Commercial


The aim of this Regulation is to clarify and structure the amendments made to the former Regulation on the Community trademark, i.e. Council Regulation (EC) No. 40/94, of 20 December 1993.

The Community trademark was adopted as an instrument to enable companies, within the single European market, to identify their products or services in an identical manner throughout the Community.

In order to acquire rights, a Community trademark must be registered. This registration may be refused if the trademark is not distinctive, is illegal or is contrary to previously registered rights.

As indicated in the codified Regulation the Community trademark will be unitary, meaning that it will have the same effects throughout the Community. Nevertheless, this principle will only apply if not otherwise provided in the Regulation.

Article 4 provides a definition of a Community trademark: “A Community trademark may consist of any signs capable of being represented graphically, particularly words, including personal names, designs, letters, numerals, the shape of goods or of their packaging, provided that such signs are capable of distinguishing the goods or services of one undertaking from those of other undertakings”. This task is entrusted to the Office for Harmonization of the Internal Market.

Of significance is Title X (Jurisdiction and procedure in legal actions relating to Community trademarks)), Arts. 94 to 108, regulating Community trademark proceedings: disputes concerning the infringement and validity of Community trademarks and other lawsuits regarding Community trademarks. Unless otherwise provided in the Regulation itself, all claims in Community trademark matters and applications, including proceedings related to simultaneous or successive actions brought on the grounds of Community and national trademarks, will be governed by the provisions of EC Regulation No. 44/2001.

Said rule came into force on 13 April 2009. All Member States have a three-year term in which to implement the necessary jurisdictional measures, including formal requirements related to the main industrial property service that receives a request for change.
2.- Royal Decree-Law 3/2009, of 27 March, on urgent measures in tax, financial and bankruptcy matters given the current economic scenario.

Of significance are the amendments made in financial matters, specifically empowering the Compensation and Insurance Consortium to act in credit reinsurance and caution activities, given the difficulties that have arisen in the international reinsurance market, a situation that has negatively affected commercial relations between companies. Furthermore, as established in the Preamble itself, “international market experience has indicated the need for the State to pay default interest in the event of mandatory enforcement of the guarantees granted further to Royal Decree-Law 7/2008, of 13 October, on Urgent Measures in Economic and Financial Matters, in relation to the concerted Action Plan in Eurozone countries”.

3.- Act 2/2009, of 31 March, regulating consumer loans or mortgage facilities and brokerage services to execute loan or facility agreements.

The Act was published in Official State Gazette No. 79, on Wednesday 1 April 2009, in order to regulate the activity of companies which, albeit not credit institutions, grant mortgage loans to consumers as their corporate object, or which provide brokerage services to execute consumer loan or facility agreements for any purpose. Its scope of application excludes any operations carried out by credit institutions or their agents.

The aim of the Act is to regulate and establish the duties and obligations of non-banking institutions that provide “debt reunification” services, granting facilities and mortgage loans to consumers and users, as publicised on a daily basis in the media.

Any companies subject to this Act will have a three-month term in which to adjust to the foregoing duties and obligations, as of 2 April 2009.

Act 3/2009, of 3 April, on structural changes in corporations.

This Act, published in the Official State Gazette of 4 April, introduces a new regulatory framework for structural changes in stock companies (company transformations, mergers and splits; global assignment of assets and liabilities; international transfer of the registered address), establishing a common legal framework for all corporations.

Likewise, the Act regulates cross-border mergers for the first time, thereby implementing Directive 2005/56/EC into Spanish law and, specifically, mergers between Spanish and non-Community companies.

Furthermore, the Act amends certain provisions of the Spanish Corporations Act (LSA), Spanish Limited Liability Companies Act (LSRL), the Act on workers’ involvement in Public Limited Companies and European Cooperatives, and the Act on Credit Cooperatives, as described below.

1) Amendments to the Spanish Corporations Act (LSA)

The most significant amendments are reflected below:

- **Non-monetary contributions**: the Act changes the provisions applicable to an independent expert’s report, in non-monetary contributions, as follows:
  - The appraisal made by the independent expert on the assets or rights contributed will be included in said report.
The value assigned to the assets and rights in the public deed may not exceed the value given by the expert. This therefore removes the 20% margin foreseen in Art. 133.2 of the Commercial Register Regulations.

Regulation of the provisions on liability for damage caused by an independent expert’s appraisal, when exemption is possible, and a four-year statute of limitations; and

Cases where an independent expert’s report will not be necessary, specifically when securities are contributed that are listed on regulated markets, or assets that were appraised in the six preceding months, as long as the requirements established in the Act are met.

- **Own funds**: a change in the maximum allowed for the face value of own shares and shares in the controlling company: 20% of the capital stock for unlisted companies and 10% for listed companies. Likewise, the term in which to obtain the General Meeting’s authorisation for the acquisition of own funds is increased from eighteen months to five years.

