



Retail Banking: a modern and highly efficient sector

Spain has an efficient, modern and solid banking system, which has over recent years been strengthened by the domestic competition between the various Banks, technological development, the quality of the management teams and their model of the banking business, focused on retail banking

Retail banking services, intended for the final consumer and small and medium enterprises, account for more than 50% of banking business in the EU. The Spanish banking system has traditionally specialised in retail banking and this has given it a clear competitive advantage. Madrid is the site of the central decision taking in two of the top thirty Banks in the world (Santander and BBVA).

In Spain, retail banking services are provided by Banks and Saving Banks. Both types of financial institutions are supervised by the Bank of Spain and insofar as they provide investment services, by the Spanish Securities Market Commission (*Comisión Nacional del Mercado de Valores* or "CNMV"), in respect of rules of conduct. There are two major associations which bring together the interests of the Banks and the Saving Banks, the Spanish Banking Association (AEB) and the Spanish Confederation of Saving Banks (CECA).

The principal product in retail banking is the current account, on the basis of which the Banks can offer their clients other services, among which the most important are: the deposit-taking, extending personal or consumer loans and credit or mortgages, operations relating to credit and debit cards and the sale of investment funds, pension funds and insurance.

Over the last few years, the number of lending institutions which business consists of granting consumer credit, on many occasions "fast credit", geared towards the retail sector has increased enormously.

As far as channels of distribution for products and services, branch offices are the most important. In recent years branches have been complemented by other distribution channels such as telephone banking or Internet banking. Furthermore, the distribution channel varies depending on the service provided; for example in the case of credit cards or deposit accounts, the use of electronic means is becoming more and more frequent, although for the provision of other more

complex services clients prefer to contract them through the branch network.

One important characteristic of the Spanish banking system is that it has an "ex ante" deposit-guarantee scheme, that is to say, the guarantee scheme collects funds in advance on a regular basis against the profit and loss accounts of the member Banks by means of obligatory contributions.

The Establishment of Credit Institutions in Madrid

According to the data provided by the Bank of Spain, the number of Credit Institutions registered in Spain reached approximately 400 in 2009.

With regard to the possible forms of providing retail banking services, it is necessary to distinguish between Banks which are authorised within a Member State of the EU from those which are authorised in third countries (not members of the EU).

◆ Credit Institutions authorised in EU Member States

These institutions enjoy the benefits of the EU passport and may carry on banking activities in Spain after the Home State Regulator notifies the Bank of Spain, either by setting up a branch or under freedom of services.

◆ Credit Institutions authorised in third countries (non EU Member States)

Such Credit Institutions do not enjoy the benefits of the EU passport and therefore they need to obtain prior authorisation from the Bank of Spain if they are to operate in Spain using branches. The process of opening a branch is similar to that of creating new Spanish Credit Institutions.

Furthermore, such Credit Institutions may obtain authorisation from the Bank of Spain to operate under freedom of services, although in these cases they will not be allowed to take deposits from the public.

◆ **Establishing a Credit Institution in Spain**

Foreign Credit Institutions may opt to set up a Credit Institution in Spain. In order to create a Credit Institution, the prior official authorisation of the Ministry of the Economy and Finance is required.

In order to obtain such authorisation compliance with an extensive series of requirements is essential and must be demonstrated to the Bank of Spain. These requirements vary depending on the nature of the Credit Institution and cover all aspects of the organisation: minimum capital, shareholders, board of directors, administrative structure, procedures for control, feasibility of the project, etc.

Once the authorisation has been obtained, the Credit Institution may enjoy the benefits of the EU passport in order to offer their services in the other Member States of the EU, either through a branch or under freedom of services.

Tax obligations of Credit Institutions

◆ **Direct taxation of Credit Institutions**

Banks, Saving Banks and Lending Institutions are all subject to Corporate Income Tax at the rate of 30%.

In order to calculate the earnings subject to tax, the tax legislation sets out particular conditions with respect to tax deductions for provisions relating to covering credit risk.

◆ **Indirect taxation of Credit Institutions**

Credit Institutions, just like all other Banks are subject to the tax obligations set forth in the regulations on Value Added Tax, since they are taxable under this law.

Financial operations in general are, with certain exceptions, tax exempt. Such operations include, among others, cash deposits and the transfer of deposits, granting of loans and credits and the transfer of loans, provision and transfer of sureties,

bonds and other personal and real guarantees, transfers, giros, cheques, bills, promissory notes, bills of exchange, credit cards, financial swaps, foreign exchange operations, share operations and mediation services relating to the above operations.

The principal financial operations which are not exempt from Value Added Tax are, among others, the handling of the collection of loans, bills of exchange and debits, the services of the management and deposit of securities and management and advisory services for investment portfolios and financial consulting.

With regard to Transfer Tax and Stamp Duty (ITP y AJD) on setting up, Credit Institutions are subject to Capital Duty and this tax amounts to 1 % of the nominal value of the capital including share premium.

◆ **Taxation of a branch of a Credit Institution**

Foreign Credit Institutions have the option of offering their services in Spain by opening a Branch. Since the Branch is considered to constitute a permanent establishment for tax purposes, it will be subject to Non-Resident Income Tax.

Nevertheless, under the provisions of the regulations on Non-Resident Income Tax, permanent establishments are taxable under the provisions of Corporation Tax, except where specific exceptions are applicable.

In this respect, the payments which the Branch makes to its holding company and other permanent establishments in foreign countries in respect of canons, commissions for technical assistance services or for the use or transfer of goods and fees are not deductible. Furthermore, a reasonable part of the management and general administration expenses corresponding to the permanent establishment are deductible, subject to the fulfilment of certain requirements.

On the other hand, the setting up of the Branch will not be subject to taxation in Spain under the regime of Capital Duty if any of this requirements are met: (i) the holding company's register domicile and its business management are both located in an EU Member State or (ii) at least the holding company's register domicile is located in an EU Member State.

In case that none of the mentioned requirements are met, the Branch will have to pay 1 % of the capital assigned by the holding company under the regime of Capital Duty under Transfer Tax and Stamp Duty.

Useful Contacts:

Bank of Spain (Banco de España): www.bde.es

AEB: www.aebanca.es

CECA: www.ceca.es

Tax Authority (Agencia Tributaria):
www.agenciatributaria.es

Principal relevant legislation:

- ◆ Law 26/1988, of 29 July. Discipline and Regulation of Credit Institutions.
- ◆ Royal Decree 1245/1995, of 14 July. Creation of Banks, cross-border activity and other questions relating to the law applicable to Credit Institutions.
- ◆ Circular 6/2002, of 20 December, of the Bank of Spain. Information about Agents of Credit Institutions and Agreements for the regular provision of financial services.
- ◆ Circular 6/2001, of 29 October, of the Bank of Spain. Owners of establishments for foreign exchange.
- ◆ Royal Decree 2660/1998, of 14 December. Foreign exchange in establishments open to the general public other than Credit Institutions.
- ◆ Royal Legislative Decree 4/2004, of 5 March. Approving the Consolidated Text of the Law on Corporate Income Tax.
- ◆ Royal Decree 1777/2004, of 30 July. Approving the Corporate Income Tax Regulations.
- ◆ Royal Legislative Decree 5/2004, of 5 March. Approving the Consolidated Text of the Law on Non-Resident Income Tax.
- ◆ Law 37/1992, of 28 December, on the Value Added Tax.
- ◆ Royal Decree 1624/1992, of 29 December. Approving the Value Added Tax Regulations.
- ◆ Royal Legislative Decree 1/1993, of 24 September. Consolidated Text of the Law on Transfer Tax and Stamp Duty.