

The Bank of Spain has 60 working days after the date on which the notification was received to object to a proposed transaction. Such objection may be based on the fact that the Bank of Spain does not consider the acquiring person suitable to guarantee the sound and prudent operation of the target bank.

Regarding the transparency of listed companies, Law 6/2007 amended the Securities Markets Act on takeover bids and transparency requirements for issuers. The transparency requirements have been further developed by Royal Decree 1362/2007 developing the Securities Markets Act on transparency requirement for issuers of listed securities, specifically information on significant stakes, reducing the communication threshold to 3%, and extending the disclosure obligations to the acquisition or transfer of financial instruments that grant rights to acquire shares with voting rights.

#### **Tender Offers**

The Spanish legal regime concerning takeover bids was amended by Law 6/2007 in order to adapt the Spanish Securities Market Act to the Directive 2004/25/EC on takeover bids, and Directive 2004/109/EC on the harmonization of transparency requirements in relation to information about issuers.

Additionally, Royal Decree 1066/2007, of July 29, on takeover bids, completes the modifications introduced by Law 6/2007, further developing the takeover bids legal framework in Spain and harmonizing the Spanish legislation with Directive 2004/25/EC.

#### **E. Taxation**

##### **Spanish Tax Considerations**

The following is a summary of the material Spanish tax consequences to U.S. Residents (as defined below) of the acquisition, ownership and disposition of BBVA's ADSs or ordinary shares as of the date of the filing of this Annual Report. This summary does not address all tax considerations that may be relevant to all categories of potential purchasers, some of whom (such as life insurance companies, tax-exempt entities, dealers in securities or financial institutions) may be subject to special rules. In particular, the summary deals only with the U.S. Holders (as defined below) that will hold ADSs or ordinary shares as capital assets and who do not at any time own individually, and are not treated as owning, 25% or more of BBVA's shares, including ADSs.

As used in this particular section, the following terms have the following meanings:

(1) "U.S. Holder" means a beneficial owner of BBVA's ADSs or ordinary shares that is for U.S. federal income tax purposes:

- a citizen or an individual resident of the United States,
- a corporation or other entity treated as a corporation, created or organized under the laws of the United States or any political subdivision thereof, or
- an estate or trust the income of which is subject to United States federal income tax without regard to its source.

(2) "Treaty" means the Convention between the United States and the Kingdom of Spain for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, together with a related Protocol.

(3) "U.S. Resident" means a U.S. Holder that is a resident of the United States for the purposes of the Treaty and entitled to the benefits of the Treaty, whose holding is not effectively connected with

(1) a permanent establishment in Spain through which such holder carries on or has carried on business, or (2) a fixed base in Spain from which such holder performs or has performed independent personal services.

Holders of ADSs or ordinary shares should consult their tax advisors, particularly as to the applicability of any tax treaty. The statements regarding Spanish tax laws set out below are based on interpretations of those laws in force as of the date of this Annual Report. Such statements also assume that each obligation in the Deposit Agreement and any related agreement will be performed in full accordance with the terms of those agreements.

#### ***Taxation of Dividends***

Under Spanish law, cash dividends paid by BBVA to a holder of ordinary shares or ADSs who is not resident in Spain for tax purposes and does not operate through a permanent establishment in Spain, are subject to Spanish Non-Resident Income Tax, withheld at source, currently at a 21% tax rate. For these purposes, upon distribution of the dividend, BBVA or its paying agent will withhold an amount equal to the tax due according to the rules set forth above (i.e., applying a withholding tax rate of 21%), transferring the resulting net amount to the depositary.

However, under the Treaty, if you are a U.S. Resident, you are entitled to a reduced withholding tax rate of 15%. To benefit from the Treaty-reduced rate of 15%, if you are a U.S. Resident, you must provide to BBVA through our paying agent depositary, before the tenth day following the end of the month in which the dividends were payable, a certificate from the U.S. Internal Revenue Service (“**IRS**”) stating that, to the best knowledge of the IRS, you are a resident of the United States within the meaning of the Treaty and entitled to its benefits.

If the paying agent depositary provides timely evidence (i.e., by means of the IRS certificate) of your right to apply the Treaty-reduced rate it will immediately receive the surplus amount withheld, which will be credited to you. The IRS certificate is valid for a period of one year from issuance.

