



Tax Alert

Temporary Solidarity Tax on Large Fortunes (ITSGF)

Policy context and purpose

On 29th December 2022, the new 38/2022 Law of 27th December on the establishment of temporary taxes on energy companies, credit institutions and financial credit establishments and the creation of the temporary solidarity tax on large fortunes, and amending certain tax rules, which approved the new Temporary Solidarity Tax on Large Fortunes (hereinafter “ITSGF”), came into force.

According to the Explanatory Memorandum itself, there are **two main purposes of this tax: (i) collection**, since, due to the situation of the energy crisis and inflation, the aim is to demand a greater effort from those who have a greater economic capacity as a sign of their solidarity, and **(ii) harmonisation**, since it aims to reduce the differences in taxation of the wealth of individuals resident in the different Autonomous Communities (Autonomous Communities), under the basic pretext of the lack of taxation that occurs in some Autonomous Communities with respect to the capital gains tax. Hence, the tax cannot be ceded to the Autonomous Regions.

Concept, nature and scheme of the Tax

- **Nature and purpose:** it is a **direct tax**, of a state nature and of a personal nature, complementary to the Capital Gains Tax (hereinafter, “CGT”), which is levied on the net wealth of natural persons in excess of **3,000,000 euros**.
- **Taxable event:** the ownership of net assets exceeding 3,000,000 euros. For these purposes, the net assets shall be constituted by the value of the assets and rights of economic content valued in accordance with the CGT regulations, less the charges and encumbrances that reduce their value, as well as the debts and obligations for which the taxpayer is liable.
- **Territorial scope:** it extends to the whole of Spanish territory including the foral tax regimes in force in the Basque Country and Navarre, and to the provisions of international treaties and conventions which form part of the domestic legal system.
- **Temporary scope:** It is envisaged to be in force for 2 years, applying during the first 2 financial years in which the tax is accrued from its entry into force (2022 and 2023). However, the Law itself establishes the possibility of extension depending on socio-economic circumstances.
- **Accrual:** The accrual of the tax occurs on 31st December of each year, i.e., on 31st December 2022 and 2023.
- **Taxable person:** They will be determined according to the rules of the CGT (residents or non-residents in Spain).



> **Appointment of a representative:** The following taxpayers must appoint, before the end of the deadline for filing the return, a representative resident in Spain to represent them before the Tax Administration in relation to their obligations under this Tax:

- Non-residents in Spain who are also non-residents in another EU Member State.
- Residents in a State of the European Economic Area (EEA) with which there are no regulations on mutual assistance in the exchange of tax information.
- Resident taxpayers who leave Spain after the taxable event has occurred for a third State that is not a member of the EU or the EEA with which there are regulations on mutual assistance in the exchange of tax information.

> **Exempt goods and rights:** The same goods and rights of the IP shall be exempt from this tax. Specifically:

- The taxpayer's main residence, up to 300,000 euros.
- Household goods.
- Assets forming part of the historical or cultural heritage.
- Rights derived from intellectual or industrial property.
- Business and professional assets, under certain conditions.

> **Taxable base:** The taxable base of this tax is made up of the total value of the taxpayer's assets and rights, less any charges and encumbrances that reduce their value, as well as the debts and obligations for which the taxpayer is liable. In this regard, it is important to note that, according to the recent Supreme Court ruling 167/2023 of 13th February, in the case of taxpayers liable for real obligation, the debt secured by a mortgage on the property whose ownership determines the liability for real obligation is not deductible if it has not been used for the acquisition or alteration of the property.

> **Minimum exemption for residents:** In the case of taxpayers subject to personal liability (residents in Spain), the taxable base will be reduced as an exempt

minimum by 700,000 euros. In practice, taxpayers who also own a main residence in their assets (main residence exemption 300,000 euros) will be taxable persons with assets exceeding 4,000,000 euros.

> **Non-resident exempt minimum:** Those who are taxed by real obligation (non-residents) will not enjoy this minimum exemption of 700,000 euros, so that non-residents will be taxable persons for the Tax provided that their assets are greater than 3,000,000 euros.

> **Tax payable:** The taxable base will be taxed in accordance with the following tax scale:

Net base (€)	Quota (€)	Remaining taxable income (€)	Applicable rate (%)
0	0	3.000.000	0
3.000.000	0	2.347.998,03	1,7
5.347.998,03	39.915,97	5.347.998,03	2,1
10.695.996,06	152.223,93	Hereafter	3,5

> **Limit:** For taxpayers subject to the ISGF by personal liability, the sum of the full ISGF, CGT and personal income tax payments may not exceed 60% of the personal income tax bases. When the sum exceeds this 60%, the ISGF tax liability will be reduced until the excess is reached, without this reduction being able to exceed 80% of the ISGF tax liability. In other words, a minimum tax liability of 20% of the full ISGF tax liability is established.

> **Deductions:** Both the CGT tax paid and, in the case of residents in Spain, the taxes actually paid abroad will be deductible under the terms established in the CGT regulations (notwithstanding provisions of international treaties and conventions).

> **Tax return and filing deadline:** Only those taxpayers whose tax liability is payable will be obliged to file a tax return. The tax will be filed using Form 718, which must be filed between 1st and 31st July.



