

TAX

VAT AMENDMENT: TRADING COMPANIES CEASE TO BE ENTREPRENEURS "IN ANY EVENT"

With the forthcoming reform of the VAT law, which is scheduled to come into effect in December 2008 (although it could be understood to be in effect already as it is an incorporation of case law of the Court of Justice of the European Communities), the trading company ceases to be an entrepreneur for the purposes of VAT "in any event". It is only so if it acts in exercise of a business or professional activity. This means, for example, that the transfer of land, even though it is for building, made by a limited company and which it has maintained as not subject to any activity, cease to be liable for VAT. If the buyer does not know the specific status of business activity of the seller, no matter how much the buyer is in possession of an invoice, the VAT borne becomes non-deductible. Consequently, checks on the tax status of the buyer need to be doubled to prevent the purchase of goods from entailing an "acquisition of tax risks".

TAX INSPECTION: ANNULMENT OF PROCEEDINGS

In a ruling of 17 March 2008, the Supreme Court tackled the extent of lapsing when there is an unjustified interruption of more than 6 months in an inspection that refers simultaneously to a number of taxes (e.g. joint check of tax obligations for IS [Corporation Tax], VAT and IRPF [Personal Income Tax] withholdings). In these cases, the Supreme Court states that the inspection cannot be stopped for more than 6 months with regard to any of these taxes due to the fact that other taxes are being inspected in the course of the same proceedings. Should this occur, it will be understood that the lapse period of the tax whose proceedings were stopped is not taken to be interrupted. In the example, if the inspection the proceedings refer to VAT and IS but nothing is done with regard to IRPF withholdings, it would be understood that the autonomous unjustified interruption with regard to this tax has occurred and, if more than 4 years have elapsed, the lapse of the IRPF tax obligations could occur, even though this stoppage has not occurred with regard to VAT and IS in the course of the inspection. However, the tax administration hurried to qualify it through the introduction in Royal Decree 1065/2007, in Sections 6 and 7 of Article 184, of regulatory rank precepts, which tend to consider that the unjustified interruption does not occur when the Administration carries out any proceedings with regard to any of the tax obligations, having interrupting effects of the lapsing with regard to all of the tax obligations and taxable periods referred to in the proceedings. In our example and according to these precepts, the IRPF withholdings would not be understood to be interrupted as the VAT and IS proceedings had continued. Case law has already indicated that these provisions may mean a clear regulatory exceeding of authority. This is an open question, in light of the above ruling, in which we will need to be attentive to the future rulings that may be handed down by the Courts.

FAMILY BUSINESS

FAMILY BUSINESS SUCCESSION

Covenants that imply a certain successor nature, conventions, statutory adaptations and provisions and the so-called family protocols show that at the present time an evident attention to the continuity of the family business is emerging. The new book of successions of the Civil Code of Catalonia provides for the new feature of allowing successor covenants geared towards the continuity, regulation and survival of the family business. The restrained regulation rather than a material substantive content means the opening of a framework of which the autonomy of the desire and the ability of the legal operators will no doubt be able to take advantage. The aim in this matter is to overcome the old prohibition of entering into successor contracts. The sphere that was formerly permissive only for inheritances and marriage settlements are extended to covenants between other people. That permissive exception that served to preserve the rural property over several generations preventing it from being divided, and that affording of tranquillity to the future heir for them to work on the land in the father's lifetime, knowing that their naming was irrevocable, gave a magnificent result. Now, the preservation of the family business is rather more complex that, without doubt, one will be able to make arrangements taking advantage of the opening of a framework that will, in all certainty, increase further. See Title III of Book IV of the Code in its Section 1, Article 431-1, and most especially Article 431-6 (and also 431-8, 431-25 and 431-29-1) in its Paragraph 2, which makes special mention of the "family business". Note that the framework increases objectively (to the possibility of various covenants beyond the institution of heir) and subjectively beyond the rigid parental framework.

