



MADRID CENTRO FINANCIERO

Regulation and Taxation of Financial Business in Madrid

2010

Regulation and Taxation of Financial Business in Madrid

Introduction

“**Regulation and Taxation of Financial Business in Madrid**” has been prepared by Deloitte for the purpose of offering international financial intermediaries an overview of the regulatory and tax advantages offered by setting up their business or carrying out financial business in the Region of Madrid.

Madrid is a financial centre which offers interesting possibilities for international financial intermediaries:

- ◆ Modern financial regulation harmonised with other Member States of the European Union (EU).
- ◆ An attractive tax regime for expatriate professionals.
- ◆ A system of treaties which fosters the establishment of companies.
- ◆ A perfect centre for raising funds. There are Securities Markets with a high degree of liquidity.
- ◆ An important securitisation centre.
- ◆ An increasing number of venture capital groups.
- ◆ Modern supervisory authorities based in Madrid.
- ◆ Wide range of professional support and advisory services for financial intermediaries as well as a significant number of professional and sector associations.
- ◆ A workforce specifically trained in the financial system

Purpose and method of the Report

As the fourth financial centre in the world¹ Madrid enjoys a number of features which determine its capacity to attract financial business. Among these features is the fact that Madrid has the appropriate substantive and tax regulations to facilitate and promote the development of financial business while providing the necessary certainty in transactions for the various participants in the financial markets.

The purpose of the present Report is to compile and give a brief explanation of the regulatory and tax framework which has made it possible for Madrid to take its place among the leading financial capitals and give an initial overview to those agents of the financial markets who may be interested in setting up their business in Madrid in order to gain presence in the Spanish market. The Report is focused primarily on giving a regulatory and tax overview. Notwithstanding that, certain information² has also been included in respect of professional and sector associations, professional services firms and centres for discussion and training which exist in the Region of Madrid and which may serve as a first point of contact for financial intermediaries who are interested in planning their landing in Madrid.

¹ According a report issued by Deloitte in 2008, available for consultation on the website of Madrid Centro Financiero: www.madridfinancialcentre.org

² The information hereby included regarding institutions, professional and sector associations and supervisory authorities may be complemented with the one included in the “Guide of Institutions, Regulatory Bodies and Associations” issued by Madrid Centro Financiero and available through its web site.

To this end, the present Report comprises:

- (i) A **General Section**, and
- (ii) A number of **Fact Sheets**.

The **General Section** begins by offering a view of the regulation of the three major areas which are generally understood to integrate the financial system (Banking, Insurance and Securities) and it has the following functional structure:

(i) The principal characteristics of the regulation of the three areas of financial activity

In this regard, the EU Financial Services Action Plan (FSAP) has played an important role which has been reflected in a high level of harmonisation of the Spanish legislation and the rest of EU Member States.

This harmonisation facilitates the option for Madrid to serve as the entry point to the EU market for financial intermediaries from third party countries who wish to take advantage of the so called “EU Passport”. For cultural and linguistic reasons this option is particularly interesting for countries in Latin America and the Caribbean.

As far as financial intermediaries from the EU are concerned, the harmonisation of the legislation makes it easy for them to set up in Madrid without the need to adapt to new standards and to develop their business in a market in which there is still a considerable amount of business to be won in comparison with other countries of the EU. The Spanish market still offers business opportunities and challenges.

(ii) A description of the various supervisory authorities in each of the areas of financial activity

Having technically competent supervisory authorities who are close to the financial sector and with the capacity to understand the complex business of intermediaries in the markets is a critical factor for a financial centre to remain significant. The Spanish regulation system has proven to be effective. It offers an appropriate balance between the protection of the investor and financial innovation. Since Madrid is the headquarters of the three supervisory authorities, it has the advantage of being close to them.

(iii) A summary of the systems for investor protection

In the area of guarantee schemes, an approach is followed which maximises the protection of investors and savers by setting up “*ex ante*” indemnity systems, a fact which takes on particular importance at a time in which financial business is experiencing turbulence and in which investor confidence in the system of guarantees becomes crucial.

The General Section then focuses upon the **legal instruments which make it possible for Madrid to attract companies and professionals with talent**. Specifically, an overview of the following aspect is given:

(i) Tax instruments to attract companies

The existence of special tax arrangements such as that for Foreign Securities Holding Companies, that for Collective Investment Schemes, and Venture Capital companies, or the wide-ranging network of international Double Taxation Agreements and Treaties signed by Spain with other States, makes Madrid a good option in the international context for setting up financial

companies which wish to carry out investments in the Spanish financial markets, to obtain finance in those markets and channel their investments into foreign markets.

(ii) Tax instruments for attracting highly qualified professionals

Highly qualified workers moving to Madrid to offer their services to established entities who become tax resident in Spain may apply tax arrangements which are advantageous in comparison with other resident workers.

Furthermore, the tax system as applicable to certain professionals resident in Spain who move in order to provide their services to entities based abroad promotes training and recycling for them.

In respect of the **search for financing**, Madrid is the headquarters of the Regulated Markets and the most representative organised trading system in Spain in terms of volume of negotiation and capitalisation. **Spanish Stock Markets** (BME or *Bolsas y Mercados Españoles*) is the holding company for the group which includes the Spanish secondary markets and their settlement and payment systems. BME has its headquarters in Madrid. Over recent years, BME has been promoting interesting initiatives which have expanded the financing options for companies which are interested in raising funds in the Securities Markets.

In relation to financing options, such as **Venture Capital**, Madrid is also in a dominant position, with 48 Venture Capital Management Companies, and 74 Venture Capital Entities (including both Venture Capital Entities with fund structure and with corporation structure).

Likewise, Madrid has become known as a centre of international importance in **securitisation**, the market for "**covered bonds**" and financing structures such as "**project finance**".

