

TAX

ANOTHER TAX DISCRIMINATION AGAINST NON-RESIDENTS IS ABOUT TO DISAPPEAR

Some years ago, non-residents who sold property in Spain had to pay tax on profits at a rate of 35%, far higher than the 18% (now between 19% and 21%) in effect for residents in Spain. After the official complaint lodged with the European courts, Spanish legislation was corrected.

Recently, the law that reintroduced the Wealth Tax has stipulated that the exemption from the first portion of € 700,000 also applies to non-residents, contrary to the provisions of the previous wording.

It is due to all this that on 27 October, the European Commission decided to take Spain to the EU Courts of Justice seeking to annul the discriminatory Spanish rules against non-residents in terms of Inheritance and Gift Tax. To this effect, we should remember that in most autonomous communities, inheritance in favour of children and/or spouse practically pays no tax for this, unless the deceased or heir are non-resident, in which case the rule in effect is generally state law and a progressive scale of liability is applied that can go up to a rate of 34%. For the purposes of inheritance tax planning, it is foreseeable that this discriminatory Spanish rule will also be corrected in the near future.

CRIMINAL

LIABILITY OF ORGANISATIONS

Last 11 October saw the publication in the State Gazette (BOE) of the Procedural Streamlining Measures Act 37/2011, of 10 October 2011. In criminal law, this Act means the configuration of a procedural statute for organisations, inexcusably required once their criminal liability is explicitly established by virtue of the substantive reform operated by Constitutional Law 5/2010, of 22 June 2010. Consequently, through the introduction of ten new articles in the nineteenth-century Criminal Proceedings Act, promulgated by Royal Decree of 14 September 1882, questions are tackled relating to (i) the system whereby competence is determined, (ii) the right to a defence, (iii) their intervention in the oral proceedings, (iv) acceptance and (v) default, on the terms briefly described below. For the first appearance before the judge, the citation of the organisation is foreseen at the registered address (if this is not known, they will be called by means of **summons** published in the State Gazette (BOE) and the Official Gazette of the Companies' Registry (BORME)) and, after the informing of the facts with which they are charged and the reading of the rights by the Clerk of the Court, they will be required to appoint a representative and a lawyer and solicitor.

With regard to this point, we should highlight that the appointment of the solicitor will replace the indication of the address for the purposes

of notifications and that the failure to appoint a representative or the absence of one neither suspends the proceedings nor determines the impossibility of practising the appearance, which will be done in this case by the lawyer.

The practice of the preparatory enquiries or the gathering of evidence before the trial that require the presence of the suspect will be done through the representative especially appointed by the organisation, who may attend accompanied by a lawyer. The failure of the representative to appear will not prevent the practice of the enquiries, being substantiated in this case with the counsel. With regard to the declaration of the organisation, this will be done through the representatives assisted by a lawyer with the aim of ascertaining both the criminal acts and the participation of the organisation charged and the other persons that may have taken part, with the whole right of defence that is not incompatible with their nature applying (including the right to maintain silent, the right not to declare against oneself and the right not to incriminate oneself).

The failure of the representative to appear, in this case, will determine that they are using their right not to declare. With regard to the cautionary measures that may be imposed on them, it should be pointed out that they are the ones expressly set out in the Criminal Code and that their adoption will always require prior request and the holding of the trial.

Finally, and unless the organisation gives its acceptance (to which it may resort, unlike to date, irrespective of the stances that the other defendants adopt), the Spanish parliament envisages the possibility of its being represented at the hearing by a person who is especially appointed to this effect. The failure of that person to appear, who would occupy the place in the court reserved for the defendants and who would enjoy the same rights that they enjoyed in the declaration plus the right to the last word, would not in any event prevent the holding of the hearing, which would be carried out with the presence of the lawyer and the solicitor.

Besides this, we should add that although it is true that Law 37/2011 finally resolves the specific question of the procedural regulation of the intervention of organisations as new subjects of criminal charges, it is no less certain that the procedural model initially set out in the 1882 Criminal Proceedings Act unavoidably requires an overall reform as the succession of partial reforms – sixty-six and counting – has not solved the structural problems in the current system.

SPORTS

CAS HEARING AT PINTÓ RUIZ & DEL VALLE

Last 22 November saw the hearing of the CAS 2011/O/2405 Ituano Sociedade de Futbol Ltda. vs. Atletico Morelia S.A. de C.V. case in our chambers in Barcelona. Court of Arbitration for Sport (CAS) hearings are normally held in the Court's headquarters in Lausanne, but in some cases, due to exceptional reasons, The CAS may decide to hold them in other cities. In the case in question, the CAS decided that the hearing should be held in Barcelona, and within the city, it chose our chambers for the case as ad hoc headquarters. The line-up of arbitrators for the case, under the chairmanship of Mr Rui Botica Santos, also included lecturer Massimo Coccia and José Juan Pintó.

