

NEWSLETTER OCTOBER 2015

TAX

TAX NEWS

1.- Entry and registration of the address of a trading company is null and void: Constitutional Court Ruling of 16 March 2015.

- Entry by AEAT (Spanish Tax Administration Agency) Inspection with administrative authorisation, not court. Although the shareholders agreed to the entry, the court ruled that this action was legally null and void as the taxpayers were never informed of their right to oppose the entry and registration and because the registration had no court authorisation.

- The evidence obtained during this null and void action are also invalid ("case law of the fruit of the poisoned tree").

2.- Profits in Corporation Tax for Small Companies (SMEs): Supreme Court Ruling of 8 June 2015.

- For the purposes of determining the threshold of the SME Special System (currently € 10,000,000), in terms of business groups, turnover must also include the internal transactions of the companies that comprise the groups.

3.- Nature of the penalty for the action derived from tax liability: Supreme Court Ruling of 6 July 2015.

- The appeal to the Supreme Court is dismissed regarding the unification of case law lodged by the Administration. The ruling contested recognises the "nature of the penalty derived from tax liability". If a taxpayer is penalised for not paying part of the tax debt incurred by declaring false invoices, neither can the liability for failure to pay the debt by the issuer of these invoices be derived, as this would violate the *non bis in idem* principle because derivation of liability is a type of penalty action.

COMMERCIAL

NEW FEATURES IN THE ISSUING OF BONDS IN TRADING COMPANIES

The Spanish Business Finance Advancement Act 5/2015 of 27 April 2015 (hereafter, LFFE), establishes a set of measures aimed at facilitating and streamlining financing for Spanish small- and medium-sized businesses, which to date have depended significantly on bank financing to meet their investment needs, as well as their current operating needs. The purpose of this legislative reform is to make progress in the development of alternative sources of participative finance, such as crowdfunding, while updating the pre-existing corporate financing legal system, a highlight of which is the legislation with regard to bond issues.

Through the relevant amendments to the Capital Companies Act (LSC), the LFFE extends the type of companies that can issue bonds, allowing limited-liability companies to issue and guarantee numbered series of unsecured bonds, which they were not authorised to do until now. The total amount of these issues must not be more than double their equity, unless issuing the bonds is guaranteed by a mortgage, pledged securities, public guarantee or a joint and several guarantee from a credit institution.

Another important new feature introduced by the LFFE is the suppression of the maximum quantitative limit of the issue established in the former Article 405 LSC for limited companies not listed on the stock market.

We should also stress that in accordance with the new wording of Article 406 LSC, the administration body is granted the authority to agree the issuing of unsecured bonds, unless stated otherwise in the Articles of Incorporation.

The reform also repeals Article 408 of the former LSC, which established the announcement of the issue in the Official Gazette of the Companies Registry as a prerequisite for the subscription of the bonds or for introducing them to the market. Finally, the LFFE introduces a series of changes to the regulation of the bond holders' commission and syndicate.

INTERNATIONAL COOPERATION

INTERNATIONAL LEGAL COOPERATION IN CIVIL MATTERS ACT 29/2015, OF 30 JULY 2015

The International Legal Cooperation in Civil and Trading Matters Act 29/2015 came into effect on 20 August, after a broad consensus in the Congress of Deputies, due to the lack of regulations – international treaties and agreements aside – to regulate international legal cooperation between the Spanish and foreign authorities, and so not prejudice individuals in their private affairs when there are insufficient or no relations between these countries.

By virtue of the principle of precedence of EU law which gives priority to the application in this area of EU regulations and international treaties and agreements of which Spain is a party, Act 29/2015 is subsidiary in nature, as established in Article 2.a). The principle of speciality of Act 29/2015 allows the priority of specific sectoral rules, such as those in the Bankruptcy Law 22/2015; or the International Adoption Law 54/2007 and other complementary laws.

The International Legal Cooperation Act states that, even where there is no reciprocity, this legal cooperation will continue to exist between the states, authorising all Spanish jurisdictional bodies to communicate with jurisdictional bodies of other states without any form of intermediation.

The exequatur is undoubtedly the culmination of this law, as foreign court rulings that have executive power in the state of origin will only be executable in Spain once the exequatur has been secured.

