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- credit institutions
- investment firms
- insurance and reinsurance undertakings.

However, it is only a partial transposition, to the extent that it is subject to the subsequent regulatory development of its more technical aspects.

Apart from the transposition to national law of the community legislation, the Law, in its last part, also deals with the amendment of Law 26/2006, of 17 July, on mediation in private insurance and reinsurance, to replace the current system of prior authorization for closely related companies and qualifying holding regime for a system of non-opposition, so that if the General Directorate of Insurance and Pension Funds does not oppose to the proposed transaction, it will be possible to carry it out.

The three articles of the Law refer, respectively, to the modifications required to incorporate the provisions of Directive 2007/44/CE to the regime of qualifying holdings foreseen in Law 24/1988, of 28 July, on the Securities Market, in Law 26/1988, of 29 July, on discipline and intervention of credit institutions and in the Consolidated Text of the Law on regulation and supervision of private insurance. This Law introduces into the three mentioned rules, with the adjustments necessary for each article, the same reformed regime for qualifying holdings, with the following new features:

a) Articles 69.1 of Law 24/1988, 56.1 of Law 26/1988 and 22 of the Consolidated Text of the Law on regulation and supervision of private insurance are amended by giving them a new wording, so that a qualifying holding will arise when reaching at least 10 per cent of the capital or voting rights in the undertaking, thereby eliminating, as required by community law, the previous percentage of 5 per cent.
b) A new duty is introduced, to communicate to the supervisor any non-qualifying holdings that entail reaching or exceeding the 5 per cent capital or voting rights threshold. This new duty does not activate the evaluation procedure, but allows the supervisors to access the information about the existence of such holdings.

c) The different thresholds that determine the undertaking’s duty to notify increases or reductions of qualifying holdings are simplified: 20, 30 or 50 per cent, compared to the previous 10, 15, 20, 25, 33, 40, 50, 66 and 75 per cent.

d) It incorporates the list of strictly prudential criteria that must be taken into account both by the Bank of Spain and by the Spanish Securities Market Commission and the General Directorate of Insurance and Pension Funds when evaluating the suitability of the potential acquirer who has decided either to acquire a qualifying holding or to exceed the mentioned thresholds with its new holding.

Based on these criteria, or in the cases where the information sent by the acquirer is incomplete, the supervisors may oppose to an acquisition or increase of qualifying holdings.

The new criteria refer to the honourableness and solvency of the acquirer, the honourableness of the undertaking’s future directors, the entity’s ability to comply with the regulatory obligations imposed on the same, and the non-existence of reasonable grounds to believe that money laundering transactions or terrorist financing is being committed. In order to obtain an adequate evaluation of this last criterion, the duty to request a report from the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Infringements is introduced.

e) Regarding the design of the evaluation procedure, the deadlines for each of the phases are clearer and more transparent.

f) Cooperation between the supervisor of the acquirer and target undertaking is reinforced, both within Spain, through the cooperation among the Bank of Spain, the Spanish Securities Market Commission and the General Directorate of Insurance and Pension Funds, as well as among the supervisors of the different Member States of the European Union.

It is intended, mainly, that the competent authorities shall work in close cooperation when verifying the suitability of a potential acquirer who is an undertaking authorized in another Member State or, within Spain, regulated in another activity sector.

The last part of the Law includes two additional provisions regarding measures in the airport scope and regarding the review of the community emission allowances commerce system, a general derogatory provision and nine final provisions regarding the amendment of the Law on mediation in private insurance and reinsurance, the amendment of the Law on Collective Investment Undertakings, the amendment of the Law on Public Limited Companies, the amendment of the Law on the regime of real estate investment funds and companies and mortgage securitization funds, the amendment of Royal Decree-Law 18/1982 on Deposit Guaranty Funds in Savings and Credit Banks, the attribution of powers, the authorization for the Government to issue the implementing regulations, the incorporation to the Community Law and its entry into force.

