Financial regulation: 2000 Q4

1. INTRODUCTION

During the fourth quarter of the year 2000, more financial provisions were issued than in previous periods.

First, a so-called reimbursement scheme has been introduced into TARGET (1) for situations in which some incident prevents complete processing of payment orders introduced by participants, and certain provisions of the law governing the Banco de España Settlement Service (SLBE) have been updated.

As regardes credit institutions, the remaining provisions of Directive 97/5/EC of the European Parliament and of the Council (2), relating to bank transfers, have been transposed into Spanish law, with the establishment of minimum publicity obligations that credit institutions making credit transfers between Member States of the European Union (EU) must comply with.

In the field of public debt, the special procedures for paying interest on State debt have been extended to debt issued by the regional (autonomous) governments and local authorities, whenever certain requirements are complied with.

With regard to the National Electronic Clearing System (SNCE) all documents capable of being processed in the System have been incorporated. The only ones excluded, for operational or technical reasons, are specified in its Operating Instructions.

In the Community sphere, the publication of four provisions should be noted. The first two relate to electronic money, extending the definition of credit institutions to include electronic money institutions (EMIs), and establishing a legal framework for these institutions, which specifies their legal status, the conditions for taking up their business and their prudential supervision. The other two provisions have been published as a consequence of the adoption of the euro by Greece. The Council Regulation on the introduction of the euro has been amended to include Greece, and the minimum reserves system has been extended to cover credit institutions located in Greece and the branches in Greece of credit institutions.

(1) Trans-European Automated Real-Time Gross settlement Express Transfer (TARGET) is an EU general interbank payments system, which connects the various real time gross settlement systems and the payments mechanism of the ECB via the Interlinking mechanism.

(2) See «Regulación financiera: primer trimestre de 1997", in Boletín Económico, Banco de España, April 1997, p. 117.

As for cross-border transactions, three instruments should be noted. The first amends the procedure for reporting to the Banco de España financial or commercial foreign loan transactions and transactions involving the setting off of credits and debits with non-residents, laying down threshold amounts for the reporting obligation. The second revises the information that must be sent to the Banco de España by residents holding accounts with bank branches operating abroad, or who collect receipts from or make payments to non-resident entities that are settled through accounts with non-resident entities. Finally, certain provisions of the law on foreign economic transactions are updated.

Certain aspects of the legal regime for foreign-currency bureaux have been developed and publicity and transparency obligations have been laid down for foreign exchange and travellers cheque sale and purchase transactions carried out by such proprietors, in order to ensure an adequate level of information and customer protection.

Finally, as usual in this period, the State budget is discussed, for the year 2001. It maintains the austerity, the deficit control and the budget discipline initiated in previous years. The budget law, as in previous years, was accompanied by the adoption of a number of fiscal, administrative and social measures to facilitate the achievement of economic policy goals.

2. TARGET MODIFIED: REIMBURSEMENT SCHEME AND OTHER CHANGES TO THE LAW GOVERNING THE BANCO DE ESPAÑA SETTLEMENT SERVICE

One of the consequences of the integration of the Banco de España into the ESCB, was the application of harmonised procedures, together with the national central banks of the euro area countries, in accordance with the operational requirements of the ECB. These new requirements, ranging from the implementation of monetary policy to the operation of the TARGET system, via market opening and closing procedures and related activities, will apply to the activities of the Banco de España carried out within a common framework. Another consequence of this integration was the adaptation, through CBE (Banco de España Circular) 11/1998 of 23 December 1998, of the organisation and operation of the then STMD (Money-Market Telephone Service) to the new obligations assumed by the Banco de España as a result of the implementation of the TARGET system, which are set out in the Guideline of the ECB of 16 November 1998. The name of the STMD was changed to SLBE (Banco de España Settlement Service) and any reference to it in then current legislation was to be taken as a reference to the new name.

CBE 8/2000 of 22 December 2000 has recently been published in order to transpose into Spanish law the Guideline of the ECB of 3 October 2000 (ECB/2000/9), which replaces the Guideline of the ECB of 16 November 1998. The main change made by this Guideline is the establishment of a so-called reimbursement scheme.

This scheme is intended for situations in which there may be a malfunctioning of TARGET preventing complete processing of payment orders entered into the system. In such situations, the ESCB and the other central banks participating in TARGET undertake to reimburse the institutions concerned with certain amounts based on the difference between the interest rate applied for the use of standing facilities and the main refinancing operations rate. Participants may opt at any time to reject the arrangements of the scheme and any reimbursement payment and to seek any other legal means that may be available to them for compensation of damages.

The reimbursement scheme shall be applied when the malfunctioning of TARGET affects domestic and cross-border payments simultaneously. When it only has consequences for domestic payments, the Banco de España shall apply the appropriate rules under current legislation. Also, this scheme only applies to sending and receiving participants, who have had to resort, as a consequence of the malfunctioning of TARGET, to marginal lending or deposit facilities.