- **Preferential subscription right**: (i) in capital increases with the issue of new shares, a preferential subscription right will only exist if there are monetary contributions, thereby excluding all subscription rights in capital increases carried out in exchange for non-monetary contributions or credit capitalization, without any requirements or additional conditions being foreseen in these cases; (ii) in the event of a capital increase and issue of new convertible obligations, the holders of convertible obligations will not have any preferential subscription rights.

II) **Company transformations.**

The provisions applicable to the transformation of corporations is updated and unified and the number of possibilities is increased. The main aspects of this change are as follows:

- A resolution is required from the members’ meeting, further to any applicable requirements. After publication in the Official Gazette of the Commercial Register and in a daily paper or, as applicable, further to an individual communication of the resolution to all the members and creditors, it will be raised to public document status. In order to be valid, the resolution must be recorded at the relevant Commercial Register.

- The following documents must be provided to the members from the moment the Meeting is called in order to agree on the transformation, further to the right of information they are entitled to: (i) directors’ report; (ii) company balance sheet, closed during the six months prior to the date scheduled for the Meeting, plus the relevant report on any significant changes in equity that subsequently occurred; (iii) auditors’ report on the balance sheet, if the company is obliged to conduct an audit; (iv) intended memorandum of incorporation or by-laws of the company resulting from the transformation.

- Any members not in favour of the transformation resolution are entitled to leave the company.

III) **Mergers.**

With the amendment implemented by the legislator in this Act, significant changes are introduced without altering the stages of a merger process. Thus,
the main amendments are as follows:

- Ordinary mergers fall within the category of “special mergers”, without it being necessary now to obtain the approval of the General Meetings of the absorbed companies or of the absorbing company, unless this is requested by at least 1% of the capital stock.

- Furthermore, from now onwards, it will not be necessary for ordinary mergers to obtain the relevant reports from an independent expert and directors on the merger project, except for those cases foreseen by law. The content of the Merger Project is now simplified and there is no need for a resolution from the absorbing company to increase the capital stock.

- Specific provisions are established for absorptions of investee companies by at least 90%.

- An independent expert’s report is no longer necessary in ordinary mergers or if this is unanimously agreed by all the members.

- There are specific provisions to cover a merger between two or more companies if any debt is undertaken in the three immediately preceding years in order to take over control of another company participating in the merger.

- An out-of-court procedure to resolve disputes is foreseen.

- For the first time in Spanish law, intra-Community cross-border mergers are regulated.

IV) **Splits and assimilated situations.**

The main novelty is the application of the following to provisions on splits: (i) a non-monetary contribution of an activity branch (referred to as a segregation in current law); (ii) a non-monetary contribution of the entire business equity to a newly incorporated company.

V) **Global assignment of assets and liabilities.**

This figure is regulated and in a more complete and accurate manner- it may now apply to any corporate situation, and is no longer considered exclusive to liquidations; it is also included in Spanish law amongst structural modifications for company transfers.

VI) **Transitional provisions and effective date.**

The Act will come into force three months after it is published in the Official State Gazette, excepty for provisions regarding intra-Community cross-border mergers which will be effective on the day following the publication date.

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**Employment**

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This Royal Decree-Law for urgent measures intends to maintain and encourage employment and the protection of the unemployed.

The following articles are of importance.

- Article 1 covers a measure aimed at encouraging the provisional
Employer Social Security contributions for common contingencies will receive a 50% rebate, if there are economic, technical, organisational or production reasons for a provisional adjustment in employment in order to secure continuity of the company and its work posts, and as long as the employer assumes a commitment to maintain employment for at least one year after the contractual suspension or reduced working hours.

- Article 3 intends to reinstate unemployment benefits and Social Security contributions for those workers subject to suspension of their employment contract or reduced working hours as a result of collective dismissal proceedings, whose contract is subsequently terminated or suspended for economic, technical, organisation or production needs.

- Article 4 removes the one-month waiting period for receipt of unemployment benefits, which until now applied in certain cases.

- Article 5 foresees certain rebates for the indefinite hiring of workers who receive unemployment benefits. A company that hires an unemployed worker who is receiving unemployment benefits may enjoy a 100% rebate on its employer’s Social Security payments for common contingencies, up to a maximum equivalent to the benefits outstanding at the effective date of the contract and for a maximum term of three years. This measure will not only apply to those persons receiving contribution benefits but also to unemployed individuals who receive a welfare subsidy and who are subject to the “Renta Activa de Inserción” plan.

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Tax

LEGISLATION.

ORDER ISSUED BY THE MINISTRY OF ECONOMY AND FINANCE/3697/2008, dated 11 December, which approves the average sale prices applicable to the management of Capital Transfer Tax and Stamp Duty, Inheritance Tax and Donations and the Special Tax on Certain Means of Transport.

