

## NEWSLETTER DECEMBER 2015

### TAX

Law 34/2015, of 15 September 2015, partially amending the General Tax Law 58/2003 (LGT), has been published. This amendment introduces numerous changes, notably:

**1.- Recognition of the right of the Tax Administration to verify elapsed financial years, insofar as the act or business affects non-elapsed periods.** No settlement ruling of a lapsed financial year needs to be issued, but, for example, losses from elapsed financial years that are offset in a non-elapsed financial year need to be reviewed (or deductions, etc. reviewed).

**2.- New figure: interruption of linked obligations.** This occurs when, for example, the verification by the Administration of Corporation Tax (IS) affects a specific period and, as the case may be, it may affect other obligations or periods or even affect the Personal Income Tax (IRPF) of the workers or shareholders. In addition, a verification of the taxable base of the saving may affect, for example, Wealth tax (IP). In light of these situations, a new rule has been introduced of the interruption of these linked connections and, also parallel to this, that of the right of the taxpayer to apply for a refund.

**3.- Changes to the inspection procedure.**

- Two periods are set: the general one of 18 months and that of 27 months when certain circumstances arise: annual turnover of more than is necessary to audit accounts or being the member of a group subject to the tax consolidation system that is undergoing a tax inspection.
- The figures of "delays not attributable to the Administration" is removed and the cases of suspension of the procedure are regulated.
- Also removed is the circumstance of "the unjustified interruption of the inspection procedure for a period of more than six months".
- Continuation of the inspection procedure in the event of the discovery of an alleged tax offence. The administrative procedure continues parallel to this.

**4.- Changes to the economic-administrative procedure.**

- Persons or organisations obliged to submit self-assessments telematically will have to file a claim and other procedural actions electronically.
- Voluntary representation is presumed to be accredited when it has been admitted by the Tax Administration in the administrative procedure.
- The rules of accumulation are amended.
- The appeal against enforcement is introduced.
- The abbreviated procedure will only apply in cases of a sum below what is statutorily determined.

### PROCEDURE

#### REFORMS TO THE CODE OF CRIMINAL PROCEDURE APPROVED

On 6 October, the Official Gazette of the Spanish State (BOE) finally published the new reform of the Code of Criminal Procedure, which will come into effect two months after its publication.

The new reform is the consequence of the integration of the "Draft Bill for the Amendment of the Code of Criminal Procedure for streamlining criminal justice and strengthening procedural guarantees", classified as ordinary law, and the "Draft Constitutional Bill for the Amendment of the Code of Criminal Procedure for strengthening procedural guarantees and regulating technological investigation measures", classified legally as constitutional law as it affects fundamental rights. The overriding characteristic of the new legal text is the aim to streamline the process while guaranteeing the rights of the parties. It also has important aspects in the fields of technology and confiscation. The following are of particular interest in terms of streamlining procedure:

- a) The establishment of specific instruction timescales, the duration of which will be determined by the complexity of the matter in question. Consequently, simple cases will have an ordinary instruction period of six months, while more complex cases will have a period of 18 months, extendible up to 36 months if the circumstances occur that justify it.
- b) Amendment to the rules of connectedness. This is uniquely relevant, as from now on all offences will lead to the creation of a new procedure, so avoiding "macro-cases" and consequently the collapse of the courts due to the accumulation of "unwieldy" cases. This amendment will not only reduce the lengthy periods of instruction, but it will also reduce material and personal costs, which will lead to improved maintenance of procedural guarantees.
- c) The non-referral to the courts of police statements with no known perpetrator, a new feature that will prevent unnecessary proceedings from being undertaken. The police, however, must retain these statements, and in the event of new circumstances arising that enable the identification of the alleged perpetrator of the offence, they must then refer it to the relevant court.
- d) The regulation of a criminal small claims procedure. This circumstance will permit procedures to be streamlined by offering a fast punitive response for offences of a lesser seriousness, which very often do not generate dispute as the facts of the offence are recognised by the perpetrator themselves.

With regard to the strengthening of the procedural guarantees, we should highlight the following:

- a) The term "charged" will be changed to "investigated" to refer to the "person being investigated due to their connection with an offence". Also, the term "accused" will be replaced with "defendant" to refer "generally to anyone that the legal authorities, once the instruction of the case has concluded, formally charged with having taken part in the commission of a specific offence". This terminological change is particularly relevant in that the new terms are not particularly negative, which will soften "parallel judgements" created by the media.
- b) The generalisation of a second hearing during the criminal process; this is particularly important as the double criminal hearing is a right established in Article 2.1. of Protocol No. 7 of the European Convention for the Protection of Human Rights.

c) In terms of non-communication of detained persons, not only will judges have to justify the application of this measure in a ruling, but also that the non-communicated arrested persons must undergo two medical examinations every 24 hours. Minors under the age of 16 are excluded from this system of non-communication.

