

FISCAL

CORPORATE TAX: FREEDOM OF DEPRECIATION WITH MAINTENANCE OF EMPLOYMENT WITHOUT LIMIT ON AMOUNT OR IMPACT ON THE COMPANY BALANCE SHEET

In accordance with Additional Provision 11 of the Revised Text of the Corporate Tax Act, during the financial years which begin in 2009 and 2010, investments in new elements of the tangible fixed assets and real estate investments that affect economic activity, may be freely depreciated, without limit on the amount, providing that (i) the elements acquired come into operation within 24 months after the start date of the tax period and (ii) the total average workforce of the company is maintained in comparison with the average workforce for the 12 previous months. This deduction is not conditioned by its accounting allocation in the profit and loss account, ensuring that enjoyment of it by taxpayers does not impact on company balance sheets.

COMMERCIAL

BANKRUPTCY ANTI-AVALANCHE MEASURES

Royal Decree Law 10/2008, of 12 December 2008, whereby financial measures are adopted for the liquidation of small and medium size companies, and other measures, has laid down a measure for trying to stop the avalanche of bankruptcy proceedings, so establishing a new temporary loss calculation system for dissolution or reduction purposes, also taking into consideration the deterioration of assets caused by the current crisis situation. During the 2008 and 2009 financial years, companies, which, due to their losses, caused by deteriorations recognised in the annual accounts, derived from Tangible Fixed Assets, Real Estate Investments and Stocks, have seen their net equity drop to below half the share capital will not be obliged to agree their dissolution or to adopt the corresponding equity restructuring measures established in the Limited Companies and Limited Liability Companies Acts.

THE SUPREME COURT CONFIRMS THE VALIDITY OF EARLY WAIVER OF COMPENSATIONS BY DEALERS IN THE CASE OF TERMINATION BY THE UNILATERAL DECISION OF THE MANUFACTURER

In its Ruling of 21 January 2009, the Supreme Court states that the early waiver by the dealer or distributor regarding compensation, with special mention of the probability of its being generated by clientele, in the case of termination by the unilateral decision of the manufacturer, is perfectly valid and binding in law, requiring, in addition, that, as established in previous rulings (for all, see the Ruling of 15 January 2008), in cases of cancellation of a franchise or distribution agreement, compensation by clientele and similar application of Article

28 of the Agency Agreement Act, is by no means automatic, but that the dealer or distributor who wants to receive compensation needs to prove the effective contribution of the clientele and its potential enjoyment by the manufacturer. In addition, and due to its being a renowned brand, the Supreme Court establishes the presumption, which admits proof to the contrary, that the creation or increase of the clientele is due to the renown, reputation and campaigns of the manufacturer.

ACCOUNTING

2008 ANNUAL ACCOUNTS

Next July will see the presentation of the new Annual Accounts for the 2008 financial year, in accordance with the new regulations, approved in December 2007, of the New General Accounting Plan, and adaptation to company and trading regulations. Ministerial Order 206/2009 was published on 28 January 2009, approving the new Annual Accounts submission forms, with three different forms being approved depending on the series of requirements with which they comply, Normal, Abbreviated and SMEs and Microcompanies. Drawing up the Balance Sheet and the Abbreviated Profit and Loss Account, whose limits respectively involve compliance with two of the following requirements, for a minimum of two consecutive years: the assets should not exceed 11,400,000.00 euros; the net amount of annual turnover should not exceed 22,800,000.00 euros; and the average number of employees should not be more than 250. The limits that mark small and medium companies, which must be met over two consecutive years, are two of the following requirements: assets should not exceed 2,850,000.00 euros; the net amount of annual turnover does not exceed 5,700,000.00 euros; and the average number of employees is not more than 50. And limits for microcompanies, which should also be maintained over two years, should comply with two of the following requirements: assets should not exceed 1,000,000.00 euros; the net amount of annual turnover does not exceed 2,000,000.00 euros; and the average number of employees is not more than 10. The normal form contains 46 sections that have to be completed, in the abbreviated form there are 23 sections and in the SMEs and microcompanies form there are just 23. The EFT (Cash Flow Statement) should also be added but only in the Normal Form and the ECPN (Net Equity Exchange Statement) in all forms. Another important aspect that affects primarily business groups, including family groups, is information about binding operations that they carry out between themselves, with partners and administrators, and also indicating the criteria that are applied to transfer prices. Finally, this first financial year should also indicate the change from the old accounting plan to the new one, including any adjustments carried out.