Finally, the Circular takes the opportunity to make certain amendments to update CBE 5/1990 of 28 March 1990, with respect to the institutions belonging to the SLBE (formerly, STMD), and also makes certain changes to CBE 11/1998 of 23 December 1998, in relation to intraday credit (3). In particular, credit institutions and the Spanish branches of foreign credit institutions that are not eligible counterparties to the Eurosystem for monetary policy operations or are not authorised to use the marginal lending facility and which fail to repay intraday cre-

3. Intraday credit is granted by the Banco de España to participants, following the provision by the latter of adequate collateral during a particular daily session of the SLBE. Such financing shall necessarily be repaid during the course of the day, whether by payment of sufficient cash or via the marginal lending facility regulated in the general clauses applicable to Banco de España monetary policy operations and implementing provisions.

dit by the end of the day, shall pay interest, calculated in accordance with the terms of CBE 11/1998.

3. CROSS-BORDER CREDIT TRANSFERS

Directive 97/5/EC of the European Parliament and of the Council of 27 January 1997 on cross-border credit transfers, laid down the basic rules for individuals and businesses (especially small and medium-sized businesses) to be able to make credit transfers through credit institutions from one part of the Community to another rapidly, reliably and cheaply. It established both the minimum requirements to ensure an adequate level of customer information, and the minimum obligations of institutions when executing such credit transfers in accordance with the customer's instructions. Also, the EU Member States had to transpose into their domestic law the provisions of the Directive by 14 August 1999. Spain partially complied with this mandate by means of Law 9/1999 of 12 April 1999, which regulated the legal system for credit transfers between EU Member States, introducing into Spanish law the provisions of Directive 97/5/EC which required the status of statute. The *Ministerial Order of 16 November 2000* (BOE of 25 November 2000) has recently transposed into Spanish law the other provisions of the Directive and has also developed certain specific aspects of Law 9/1999.

First, the Order lays down some transparency obligations that must be complied with by credit institutions that perform credit transfers between EU Member States. After notification of the Banco de España, a number of general conditions applicable to such transfers must be made public, including notably the following: the maximum time needed in business days for the funds to be credited to the account of the beneficiary; their cost in terms of the commissions and expenses charged to the customer for the transfers ordered and received; in the case of receipt of a transfer the maximum time for the funds credited to the account of the institution to be credited to the account of the customer beneficiary which shall be agreed beforehand with the originator, or otherwise one banking business day; the exchange rates used for conversion in the case of transfers that are to be paid in a different currency from that in which the funds were delivered, and the complaints and redress procedures offered to customers. Such conditions shall be made public in writing, in a readily comprehensible form and shall be included in the tariff brochure. Also, they must be made available to actual and prospective customers in electronic format (e.g. by Internet) when the institution offers electronic operations.

These obligations are extended to cover the proprietors of currency-exchange bureaux, provided the operation carried out by the latter has the purpose of crediting a sum of money to an account held at a credit institution where it is accessible to the beneficiary. However, such proprietors are exempted from the obligation to set a maximum period within which to make the funds received via a transfer available to the beneficiary. They are also required to maintain exclusive bank accounts for the management of credit transfers and to avoid confusion as to the identity or responsibility of the proprietor with whom the customer contracts the operation when the latter is associated with networks or international organisations.

Both credit institutions and the proprietors of currency exchange establishments shall provide their customers, unless they expressly forgo their rights in this respect, with information on the settlement of all transfer operations ordered or paid to beneficiaries. This information shall be given in writing, be clear, specific and readily comprehensible, and must contain at least the following: a reference number allowing the transfer to be identified; the amount of the transfer; all the expenses and commissions payable by the customer, and if applicable, the valuation date applied.

An obligation is also established to supply customers, at their request when the institution accepts the operation, with a written offer setting out the specific conditions applicable to the transfer. These shall include the time needed to execute the operation, the charges payable by the originator and, where appropriate, by the beneficiary.

The obligations to publish information and deliver the settlement document are extended to cover those cross-border transfers that do not fall under the scope of application of Law 9/1999. Third-party civil liability insurance for currency-exchange bureaux that manage cross-border transfers is also regulated.

For the purposes of Law 9/1999 a banking business day is defined as a twenty-four hour period during which the institution is open for business. For this definition the locality or localities in which the various different periods set by the Law must be calculated are taken into account, as well as the working calendar.

Finally, the Banco de España is enabled to issue specific regulations for the implementation and enforcement of this Order.

4. PROCEDURES FOR THE PAYMENT OF INTEREST ON STATE DEBT EXTENDED TO DEBT ISSUED BY REGIONAL (AUTONOMOUS) AND LOCAL GOVERNMENTS

Special procedures have been established in recent years for the payment of interest on State debt registered in the Book-Entry System. Legislation waived the obligation to withhold interest on public debt for particular categories of investor and certain yields, but similar procedures were not established for debt issued by regional (autonomous) and local governments, despite the fact that this debt enjoys the same benefits and conditions as State debt.

