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Introduction

This article summarises the content of new financial provisions adopted in the third quarter of 2013.

Various decisions of the European Central Bank (ECB) were published: one relating to reporting requirements in the field of external statistics, and others in view of Croatia's national central bank (Hrvatska narodna banka) joining the European System of Central Banks (ESCB).

The Banco de España introduced significant changes to the reporting of transactions and stocks of external assets and liabilities in marketable securities, and changed the definition of SME ("pyme", by its Spanish acronym) to adapt it to European law.

At the EU level, the information requirements applicable to prospectuses for exchangeable and convertible debt securities in the event of public offerings or admission to trading were updated. Also, regulatory technical standards on colleges of central counterparties (CCPs) were published.

Finally, the fiscal and financial changes in relation to the measures adopted to support the internationalisation of entrepreneurs, as well as to stimulate growth and employment creation, are discussed.

The contents of this article are set out in Table 1.

European Central Bank Guideline on reporting requirements in the field of external statistics

Guideline ECB/2013/25 of 30 July 2013 (OJ L of 18 September 2013) amending Guideline ECB/2011/23 of 9 December 2011[1] on the statistical reporting requirements of the ECB in the field of external statistics was published.

This Guideline makes certain technical amendments to the Annexes to Guideline ECB/2011/23, which neither change the underlying conceptual framework nor affect the reporting burden of reporting agents in Member States.

The most important change is in relation to Annex III, which sets out "concepts and definitions to be used in the balance of payments and international investment position (IIP) statistics and the international reserves template". Specifically, strict application of the current standard valuation method for equity stocks in unlisted direct investment companies may, in certain cases,[2] lead to distortions in the net IIP. In these cases, Member States are allowed to apply one of the other valuation methods set out in the IMF's Balance of

1 See "Financial regulation: 2012 Q1", *Economic Bulletin,* April 2012, Banco de España, pp. 143-144.

2 The cases envisaged in the Guideline are the following: 1) at least one enterprise in a direct investment chain is listed on the stock-exchange, while at least one is not and this leads to a significant distortion in the net IIP of a company in the chain; in this case the market price of the listed company may be used as a reference for the valuation of the related unlisted companies; 2) if differences occur in the recording of acquired goodwill along a chain of direct investment enterprises, leading to a significant distortion in the net IIP of the country in which the company in the middle of the chain is resident; or 3) if the accounts of enterprises in a direct investment chain are denominated in different currencies and exchange rate fluctuations lead to a significant distortion in the net IIP of the country in which the company in the middle of the chain is resident.

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Payments and International Investment Position Manual,[3] namely: recent transaction price; net asset value; present value and price-to-earnings ratios; market capitalisation method; own funds at book value; or apportioning global value.

If one of the alternative methods is applied to value such stocks, the IIP compiler is encouraged to inform the compiler in the counterpart country of the alternative method and to cooperate with this compiler to minimise the risk of bilateral asymmetric recording.

The Guideline will apply from 1 June 2014.

Decisions of the European Central Bank in view of Croatia's national central bank joining the European System of Central Banks (ESCB)

By virtue of the accession of Croatia to the European Union and its national central bank (NCB), Hrvatska narodna banka, joining the ESCB on 1 July 2013, the ECB has published various decisions to adjust the shares of the NCBs in the ECB. The most important ones are summarised below:

Decision ECB/2013/17 of 21 June 2013 (OJ L of 6 July 2013), amends Decision ECB/2008/23 of 12 December 2008 on the NCBs' percentage shares in the key for subscription to the European Central Bank's capital. In accordance with the accession of the new State, the ECB's subscribed capital has been increased pursuant to the Statute of the ECB, from €10,760.65 to €10,825.01. This increase has required new weightings to be assigned to each NCB in the key for subscription to the ECB's capital. In the case of the Banco de España, its weighting in the capital key has been reduced from 8.304% to 8.253%.

Decision ECB/2013/19 of 21 June 2013 (OJ L of 6 July 2013), replaces and repeals Decisions ECB/2008/24 and ECB/2010/27 on the paying-up of the ECB's capital by the NCBs of Member States whose currency is the euro. In accordance with the new weightings in the capital key

3 See paragraph 7.16 of the sixth edition of the IMF's *Balance of Payments and International Investment Position Manual.*

established by Decision ECB/2013/17, the total amount of the subscribed and paid-up capital of each NCB of the euro area is amended. In the case of the Banco de España, the amount of the subscribed and paid-up capital is reduced from €893.56 million to €893.42 million.