ROYAL DECREE LAW 2/2009

Royal Decree Law 2/2009 was approved on 6 March 2009, regarding urgent measures for maintaining and fostering employment and for protecting the unemployed.

Highlights include,

- Entrepreneurs will be incentivised for hiring employees receiving unemployment benefit on open-ended contracts, and will receive an rebate of 100% of the National Insurance common business contingency fund up to a maximum of the equivalent of the amount of the contribution that they have the right to receive on the date when the contract came into effect and with a maximum of three years.
- Incentives will also be established for part-time open-ended hiring, establishing a rebate created from the application to the provisions in each case of a percentage equal to the agreed working day increasing it by 30%, without this in any case exceeding 100% of the sum established.
- A rebate is established for business contributions for common contingencies of 50% for cases of temporary Redundancy Measures, providing that the entrepreneur takes on the commitment to maintain employment for at least one year. Similarly, employees who are affected by a temporary Redundancy Measure are allowed to undertake economic activities that pay National Insurance until their situation is resolved.

REGULATORY DEVELOPMENT OF THE ECONOMICALLY DEPENDENT SELF-EMPLOYED WORKERS' CHARTER

Royal Decree 197/2009, of 23 February 2009, has developed and clarified the figure of the economically dependent self-employed worker (TRADE). These are self-employed workers 75% of whose income depends, at least, on a single customer.

Since the date when this Royal Decree came into effect, 5 March 2009, this group now has three months to request that their employers adapt to the contract that joins them to the new approved model, which specifies the length of the working day, the legal breaks to which they have a right and establishes a minimum of 18 working days of annual holiday.

New hirings with dependent self-employed workers signed after this date will be governed by these regulations, while individuals with these types of contracts will have six months, as of the request by the self-employed worker to adapt to current conditions, except for insurance agents and hauliers, who have a maximum of 18 months to complete the adaptation.

The relationship that connects the self-employed worker and the customer is not considered to be one of employment, but a civil, commercial and administrative relationship.

MASS REDUNDANCIES VS. UNFAIR DISMISSAL

In its Ruling of 30 September 2008, the Supreme Court opens a door to entrepreneurs when deciding on dismissing a number of workers in excess of the number established in the Workers' Charter for cases of mass redundancies (which are unreasonable when the legal formalities are not thoroughly observed, and which results in the worker having to be readmitted with payment of the salary payments that they had stopped receiving).

In a unification of case law, this Ruling examines a supposition in which the dismissal of a worker is classed as unfair, who makes an official complaint about its being an unreasonable dismissal due to the fact that the number of workers affected had been exceeded, as set out in Article 51 of the Workers' Charter, and the procedure for mass redundancy had not been followed.

The appeal was rejected, with the High Court stating that, *"the judgement adopted by the ruling against which the appeal was lodged is totally correct, as the dismissal of the claimant has been classed as unfair."* It clarifies that, *"for the existence of a mass redundancy it is not sufficient, in any shape or form, for several workers to have been dismissed at the same time, even though the number of these workers exceeds the limits set in Article 51-1 of the Workers' Charter even by a lot, but it is also absolutely essential that these dismissals are due to economic, technical, organisational or production reasons."*

During the current economic recession, where there are frequent Redundancy Measures and so many companies are going bankrupt, the practice is due for revision where, in view of a Redundancy Measure, companies offer compensation in excess of what is legally established to avoid running the risk of its being declared unreasonable due to formal questions (auditing, feasibility plan, timescales, etc.). This ruling appears to offer the choice of dismissals that recognise their unfairness and make available the corresponding compensation, even though it exceeds the number established for mass redundancy, if it does not involve economic, technical, organisational or production reasons.

PANNONE LAW GROUP

A meeting was held in Frankfurt on 21 February of the Board of Directors of the international law group PANNONE LAW GROUP, of which PINTÓ RUIZ & DEL VALLE is a founder member. Our practice was represented by Board Members María del Mar Martín and Salvador Ferrandis. María del Mar Martín was appointed a member of the Organising Committee for the group's next General Assembly.

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