In technological terms, the creation of Chapter IV under Title VIII of Book II is particularly interesting as it regulates new technologies in the field of communication interception.

Finally, and with regard to confiscation, the main new feature is the creation of an autonomous procedure, which not only implies the possibility of operating independently from the existence of a criminal sentence for the perpetrator, but also allows the intervention of third persons in the process who may be affected by the confiscation.

#### REFORMS TO THE CODE OF CIVIL PROCEDURE APPROVED

The BOE State Gazette has published Law 42/2015, reforming the Code of Civil Procedure, which came into general effect on 7 October. This reform introduces a number of changes aimed at improving the working of justice, with the changes having a scope that exceeds the usual legal operators through the imposition of obligations on other parties taking part in court proceedings (legal persons, notaries public or registrars, inter alia).

The principal new features that are included in the new Code of Civil Procedure are those relating to information and communication technologies, where, as of 1 January 2016, electronic and telematic means must be used for the submission of procedural documents and proceedings, and it must be taken into account that these can be made 24 hours a day every day of the year, without this entailing any modification of the procedural periods and the existence of the "day's grace", which will continue to be in effect; in addition, lawsuits may be received by this channel and new means will be established for *apud acta* power of attorney by means of electronic appearance.

The use of telematic means will also reach different actions in the procedure, such as processing petitions and actions that are carried out through judicial assistance, orders and official communiques, display of documents in compliance with preliminary proceedings and filing of expert witness reports.

**The regulation of the declaratory action is amended**, where the figure of the written reply to the lawsuit is introduced, so enabling the claimant to go to court knowing the defendant's motives for opposition, and in short, coming into line with the written processes of the ordinary lawsuit, so losing the declaratory nature.

**The regulation of the small claims process is amended**, where the judge will be able to verify the existence of abusive clauses in contracts entered into with consumers or users.

Similarly included is the possibility of judicial control of abusive clauses in the enforcement of **arbitration rulings**, as is envisaged for non-judicial resolutions.

Similarly strengthened are the functions of solicitors with regard to the acts of communication to the parties they do not represent, and the electronic auction as a specific means of realisation.

**A very relevant reform, in line with the new system of Second Opportunity for individuals, is the reduction of the expiry time of personal actions that do not have a specific expiry time established, amending the period for them to be exercised from fifteen years to five.**

#### SPORTS

The new amendments to the Regulations on the Status and Transfer of Players (RSTP), implemented to continue regulating ownership of the players' financial rights by third parties (TPO), came into effect on 1 October. Remember that this decision to prohibit, which was adopted by FIFA's Executive Committee, came into effect on 1 May 2015, which we discussed in our April Newsletter.

Before we go any further, we should warn that, as you see below, the FIFA Transfer Matching System (TMS) was established as the main tool for the implementation of the recent RSTP amendments. To this end, FIFA's Executive Committee has made changes to Paragraph 2 of Article 4, Appendix 3 of the RSTP. From now on, (i) every time clubs create an order in the TMS they must provide a statement as to whether there is a participation agreement for third parties regarding ownership of players' financial rights or not; and (ii) in the TMS, clubs must declare any possible commission clause for future sales (sell-on clause) that are already included in players' transfer contracts.

Besides this, Paragraph 1 of Article 8.2, Appendix 3 RSTP, regarding the creation of the International Transfer Certificate (ITC), has been amended. Depending on the circumstances, players and their clubs of origin must declare that there is no third-party participation in the players' rights; however, if this third-party participation does exist, clubs of origin must pay for the copy of the corresponding contract with third-parties in the TMS.

#### PLAYER'S CONTRACT

The Player's Contract Conference, one of the most widely-respected in the field of sports law, was held in London on 4 and 5 November. This is an annual event organised by the World Sports Law Report to highlight current issues in international football and, in particular, those associated with players' contracts. This year, the event was attended by leading international sports law professionals such as, Michele Bernasconi, Emilio García, Mark Hovell and Marcos Motta. At this year's conference, lawyer Lucas Ferrer, Director of the Sports Law Department at Pintó Ruiz & Del Valle spoke jointly with Jesús Arroyos, Director of Legal Services at Sevilla CF, about television rights in Spanish football (Broadcasting issues in Spanish Football).

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