

newsletter

COMPILATION OF
FISCAL CASE-
LAW AND
JURISPRUDENCE

FIFA
ANNOUNCES A
NEW
REGULATORY
FRAMEWORK
FOR
CONTRACTING
COACHES

REINFORCEMENT AND
CONSOLIDATION OF
SOCIAL MEASURES TO
PROTECT EMPLOYMENT
AND OTHER MEASURES
RELATED TO COVID-19

WHO'S WHO
LEGAL SPORTS
2021 NAMES
JOSÉ JUAN
PINTÓ SALA,
LUCAS FERRER
AND EVA OCHOA

BEST LAWYERS
SPAIN 2021 NAMES
PINTÓ RUIZ & DEL
VALLE AS LAW
FIRM OF THE YEAR,
AND ELEVEN OF
OUR LAWYERS AS
LEADERS IN SIX
AREAS OF
PRACTICE

newsletter

98

Legal Capsules

February 2021

01

COMPILATION OF FISCAL CASE-LAW AND JURISPRUDENCE

THE AMOUNT PAYABLE FOR MUNICIPAL CAPITAL GAINS TAX MUST NOT BE EQUAL TO OR MORE THAN THE CAPITAL INCREASE OBTAINED BY THE TAXPAYER

In its ruling 6386/2017 of 9th December 2020, the Chamber for Contentious Administrative Proceedings of the High Court ruled it unlawful to impose this tax when the amount payable exceeds the capital gains obtained by the taxpayer in the transaction as it infringes the principle of economic capacity established in the Constitution.

THE DEDUCTIBILITY OF EXPENSES DERIVED FROM ECONOMIC ACTIVITY FOR PERSONAL INCOME TAX PURPOSES DOES NOT DEPEND ON OBTAINING INCOME

In its ruling of 1st June 2020, the Economic Administrative Court of Murcia ruled that, although a Personal Income Taxpayer does not earn income, this does prevent them from deducting the expenses accrued that they can credit as being related to their economic activity. This ruling overturned the Tax Authority's resolution that such expenses incurred in the course of an economic activity were not deductible for Personal Income Tax purposes as no income was generated and, therefore, according to the Tax Authority, the correlation between income and expenses could not be properly justified.

LOANS CONTRACTED ABROAD TO PURCHASE REAL ESTATE IN SPAIN ARE DEDUCTIBLE FOR WEALTH TAX PURPOSES FOR NON-RESIDENTS

The binding inquiry 3112-20 of the General Tax Directorate (GTD) of 19th October 2019 established that loans taken out by a non-resident to purchase real estate in Spain are deductible for Wealth Tax purposes.

The inquiry report states that it is possible for a German tax resident to deduct a mortgage loan granted by a German financial institution for the purchase of a property in Spain. According to the GTD, taxpayers who are non-resident in Spain must pay Wealth Tax for the real obligation for having real estate in the country and they can deduct the mortgage loan granted in Germany.

INTEREST ON ARREARS OBTAINED FOR REIMBURSEMENT OF UNDUE TAXES PAID ARE NOT SUBJECT TO PERSONAL INCOME TAX

Until now, it was the undisputed opinion of the Tax Authority that interest on arrears resulting from an agreement to reimburse undue taxes paid was considered capital gains subject to Personal Income Tax for the taxpayer. However, in contradiction to this, in its ruling 7763/2019 of 3rd December 2020, the Chamber for Contentious Administrative Proceedings of the High Court ruled that no Personal Income Tax is payable on such interest, as otherwise the compensatory nature of the interest would be diminished.

newsletter

98

Legal Capsules

February 2021

02

FIFA ANNOUNCES A NEW REGULATORY FRAMEWORK FOR CONTRACTING COACHES

On 14th December 2020, FIFA published its Circular n° 1743, in which it announced an amendment to the Regulations on the Status and Transfer of Players (RSTP) that came into force on 1st January 2021 in relation to the incorporation of a new regulatory framework for contracting coaches, the new Annex 8 of the RSTP. With this new amendment to the regulations, FIFA gives coaches a greater degree of legal certainty regarding their employment relationship with a club or association, while also facilitating the work of the relevant FIFA bodies to rule on employment-related disputes. Specifically, the most important provisions of the new Annex

8 of the RSTP for contracting coaches include the following: (1) it stipulates the scope of application and minimum requirements of employment contracts; (2) in relation to the fulfilment of contracts, it establishes the circumstances in which they can be terminated: expiry of the term of the contract, by mutual agreement or with just cause; (3) moreover, it establishes the consequences of terminating a contract without just cause and the relevant compensations; (4) lastly, it regulates outstanding payments and the consequences of late payment of amounts owed to coaches by clubs or associations.

