

**TAX**

*NEW TAX FEATURES ANNOUNCED IN THE GENERAL STATE BUDGETS BILL FOR 2010*

On 26 September, the Cabinet approved the presentation before the Spanish Parliament of the General State Budgets Bill. This includes a series of significant tax amendments, most notably the following:

• **Personal Income Tax:**

- Exemption from unemployment benefit in the single payment mode is raised to € 15,500, compared with the current € 12,020.
- Amendments are made to rates of tax on savings: effective from 1 January 2010, with 19% tax paid on the first € 6,000 and 21% on the remainder, instead of the current 18%.
- With regard to interim withholdings and income, the rate of withholding is raised to 19% (compared with the current 18%) on earnings from freed-up capital, on equity earnings derived from the transfers or reimbursements of shares and interests in collective investment institutions, on prizes, on earnings from the letting or subletting of urban real estate, on earnings from intellectual and industrial property, from the provision of technical assistance, the letting of movable property, businesses and mines and the subletting of the above assets.
- Since 1 January 2009, there has been a 20% reduction on net earnings from economic activities for the maintenance or creation of employment, when the following requirements are fulfilled: net turnover figure is less than € 5,000,000, average workforce fewer than 25 employees and the creation and maintenance of employment.
- The deduction of up to € 400 for securing earnings from work or economic activities is removed.

• **Corporation Tax:**

- With effect for the tax periods commenced as of 1 January 2009, a reduced tax rate has been created for the maintenance or creation of employment. This rate will be 20% for the tax base between € 0 and € 120,202.41 and 25% for the remainder of the tax base. For this reduced rate to apply, the following requirements must be met: turnover of less than € 5,000,000 and average workforce of fewer than 25.
- The interim withholdings and income rate is increased to 19%, compared with the previous 18%.

• **Value Added Tax:**

- Amendment to rates of tax: the general rate is raised from 16% to 18% and the reduced rate from 7% to 8%.

**MERGERS AND DIVISIONS**

*EUROPEAN DIRECTIVE ON AMENDMENTS TO OBLIGATIONS CONCERNING INFORMATION AND DOCUMENTATION IN THE EVENT OF MERGERS AND DIVISIONS*

Directive 2009/109/CE was published in the Official Gazette of the European Union on 2/10/09 with a view to reducing administrative loads placed on companies so as to intensify their competitiveness in the Community. Consequently, this Directive amends Directives 77/91/CEE and 82/891/CEE, making it possible for Member States to determine free websites for the publication of merger or division projects and other documents that have to be made available to shareholders and creditors in the process (with the due website security and document authenticity guarantees), and also to establish that the requirements for detailed reports and information concerning mergers and acquisitions are not necessary when all the shareholders of the affected companies agree to do without this requirement. The directive also refers to the fact that mergers between parent companies and subsidiaries have reduced economic effects on shareholders and creditors, when the parent company holds at least 90% of the shares and other entitlements of the subsidiary which grant the right to vote; in these cases, the Directive also rules that the obligations of the presentation of reports established by Directives 78/855/CEE y 82/891/CEE may be reduced.

**FAMILY OFFICE**

*SPECIAL SYSTEMS YET AGAIN*

Recent years have seen continuous demagoguery towards joint stock companies, the supposedly favourite vehicle of large equities for investing their financial equity. In fact, instead of comparing the taxation paid by these companies with the taxation of any other Collective Investment institutions, some have insisted on comparing it with the that of trading companies. The same is now happening with the revisions proposed in relation to the special system of "impatriate" workers. This system should be verified if the aim is to compare with other systems that foster the procurement of talent, systems such as the Swiss *impôt au forfait*, or the British *resident non domiciled*, which may be competitive to a greater or lesser extent. If they allow us, we could even compare it with the impatriate system that certain European countries are planning to start up by copying our model, for once. In any event, what does not make much sense is comparing special systems with general systems. It leads us to ask in the end, why are we not questioning the fiscality of joint stock companies during boom and bust cycles (this would be because losses cannot be compensated, with the ensuing damage for investors) and why is it not specified that foreign and non-foreign footballers tend to agree net salaries, with the corresponding taxes having been deducted.