Decision ECB/2013/20 of 21 June 2013 (OJ L of 6 July 2013), replaces and repeals Decision ECB/2010/28 on the paying-up of the European Central Bank's capital by the non-euro area national central banks. Each non-euro area NCB will continue to pay up the same percentage of 3.75%, but on the new capital of the ECB.

Decision ECB/2013/16 of 21 June 2013 (OJ L of 6 July 2013) amends Decision ECB/2010/29 on the issue of euro banknotes. As a consequence of the new capital key weightings, new banknote allocation keys applying from 1 July 2013 are specified. In the case of Spain the key is reduced from 10.919% to 10.916%.

Decision ECB/2013/15 of 21 June 2013 (OJ L of 6 July 2013), replaces and repeals Decision ECB/2008/27 of 12 December 2008 laying down the measures necessary for the contribution to the ECB's accumulated equity value and for adjusting the NCBs' claims equivalent to the transferred foreign reserve assets.

The adjustments to the capital key weightings and the resulting changes in the euro area NCBs' shares in the ECB's subscribed capital make it necessary to adjust the foreign reserve assets that the NCBs have contributed to the ECB. Those NCBs whose foreign reserve assets increase due to the increase in their capital-key weightings must effect a compensatory transfer to the ECB, while the ECB must effect a compensatory transfer to those NCBs whose reserve assets decrease.

In the case of Spain, until 30 June 2013 the foreign reserve assets transferred to the ECB amounted to €4,783.65 million, and from 1 July should amount to €4,782.87 million, so the ECB will effect a compensatory transfer of €0.78 million.

Banco de España: change in the definition of "SMEs"

CBE 4/2013 of 27 September 2013 (BOE of 12 October 2013) was published, which changes the definition of "SMEs" contained in CBE 3/2008 of 22 May 2008[4] on the determination and control of minimum own funds, to adapt it to Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises. This concept has thus been brought into line with the definition prevailing at the European level.

To date, the definition of "SMEs" has been determined by Royal Decree 1515/2007 of 16 November 2007[5] approving the General Chart of Accounts for Small and Medium-Sized Enterprises. These included all enterprises, whether sole traders or with some other corporate status, that in two consecutive accounting periods, as at the end-date of each, fulfil at least two of the following three circumstances: 1) their total assets do not exceed €2,850,000; 2) their net annual turnover does not exceed €5,700,000, and 3) the average number of employees during the accounting period is no more than fifty. The firms lose this status if they cease to fulfil, for two consecutive accounting periods, as at the end-date of each, two of the three circumstances mentioned above.

Also, excluded from this definition are those firms that: 1) have issued securities listed on regulated markets or multilateral trading systems of any Member State of the European

4 See "Financial regulation: 2008 Q2", *Economic Bulletin,* July 2008, Banco de España, pp. 134-143.
5 See "Financial regulation: 2007 Q4", *Economic Bulletin,* January 2008, Banco de España, pp. 196-199.

Union; 2) form part of a group of companies that prepares or should have prepared consolidated annual accounts; 3) have a functional currency other than the euro, or 4) are financial institutions that raise funds from the public assuming obligations with respect to them and institutions that manage the foregoing.

Recommendation 2003/361/EC includes in the category of SMEs micro, small and medium-sized enterprises. Medium-sized enterprises employ fewer than 250 persons and have an annual turnover not exceeding €50 million and/or an annual balance sheet total not exceeding €43 million. Small enterprises employ fewer than 50 persons and have an annual turnover and/or annual general balance sheet not exceeding €10 million. For their part, microenterprises employ fewer than 10 persons and have an annual turnover and/or annual balance sheet total not exceeding €2 million.

Where, at the date of closure of the accounts, an enterprise finds that, on an annual basis, it has exceeded or fallen below the headcount or financial ceilings during two consecutive accounting periods, it will be reclassified in the category corresponding to its new situation.

The Circular came into force on 12 October 2013.

Banco de España: reporting of transactions and stocks of marketable securities

CBE 3/2013 of 29 July 2013 (BOE of 2 August 2013) on reporting of transactions in and stocks of marketable securities, which repeals CBE 2/2001 of 18 July 2001 on reporting of transactions in and stocks of external assets and liabilities in the form of marketable securities, was published. This Circular comes into force on 1 January 2014.

The Circular incorporates the provisions of Regulation (EU) No 1011/2012 of the ECB of 17 October 2012[6] concerning statistics on holdings of securities implemented by Guideline ECB/2013/7 of 22 March 2013 concerning statistics on holdings of securities.

