

TAXATION

JUDICIAL DECISION CONFIRMS TAXPAYERS' ENTITLEMENT TO LATE VAT CLAIMS

On 4th April 2007, a historical ruling from the Supreme Court entitled taxpayers to claim from the Administration their VAT returns which failed to be recovered in due time through the traditional 'compensation' system, consisting of the tri-monthly or monthly submission of tax self-liquidations, even if the period for claiming such returns has elapsed.

The Spanish Agency for Tax Administration (AEAT) has since then shown its objection to the practical, large-scale effects derived from the enforcement of this resolution, on the grounds that such a single decision had not set any legal precedents.

The Supreme Court has recently passed two sentences, dated 24 November and 23 December 2010, respectively, confirming the decision of 2007, thus endorsing the legal criteria that, in our opinion, both the AEAT and Courts can no longer ignore.

SPORTS

Last 15 February, Mr. José Juan Pintó delivered a lecture at the Aranzadi Forum that gathered several Spanish experts in Sports Law.

During the conference, held at the Professional Football Spanish League (LNFP) headquarters, Mr. Pintó made reference to the arbitration award passed by the TAS (Tribunal Arbitral du Sport) last 18 January 2011, in connection with the case TAS 2010/A/2172, Mr. Oleg Oriekhov and UEFA.

This is the first award issued by the TAS in a case of corruption involving a football referee. It is worth noticing that the Arbitration Body is formed by Mr. Pintó, Dennis Oswald (from Switzerland) and Michael Beloff (from England), who acted as Chairman. The arbitration award ratified the UEFA decision and imposed on the referee a sanction consisting of lifetime suspension.

BANKRUPTCY

THE BANKRUPTCY ACT MOVES AHEAD

Last 17 December 2010, the Spanish Council of Ministers passed the draft bill of reform of the Bankruptcy Act, as a continuation of the amendments entered by the Royal Decree-Law of 27 March 2009 on emergency measures with regards to tax, finance and bankruptcy matters. Thus, the reform of the bankruptcy Act is now allowed to move ahead on account of the Government's approval and the corresponding reports issued by the Council of the Judiciary and the Social and Economic Council, while awaiting the one to be drawn up by the Council of State.

The draft bill includes significant changes with respect to the contents of the previous bill, which was presented last May by the seventeen members of the Special Section of the General Codification Commission. According to the bill's General Provisions, its purpose is not to carry out a major reform of the Bankruptcy Act or a radical change of the legal text in force. Rather, its intent is to update the Spanish bankruptcy Law by means of some important modifications intended to correct certain practical approaches and to fill in the legal blanks.

In general terms, the main goals of the reform are: **(i) to simplify and to speed up** bankruptcy proceedings, which will encourage earlier settlements and will also give rise to, and regulate, proper summary proceedings that will provide specific solutions both during the ordinary stage and the agreement; **(ii) to analyse in greater depth the alternatives to bankruptcy proceedings**, through the adoption of measures prior to the proceedings; **(iii) to amend or to complete the regulation of the present Bankruptcy Act**, in order to solve some of its practical problems, as well as the disputes of interpretation arising from its enforcement, such as advancing settlements, clarifying rating issues, rating the credits issued after the agreement's judicial approval in the occurrence of a credit opening subsequent to the settlement stage or setting a payment order of credits against the bankruptcy estate in a case of insufficient assets. Other aspects are covered, such as a more detailed regulation of *asset-less* proceedings; the adoption of measures encouraging the reaching of an agreement between the debtor and the creditors; the modification of some of its aspects and the provision of answers to legal enquiries relating corporate matters; the professionalization of bankruptcy administrators and the liability of corporate administrators with regards to the bankruptcy proceedings; and **iv) to reform certain common law legislation** that is closely related to the proceedings, such as the Trade Code or the General Tax Act.

In summary, the new Act seeks to ensure greater legal safeguards within the proceedings and to open up to new alternatives that will enable a balance between company feasibility and the necessary legal guarantees.