## INDUSTRIAL PROPERTY

### CAN A FOREIGN PATENT CONTAINED IN THE DOCUMENTARY RESOURCES OF THE OEPM (SPANISH PATENTS AND TRADEMARKS OFFICE) UNDO THE NOVELTY OF A UTILITY MODEL?

Most recent doctrines and case law consider foreign patents contained in the OEPM documentary resources to be part of the state of the technique used to determine the novelty and inventive activity required for utility models, despite the provisions of Article 145 LP, which takes into consideration everything that has been disclosed in Spain before the submission date of the application for protection as a model. To this end, it is essential that we highlight the difference regarding the term novelty, which the Invention Patents and Utility Models Act 11/1986 establishes between patents and models. Consequently, Article 6 PL sets the limit of the patents technique based on everything before the date when the application was submitted being made public in Spain or abroad.

The Ruling of the Catalan Supreme Court No. 1270/2008, in its Point of Law Four sets out the reasons for this new interpretation, *“the aim of the OEPM (...) is to (...)’efficiently disseminate on a regular basis the technological information recorded’. On the basis of this, any person (...) may have the necessary information to see whether a utility model has been advanced or not. It would be a type of fraud to have access to the Register, view the documents deposited there, copy them and then try and patent them again alleging that they have not been disclosed. Consequently, although the claimant has had complete originality in their creation, should this coincide with the OEPM documentary resource, it will be because they have not taken the precaution of checking what it contained. Then will not then be subsequently able to take advantage of their lack of due care.”*

## INTERNATIONAL BAR ASSOCIATION

### INTERNATIONAL BAR ASSOCIATION CONGRESS

José Juan Pintó Sala took part in this congress as a speaker at the round table on employment relations between Football Clubs and Players, together with Bayern Munich’s lawyer, Michael Gerlinger, Chairman of FIFPRO (the International Footballers’ Union), Theo van Seggelen, Head of the FIFA Players’ Charter Department, Omar Ongaro, General Secretary of the Tribunal Arbitral du Sport, Matthieu Reeb, and Swiss lawyer and arbitrator, Michele Bernasconi.

## CIVIL

### MEASURES AGAINST THE ABUSE OF HOUSE PRICES AND COSTS

Rulings have recently been passed which fine certain measures by some agents involved in the development and sale of homes that entail a price increase that will have to be met by the buyer.

On 12 November 2009, the National Competition Commission imposed a fine of 120 million Euros on six insurance companies (ASEFA, CASER, MAPFRE, SCOR, SUIZA and MÜNCHENER), for having fixed minimum prices on ten-year insurance policies for damages to buildings, which is mandatory and which means a rise in the price of the home. Although appeals can be lodged in the Courts against the Ruling, this is the largest fine imposed on these grounds.

In addition to this, the Court of First Instance No. 5 of Cáceres passed a Ruling on 30 September 2009 (in November of this year other Courts in the same province passed rulings on the same matter), in which it declared null and void the clause that moves the obligation from the taxpayer regarding Value Tax on Urban Land (the seller, which in the case being tried, was a developer) to the buyer, so impeding this price rise as it considered it to be an abuse.

## PANNONE LAW GROUP

A meeting of the Board of Directors of the PANNONE LAW GROUP (PLG) international lawyers group, of which our firm is a founder member, was held in Buenos Aires on 24 October 2009. María del Mar Martín and Alfonso Abadía Jordana attended this Board meeting on behalf of PINTO RUIZ & DEL VALLE. In addition to this, a further meeting of the Board of Directors of the young lawyers of the group (Young PLG) was held at these offices on 23 October, at which PINTO RUIZ & DEL VALLE lawyer Yago Vázquez Moraga was elected Chairman of this Board for the next two years. A series of work meetings according to speciality were held once again, parallel to each Board of Directors meeting, which were attended by Cristina Abilleira from the mergers and acquisitions group.

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