Law 31/1990 of 27 December 1990 on the State budget for 1991 and Law 17/1991 of 27 May 1991 on urgent fiscal measures, exempted interest received by non-residents without a permanent establishment in Spain from taxation, except where it is obtained through countries or territories classified as tax havens, and Royal Decree 1285/1991 of 2 August 1991 established the appropriate special procedure for the payment of interest. Likewise, Royal Decree 537/1997 of 14 April 1997, which approved the Corporate Income Tax Regulation, exempted interest on public debt received by certain categories of resident institutions from withholding tax, and the Ministerial Order of 20 April 1988 established the relevant procedure for paying interest for the said institutions, following a similar system to that established for non-residents. Finally, Royal Decree 326/1999 of 26 February 1999, which approved the Regulation on the Income Tax for non-residents, submitted the income obtained by non-residents through a permanent establishment to the same withholding system as applicable to payers of corporate income tax.

Royal Decree 1948/2000 of 1 December 2000 (BOE of 19 December 2000) now extends the special procedures for payment of interest on State debt to the debt issued by regional (autonomous) and local governments (4), provided that this debt fulfils the following requirements:

a) It is registered in the Book-Entry System.

b) The issuing regional (autonomous) or local government has signed an agreement with the Banco de España whereby the service of refunding amounts withheld from coupon payments shall be provided by the Banco de España.

(4) Notwithstanding the special tax arrangements in force in the Basque Country and Navarre.

5. NATIONAL ELECTRONIC CLEARING SYSTEM: NEW DOCUMENTS INCORPORATED

Royal Decree 1369/1987 of 18 September 1987 (5), the Ministerial Order of 29 February 1988 (6) and CBE 8/1988 of 14 June 1988 (7), regulated the structure and operation of the National Electronic Clearing System (SNCE), consisting of the National Exchange System (SNI) and the National Settlement System (SNL). Later, the CBE 11/1990 of 6 November 1990 (8) laid down the operating rules for the general subsystem for current-account cheques and promissory notes, regulated in SNCE Rule-004 (hereinafter SNCE-004), incorporated in the SNI. Subsequently, CBE 1/1998 of 27 January 1998 (9), published the operating rules for the new general subsystem for commercial bills, also incorporated in the SNI (regulated in SNCE Rule-07).

Specifically, CBE 11/1990 and CBE 1/1998 excluded the presentation through these subsystems of documents whose maturity date was more than 90 calendar days before their clearing date. Also, CBE 1/1998 excluded from the general subsystem for commercial bills, inter alia, bills issued before 1 January 1986 that might be subject to a protest before a Notary Public.

Having overcome the technical and operating difficulties that prevented their processing in the SNCE, *CBE 9/2000 of 22 December 2000* (BOE of 29 December 2000) has incorporated all the documents capable of being processed in the SNCE. The only documents excluded are those which, for operational or technical reasons, are specified in the Operating Instructions.

(5) See «Regulación financiera: cuarto trimestre de 1987», in Boletín Económico, Banco de España, January 1988, p. 51

(6) See «Regulación financiera: primer trimestre de 1988», in Boletín Económico, Banco de España, April 1988, p. 65.

(7) See «Regulación financiera: segundo trimestre de 1988», in Boletín Económico, Banco de España, July-August 1988, p. 79.

(8) This Circular was amended by CBE 5/1991 of 26 July 1991, CBE 1/1995 of 30 June 1995, CBE 2/1998 of 27 January 1998 and CBE 9/1998 of 30 October 1998, so as to incorporate the clearing of new documents and means of payment into this subsystem.

(9) See «Financial regulation: first quarter of 1998», in Economic Bulletin, Banco de España, April 1998, p. 104.

6. EUROPEAN DIRECTIVE RELATING TO THE TAKING UP AND PURSUIT OF THE BUSINESS OF ELECTRONIC MONEY INSTITUTIONS

Directive 2000/12/EC of the European Parliament and of the Council, of 20 March 2000 (OJ of 26 May 2000) combined in a single text a number of directives relating to credit institutions, for reasons of clarity and rationality.

Meanwhile, the electronic money disseminated by credit institutions has rapidly gained broad acceptance in Spain as a retail payment instrument, since it enables monetary value to be stored on an electronic device in the hands of the consumer. Against this background, the European Community has considered it desirable to provide a regulatory framework that assists electronic money in delivering its full potential benefits and that avoids hampering technological innovation in particular.

To this end, *Directive 2000/28/EC of the European Parliament and of the Council of 18 September 2000* (OJ of 27 October 2000) has been published. It amends Directive 2000/12/EC in order to promote harmonious development of the activities of credit institutions, in particular as regards the issuance of electronic money, widening the definition of credit institutions to include electronic money institutions (EMIs).

Directive 2000/46/EC of the European Parliament and of the Council of 18 September 2000 (OJ of 27 October 2000) was published at the same time. This directive provides the appropriate measures necessary to coordinate and harmonise Member States' laws, regulations and administrative provisions relating to the taking up, pursuit and prudential supervision of the business of electronic money institutions (10).

For the purposes of this Directive, electronic money can be considered an electronic surrogate for coins and banknotes, representing a claim on the issuer, stored on an electronic device, issued on receipt of funds of an amount not less in value than the monetary value issued, and accepted as means of payment by undertakings other than the issuer. A distinctive feature of transactions carried out with electronic money is that it does not necessarily involve the existence of a bank account, since it operates as a prepaid bearer instrument.