COMMERCIAL

END OF THE DEADLINE FOR THE ADAPTATION TO THE PROFESSIONAL COMPANIES ACT

Professional Companies, understood, in accordance with Article 1 of Law 2/2007, as those that conduct professional activities for the performance of which are required official university qualifications, or professional qualifications for the exercise of which it is necessary to accredit an official university qualification, and registration in the corresponding professional association, have until 16 December 2008 to adapt their articles of incorporation and comply with the provisions of the above law, under penalty of incurring the risk of dissolution by the powers vested in the Companies' Registry.

IMMIGRATION

FAMILY REUNION AT RISK

Recent declarations by the present Minister for Employment, Celestino Corbacho, announce with no immediate objections significant amendments to the immigration policies that had been emerging to date. Irrespective of the approval on 20 June by the EU Council of the so-called "Return Directive" and its consequences, of note is the amendment sought by the government in the Family Reunion procedure, and specifically in the family reunion of ascendants both of legal residents in Spain and of nationals or their spouses. This reform will consist, precisely, of restricting this exercise even further, making it practically impossible to reunite ascendants that are not too disabled to work or who have not yet reached the established retirement age in Spain. As an exception to this are the spouses of the non-EU residents, whose procedure and processing will not undergo amendments for the time being. Everything points towards preventing the family reunion channel from being used for the subsequent access to the employment market, fundamentally in its prior form of registration as job seeker. Present unemployment indicators in Spain and its unstoppable rise in recent months have acted as a salutary lesson in the government for taking such decisions that they are predicted to be effective for the coming year in the form of a reform of the Immigration Act or, as the case may be, of the Regulations developing it.

PANNONE LAW GROUP

On 4 October 2008, a meeting of the Board of Directors of the Pannone Law group international law firm, to which our firm Pintó Ruiz & Del Valle belongs, was held in Quebec (Canada).

INDUSTRIAL PROPERTY

DIGITAL FEE ORDER PRE/1743/2008

Ministerial Order ORDER PRE/1743/2008, of 18 June 2008, was published in the Official State Gazette on 19 June 2008, establishing the list of equipment, apparatus and material supports subject to the payment of the equitable compensation per private copy, the sums applicable to each one and the distribution between the different forms of reproduction, better known as the 'digital fee' rule. This Order was drafted by the Ministry of Culture and the Ministry of Industry, Tourism and Trade in exercise of the powers attributed by virtue of Section 6 of Article 25 of the revised text of the Intellectual Property Act. Basically, this ministerial order updates the charge of the fee per private copy, or 'digital fee', on supports or devices that already paid it, such as the CD and the DVD, and includes other new ones, such as mobile telephones. The rule should be reviewed on 31 December 2009, otherwise its effect will be extended. The publication of the above Order has led to controversy among the different sectors affected. Consumer and user organisations have come out against it; collective management agencies have stated that they are in favour; and finally, the manufacturers of supports and devices have maintained a more intermediate stance. Bringing the three stances into harmony is predicted to be complicated. A similar debate has come about in other EU member countries. To this effect, the present Chairman of the Commission, McCreevy, has commented on several occasions that a good starting point would be the creation of a forum for debate in which all the parties concerned could lay down the bases of future European regulations capable of satisfying them all.

BARCELONA

Beethoven 13,7º
08021 Barcelona
Tel: 34 93 241 3020
Fax: 34 93 4143885/ 1157
bcn@pintoruizelvalle.com
www.pintoruizelvalle.com

MADRID

Velázquez 146,1º Dcha
28002 Madrid
Tel: 34 91 563 8678
Fax: 34 91 563 3229
ma@pintoruizelvalle.com
www.pintoruizelvalle.com

PALMA

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

ALICANTE

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

Member of PANNONE LAW GROUP / A.E.I.E.

Alicante, Andorra, Beijing, Barcelona, Berlin, Bruxelles, Buenos Aires, Dili (Democratic Republic of Timor-Leste), Düsseldorf, Frankfurt am Main, Genève, Lisboa, London, Lyon, Madrid, Manchester, Milano, Montevideo, Montreal, München, Nicosia, Palma de Mallorca, Paris, Québec, Roma, Rotterdam, San José de Costa Rica, Santiago de Chile, Sao Paulo, Shanghai, Tel-Aviv, Warsaw and Wien.

© October 2008 Pintó Ruiz & Del Valle