ORDER ISSUED BY THE MINISTRY OF ECONOMY AND FINANCE/3786/2008, dated 29 December, which approves Form 303 (Self-settlement, Value Added Tax) and Form 308 (Application for Return, Value Added Tax: Additional VAT, Article 30.bis) of the VAT Regulations and occasional taxpayers), and amends Annexes I and II of the Order issued by the Ministry of Economy and Finance/3434/2007, dated 23 November, which approves Form 322 (Monthly Self-settlement: Individual Form) and Form 353 (Monthly Self-settlement: Aggregate Form), as well as other tax regulations.

- It approves a new Form 303 that replaces Forms 300, 320, 332 and 330.

- Of general application, except for taxpayers under simplified VAT provisions or Special provisions for groups of entities.

- It approves Form 308, implementing Article 30.bis) of the VAT Regulations, which allows road transportation companies for both travellers and merchandise to exercise their right to a VAT return, regulated in said article, including returns to exporters subject to passenger regulations, made by taxpayers under the special provisions for additional VAT and occasional taxpayers making deliveries exempt from new means of transport.
• It modifies Form 322 (Individual form, entity subject to Special provisions for groups of entities, VAT) and Form 353 (Aggregate self-settlement).

• An adjustment is made to Form 036 for an entry in the census, change and de-registration from the Census of entrepreneurs, professionals and withholders in order to apply for an entry or de-registration from the Census of entrepreneurs, professionals and withholders.


• The Form is mandatory for taxpayers obliged to file self-settlements or statements by electronic means in relation to Corporate Tax, VAT and IGIC, and who in turn apply for the monthly return option foreseen in Article 30 of the VAT Regulations, or in Articles 7 and 8 of Decree 182/1992, of 29 December, on General Canary Islands Tax (IGIC).

• An entry will be made of any operations recorded in the Ledgers of issued and received invoices, including certain intra-Community operations. Any operations related to investment assets will also be included for the last period of the calendar year or during the taxpayer’s inactivity.

• The Form must be filed each month, during the term in which to file VAT or IGIC statements.

ORDER ISSUED BY THE MINISTRY OF ECONOMY AND FINANCE/3788/2008, dated 29 December, which approves Form 039 (Data communication, regarding the Special provisions applicable to groups of entities, VAT) and amends Order issued by the Ministry of Finance/3626/2003, dated 23 December, and Order issued by the Ministry of Finance/3398/2006, dated 26 October.

• Form 039 is modified to enable VAT taxpayers subject to the Special provisions applicable to groups of entities to decide whether or not to apply for a monthly tax return.

• Due to the removal of Wealth Tax, Form 214 is removed (Simplified statement for non-residents, Wealth Tax and Non-Resident Income Tax). Form 210 is changed in order to include any real estate income charged during the term formerly applicable to Form 214 (the calendar year following the year of accrual). Form 210 is also included amongst self-settlements subject to standing orders.


• To be implemented by 1 January 2010, in relation to the obligation to file monthly recapitulative statements for intra-Community operations, provision of services and delivery of goods.


ORDER ISSUED BY THE MINISTRY OF ECONOMY AND FINANCE/396/2009, dated 13 February, which approves the 2008 Personal Income Tax Statement Form, including the place, manner and deadlines for filing the same; it establishes procedures to apply for, send, amend and confirm or execute a draft Personal Income Tax statement; it determines the general terms and procedure with which to present both forms by electronic means or telephone; an amendment is made in Annexes I and VI of the Order issued by the Ministry of Economy and Finance/2027/2007, dated 28 June, which partly implements Royal Decree 939/2005, of 29 June, which
approves the General Regulations for Tax Collection, in relation to credit institutions that provide collaboration services related to AEAT tax collection management.


- Amendment of Act 2/2008, of 23 December, on General State Budgets for 2009
  (i) The legal monetary interest rate is set at 4%/year; default interest is set at 5%. These rates will apply as of 1 April 2009.

- Personal Income Tax.
  (i) The necessary amendments are made to the Consolidated Version of the Personal Income Tax Act, in order to indefinitely maintain the deduction foreseen in Article 35 of the Consolidated Version of the Corporate Tax Act, i.e. a deduction for technological R+D+I.

- Corporate Tax.
  (i) The necessary amendments are made to the Consolidated Version of the Corporate Tax Act, in order to indefinitely maintain the deduction foreseen in Article 35 of the Consolidated Version of the Corporate Tax Act, i.e. a deduction for technological R+D+I.

CASE LAW.

- Supreme Court Decision, Contentious-Administrative Chamber, 18 February 2009.
  (i) Article 38 of Royal Decree 1629/1991, of 8 November, which approves the Regulations on Inheritance Tax and Donations, is removed. Said article established that any donation by both spouses of common rights or assets acquired during marriage would be treated as a single donation. From now on, two donations are considered to take place.
  (ii) There is now a possibility to apply for a return of undue revenue resulting from settlements imposed on these transactions, carried out according to the literal wording of the repealed article and not statute-barred.

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This newsletter is designed to provide a summary of the matters examined therein. This document does not intend to provide an exhaustive analysis of these matters and is not a replacement for any specialised legal advice.

For more information, please contact our firm.