SCOPE

The following are subject to this Circular: 1) credit institutions and Spanish branches of credit institutions entered in the official registers of the Banco de España, which act as depository or settlement entities in regulated markets for marketable securities; 2) resident financial institutions entered in the official registers of the CNMV that act as depository or settlement entities in regulated markets for marketable securities, and 3) financial institutions entered in these registers that act as management companies of Spanish investment funds.

STATISTICAL REPORTING OBLIGATIONS

The first two groups of institutions mentioned above must send to the Banco de España, on a monthly basis, "security-by-security" data (broken down by type of security, and by individual security, identified by means of their ISIN code) on:

1) Transactions carried out with marketable securities and the stocks held on behalf of their customers, including those corresponding to investment funds. They shall only report the stocks in the case of marketable securities issued by residents and held on behalf of resident customers. Resident institutions marketing in Spain foreign investment funds, entered as such in the official registers of the CNMV, shall report the information (transactions and stocks) for the holdings of investors.

2) The total transactions and stocks of the (own and third party) securities accounts of the institution, corresponding to securities issued by residents that are depos-

6 See "Financial regulation: 2012 Q4", *Economic Bulletin,* January 2013, Banco de España, pp. 29-30.

ited in accounts of the institution at non-resident depository institutions, at non-resident central depositories or at international clearing and settlement systems.

As regards the management companies of Spanish investment funds, they must report the transactions that they carry out with shares in such funds (except for those that correspond to the institutions mentioned above) and their stocks. However, such information may be provided by the relevant depository institutions if so agreed with management companies. For this purpose, the latter must provide to the depositories the information they may require. To be able to use this procedure, both types of institutions must notify the Banco de España that they wish to.

The information must be sent by electronic means, in accordance with the formats, conditions and requirements established in the "technical applications" of the Circular.

In the first declaration, which must be sent within the first 10 business days of February 2014, the initial stocks will be those existing as at 31 December 2013, final stocks will be those existing as at 31 January 2014, and transactions will be those corresponding to the month of January 2014.

EU regulation concerning the disclosure requirements applicable to convertible and exchangeable debt securities

Commission Delegated Regulation (EU) No 759/2013 of 30 April 2013 (*OJ L* of 8 August 2013) amending Regulation (EC) No 809/2004 as regards the disclosure requirements for convertible and exchangeable debt securities.

Regulation 809/2004 sets out the minimum information to be included in a prospectus for different kinds of securities in order to comply with Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading.

Now, Delegated Regulation 759/2013 introduces the information that must be included in a prospectus for shares with warrants that give the right to acquire the issuer's shares when these are not admitted to trading on a regulated market (the information required is set out in Annex XII, except item 4.2.2).

The information required for securities with denomination per unit of less than €50,000 that are exchangeable or convertible into shares already admitted to trading on a regulated market is also established (that required by item 4.2.2 of Annex XII). And the information required for these securities issued by an entity belonging to its group, and for the underlying shares that are not already admitted to trading on a regulated market is established (that set out in Annex III or, as the case may be, in the schedule in Annex XXIV). Finally, where debt securities with warrants give the right to acquire the issuer's shares and these shares are not admitted to trading on a regulated market, the information required by the schedule set out in Annex XII must also be given.

The Delegated Regulation entered into force on 28 August 2013.

Regulatory technical standards on colleges for central counterparties

Commission Delegated Regulation (EU) No 876/2013 of 28 May 2013 (*OJ L* of 13 September 2013) supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012[7] on OTC derivatives, central counterparties[8] and trade

7 See "Financial regulation: 2012 Q3", *Economic Bulletin,* October 2012, Banco de España, pp. 96-100.
8 A CCP is a legal person that interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer.

repositories with regard to regulatory technical standards on colleges for CCPs was published.[9]

The Delegated Regulation details the operational organisation of colleges, their governance and the exchange of information between their members, and in particular with the CCP's competent authority, the way to provide or request information to and from competent authorities that are not members of the college, and the voluntary sharing and delegation of tasks among members.

The Delegated Regulation came into force on 3 October 2013.

Measures to support business and its internationalisation and measures conducive to growth and job creation

Law 11/2013 of 26 July 2013 (BOE of 27 July 2013) on business support measures and measures conducive to growth and job creation came into force on 28 July 2013. It revises the provisions in Royal Decree-Law 4/2013 of 22 February 2013 on business support measures and measures conducive to growth and job creation, making diverse amendments, some of which affect the financial sector.