Finally, we must draw attention to the effort which very different agents have been putting in to cooperate actively in the growth of the finance culture in the Region of Madrid. We are referring on the one hand, to the extensive range of available training offered in the Region of Madrid; on the other hand, the increasing number of **Law Firms and Professional Firms which are established** in Madrid

The **Fact Sheets** offer information regarding regulation, tax advantages and business possibilities in the various sectors of financial activity.

Specifically, in the Fact Sheets a study of the following is made:

- ◆ Investment Firms and MiFID
- ◆ Retail Banking
- ◆ Private Banking
- ◆ Financial Credit Establishments
- ◆ Payment Institutions
- ◆ Madrid Stock Market
- ◆ Alternative Stock Market
- ◆ Collective Investment Industry
- ◆ Hedge Funds Industry

- ◆ Venture Capital
- ◆ Insurance Sector
- ◆ Listed Corporations for Investment in the Real Estate Market
- ◆ The tax regime for direct investment in certain securities and financial assets
- ◆ The tax regime of Foreign Securities Holding Companies

GENERAL SECTION

General overview of the regulation, supervision and systems of protection in the three areas of the financial sector

(i) The principal characteristics of the regulation of the three areas of financial activity³

As a consequence of globalisation, competition and processes of concentration, financial systems are evolving at a tremendous speed, highlighting the need to adapt the mechanisms for regulation, control and supervision, because the tools which have existed to the date have in many cases been proven to be inadequate.

The FSAP was put under way by the European Commission in order to remove the remaining barriers to a Single Market in financial services across the EU as a whole. On the one hand, the FSAP pursued the liberalisation of business activity and on the other hand the strengthening of the demands of prudence and good conduct in order to improve investor confidence. In order to achieve these objectives, it was necessary to create a new EU legislative framework by preparing a major set of legal provisions (Directives and Regulations).

Within the new EU legislative framework, the EU Member States, including Spain, have been carrying out a double task over recent years; on the one hand, the transposition of Directives regarding Banking, Insurance and Securities; and on the other hand, the review of existing financial regulation in order to simplify it and make it more dynamic and aligned with the needs of the financial sector.

With regard to the Spanish legislation, the transposition of different directives has been completed: MiFID⁴, Capital Adequacy Directives (Basel I and II); Market Abuse Directive, Transparency Directive or Prospectus Directive. The adaptation of the new General Plan of Accounting has been also achieved. At the time being other implementation and adaptation works are in process (i.e.: Payment Services Directive).

As a result of all this work, a modern harmonised financial legal system is being established to achieve an appropriate scope of protection for the investor, client and consumer of financial services.

The harmonisation of the legislation determines the increasing use of the so-called “EU Passports for Entities and Products”.

Community Passports for Entities and Products

Spain has traditionally been a country which imports financial entities and products. This tendency has been reinforced by the increasing harmonisation of the various different regulations for financial business in the EU.

The option which Investment Firms and Banks, domiciled in a EU Member State, have to set up in another country within the EU without being required to have a new authorisation from the supervisory authority in the Host State is known by the name of the “**EU Passport for Entities**”. Such entities may use the authorisation issued by their EU Home State supervisory authority in order to provide their services in another EU Member State. The services may be provided through the exercise of the right of establishment or through freedom of services.

³ The transposition laws of the principal Directives of the EU in Spain are listed in Annex I to the present Report.

⁴ Markets in Financial Markets Directive.

Harmonised Collective Investment Schemes (UCITS) and traded securities which have previously been verified by the Home State supervisory authority of the Management Company or the issuer (UCITS Directive and Prospectus Directive) may be sold in the different countries of the EU under the EU Passport for the Product.

The EU Passport system facilitates the option for Madrid to serve as entry into the EU market for financial intermediaries from third party countries who wish to take advantage of the “EU Passport” system. Therefore, if a company from a third country not a EU Member State sets up an Investment Firm or a Credit Institution in Madrid, following authorisation from the Spanish Securities Market Commission (CNMV or *Comisión Nacional del Mercado de Valores*) or the Bank of Spain, they may later move freely around the other EU Member States in order to offer their services. As previously mentioned, for cultural and linguistic reasons this option is particularly interesting for financial intermediaries from countries in Latin America and the Caribbean.

The existence of the EU Passport system, an harmonised regulation, the growing financial sophistication of investors in Madrid and the increasing business opportunities and challenges convert Madrid into an attractive financial centre. Thus over recent years Madrid continues being destination for foreign players in the financial world.

Other recent trends observed in Spain

The two clearest trends which can be observed in the financial sector in Spain are, on the one hand, the **"bank-dominance"** or increasing involvement of the Banks. While the number of Banks offering not only the services inherent in the banking business but also investment services continues to grow, the number of Investment Firms remains quite stable.

The second trend is the **"proliferation of branches"**. The greater number of companies, both Investment Firms and Credit Institutions which targets Spain, are incorporating a branch. The number of entities which offer financial services in Spain through freedom of services as recognised in the EU Directives is considerable, although the number of entities which in fact operate in the country is less than the number which can be found in the official registers of the Bank of Spain or the CNMV.

(ii) The regulators in each of the various areas of financial activity⁵

The Spanish financial supervision system falls within the institutional system of the three pillars. It follows the traditional lines of division with a supervisory authority for each sector (Banking, Insurance, and Securities).

THE SUPERVISORY SYSTEM IN SPAIN		
CNMV	Bank of Spain	DGSFP
<ul style="list-style-type: none"> ◆ Broker-Dealers ◆ Brokers ◆ Portfolio Management Firms ◆ Investment Advice Firms ◆ Collective Investment Schemes ◆ Venture Capital Entities 	<ul style="list-style-type: none"> ◆ Banks ◆ Savings Banks ◆ Co-operatives Banks ◆ Financial Credit Establishments 	<ul style="list-style-type: none"> ◆ Insurance and Reinsurance Entities ◆ Pension Funds ◆ Pension Plans ◆ Insurance and Reinsurance Intermediaries

⁵ The legislation regulating each of the Spanish supervisory authorities is listed in Annex I to the present Report.