**Law 6/2009, of 3 July, amending the Legal Statute of the Insurance Compensation Consortium, approved by Royal Legislative Decree 7/2004, of 29 October, to eliminate the functions of the Insurance Compensation Consortium as regards travel and hunting insurance and reduce the surcharge used to finance the liquidation functions of insurance companies, and the consolidated text of the Law on regulation and supervision of private insurance, approved by Royal Legislative Decree 6/2004, of 29 October.**
Law 6/2009, of 3 July, came into force last 4 August 2009, and amends the Legal Statute of the Insurance Compensation Consortium, whose article 14 entrusts to such public institution, among other functions, the one of assuming the condition of liquidating entity with regard to insurance companies subject to the execution power of the State or the autonomous communities, when the Ministry of Economy and Treasury or the competent body of the respective autonomous community orders the liquidation thereof.

According to the Stated Purpose of the Law, the favourable development of the Consortium’s liquidation activity as a consequence of the foreseen synergies has enabled a satisfactory performance of the liquidation procedures and, thanks to an efficient financial management of the resources, it has also recorded a positive evolution of the funds available in such entity for the performance of this activity and, in view of this, it is possible to guarantee the future satisfactory development of the Consortium’s liquidation activities with a lower income from surcharges than the current one; for this reason, the surcharge is reduced in fifty per cent, and becomes 1.5 per thousand.

Additionally, the exclusion that operated for credit enhancement when applied to the own insurance companies, whenever they concurred in the liquidation of another insurance company with regard to which they were a creditor because of an insurance contract is suppressed, and this is because there seem to be no reasons at present that justify such discrimination.

Lastly, the Law eliminates the Consortium’s functions as regards compulsory travel insurance and compulsory hunting insurance consisting in, on the one hand, taking out the coverage of the risks related to such insurance not accepted by the insurance companies, and on the other hand, taking charge of the compensation in certain cases, such as breach of the obligation to insure or the liquidation of the insurance company. Finally, a procedural amendment is introduced, consisting in the possibility of certification of the amounts paid by the Consortium, where a right to restitution exists, by the competent services of the company, in order to make the handling of the mentioned action for restitution speedier.

Resolution of 12 March 2009, of the Spanish Congress, ordering the publication of the Agreement to validate Royal Decree-law 1/2009, of 23 February, on urgent measures in telecommunication matters.

In accordance with the provisions of article 86.2 of the Constitution, the Spanish Congress agrees to validate Royal Decree-law 1/2009, of 23 February, on urgent measures in telecommunication matters, published in the Official State Gazette number 47, of 24 February 2009.


Law 7/2009, on urgent measures in telecommunications matters, was published in the Official State Gazette and came into force on 4 July 2009, which regulates the following aspects:

a) Law 10/2005, dated 14 June, on Urgent Measures for Promoting Terrestrial Digital Television, Liberalizing Cable Television and Promoting Pluralism was amended, by adding a new seventh additional provision with regard to the supplementary coverage of the terrestrial digital television service at state level.

b) Article 19 of Law 10/1988, of 3 May, on Private Television, is amended to the following effect:

i) a new second paragraph is added to the effect that individuals or legal entities may simultaneously have holdings or voting rights in different concessionaires of the state scope public television service. For public television service concessions within this scope, no individual or legal entity may acquire a qualifying holding in more than one concession when the average audience rating for all
state concession channels considered has exceeded 27% of the total audience for the twelve consecutive months preceding the acquisition. Exceeding such percentage after the acquisition of a new qualifying holding will not be considered for the purposes of the application of the provisions of articles 17.2 and 21 bis of Law 10/1988.

ii) adding three new sections 9, 10 and 11.

c) Within the scope of state coverage, the State is prohibited from reserving or awarding to the state owned service providers more than 25% of the radioelectric spectrum available for the television service within the state scope, in accordance with the relevant National Technical Plan.

The Autonomous Communities are competent for the regulatory implementation of the Law, in accordance with their respective Statutes of Autonomy.

