

June 2019, no. 1

Legal Mixed Zone

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New information letter from Zafo Law

It is a great pleasure for Zafo Law to present this first letter of information on Spanish law.

Since it is part of our DNA to provide legal advice on matters that, in terms of our clients' affiliation with Scandinavia, very often end up being somewhere in the legal mixed zone between Scandinavia and Spain, we have chosen to name our information letter according to this characteristic.

In our new information letter, we will continuously describe conditions concerning Spanish law, which we know from experience are relevant to the Scandinavian interests in Spain.

At Zafo Law, we help both Scandinavian companies, private persons, Scandinavian lawyers, banks and many more in relation to their interests in Spain. It will of course not be everything we write in our information letter that will be equally relevant to every one of our readers, but it might incur an interest anyway...

General legal information about a country other than your own may well prove to be relevant knowledge in another context or at a later moment!

In our information letter we only publish relatively short texts. Often there will be a more detailed description of a specific topic either on our website zafolaw.com or in one of our popular Fact Sheets.

If you would like further information on a topic that you have read about in our Legal Mixed Zone, you are very welcome to visit our website or send us an email at info@zafolaw.com.

We hope that Legal Mixed Zone will be well received!

[Private, tax](#)

Spanish gift tax

Spanish gift tax is payable when a gift transfer takes place in Spanish territory or when the recipient of the gift is tax resident in Spain.

As an example, it is considered a gift in Spain, when the spouse or children, in connection with the purchase of a real estate in Spain, are included in the title deed without paying for their part.

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The gift tax is a local tax and unless otherwise stated by local rules, it is calculated at the same rate as the Spanish inheritance tax by up to 34% for children and spouse and up to 80% for others.

1%: In Madrid, Murcia and now Andalusia, children, grandchildren and spouse pay only 1%.

Condition: The gift transfer must be made in a notarial document.

Andalusia/Murcia: Unmarried couples are treated as spouses in relation to the gift tax, but only if the cohabitation is registered with the Spanish authorities.

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Business

Large Danish company chooses Zafo Law in Spain

A Danish engineering company with more than 500 employees and a three-digit annual million turnover (Danish kroner) has chosen Zafo Law to assist with the establishment of a Spanish subsidiary as an S.A. company that roughly corresponds to a Danish A/S.

In connection with the founding of the subsidiary, Zafo Law has advised on various corporate matters, including the difference between a S.A. and a S.L. company, the former being a necessary form of company, if the company is to be able to supply products or services to the public, while an S.L. company is more flexible and requires fewer resources to manage.

We also advised on the S.A. company's set-up and authority to bind the company, so that flexibility has been achieved in relation to day-to-day tasks in Spain and at the same time it is ensured that the real control and decision-making in relation to significant matters in the subsidiary have been retained by the parent company in Denmark.

In the future, Zafo Law will, through our Global Corporate Management service package, also manage the company's accounting, tax and VAT, annual accounts, payslips etc.

Business, employment law

Companies must register hours for employees

If you do business in Spain and you have employees in this company, you need to be aware of the new rules for registering time for employees.

With effect from May 12, 2019, Spanish companies must register the time when employees are at work and divide it into ordinary and extraordinary time respectively.

The time balance sheet must be given to the employee together with the payslip.

There is (yet) no officially approved method of time registration, and each company must therefore incorporate its own system.

In case of violation of the law, this may be characterized as being either minor violation or gross violation.

The penalty for a minor violation amounts to € 60,00—€ 625,00, while a gross violation is sanctioned by a fine of € 626,00 - € 6.250,00.

You can find further information in our Fact Sheet on the subject (English / Spanish).

“The time balance sheet must be given to the employee together with the payslip“

Business, contracts

“Private” loan agreement is not recognized by Tax Office

In Spain there is a big difference between a private document and a public document.

A private loan agreement between, for example, two private persons or between a parent and a subsidiary will thus not be recognized for tax purposes, and therefore neither the payment of the loan nor its repayments will be treated as such.

In order for a private loan agreement to be recognized by the Spanish tax authorities, it is necessary that the following items are, as a rule, observed:

- The loan agreement must be stamped by a public authority.
- Payment of the loan must be documented eg. by a transfer document.
- Regular real repayments must be made on the loan and they must be documented.