The three Spanish supervisory authorities have managed to adapt to the dynamic nature of the financial market. Over recent years they have put the appropriate modifications and adaptations into effect in their organisational structure and working procedures so as to respond to the demands of the financial sector.

A highly significant trend observed recently is the greater degree of cooperation between the supervisory authorities and the financial sector. This greater cooperation has taken the form of the creation of a growing number of mixed working groups from the entities within the financial sector and the supervisory authorities. The fact that the headquarters of the three supervisory authorities are in Madrid makes it possible to take advantage of this increased transparency and the possibilities for the exchange of ideas with them.

Below we offer a general overview of the competences and core functions of each of the supervisory authorities and then explain the reform of financial supervision announced by the Government of Spain.

Spanish Securities Market Commission

The CNMV, attached to the Ministry of Economy and Finance, is the competent authority in charge of the supervision and inspection of the Spanish Securities Markets and financial instruments and of the business of the parties which participate in them. The principal objective of the CNMV is to watch over the transparency of the Spanish Securities Markets and the protection of investors.

In year 2007, the CNMV published a “Plan of Activities” which pursues increased transparency in the activity of the CNMV and publication of the calendars of legal developments and the basic lines of supervision and advancing the criteria for the application of the regulations, thus permitting entities to anticipate the necessary internal changes in their organisation and control, and avoiding uncertainties in interpretation. The Plan for the year 2010 was presented on 25 January 2010 and according to it, the main objectives for 2010 and first quarter of 2011 are as follows: regulatory implementation in different areas (Investment Firms, Collective Investment Schemes, Venture Capital Entities and Securitisation Funds). CNMV will also continue to contribute to the regulatory debate on areas such as short selling, clearing and settlement systems and trading in own securities. Its labour will be also focused on issues relating to improving transparency in financial activities and it will maintain a special focus on information provided to retail investors by Investment Firms or Securities Issuers. As regards transparency, CNMV will also continue with dissemination of the so-called “soft law” by means of criteria and recommendations.

On the CNMV internet site, information is available in respect of the entities and instruments which fall within the scope of their jurisdiction (registered or established in Spain), together with the regulations applicable to the Securities Markets, the reports which are published periodically on the situation of the sector and its soft law.

Web page: www.cnmv.es

Bank of Spain

The constitution of the European System of Central Banks or Eurosystem (ESCB) and the European Central Bank (ECB) meant the redefinition of the traditional functions carried on by the Bank of Spain. As a member of the ESCB, the Bank of Spain takes part in the functions which are entrusted to them by the ECB, relating principally to monetary policy, price stability and the Eurozone settlements systems.

Together with the functions which it must carry out as a member of the ECB, the Bank of Spain acts as a regulator and has the responsibility for the supervision of solvency and compliance with the specific regulations by the Banks, other entities and the Financial Markets, the supervision of which has been put under its responsibility in accordance with the current provisions of the law.

The good work and know-how of the Bank of Spain has recently been put in the limelight as a consequence of what is known as the subprime crisis, a crisis which as has been discussed in much of the media both in Spain and internationally⁶, has had a much lighter impact in the Spanish banking sector.

In the same way as the CNMV, the Bank of Spain provides reports and information on the Banks which are subject to its jurisdiction together with the legislation applicable to the banking sector in Spain on its web page.

Web page: www.bde.es

General Directorate for Insurance and Pension Funds

The General Directorate for Insurance and Pension Funds (DGSFP or *Dirección General de Seguros y Fondos de Pensiones*) is attached to the Ministry of Economy and Finance, and is the supervisory authority of private Insurance and Reinsurance Entities, Insurance Intermediaries and Pension Funds.

Of special importance among the functions which are the responsibility of the DGSFP is the supervision of the necessary requirements for accessing and expanding insurance and reinsurance business, insurance mediation, pension fund managers and their regulation.

Additionally, the DGSFP has responsibility for the preparation of draft regulations, the performance of studies on the private insurance and reinsurance sector and the pension sector, together with the coordination of relations in these areas with the EU, the other EU Member States and with international bodies.

Web page: www.dgsfp.mineco.es and www.dgsfp.es

Draft reform of the financial supervisory system

The Ministry of Economy and Finance has recently announced that there is to be a reform of the current system of financial supervision towards the so-called "Twin Peaks" system. The aim is to redefine the functions of the existing supervisory authorities and carry out an improvement in the sharing of responsibilities, to the benefit of the general effectiveness of the system and the protection of investors.

The reform of the supervisory system will be organised in the following manner:

- ◆ The **Bank of Spain** is the body which will be responsible for the prudential supervision of the risks and solvency of all financial entities (Banks, Insurance Entities and Investment Firms).
- ◆ A new body to be called the **National Financial Services Commission** (CNSF or *Comisión Nacional de Servicios Financieros*) is to be created, based in principle in Madrid, and the task of this new body will be to replace the existing CNMV and keep a watch over the proper operation and transparency of the financial markets. In this respect, the functions of the CNSF will be to

⁶ See:

- Financial Times: http://www.ft.com/cms/s/0/e080a31c-d067-11dc-9309-0000779fd2ac.html?ncklick_check=: The Economist on the role of the Bank of Spain in the subprime crisis: http://www.economist.com/specialreports/displaystory.cfm?story_id=11325484;
- Half yearly Economic Analysis Report of the BBVA on the situation of Spain (2007), point 3 "A solid and efficient financial system and a still dynamic labour market are key supports for the Spanish economy"
- Article in the databases at Wharton: Why Spanish Banks Seem Immune to the Subprime Virus?: <http://www.wharton.universia.net/index.cfm?fa=viewfeature&id=1470&language=english>

supervise the conduct of financial intermediaries in their relations with investors, savers, insured and, in general, with all consumers of financial services.

