

TAX

TAX NEWS IN CATALONIA

Slight reduction in Inheritance and Donations Tax

The Tax, Financial and Administrative Measures Act 26/2009, of 23 December 2009, approved by the Catalan Parliament, amends the controversial Inheritance and Donations Tax in Catalonia, and deals timidly with the repeated calls for the tax to be suppressed or reduced.

The main elements of this amendment are the rise in personal reductions, the suppression of corrector coefficients for pre-existing equity, slight downwards modifications of rates and the expansion to the concept of the main dwelling for the purposes of application of the expected reduction due to its mortis causa acquisition.

Of all the amendments, the most significant is the increase to personal reductions. Two examples of which are that until 31 December 2009, personal reduction was € 18,000 for spouses and children over 21. Following this amendment, the reduction for spouses will now be € 500,000, with the possibility of an additional reduction of up to € 150,000, and € 275,000 for children over 21, with the possibility of an additional reduction of up to € 125,000.

This increase to personal reduction will be applied progressively until application is complete as of July 2010, in accordance with the following schedule:

- 25% of the reductions for tax items accrued between 01/01/2010 and 30/06/2010.
- 65% of the reductions for tax items accrued between 01/07/2010 and 30/06/2011.
- 100% of the reductions for tax items accrued after 01/07/2011.

Income Tax: tax deduction for investment in new or recently created companies.

Deduction to the total tax liability of 20% of the sums invested in trading companies as a result of incorporation or capital increase agreements of recently created companies (3 years old). The maximum amount of this deduction is € 4,000. The main requirements are as follows:

- The share, once investment is complete, cannot exceed 40% of the share capital or the voting rights of the company in which investment is being made.
- That the company has a registered and tax address in Catalonia.
- That the company's activity is not the management of real estate equity or personal property assets and that it employs at least one employee.
- The taxpayer cannot carry out executive or managerial roles in the company.
- Ownership of the shares acquired and the fulfilment of the requirements must take place within a minimum of 3 years.

UNFAIR COMPETITION

REFORMS TO THE UNFAIR COMPETITION AND ADVERTISING ACT

Act 29/2009, which reforms the legal system of unfair competition and advertising, incorporating Directive 2009/29/CE relating to unfair practices by companies in their relations with consumers in the domestic market and Directive 2006/114 regarding misleading advertising and comparative advertising into internal law, was passed on 22 December 2009. These regulations introduce amendments that apply to a number of laws and, in particular, to the Unfair Competition Act (LCD), the General Advertising Act (LGP), the revised text of the General Consumer and User Protection Act (LDCU) and the Retail Trade Act (LOCM). The highlights include the development of those types of behaviour or conduct by entrepreneurs which are contrary to the good faith of the LCD general clause, the development of so-called unfair acts or misleading omissions, the introduction of so-called aggressive practices and a catalogue of other conducts deemed unfair, the introduction of codes of conduct, the common regulation of legal actions for both unfair acts and illegal advertising, and a range of specifications and/or new provisions designed to contribute to the level of protection for consumers and users.

CIVIL

MEASURES FOR FOSTERING AND STREAMLINING THE RENTAL PROCEDURE

Act 19/2009, of 23 November 2009, which establishes measures for fostering and streamlining the rental procedure, were published in the Official Gazette of the Spanish State of 24 November 2009. Of these measures (which also include procedural questions relating to the right to free justice, acts of communication and type of procedure), we would like to highlight the following: a) The non-admissibility of the mandatory extension when the contract expressly states that the lessor must occupy the property before the end of five years for themselves or their direct family members, or for their spouse in the event of a decree absolute in the case of divorce or marriage annulment; b) That in the event of settlement during evictions due to non-payment or legal or contractual expiry of the term, this will not be effective if dispossession does not occur within the period established by the settlement, with the eviction order carried out without further procedures or notification made to the lessee; c) That evictions due to non-payment will end if before the hearing the lessee pays the lessor, which the lessee will not be in a position to do if they have already done so on a previous occasion, or when the lessor states that one month prior to filing the official complaint they have demanded payment from the lessee and that the latter has not paid at the time that the official complaint was filed; d) That during eviction proceedings due to non-payment, the ruling may include the sentence of paying the interest, provisions or income accrued subsequent to when the sentence was passed; e) That in their official complaint, the lessor may state the commitment to write off all or part of the debt and the proceedings costs, giving the specific amount, and conditioning this write-off to the voluntary dispossession of the property within the term indicated, which cannot be less than fifteen days after the ruling was given. This Act came into effect at the time of its publication in the Official Gazette of the Spanish State.