To help shareholders obtain such certificates, BBVA has set up an online procedure to make this as easy as possible.

If the certificate referred to in the above paragraph is not provided to us through our paying agent depositary within said term, you may afterwards obtain a refund of the amount withheld in excess of the rate provided for in the Treaty.

#### ***Scrip Dividend***

As described under “Item 4. Information on the Company Business–Overview–Supervision and Regulation–Dividends”, the BBVA annual shareholders’ general meeting held on March 16, 2012, passed a resolution adopting two different free-of-charge capital increases for the implementation of a new “Dividendo Opción” scheme for this year, the first of which relates to the dividend traditionally paid in April and which execution we expect to complete in early May 2012. This dividend scheme lets the shareholders choose how they would like to receive their dividends: in cash or in new shares.

Pursuant to the terms of the “Dividendo Opción” program, upon its implementation, the shareholders will receive one free-of-charge allocation right for each share of BBVA that they hold as of a given record date. These rights will be tradable on the Spanish Stock Exchanges for a minimum period of 15 natural days. BBVA will undertake to purchase free allocation rights tendered by a shareholder to it during a certain period of time at a fixed price, subject to the conditions that may be imposed each time the “Dividendo Opción” program is implemented. This fixed price will be the result

of dividing the Reference Price (as defined below) by the number of rights necessary to receive one new share plus one. At the end of the 15 natural days period, the free-of-charge allocation rights not validly tendered to BBVA will be converted into newly-issued shares of the Company. The number of rights necessary for the allocation of one new share and the total number of shares to be issued by BBVA will depend, amongst other factors, on the arithmetic mean of the weighted average prices of BBVA's shares on the Spanish Stock Exchanges over the five trading sessions immediately prior to the Board's resolution concerning the implementation of the relevant free-of-charge capital increase (the "**Reference Price**").

Consequently, when each of the free-of-charge capital increases implementing the "Dividendo Opción" scheme is executed, the shareholders of BBVA will be able to freely choose among:

- (a) Not transferring their free-of charge allocation rights. In this case, at the end of the trading period, the shareholders will receive the number of new totally paid-up shares to which they are entitled. For tax purposes the delivery of paid-up shares does not constitute income for purposes of the Spanish Non-Resident Income Tax, whether or not non-residents act through a permanent establishment in Spain.

The acquisition value of both the new shares received and the shares from which they derive, will result from distributing the total cost among the number of securities (both existing and those issued as paid-up shares corresponding thereto). Such paid-up shares will be deemed to have been held for as long as the shares from which they derive.

- (b) Sell their free-of-charge allocation rights on the market. In this event, the amount obtained for the transfer of such rights on the market will be subject to the following tax treatment:

For purposes of the Spanish Non-Resident Income Tax on non-residents without a permanent establishment, the amount obtained for the transfer of the free-of-charge allocation rights on the market is subject to the same treatment that tax regulations provide for pre-emptive rights. Accordingly, the amount obtained for the transfer of the free-of-charge allocation rights decreases the acquisition value for tax purposes of the shares from which such rights derive, pursuant to Section 37.1.a) of Law 35/2006, of November 28, on Personal Income Tax (*Ley del Impuesto sobre la Renta de las Personas Físicas*).

Thus, if the amount obtained for the aforementioned transfer is larger than the acquisition value of the securities from which they derive, the difference will be deemed to be a capital gain earned by the transferor in the tax period in which the transfer is effected.

- (c) Use the purchase commitment assumed by BBVA of free-of-charge allocation rights. The tax treatment applicable to the amount received for the transfer to the Company of the free-of-charge allocation rights held by them in their capacity as shareholders or acquired on the market will be equal to the treatment applicable to dividends directly distributed in cash and, consequently, such amount will be subject to the corresponding withholding.

It should be borne in mind that this analysis does not cover all the possible tax consequences. Therefore, shareholders are advised to consult with their tax advisors.

#### **Spanish Refund Procedure**

According to Spanish Regulations on Non-Resident Income Tax, approved by Royal Decree 1776/2004 dated July 30, 2004, as amended, a refund for the amount withheld in excess of the Treaty-reduced rate can be obtained from the relevant Spanish tax authorities. To pursue the refund claim, if you are a U.S. Resident, you are required to file:

- the corresponding Spanish tax form,

- the certificate referred to in the preceding section, and
- evidence of the Spanish Non-Resident Income Tax that was withheld with respect to you.

