

November 2020, no. 2

# Legal Mixed Zone

In this edition:

Page 1 - New times, new logo, new website and a new digital Spain?

Page 1 - If you own real estate in Spain, remember the Spanish tax return before 31.12.

Page 2 - Mortgage enforcement in Spain

Page 2 - A Spanish lawyer or an unauthorized advisor?

Page 3 - Spanish inheritance tax in Murcia

Page 3 - New Supreme Court ruling on false self-employed

Page 4 - New rules on working from home

Page 5 - Governing body of a Spanish company

Page 5 - Declaration of responsibility replaces (temporarily) the first occupation license in Andalusia

Page 6 - Sale of Spanish property for Danish executor in a complicated insolvent estate

Page 6 - New tax reference value for real estate?

Page 7 - New requirements for real estate agents in Andalusia?

Page 7 - Worth knowing when making a transfer from a Spanish sports club

Page 8 - Zafo Law launches new website

November 2020, no. 2

## New times, new logo, new website and a new digital Spain?

Spain is greatly affected by corona, and it affects all individuals and companies related to Spain to a greater or lesser degree.

At Zafo Law, we try to handle the new corona day-to-day with optimism. We are convinced that there must also be opportunities for the development of new products, services and companies hidden in the grey corona reality, and such business opportunities are of course only seen if the light is turned on and not turned off.

We have long focused on our own digital opportunities and change within the framework and rules of the game that such a paperheavy and bureaucratic society as the Spanish one now allows us to do. It is our expectation that the corona will mean that Spain moves towards the digital reality at a faster pace than before.

Although this is another example of the great necessary societal changes in Spain only taking place after external influences, it is to that extent positive if Spain at the back of the corona can become a more digital society.

At the same time, good opportunities should open up for Scandinavian companies' sale of tech solutions to Spain, where the Spanish government together with the private sector in the period 2020-2025 will spend 70 billion euros to spread i.a. 5G, Artificial Intelligence, Big Data, Cyber Security and Business Digitization.

Private, tax

## If you own real estate in Spain, remember the Spanish tax return before 31.12.

All non-resident real estate owners in Spain must file a Spanish tax return with the Spanish tax authorities at least once a year.

This also applies even if you have not had rental income, as it is the period without rental income that must be declared before the 31st December 2020.

You can read more about Spanish tax returns for non-residents on our website, where you can also download a Fact Sheet on this topic.

### Content

- 1 - New times, new logo, new website and a new digital Spain?
- 1 - If you own real estate in Spain, remember the Spanish tax return before 31.12.
- 2 - Mortgage enforcement in Spain
- 2 - A Spanish lawyer or an unauthorized advisor?
- 3 - Spanish inheritance tax in Murcia
- 3 - New Supreme Court ruling on false self-employed
- 4 - New rules on working from home
- 5 - Governing body of a Spanish company
- 5 - Declaration of responsibility replaces (temporarily) the first occupation license in Andalusia
- 6 - Sale of Spanish property for Danish executor in a complicated insolvent estate
- 6 - New tax reference value for real estate?
- 7 - New requirements for real estate agents in Andalusia?
- 7 - Worth knowing when making a transfer from a Spanish sports club
- 8 - Zafo Law launches new website

Boutique, mortgage loan

## Mortgage enforcement in Spain

A crucial EU ruling from 2017 currently makes it difficult for banks to enforce their Spanish mortgage deed in real estate in Spain, in cases where there is default on the repayment of the mortgage.

The judgment stated that, for consumer reasons, it must be considered if the provisions of loan agreements, according to which the entire amount due, in the form of the loan's principal and interest, can be demanded to be repaid (accelerated repayment) in the event the debtor fails to comply with his obligations, are reasonable and valid.

In making this assessment of reasonableness, the Spanish courts must consider, whether the debtor's (consumer's) default on the loan is sufficiently serious in relation to the duration and amount of the loan, and whether the debtor's adverse actions have given the debtor an opportunity to avoid the accelerated repayment.

There is yet no legislation or case law that clearly defines when this is the case, and a clarification of this will probably not be available until the Spanish Supreme Court has had the opportunity to address this issue.