More recently, *Law 14/2013 of 27 September 2013 (BOE* of 28 September 2013) on support to and internationalisation of business came into force on 29 September 2013 except for certain chapters which enter into force on other dates. This law not only complements that mentioned above, but also introduces new fiscal and social security support for business and promotes channels of financing and growth in the international markets.

The most notable changes introduced by these two laws, particularly those of a financial and fiscal nature, are as follows:

CHANGES OF A FINANCIAL NATURE

Credit institutions

Own funds and core capital requirements of credit institutions in respect of risk-weighted exposure amounts for credit risk to SMEs have been reduced, since now the capital requirements for risks of this type will be multiplied by a supporting factor of 0.7619.[10]

In addition, the minimum share capital of mutual guarantee companies (MGCs) is substantially raised from €1.8 million to €10 million, applicable from 28 June 2014. Also, it is stipulated that the amount of own funds for solvency purposes of MGCs may not be less than €15 million, and must be calculated as specified by the Banco de España.

Finally, certain reference indices or interest rates are discontinued. In particular, from 1 November 2013 the Banco de España will cease to publish on its website the following official indices applicable to mortgage loans: 1) average interest rate of mortgage loans over three years for purchasing unsubsidised housing, granted by commercial banks; 2) average interest rate of mortgage loans over three years for purchasing unsubsidised housing, granted by savings banks; and 3) savings bank lending reference rate.

These reference rates must, in the next revision of applicable rates, be replaced by the substitute rate or index envisaged in the loan agreement. In the absence of any contractually envisaged substitute rate, they must be replaced by the official interest rate denoted

9 Regulation (EU) No 648/2012 provides that the competent authority of the CCP shall establish, manage and chair a college to facilitate the exercise of the tasks of the CCP specified in the Regulation, indicating who would be the members of such college (see Article 18).

10 This brings Spanish law into line with the provisions of Article 501.2 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012.

(in translation) “the average interest rate of mortgage loans over three years for purchasing unsubsidised housing, granted by credit institutions in Spain”, applying to them a spread equal to the arithmetic average of the difference between the outgoing rate and that stated above, calculated using the data available between the date of entry into the loan agreement and the date on which the rate is effectively replaced.

The replacement of rates will signify the automatic novation of the loan agreement without any alteration or loss of the rank of the mortgage in question. Also, the parties will have no recourse to any action to claim the modification, unilateral alteration or extinguishment of the loan as compensation for application of the provisions of the Law.

Internationalisation bonds

The regulatory framework governing *cédulas de internacionalización* (internationalisation covered bonds) was updated to address in greater detail the assets pledged as collateral for them, and a new instrument, *bonos de internacionalización* (internationalisation bonds), was created to lend greater flexibility to the issuance of securities collateralised by loans linked to internationalisation (without prejudice, in any case, to the unlimited liability of the issuer).

Compared with the previous legislation,[11] the list of eligible collateral is broadened and its scope is extended to include internationalisation bonds. Thus the principal of and interest on covered bonds will be particularly collateralised by loans relating to the financing of goods and services export contracts or to the internationalisation of firms meeting certain requirements. These requirements include, inter alia, that the firm has a high credit quality, and that the loan has been granted to general government or to EU or non-EU public-sector entities or to multilateral development banks or international organisations or, regardless of the borrower, has been guaranteed by these bodies.

In the case of bonds, their principal and interest will be collateralised by the loans meeting the requirements indicated for covered bonds and assigned to each issue per a public deed and by any corporate loans assigned per said public deed which are linked to the financing of Spanish or non-Spanish goods and services export contracts or to the internationalisation of firms resident in Spain or other countries provided they receive a risk weight of no more than 50% under the calculation of own funds requirements for credit risk set forth in credit institution solvency regulations. Also included in this category are ICO loans to financial institutions within the framework of its *líneas de mediación* (intermediation facilities) for internationalisation, provided they receive the same risk weight.

In both cases, certain substitute assets and the economic flows generated by the derivative financial instruments associated with each issue may also be added as collateral.

The total amount of internationalisation covered bonds issued by a credit institution may not exceed 70% of its outstanding loans which meet the aforementioned requirements and have not been pledged as collateral for the internationalisation bond issue. The present value of the internationalisation bonds must be at least 2% less than the present value of the pledged loans. The method of calculating this value will be as provided by law.

Internationalisation bonds will qualify as investments of the required reserves of *sociedades y empresas mercantiles* (firms governed by Spanish commercial law), being equiva-

11 See Law 24/1988 of 28 July 1988 on the security market and Law 44/2002 of 22 November 2002 on financial system reform measures.

lent for this purpose to listed securities. In particular, they will qualify for the following purposes: 1) investments for the coverage of technical provisions of insurance and reinsurance companies, provided that the bonds have been issued by firms established in the European Economic Area (EEA);[12] 2) investments suitable for pension funds; 3) investment of the resources of securities investment funds and companies; and 4) investment of the reserve funds of social security entities.