The main features of the new legal regime for EMIs are as follows:

6.1. Initial capital and ongoing own funds requirements

EMIs shall have an initial capital of not less than EUR 1 million and, at all times, own funds which are equal to or above 2 % of the higher of the current amount or the average of the preceding six months' total amount of their financial liabilities related to outstanding electronic money.

6.2. Restriction of activities and investments

Besides the issuing of electronic money, EMIs may carry on other activities which are restricted in this Directive to the following:

a) The provision of closely related financial and non-financial services such as the administering of electronic money by the performance of operational and other ancillary functions related to its issuance, and the issuing and administering of other means of payment but excluding the granting of any form of credit;

b) The storing of data on the electronic device on behalf of other undertakings or public institutions.

As regards their investments, EMIs shall not have any holdings in other undertakings except where these undertakings perform operational or other ancillary functions related to electronic money issued or distributed by the institution concerned.

At the same time, EMIs shall have investments of an amount of no less than their financial liabilities related to outstanding electronic money in the following assets only: asset items which are sufficiently liquid and attract a zero credit risk weighting pursuant to Articles 43 and 44 of Directive 2000/12/EC (e.g. public debt); sight deposits held with zone A credit institutions (as defined in Directive 2000/12/EC); and debt instruments which are sufficiently liquid and fulfil certain other requirements set out in Directive 2000/46/EC. Sight deposits and debt

(10) The approach adopted is appropriate to achieve only the essential harmonisation necessary and sufficient to secure the mutual recognition of authorisation and prudential supervision of electronic money institutions, making possible the granting of a single licence recognised throughout the Community and designed to ensure bearer confidence and the application of the principle of home Member State prudential supervision.

instruments shall not exceed 20 times the own funds of the EMI concerned.

6.3. Other requirements

EMIs shall have sound and prudent management, administrative and accounting procedures and adequate internal control mechanisms. These should respond to the financial and non-financial risks to which the institution is exposed including technical and procedural risks as well as risks connected to its cooperation with any undertaking performing operational or other ancillary functions related to its business activities.

The competent authorities shall, at least twice a year, check compliance with the initial capital and ongoing own funds requirements, as well as with the limits for investments. Also, Member States shall prohibit persons or undertakings that are not credit institutions from carrying on the business of issuing electronic money.

6.4. Redeemability

A bearer of electronic money may, during the period of validity, ask the issuer to redeem it at par value in coins and bank notes or by a transfer to an account free of charges other than those strictly necessary to carry out that operation. The conditions of redemption shall be clearly stated in the contract between the issuer and the bearer, which may stipulate a minimum threshold for redemption. The threshold may not exceed EUR 10.

6.5. Waiver

Member States may allow their competent authorities to waive the application of some or all of the provisions of this Directive and the application of Directive 2000/12/EC to electronic money institutions when the electronic storage device is subject to a maximum storage amount of not more than EUR 150 and one of the following conditions is met: a) the total amount of financial liabilities relating to outstanding electronic money does not normally exceed EUR 5 million and never exceeds EUR 6 million; b) the electronic money is accepted as a means of payment only by the corporate group to which the EMI belongs; or c) the electronic money is accepted in limited local areas or only by a limited number of undertakings that have a close financial or business relationship with the EMI, such as a common marketing or distribution scheme. EMIs that are granted a waiver shall not benefit from the mutual recognition arrangements.

Member States shall require that all electronic money institutions granted a waiver report periodically on their activities including the total amount of financial liabilities related to electronic money.

Finally, the Member States shall transpose the provisions of Directive 2000/28/EC and Directive 2000/46/EC into their national law by 27 April 2002, immediately informing the Commission thereof.

7. COUNCIL REGULATION ON THE INTRODUCTION OF THE EURO AMENDED FOLLOWING THE ADOPTION OF THE EURO BY GREECE

Council Regulation 974/98 of 3 May 1998 provided for the substitution of the euro for the currencies of the Member States which fulfilled the necessary conditions for the adoption of the single currency at the time when the Community entered the third stage of economic and monetary union, on 1 January 1999. This Regulation also envisaged the possibility of other Member States adopting the euro at a later date.

Greece has now fulfilled the necessary conditions for the adoption of the single currency. Consequently, *Council Regulation (EC) No 2596/2000 of 27 November 2000* (OJ of 29 November 2000) has been published in order to amend Regulation 974/98 so as to make its provisions on the introduction of the euro applicable to Greece as from 1 January 2001.

8. EUROPEAN CENTRAL BANK: APPLICATION OF THE RESERVE RATIO FOLLOWING THE ADOPTION OF THE EURO BY GREECE

The Statute of the ESCB and of the ECB empowered the Governing Council of the ECB to define the mandatory reserve ratio applicable to the credit institutions of the Member States as from January 1999. The ECB submitted Recommendation 98/C 246/06 of 7 July 1998 for a Council Regulation concerning the application of minimum reserves to the Council of the European Union, which responded by adopting Council Regulation 2531/98 of 23 November 1998 (11). This Regulation laid down the general principles, the basic aspects and the limits to the ratio, which were subsequently implemen-

(11) See «Financial regulation: fourth quarter of 1998», in Economic Bulletin, Banco de España, January 1999, p. 78.

ted by Regulation 2818/1998 of the ECB of 1 December 1998 (12), amended by Regulation 1921/2000 of 31 August 2000, on the application of minimum reserves, to enter into force on 1 January 1999, coinciding with the start of the third stage of economic and monetary union.