Until then a mortgage enforcement will only bring cover for the installments that may have been defaulted, while the remaining part of the loan after a mortgage enforcement will not be secured by the mortgage now enforced.

Business, Private

## A Spanish lawyer or an unauthorized advisor?

Unfortunately, in Spain there are a large number of unauthorized advisors who illegally offer legal counseling.

As a foreigner, it can be difficult to find out whether the counseling being offered is from a real Spanish lawyer, or if it is from an unauthorized advisor and thus an illegal actor.

Under Spanish law, it is only Spanish and foreign lawyers, who are members of the Spanish Bar Association, Colegio de Abogados, who are entitled to advise on legal matters in Spain. This applies to both judicial and non-judicial matters.

Lawyers can run their business in the form of a company, and Zafo Law S.L.P. is an example of this. The abbreviation S.L.P. after the company name indicates "Sociedad Limitada Profesional".

An S.L.P. must be registered in the Colegio de Abogados thereby ensuring control of the law firm, and it is therefore only in the company form S.L.P. that legal advice may be offered.

The majority of the shareholders in a S.L.P. must be members of the Spanish Bar Association, and in the board of directors more than half of the members must also be members of the Spanish Bar Association. If the company does not have a board of directors, the administrator of the company must be a lawyer and a member of the Spanish Bar Association.

You can read more on our website, where you can also download a Fact Sheet on this topic.

Sign-up for  
**Legal Mixed Zone**  
at [zafolaw.com](https://zafolaw.com)

Private, tax

## Spanish inheritance tax in Murcia

In Spain, the Spanish inheritance tax is calculated and paid individually by each heir and not by an estate. The various Spanish regions have the competence to make their own deductions, which can be used when the rules of the specific region apply.

In the region of Murcia, this competence has been used to provide a large deduction for heirs in inheritance groups 1 and 2. These inheritance groups include children and spouse, but not one's partner's children.

**Basic deduction:** When calculating the tax base, the national basic deduction of 16,000 euros can be used. Additional basic deductions for inheritance group 1 and 2 are only possible when taking over a business in Murcia, and this business shall be maintained within Murcia for the following 5 years.

**99% deduction:** In Murcia, a deduction in the calculated inheritance tax of 99% is given for inheritance groups 1 and 2. Thus, there is virtually no Spanish inheritance tax to pay when heirs are children and spouse.

**Unmarried cohabitants:** Unmarried cohabitants couples are equated with spouses in terms of inheritance tax, if their relationship is registered properly with the authorities in accordance with the rules that apply to this in Murcia.

*“In Murcia, a deduction is in the calculated inheritance tax of 99% is given for inheritance groups 1 and 2“*

Business, employment law

## New Supreme Court ruling on false self-employed

The Spanish Supreme Court has ruled in a case involving the Spanish start-up *Glovo*, a service through which individuals can bring various forms of shopping, such as medicine, food, fast food, etc., from store to home. This is done through couriers, known in Spain as “riders”, who have a high degree of freedom to plan their working day. The various courts around Spain have had difficulty identifying whether they were self-employed or employed, and the new Supreme Court ruling sets out the main guidelines for this.

The Supreme Court ruling is from the 25 September 2020, and it deals exclusively with “riders” from *Glovo*. The judgment states that these “riders” must be considered employees and not self-employed.

The reason for this is that it is *Glovo* that determines the most important conditions for the provision of the service, and which also owns the most important assets to be able to carry out the activity, while the “riders” do not have their own and independent organisation that provides a service in the employer's organisation.

Although the ruling only applies to “riders” from *Glovo*, the guidelines can be applied to similar services such as *Amazon*, *Deliveroo* and others.

The consequence of this being an employment relationship and not a freelance relationship is that the company must pay social security contributions for the employee for the past 4 years with the addition of a fee of 20%. Social contributions are paid in addition to the gross salary and as a general rule, the amount is approx. 30% of gross salary.

In addition, it will be possible to impose a fine in the order of 3,126 euros - 10,000 euros.

Business, employment law

## New rules on working from home

The Spanish government has adopted new legislation for homework in employment relationships carried out using IT and telecommunications. An agreement on homework must then be in writing to be valid, and the law specifies a number of matters which must be stated in the written agreement.