Business, employment law

False self-employed are equated with employees

Some Spanish companies try to avoid the often large monthly payments of social security contributions and the compensation payable to the employee on dismissal by simulating that, instead of an employment relationship, it is a service between a selfemployed person (employee) and the company.

The question then is when it is an employment contract or a service (consultancy agreement).

In the employment relationship, the parties' contractual freedom is limited by the Spanish employment law and the applicable industry agreements.

This means that agreements entered into in violation of this will be considered void. The authorities can thus demand payment of social contributions (typically amounting to 1/3 of the gross salary), just as the employee can claim compensation on dismissal.

According to the employment law and case law, the relationship is considered employment contract, when the following characteristics of the work are present:

- Voluntary (not forced).
- Personal (same concrete person).
- Performed for someone else's account and not own.
- Subordination (management, control.).
- Against payment (salary).

Business, tax

Electronic certificate mandatory for companies

Since 1 January 2017, it has been mandatory for Spanish companies to be able to contact the authorities via an electronic certificate.

This applies both to the submission and registration of information for the company, as well as to the receipt of notifications, including any claims.

The electronic certificate is valid for 2 years, after which it must be renewed. It is used inter alia for:

- Getting a Seguridad Social Registration number.
- Various permits.
- Registration of employees.
- Reporting of VAT and tax.
- Various payments (fee, stamp etc.).
- Submission of annual accounts.
- Product registration.

“The electronic certificate is valid for two years, after which it must be renewed”

It is worth mentioning that the authorities in Spain operate at both national, regional and local level, while notifications are only sent to one and the same electronic address.

Private, tax

Spanish inheritance tax in Andalusia

It was not long ago that the Spanish inheritance tax was changed in Andalusia, so that children and spouses had a deduction of 1 mio euros.

99% deduction: In April 2019, another significant impact has been made in the Spanish inheritance tax in Andalusia, which has introduced a special deduction of 99% in the calculated Spanish inheritance tax for children and spouse.

Unmarried cohabitants: As something new, unmarried cohabiting couples are treated as spouses (inheritance tax) if the cohabitation relationship is registered with the Spanish authorities.

However, this does not mean that everybody can forget about Spanish inheritance tax in Andalusia.

The said deductions do not apply in relation to one's partner's children, meaning merged children will not inherit equally from Spain.

You can read more about Spanish inheritance tax in Spain in our Fact Sheet on this topic.

[Private, inheritance](#)

Spanish inheritance estate after resident Dane

Zafo Law has assisted the heirs of a Dane resident in Spain, who, among other things, had real estate in Spain and in Denmark.

As the deceased was last resident in Spain, the entire estate had to be treated from Spain, thus including a property located in Denmark.

The deceased had (fortunately) set up a Spanish will and outlined his family affairs, so that a notarial declaration was not a necessity.

The testament showed how the deceased wanted the assets in Spain and Denmark to be distributed among the heirs, and there was thus no dispute regarding this.

As the estate was handled from Spain, the probate court in Denmark was not involved, and therefore there was no Danish certificate that could facilitate the registration of the new ownership with the Land Register in Denmark.

Still, Zafo Law managed to register the heirs as new owners in the Land Register in Denmark, and we consider our assistance in this type of case to be specialist advice, and it is our opinion that very few Spanish law offices in similar cases can manage assets in both Denmark and Spain.

[Private, real estate](#)

Rental loft introduced in Catalonia

Valid from June 2019, a threshold has been set for how much a landlord may require in rent when renting homes in certain areas of Catalonia.

The purpose of the law is to limit the amount of rent when the Premises is the primary residence of the tenant and is in an area which is categorized as a tense (tenso) housing market.

According to the new law, the rent for housing located in tense areas can only exceed the reference rent for similar housing by a maximum of 10%.

The rent reference is determined by the local competent authority and the parties to the lease agreement must ensure that it is also included in the lease contract.

Private, real estate

Distribution of Spanish plot from Danish company

In a case that has been tried by several other lawyers before getting to Zafo Law, a Danish company had, in 2006, been distributing a property in Spain as part of a family estate planning, in which a capital reduction had been made in the Danish company, thereby distributing both cash and a plot in Spain to the company's then owner.

However, the owner had never succeeded in registering his access to the property in the Spanish Land Register, and as the property was not registered in the owner's name, but in the company's name, it could not be sold by the owner either.

The lack of registration was probably due to the fact that previous attempts had failed to obtain a sufficient understanding of the transaction carried out in Denmark, so the transfer could not be documented and registered by the Spanish Notary and the Spanish Land Register.