The Statute of the ESCB and of the ECB likewise enabled the Council of the European Union to define various powers that the ECB must assume at the start of the new stage of EMU, which were developed by Council Regulation 2532/98 of 23 November 1998 concerning the powers of the ECB to impose sanctions, by Council Regulation 2533/98 of 23 November 1998 concerning the collection of statistical information by the ECB, and by ECB Regulation 2819/98 of 1 December 1998, amended by Regulation 1921/2000 of 31 August 2000 concerning the consolidated balance sheet of the monetary financial institutions sector.

With the introduction of the euro in Greece as of 1 January 2001, the minimum reserve system has been extended, by ECB Regulation 2548/2000 of 2 November 2000 (OJ of 18 November 2000), to cover credit institutions located in Greece and the branches in Greece of credit institutions. As of 1 January 2001 these institutions shall be obliged to hold minimum reserves, subject to a transitional maintenance period running from 1 to 23 January 2001.

9. FOREIGN LOANS, CREDIT AND SET-OFFS

A Ministerial Order of 27 December 1991 implementing Royal Decree 1816/1991 of 20 December 1991 laid down the obligation to report to the Banco de España both financial and commercial foreign loans received or extended by residents. The reporting procedure for trade credit on goods and services imports was stipulated by CBE 2/1992 of 15 January 1992, while CBE 23/1992 of 18 December 1992 regulated the procedure for reporting to the Banco de España operations involving obtaining and extending financial or commercial foreign loans, and the setting off of credits and debits with non-residents.

Since the entry into force of this latter Circular and in view of the time elapsed, there has been a notable increase in both the number and value of such transactions and it was deemed advisable to update its provisions by means of the publication of *CBE 6/2000 of 31 October 2000* (BOE of 17 November 2000). This Circular basically retains the same precepts as in CBE 23/1992, but sets certain quantitative limits below which it is not necessary to submit the declaration. Likewise, the Circular adapts the forms of and instructions for the declaration to current statistical reporting requirements. The following differences are detailed hereafter.

9.1. Loans and credit from non-residents to residents

As regards *financial loans and credit,* natural or legal persons resident in Spain (other than registered entities) obtaining financing from a non-resident, in whatever form, are obliged to report it whenever the amount of such financing is equal to or above EUR 3 million or the equivalent value in other currencies (previously all loans and credit had to be declared as there was no threshold amount).

The Banco de España will generally continue to assign a specific financial operation number (NOF by its Spanish name) (13) to each declaration. Likewise, registered entities, duly authorised by the Banco de España, may continue to assign the NOF for loans from non-residents whose amount is less than EUR 6 million or the equivalent value in other currencies (the previous limit was EUR 1.5 million) and provided that the lender is not a resident of territories or countries deemed to be tax havens under the terms of Royal Decree 1080/1991 of 5 July 1991.

As to *commercial credit,* residents obtaining credit facilities from a non-resident shall declare these to the Banco de España within one month from the date of receiving the credit, provided the amount thereof is equal to or greater than EUR 600,000 or the equivalent value in other currencies and the maturity is greater than one year in the case of goods and services import transactions (the amount was previously unlimited).

9.2. Loans and credit from residents to non-residents

This is similar to the previous case and the same thresholds below which there is no obligation to submit a declaration are established. Hence, as regards financial loans and credit, natural or legal persons resident in Spain (other than registered entities) that extend financing to

(12) See previous note.

(13) The financial transaction number (NOF) is used to record the consideration given and may act as a reference for any matter relating thereto.

non-residents, in whatever form, are obliged to declare it whenever the amount of such financing is equal to or greater than EUR 3 million or the equivalent value in other currencies (previously there was no threshold amount for the purposes of declaration).

Registered entities, duly authorised by the Banco de España, may continue to assign the NOF for loans to non-residents whose amount is less than EUR 6 million or the equivalent value in other currencies (the previous limit was EUR 1.5 million) and provided that the borrower is not a resident of territories or countries deemed to be tax havens under the terms of Royal Decree 1080/1991 of 5 July 1991.

As to *commercial credit,* residents extending credit facilities to a non-resident shall declare these to the Banco de España within one month from the date of the credit being received, provided the amount thereof is equal to or greater than EUR 600,000 or the equivalent value in other currencies and the maturity greater than one year in goods and services import transactions (the amount was previously unlimited).

9.3. Setting off of foreign receipts and payments

Natural or legal persons resident in Spain setting off receipts and payments with non-residents originating from transactions of whatsoever nature (whether financial or of goods or services) are obliged to declare them to the Banco de España within one month (previously there was no time limit).