It is defined as homework, when working from home on a regular basis, understood as at least 30% of working time for a period of 3 months. A scheme for homework must be voluntary for both employee and employer.

The new rules came into force on the 13 October 2020, but the law does not apply to agreements on home-work entered into as a result of COVID-19. Other existing written agreements on homework are valid until 12 October 2021, but can be extended by the parties for 3 years. If the existing agreement has not been entered into in writing, the new rules from 13 January 2021, which do not require written agreements on homework, must be made in writing.

On our website you can read more about the most important aspects of the new rules on homework.

Private, real estate

## Large fine to Danish holiday fund for lack of Spanish tourist license

Zafo Law has repeatedly been asked to address the question of whether it is necessary for a Danish holiday fund to obtain a Spanish tourist license for a holiday home located in Spain. The argument, that it should not be necessary, has always been that renting is only made to the members of the holiday fund, thus being a limited group of people.

Zafo Law has always had to answer that it will be very difficult for a Spanish authority to understand what a Danish holiday fund is legally, as the equivalent is not known in Spain, and since a holiday fund's activity consists in renting holiday homes to its holidaying members (tourists), we find it difficult to see why this activity should be exempt from the requirement of a tourist license.

The requirement for a tourist license is found in local rules, but all use roughly the same definitions. In the Catalan law on housing for tourist purposes, housing for tourist purposes is defined, for example, as follows:

- Homes for tourist purposes are those which are rented out by their owner, directly or indirectly, to a third party repeatedly and for a financial consideration, for a temporary stay in a condition suitable for immediate use.
- In the same law, it is specified that a stay is considered temporary when the stay is 31 days or less, and that this is repeated when you rent out the home two or more times within one year.

A Danish holiday fund has recently been fined 30,000 euros for not having a tourist license, and we continue to recommend all Danish holiday funds to get a tourist license for their holiday homes in Spain.

*“A Danish holiday fund has recently been fined 30,000 euros for not having a tourist license”*

Business, corporate

## Governing body of a Spanish company

In Spain, the management, administration and representation of a company must take place by choosing one of three possible forms of management, some of which are not legal actors in Scandinavia.

1. One administrator
2. Two administrators (together / separately).
3. A board (minimum three people).

*“The administrator / board members can (easily) assume personal responsibility for the company’s obligations to third parties responding with personal assets.”*

Between the members of the Board of Directors, it is possible to appoint a *Consejero Delegado*, who may delegate most of the powers of the Board of Directors. Thus, a *Consejero Delegado* can act on behalf of the Board of Directors and the company and will thus be able to sign employment agreements and other contracts as well as act in relation to the company's bank account etc.

A secretary of the board of directors (*secretario no miembro*) can be appointed, typically the company's lawyer, who can sign and certify notarial documents on behalf of the board of directors and the general meeting, such as approval of annual accounts and amendments to the articles of association. Thus, the board members do not have to appear in person in front of a notary in Spain, but can sign the minutes in a country outside of Spain.

Companies with a share capital of more than 300,000 euros or a turnover of more than 600,000 euros or with more than 50 employees are required to appoint an advisory lawyer (*Letrado asesor*) who must be present and advise at board meetings. The main purpose is to prevent the board of directors from entering into agreements that are contrary to the law or may lead to liability.

You can read more on our website, where you can also download a Fact Sheet on this topic.

Private, real estate

## Declaration of responsibility replaces (temporarily) the first occupation license in Andalusia

Due to the paralysis caused by COVID-19, a new section has been added to Article 169 of the Andalusian Urban Planning Act (LOUA), replacing the first occupation licence with a “Declaration of Responsibility”, which frees the seller of new buildings from the obligation to obtain the first occupation license.

This simplifies the process of taking over new construction, as it allows residential use from the moment when the building is technically completed and where the declaration of responsibility has been submitted to the municipality.

The Spanish government has, however, brought an action against the regional government, Junta de Andalucía, regarding possible breach of the constitution, but so far the new provision applies.

According to the case law of the Constitutional Court, a future judgment will not apply retroactively, and thus it can be expected that declarations of responsibility submitted to the municipality, instead of awaiting the issuance of a

first occupation license, will be valid and will not be annulled if the Constitutional Court later may conclude that there is a constitutional violation.