Certificates of ownership of internationalisation bonds will be transferable by any lawfully accepted means without need for the intervention of a public authenticating official or for notification of the debtor. When they are made out to a named party, they may be transferred by a declaration written on the certificate itself. If the certificates are made out to bearer, the owner will be deemed to be the last recipient of interest revenue.

Finally, the issuance, transfer and cancellation of internationalisation bonds, as well as their redemption, will enjoy the exemption provided for in the transfer tax and stamp tax law.

Amendments to the regulations governing insurance companies

Certain amendments were made to the regulations on the organisation and supervision of private insurance enacted by Royal Decree 2486/1998 of 20 November 1998. In particular, it is provided that insurance companies may invest in securities admitted to trading on the *Mercado Alternativo Bursátil* (alternative stock market)[13] or on the *Mercado Alternativo de Renta Fija* (alternative fixed-income market)[14] and in venture-capital companies and that those investments qualify for the coverage of technical provisions under certain conditions, although they are not eligible for an amount above 10% of total technical provisions. In the same vein, amendments were made to the pension scheme and pension fund regulations enacted by Royal Decree 304/2004 of 20 February 2004 so as to allow pension funds to invest in these securities.

In both cases, a specific upper limit of 3% of total insurance company technical provisions or total pension fund assets is set for investment in securities issued by a single firm. This limit may be raised to 6% when they are issued or guaranteed by firms belonging to the same group.

Another new development is an amendment of the consolidated text of the private insurance law enacted by Legislative Royal Decree 6/2004 of 29 October 2004, so as to adapt it partially to Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services. Under this amendment, when insurance companies use sex as an actuarial factor in calculating the rates applied in insurance contracts, this may not result in differences between men and women in the premiums and benefits of insureds.

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12 The EEA was created on 1 January 1994 following an agreement between European Union Member states and the European Free Trade Area (EFTA). Its creation allowed EFTA countries to participate in the EU's internal market without being members of the EU. It comprises the 27 EU countries plus the following EFTA members: Iceland, Liechtenstein and Norway.

13 The alternative stock market is a market devoted to small capitalisation companies that seek to expand, with regulations specially tailored to them, and costs and processes suited to their characteristics. It provides a system for entering into, settling, clearing and recording transactions in: shares and other securities of collective investment institutions (CIIs); securities and instruments issued by or referring to small capitalisation companies; and other securities and instruments which, due to their special characteristics, qualify for a specially-tailored regime.

14 The alternative fixed-income market is a multilateral trading system for the purpose of financing businesses on the capital markets through marketable fixed-income securities targeted at qualified investors and issued by firms whose circumstances require a channel which is special or separate from the official secondary markets.

Other financial changes

The provisions of Royal Decree-Law 4/2013 regarding the removal, in certain cases, of the limit imposed on share capital companies are retained, and, accordingly, the total amount of debt securities issued may not exceed paid-in share capital plus reserves.[15] To ensure that retail investors are adequately protected, this flexibility will only apply in those cases in which the issues are targeted at institutional investors, specifically: 1) when they are targeted exclusively at qualified investors; 2) when the securities offering is directed at investors that purchase securities amounting to at least €100,000 per investor in each separate offering, or 3) when the offering is of securities with a unit nominal value of at least €100,000.

Also, certain refinements are made in respect of the issuance by share capital companies of debt or other securities of which recognise or create debt and are to be admitted to trading in a multilateral trading system. Thus, it will not be required to execute a public deed, register the issue or perform other related acts in the Mercantile Register, including the Official Gazette of the Mercantile Register. The legal conditions to be met by the issue and the characteristics of the securities will be stated in a certificate issued by the persons so empowered by current law. All acts relating to these issues will be made public by the means established for such purpose by the multilateral trading systems.

TAX CHANGES

The tax framework of Royal Decree-Law 4/2013, which favours the self-employed who start up a business, with a view to encouraging the creation of businesses and to reducing the tax burden during the initial years of business activity, has been retained. Thus, under corporate income tax for entities that have begun to engage in an economic activity as from 1 January 2013, such entities shall be taxable in the first tax period in which the tax base is positive at a tax rate of 15% for the first €300,000 of the tax base, and at 20% for the remainder.

