

CAPITAL MARKETS: THE TAX UNCERTAINTIES - ALLEN & OVERY

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Spanish financial institutions and corporations face nowadays a need to refinance existing debt and to obtain additional liquidity. The capital markets, which seem to have shown a degree of recovery, are the natural route for achieving this. But Spanish entities' attempts to raise funds this way may suffer uncertainties from a tax perspective.

Leaving aside the potential introduction at a European level of a national financial transactions tax (applicable to negotiable instruments), it is worth mentioning the new procedures for investors holding listed preferred securities and debt instruments issued by Spanish qualifying issuers. The new procedures constitute a real improvement as they simplify the administrative issues, particularly in the case of international transactions and align the position of Spanish issuers to that of companies located in other jurisdictions.

Capital markets: the tax uncertainties

Spanish financial institutions and big corporations face nowadays the need to refinance existing debt and to obtain additional liquidity. The capital markets, which seem to have recently shown a certain degree of recovery, are the natural gate for achieving this. The attempt to raise funds in the domestic or international capital markets for Spanish issuers may suffer certain uncertainties from a tax perspective, in addition to the now long standing liquidity concerns, amongst others.

Leaving aside the potential introduction at a European level of a national financial transactions tax (applicable to negotiable instruments), it is worth mentioning the new procedures for investors holding listed preferred securities and debt instruments issued by Spanish qualifying issuers (listed companies and credit entities), introduced back in July 2011 (Royal Decree 1145/2011).

There is no doubt that the new procedures constitute a real improvement for Spanish issuers as they simplify the administrative work which has traditionally been carried out, particularly in the case of international transactions and, at the same time, have aligned the position of Spanish issuers to those entities located in other jurisdictions.

There seem to be certain attempts to minimise the more than positive effects of these new regulations on Spanish issuers. Although certain items may require some "fine tuning" (ie reporting, if any, on withholding tax made by Personal Income Taxpayers), should the Spanish tax authorities consider that certain sections of this new legislation need to be amended (as clarification of these sections via rulings would not be possible), this should be done urgently to avoid any further confusion, bearing in mind the two and a half year "interim" period that will elapse since Royal Decree 1145/2011 was enacted.

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