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# *Approval of the rewritten text of the Labour Statute and General Social Security Act*

Under the single Article of Law 20/2014, of 29 October 2014, whereby the authority to issue various rewritten texts is delegated to the Government, by virtue of the provisions of Articles 82 et seq. of the Spanish Constitution, the Government has been authorised to approve, within twelve months of the coming into effect of such Law ( 31 October 2014), various rewritten texts, amongst them the rewritten text of the Labour Statute.

The structure of the new rewritten text of the Labour Statute, approved by Royal Legislative Decree 2/2015, of 23 October, is very similar to the old Statute (approved by Royal Legislative Decree 1/1995, of 24 March).

Given that no other date was expressly established, the new Labour Statute came into effect pursuant to the provisions of Article 2 of the Spanish Civil Code , twenty days after its publication in the Official State Gazette: on 13 November 2015.

Certain changes are found in Article 2, which regulates special employer/employee relationships (lawyers, stevedores ); Article 8, on the form of the contract; as concerns training contracts (terminology changes), etc.

Likewise, worthy of mention is the publication on 30 October 2015, of Royal Legislative Decree 8/2015, of 30 October, whereby the rewritten text of the General Social Security Act was approved.

In accordance with the above legal text, this new rule aims to integrate the rewritten text of the General Social Security Act, approved by Royal Legislative Decree 1/1994, of 20 June, and other legal provisions.

The main changes introduced by the new wording of the General Social Security Act are: (i) the introduction of a new Section called "Recognising, establishing and maintaining the right to benefits ", (ii) the introduction of the basic regulation of the Register of Public Social Benefits, (iii) the centralisation in one article of the special features of the benefits and services managed by the collaborative mutual societies, and (iv) the establishment of cases in which the competent bodies shall inform the managing bodies of the Social Security for the purposes of the benefits.

## *Unblocking of the new Double Tax Treaty with the US*

On 10 November, the US Senate Committee on Foreign Relations approved several treaties for the avoidance of International Double Taxation that were pending ratification. Such treaties include the US/Spain Treaty which shall be approved shortly by the plenary session of the Senate.

The new Protocol, which had been blocked since 2013, introduces substantial changes to the current Treaty, in force since 1990. Under the new Treaty, several maximum withholding rates are reduced, taxation at source is eliminated in the majority of cases, interest and royalties are exempt from withholding save exceptions, capital gains shall not be subject to tax at source unless they derive from the disposal of properties or companies whose assets consist mainly of such properties, amongst other measures. The mechanisms for the avoidance of double taxation through mutual agreement procedures are enhanced and a limitation-on-benefits clause is introduced.

## *New regulations governing the Canary Islands Economic and Fiscal Regime*

Royal Decree 1022/2012, of 13 November, amending the Canary Islands Economic and Fiscal Regime (REF) has been approved.

Among the main changes introduced, attention is drawn to the clarification of how to materialise the Canary Islands Investment Reserve (RIC), the introduction of several technical and procedural changes for the Canary Islands Special Zone and the introduction of new rules on the control and monitoring of State aid included in the REF.

The new REF envisages important tax benefits such as creating a deduction for investments in West Africa and export activities, increasing the deduction for technological innovation and maintaining the increased deduction limits for investments in cinematographic productions and audio-visual series and live theatre and musical performances.

## *Reform of the Common Administrative Procedure Law*

Law 39/2015, on Common Administrative Procedure was published on 2 October, replacing, amongst others, Law 30/92 governing public bodies and common administrative procedure.

The new regulation aims to promote a fully electronic Administration, interconnected and transparent, through the electronic management of the procedure, by the Administration citizens.

The rule will come into effect on 2 October 2016 (except certain provisions on the electronic register which will come into effect a year later).

Among the main novelties of the rule, the following are worthy of highlight :

- Companies, entities without a legal personality and professionals who are required to become members of a professional association, inter alia, shall use electronic means in their dealings with the public authorities.

- Notices shall be served preferably by electronic means.

- Time limits shall be computed by hours (up to a maximum of 24) and Saturdays become non-business days.

- Disciplinary proceedings and proceedings relating to financial liability are no longer regulated as special procedures but as specialties of the common administrative procedure.

- A common administrative procedure of simplified processing is introduced, with a maximum period of 30 days for issuing a resolution.

- Reviews instigated on an ex officio basis and current types of appeal are maintained.

- The filing of a prior administrative claim in civil and labour proceedings is eliminated.

## *BEPS and transfer pricing*

One of the main actions included in the OECD Base Erosion and Profit Shifting (BEPS) Project is to assure that transfer pricing outcomes are aligned with value creation, reviewing the OECD guidelines on this matter.

Among the measures to be developed are providing tax administrations with sufficient authority to apply rules based on real results to price hard to value intangibles and assets ; limiting the return on the investment to entities whose activities are limited to providing funding for the development of intangibles and potentially other activities; requiring contingent payment terms or the application of profit split methods for certain transfers of hard to value intangibles; and requiring the application of specific rules in cases of excessive capitalisation of low function entities.

## *Funding for audio-visual works in Europe*

Royal Decree 988/2015, of 30 October, which establishes the legal framework that regulates the obligation to pre-finance certain European audio-visual works has been approved. The Royal Decree, which abolishes the previous Royal Decree 1652/2004, aims to develop the provisions of Article 5.3 of General Law 7/2010, on Audio-visual Communication which establishes the obligation of audio-visual communication service providers to contribute annually to the financing of European audio-visual works with five per cent of the income accrued in the previous year.

The Royal Decree establishes the procedure, computation mechanisms and information that may be obtained from operators to control compliance with the obligation, notwithstanding any implementing rules that may, where appropriate, be enacted by the Autonomous Communities, with respect to broadcasts whose coverage area is limited to autonomous regions.

## *Resolution of the question referred to preliminary ruling concerning collective dismissals*

Following the referral of a question to preliminary ruling concerning the interpretation of Article 1 of Council Directive 98/59/EC on the approximation of the laws of the Member States relating to collective redundancies, the CJEU has stated that: (i) workers with a fixed term or specific task contract shall be considered as workers "habitually" employed by the work centre within the meaning of the Directive ; (ii) when determining whether the dismissal is a collective dismissal, the requirement that the number of workers dismissed be at least 5 shall not refer to terminations of employment contracts that may be assimilated to dismissals but to dismissals in the strict sense of the term; and (iii) the fact that an employer unilaterally changes the essential elements of the employment contract, for reasons not inherent to the worker, and such changes are to the detriment of the worker, shall fall under the definition of dismissal within the scope of the Directive.

## *Jersey, Guernsey and Isle of Man cease to be tax havens*

The three British territories of the Channel Islands shall cease to qualify as tax havens as a result of the tax information exchange agreements signed with the Spanish tax authorities and shall be removed from the list of territories officially classified as tax havens. Under such agreements, Jersey, Guernsey and the Isle of Man undertake to provide information that is foreseeably relevant to the determination, assessment and collection of tax, the recovery and enforcement of tax claims and the investigation and prosecution of cases related to tax matters .

***Should you require more detailed information on any of the points referred to in this publication, please consult your usual contact person at PwC or send an e-mail to ticeposts@es.pwc.com.***