Relevant Spanish Tax Authorities

Below, the responsibilities of the State Tax Administration Agency (Agencia Estatal de Administración Tributaria) and the General Directorate of Taxation (Dirección General de Tributos), which are not supervisory bodies, but do exercise a major contribution in matters of the application and the interpretation of the tax regulations.

State Tax Administration Agency

The Spanish Tax Authority (AEAT or *Agencia Tributaria*) is configured as a public entity attached to the Ministry of Economy and Finance.

The Spanish Tax Authority is the public body in charge of the management and application of the national tax and customs system. The Spanish Tax Authority is in charge of the State taxes management, inspection and collection of State taxes.

The Tax Agency has no responsibility for the preparation and approval of tax regulations, nor, in the area of public expenses, for the assignment of public resources to their various purposes.

The essential purpose of the Tax Agency is the promotion of voluntary compliance of their tax obligations by the people. In pursuit of this aim, they develop two lines of action: on the one hand, the provision of information and advisory services to the taxpayer in order to minimise the indirect costs associated with compliance with tax obligations and on the other hand, the detection and correction of failure to comply with tax obligations through verification activities. Further, the Spanish Tax Authority has other complementary functions assigned to them such as support for the Courts and cooperation with other Public Authorities.

Web page: www.agenciatributaria.es

General Tax Directorate

The Directorate-General for Taxation (DGT or *Dirección General de Tributos*) is a body which is attached to the Ministry of Economy and Finance. Within its core functions are the following ones: taking part in the analysis and design of the global policy for public revenues, the proposal, preparation and interpretation of the legislation for the general tax system, the proposal of fiscal policy measures and the preparation of the budget of tax benefits; the negotiation and application of double taxation treaties and the preparation of measures in respect of international tax treaties and special tax agreements.

Web page: <http://www.meh.es>

(iii) Investor protection systems⁷

The guarantee system in Spain comprises three independent Deposit Guarantee Funds and the Investors' Guarantee Fund.

One of the principal advantages of the guarantee systems in Spain is that they are “*ex ante*” systems, which is to say that they require the entities to make annual contributions to the appropriate guarantee fund of which they are members and the entities make these contributions as a charge to their profit and

⁷ The legislation in respect of investor protection schemes is listed in Annex I to the present Report.

loss account, which is the opposite of what happens in “ex post” indemnity systems which only require that contributions are made at the moment at which a contingency occurs.

Deposit Guarantee Funds

There are three Deposit Guarantee Funds, one for each of the categories of banking entities: Banks, Savings Banks, and Co-operative Banks, the principle object of which is to guarantee depositors that their deposits in cash and in securities up to the established limits will be recovered.

All Spanish banking institutions have the obligation to join the appropriate Deposit Guarantee Fund. With respect to the branches of foreign entities, it is essential to distinguish between the branches of banking entities authorised in a EU Member State, for which joining is discretionary, given that the guarantee in their Home State Country should be equal to that of the Spanish system and the branches of banking entities which are authorised in a non EU Member State, which should join in cases where deposits are not covered by a guarantee system in their country of origin, with similar cover to that provided by the Spanish Deposit Guarantee Funds.

The amount guarantee has a limit of 100,000 Euros per depositor in each credit institution. The Deposit Guarantee Funds will meet the guaranteed sum of the deposits when an entity is declared to be insolvent and deposits which are due and payable are dishonoured, with a declaration by the Bank of Spain that the financial situation of the entity makes it impossible to repay them in the immediate future.

Web page: www.fgd.es

Investment Compensation Scheme

The principal purpose of the Investment Compensation Scheme (FOGAIN or *Fondo de Garantía de Depósitos*) is to offer the clients of Brokers and Portfolio Management Companies the cover of an indemnity in the event that any of those entities is declared insolvent by the CNMV. The monetary sum guaranteed has a limit of 100,000 Euros per holder.

As in the case of the Deposit Guarantee Funds, the branches of foreign entities whose country of origin is a EU Member State may join FOGAIN on a voluntary basis. In the case of branches of entities from non EU Member States, they should join in those cases in which they are not covered by a guarantee system in their country of origin.

Web page: www.fogain.com

Tax instruments which permit Madrid attract companies and professionals with talent

(i) Tax instruments to attract companies

Spain has signed a great variety of international Double Taxation Treaties, based principally on the various model Treaties proposed by the Organisation for Economic Co-operation and Development (OECD).

In general, except for certain exceptions, all the Treaties signed by Spain have a similar and analogous structure to that provided in the Treaties signed by the great majority of States.

The international Double Taxation Treaties signed by Spain are as follows:

International Double Taxation Treaties		
Algeria	Georgia	Norway
Argentina	Greece	Philippines
Armenia	Hungary	Poland
Australia	Iceland	Portugal
Austria	India	Romania
Azerbaijan	Indonesia	Russia
Byelorussia	Iran	Saudi Arabia
Belgium	Ireland	Slovakia
Bolivia	Israel	Slovenia
Brazil	Italy	South Africa
Bulgaria	Jamaica	Sweden
Canada	Japan	Switzerland
Chile	Kazakhstan	Tajikistan
China	Korea	Thailand
Colombia	Kyrgyzstan	Tunisia
Croatia	Latvia	Turkey
Cuba	Lithuania	Turkmenistan
Czech Republic	Luxembourg	Trinidad and Tobago
East Timor	Macedonia	Ukraine
Ecuador	Malaysia	United Arab Emirates
El Salvador	Malta	United Kingdom
Egypt	Mexico	United States
Estonia	Moldavia	Uzbekistan
Finland	Morocco	Venezuela
France	Netherlands	Vietnam
Germany	New Zealand	

With respect to the methods of preventing double taxation, as a general rule the Treaties signed by Spain opt for the exemption method and the credit method.