Likewise, under personal income tax, a 20% reduction is set for the net income on economic activity obtained by taxpayers that have begun to pursue a business activity. This reduction will be applicable in the first tax period in which net income is positive and in the following period. Further, as stipulated under Royal Decree-Law 4/2013, the limit currently applicable to the exemption for unemployment benefits received as a single payment has been eliminated (hitherto, this exemption was set at €15,500).

In relation to corporate income tax, a new tax credit for the reinvestment of earnings has been established for those businesses with small-enterprise status (turnover below €10 million), linked to the creation of a restricted commercial reserve. These enterprises will be entitled to a tax credit reducing gross tax payable of 10% on earnings for the year that are invested in new tangible fixed assets or investment property assigned to economic activities.

Tax incentives are also introduced for R&D and technological innovation activities. These are applicable as from the tax period commencing 1 January 2013. Relief of up to 20% on their amount may be applicable upon compliance with the requirements stipulated in the regulations. If R&D and technological innovation activities are involved, the tax credit taken may not exceed overall, and for all items, €3 million per annum. If only technological innovation activities are involved, the ceiling is set at €1 million per annum.

Likewise, the tax arrangements applicable to income from specific intangible assets have been amended, so that revenue arising on the assignment of the right to use or use of

15 See Article 405 of Legislative Royal Decree 1/2010 of 2 July 2010 enacting the consolidated text of the share capital companies law.

patents, design rights, plans, secret formulas or procedures, and rights over information concerning industrial, commercial or scientific experience shall be included in the tax base to the tune of 40% (formerly 50%) of the related amount. In the case of the assignment of intangible assets, income arising is defined as the positive difference between the revenue for the period from the assignment of the right to use or use of the assets and the expenditure for the period directly related to the asset assigned. In the case of intangible assets not recognised on the enterprise's balance sheet, income shall be taken to be 80% of the revenue from assignment of such assets. Finally, credits for job creation for disabled workers are substantially increased.

New personal income tax incentives have been introduced in relation to business start-ups or recently created enterprises. Taxpayers may thus deduct up to 20% of the amounts paid for the subscription of shares or participating interests in newly or recently created enterprises if certain conditions are met, including most notably: that the shareholdings or interests should remain part of the holder's assets for more than three years and less than twelve years. The maximum deductible base will be €50,000 per annum and will comprise the acquisition value of the subscribed shares and interests.

If the taxpayer transfers this type of share or interest, the capital gain thereon will not be taxable provided that the total amount obtained from the transfer is reinvested in the acquisition of shares or interests in the above-mentioned enterprises under the conditions stipulated in the regulations. If the amount reinvested is lower than the total received for the transfer, only the proportional part of the capital gain obtained that corresponds to the amount reinvested will not be taxable.

An optional regime is established for VAT, known as the "cash-basis criterion", for taxpayers whose volume of transactions during the year does not exceed €2 million. Under this regime, VAT taxpayers can opt for a system that defers accrual and the subsequent tax return and payment of the VAT charged in most of their commercial transactions until the time of (full or partial) collection from their customers, with a deadline date set at 31 December of the year immediately following that in which the transactions have been carried out. Symmetrically, taxpayers will likewise see a delay in the deduction of the VAT borne in their acquisitions until the time they actually pay their suppliers for such acquisitions, with the same deadline date of 31 December of the year immediately following that in which the transactions have been carried out.

MEASURES COMBATING LATE PAYMENT IN COMMERCIAL TRANSACTIONS

In the private sector, as in the case of Royal Decree-Law 4/2013, the law includes the shortening of the period in which debtors are to settle payment (unless stipulated otherwise in the contract) from 60 to 30 calendar days after the receipt of the goods or provision of the services, even if the invoice or demand for payment is received previously. This limit can be extended to 60 calendar days by agreement between the parties in exceptional cases.

Similarly, the legal interest rate the debtor is liable to pay to the creditor in the event of late payment is eight percentage points (previously seven percentage points), in addition to the interest rate applied by the ECB in its most recent main refinancing operation. Late payment incurs a fixed charge of €40 that the creditor is entitled to collect from the debtor, which will be added to the principal without the need for an express demand. All duly substantiated costs of collection caused by the late payment will be added to this amount.

As for unfair terms and practices, the law introduces certain refinements to Royal Decree-Law 4/2013 and increases its scope. Thus, a contract term or practices related to the pay-

ment date or period, the late-payment interest rate or compensation for costs of collection where they are grossly unfair to the detriment of the creditor, taking into account all the circumstances of the case in question, shall be null and void.