03

REINFORCEMENT AND CONSOLIDATION OF SOCIAL MEASURES TO PROTECT EMPLOYMENT AND OTHER MEASURES RELATED TO COVID-19

On 27th January 2021, the Official State Gazette published Royal Decree-Law 2/2021, of 26th January, on the reinforcement and consolidation of social measures to protect employment, which, among other issues, sets out the 4th Social Agreement to Protect Employment agreed between the Ministry of Employment and social stakeholders. The Royal Decree-Law (RDL) stipulates an automatic extension until 31st May 2021 of: Temporary Redundancy Schemes due to force majeure, under Article 22 of RDL 8/2020, that were in force on 27th January 2021; Temporary Redundancy Schemes for being impeded from working, in force on the same date; and Temporary Redundancy Schemes for being hindered from working normally, under Article 2.2 of RDL 30/2020. Simplified administrative procedures have also been implemented for Temporary Redundancy Schemes to facilitate their application without the need for new administrative authorization.

Moreover, RDL 2/2021 states that, throughout 2021, the governing boards and delegate committees of limited companies can hold meetings digitally, even if this option is not specified in the company's bylaws. Likewise, throughout 2021, the agreements of the governing boards of companies can be adopted by written vote without a meeting, if so decided by the President or it is requested by at least two of the Directors. The same rule applies to any compulsory or non-compulsory committees that the company may have established.

RDL 2/2021 also sets out measures on employment and Social Security matters, as well as on corporate and rental issues, that expand and develop the measures adopted through various royal decree-laws previously approved in response to the health emergency caused by Covid-19.

newsletter

98

Legal Capsules

February 2021

04

WHO'S WHO LEGAL SPORTS 2021 NAMES JOSÉ JUAN PINTÓ SALA, LUCAS FERRER AND EVA OCHOA

In its 2021 edition, the prestigious 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 members of the Thought Leaders Global Elite. According to the directory, its sources describe our President as "one of the "most experienced sports lawyers in the market who gains recognition for his expert handling of football-related disputes".

Moreover, the directory describes Lucas Ferrer as "an excellent lawyer who draws plaudits from market sources for his experience in contentious matters and deep knowledge of issues relating to football contracts". In addition, Who's Who Legal - Trademarks recognizes our Partner Eva Ochoa as a Global Leader.

05

BEST LAWYERS SPAIN 2021 NAMES PINTÓ RUIZ & DEL VALLE AS LAW FIRM OF THE YEAR, AND ELEVEN OF OUR LAWYERS AS LEADERS IN SIX AREAS OF PRACTICE

For the first time, our firm has been named by the respected Best Lawyers legal directory as one of the sixteen Law Firms of the Year in Spain. Moreover, as in previous years, eleven of our firm's lawyers are named as Best Lawyers in their fields, in recognition of their performance in six different areas of practice.

As in previous editions, the publication highlights José Juan Pintó Sala in the field of Sports Law and Litigation; Jordi López in Commercial Law, Mergers and Acquisitions, and Sports Law; Lucas Ferrer in Sports Law; Yago Vázquez and Miguel Galmés in Litigation; Carlos Noguera and David Peña in Restructuring and Bankruptcy; Claudia Burés-Vall de Vilaramó in Labour Law; and Javier del Valle Sánchez, Eva Ochoa and Isabel Aparicio, in Intellectual Property.

Every year, the Best Lawyers directory selects the best legal professionals in each country through an exhaustive process that includes confidential recommendations from other lawyers and firms.

Our inclusion in this edition is yet another acknowledgement of the philosophy of Pintó Ruiz & del Valle based on quality, hard work, a job well done, personalized client serviced and respect for the profession, all in our quest for excellence.