Notwithstanding the foregoing, the Banco de España may require those natural or legal persons who had remained exempt from declaration, owing to the fact that the value of their operations did not exceed the above-mentioned amounts, to declare them if the aggregate amount of the operations exceeds the established limits.

10. RESIDENTS HOLDING BANK ACCOUNTS ABROAD

The above-mentioned Ministerial Order of 27 December 1991, which implemented Royal Decree 1816/1991 of 20 December 1991, allowed residents, inter alia, to open and hold accounts denominated in foreign currency and pesetas in bank branches operating abroad and to collect from and make payments to non-residents through crediting and debiting such accounts, but it obliged them to inform the Banco de España of the opening of and movements in such accounts. Subsequently, CBE 24/1992 of 18 December 1992, regulated the information to be reported to the Banco de España by residents holding accounts opened in the branches of both registered entities and foreign credit institutions operating abroad, or conducting receipt or payment transactions and clearing mutual credits and debits with non-resident institutions settled via accounts with non-resident entities that are not credit institutions.

For the same reasons as CBE 6/2000, discussed in the previous section, CBE 7/2000 (BOE of 17 November) amending CBE 24/1992 has been enacted to raise the amounts below which declarations of transactions are not necessary or, if appropriate, where such declarations may be simplified, with the information retaining a sufficient degree of quality. The Circular also adapts the declaration forms and rules of procedure to current statistical reporting requirements.

In this respect, the amount above which holders of accounts abroad must submit a declaration to the Banco de España for receipts and payments via credits and debits in the accounts has been raised from EUR 300,506 (PTA 50 million) to EUR 3 million (PTA 499.2 million) or the equivalent value in other currencies. This shall continue to be done monthly. If in any one month, in the credits or debits in question, the aforementioned figure of EUR 3 million is reached (the previous limit was PTA 50 million or EUR 300,506), the monthly declaration submitted shall encompass the declarations not reported in the previous month or months.

Account holders exempt from reporting in a particular month in the year or in every month shall submit an annual declaration in the last month of the year containing the undeclared operations. Nonetheless, a change introduced here is that if neither the sum of debits or credits should have exceeded EUR 600,000 or the equivalent value in foreign currency during the year, the declaration shall only be sent to the Banco de España on the express requirement of the latter.

11. AMENDMENTS TO THE REGULATIONS ON FOREIGN ECONOMIC TRANSACTIONS

The Resolution dated 9 July 1996 issued by the Directorate General of Trade Policy and Foreign Investment implemented specific articles of the Ministerial Order of 27 December 1991 -amended by the Ministerial Order of 9 July 1996- on foreign economic transactions. There have since been regulatory

changes making it necessary to amend this Resolution, as has duly been the case with the *Resolution of 31 October 2000* (BOE of 22 November).

Firstly, the Resolution partly implements Law 9/1999, of 12 April 1999, on the legal regime for credit transfers between EU Member States, determining the procedure to be followed for credit transfers from EU Member States whose amount is between EUR 12,500 and EUR 50,000 (both inclusive). In this case, the resident recipient shall submit the declaration within fifteen calendar days from the date on which the account was credited. To this end, the registered entity shall communicate this crediting of account to the resident beneficiary forthwith, including the amount under a temporary heading and requiring of the beneficiary the related declaration of receipt. The beneficiary is warned that failure to submit this declaration within the period established shall entail disclosure thereof to the Directorate General of the Treasury and Financial Policy (formerly the Directorate General of Trade Policy and Foreign Investment).

Secondly, the Resolution provides for a procedure to formulate the declaration in the event of payments and receipts between residents and non-residents via the endorsement of commercial bills. To date, receipts and payments between residents and non-residents, along with transfers between them via registered entities, were subject to declaration by the resident collecting the receipts or making the payment or transfer. Specifically, if the receipts and payments were made via commercial bills or cheques, declaration was obligatory for the paying resident to whose account the bills or cheques were charged. But the same obligation was not envisaged for the resident when the initial draft was made out to another resident and the latter, in turn, endorsed it in favour of a non-resident. And nor was it foreseen were a non-resident to draw the bill in favour of another non-resident and if the same non-resident were to endorse it on account of a resident. However, in both cases the regulation obliges the endorsers of the trade bills or the cheques to submit the related declaration in the form and within the period envisaged in the Resolution, and this irrespective of whether the registered entities submit the appropriate notifications.

Finally, the threshold for the declaration of receipts, payments or credit transfers is obligatory has been raised, with the exemption ceiling set at EUR 12,500 or the equivalent value in pesetas, provided that partial payments are not involved.

12. IMPLEMENTATION OF THE LEGAL REGIME FOR CURRENCY-EXCHANGE BUREAUX

Law 13/1996, of 30 December 1996, on fiscal, administrative and social measures, which accompanied the 1997 Budget Law, pointed to the need to complete the regulation of establishments other than credit institutions open to the public for currency exchange (hereafter, currency-exchange bureaux) with more comprehensive legislation, similar to that in other European countries, regarding the persons who perform such operations, enabling the government to implement such legislation subsequently. This was done by Royal Decree 2660/1998 of 14 December 1998 (BOE of 15 December 1998), which regulates the activity of these establishments while giving due regard to free competition and proper safeguards for customers. As regards its scope of application, the activity of these currency-exchange bureaux, or whatever they may be called, was widened to include not only the exchange of currency (the purchase and sale of foreign banknotes) but also the management of credit transfers received from or sent abroad through credit institutions.