After the Council of Ministers' approval of the draft bill of reform last 18 March, the document was submitted to the Chamber of Deputies in order to enter the Parliamentary procedure as a bill. Its enforcement is scheduled for the end of the year, once the *vacatio legis* deadline set from its publishing date has elapsed.

LIMITS TO THE EXTENT OF MORTGAGE LIABILITY

The well-rooted, uniform conception of mortgage debtor's liability has been shaken by the commotion caused by a judicial decision which restricts the liability of those failing to meet the outstanding mortgage cancellation payments to the specific asset which was offered as a guarantee of said payments, inasmuch as the asset's appraisal was higher than the debt's amount, resulting in the Bank taking over said property in payment of the debt.

The Spanish legislation states the universal liability of natural persons whose current and future assets are presented as a guarantee of compliance with their obligations. Such rule also governs mortgage liability, unless liability is expressly restricted to the asset which is the subject of the mortgage guarantee.

The dramatic consequences of the current recession have favoured a revision of the liability concept. Individuals' failure to face their mortgage payments has enabled banks to execute the guarantees by taking over the auctioned properties that did not attract the interest of third parties'.

In this particular instance, the asset's appraisal was higher than the mortgage credit; thus once it was executed due to debtor's non-fulfilment, its value did not suffice to cover the debt, which resulted in the bank taking over the property, while claiming payment of the outstanding amount from the debtor. The bank's demands were initially rejected, on the grounds that handing in the asset that was assumed by the Bank as a guarantee should serve to settle the debt. A revision of the court's decision was requested and the subsequent ruling, dated 17 December 2010, rejected the Bank's demand, stating that the decision made by the Provincial Court of Navarra was consistent with the Law. However, less than a month (ruling of 28 January 2011) later the same Court revoked an identical decision, ratifying the debtor's universal liability.

Se abre así una brecha que sin duda afectará a la concesión de crédito por la banca, ya que ralentizará la recuperación económica de particulares que no puedan asumir el pago de su hipoteca sin más bienes que la casa que pierden.

THE PRIVATE COPYING LEVY SHALL NOT APPLY TO CORPORATE EQUIPMENT

The Barcelona Provincial Courts have acquitted Padawan, S.L. of the lawsuit brought by SGAE (the Spanish Authors and Editors Association) in connection with the payment of the private copying levy, through their ruling passed last 2 March.

The decision, against which no appeal may be filed, results from a request for a preliminary ruling made by the Provincial Courts to the European Union Courts of Justice, at Padawan, S.L.'s request. Said issue seeks to determine whether applying the royalty indiscriminately to companies and professionals buying digital reproduction devices and media for purposes other than private copying complies with the EC concept of *fair compensation*, or otherwise. In this case, the problem lies in the use given to the digital reproduction devices or media on the purchaser's part. The decision states that 'the sale of these devices and media to public entities, companies or professional firms may lead to the assumption that the equipment will be mostly used for other purposes, such as storing information of their own creation or which is not subject to the intellectual property of a third party. Thus, if analyzing every single item sold is required for applying the private copying levy, only the sales of goods intended for consumers' use, but not for that of public entities, corporations or professional firms, would be subject to the payment of the levy'. Likewise, it is now established that the concept and extent of fair compensation are linked to the damage caused to the author as a consequence of non-authorized reproduction for private use, and that the private copying levy may only be justified in the context of private copies of lawfully-acquired works. In this regard, it has been stated that the defendant provided evidence of the sale of the material to companies, institutions and professionals. Therefore, the acquittal of Padawan owes to the fact that indiscriminate collection would have negative effects on *fair balance*. Josep Jover, the attorney in charge of the defence of Padawan S.L., says that this decision opens the way to companies, administrators and professionals in order to claim the refund of the aforementioned private copying levy, enforced in 2003, from companies managing authors' rights

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