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Labour

Unemployed workers who exhaust the unemployment benefit or do not collect the same, may redeem pension funds in advance

The Council of Ministers approved amendments to the pension scheme and fund regulation, so that unemployed workers who are not collecting a benefit, either upon exhaustion thereof or because they are not entitled to the same, may redeem such schemes and funds and withdraw the same without delay.

What the Government has eliminated is the requirement of continued unemployment for a period of 12 months, so that unemployed pension fund holders may dispose earlier of their pension scheme, once the unemployment benefit has been exhausted, or if they are not entitled to the same. At the same time, the self-employed worker who discontinues activity and registers as unemployed may also redeem the plan without waiting for such period.

The Supreme Court applies the new Constitutional Court doctrine to annul the dismissal of a pregnant employee who did not communicate her condition to the company

The Supreme Court has applied for a second time the new doctrine established by the Constitutional Court in July 2008, to declare void the dismissal of a pregnant employee who did not communicate her condition to the company where she worked. Until the decision issued by the Constitutional Court, the doctrine considered that it was necessary for the company to know the pregnancy of the employee to conclude that a fundamental right had been infringed, as the company alleged in its appeal in cassation.

In the case now analyzed by the Supreme Court, the employee, two days after her dismissal, took a pregnancy test which was positive, although she never communicated this fact to her company. According to the judgment of the Supreme Court, her case is "substantially identical" to the one analyzed last July by the Constitutional Court and to the one already applied by the Labour Division in a judgment rendered on 17 October 2008. The judgment of the Supreme Court contains the dissenting vote of the judge Antonio Martín Valverde, who defends the doctrine previously applied by the Supreme Court, prior to the judgment of the Constitutional Court, since he considers that "the specific issue debated concerns ordinary legislation and does not refer to the constitutional guarantees concerned in the legal regulation of fundamental rights".

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Tax

Legislation

Value added tax

Value added tax and special taxes. Order EHA/1729/2009, of 25 June, which approves the form of Certificate for the exemption from the Value Added Tax and Special Taxes in deliveries of goods and services performed within the framework of diplomatic and consular relations and in the ones made to international organizations or armed forces of Member States who belong to the North Atlantic Treaty, other than Spain, and which approves the sending of VAT self-assessments. (Official State Gazette 2009-06-30)

Collection procedure

Order EHA/1030/2009, of 23 April, whereby the limit exempted from the obligation to provide security in requests to defer or fraction the payment is raised to Euro 18,000. (Official State Gazette 2009-04-30)

Order EHA/1621/2009, of 17 June, which raises to Euro 18,000 the limit for the exemption from the obligation to provide security in the requests to defer or fraction the debts derived from taxes assigned and collected by the Autonomous Communities. (Official State Gazette 2009-06-18)

Resolution of 10 July 2009, by the General Directorate of the State Tax Administration Agency, whereby a procedure is established to effect by telematic means the attachment of money in accounts open in credit institutions for procedures of an amount equal or less than Euro 20,000. (Official State Gazette 2009-07-22)

International taxation


European Union


Jurisprudence

Personal Income Tax

Judgment of the Higher Court of Justice of Cataluña, of 4 October 2007. Deductibility, for Personal Income Tax purposes, of expenses regarding the leasing or renting of a private car by an architect.

In this case, 3 matters are raised in the appeal: a) The absence of a valid notice for the year settled; b) The failure to provide a reasoning for rejecting the expenses, which refer to two types of expenses, the first ones, regarding the leasing or renting of a private vehicle, and the others, regarding sundry expenses related or not to the professional activity carried out by the appellant (Architect), who has to get to the works, and therefore needs a vehicle, which must be considered as assigned to the activity and therefore, both the leasing payments and other expenses of the vehicle are deductible, given that he already had another vehicle for his private use; and c) Absence of a punishable infringement

With regard to point b) of the appeal, the Higher Court of Justice of Cataluña explains that the taxpayer is not obliged to prove the correlation between expenses and income of the activity beyond that resulting from his tax return-assessment and accounting, and therefore, the Inspection Authorities are the ones that must prove that, contrary to that stated in the accounting records, the expenses are not related to the activity.