In any event, the law considers null and void terms agreed between parties and practices which exclude late-payment interest or any other term and practice in relation to the statutory interest for late payment that applies when no other rate has been agreed, that unfairly prejudices the creditor, considering that it will be unfair where the interest agreed is 70% lower than the statutory interest for late payment, unless, in accordance with the circumstances envisaged in the law, it can be proved that the interest applied is not unfair.

The law establishes a transitional period of application for the new measures combating late payment in commercial transactions. Thus, the law shall apply to contracts concluded before it came into force one year after its publication in the BOE (27 July 2013).

In the public sector, as provided by Royal Decree-Law 4/2013, general government will have to pay debts within the 30 days following the date of approval of works certificates or documents evidencing conformity with the provisions in the contract for the delivery of goods or provision of services and, in the event of any delay, it must pay the contractor the late-payment interest and an indemnity for the collection costs as laid down previously for private-sector commercial transactions.

In order for the period of interest accrual to begin to run, the contractor must have fulfilled the obligation of submitting the invoice to the corresponding administrative register, in due time and form, within thirty days from the effective date of the delivery of merchandise or the provision of the service. If the submission deadline has not been complied with, the accrual of interest will not begin until 30 days from the date of submission of the invoice in the corresponding register.

For the first time, the law adds that the contractor may agree with suppliers and subcontractors to longer payment periods than those set previously, while respecting the limits envisaged in private-sector commercial transactions, provided that this agreement does not constitute an unfair term and that payment is in the form of a negotiable document, the discounting and trading expenses of which will be paid in full by the contractor. Also, the supplier or subcontractor may require that payment is ensured through a guarantee.

INSOLVENCY-RELATED AND OTHER COMMERCIAL CHANGES

1) A mechanism is regulated for "out-of-court negotiations on the payment of the debts of entrepreneurs", whether they be natural or legal persons, which fulfil certain conditions, in particular, for sole proprietors, that their balance sheet does not exceed €5 million. In this case, the Mercantile Registrar or a notary public from where the debtor is domiciled will be requested to appoint an "insolvency mediator". Once the process has commenced, the debtor may continue to pursue his or her employment, business or professional activity. From the submission of the request, the debtor will refrain from applying for loans or credit, will return to the institution any credit cards held and will refrain from using any electronic means of payment. Claims governed by public law may not be subject to the out-of-court agreement, while any secured claims may only be included in and subject to the out-of-court agreement if the claimants concerned so decide. The mediator will promote a meeting of all the creditors of the debtor and a payment plan will be proposed. In this plan the extension of the payment period or moratorium may not exceed

three years and the partial acquittance or forgiveness of the debt may not exceed 25% of the amount of the claims. Creditors representing at least 60% of the liabilities must vote in favour for the payment plan to be considered accepted. If the payment plan involves the transfer of the debtor's assets to pay debts, this plan must be approved by creditors representing 75% of the liabilities plus any creditor(s) with a security interest in such assets.

2) In relation to the refinancing agreements included in Insolvency Law 22/2003 of 9 July 2003 the procedure whereby the Mercantile Registrar appoints an independent expert, who must verify the refinancing agreements, is regulated more fully and flexibly. In particular, the Registrar may be requested to appoint the independent expert and the procedure may be followed without the need for the agreement to have been reached or for the viability plan to have been finalised. Also, for the refinancing agreement to be approved by the courts, the minimum percentage of liabilities corresponding to financial institutions that enter into such agreement is reduced from 75% to 55%. Consequently, the terms and conditions of the extension of the payment period contained in said agreement are binding on all the creditor financial institutions with unsecured claims that are not party to or that dissent from the refinancing agreement.

3) As for the termination of the insolvency proceedings, previously the debtor remained liable for unpaid claims. From now on, the court decision on the termination of the insolvency proceedings must state that unpaid debts (except for tax and social security debts) are cancelled, provided that certain conditions are met: that the insolvency proceeding does not involve fault or a criminal offence by the debtor; that all claims on the debtors' assets have been settled, along with the claims of preferred creditors and at least 25% of the claims of ordinary creditors. This requirement does not apply if the debtor has unsuccessfully attempted to reach an out-of-court payment agreement.

4) The new "limited liability entrepreneur" ("ERL" by its Spanish abbreviation) is created, whereby natural persons may avoid their business debts affecting their principal residence under certain conditions detailed in the law. The effectiveness of this limitation of liability depends on the recording and publication of this new status in the Mercantile Register and in the Real Estate Register. Nevertheless, debtors may not take advantage of this limitation if they have been found in a final judgment or insolvency proceedings to have acted fraudulently or with gross negligence in the compliance of their obligations vis-à-vis third parties.