Recently, the Ministry of Economy and Finance, having been enabled by the above-mentioned Royal Decree, has enacted *Ministerial Order of 16 November 2000* (BOE of 25 November), regulating specific aspects of the regime for currency-exchange bureaux and implementing obligations as to the advertising and transparency of foreign currency and traveller's cheque sale/purchase transactions by these establishments, so as to ensure proper information and safeguards for customers.

With regard to own funds, the Ministerial Order states that the minimum capitalisation requirements detailed in Royal Decree 2660/1998 shall be deemed met if net worth reaches at all times the minimum amounts established. As to the registration of currency-exchange bureaux envisaged in the aforementioned Royal Decree, the Ministerial Order adds that, once establishment-proprietors receive certification from the Banco de España of the operations they are authorised to conduct, this should be made perfectly visible to the public in all premises where they engage in their activity. Moreover, the Order addresses the principle of freedom for authorised establishment-proprietors to open premises with the sole requirement that this be communicated to the Banco de España, following the procedure laid down by the latter. Also, in addition to the authorised operations, they may engage in those others which, in the

opinion of the Banco de España, supplement or complement the former operations.

Regarding the rules governing the advertising and transparency of operations, establishment-proprietors shall publicise, in the manner determined by the Banco de España, the exchange rates, commissions and expenses (minimum charges included) applicable to the sale and purchase of foreign currency notes and traveller's cheques. Likewise, they shall adopt the appropriate organisational measures when, in a single establishment, other activities are engaged in, so that customers may clearly identify the service-provider.

Certain special rules of conduct are also included for the proprietors of these establishments for the purposes of statistical and fiscal monitoring. Thus, the consignment and receipt of domestic and/or foreign currency coins must be routed via credit institutions or via other proprietors of currency-exchange bureaux abroad, in accordance with the procedure established by the Banco de España. Moreover, customers buying or selling foreign banknotes or traveller's cheques for an amount exceeding ESP 1 million (EUR 6,010) shall provide a signed statement, following the format established by the Banco de España, with data identifying the resident customer and, where appropriate, those of the non-resident from/to whom the funds in question were received/sent.

In addition, clarification is given of the powers of control and inspection assigned to the Banco de España by Royal Decree 2660/1998, regarding the activity of authorised establishments and the verification of the requirements made of them to obtain and retain such authorisation. These powers shall be exercised without prejudice to those attributed to the authorities responsible for money laundering or those powers which, in particular, in respect of proprietors authorised exclusively to purchase foreign banknotes, might correspond to other State or regional authorities entrusted with consumer protection responsibilities. It is likewise stipulated that the Banco de España Complaints Service shall be entrusted with receiving and processing complaints from customers of currency-exchange bureaux. The latter shall in turn inform the public, in the manner established, of the existence and functions of the aforementioned Service, and of the rules governing the transparency of operations with customers.

Lastly, regulations have been enacted governing the agents of currency-exchange bureau proprietors who act as legal representatives or proxies, habitually acting in the name or on the behalf of the bureau proprietor vis-à-vis customers. Specifically, a list of agents and the scope of their representation shall be available to the general public in each establishment; agency contracts should be written agreements and the powers conferred legalised before a notary public and registered with the Mercantile Registry. Currency-exchange bureaux are forbidden to entrust agents with engaging in the buying/selling of foreign banknotes or traveller's cheques, or the direct depositing by customers in their accounts, although they are allowed to use these accounts to deposit temporarily the funds received in cash from customers or to obtain the funds to be paid to beneficiaries.

13. STATE BUDGET FOR THE YEAR 2001

As usual in December, the State budget for the year 2001 has been approved by *Law 13/2000 of 28 December 2000* (BOE of 29 December 2000).

There are no significant changes in this budget on a year earlier. The austerity, control of the deficit and budgetary discipline initiated in previous years are a continuing feature.

Owing to their importance or novelty, the following aspects may be highlighted.

As regards financial regulation, the prevailing legal interest rate and the late-payment interest rate for tax debts rise from 4.25% to 5.5% and from 5.5% to 6.5%, respectively. Further, the ceiling for the increase in the outstanding stock of State debt during the year is set at ESP 972.66 billion. This limit, which may be revised if certain circumstances envisaged in the Law arise, shall be effective at the end of the year, and may be exceeded, upon authorisation from the Ministry of the Economy, in a limited number of cases.

In the fiscal realm, and with specific regard to personal income tax, the amendments affect the adjustment of the coefficients to correct acquisition values (to 2%, the inflation percentage rate forecast for the year 2001). Also, mechanisms are established to compensate those taxpayers for whom the new regulation is less advantageous than the deductions previously enjoyed for investment and rental of their habitual residence. Moreover, the rates for the general and regional tax schedules are maintained for the year 2001.

