



Financial Credit Establishments: flexibility in granting credit and complementary business

Financial Credit Establishments allow carrying out regular business of Banks and Saving Banks, with a very wide flexible scope in respect of financial asset operations, but without being able to take deposits from the public

Financial Credit Establishments (“FCEs”) have the status of Credit Institutions and enjoy a very wide flexible scope in respect of financial asset operations, but without the capacity to take deposits from the public.

FCEs established in Spain are generally subsidiaries entities of Bank groups. FCEs are specialised in granting consumer loans.

There are a large number of entities that set up a FCE in Spain in order to expand their business. This is the case, for example, of the automobile industry and the supermarkets, which create FCEs for offering complementary services to their regular activities, such as financing the purchase of their own product lines. Currently, the FCEs which are subsidiaries of automobile manufacturers in Spain represent 15% of the total number of FCEs registered.

It is also important the number of FCEs specialised in the so-called “fast credits” which are personal loans that usually are requested by telephone. The “fast credits” are granted between 24 and 48 hours after the entity has analysed and approved the application and they have interest rates considerably higher, for preventing potential defaults.

As for the Banks and Saving Banks, the activities carried out by FCEs are regulated by the Bank of Spain. FCEs have a national association (*Asociación Nacional de Establecimientos Financieros de Crédito – “ASNEF”*) that groups the majority of Spanish FCEs.

Principal Characteristics

FCEs may carry out the following activities:

- ◆ **Loan and Credit business:** all types of loan and credit operations, such as personal loans, credit lines, consumer credit, mortgage loans and finance for commercial operations. They may not, however, carry out credit operations on current accounts, given that they may not take deposits from the public.

- ◆ **Factoring business:** and complementary activities, such as, the investigation and classification of client bases, debtor accounting, or any other related activity.
- ◆ **Leasing/financial leasing business:** together with these activities, FCEs may carry out other activities such as, the maintenance and protection of leased assets, the provision of financial support to a current or future lease operation, the intermediation and management of leasing operations, non-financial leasing operations or renting with or without a purchase option, the provision of credit advice and commercial reports.
- ◆ **Issuance and management of credit cards:** there is no legal limitation; thus, a credit card issued by a FCE may be used to pay all types of goods and services.
- ◆ **Granting of performance bonds and guarantees:** this is a business which FCEs may perform in the same way as Banks and Saving Banks.

FCEs may not take deposits from the public given that the applicable legislation does not permit them to formalise liability operations. However, FCEs have a wide range of sources of finance, such as:

- ◆ Finance granted by Credit Institutions.
- ◆ The issuance of securities regulated by the Securities Market Law and the possibility to securitize their assets in accordance with the legislation applicable to securitization funds.

Establishment of a FCE in Madrid

According to the information provided by the Bank of Spain the number of FCEs registered in Spain is approximately 79, of which 28 FCEs are subsidiaries of Spanish deposit entities and 12 FCEs are subsidiaries of foreign Credit Institutions. The remainder are independent FCEs or subsidiaries of automobile companies or hypermarkets.

Foreign FCEs which wish to offer their services in Spain will have to do so by opening subsidiaries or by taking advantage of freedom of services. In this respect it is necessary to distinguish between entities authorised in a Member State of the European Union (EU) and entities authorised in third countries (non-Member States of the EU).

◆ Entities authorised in EU Member States

These entities can benefit from the EU passport and may carry out their business in Spain following the Bank of Spain receives a notification from the Home State Regulator containing the information required to this effect.

◆ Entities authorised in third countries (non-EU Member States)

Such entities do not enjoy the benefits of the EU passport and therefore they need to obtain prior authorisation from the Bank of Spain for rendering services in Spain by means of branches. The process for opening a branch is similar to the creation of new Spanish FCE.

Furthermore, such entities may obtain authorisation from the Bank of Spain to operate under freedom of services.

◆ Setting up a FCE in Spain

Foreign FCEs may choose to set up a FCE in Spain. In order to set up a FCE, it is necessary to obtain authorisation from the Ministry of Economy and Finance, following a report from the Bank of Spain and the Executive Service of the Commission of Prevention of Money Laundering and Monetary Offences. After obtaining this authorisation and after incorporation and registration with the Companies Registry, FCEs must register with the Special Register of the Bank of Spain.

The procedure for obtaining this authorisation is very similar to that for the creation and incorporation of Banks and Saving Banks. Nevertheless, the requirements laid down for FCEs are more flexible and require a lower minimum share capital and a reduced number of members of the Board of Directors.

Board members, General Directors and similar should be entered in the Register for Senior Managers set up to this effect by the Bank of Spain.

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

Tax regime for FCEs

Direct taxation of FCEs

- ◆ FCEs resident in Spain are subject to Corporate Income Tax, at a tax 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 FCEs

FCEs, just as all other entities, are subject to the tax obligations set forth in the regulations on Value Added Tax, since they are taxable under this law.

Nevertheless, financial operations in general, with certain exceptions, are exempt from this tax.

Such operations include, among others, the extension and transfer of loans and credits, 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 include, among others, the handling of the collection of loans, bills of exchange and debits, the services of the management and deposit of securities.

With regard to the Transfer Tax and Stamp Duty (ITP y AJD) on incorporation, FCEs 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 FCE**

Foreign FCEs 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 Corporate Income Tax, except where specific exceptions are applicable.

In this respect, the payments which the Branch makes to their parent company and other permanent establishments in foreign countries as interest (except Banks), 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.

◆ **Taxation of a FCE under regime of free rendering of services**

Foreign FCEs which operate in Spanish territory under the freedom of services system are taxable in the following manner:

- ✓ If they are resident in a country with which Spain has a Double Taxation Treaty in order to avoid international double taxation, as a general rule earnings obtained by FCEs which arise from the performance of their business are not subject to tax in Spain.

- ✓ If they are not resident in a country with which Spain has a Treaty in order to avoid international double taxation, as a general rule earnings obtained by FCEs which arise from the performance of their business will be subject to Non-Resident Income Tax at a rate of 24 %.

Useful Contacts:

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

ASNEF: www.asnef.com

Principal relevant legislation:

- ◆ Royal Decree 692/1996, of 26 April, on the Legal regime for Financial 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.
- ◆ Law 37/1992, of 28 December, on Value Added Tax.
- ◆ Royal Legislative Decree 1/1993, of 24 September, Approving the Consolidated Text of the Law on Transfer Tax and Stamp Duty.