

Tax – Informative Note

"Draft bill on digital services tax"

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Although it is not clear if it will be finally approved due to the lack of sufficient parliamentary support, Draft Bill on Digital Services Tax was released last month. Known as "the Google tax", it is an indirect levy (in the words of the draft, compatible with VAT), which aims to tackle the problems of digital business models in the tax sphere. More specifically, it addresses the disconnect that occurs between the State where the income is generated and the State where it is finally taxed; this is due to the absence of a physical presence in the State where the income is generated.

Taxpayers will be companies whose worldwide turnover (on an individual or group level) is over € 750 million and whose total income from the supply of digital services in Spain is higher than € 3 million. In principle, this tax will not affect SMEs and startups doing business in the digital field.

The charge will be 3% on revenue (not profits), excluding VAT or another equivalent tax, for a specific set of digital services ("online advertising", "online intermediation", and "data transmission") in which users located in Spain are involved.

Digital services subject to taxation are the following:

- (i) Online advertising services such as the inclusion, on a digital interface, of advertising aimed at users whose device (on which the advertising appears) is located in Spain, e.g. hosting of advertising on social networks, websites, etc.
- (ii) Online intermediation services such as supplies of multifaceted digital interfaces enabling their users to locate and interact with other users in order to facilitate the delivery of underlying goods or services directly between those users whose device, at the moment the transaction is concluded, is in Spain, e.g. interconnection platforms with suppliers for e-commerce.
- (iii) Data transmission services such as transmission of data collected about users, generated by activities carried out by the users on digital interfaces visited on a device located on Spanish territory, e.g. sale of personal data from social networks.

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Nonetheless, among others, the following activities will not be subject to this tax: i) the supply of underlying goods or services taking place between users within the framework of an online intermediation service; and ii) the supply of goods or services contracted online through the website of the supplier of those goods or services (retail "e-commerce" activities) in which the supplier does not act as an intermediary.

Among other tax obligations arising from this tax, taxpayers must apply to the Tax Authorities for registration in the relevant Register, apply for a tax identification number, and report regularly or as required on the digital services they offer.