The refund claim must be filed within four years from the date in which the withheld tax was collected by the Spanish tax authorities, but not before February 1, of the following year.

U.S. Residents are urged to consult their own tax advisors regarding refund procedures and any U.S. tax implications thereof.

Additionally, under the Spanish law, the first €1,500 of dividends received by individuals who are not resident in Spain for tax purposes, and do not operate through a permanent establishment in Spain, will be exempt from taxation in certain circumstances.

U.S. Holders should consult their tax advisors regarding the availability of, and the procedures to be followed in connection with, this exemption.

#### ***Taxation of Rights***

Distribution of preemptive rights to subscribe for new shares made with respect to your shares in BBVA will not be treated as income under Spanish law and, therefore, will not be subject to Spanish Non-Resident Income Tax. The exercise of such preemptive rights is not considered a taxable event under Spanish law and thus is not subject to Spanish tax. Capital gains derived from the disposition of preemptive rights received by U.S. Residents are generally not taxed in Spain provided that certain conditions are met (See “Taxation of Capital Gains” below).

#### ***Taxation of Capital Gains***

Under Spanish law, any capital gains derived from securities issued by persons residing in Spain for tax purposes are considered to be Spanish source income and, therefore, are taxable in Spain. For Spanish tax purposes, gain recognized by you, if you are a U.S. Resident, from the sale of BBVA’s ADSs or ordinary shares will be treated as capital gains. Spanish Non-Resident Income Tax is currently levied at a 21% tax rate on capital gains recognized by persons who are not residents of Spain for tax purposes, who are not entitled to the benefit of any applicable treaty for the avoidance of double taxation and who do not operate through a fixed base or a permanent establishment in Spain.

Notwithstanding the discussion above, capital gains derived from the transfer of shares on an official Spanish secondary stock market by any holder who is resident in a country that has entered into a treaty for the avoidance of double taxation with an “exchange of information” clause (the Treaty contains such a clause) will be exempt from taxation in Spain. Additionally, capital gains realized by non-residents of Spain who are entitled to the benefit of an applicable treaty for the avoidance of double taxation will, in the majority of cases, not be taxed in Spain (since most tax treaties provide for taxation only in the taxpayer’s country of residence). If you are a U.S. Resident, under the Treaty, capital gains arising from the disposition of ordinary shares or ADSs will not be taxed in Spain. You will be required to establish that you are entitled to this exemption by providing to the relevant Spanish tax authorities a certificate of residence in the United States from the IRS (discussed above in “Taxation of Dividends”), together with the corresponding Spanish tax form.

#### ***Spanish Inheritance and Gift Taxes***

Transfers of BBVA’s shares or ADSs upon death or by gift to individuals are subject to Spanish inheritance and gift taxes (Spanish Law 29/1987), if the transferee is a resident in Spain for tax purposes, or if BBVA’s shares or ADSs are located in Spain, regardless of the residence of the

transferee. In this regard, the Spanish tax authorities may argue that all shares of a Spanish corporation and all ADSs representing such shares are located in Spain for Spanish tax purposes. The applicable tax rate for individuals, after applying all relevant factors, ranges between approximately 7.65% and 81.6%.

Corporations that are non-residents of Spain that receive BBVA's shares or ADSs as a gift are subject to Spanish Non-Resident Income Tax at a 21% tax rate on the fair market value of such ordinary shares or ADSs as a capital gain tax. If the donee is a United States resident corporation, the exclusions available under the Treaty described in "Taxation of Capital Gains" above will be applicable.

#### **Spanish Transfer Tax**

Transfers of BBVA's ordinary shares or ADSs will be exempt from Transfer Tax (*Impuesto sobre Transmisiones Patrimoniales*) or Value-Added Tax. Additionally, no stamp duty will be levied on such transfers.