In general, dividends, interest, and capital gains will be subject to tax in the State from which they are sourced. Specifically, the Spanish tax legislation charges the income indicated when they are obtained by non-residents without the intermediation of a permanent establishment in Spain at the tax rate of 18 percent. From 1 January 2010, the tax rate applicable will increase from 18 percent to 19 percent.

Nevertheless, the international double taxation treaties signed by Spain limit the taxation of the source State on interest and dividends to the maximum percentage established by them.

With respect to capital gains, the great majority of the Treaties signed by Spain tax them as follows:

- ◆ Capital gains which a resident of a contracting State obtains from the sale of property in the other State may be taxed in the latter State.
- ◆ Capital gains deriving from the sale of movable property may only be taxable in the State in which the seller is resident, except where it forms a part of the assets of a permanent establishment.

Nevertheless, some Treaties permit the source State to tax capital gains deriving from the sale of particular holdings.

Certain Treaties signed by Spain incorporate special clauses in respect of double taxation which establish mechanisms for the deduction of tax not in fact paid by credits or exemptions in the source State.

There are two modalities, the **tax sparing** clause and the **matching credit** clause.

Under the tax sparing clause it is permitted to enjoy a deduction in the State of residence of the earner of the income provided that the double taxation Treaty establishes the possibility that the income should be taxed in the source State but through the application of the internal legislation of that State, the income is not in the end subject to taxation.

The matching credit clause specifically sets out the possibility of a deduction in the country of residence of the earner of a greater sum at the maximum tax rate which is established for each type of income in the source State.

Among the principal international double taxation Treaties signed by Spain which include the preceding clauses, we would highlight those with Argentina, Belgium, Brazil, Cuba, China, Philippines, Finland, Japan, Luxembourg, Morocco, Mexico, Netherlands, United Kingdom, Switzerland and Turkey.

(ii) Tax instruments for attracting highly qualified professionals⁸

The regulations on Personal Income Tax establish attractive tax arrangements for income from work obtained by certain workers resident in Spain.

In this respect, workers who become tax resident in Spain as a result of moving to Spain may opt to pay tax in Spain under the Non-Resident Income Tax rules (IRNR or *Impuesto de la Renta de No Residentes*), without losing their status as taxpayers under the Personal Income Tax (IRPF or *Impuesto de la Renta de las Personas Físicas*) de rules by doing so, throughout the tax period in which the taxpayer carries out the change of residence and for the five subsequent tax periods.

As a consequence of the application of the special arrangements, from 1 January 2010, the worker will only pay tax for income sourced in Spain at a tax rate of 24%, instead of including the income in the general tax assessment basis of the Personal Income Tax and therefore pay tax according to the scale for that tax (24% to 43%), always provided that the yearly income is not up to 600,000. The amount which exceeds such figure will be subject to the tax scale (24% to 43%).

On the other hand, the taxpayers who will be moved to the Spanish territory before 1 January 2010 and who had chosen the special tax regime will pay taxes at 24% for the totality of the income obtained in Spain during each period in which it results applicable.

In both cases and in order to be able to apply these arrangements, it is necessary that the following requirements should be met:

- ◆ A natural person who wishes to apply the arrangements in question must not have been resident in Spain for a period of 10 years prior to returning to Spain;
- ◆ The return to Spain must be the result of an employment contract;
- ◆ The work must be carried out effectively in Spain;
- ◆ The work performed by the taxpayer must be carried out for companies or entities which are resident in Spain or for the permanent establishments in Spain of non-resident entities;
- ◆ The income deriving from the contractual relationship is not exempt from Personal Income Tax or Non-Resident Income Tax.

Furthermore, the IRPF regulations lay down an exemption for certain kinds of income obtained by natural persons resident in Spain who carry out work abroad. This exemption will be applicable for salaries earned during the days the person is abroad, and has a limit of 60,100 Euros per year. The essential requirements for the application of the exemption are as follows:

- ◆ The work must be carried out for a company which is not resident on Spanish territory, or a permanent establishment based abroad, although when the person for whom the work is performed is a related entity to the entity which employs the worker or with that for which he is providing his services, the work should afford some benefit or utility for the person for whom the work is performed.
- ◆ A tax of equivalent or identical character to Spanish Personal Income Tax should be applicable in the country where the taxpayer is performing his work, and this country must not be a tax haven. This requirement is deemed to have been met when the country or territory has signed an international double taxation treaty with Spain containing an information exchange clause.

⁸ The legislation in respect of attracting qualified professionals is listed in Annex I to the present Report.

Madrid, a perfect Centre for raising funds

In respect of the search for financing, Madrid is the headquarters of the **Regulated Markets**, and the most representative organised trading system in Spain in terms of volume of negotiation and capitalisation. BME, the holding company for the group which includes the Spanish secondary markets and their settlement and payment systems, has its headquarters in Madrid. Over recent years has been promoting multiple initiatives which have expanded the financing options for companies which are interested in raising funds in the securities markets.

The new **investment flows** channelled through the **Spanish Stock Market** in 2009 amounted to 22,000 million Dollars, figure which situates the Spanish Stock Market within the first ten Stock Exchanges in the world regarding capitalization of its traded companies. Furthermore, within the European frame, the Spanish Stock Market holds the fourth place as far as traded volume is concerned. According to the information provided by the **World Federation of Exchanges** (“WFE”) for the year 2009, **BME** recorded a net profit of 150 million of Euros, which demonstrates its capacity to generate sustained earnings even in difficult conditions. This figure represents a 21.3% decrease from 2008.

