

**TAXATION**

*NULLITY OF THE ANNUAL AND NON-QUARTERLY VAT SETTLEMENTS AND PROHIBITION ON RETROACTIONS*

The Resolution of the Central Economic-Administrative Court (TEAC) of 29 June 2010 established the nullity of actions of the Tax Inspections of the Tax Office (Agencia Estatal de Administración Tributaria - AEAT) and the cancellation of a VAT settlement as the calculations had been made annually and not quarterly.

The new development is that the TEAC has resolved that in this case retroaction will not be applied and so the AEAT is prevented from making a new VAT settlement to amend the fault, as the TEAC considers that the error in “determining the period” is not a formal defect, but rather a material one and that therefore the retroaction is proscribed, for otherwise the principle of legal security would be being breached.

**MERCANTILE**

*REWRITTEN TEXT OF THE CAPITAL COMPANY ACT*

On 3 July, the Official State Gazette published Legislative Royal Decree 1/2010 of 2 July, approving the rewritten text of the Capital Company Act, which came into force on 1 September 2010, with the exception of article 515 (nullity of the clauses limiting the right to vote), which will come into force on the coming 1 July 2011. This rewritten text includes the regulation of joint stock companies (RDL 1564/1989, of 22 December), that of the limited liability companies (Law 2/1995 of 23 March), the regulation of limited partnerships (contained in articles 151 to 157 of the Trade Code of 1885), and the regulation of quoted partnerships (contained in articles 111 to 117 of Law 24/1988 of 28 July, concerning the Stock Market), with the resulting repealing of the rules and articles that are rewritten, referred to above.

As is recognised in the preamble of RDL 1/2010, the rewritten text of the Capital Company Act appears as provisional because, on the one hand, it is not venturesome to say that in the more immediate future, the legislator has to undertake serious reforms in this area, and on the other, the aspiration that the whole of the general law of mercantile companies, including that applicable to personalist companies, is contained in a single legal text, overcoming the persistent legislative plurality that the RDL we mention rewrites, but fails to eliminate.

**CRIMINAL**

*THE CRIMINAL LIABILITY OF LEGAL ENTITIES*

On the past 23 June 2010, the Official State Gazette published Organic Law 5/2010 of 22 June, modifying Organic Law 10/1995 of 23 November of the Criminal Code, to be enforced on 23 December 2010.

The most significant developments contained in this reform include the explicit recognition of the criminal responsibility of legal entities, thus doing away with the former dogmatic discussion related to continental legal tradition and expressed under the aphorism “societas delinquere non potest”, that as the said corporate structures lack capacity of action, blame and penalty, they cannot be the receivers of criminal sanctions. Given the importance and surely the “revolution” that this development will suppose in the area of criminal law, we believe that it is essential to clearly state the most important notes which this Organic Law contemplates thereon. Therefore, to establish the criminal liability of legal entities, the legislator has opted to establish a double path: (I) along with the responsibility for the crimes committed on their behalf or on their account and to their benefit by people with power to represent them, (II) the responsibility is added for breaches caused by the legal entity having failed to exercise due control over its employees, regardless of whether or not it is possible to individualise the criminal liability of the physical person and therefore suppress the present section 2 of article 31 of the Criminal Code (hereinafter CC). It goes on to specify, on the one hand, the crimes that can be committed by legal entities (apart from those included in section 5 of art. 31 bis of the CC) and on the other, the sanctions that might be imposed there on, adding the following accessory consequences to those already named by art. 129 CC: (a) the penalty of a fine by quotas or proportional, (b) the penalty of disablement for obtaining subsidies and public help, for contracting with Public Administrations, and for receiving tax or social security benefits and incentives and (c) the penalty consisting of legal intervention as stated in the modified art. 33 of the CC. The legislator also allows for part payments of the fines imposed when their survival or post stability is put at risk, and whenever it might be advisable for the general interest. It must also be said that this reform has, limitatively and in an independent precept, regulated the cases of attenuation of liability of legal entities (Vid. art. 31 bis fourth paragraph of the CC) including, amongst others, the establishment by them of effective measures to prevent and reveal any crimes which might be committed in the future with the means or under the cover of the legal entity. Finally, the new approved legal framework contains specific provisions for avoiding the legal liability of legal entities being overcome by a covered or apparent dissolution or by its transformation, merger, absorption or separation, presuming that this apparent or covered dissolution exists when they continue with their economic activity and substantially maintain the same clients, suppliers and employees. In such cases, the criminal liability is transferred to the entity or entities into which they are transformed, merged or absorbed, and is extended to the entity or entities created by the separation, as seen in the second new paragraph of art. 130 of the CC.

*ENFORCEMENT OF BOOK II OF THE CIVIL CODE OF CATALONIA*

On the coming 1 January 2011, Law 25/2010 of 29 July comes into force, concerning the Second Book of the Civil Code of Catalonia, which brings in modifications with respect to legislation currently in force with regard to the person and the family.

Since Catalonia recovered its legislative competence in the civil area, the Parliament of Catalonia has been building the parts of the new private legal system that will make up the General Code. This book therefore forms part of the six that will make up the Catalan Civil Code.

This law, with a single article, is structured on the basis of the Family Code. The Second Book is divided into four titles: title I regulates the physical person; title II, the institutions that protect the person; title III, the family; and title IV, the other relations of coexistence.

With this new Law, Law 9/1998 of 15 July concerning the Family Code, Law 10/1998 of 15 July concerning stable relationships of coexistence and Law 19/1998 of 28 December concerning situations of coexistence for mutual help, are all repealed.

*BELONGING TO THE SAME CLASS OF THE INTERNATIONAL CLASSIFICATION IS NOT SUFFICIENT FOR CONCLUDING THAT THERE IS SIMILARITY BETWEEN PRODUCTS*

On 9 September 2010, Section 15 of the Provincial Audience of Barcelona confirmed the whole of the sentence passed by Company Court no. 8 of Barcelona, corresponding to the ordinary suit brought by LABORATORIOS SANFER SA DE C.V. (hereinafter SANFER) against INDUSTRIAL VETERINARIA SA (assisted by our colleague Ana Padial).

The suit was based on an action of nullity of the Spanish trademark SINCROL of the defendant, registered for veterinary products for animal use in class 5, considering it incompatible with the priority community trademark SYNCOL of the plaintiff, also registered in class 5, to distinguish a pharmaceutical product for human health.

The reason given for the nullity is based on art. 52.1 of the Trademark Act in relation to its art. 6.1.b., according to which signs may not be registered as trademarks which, "being identical or similar to a previous trademark and the designated products or services being identical or similar, there is a risk of confusion amongst the public, a confusion which includes the risk of association with the previous trademark."

The sentence does not simply turn down the SANFER plaint and order the company to pay the costs, but it goes further into the matter by stating that the differences relative to its nature and purpose, the absence of competition and complementarity, and the different target, despite the partial coincidence of the distribution channels, is not sufficient for appreciating the alleged similarity of the products.

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