i) will be the proportion that the number of users in Spanish territory represents of the global income from these intermediation services with respect to the total number of users in the world; for ii) it will be the revenue earned on accounts allowing the user to access the digital interface which have been opened using a device which, at the time of opening, is located in Spain.

3. The sale or lease of data provided by the user and generated from accessing the digital device. The taxable base in this case will be determined by the proportion of the overall revenue represented by the number of users who have generated such data and who are located in Spanish territory with respect to the total number of users who have generated such data, irrespective of where they are located.

Excluded activities

The following activities do *not* fall within the scope of the Spanish DST:

- Revenue derived from the online sale of goods and services made on supplier's website when the supplier does not act as an intermediary. In this regard the concept of intermediary for these purposes is not completely clear and should be analyzed on a case-by-case basis.
- Underlying sale of goods or services between users in the context of online intermediation services
- Online intermediary services for the purpose of supplying digital content to users, providing communication or payment services.
- Digital services rendered to entities of a group owned by one shareholder. Unlike the provisions of the European Commission's Proposal, services between group companies are not exempt from DST if they are not wholly owned.
- Financial services rendered by regulated financial institutions and data transmission services rendered by these same institutions.

Collection and compliance

A penalty system is established in the event that the taxpayer does not establish the systems that allow location of users. The penalty is 0.5 percent of the turnover of the previous year, with a minimum of €15,000 and a maximum of €450,000.

The tax must be paid quarterly. The regulation establishes the specific content of the registers and the report to be made available by taxpayers to the tax administration together with the quarterly tax return in relation to the digital services provided subject to the tax.

In principle, given the qualification of the DST as an indirect tax, its application shall not be restricted by the application of tax treaties. However, considering that this qualification is controversial, the discussion on the applicability of the tax treaties may give rise to claims by taxpayers requesting a refund.

Find out more about this evolving concern by contacting the author or your usual DLA Piper advisor.

To review the key features and country-specific developments of the DST in France, Italy, and the United Kingdom, please click on the following links:

[Key features of France's DST](#)

[Key features of Italy's DST](#)

[Key features of the United Kingdom's DST](#)

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