#### **U.S. Tax Considerations**

The following summary describes the material U.S. federal income tax consequences of the ownership and disposition of ADSs or ordinary shares, but it does not purport to be a comprehensive description of all of the tax considerations that may be relevant to a particular person's decision to hold the securities. The summary applies only to U.S. Holders (as defined under "Spanish Tax Considerations" above) that are eligible for the benefits of the Treaty and that hold ADSs or ordinary shares as capital assets for tax purposes and does not address all of the tax consequences that may be relevant to holders subject to special rules, such as:

- certain financial institutions;
- dealers and traders who use a mark-to-market method of accounting;
- persons holding ADSs or ordinary shares as part of a hedging transaction, straddle, wash sale, conversion transaction or integrated transaction or persons entering into a constructive sale with respect to the ADSs or ordinary shares;
- persons whose "functional currency" for U.S. federal income tax purposes is not the U.S. dollar;
- persons liable for the alternative minimum tax;
- tax-exempt entities;
- partnerships or other entities classified as partnerships for U.S. federal income tax purposes;
- persons holding ADSs or ordinary shares in connection with a trade or business conducted outside of the United States;
- persons who acquired our ADSs or ordinary shares pursuant to the exercise of any employee stock option or otherwise as compensation; or
- persons who own or are deemed to own 10% or more of our voting shares.

The summary is based upon the tax laws of the United States including the Internal Revenue Code of 1986, as amended to the date hereof (the "Code"), the Treaty, administrative pronouncements, judicial decisions and final, temporary and proposed Treasury regulations, all as of the date hereof. These laws are subject to change, possibly with retroactive effect. In addition, the summary is based in part on representations by the depositary and assumes that each obligation

provided for in or otherwise contemplated by BBVA's deposit agreement and any other related document will be performed in accordance with its terms. Prospective purchasers of the ADSs or ordinary shares are urged to consult their tax advisors as to the U.S., Spanish or other tax consequences of the ownership and disposition of ADSs or ordinary shares in their particular circumstances, including the effect of any U.S. state or local tax laws.

In general, for United States federal income tax purposes, a U.S. Holder who owns ADSs will be treated as the owner of the underlying ordinary shares represented by those ADSs. Accordingly, no gain or loss will be recognized if a U.S. Holder exchanges ADSs for the underlying ordinary shares represented by those ADSs.

The U.S. Treasury has expressed concerns that parties to whom American depositary shares are pre-released may be taking actions that are inconsistent with the claiming of foreign tax credits by U.S. holders of American depositary shares. Such actions would also be inconsistent with the claiming of the reduced rate of tax applicable to dividends received by certain non-corporate U.S. Holders, as described below. Accordingly, the analysis of the creditability of Spanish taxes described below, and the availability of the reduced tax rate for dividends received by certain non-corporate U.S. Holders, could be affected by future actions that may be taken by such parties.

This discussion assumes that BBVA is not, and will not become, a passive foreign investment company ("PFIC") (as discussed below).

#### ***Taxation of Distributions***

Distributions, before reduction for any Spanish income tax withheld by BBVA or its paying agent, made with respect to ADSs or ordinary shares (other than certain pro rata distributions of ordinary shares or rights to subscribe for ordinary shares of its capital stock) will be includible in the income of a U.S. Holder as ordinary dividend income, to the extent paid out of BBVA's current or accumulated earnings and profits as determined in accordance with U.S. federal income tax principles. Because we do not maintain calculations of our earnings and profits under U.S. federal income tax principles, it is expected that distributions generally will be reported to U.S. Holders as dividends. The amount of such dividends will generally be treated as foreign source dividend income and will not be eligible for the "dividends received deduction" generally allowed to U.S. corporations under the Code. Subject to applicable limitations and the discussion above regarding concerns expressed by the U.S. Treasury, dividends paid to certain non-corporate U.S. Holders in taxable years beginning before January 1, 2013 will be taxable at a maximum tax rate of 15%. U.S. Holders should consult their own tax advisors to determine the availability of this favorable rate in their particular circumstances.

The amount of dividend income will equal the U.S. dollar value of the euro received, calculated by reference to the exchange rate in effect on the date of receipt (which, for U.S. Holders of ADSs, will be the date such distribution is received by the depositary), whether or not the depositary or U.S. Holder in fact converts any euro received into U.S. dollars at that time. If the dividend is converted into U.S. dollars on the date of receipt, a U.S. Holder should not be required to recognize foreign currency gain or loss in respect of the dividend income. A U.S. Holder may have foreign currency gain or loss if the dividend is converted into U.S. dollars after the date of its receipt.

