



## The Spanish Government changes the treatment of Deferred Tax Assets or DTA in the Corporate Income Tax

- The reform will remove any uncertainty regarding compatibility with the EU legislation
- The European Commission, the Ministries of Finance and Economy and Banco de España have collaborated in the design

**28 September 2015.-** The Spanish government has decided to amend the Corporate Income Tax to change the fiscal treatment of Deferred Tax Assets or DTA. The reform will be introduced through an amendment of the General State Budget Law for 2016 and is the result of close collaboration between all institutions involved: the European Commission, the Ministries of Finance and Public Administrations, Economy and Competitiveness, and the Banco de España.

The Royal Decree-Law 14/2013 amended the Corporate Income Tax Law to delink certain DTA (namely those resulting from non-tax deductible provisioning and contributions to social insurance schemes) from the evolution of the companies' financial situation, by envisaging the conversion of those assets into tax credits in case of losses, legally declared insolvency and liquidation. .

For credit institutions, this law strengthens solvency, by preventing the tax regime from creating distortions in the calculation of regulatory capital that do not exist in other tax jurisdictions. Therefore, RDL 14/2013 contributes

to support recovery, by facilitating that financial institutions can continue to provide credit to households and companies.

The Ministries of Economy and Competition, Finance and Public Administrations and Banco de España engaged in a dialogue with the European Commission that has resulted in a reform aiming at removing any uncertainty regarding compatibility of the tax treatment of DTA in Spain with EU legislation. This amendment also ensures the stability of current capital requirement calculations of Spanish financial institutions.

The Commission has welcomed the amendment of the Corporate Income Tax Law, which consists of the following elements:

1. DTA generated before 1 January 2016 and guaranteed according to RDL 14/2013, will continue to be guaranteed in the future. However, if the beneficiaries of the guarantee paid fewer taxes between 2008 and 2015 than the total value of those guaranteed DTA, they will have to pay an annual fee to the public treasury. This fee will amount for 1.5% of the difference between those DTA and taxes paid.
2. After fiscal year 2016, only DTA complying with the requirements of RDL 14/2013 and below the threshold of taxes effectively paid on Corporate Income Tax will be allowed to be converted into guaranteed DTA each year. Therefore, no guaranteed DTA will be generated when no taxes are paid on a given fiscal year.