NEW TEMPORARY TAX ON HIGH-NET-WORTH INDIVIDUALS

At the end of September, the Spanish government announced a draft bill of a new temporary tax on high-net-worth individuals.

On November 10th, the left wing of the Parliament introduced an amendment to the legislative proposal aimed to establish temporary taxes on the energy sector and on the financial institutions and fspecial credit institutions, consisting in a new temporary "solidarity tax on high-net-worth individuals" (hereinafter, the "**Solidarity Tax**").

The goals of this new Tax are, on the one hand, to increase revenue, in a time of energy crisis and inflation, and, on the other hand, to harmonise the taxation on net-wealth among the Spanish autonomous regions (*Comunidades Autónomas*).

The Solidarity Tax is aa direct, personal and complementary tax to the Spanish Net Wealth Tax (*Impuesto sobre el Patrimonio*, hereinafter, "**NWT**"), applicable throughout the Spanish territory, through excluding the specific tax regimes of the Basque Country and Navarre).

It is expected the Solidarity Tax to be temporary, and applicable during the first two years after its entry into force. Therefore, it will foreseeably apply in 2022 and 2023, provided that it is finally approved and published in the Spanish Official Gazette before 31 December 2022. However, as indicated in the bill itself, it is expected to be reviewed and evaluated at a later date, so that it could be the case the Solidarity Tax becomes permanent.

I.) Main characteristics of the Solidarity Tax

The main characteristics of the Tax are set out below:

Taxable event: what is levied upon the Tax? The ownership of a net worth of more than 3 million euros, calculated and determined in accordance with the rules established in the NWT regulations.

Taxable person: who may be affected? To the extent the Tax refers to the NWT Law, both resident and non-resident individuals are liable. The Spanish tax resident taxpayers are liable for the totality of their net assets, on a worldwide basis while the Spanish non-resident taxpayers are liable only for their assets and rights located or exercisable within Spanish territory

Accrual: when does the Tax accrue? The accrual date will take place on December 31st of each year. Therefore, the reference date for self-assessment of the Tax will be the assets and rights - reduced by certain debts and obligations - held by the taxpayer on that date.

Exempt assets and rights: which assets and rights are not taxed? A direct reference to the NWT regulations is established. Hence, the so-called "family-owned" businesses may be exempt, totally or partially, in addition to the main residence, with a limit of 300,000 euros per taxpayer, among other exemptions.

Taxable Base: how are assets and rights valued? The value of the assets for the purposes of the Tax is determined in accordance with the NWT regulations as well as the value of debts and deductible obligations.

Net base: A reduction per taxpayer of 700,000 euros will be applied to the taxable base to calculate the liquid base. This amount cannot be modified by the Autonomous Regions,la and only applies to Spanish tax resident taxpayers.

Tax rate: Although the regulations of the Tax lie on the regulations of the NWT, the tax scale is different from the tax scale regulated under the NWT. Below is the applicable tax scale for the Tax:

Liquid taxable base *Up to Euros*	Quota *Euros*	Rest of liquid taxable base *Up to Euros*	Tax rate *Percentage*
0	0.00	3,000,000	0.0%
3,000,000	0.00	2,347,998.03	1.7%
5,347,998.03	39,315.97	5,347,998.03	2.1%
10,695,996.06	152,223.93	Henceforth	3.5%

Tax shield: For the calculation of the gross tax liability of the Tax, a joint limit is established for the gross tax liability of this tax together with the Personal Income Tax (and the NWT exclusively for taxpayers that are resident in Spanish territory.

In practice this means that the sum of the quotas of PIT, NWT and the Tax may not exceed 60% of the PIT taxable base, although the maximum reduction of the quota of the Tax may not exceed 80%, so as it occurs with the NWT .

Tax payable: In order to prevent from double taxation, the tax effectively paid for the NWT may be deducted from the tax payable for the Solidarity Tax For this reason, the Solidarity Tax is particularly burdensome for those taxpayers residing in an Autonomous Region where the NWT is effectively in force with no or limited rebates, though has a very relevant impact for taxpayers resident (or non-residents owning assets and rights located or exercisable) in an Autonomous Region where NWT is subsidised or fully rebated.

Finally, it should be noted that there are many doubts as to the constitutionality of the Solidarity Tax, firstly, due to its parliamentary procedure as an amendment to a draft bill secondly, due to the double taxation that it may entail, despite the attempt to correct it by deducting the NWT effectively paid; and, lastly, among other issues, because it could be found to be confiscatory. Moreover, as some Autonomous Regions have remarked, the Solidarity Tax could encroach on their constitutional competences.

II.) Other considerations

The aforementioned draft bill has also introduced an amendment aimed at modifying section 5 of the NWT Law as to enable that non-resident individuals holding real estate assets located in Spanish territory through non-resident entities may be subject to the NWT.

In this connection, securities representing an interest in the equity of entities (excluding listed entities), which assets is comprised, directly or indirectly, at least in a 50% of real estate located in Spanish territory, will be deemed to be considered assets located in Spanish territory for NWT purposes and hence subject to NWT.

Insofar as the new Solidarity Tax is regulated by mirroring the NWT regulations, this amendment will also affect the Solidarity Tax.

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Our Tax team will be pleased to provide you with more information. Please, do not hesitate to contact us:

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