

Enactment of Law 10/2014: extension of the tax regime of preferred securities and debt instruments

On 27 June 2014, the Spanish Official Gazette has published Law 10/2014 on the organisation, supervision and solvency of credit entities (*Ley 10/2014 de ordenación, supervisión y solvencia de entidades de crédito*) (the "Law 10/2014").

Law 10/2014 repeals 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 establishes a new regulation for the issuance of preferred securities.

The tax regime applicable to preferred securities extended to debt instruments remains unaltered in the new law. The main change proposed is to extend this tax regime to a wider range of issuer entities.

During the life of Law 13/1985, a special tax regime applied 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 Law 10/2014, according to its 1st Additional Disposition, is the extension of this special tax regime to the following entities issuing debt instruments:

- Companies resident in Spain. These companies will no longer have to be listed, therefore, non listed entities will also enjoy the special tax regime.
- Corporate public entities (*entidades públicas empresariales*).
- Companies resident in a European Union territory not classified as a tax haven, the voting rights of which correspond in full, whether directly or indirectly, to the above entities.

Approval of the Law 10/2014 will allow for issuances of debt instruments carried out by any company resident in Spain (listed or not) or by a corporate public entity (or by a fully owned European Union subsidiary of them) that meet the requirements stipulated (in particular, listing on a regulated market or on a multi-lateral trading facility) to benefit from the special tax regime which was regulated by Law 13/1985.

Key issues

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

2 Enactment of Law 10/2014: extension of the tax regime of preferred securities and debt instruments

This will greatly extend the application of the privileged tax regime and will facilitate the issuance of debt instruments by entities that, under the former legislation, had 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 Law does not alter the reporting obligations of issuers of preferred securities and debt instruments, and such obligations will be extended to the new issuer entities.

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