*RIGHT TO FREEDOM OF INFORMATION VERSUS
RIGHT TO PRIVACY*

In light of the media repercussion generated after the publication of Ruling no. 531/09, of 18 December 2009, handed down by Criminal Court no. 16 of Madrid, whereby the director and deputy director of the news services of the Ser channel were convicted for an offence of disclosing secrets, we feel that it is necessary to give a brief summary of the legal arguments put forward by the judge in adopting this decision and to highlight the confrontation between two fundamental rights, namely the right to information and the right to privacy.

To put it succinctly, the declared facts as found in the ruling concern the transfer that the two defendants made to the Ser.com company of the list of Partido Popular members, identifying seventy-eight inhabitants of a town in Madrid, when these data were for the exclusive use of this political party and neither defendant had the authority for their publication and transfer.

The court considered that the conduct of both defendants may be included in the criminal act of disclosure of secrets as they disclosed personal data (names, surnames, addresses) revealing a political ideology (party membership) without the authorisation of the Partido Popular. Similarly, the court considered that the subjective part of this offence occurred, arguing for this that experienced journalists such as the defendants could not be unaware of the existence of personal data to which, due to their private nature, another person does not have the to access or publish or transfer to third parties, for which reason they had to be aware of the certain damage that was occasioned to the people whose data were published, at least due to constructive malice.

Finally, the relevant issue of the ruling centres on the assessment that the court must make in relation to the possible justification (total or partial) of this damage to the public interest that may have been entailed, with the defendants exercising their fundamental right to freedom of information.

The conclusion that the court reached is that although it is true to say that the mere denouncing of irregularities in membership of the Partido Popular in the town of Villaviciosa de Odón was a newsworthy fact, it is no less true to say that the party membership of specific people, disclosing their details, was not necessary, so it ended up by finding, as mitigating circumstance, the ground for justification of acting in the legitimate exercise of a right or position.

*“EU” INTERNET DOMAIN NAMES, AVAILABLE IN ALL EU
LANGUAGES*

The EUROPEAN Commission has announced that as of now, European citizens, companies and organisations can register “.eu” website names using characters in the 23 official EU languages. This advance has been possible thanks to the new rules adopted by the Commission in June 2009, where it was decided that the “.eu” top-level domain name should offer the characters of all the official EU languages. With this change, citizens, companies and organisations in the EU will be able to register domain names in non-Latin alphabets.

Internationalised domain names are Internet domain names that contain additional characters to the 26 in the Latin alphabet, “a-z”, the numbers “0-9” and the “-“. Until now, anyone registering “.eu” domain names could only use this limited set of characters, but as of today it will be possible to register a broad range of different characters used in the various official languages of the European Union.

*PINTÓ RUIZ & DEL VALLE**VANCOUVER WINTER OLYMPIC GAMES*

José Juan Pintó Sala, Partner Director of Pintó Ruiz & Del Valle and arbitrator with the Court of Arbitration for Sport (CAS), has been elected member of the ad hoc division of the CAS for the Winter Olympics, to be held in Vancouver (Canada) between 12 and 28 February 2010. Thanks to this appointment, Pintó Sala becomes the first Spanish specialist to be member of a world supreme court for sporting disputes at the Olympic Games.

PINTÓ RUIZ & DEL VALLE - MALLORCA

As was widely reported in the media, on 21 December, famous tennis player Rafael Nadal and the Quely, S.A. biscuit company, founded over a hundred years ago, signed a long-term agreement for use by the latter of the sports star's image in the promotion and sale of its products abroad. This agreement is part of the ambitious expansion, internationalisation and modernisation plans of the food company, whose presence outside Spain is starting to become significant, which is expected to accelerate thanks to the magnetism of Rafa Nadal. The agreement embraces a bold and daring business undertaking, with Quely taking on a commitment to its now ‘ambassador’ way beyond his sporting career and staking on his charisma and values long after his retirement from official competition. Pintó Ruiz & del Valle played a decisive role in drawing up the agreement through its offices in Palma de Mallorca, whose members advised Quely, S.A. at all times, making the conclusion of the contract possible.

BARCELONA

Beethoven 13, 7^o
08021 Barcelona
Tel: 34 93 241 3020
Fax: 34 93 414 3885 / 1157
bcn@pintoruzdelvalle.com
www.pintoruzdelvalle.com

MADRID

Guadalquivir, 22
28002 Madrid
Tel: 34 91 745 4958
Fax: 34 91 411 5045
ma@pintoruzdelvalle.com
www.pintoruzdelvalle.com

PALMA

Sindicato, 69 7^o
Edificio Banco Santander
07002 Palma de Mallorca
Tel: 34 971 71 6029
Fax: 34 971 71 9075
palma@pintoruzdelvalle.com

ALICANTE

César Elguezábal 39, pp1 dcha
03001 Alicante
Tel: 34 96 514 3928
Fax: 34 96 514 5353
ali@pintoruzdelvalle.com
www.pintoruzdelvalle.com

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