The transposition of MiFID puts an end to a period of concentration, and brought in two new trading systems: the Multilateral Trading Systems (MTS) and the Systematic Internalisers (SI). BME has been able to take business and strategic decisions in order to prevent the new regulations from having an impact upon their business. To the date there are no Systematic Internalisers based in Spain⁹, nor any MTS which has taken an appreciable volume of business. Furthermore, BME has increased the services they offer, opening up new market segments such as the Alternative Stock Market (Mercado Alternativo Bursátil) with trading systems for Open-ended Investment Schemes Companies (SICAVs or *Sociedades de Inversión de Capital Variable*), Venture Capital, Small and Medium-sized Companies, the Exchange Traded Funds (ETF) segment, Latibex, etc..

With respect to other forms of financing, such as **Venture Capital**, the existence of a modern flexible legal system since the year 2005 in matters of suitable assets and operations of venture capital entities has helped Madrid to take a leading position here too: the fact is that there are currently around 48 Venture Capital Management Companies and 74 Venture Capital Entities domiciled in Madrid, and 50% of the investments made by Venture Capital Entities were completed by companies from the Region of Madrid.

Similarly, Madrid has taken shape as an **internationally important centre for securitisation** and specifically in the important market of covered bonds or mortgage certificates. According to data from the Bank of Spain to December 2007, the annual volume of gross securitisation issue in Spain has multiplied by more than 15 times between the years 2000 and 2007, reaching a value of 124,000 million Euros, and the active balance of these instruments rose by 17 times, to reach 307,00 million Euros.

Spain has become the greatest issuer of covered bonds in Europe over the last two years, through the issue of mortgage backed securities. These debt instruments are regulated by legislation which dates back to the year 1981, although the Law on the Reform of the Mortgage Market was approved in 2007, pursuing among other objectives the modernisation of the Spanish legislation in respect of mortgage backed securities, and promoting secured bonds and thus remaining competitive in the European capital markets where a large number of amendments and new laws have strengthened other, similar, instruments. Consequently, the new legal framework in this area constitutes an effective instrument to permit Madrid continue to be a centre of reference in the issue of this type of asset.

⁹ According to the databases of the CESR, available at www.cesr.org

The Region of Madrid is taking an active role in the growth of the Finance Culture

One of the factors which have allowed Madrid to differentiate itself from other regions in the country has been the effort put over recent years by very different social agents who have contributed to strengthening the growth of the finance culture.

Madrid offers wide range of supportive services to the financial industry (professional' associations, law firms and training and other professional services firms).

(i) Madrid, a wide-range of financial training on offer

The Region of Madrid is not only one of the principal university capitals of Europe, in that it has almost twenty public and private universities (in addition to being the headquarters of two out of the three open, or distance, universities in Spain) giving an education to more than 300,000 students but it is also opening wider and wider the range of postgraduate training on offer, with masters degrees, courses, specialist seminars and conferences, amongst which we can find a wide range of financial training on offer.

Business Schools and specialist institutes in Financial training

The most widely-recognised Business Schools in Spain impart their courses in Madrid, and have great international prestige, such as the *Instituto de Empresa* (IE), *Escuela Superior de Administración y Dirección de Empresas* (ESADE), La Salle, *Instituto de Estudios Superiores de la Empresa* (IESE), *Instituto Católico de Administración y Dirección de Empresas* (ICADE), etc. which constitute a whole talent-mine in business management.

There are numerous bodies involved in training specifically for the financial sector, such as University College of Financial Studies (CUNEF or *Colegion Universitario de Estudios Financieros*), the Institute for Stock Market Studies (IEB or *Instituto de Estudios Bursátiles*), the Higher Institute for Technical Banking Practice (ISTPB or *Instituto Superior de Técnicas y Prácticas Bancarias*), the School of Applied Finance (AFI or *Escuela de Finanzas Aplicadas*), the Institute for Spanish Stock Markets and Exchanges (BME Institute or *Instituto de Bolsas y Mercados Españoles*), the Intereconomía School of Finance (*Escuela de Finanzas Intereconomía*), the Centre for Financial Studies (CEF or *Centro de Estudios Financieros*), Foundation for Financial Studies School (FEF School and *Escuela de Formación de la Fundación de Estudios Financieros*) and so on.

The increase in the internationalisation of these finance schools and institutes is notable, particularly in step with the increase in the bilingual study plans and international professional practices on offer.

Training through conferences, courses, and seminars

The training on offer from the BME Institute with courses on the stock market, derivatives and financial management is outstanding, as is the training school of the FEF School which imparts specialist courses such as the Certified International Investment Analyst or the Higher Programme in Equity Management, and also the recently created Financial Mind, which offers specialist training days in financial regulatory innovations. The *Grupo Unidad Editorial*, through *Expansión Conferencias*, also imparts important sessions on topics of current interest in financial life in Madrid. It is not only Spanish entities which impart training sessions in Madrid, but the number of specialist international financial training institutions showing interest in setting up offices in Madrid is constantly increasing. This is the case with the Institute of International Research, (with its IFR Conferences and the Institute for Financial Training divisions) and the International Faculty For Execution (IFAES), both of which offer a wide range of financial training.

Discussion Centres for professionals from the legal and financial world

In Madrid there are also foundations, professional associations and schools aimed at promoting the exchange of ideas and serving as centres for discussion for professionals from the legal and financial world, such as the Spanish Financial Analysts Institute (IEAF or *Instituto Español de Analistas Financieros*), the Foundation for Financial Studies (*Fundación de Estudios Financieros - FEF*), the young Foundation for Research on Law and the Company (FIDE or *Fundación para la Investigación sobre el Derecho y la Empresa*), the Association for Management Progress (APD or *Asociación para el Progreso de la Dirección*) and the ESCA, this latter focused on the training of professionals in Savings Banks.