In relation to corporate income tax, the coefficients adjusting for the monetary depreciation since 1983 have been updated by means of the application of a uniform coefficient to the indices included in the table approved for the pre-

vious year. This reflects the change in prices forecast for this year, and is aimed at eliminating the taxation of monetary gains. As in 1999 and 2000, these coefficients shall be applied only to real estate assets. Further, the amount of the payments on account that entities subject to this tax are required to make is determined in a similar way to the previous year.

As regards transfer and legal documents tax, the schedule applicable in the case of the transfer and restitution of titles has been updated (2%).

Turning to public spending, the suspension of the possibility of making appropriations, except in certain cases, and the prohibition on transferring appropriations from capital to current operations have both been maintained, with the same qualifications applying as last year.

In relation to the regional (autonomous) governments, their percentage shares in State revenue for the five-year period 1997-2001, applicable on 1 January 2001, have been set, distinguishing between the final percentage shares in the State's territorial revenue under personal income tax and those of the regional (autonomous) governments in general State revenue. Also, as regards financing for the year 2001 via shares in State revenue, a distinction is drawn between those regional governments to which the financing arrangements for the five-year period are applicable and those that have not adopted the agreement on these arrangements.

14. FISCAL, ADMINISTRATIVE AND SOCIAL MEASURES

As usual in recent years, to facilitate fulfilment of the economic policy objectives set out in the State budget for the year 2001, a number of fiscal, administrative and social measures have been adopted. These are contained in *Law 14/2000 of 29 December 2000* (BOE of 30 December 2000).

The Law introduces certain reforms affecting taxation and the rules regulating general government employees, and it responds to specific needs in relation to government management, organisation and action in various spheres.

14.1. Fiscal sphere

In the fiscal area, certain sections of the current personal income tax provisions in Law 40/1998 of 9 December 1998 are amended. First, under exempt income, new cases of exemption are added, namely: compensation as a result of liability for personal injuries for the legal or judicially acknowledged amount, benefits received in connection with burial or interment limited to the total amount of the expenses incurred, and the raising from ESP 1 million to 2 million of the exemption ceiling for unemployment benefits recognised by the respective management entity if received in the form of a one-off payment. Also, the cases of taxpayers not obliged to submit a personal income tax return will be extended to encompass those obtaining income exclusively from movable capital returns not subject to withholding taxes arising on Treasury bills and subsidies for the purchase of housing subject to official protection or appraisal-value housing, with a joint gross annual limit of ESP 100,000.

Under corporate income tax, certain aspects of merger regulations have been amended, while as regards tax rates on non-resident income, these have been brought onto an equal footing with the withholding rates applicable to residents (18%).

As regards the Economic and Fiscal Regime for the Canary Islands, it is made clear that purchased or imported investment goods should be operational immediately, and the lower of a period of five years or the useful life of the goods is specified for maintaining the investment.

As to VAT, Community rules are adapted to the special procedure for the refund of tax borne prior to the start of the operations constituting the corporate purpose of the taxpayer.

14.2. Government action in the financial sphere

The Law contains significant forecasts relating to various aspects of sectoral government action, most notably in the financial field.

First, in the monetary realm, Law 46/1998 of 17 December 1998 on the introduction of the euro is amended in order to shorten the period for the exchange of peseta-denominated notes and coins for notes and coins in euro. The date from which peseta-denominated notes and coins will cease to be legal tender (retaining only exchange value) is brought froward from 30 June to 28 February 2002. Exchange will be possible from 1 January to 30 June 2002 at credit institutions and at the Banco de España, in accordance with the conversion rate (166.386 pesetas per euro) and applying, where necessary, the rounding rules stipulated in Law 46/1998. As from 1 July 2002, exchange will be

carried out exclusively by the Banco de España. The distribution of limited amounts of money in euro will be permitted before the year 2002 so as to smooth the transition to the new currency.

Second, Law 24/1988 of 24 July 1998 on the Securities Market is amended to lift the requirement that Stock Exchange members should participate as shareholders in the Management Company of said Exchange, thereby making it easier for other entities or individuals to gain member status, and thus heightening competition. This measure will, inter alia, allow the stock-market listing of the shares of these Management Companies of the various securities markets. It will also ease the way for Spanish stock markets to enter into European or global alliances.

Turning to insurance, Law 30/1995 of 8 November 1995 on the Regulation and Supervision of Private Insurance is amended, establishing new procedures for complaints to the Directorate General of Insurance. Such complaints shall be formulated first before the Ombudsman of the insurance company or, in the absence of such a figure, the service or department responsible for resolving complaints by insurance policy-holders, beneficiaries, injured third parties or the right-holding representatives of any of these parties.

14.3. Government action in other sectoral spheres

Notable among organisational amendments is the transformation of the state-owned postal services enterprise Correos y Telégrafos into a state-owned public limited company. The aim is to modernise the public postal service, so as to address, among other challenges, the process of liberalisation initiated by the European Union in 1997. The postal operator is thus endowed with the appropriate structure and legal framework to allow it to operate with sufficient flexibility in a progressively more liberalised market.

11.1.2001.