

Projected modification of the tax regime of preferred securities and debt instruments issued in accordance with Law 13/1985

On Friday 7 February 2014, the Council of Ministers approved the draft bill on the organisation, supervision and solvency of credit entities (*Proyecto de Ley de ordenación, supervisión y solvencia de entidades de crédito*) (the "**Draft Bill**"). The Draft Bill will now begin its passage through Parliament before becoming law.

Among the items considered by the Draft Bill is the repeal of Law 13/1985 of 25 May, on Coefficients of Investment, Equity and Information Obligations of Financial Intermediaries (*Ley 13/1985, de 25 de mayo, de Coeficientes de Inversión, Recursos Propios y Obligaciones de Información de los Intermediarios Financieros*) and its substitution by a new regulation for the issuance of preferred securities and debt instruments.

The tax regime applicable to preferred securities and debt instruments remains unaltered in the Draft Bill. The main change proposed by the Draft Bill is to extend this tax regime to a wider range of issuer entities.

As at today's date, a special tax regime applies to the issuance of preferred securities and debt instruments by, among others, the following entities:

- Spanish credit entities
- Spanish companies listed on an organised market
- Spanish public limited companies (*sociedades anónimas*) with residence in Spain or in the EU, the voting rights of which correspond in full, whether directly or indirectly, to a Spanish credit entity or a Spanish listed company and whose activity or corporate purpose is exclusively the issuance of preferred securities or debt instruments

The main change contemplated by the Draft Bill is the extension of this special tax regime to the following entities issuing debt instruments:

- Companies resident in Spain. It will not be necessary for the company to be listed or for its voting rights to belong in full or in part to a credit entity or a listed company
- Corporate public entities (*entidades públicas empresariales*)

Approval of the Draft Bill in its current form would allow for issuances of debt instruments carried out by any company resident in Spain or by a corporate public entity that meet the requirements stipulated (in particular, listing on a

Key issues

- Extension of the special tax regime to other issuers of debt instruments.
- Application to non listed entities and corporate public entities.

regulated market or on a multi-lateral trading facility) to benefit from the special tax regime which is currently regulated by Law 13/1985.

This would greatly extend the application of the privileged tax regime that currently exists under Law 13/1985 and will facilitate the issuance of debt instruments by entities that, under the current legislation, have limited access to investors outside of Spain.

It is worth remembering that the main aspect of the tax regime is that income deriving from preferred securities and debt instruments that comply with the relevant requirements benefit from the same tax treatment as public debt, i.e. there is no tax or withholding in Spain for investors that are residents outside of Spain for tax purposes (provided that they act without a permanent establishment in Spain).

Lastly, the Draft Bill does not alter the reporting obligations of issuers of preferred securities and debt instruments, and such obligations would be extended to the new issuer entities.

The above comments were made notwithstanding the modifications that the Draft bill may undergo while it is being processed in Parliament.

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