However, Act 29/2015 details the types of rulings liable to be recognised and executed and their effects and also touches on questions of partial recognition and execution. The execution procedure in Spain for foreign rulings will be governed by the provisions of the Code of Civil Procedure, including the expiry of the executive action.

For measures contained in the foreign ruling which are unknown in Spanish law, measures from Spanish law will be adopted that have an equivalent effect and that pursue a similar aim, as is the case of the adaptation of foreign titles. In terms of final foreign rulings which given their nature are liable to be amended, such as decisions regarding the protection and custody of minors, the parties may choose to amend the foreign ruling or open new proceedings.

Applications addressed to Spanish authorities to obtain evidence will be executed as a general rule in accordance with Spanish procedural regulations; personal data protection will be established to ensure that the data cannot be used or treated for purposes not directly related to the request. With regard to international procedural law and connecting factors, Act 29/2015 continues the trend of Regulation (EU) 1215/2102 regarding court jurisdiction, recognition and execution of court rulings, in civil and mercantile cases.

Inscription of foreign court rulings and public documents in public Spanish registers will be carried out in accordance with Spanish law.

PUBLIC ADMINISTRATIONS

NEW COMMON ADMINISTRATIVE PROCEDURE LAW FOR PUBLIC ADMINISTRATIONS

The Plenary Session of the Senate has approved the new Common Administrative Procedure for Public Administrations Law (pending, at the time this newsletter went to print, publication in the BOE State Gazette) with a clear forward-looking aim of implementing a fully electronic, interconnected and transparent Administration. It will streamline administrative procedures and reduce processing times. It will also strengthen public participation and legal safety.

A new feature of this law, and regarding the interested parties in the procedure, Title I of the Law extends the capacity to act in the field of administrative law to groups of affected parties, to unions and to unincorporated entities, etc. for the first time. In terms of representation, it includes new means of accrediting this, such as *apud acta* power of attorney or the accreditation of its inscription in the electronic power of attorney register of the public administration or relevant body.

For the first time, a distinction is made between identification and electronic signature, with the first only necessary as a general rule and the second only when the willingness and consent of the interested party has to be accredited; the means for using either are simplified.

In terms of the activity of the public administrations established in Title II, these must all have a general electronic register, known as the registration assistance office, that will allow interested parties to submit their applications on paper that will be converted into electronic format.

Also of note is that Chapter II of Title II of the Law introduces the calculation of deadlines by hour and declares Saturdays as non-working days, so unifying the calculation of deadlines in the legal and administrative spheres.

Title III, which refers to administrative actions, maintains the great majority of the general rules already established by Law 30/1992; however, for electronic notifications, it increases legal safety for interested parties, making it possible for them to send notifications and giving them access to their notifications through the Administration's General Electronic Access Point, which will act as an entry portal.

Title IV on provisions of the common administrative procedure highlights the integration as specialities of penalising authority and equity liability.

Title IV includes a new Chapter on the simplified processing of the common administrative procedure, with a minimum 30-day ruling period, and not forgetting the possibility of agreeing the emergency processing of the procedure under the same terms as in Law 30/1992.

Title V, which reviews the administrative actions, maintains the same channels set out in the Law which precedes it. Even so, it incorporates the suppression of the period of ruling until the court pronouncement has been given, if there is a variety of appeals that stem from the same administrative action.

In terms of Title VI of the legislative initiative and regulatory authority of the public administrations, public participation in the regulation creation process has increased, thereby improving *ex ante* regulatory planning. Regular assessments must also be carried out regarding the application of current regulations, strengthening their *ex post* evaluation.

SPORTS

INTERNATIONAL LAW AND FOOTBALL SEMINAR

The International Law and Football Seminar organised by the De Buen Rodríguez Abogados firm was held on 29 June at the Ibero-American University in Mexico City. It covered topics such as the contracts of world-level footballers, the Training and Transfer of Minors and the Luis Suárez Case. Speakers included Patricia Moyersoén (President of the International Association of Football Lawyers), José Juan Pintó (President of Pintó Ruiz & Del Valle, President of Rex Sport and CAS arbitrator), Rui Botica (CAS arbitrator), Guillermo Cantú (former National Teams Director) and Lucas Ferrer (partner at Pintó Ruiz & Del Valle).

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