Spain introduces transitional period for fund reclassifications due to MiFID II regulations

Executive summary
On 28 December 2018, the Spanish Government approved certain measures in tax and cadastral areas (Royal Decree-Law (RDL) 27/2018) related to fund reclassifications.

Directive 2014/65/EU (known as MiFID II), which was implemented into the Spanish legislation, introduced certain measures so that investors (unit-holders or shareholders) cease to bear costs associated with certain incentives.

In the rules approved in December 2018, the Government introduced a transitional period during which reclassifications of units or shares of Collective Investment Vehicles (CIVs) carried out as a consequence of the requirements established in the MiFID II can be made without the need to obtain the individualized consent of the unit-holders and shareholders, and be tax neutral.

Detailed discussion
Background
Since its implementation in November 2007, MiFID\(^1\) has been the cornerstone of capital markets regulation in Europe. However, since its inception, not all benefits have been provided to the end investor as envisaged. MiFID II aims to address the shortcomings of the original MiFID release and has been amended with measures as a result of the lessons learned from the 2008 financial crisis.
MiFID II, which came into force on 3 January 2018, implies a substantial change in the functioning of EU financial markets and trading centers due to the scale of the operational amendments imposed to comply with the obligations of transparency and mandatory negotiation in trading centers.²

The MiFID II regulatory package aims to: (a) ensure high levels of protection for investors in financial products, especially retail investors; (b) improve the organizational structure and corporate governance of investment services companies; (c) increase the safety, efficiency, smooth functioning and stability of securities markets; (d) ensure regulatory convergence allowing competition within the EU framework; and (e) promote access of small and medium-sized companies to capital markets.

On 28 September 2018, the Council of Ministers processed Royal Decree-Law 14/2018 (RDL 14/2018) by urgent procedure to transpose MiFID II into Spain’s domestic legislation in the face of possible Commission sanctions. RDL 14/2018 implements the obligations under this EU regulatory package that had to be adopted by means of a law. However, these needed to be complemented by regulations in greater detail, developing obligations and requirements of a purely technical nature. In fact, the entry into force, scheduled for 30 September 2018, conditioned some of the most relevant requirements to its regulations development.

On 28 December 2018, additional regulations³ were published in the Spanish Official Gazette as an instrument for the partial regulatory transposition of the MiFID II regulatory package.

One day later, RDL 27/2018 was published, establishing a transitional period between 3 January 2018 (effective date of MiFID II) and 30 March 2019 during which the reclassifications of units or shares of CIVs carried out as a result of the new incentive requirements established in MiFID II can be made without the need to obtain the individualized consent of the unit-holders and shareholders, and be tax neutral.

**Analysis of new measures**

Reclassifications between CIVs, or between their sub-funds, classes or series of units or shares, carried out within the transitional period (3 January 2018 to 30 March 2019), whose sole purpose is to comply with the obligations established in RDL 14/2018, in such a way that the unit-holder or shareholder ceases to bear costs associated with incentives, may be carried out automatically, without the requirement to obtain the individualized consent of the unit-holder and shareholders to whom such reclassifications apply.

These reclassifications will not give rise to the obtaining of income for the unit-holder or shareholder for Spanish Income Tax, Spanish Corporate Income Tax and Spanish Nonresidents Income Tax purposes, and the new units or shares assigned to the reclassified unit-holders or shareholders shall be maintained the value and date of acquisition of the units or shares they replace.

This treatment shall also apply to reclassifications within the transitional period between EU-harmonized CIVs (UCITS) duly registered in Spain for commercialization purposes by Spanish resident entities, or between their sub-funds, classes or series of units or shares, provided that the reclassification seeks the purpose mentioned above.

**Impact**

The incorporation of this transitory provision, covering from the effective date of MiFID II, was in response to sector requests.

This measure, as stated in the Preamble, is intended to ensure that investors in CIVs immediately bear fewer costs associated with their units or shares, in accordance with a regulation that is already applicable and that any reclassification aimed at seeking this goal does not trigger adverse tax consequences in Spain.

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**Endnotes**


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