Private, inheritance

## Sale of Spanish property for Danish executor in a complicated insolvent estate

In a complicated inheritance case that was already several years old when it landed on our table, we have managed to sell the estate's Spanish property and send the proceeds to the executor of the insolvent estate in Denmark.

The challenge of the case was that the registered owner of the Spanish property according to the Spanish property register was a Danish company, but according to the Danish company register back in 2009 this company had been dissolved and liquidated in Denmark as a result of a bankruptcy, where all creditors had been satisfied.

The company's property in Spain had therefore been transferred by the probate court in Denmark to the company's two owners. However, this transaction had never been registered in Spain, and when one of the owners later died in 2014, the property was therefore still registered with the now non-existent Danish company as registered owner.

So, the Danish executor had a Danish insolvent estate, which, seen from a Danish perspective, was the owner of an asset in Spain, but without the prospect of being able to sell the property due to the complexity of the case.

However, Zafo Law succeeded in carrying out the necessary expeditions so that the property could be sold.

This is a case that we are talking about with a certain amount of pride, as we feel convinced that very few other Spanish law firms could have solved this task in a similar way.

Private, tax

## New tax reference value for real estate?

The Council of Ministers has approved a draft law on the prevention and combating of tax fraud, which will now begin its parliamentary process. If the law is passed, a new reference value for real estate will be introduced, which will be used in the calculation of Spanish transfer and document tax (ITPAJD), wealth tax (IP) and gift / inheritance tax (ISD).

The law is motivated by the many lawsuits about the valuation of real estate, and the taxes derived from them, and it is thus the purpose to increase legal certainty for taxpayers.

The idea is that the new reference value will be determined by the Spanish Property Equation Register (Catastro), and that the reference value will then form the tax base for calculating ITPAJD, IP and ISD.

The starting point for determining the reference value shall be the notarial deed price information registered for the purchase / sale of real estate.

All Spanish regions support this new reference value, and it is therefore expected that the law will pass later.

It should be noted that the reference value will be different from the tax value (valor catastral), and it will therefore



not affect the taxes, where it is the tax value that is used as a tax base such as personal income tax (IRPF / IRNR), property tax (IBI) or the local value added tax (plus valia municipal).

Private, real estate

## New requirements for real estate agents in Andalusia?

In the Andalusian Act no. 1/2018 of 26.04.2018, it is stipulated that real estate, for the sake of consumer protection, must be regulated in more detail by a decree within 1 year from the entry into force of the Act on 08.05.2018.

This must be done by creating a register in which real estate agents must register a number of information:

- Identification and physical address in Spain
- Affiliation or not to a trade union (Colegio Profesional)
- Proven education and a clean criminal record
- Liability insurance and bank guarantee

*“Real estate agents will need to have valid liability insurance and provide a bank guarantee”*

The draft decree sets out the detailed requirements for being able to act as a real estate agent. At least one of the following must be met:

- Minimum 2 years prior experience as a real estate agent.
- University degree (architect, social sciences, law or engineering).
- Secondary education of at least 200 hours of lessons in real estate.

It is clarified that the requirement applies both to a company's administrator and to the person responsible for each office that may be available to the public. If the real estate company operates only online, this applies to the person representing the company, and it is the same person who must submit the application for registration.

A liability insurance is required of at least 100,000 euros per claim and 600,00 euros per year, as well as a bank guarantee of 60,000 euros per year per office open to the public or per person, if the business is only operated online.

The final decree is still being drafted and is therefore not yet in force.

