

Legal Developments in the Spanish Digital Services Tax

We review the ISD tax development regulations that just published the AEAT

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Five months after the entry into force of Law 4/2020, of October 15, which approved the Spanish Digital Services Tax (DST), and ahead of the declaration period corresponding to the first and second quarter of 2021, the Spanish Tax Authorities (STA) have published the corresponding regulations developing the DST Law.

Let us remember that DST is configured as a "special" indirect tax (although the regulations do not contemplate the obligation to charge it or its breakdown on the invoice) levied on the following services provided electronically at a tax rate of 3%:

1. Online advertising services directed to users of digital interface.
2. Online intermediation services to make available to users of a digital multi-faceted interface that facilitates an underlying supply of goods or services directly between users, or that allows them to contact other users and interact with them.
3. Data transfer services (including sale or cession) of data collected about users, that have been generated through activities carried out by those users through a digital interface.

Nowadays, this tax will only affect large companies with a net revenue higher than 750 million and a turnover of more than 3 million in services subject to the DST.

Trying to solve some of the darkest or conflictive points of the legal text and developing its formalities and models for payment, the following documents have

recently been published in the Spanish Official State Gazette (BOE):

1. **Royal Decree 400/2021, of June 8, which develops the rules for locating user devices and the formal obligations of the Digital Services Tax, and modifies the General Regulation of actions and procedures management and tax inspection and development of the common rules of the tax application procedures, approved by Royal Decree 1065/2007, of July 27.**

This Royal Decree mainly develops some aspects of difficult application such as the place of supply rules (location of the users' devices) and the several formal obligations of the taxpayers, mainly the mandatory memo of activity and the DST ledgers.

2. **Order HAC / 590/2021, of June 9, approving form 490 of "Digital Services Tax return" and determining the form and procedure for its submission.**

Along with the approval of the corresponding DST return (form 490), this order confirms that there will not be a new extension of the deadline for submitting the DST returns corresponding to the first and second quarter of 2021, stating that "The deadline for filing and payment of the DST accrued during the first half of year 2021 must be performed from July 1 to August 2, 2021".

In addition, a regularization procedure is foreseen for those cases in which provisional amounts have been declared for the calculation of the tax base.



3. **Proposal of Resolution of the Spanish General Directorate of Taxes (SGDT) in connection with the DST**

Finally, as a FAQ document, the SGDT has published the draft of an interpretative resolution, currently in the process of hearing and public information.

The objective of said resolution is to clarify certain concepts of the tax in order to provide greater legal certainty in relation to the definition of the different taxable events and taxpayers. This text, in addition to providing some precision on specific concepts (eg, what is understood by segmentation), tries to avoid cases of double taxation or “cascade” effects, mainly in relation to online advertising services.

It insists on a tax base calculated per operation, perhaps to avoid assumptions of “netting” or even negative tax bases, although then it has to admit that there will be a “global” tax base subject to a proportional criteria (according to the number of devices or users in the territory of application of the tax).

Finally, if the taxable base has been provisionally fixed because there was no other possibility, the subsequent regularization will not be subject to surcharges, but will be subject to late payment interest in contrast what the VAT Law established, which allows in such cases the adjustment within DST return of the period in which the taxable base is determined.