Practical analysis

The current configuration of the ISGF implies that this new tax will only affect those taxpayers not resident in Spain subject to the tax by real obligation with assets exceeding 3,000,000 euros and those taxpayers resident in Spain who are resident in Autonomous Communities where lower tax rates than those of the State are applied. In this sense, the ISGF will mainly affect taxpayers with assets of more than 4,000,000 euros resident in Madrid, Andalusia, Galicia, Catalonia, Asturias, Cantabria, Murcia, the Balearic Islands, the Basque Country and Navarre. Of all of them, only those taxpayers resident in Madrid and Andalusia will pay the full ISGF fees, as they are currently the only Autonomous Communities where the IP is 100% subsidised.

It is important to note that, as confirmed by the Directorate General for Taxation in its recent Binding Opinions, V0420-23 and V0424-23, both dated 24th February 2023, taxpayers subject to ISGF who are duly covered by the special tax regime applicable to workers, professionals, entrepreneurs and investors moving to Spanish territory (Beckham Law), and who are therefore taxed under the Non-Resident Income Tax (hereinafter, "IRNR"), are subject by real obligation to both the CGT and the ISGF during the entire period in which they are subject to the IRNR.

However, regarding non-resident taxpayers subject to the tax by real obligation, both the regulations set out above and the criteria established by the Directorate General for Taxation in the consultations must be considered in the light of the Double Taxation Agreements signed by Spain.

In this sense, the Directorate General for Taxation has ruled in its binding consultation V0107-23, dated 1st February 2023, in which it establishes with regard to the CGT that a tax resident in Germany is subject to real obligation in Spain for the shareholding he holds in a German company whose assets comprise more than 50% of a real estate property located in Spain, insofar as the Double Taxation Agreement between Germany and Spain has a section referring to real estate companies that allows this.

Therefore, a sensu contrario, we can conclude that, if the applicable Double Taxation Agreement does not contain a specific clause referring to real estate

companies whose main assets consist of real estate located in Spain, they cannot be subject to taxation in Spain.

Thus, in the light of this interpretation by the General Directorate of Taxes and following the entry into force of the new wording of Article 5 of the CGT Law, two situations must be distinguished regarding the taxation of non-residents with real estate in Spain:

1. Non-residents from countries without a Double Tax Agreement or with a DTA that does not cover the CGT/ITSGF

Taxpayers resident in these countries will be taxed under both IP and ITSGF by real obligation for all their assets and rights located in Spanish territory, including those holdings in non-resident companies more than 50% of whose assets are made up of real estate located in Spanish territory.

These countries are:

Albania, Andorra, Australia, Barbados, Brazil, Cape Verde, Qatar, USA, China, South Korea, Philippines, Finland, Hong Kong, Ireland, Italy, Jamaica, Japan, Malaysia, Malta, New Zealand, Oman, Pakistan, Poland, Portugal, Dominican Rep., Romania, Senegal, Singapore, Thailand, Turkey and Trinidad and Tobago.

2. CGT / ITSGF - Non-residents of countries with DTA that have CGT/ITSGF

➤ 2.1. Non-residents of countries with a DTA without a section on real estate companies.

They will only be taxed under CGT and ITSGF for the ownership of real estate located in Spain, the rest of the real estate can only be taxed in their country of residence. Consequently, these residents will not be taxed under CGT / ITSGF on the ownership of shares in non-resident companies more than 50% of whose assets are made up of real estate located in Spanish territory, as the DTA does not grant Spain the taxing power to tax this income.

These countries are:

Algeria, Argentina, Austria, Bolivia, Bosnia and Herzegovina, Bulgaria, Canada, Czech Republic, Chile, Colombia, Costa Rica, Croatia, Cuba, Cyprus, Denmark, Ecuador, Estonia, Greece, Holland, Hungary, Indonesia, Iran, Latvia, Lithuania, Macedonia, Morocco, Nigeria, Russia, Serbia, Slovakia, Sweden, Switzerland, Tunisia, United Arab Emirates, Venezuela.

➤ **2.2. Non-residents of countries with a DTA with a section on real estate companies.**

They will be taxed under CGT and ITSGF on the ownership of all the real estate located in Spain, including the ownership of shares in resident and non-resident companies more than 50% of whose assets are made up of real estate located in Spanish territory, insofar as the DTA grants Spain the taxing power to tax this income and the internal regulations enable this possibility with the current legislative amendment.

These countries are:

Armenia, Azerbaijan, Belgium, Belarus, Egypt, France, El Salvador, Germany, Republic of Georgia, Kazakhstan, Kuwait, Panama, Uruguay, Iceland, India, Israel, Luxembourg, Mexico, Moldova, Norway, Saudi Arabia, Slovenia, South Africa, United Kingdom, States of the former USSR not mentioned above (except Russia) and Uzbekistan.

Therefore, non-residents of countries with a DTA with a section referring to real estate companies will be the only ones who will be taxed under the CGT / ITSGF for the ownership of shares in foreign companies more than 50% of whose assets are made up of real estate located in Spanish territory.

Finally, it should be noted that the Constitutional Court has admitted the appeals of unconstitutionality filed by the regional governments of the Autonomous Community of Madrid, the Xunta de Galicia and Andalusia on the grounds of infringement of the principles of legal certainty, economic capacity and non-confiscation, as well as the political and financial autonomy of the Autonomous Communities. In addition, the Region of Murcia has joined this initiative by presenting an appeal of unconstitutionality which was submitted for deliberation on 9th May, having finally been admitted for processing, so that everything points to the future unconstitutionality of the tax.

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