However, Zafo Law managed to get the property registered in the name of the owner, after which the property could be sold.

Private, tax

Spanish tax return 2018 for residents

Most resident Scandinavians in Spain are covered by the exemption clause to the Spanish main rule concerning when you are obliged to submit a Spanish tax return, which means that they must submit a Spanish tax return for 2018 before 30.06.2019.

Tax resident: You are regarded as a tax resident in Spain in the following cases:

- Stay in Spain for more than 183 days within the same calendar year.
- Main personal or financial interests are in Spain.

There is a presumption of tax residence when spouse or minors have a common residence in Spain.

General rule: Spanish tax returns must not be filed when the annual ordinary income has been less than 22,000 euros.

There are several exceptions to this, among other things:

Exception 1: The payer of the income is not obliged to withhold Spanish tax.

Exception 2: The taxpayer wants to deduct foreign paid tax in his Spanish tax statement.

Scandinavian pension: Since a Scandinavian payer is not obliged to withhold Spanish tax, but Scandinavian tax, and since the taxpayer will deduct the Scandinavian tax in the calculation of Spanish tax, a Spanish tax return must be filed in this case.

Private, tax

Spanish wealth tax return 2018

A tax return of Spanish assets must be submitted for the year 2018 before June 30, 2019 in the following cases:

Residents: Global assets with a total net worth more than 700,000 euros (varies locally) or a total gross worth of more than 2 million euros.

Non resident: Spanish assets with a total net worth more than 700,000 euros (varies locally) or total gross worth more than 2 million euros.

Tax rate: 0.2% - 3.45% depending on worth and region.

Wealth tax limit: The total income and wealth tax must not exceed 60% of the taxable income. The wealth tax may, however, be reduced up to 20% of the calculated wealth tax. Only assets that has generated income is included in this calculation.

The limit is of particular relevance in cases where a smaller income is received, while wealth is large.

Special deductions: La Rioja and Madrid regions provide special deductions in the calculated wealth tax of 50% and 100%.

“The total income and wealth tax must not exceed...”

Litigation

Recognition of Danish judgment in Spain

When a foreign judgment has been obtained and is to be enforced in Spain, for example because the convicted counterpart lives in Spain or has its fortune or part of it in Spain, the first necessary step is to have the foreign judgment recognized and granted legal force in Spain.

It is only when the foreign judgment has been recognized in Spain that it will be possible to get the help of the Spanish courts to execute the judgment.

In Spain, a special judicial process (exequator) is initiated, where the judge only decides whether the foreign trial has complied with fundamental legal principles.

- The following must as a minimum be documented:
- The judgment cannot be appealed.
- The convicted person has been properly notified of the judgment.

Documentation in English is not accepted and must be endorsed with Apostille.

Lawyerpress interviews partner in Zafo Law, Vicente Sebastián Ruiz

Spanish media, Lawyerspress, which focuses on news about the law firm business in Spain, has interviewed co-founding partner at Zafo Law, Vicente Sebastián.

It is interesting reading about Scandinavia seen through the eyes of a Spanish lawyer.

That is, a Spanish lawyer with 22 years of experience in consulting in Spain of primarily Scandinavians and Scandinavian companies, who over the years has observed and acquired a solid knowledge of Scandinavia and Scandinavian interests in Spain.



Vicente Sebastián Ruiz

In addition, Vicente Sebastián occupies an active and prominent role in Círculo Empresarial Danés de Barcelona, a business association founded in 2011 in Barcelona, with its focus on the companies in the mixed zone between Denmark and Spain.

Vicente Sebastián Ruiz highlights in the interview, among other things, that in 2019 Denmark is the European country that is highest placed on the World Bank's list of countries where it is easiest to do business, and that Denmark globally is only surpassed by New Zealand and Singapore.

He further mentions that Spain comparatively is listed as number 30 on the same list, knowing that it requires certain ability, due to the, for Scandinavians, sometimes illogical Spanish way of doing things.

If you are interested in reading the entire interview (Spanish), you can find a link to the article at Lawyerpress via our website zafolaw.com.

Zafo Law S.L.P. is one of the Spanish law offices that is most oriented towards Scandinavian clients such as private persons, companies and lawyers with Spanish interests. We have offices in Barcelona, Marbella and Alicante, where we cover the whole of Spain.