Training of foreign students

Madrid is also host to the greatest number of foreign students, above all those coming from the Latin American countries. We should point out the fact that there exist a large number of Treaties between universities and institutions from Madrid and the universities of Latin America, including the IberoAmerican Postgraduate University Association (AUIP or *Asociación Universitaria Iberoamericana de Postgrado*) thus assisting Latin American students in gaining access to University Masters Degrees which satisfy the requirements of the European Space for Higher Education (ESHE).

The training of foreign students is promoted principally thanks to scholarship programmes offered to foreign students, in the main from Latin America. In this respect, it is important to highlight the work carried out by bodies such as the Carolina Foundation (FC or *Fundación Carolina*) or the effort put in by the Banco Santander through Universia.

Madrid is therefore an ideal space for the training of financial talent which encourages them to stay in the region. The population of the Region of Madrid has a high standard of education. Almost 50% of the population between 24 and 35 years old has studied at the university.¹⁰

(iv) Madrid, headquarters of the major professional services firms supporting the financial sector

There are more and more professional services firms which specialise in consultancy for the financial sector in Madrid.

In the matter of audit services, the Spanish market is dominated by the Big Four, namely, Deloitte, KPMG, PriceWaterHouseCoopers, and Ernst & Young. All of them have a base in Spain, and the offices in Madrid stand out by their size and their volume of business. Furthermore, with competition and the available financial advisory services on offer continuing to become more numerous, the four auditors have included their own Legal Departments within their structure, and the services they offer include advisory services on financial and tax regulation.

With respect to legal practices, the number of Spanish firms which have been growing and including legal advice on financial regulation (for Banking, Finance and Capital Markets) in their portfolio of services has continued to increase, notable among which are Garrigues, Uria & Menéndez, and Cuatrecasas. Further, foreign law firms which have seen an important business goal in the Spanish market have been settling in Madrid.

During the 90s, the major international law firms came to Spain, taking advantage of the underdeveloped legal market in the country, and located most part of their offices in Madrid. With the exception of the US law firm Baker & Mackenzie which had already entered the Spanish market in 1965,

¹⁰ “*Madrid, el mejor clima para los negocios*” (Madrid, the best climate for Business) by Madrid Emprande, Economic Development Agency, 2007.

the first firms to arrive were from Britain. Nowadays, the most important British firms with a headquarters in Madrid are among others, Freshfields Bruckhaus Deringer; Linklaters; Allen & Overy; Clifford Chance; Simmons & Simmons; Bird & Bird; Lovells, and Ashurst.

Subsequently, it was the turn of the major North American firms to show interest in the Spanish market, including DLA Piper; and Jones Day. The most recent North American firm to arrive was Lathan & Watkins, who opened their doors in Madrid in 2007.

All of this means that it can be said that Madrid has important specialist firms in financial services, both domestic and foreign. This competition entails that there are legal and financial advisory services of a high quality offered, which makes it possible to attend to the demands of the professionals in the sector in a satisfactory and skilful manner.

Annex I: Principal legislation of interest

Transposition of the principal Directives to Spain	
European Legislation	Transposition legislation in Spain
<p>MiFID:</p> <ul style="list-style-type: none"> ◆ Directive 2004/39/EC of the European Parliament and Council, of 21 April 2004, relating to the markets for financial instruments. ◆ Directive 2006/73/EC of the Commission, of 10 August 2006, in application of Directive 2004/39/ ◆ Regulation 1287/2006/EC of the Commission, of 10 August 2006, in application of Directive 2004/39/EC 	<p>MiFID:</p> <ul style="list-style-type: none"> ◆ Law 47/2007, of 19 December, Amending Law 24/1988, of 28 July, on the Securities Market Law ◆ Royal Decree 217/2008, of 15 February, on the legal system applying to Investment Firms and other bodies which provide investment services
<p>Money Laundering</p> <ul style="list-style-type: none"> ◆ Directive 2005/60/EC of the European Parliament and Council, of 26 October 2005, in respect of the prevention of the use of the financial system for money laundering purposes ◆ Directive 2006/70/EC of the Commission, of 1 August 2006, establishing provisions for the application of Directive 2005/60/EC 	<p>Money Laundering</p> <ul style="list-style-type: none"> ◆ Law 10/2010, of 28 April, of the prevention of money laundering and terrorist financing
<p>Solvency</p> <ul style="list-style-type: none"> ◆ Directive 2006/48 of the European Parliament and Council, of 14 June 2006 in respect of access to and operation of the business activity of banks ◆ Directive 2006/49/EC of the European Parliament and Council, of 14 June 2006, on appropriate capital for investment services companies and banks 	<p>Solvency</p> <ul style="list-style-type: none"> ◆ Law 36/2007, of 16 November, Amending Law 13/1985, of 25 May, on investment coefficients, equity, and the obligation of information laid upon financial intermediaries, and other provisions on the financial system ◆ Royal Decree 216/2008, of 15 February, on the equity of financial institutions
<p>Prospectus</p> <ul style="list-style-type: none"> ◆ Directive 2003/71/EC of the European Parliament and Council, of 4 November 2003, on the prospectus which must be published in cases of public offerings or acceptance of securities for trading ◆ Regulation 809/2004/EC of the Commission, of 29 April 2004, in application of Directive 2003/71/EC 	<p>Prospectus</p> <ul style="list-style-type: none"> ◆ Royal Decree 1310/2005, of 4 November, Partial development of Law 24/1988, of 28 July, on the Stock Market, in respect of acceptance of securities for trading in official secondary markets, public offerings for sale or subscription, and the prospectus required to these effects