5) The new "successive formation limited liability company" ("SLFS" by its Spanish abbreviation) without minimum capital is introduced. The rules governing SLFS are identical to those of private limited companies (SRL by their Spanish abbreviation), except for certain specific obligations to ensure suitable protection of third parties. Thus, until the minimum share capital established for an SRL (€3,000) is reached, the SLFS will be subject to the following rules: 1) at least 20% of profit for the year, without any limit on the amount, must be allocated to reserves; 2) once the legal or bylaw requirements have been covered, dividends may only be distributed to shareholders if the value of net assets is not less than 60% of the minimum legal capital, and 3) the annual sum of compensation paid to shareholders and directors may not ex-

ceed 20% of the net assets of the corresponding year. Furthermore, in case of liquidation, if the assets of the SLFS were insufficient to meet payment of its obligations, the company's shareholders and directors will be jointly and severally liable for the disbursement of the minimum share capital required for SRLs.

6) The new "mini enterprise" or "student company", which will have a duration limited to one academic year, extendible up to a maximum of two years, is regulated. It must be wound up at the end of the academic year by submitting the corresponding deed of winding up. It will be covered by a civil liability insurance policy or an equivalent guarantee entered into by the sponsor organisation. Similarly, it must be registered by the sponsor organisation of the mini enterprise programme in the register which will be created for this purpose. This will enable the mini enterprise to perform economic and monetary transactions, issue invoices and open bank accounts. The requirements, by-law limits and forms which will facilitate compliance with its tax and accounting obligations will be determined by regulations.

OTHER CHANGES

1) Entrepreneur assistance centres (PAE by their Spanish abbreviation) are created. They will be electronic or physical single points of contact through which each and every step in starting, undertaking and winding up business activities can be performed. It is guaranteed that there will be at least one electronic PAE which will use the electronic processing system of the Information Centre and Business Start up Network (CIRCE by its Spanish abbreviation). Its website will be hosted by the Ministry of Industry, Energy and Tourism and it will provide all of the services envisaged in the law.

2) Policies to boost the internationalisation of the Spanish economy are created, which will be implemented by the public sector together with the private sector, in order to promote and strengthen the international dimension of the Spanish economy and to encourage firms and entrepreneurs to have a presence abroad as factors of stability, growth and job creation. This dimension also covers institutional economic action in bilateral and multilateral fora and measures to boost foreign investment in Spain and Spain's investment abroad. Official financial support for the internationalisation of firms will be through the ICO; the Compañía Española de Financiación del Desarrollo (COFIDES); the Fondo para Inversiones en el Exterior (FIEX) and the Fondo para Operaciones de Inversión en el Exterior de la Pequeña y Mediana Empresa (FONPYME); the Fondo para la Internacionalización de la Empresa (FIEM); the Convenio de Ajuste Recíproco de Intereses (CARI), and any other bodies aiding internationalisation which may be created upon a proposal from the Ministry of Economy and Competitiveness.

3) Measures are laid down to encourage public procurement with entrepreneurs. In particular, the possibility is created of the public sector engaging joint ventures of entrepreneurs, without it being necessary for the joint venture to be legalised in a public deed until the contract has been awarded in its favour; the deadline for returning guarantees is reduced from twelve to six months from the completion of the project or service and the deadline for requesting the termination of the contract is reduced from eight months to six months, where in both cases the successful bidder firm is an SME.

4) Various measures are envisaged to reduce administrative burdens. These include the general government's obligation that, if in the exercise of its powers it creates new administrative burdens for firms, it must eliminate at least one existing burden provided that it has an equivalent cost.

5) Measures are included which are aimed at improving job mediation, such as: the creation of a "single employment portal" which will contain all the useful information to provide guidance to young people and to make tools available to them which make it easier to look for work or to start a business activity; a greater boost in public-private collaboration with regional governments for mediation in the area of public employment services and enabling temporary employment firms to enter into training and apprenticeship contracts.

6) Finally, a residence visa will granted to non-resident foreigners who propose to enter Spain in order to undertake significant capital investments. For an investment to be considered of this type, it must represent one of the following: 1) an initial investment amounting to €2 million or more in Spanish government debt, or amounting to €1 million or more in shares or equity units of Spanish firms, or bank deposits at Spanish financial institutions; 2) the acquisition of real estate in Spain with an investment of €500,000 or more per applicant, or 3) a business project which is going to be undertaken in Spain and is considered and shown to be of general interest, and in this connection compliance with certain conditions detailed in the law will be assessed.

3.10.2013.