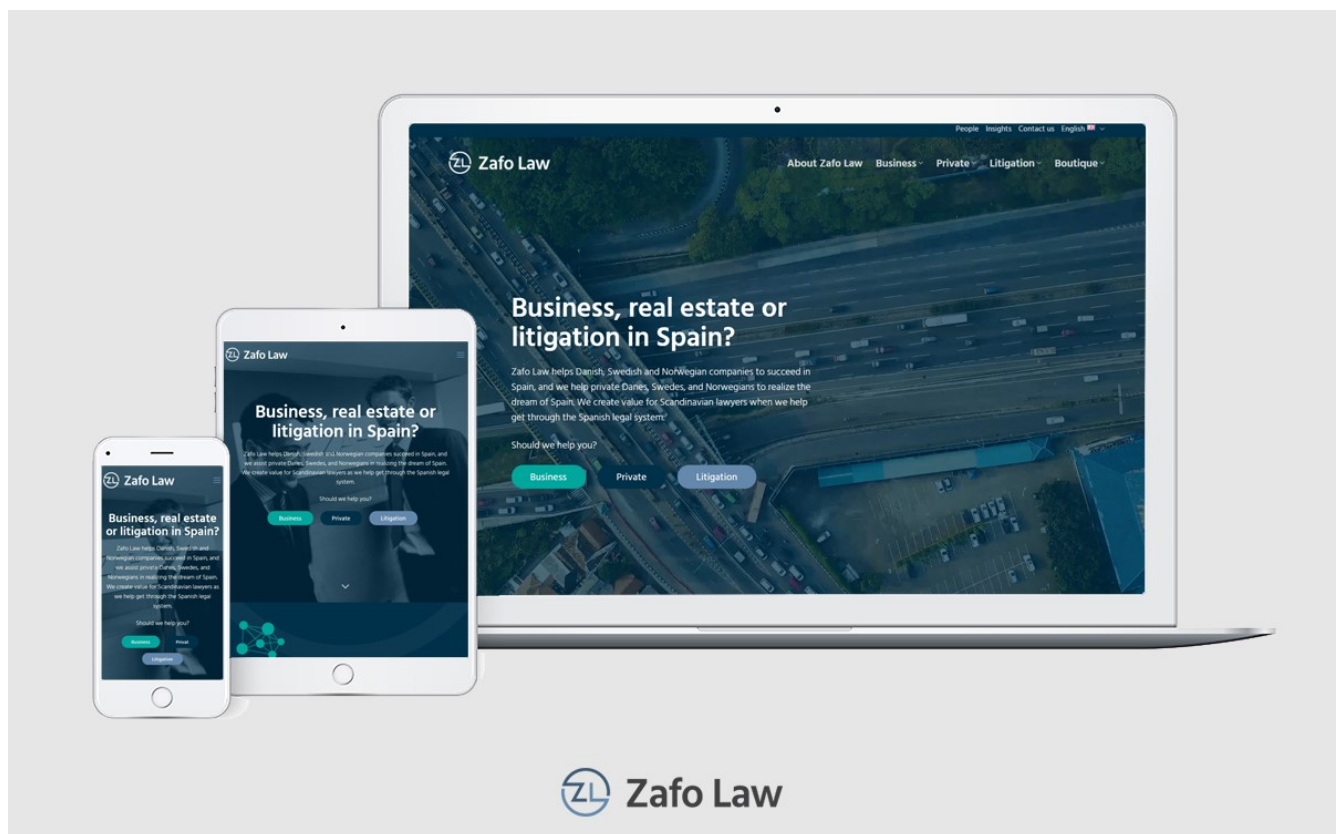
Boutique, sports law

## Worth knowing when making a transfer from a Spanish sports club

When a football or handball player transfer from a club in Spain to a club outside Spain, it will either happen in a summer or a winter transfer window. In some cases, a transfer fee is also paid from the new club to the player's Spanish club. Often large sums are at stake in this situation and it is therefore worth asking the following questions:

- *As a player, am I entitled to part of the transfer fee?*
- *As a player, do I have the opportunity to get a tax refund if I plan my transfer optimally?*





According to the Spanish law on the special employment conditions of professional athletes and the collective agreement in football, the player may be entitled to receive 15% of the transfer fee when transferring to another club.

In Spain, you can only be a tax resident or non-resident for one income year, and this applies to the entire income year. This means that a transfer in a summer window should be planned so that it can later be documented that the player has left Spain before the end of June. Thus, the player will be able to claim a refund from the Spanish tax office of too much withheld salary tax for the first half of the year.

## Zafo Law launches new website

It is with great pleasure that we can present our new logo and new website.

The name and the values are the same, but we have felt that the time had come for a more modern and contemporary expression. At the same time, we are putting more focus on our digital profile and will in the coming time activate our new digital platform.

If you have any objection, praise, comments or questions in general about Zafo Law, you are welcome to write to us at [info@zafolaw.com](mailto:info@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.