<p>Takeover Bids</p> <ul style="list-style-type: none"> ◆ Directive 2004/25/EC of the European Parliament and Council, of 21 April 2004 in respect of takeover bids 	<p>Takeover Bids</p> <ul style="list-style-type: none"> ◆ Law 6/2007, of 12 April, Reforming Law 24/1988, of 28 July, On the Stock Market, on the modification of the system for takeover bids and on transparency of issuers ◆ Royal Decree 1066/2007, of 27 July, on the system for takeover bids
<p>UCITS</p> <ul style="list-style-type: none"> ◆ Directive 107/2001 Directive of the European Parliament and Council, of 21 January 2002, Amending Directive 85/611/EEC, with a view to regulating management companies and simplified prospectuses ◆ Directive 108/2001 Directive of the European Parliament and Council, of 21 January 2002, amending Directive 85/611/EEC), insofar as it refers to investments by the OICVM ◆ Directive 2007/16/EC of the Commission, of 19 March 2007, establishing provisions for the application of Directive 85/611/EEC, in respect of the clarification of certain definitions ◆ Directive 2009/65/EC of the European Parliament and of the Council, of 13 JULY 2009, on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (Directive UCITS IV) 	<p>UCITS</p> <ul style="list-style-type: none"> ◆ Law 35/2003, of 4 November, on Collective Investment Institutions. ◆ Regulation 1309/2005, of 4 November, Developing the Law on Collective Investment Institutions. ◆ Royal Decree 362/2007, of 16 March, Amending the Regulations Developing Law 35/2003, of 4 November, on collective investment schemes, as approved by Royal Decree 1309/2005, of 4 November ◆ Order EHA/888/2008, of 27 March, on the Operations of Investment Funds of a financial nature with derivative financial instruments and Clarifying certain concepts of the Regulations of Law 35/2003, of 4 November, On Investment Funds, approved by Royal Decree 1309/2005, of 4 November ◆ The Directive UCITS IV is in the process of being transposed (the deadline is 1 July 2011)
<p>Payment Services</p> <ul style="list-style-type: none"> ◆ Directive 2007/64/EC of the European Parliament and Council, of 13 November 2007, on payment services in the internal market 	<p>Payment Services</p> <ul style="list-style-type: none"> ◆ Law 16/2009, of 13 November, on Payment Services ◆ Royal Decree 712/2010, of 28 May, on the legal regime for the Payment Services and Payment Institutions

Legislation in respect of the supervisory authorities

Legislation applicable to the CNMV:

- ◆ Law 24/1988 of 28 July, on the Stock Market
- ◆ Regulation of the Internal System of the CNMV; General Code of Conduct of the Members of the CNMV

Legislation applicable to the Bank of Spain:

- ◆ Law 13/1994, of 1 June, on the Autonomy of the Bank of Spain
- ◆ Law 26/1988, of 29 July, on Discipline and Intervention of Banks
- ◆ Internal Regulation of the Bank of Spain, Approved by Resolution of 28 March 2000, of the Board of Governors of the Bank of Spain

Legislation applicable to the DGSFP:

- ◆ Royal Decree 1552/2004 of 25 June, Developing the basic organogram of the Ministry of Economy and Finance.
- ◆ Law 30/1995, of 8 November, on the Organisation and Regulation of Private Insurance.

Regulatory legislation of the State Tax Administration Agency

- ◆ Law 26/2009, of 23 December, on the General Budget of the State for year 2010
- ◆ Law 31/1990, of 27 December, on the General Budget of the State for year 1991

Regulatory legislation of the General Directorate of Taxation:

- ◆ Royal Decree 1552/2004 of 25 June, Developing the basic organogram of the Ministry of Finance and Taxation

Legislation in respect of compensation systems

Legislation applicable to Deposit Guarantee Schemes in Banks, Savings Banks and Cooperative Banks

- ◆ Royal Decree-Law 4/1980, of 28 March, Regulating the Banking Entities
- ◆ Royal Decree-Law 18/1982, of 24 September. Deposit Guarantee Fund Scheme
- ◆ Royal Decree 2606/1996, of 20 December, on the legal system applicable to the Deposit Guarantee Funds in Credit Institutions
- ◆ Circular 4/2001, of 24 September, of the Bank of Spain, on the basis of calculation for contributions
- ◆ Order ECO/317/2002, of 14 February (Deposit Guarantee Fund - Savings)
- ◆ Order ECO/318/2002, of 14 February (Deposit Guarantee Fund - Banking)
- ◆ Order ECO/2801/2003, of 3 October (Deposit Guarantee Fund - Credit)

Legislation applicable to the FOGAIN:

- ◆ Royal Decree 948/2001, of 3 August, on Investor Compensation Schemes

- ◆ Royal Decree 948/2001, of 3 August, on Investor Compensation Schemes
- ◆ Order of 14 November 2001 Empowering the National Stock Markets Commission to issue regulations developing Royal Decree 948/2001, of 3 August, on Investor Compensation Schemes
- ◆ Circular 2/2004, of 31 March, of the National Stock Markets Commission, on accounting standards, restricted and public forms of financial statements and annual accounts of a public nature of investment services companies, partially amending Circular 5/1990, of 28 November, On accounting standards, restricted and public forms of financial statements and annual accounts of a public nature of broker-dealers and brokers.

Legislation applicable to the tax system in Spain for impatriates and expatriates

- ◆ Law 35/2006, of 28 November, on Personal Income Tax and partial amendment of the Laws on Corporate Income Tax, Non-Resident Income Tax, and Wealth Tax.
- ◆ Royal Decree 439/2007, of 30 March, Approving the Regulations of Personal Income Tax, and Amending the Regulations of Pensions Plans and Pensions Funds, approved by Royal Decree 304/2004, of 20 February.

Legislation applicable to the Mortgage Market

- ◆ Law 2/1981, of 25 March, Regulating the Mortgage Market
- ◆ Law 2/1994, of 30 March, Subrogation and Modification of Mortgage-backed loans
- ◆ Law 41/2007, 7 December, Amending Law 2/1981, of 25 March, Regulating the Mortgage Market and other regulations of the mortgage and finance systems, Regulating reverse mortgages and dependency insurance, and Establishing certain tax regulations