THE LACK OF DECLARATION OF NULLITY OF A TRADEMARK DOES NOT PREVENT THE PARTY AFFECTED FROM FILING A CLAIM FOR BREACH

European justice could annul the case law of the Supreme Court which, in the case of trademarks, denies that an action may be filed for breach of this right in the event that a third party registers an existing trademark if there is no declaration of nullity of the offender's trademark. According to the conclusions submitted by the attorney general of the Court of Justice of the European Union (CJEU), Paolo Mengozzi, the right to ban the use of a registered design or model by third parties "may likewise be exercised against a third party that uses its own design or model registered subsequently, without its being necessary to obtain a prior declaration of nullity of this latter design or model". To this effect, Mengozzi concludes that "both the intention of the third party and the fact that the registration of their design or model was subsequent or not to an extrajudicial summons in which they were required to put an end to the commercialisation of their product are irrelevant." This is a criterion that is in contrast to the one maintained by the Spanish High Court, which maintains a jurisprudential orientation whereby the existence of a trademark registered subsequently protects against an action for breach, meaning in this case that "there would not be an illegal act while the alleged offender uses its own registered trademark". This is one of the first matters in which the CJEU has been requested to interpret Regulation 6/2002 on EU designs and models. In this case, the Court will rule on a request for preliminary ruling posed by Mercantile Court no. 1 and EU Trademark Court no. 1 of Alicante.

SPORTS

Mexico City Federal District staged the First International Sports Law Seminar for sports commentators and journalists on 7 November. The seminar was organised by prestigious Mexican firm De Buen Rodríguez Abogados, with the CAS arbitrator and chairman of this firm, Ricardo de Buen, as speaker, along with Lucas Ferrer, Director of the Sports Law Department at Pintó Ruiz & Del Valle.

PANNONE LAW GROUP

The Council Meeting of the Pannone Law Group (PLG) held in São Paulo decided to appoint María del Mar Martín, partner in Pintó Ruiz & Del Valle, as member of the Executive Committee; at the same Council Meeting, David Wu, member of the Boss & Young firm based in Shanghai, was named Chairman. Similarly, the Assembly of the Young Pannone Law Group (YPLG) posted the results of the elections to the Executive Committee, in which Christa Helwig, of Pintó Ruiz & Del Valle, was appointed member of the Committee for one year.

THE THIRD ANNUAL PUIG SALELLAS PRIZE IS AWARDED TO JOSÉ JUAN PINTÓ

On 16 November, the Association of Notaries Public of Catalonia awarded the Third Annual Puig Salellas Prize to José Juan Pintó Ruiz, one of the leading contemporary Catalan lawyers, in recognition of his long and brilliant legal career, especially outstanding in the study of Catalan Civil Law.

The prize-giving ceremony took place at the headquarters of the Association of Notaries Public of Catalonia and was chaired by the Minister for Justice, Pilar Fernández Bozal, accompanied by the Dean of the Association of Notaries Public of Catalonia, Joan Carles Ollé. The Chairman of the Royal Academy of Jurisprudence and Legislation of Catalonia, José Delfín Guardia Canela, gave the speech honouring José Juan Pintó Ruiz.

In his speech, Guardia Canela commented on the personal friendship between José Juan Pintó and Puig Salellas and highlighted the most remarkable interventions of José Juan Pintó, most notably at the Second Catalan Legal Congress, held in 1971. He also stressed the fact of José Juan Pintó being "a great scholar, constant and persistent in his loyalty to civil law, which he has cultivated in all its manifestations", and how he is "the Catalan lawyer who is most identified with the Compilation of Civil Law of Catalonia", the 50th anniversary of which was commemorated in 2010. To conclude, Guardia Canela briefly described the milestones achieved by José Juan Pintó during his chairmanship of the Academy of Jurisprudence and Legislation of Catalonia. For his part, the Dean of the Association of Notaries Public of Catalonia, Joan Carles Ollé, highlighted that "this award shows the commitment and establishment of notaries public in the Catalan legal community and enhances our law and our lawyers, underlining the importance of Catalonia in law in general and in civil law in particular." The Minister for Justice, Pilar Fernández Bozal, brought the ceremony to a close commenting that "the award promoted by the institution and the prize-winners in these editions serve as a stimulus for the Government in the great challenge it poses on itself to conclude the Catalan Civil Code, started last century". Last year, the Puig Salellas Award went to lawyer Juan Valtet de Goytisolo, recently deceased. In its first edition, the award was presented to all the Ministers for Justice of the Government of Catalonia in recognition of their contribution to the process of bringing Catalan Civil Law up to date, one of the most innovative and advanced texts in Europe.

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