A scrip dividend (such as a dividend distributed under the "Dividendo Opción" program, described in "Item 4. Information on the Company—Business Overview—Supervision and Regulation—Dividends") will be treated in the same manner as a distribution of cash, regardless of whether a U.S. Holder elects to receive the dividend in shares rather than cash. If the U.S. Holder elects to receive the dividend in shares, the U.S. Holder will be treated as having received a distribution equal to the U.S. dollar fair market value of the shares on the date of distribution. The U.S. Holder's tax basis in such

shares received will be equal to the U.S. dollar fair market value of the shares on the date of distribution and the holding period for such shares will begin on the day following the distribution.

Subject to applicable limitations that may vary depending upon a U.S. Holder's circumstances and subject to the discussion above regarding concerns expressed by the U.S. Treasury, a U.S. Holder will be entitled to a credit against its U.S. federal income tax liability, or a deduction in computing its U.S. federal taxable income, for Spanish income taxes withheld by BBVA or its paying agent at a rate not exceeding the rate the U.S. Holder is entitled to under the Treaty. Spanish taxes withheld in excess of the rate applicable under the Treaty will not be eligible for credit against the U.S. Holder's U.S. federal income tax liability. See "Spanish Tax Considerations—Taxation of Dividends" for a discussion of how to obtain the Treaty rate. The rules governing foreign tax credits are complex and, therefore, U.S. Holders should consult their tax advisors regarding the availability of foreign tax credits in their particular circumstances.

#### ***Sale and Other Disposition of ADSs or Shares***

For U.S. federal income tax purposes, gain or loss realized by a U.S. Holder on the sale or other disposition of ADSs or ordinary shares will be capital gain or loss in an amount equal to the difference between the U.S. Holder's tax basis in the ADSs or ordinary shares disposed of and the amount realized on the disposition. Such gain or loss will be long-term capital gain or loss if the U.S. Holder held the ordinary shares or ADSs for more than one year at the time of disposition. Gain or loss, if any, will generally be U.S. source for foreign tax credit purposes. The deductibility of capital losses is subject to limitations.

#### ***Passive Foreign Investment Company Rules***

Based upon certain proposed Treasury regulations which are proposed to be effective for taxable years beginning after December 31, 1994 ("Proposed Regulations"), we believe that we were not a PFIC for U.S. federal income tax purposes for our 2011 taxable year. However, since our PFIC status depends upon the composition of our income and assets and the market value of our assets (including, among others, less than 25% owned equity investments) from time to time and since there is no guarantee that the Proposed Regulations will be adopted in their current form and because the manner of the application of the Proposed Regulations is not entirely clear, there can be no assurance that we will not be considered a PFIC for any taxable year.

If we were treated as a PFIC for any taxable year during which a U.S. Holder held ADSs or ordinary shares, gain recognized by such U.S. Holder on a sale or other disposition (including certain pledges) of an ADS or an ordinary share would be allocated ratably over the U.S. Holder's holding period for the ADS or the ordinary share. The amounts allocated to the taxable year of the sale or other exchange and to any year before we became a PFIC would be taxed as ordinary income. The amount allocated to each other taxable year would be subject to tax at the highest rate in effect for individuals or corporations, as appropriate for that taxable year, and an interest charge would be imposed on the amount allocated to such taxable year. The same treatment would apply to any distribution received by a U.S. Holder on its ordinary shares or ADSs to the extent that such distribution exceeds 125% of the average of the annual distributions on the ordinary shares or ADSs received during the preceding three years or the U.S. Holder's holding period, whichever is shorter. In addition, if we were a PFIC or, with respect to a particular U.S. Holder, were treated as a PFIC for the taxable year in which we paid a dividend or the prior taxable year, the 15% dividend rate discussed above with respect to dividends paid to certain non-corporate U.S. Holders would not apply. Certain elections may be available (including a mark-to-market election) that may provide alternative tax treatments. U.S. Holders should consult their tax advisors regarding whether we are or were a PFIC, the potential application of the PFIC rules to determine whether any of these elections for alternative treatment would be available