

CUATRECASAS, GONÇALVES PEREIRA



LEGAL FLASH | TAX

LAW NO. 61/2014, OF 26 AUGUST SPECIAL REGIME APPLICABLE TO DEFERRED TAX ASSETS

The special regime applicable to deferred tax assets arising from the non deduction of costs and negative equity variations from impairment losses resulting from debts and post-employment or other long-term employee benefits, enacted by Law No. 61/2014, of 26 August, comes into effect today – 27 of August.

This special regimes is applicable to costs and negative equity variations accounted for in the taxable periods starting at or after January 1, 2015, as well as to deferred tax assets registered in the annual accounts of the taxpayer reported to the last taxable period prior to such date and to the part of the costs and negative equity variations associated to them.

The following entities may apply for this regime:

- (i) Commercial companies, public companies, saving banks, mutual agricultural credit institutions and the Central Agricultural Credit Bank, with registered office or effective place of management in the Portuguese territory, pursuing primarily a commercial, industrial or agricultural activity; and
- (ii) Permanent establishments in the Portuguese territory of entities that have the same nature of the entities referred to in the previous paragraph but are domiciled in another Member State of the European Union or in a State of the Economic European Area bound to an obligation to exchange information for tax purposes equivalent to the one established in the European Union.

The decision to apply for the special regime applicable to deferred tax assets must be approved by the General Meeting of the taxpayer and communicated to the Tax and Customs Authority until the tenth day after the publication of Law 61/2014 – *i.e.* 5 of September, 2014.

Pursuant to the special regime approved, the deferred tax assets arising from the non deduction of costs and negative equity variations from impairment losses resulting from debts and post-employment or other long-term employee benefits, would be converted into tax credits whenever the taxpayer records in its annual accounts a negative net result for the year, or is liquidated through voluntary dissolution, insolvency declared by court decision or revocation of its authorisation by the competent supervising authority.

The taxpayer may use this credit to set it off against tax debts arising from State Income or Property Taxes that were borne by the same and whenever the taxable event occurs before the conversion date. The credit amount not used for the offsetting of tax debt will be reimbursed.

Please note that the procedures for the set-off of the tax credit against tax debts of the taxpayer and the respective reimbursement of the non-used tax credit, as well as the conditions and procedures for the use of the tax credit itself are still pending approval of the necessary regulation to be issued by Decree of the Ministry of Finance.

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