

newsletter

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COMPILATION OF FISCAL CASE-LAW AND JURISPRUDENCE

The capital gains amount to consider for Personal Income Tax purposes, for the transfer of unlisted securities.

In accordance with the stipulations of the Central Economic Administrative Court, in its Ruling of 10th May 2018, with respect to the regularization of capital gains derived from the transfer of unlisted securities under Article 37.1.b of the Personal Income Tax Act, no counter-valuations by appraisal experts may be considered. This provision sets a minimum transfer value (whichever is higher between the nominal, notional and market capitalization values) except when the interested party proves that the effective price is equivalent to the normal market price, in which case the transfer value is taken to be the price paid. If the taxpayer cannot prove this condition, the Tax Authority will use the minimum value indicated as the transfer value, which is not the result of a valuation appraisal but rather is set by law.

Various High Court rulings raise doubts whether the initiation of penalty proceedings can be notified before notifying the corresponding settlement.

The ruling of the Chamber for Contentious Administrative Proceedings of the High Court of the 26th September 2019, on Appeal 2839/2019, as well as various other rulings around the same date for which the cases will be heard shortly, raise doubts about whether the initiation of penalty proceedings can be notified before notifying the settlement. This separation of proceedings, between the regularization and penalty proceedings, had been more of a formality or apparent feature, than a reality, as such proceedings are often initiated by actuaries, copying and pasting the settlement proposals, without waiting for the Chief Inspector to settle.

The Inspection Report is commonly accompanied by the notification of the initiation of penalty proceedings. Actuaries tend to get these proceedings under way immediately, as they have a short deadline of three months to do so. If the criterion is confirmed, many penalty settlements may be annulled.

The restrictive criteria in the interpretation of the exemption stipulated in Article 7.p of the Personal Income Tax Act, for “work performed abroad” are not admissible.

The High Court ruling of 23rd March 2019 found in favour of the taxpayer, confirming the admissibility of the exemption, by rejecting the Tax Authority’s argument that the beneficiary of the work was also the resident employer company. As long as the work also benefits a foreign company, this does not represent any impediment. The High Court also ruled that it is wrong to disallow the exemption if the work consisted of supervision or coordination tasks, or if the placements abroad were not prolonged or continued, without interruption, as these are reductionist requirements and interpretations of the Tax Authority that are not stipulated in the law.

Simplified invoices identifying the recipient: the issuer can enter the client’s identification details manually with a pen.

In its response of the 25th September 2018 (Enquiry V2607-18), the General Tax Directorate stated that it is admissible for the issuer of a simplified invoice to enter the client identification details in pen in order for the document to meet the requirements stipulated in Article 97 of the VAT Act and be considered a supporting document for the right to deduct the tax.

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NATIONAL SECURITIES MARKET COMMISSION (CNMV)

On the 8th February, a new procedure is set to come into force for publishing inside information and other relevant information, with which listed companies must comply. This procedure is related to the framework established by Regulation (EU) 596/2014 of the European Parliament and of the Council, of 16th April (Market Abuse Regulations - MAR), and the Securities Market Act on this matter. In accordance with the new procedure, there will be a new distinction between inside information, as defined by Article 7 of the MAR (information of a precise nature, which has not

been made public, relating, an issuer or financial instrument, and which, if it were made public, would be likely to have a significant effect on the price of those financial instruments) and “other relevant information”, which may be financial or corporate in nature to be disclosed under a legal or regulatory obligation or unregulated information. As a result of this distinction, the CNMV, as the regulator, has established separate reporting channels for inside information and for other relevant information. The corresponding changes to the CNMV platforms and website are expected within the coming days.

03

NATIONAL SECURITIES MARKET COMMISSION (CNMV)

On 15th January, the CNMV opened a public consultation until 14th February 2020 on the amendment of certain recommendations of the Good Governance Code of Listed Companies, the content of which can be consulted via the corresponding link on the Commission’s website (www.cnmv.es). The proposed amendments affect

issues such as sustainability, transparency, the tendency towards gender equality on Boards of Directors, the composition of executive committees, the expansion of the functions of audit commissions and remuneration plans, among other aspects. The final text is expected to be available within the next few weeks.

04

CONFERENCE: “L’AGENT SPORTIF ET SON RÔLE DANS LES AFFAIRES JURIDIQUES INTERNATIONALES”

On 26th November, our partner Jordi López took part as a speaker at the Conference “L’agent sportif et son rôle dans les affaires juridiques internationales” (Sports agents and their role in international legal affairs) organized by the Université Jean Moulin Lyon 3, at which they discussed various current issues related to the activity and legal regime of the profession of sports agents, recent sports case-law on the

matter and the changes to the regulations on football players’ agents, which have been repeatedly announced by FIFA. Lawyers, agents, university professors, members of government institutions and other members of the academic and sporting community from different countries took part in the conference, the closing act of which was given by the Professor of the Université de Lyon, Xavier Aumeran.

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WHO'S WHO LEGAL NAMES JOSÉ JUAN PINTÓ SALA AND LUCAS FERRER AS GLOBAL ELITE THOUGHT LEADERS

The 2020 edition of the highly respected legal directory Who's Who Legal - Sports & Entertainment has named our President, José Juan Pintó Sala, and our partner and Director of the Sports Law Department, Lucas Ferrer, as Global Elite Thought Leaders 2019. With respect to our President, the sources consulted by Who's Who Legal state that he is a "legend in the field of Sports Law" and "an excellent sports lawyer and arbitrator", "whose work covers both contentious and non-contentious issues".

Moreover, the directory refers to Lucas Ferrer as "the best sports lawyer in Spain", thanks to his extensive experience dealing with a broad spectrum of sports disputes and consultancy services. In view of his work in the field of sports dispute resolution, his peers describe him as "extremely intelligent and his handling of lawsuits before the Court of Arbitration for Sport is top class".

06

LUCAS FERRER APPOINTED AS MEMBER OF THE EUROLEAGUE BASKETBALL DISPUTE RESOLUTION CHAMBER

In January, the Director of our firm's Sports Law Department, Lucas Ferrer, was officially appointed as a member of the EuroLeague Basketball Dispute Resolution Chamber (EBDRC). This Chamber is an independent body that, through its Arbitration Code, provides fast resolution for disputes between clubs and coaches within the EuroLeague. The members of the Board of the Dispute Resolution Chamber, which is responsible for overseeing the correct application of the Arbitration Code, are Luigi Fumagalli, Andrea Fioravanti and José Meirim. The list of EBDRC arbitrators includes Lucas Ferrer, Pierfilippo Capello, Martin Henssler, Jan Kleiner, Dennis Koolard, Emin Ozkurt, Lauren Page, Theodore Pistiolis and Bojan Urdarevic.

The EBDRC is a further demonstration of the improvements agreed last summer between EuroLeague Basketball and the EuroLeague Head Coaches Board concerning the process for resolving overdue salary payment disputes. The main aim of this Chamber is to increase the legal certainty of coaches who have outstanding payments from their Clubs.