Taxation of gifts made by Banks to their clients

A judgment of the Spanish High Court of Appeals has established a judicial precedent in connection with the gifts that credit institutions occasionally offer to their clients for domiciling their payrolls, etc.

This judgment affirms in the relevant case, that the insurance offered by a financial institution is not related to the assignment of the institution’s resources, but rather is a stimulus to promote the engagement of new clients or the permanence of existing ones, and is not to be considered to amount to a consideration for the product or service subscribed. Therefore, they are not capital income in kind, but rather capital gains not subject to withholding, which will be taxed according to the new personal income tax at the marginal rate, since they do not derive from a transfer.

Land owners’ Consortium. Development of land

Adherence to a Land owners’ consortium for the development of land which already has some buildings which are planned to be demolished. Tax effect of the compensation that the taxpayer is going to collect for such demolition. Tax treatment of the compensation: under the assumption that the development of land is not an economic activity, the collection of compensation for demolishment will entail the existence of a capital gain or loss, since it will cause a variation in the value of the taxpayer’s assets, which shall be taxed as general tax base, and will be calculated as the difference between the value of the buildings and the compensation received.

Judgement of the Spanish Higher Court of Appeals of 13 April 2009

The Spanish Higher Court of Appeals has invalidated the availability criterion that the Inspection had used until now, and which has been confirmed by the Central Economic-Administrative Court (TEAC), to determine the existence of income in kind, in the events where the companies make vehicles available to the employees both for work and private use. The calculation of the remuneration in kind cannot be made based on the employee’s entitlement to use the same, without considering the characteristics of the work post, and therefore evaluating the actual use of the vehicle.

Inheritance and Gift Tax

Donation of marital property

The judgment of the Supreme Court, of 18 February 2009, upholds the
question regarding the unlawfulness of article 38 of the Inheritance and Gift Tax Regulation, a rule that affects the donation of marital property, because it considers that it infringed, among others, the constitutional principles of matters reserved to law, equality and progressivity. The effects of annulling this article are relevant because the settlement of two donations instead of one will allow in most cases to cut the progressiveness of the Tax.

Judgment of the Supreme Court of 18 March 2009

The Supreme Court has determined that for the purposes of calculating the Inheritance and Gift Tax in the event of the decease of a relative, a reduction of 95% must be effected for the acquisition of the family business with regard to the value of the same, understanding as such the assets that such value adds or contributes to the taxable base, and the liabilities exclusively linked to the same. The reduction must be made on the amount of such asset for tax purposes, without deducting other items, such as charges or debts unrelated to the same, as it was affirmed in Resolution 2/1999 of the General Tax Directorate.

Value Added Tax

Earnest money agreement: Administration’s change of criterion

In the event of an acquisition of homes from the builder, which at the time of executing the sale and purchase agreement foresees a deposit of earnest money, while the homes are still being developed, the early accrual of the Tax occurs, and the purchaser is charged VAT at a 7% rate (art. 91. section One. number 7 Law on VAT), since it is the first transfer of an already finished home, even if it is still under construction at the time the agreement is signed. If the purchaser withdraws from the purchase, it will lose the amount deposited with the builder as a lump sum indemnity, but the latter will be obliged to issue a rectification invoice, given that indemnities are not taxed under this tax (art. 78.3.1º Las on VAT), recovering this way the VAT charged at the time of the payment of the earnest money deposit.

According to the previous criterion of the Tax Authorities, in this same case, the amounts paid in advance to the developer as indemnity, as well as the VAT paid when the first invoice was issued, would be lost, since they would have been considered to be subject to the tax and could not be recovered in any way.

Transfer of ownership from one spouse to the other

Transfer of ownership of a business from one spouse to the other, as a result of the dissolution of the marital property regime. With regard to the Value Added Tax, the transfer would be a transaction not subject to VAT, provided that the acquirer intends to continue with the economic exploitation of the properties and rights acquired. With regard to its treatment under the Personal Income Tax, the law provides that there is no alteration in the composition of the assets in the event of dissolution of the marital property regime.