



NEWSLETTER CORPORATE LAW

March 2017

HIGHLIGHTS

PERSONAL INCOME AND CAPITAL TAX (RETURN MODELS 2016). Order HFP/255/2017, of 21 March, which approves return models for the Personal Income Tax and of Capital Tax, year 2016, determines the filing place, form and time periods, establishes procedures to obtain, modify, confirm and file the draft return for the Personal Income Tax, determines general conditions and the procedure to file both by internet or telephone means and modifies Order HAP/2194/2013, of 22 November, which regulates procedures and general conditions to file certain self-assessments, informative returns, census returns, communications and requests of return, of tax nature. [Full text.](#)

PATENT ACT. Law 24/2015, of 24 July, of Patents, becomes effective from April 1, 2017. It equates the Spanish regulation on Patents to the international field and strengthens the national Patents system, establishing a legal framework which gives priority to the truly inventive and innovative activity. [Full text.](#)

REGULATION ON PATENTS. Royal Decree 316/2017, of 31 March, which approves the Regulation for the execution of Law 24/2015, of 24 July, of Patents. [Full text.](#)

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OTHER OUTSTANDING REGULATION DEVELOPMENTS

- **RENDERING OF PORT SERVICES.** Regulation (EU) 2017/352 of the European Parliament and Council, of February 15, 2017, which creates a framework to render port services and adopts common rules on ports' financial transparency. [Full text.](#)
- **INSURANCE AND REINSURANCE ENTITIES.** Circular 1/2017, of 22 February, of the General Directorate of Insurance and Pension Funds, which establishes the contents of the special review report on the financial situation and solvency, individual and of groups, and the person in charge of its elaboration. [Full text.](#)
- **USE OF RADIO PUBLIC DOMAIN.** Royal Decree 123/2017, of 24 February, which approves the Regulation on the use of radio public domain. [Full text](#)
- **LIST OF THIRD COUNTRIES SUBJECT TO VISA OBLIGATION.** Regulation (EU) 2017/371 of the European Parliament and Council, of March 1, 2017, which modifies the Regulation (EC) no. 539/2001 of the Council, which establishes the list of third countries whose nationals are subject to the visa obligation to cross external frontiers and the list of third countries whose nationals are exempt from such obligation (review of the suspension mechanism). [Full text.](#)
- **LAND PROPERTY, COMPANIES AND PERSONAL PROPERTY REGISTRIES.** Royal Decree 195/2017, of 3 March, which modifies the demarcation of Land Property, Companies and Personal Property Registries. [Full text.](#)
- **REDUCTION OF CHARGES FOR PROFESSIONAL CONTINGENCIES TO COMPANIES WITH LOW ACCIDENT RATE.** Royal Decree 231/2017, of 10 March, which regulates the establishment of a reduction system for contributions for professional contingencies to companies that have considerably decreased working accidents. [Full text.](#)
- **FOUNDATIONS. RECORDS' LEGALIZATION.** Order JUS/221/2017, of 9 March, on electronic legalization of records in foundations under State's jurisdiction. [Full text.](#)
- **URGENT MEASURES TO PROTECT MORTGAGORS.** Royal Decree – Law 5/2017, of 17 March, which modifies Royal Decree-Law 6/2012, of 9 March, of urgent measures to protect mortgagors without resources, and Law 1/2013, of 14 May, of measures to reinforce the protection of mortgagors, debt's restructuring and social renting. [Full text](#)
- **INSTALMENTS.** Order HFP/227/2017, of 13 March, which approves model 202 to settle interim instalments of the Corporate Income Tax and Non-Residents Income Tax corresponding to permanent establishments and entities under income allocation system, incorporated abroad with presence in the Spanish territory, and model 222 to settle interim instalments of the Corporate Income Tax under tax consolidation system, and establishes general conditions and the electronic filing procedure. [Full text](#)



NOTABLE RESOLUTIONS OF THE DIRECTORATE GENERAL REGISTRIES AND NOTARIES

DGRN. TRANSFORMATION OF A CIVIL PARTNERSHIP INTO A LIMITED COMPANY. Resolution of February 16, 2017. [Full text.](#) The DGRN analyzes the suspension of the inscription of a deed for the transformation of a civil partnership into a limited company with regards to the manner and timing of the agreement's publication. The DGRN concludes that the publication is allowed *"in a daily newspaper present notoriously in the virtual totality of all distribution points of said social communication media"*. With regards to the date of publication, the DGRN confirms the registrar's negative qualification, since the agreement was published at a date prior to its adoption.

