TICEPosts

Tax, Legal & Accounting

Notes on current tax, legal and accounting matters regarding the Technology, Information, Communications and Entertainment sectors

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A new General Telecommunications Act has been passed

On 10 May 2014, a new General Telecommunications Act was published in Spain which, amongst other matters, includes the elimination of licences and permits. The new regulations of this Act simplify the procedures for the rolling-out of electronic communications networks and radio-electrical stations in both the public and private domain, where licences can be replaced by roll-out plans and what is known as *statements of compliance*.

In addition, the installation and roll-out of public electronic communications networks are considered to be *works of general interest*.

Regulations for territorial public administrations may not include absolute restrictions or restrictions which are disproportionate to the right of occupation of the public and private domain or impose solutions, itineraries or specific locations for the roll-out of networks.

No licences or permits of any type may be demanded for the installation of antennae (radio-electrical stations) or for the installation of private domain networks if the operator presents a roll-out plan approved by the public administration and a *statement of compliance*.

For the approval of urban and territorial planning which affects the roll-out of networks, public administrations should firstly obtain a report issued by the Ministry of Industry, Energy and Tourism, which will be binding and will prevail over any other report or document.

Operators are recognised the right to shared use of infrastructures of other sectors, including those of public administrations.

This new regulation may conflict with the local and regional regulations which currently do not comply with the criteria established by law.

The new General Telecommunications Act amends the Spanish Information Society and Electronic Commerce Services Act 34/2002, of 11 July 2002. The amendments to this Act include, most notably, the elimination of the obligation to identify commercial communications sent electronically as *advertising* or *publicity*.

In addition, regarding the use of cookies, deliberately and continually ignoring a recipient's request that cookies not be installed on computer equipment or continuing to process collected data when consent to such processing has been withdrawn is classified as a serious infringement.

The authorities which assign domain names may suspend a domain name which commits a crime or offence established by the Spanish penal code, as a precautionary measure, or may even cancel it.

New anti-money laundering regulations

New regulations to combat money laundering and financing of terrorism implemented under Law 10/2010 came into force and were published in Spain on 6 May 2010.

The new regulations include provisions giving full details of the three types of due diligence measures (simplified, normal and reinforced) which should be adopted by obliged parties depending on their business activities, products and clients, and with respect to which they should previously analyse the main risks which they may come up against.

There are some specific regulations for gaming operators, such as the obligation to give formal identification when prizes over Euros 2,500 are paid or the requirement to establish a manual of procedures with a certain minimum content.

The National Court of Spain has declared that VAT is deductible on business entertainment expenditure

The National Court of Spain gave a judgment on 23 December 2013 which stated that input VAT on business entertainment expenses incurred for professional activities was deductible.

This new position on the deductibility of these expenses is the result of rulings of the Court of Justice of the European Union which have declared that the exclusion of the right to the deduction for these expenses is not in line with the aim to combat fraud and tax evasion and the principle of neutrality of the tax declared in the Sixth EU Directive.

The National Court of Spain does not allow VAT to be deductible on all types of business entertainment expenses, only those expenses where it can be proven that they are needed to carry on the professional activity. This will of course also require that the invoice would be issued to the Company with the VAT quota disaggregated.

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A 30% withholding is payable by Spanish companies which do not comply with FACTA regulations

Spain and the USA have recently made an agreement on the US Foreign Account Tax Compliance Act (FATCA), which establishes some reporting obligations and a system of withholdings if these obligations are not met (applicable as from 1 July 2014).

Although FACTA mainly affects financial entities, it also have an important effect on all companies.

Firstly, many non-financial multinational groups include companies or entities which will initially come under the scope of FATCA (holding companies, cash centres, etc.). However, there are some exceptions for these types of companies/entities if they comply with certain requirements regarding their assets and revenue.

In addition, Spanish companies/entities, whether financial or non-financial, which receive payments from the USA should certify their classification for FATCA purposes to the payer, otherwise, they may be subject to a 30% withholding.

This classification is also required for group companies which do not obtain US source income. If this obligation is not met, all of the group companies may have to pay the 30% withholding.

Companies which possess, administer or pay US source income may be required to report certain payments to non-US companies or pay a withholding on such payments.

Finally, it is likely that FACTA documentation will be requested from persons/companies with accounts in financial entities regardless of whether US source income passes through these accounts or not, as these accounts should also be adapted to this legislation.

Boards of directors are exclusively responsible for companies' tax planning

Spain's Cabinet passed a bill on 23 May 2014 as a reform of its Capital Companies Act with the aim of improving corporate governance.

New matters in this bill which were not previously stated in the draft bill include, most notably, the regulation that boards of directors of listed companies are exclusively responsible, and such responsibility is not transferable, for establishing policies on managing and controlling tax risks, approving investments and operations which have a special tax risk and determining a company's tax strategy.

The new bill also includes the obligation for companies to state their average payment terms for suppliers in the notes to their annual accounts. For listed companies, this information should also be published on their websites.

New double tax treaties with the UK and Cyprus

Spain has increased its list of double tax treaties this month with the publication in the Spanish Official Gazette of new tax treaties with the UK and Cyprus on, respectively, 15 and 26 May 2014.

These tax treaties, which will come into force in the next few days, have some new regulations common to both of them, such as the tax exemption in the source member state of dividends for companies in which at least a 10% interest is held and taxation exclusively in the member state of residence of recipients of interest and royalties.

These two new tax treaties are in addition to those passed during the current Spanish government's term of office (tax treaties with Argentina, Austria, Bahrain, India, the USA and Uzbekistan).

The European Union recognises the right to be forgotten

A European Union Court of Justice ruling given on 13 May 2014 states that internet search engines should remove links to information published in the past if such links are detrimental to a citizen and no longer relevant.

This ruling states that persons/companies managing internet search engines are responsible for the processing of personal data on websites published by third parties and, consequently, they should respect the EU directive on data protection.

As a result, the ruling recognises the right that EU citizens may directly ask search engines to remove information concerning them and, if this request is not met, to seek protection from the data protection authorities/agencies and the courts for the relevant verifications to be made and for the person responsible for the search engine to be ordered to adopt the corresponding measures.

New additional time period to pay social security contributions

In a decision issued by the Spanish social security authorities on 6 May 2014 and published in the Spanish Official Gazette on 15 May 2014, the period to deposit social security contributions for new concepts and amounts to be included in the social security contribution base has been extended in light of the amendment to Section 109 of the Spanish General Social Security Act introduced by Royal Decree-Law 16/2013, of 20 December 2013. The period is extended to 31 July 2014 and the social security contributions should be deposited by filing supplementary contribution forms (with no surcharge or late payment interest being applicable).

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