

Recent key developments in the area of Spanish financial regulation

Prepared by the Regulation and Research Department of the Spanish Confederation of Savings Banks (CECA)

Royal Decree-Law on urgent measures to protect consumers with regard to floor clauses (Royal Decree-Law 1/2017, published in the *Official State Gazette* of January 21st)

The Royal Decree-Law establishes a channel to help consumers reach an agreement with credit institutions that resolves the controversies arising from the judgment of the Court of Justice of the European Union, without recourse to the courts.

The purpose of the Royal Decree-Law is to **establish measures that facilitate the reimbursement of the amounts unduly paid by the consumer** to credit institutions through the application of certain floor clauses contained in loan or credit agreements secured with a mortgage on real estate.

The **main characteristics** of the Royal Decree-Law refer to the following:

- It applies to **mortgage credit or loan agreements** secured with a mortgage on real estate that include a floor clause, where the borrower is a consumer.
- Credit institutions must set up a **claims system before filing lawsuits**, which is voluntary for the consumer, guaranteeing that all consumers who had floor clauses in their loans are aware of it.
- The consumer must declare if he/she is in agreement with the calculation, in which case the credit institution will agree the cash reimbursement with the consumer. **The deadline for reaching an agreement will be three months.** Otherwise, it will be deemed that the **out-of-court procedure has ended without agreement** when any of the following circumstances are present:
 - The credit institution expressly rejects the consumer's request.
 - The three-month period ends without any communication from the credit institution to the consumer making the claim.
 - The consumer is not in agreement with the calculation of the amount to be repaid or rejects the amount offered.
 - Upon expiry of the three months, the amount offered has not been effectively made available to the consumer.
- During the time in which the out-of-court procedure is being dealt with, **the parties cannot take any out-of-court or court action between them** referring to the same claim which they are dealing with, and the court procedure is suspended if the claim is filed prior to the end of the procedure.
- **Procedural costs** will be payable by the credit institution if the consumer rejects the calculation

of the amount to be returned or declines the cash repayment and subsequently files a lawsuit and obtains a judgment that is more favourable than the offer made by the credit institution.

■ Credit institutions must **take the necessary measures** to comply with the provisions contained in the Royal Decree-Law **within one month**, and they must:

- Have a department or service specialising in dealing with the claims;
- Make their customers aware, in all offices open to the public and on their websites, of the information referring to the out-of-court procedure;
- Inform their customers of the possible tax obligations that agreed repayments may generate, and notify the Tax Agency of the information relating to such repayments.

■ In addition, it raises the option of agreeing a **compensation measure** other than the cash repayment.

■ The out-of-court claim procedure will be **free of charge** and the **formal execution of the public deed and the registry registration** will accrue only the corresponding notary and registry fees, respectively, of a no-amount document and a minimum registration, whatever the base may be.

■ The Government is authorised to create a **body to monitor, control and evaluate the claims**, that:

- Will issue a six-monthly report on its activity, and will count on the participation of representatives of consumers and the legal profession.
- It will collect from credit institutions the information needed to check that the prior communication has been made, especially to vulnerable persons.

● It may propose such measures that it deems necessary to ensure the correct implementation of the envisaged out-of-court mechanism.

■ With regard to the **tax effects** arising from the repayment, by credit institutions, of the interest previously paid by the taxpayers as a result of clauses limiting the interest rates agreed with them, both if the repayment of such amounts arises from an agreement reached between the parties and if it is the consequence of a court judgment or arbitration award.

The Royal Decree-Law establishes, **with effect from January 21st, 2017**:

● The repayment of interest paid previously by the taxpayer as a result of the floor clauses will not be included in the taxable base of the personal income tax, both if the repayment of such amounts arises from an agreement reached between the parties, and if it is the consequence of a court judgment or arbitration award.

● Nor will the compensatory interest relating to them be included in the taxable base.

● The following **regularization** situations are established:

■ **Regularization of the reduction for habitual dwelling**:

● When the taxpayer applied at the time the reduction due to investment in a habitual dwelling for the amounts received, he/she will lose the right to its deduction. In this case, the amounts deducted must be included in the personal income tax declaration of the year in which the judgment, arbitration award or agreement with the credit institution arises, but without including late payment interest.

- This regularization will not be applicable to amounts directly allocated by the credit institution, after the agreement with the affected taxpayer, to reduce the loan principal.

■ **Regularization of dwellings for rent:**

- In the event that the taxpayer included, in tax returns of past years, the amounts now received as a deductible expense, for the purposes of calculating the return on real estate capital or economic activity, these will cease to be deemed as such, and additional tax returns must be filed for the corresponding years, eliminating such expenses, without any penalty or late payment interest or surcharge of any kind.
- The regularizations, both of the dwelling reductions and of the deductible expenses, will only affect the years with respect to which the authorities' right to determine the tax debt has not lapsed due to expiry of the limitation period.