DGRN. EQUITY LIQUIDATION WITH CANCELATION OF THE COMPANY'S SHEET. Resolution of March 10, 2017. [Full text.](#) When a bankruptcy administrator has not been appointed, the consequence must be the prior administrators' automatic conversion into receivers, so that the last administrator with inscribed position will, acting as receiver, will maintain his/her representation power, limited, as with the company's personality, to liquidation operations.

DGRN. CERTIFICATION OF COMPANY'S POSITIONS. Resolution of March 1, 2017. [Full text.](#) The DGRN denies the issuance of certification for companies where appellants were administrators or proxies throughout the national territory, since the information is requested without specifying the corresponding companies. It is stated that the registrar can only certify with regards to the contents of the filed held in the registry. Furthermore, in order to issue information not on the basis of the company, but of the person, the justifying legitimate interest must be evidenced to the registrar.

DGRN. POWERS OF ATTORNEY. Resolution of March 2, 2017. [Full text.](#) The DGRN denies the inscription of a power of attorney granted by the sole administrator of a corporation due to the fact that, since the corporation holds professional purpose and has not adapted to Law 2/2007, of Professional Companies, such company would have been dissolved, reflecting such fact in the registration sheet.



QUESTIONS OF SPECIAL INTEREST FOR DIRECTORS AND MANAGERS

DGRN. REGISTRAR'S REFUSAL TO INSCRIBE THE APPOINTMENT OF A COMPANY'S ADMINISTRATOR. Resolution of February 8, 2017.

[Full text.](#) The DGRN must decide whether it is possible to inscribe the appointment of a listed corporation's administrator through the co-optation system when, after the vacancy's date, two general meetings have been held. The registrar rejects the appointment's inscription since the general meeting had the possibility to cover the vacancy and did not cover it.

Directors 3.0

by  MAZARS

RULING BY THE COURT OF JUSTICE OF THE EUROPEAN UNION (MATTER C-398/15) OF MARCH 9, 2017. RIGHT TO BE FORGOTTEN OF DATA AS A COMPANY'S ADMINISTRATOR. [Full text.](#)

A sole administrator in a dissolved company requests the elimination of his personal details to prevent being related to the company. The TJUE delimits the acting scope of the digital elimination right, considering that it cannot be applied in relation to personal data gathered in companies' records. However, the door is left opened by admitting that "*after a sufficiency long period of time is elapsed*", once the corresponding company is liquidated, the Member States could establish the restricted access to these data by third parties in exceptional cases.

RULING BY THE SUPREME COURT OF MARCH 2, 2017. INDIVIDUAL LIABILITY ACTION. [Full text.](#)

The necessary requirements are analyzed in order to estimate the individual action brought against board members in a limited company, that is to say: i) administrators' active or passive behaviour; ii) conduct allocable to the board of directors as such; iii) illegal conduct due to the breach of law, bylaws or for not adjusting to the diligence standard of a prudent employer and loyal representative; iv) conduct subject to causing damage; v) direct damage to contracting third party; vi) causality relation between conduct and damage.

REMARKABLE CASE LAW

RULING BY THE COURT OF JUSTICE OF THE EUROPEAN UNION (MATTER C-568/15) OF MARCH 2, 2017. [Full text.](#)

The TJUE declares that the cost of an assistance telephone call operated by a dealer cannot exceed the cost established by a standard fixed or mobile phone call, in relation to article 21 of Directive 2011/83 of the European Parliament and Council, of October 25, 2011, on consumers and users' rights.

RULING BY THE SUPREME COURT OF MARCH 13, 2017. PLEDGE OF FUTURE CREDITS IN ARRANGEMENTS WITH CREDITORS. [Full text.](#)

The Supreme Court tackles the question of resistance of the pledge of future credits in arrangements with creditors. The Supreme Court considers that those guaranteed with a pledge of future rights not existing when declaring the proceedings are resistant to the proceedings and grants the qualification of special-privilege credits. They cannot be awaiting agreement and cannot have arisen once the proceedings were declared.

RULING BY THE SUPREME COURT OF MARCH 1, 2017. CRITERION OF GROSS MARGIN IN THE COMPENSATION FOR CLIENTELE. [Full text.](#)

The Supreme Court considers that, when calculating the compensation for clientele, in relation to "*gross margin*" or "*net margin*", it is necessary to consider the difference in purchase price and resale price, and it will not be conclusive when such calculation must be performed on gross or net differences.

RULING BY THE SUPREME COURT OF MARCH 16, 2017. [Full text.](#)

The Supreme Court understands, in view of article 96 of the Insolvency Law, that the expression of "*interested party*" also covers the lawyer and attorney, who have right to challenge the list of creditors which did not contain recognition to the credit of their fees.

REVIEW – Debt Default Act. The Supreme Court clarifies the maximum period to pay invoices in trading operations.

The ruling by the civil chambers of the Supreme Court 5128/2016, of 23 November, clarifies provisions related to the determination of invoices' payment terms of Law 3/2004 of fight against debt default in trading operations (hereinafter, LLCM).

The term required by law for the debtor to pay invoices, after having received merchandise or the agreed service, has been subject of constant doctrine and jurisprudential debates, causing reiterated legislative changes during the last years.

In ruling of November 23, 2016, the High Court definitively clarifies the question on the term available to pay invoices under the LLCM.

Initially, article 4LLCM allowed monetary debts, in trading operations, to be paid within the term agreed by the parties and, otherwise, a 30-day maximum term was granted for their payment.

However, the law has undergone important legislative modifications throughout time in order to adapt it to the economic and social reality.

First, by means of Law 15/2010, of 5 July, the possibility to agree the payment term was eliminated, in order to put an end to the increase of defaults, delays and extensions in the settlement of invoices, extending the payment term to 60 days, without an option to increase it through agreement by the parties.

Subsequently, with the modification instrumented by Law 11/2013, of 26 July, of measures to support entrepreneurs and encourage growth and employment creation (hereinafter LMAE), it was decided to establish an intermediate alternative to the previous payment systems, allowing since then the parties' agreement to establish the payment term, and fixing an advisable complementary term of 30 calendar days. With an advisable term of 30 days, the parties are allowed to agree a longer term, with a maximum time limit of 60 calendar days.

All these changes in the conflictive article 4 LLCM have derived in numerous jurisprudential rulings such as in the case where, there being a 180-day payment contractual clause, the Supreme Court decides to establish the law's interpretative criteria in order to clarify and put an end to this kind of void clauses of full right.

Thus, the Supreme Court establishes the following applicable interpretation criteria under the current legislation:

- **The maximum payment term is 60 calendar days, although there is freedom for the parties to reach an agreement. The payment at 30 calendar days is advised.**
- **All agreements exceeding such time limit are void under law, as the interpretative regulation is contravened (art. 6.3 of the Civil Code).**

The Supreme Court concludes stating that the law has a protective function in favour of the weakest (in this case, the subcontractor), who does not have an option but to accept abusive conditions to be able to win the contract. Therefore, the Court claims that *"the mere celebration of the contract does not constitute an act that prevents the weak party, subject to protection, from exercising their right to judicially review the legality of conditions imposed in accordance with the control of abusiveness specifically foreseen for this contracting sector by article 9 of the LLCM"*.

That is to say, the clause establishing a time period above the legally established period is void and the resolution highlights that the fact that the parties have signed it cannot be taken as an "act" that prevents such nullity from being asserted before Tribunals.

The resolution's full text may be found [in this link](#).



OUR OFFICES IN SPAIN

ALICANTE

c/ Pintor Cabrera, 22
03003 Alicante
Tel: 965 926 253

BARCELONA

c/ Diputació, 260
08007 Barcelona
Tel: 934 050 855

BILBAO

c/ Rodríguez Arias, 23
48011 Bilbao
Tel: 944702571

MADRID

c/ Alcalá, 63
28014 Madrid
Tel: 915 622 670

MALAGA

c/ Pirandello, 6
29010 Malaga
Tel: 952 070 889

VALENCIA

c/ Felix Pizcueta, 4
46004 Valencia
Tel: 963 509 212


VIGO

Plaza de Compostela, 17
36201 Vigo

CONTACT



Jorge Rius – Partner

 91 562 40 30

 jorge.rius@mazars.es

More information in www.mazars.es