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# Legal Mixed Zone

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## Spain as Southern Europe´s digital hub?

Spain is more or less saying goodbye to most corona restrictions, and the country is now hoping that tourists will look toward Spain when this year's summer holiday is to be planned.

However, the time of the corona pandemic, homework and online meetings has also highlighted the need for an even more digital Spain, and the digital conversion is underway.

The ambitions are great and Spain wants to become Southern Europe's digital hub, and several Spanish cities offer themselves for this purpose, including Madrid, Malaga, Barcelona and Alicante.

It should be interesting news in Scandinavia when an export market as Spain makes such an announcement, especially in an area where Scandinavian companies should be able to offer competitive digital solutions.

At the same time, considering the Spanish-speaking countries outside Europe, it is not unlikely that Spain will not only create a digital hub in Southern Europe, but also a gateway for companies to approach these countries offering their digital knowledge, products and services.

The good weather in Spain and an attractive Beckham tax scheme help attracting skilled talent and highly educated directors, and the establishment of a company in Spain thus seems to make sense.

[Private, real estate, tax](#)

## Reduced transfer tax on the purchase of real estate in Andalusia until 31.12.2021

There is good news for those who buy real estate in Andalusia, where the transfer tax, that the buyer must pay when buying a resale home, is reduced to 7% when the deed is signed before 31.12.2021. The transfer tax has so far been 8% -10% depending on the price.

It is not yet known what the transfer tax will be after 31.12.2021, and we do not expect to know about this until the end of the year.

In the case of a project, and thus a property not previously traded, the buyer does not pay transfer tax but instead Spanish VAT by 10%, and the document fee, which must also be paid in this case, is reduced from 1.5% to 1.2%, also valid until 31.12.2021.

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Business, corporate

## Focus on non-submission of annual accounts

In Spain, non-submission of annual accounts does not result in forced dissolution of the company, and it is estimated that more than 1.5 million Spanish companies did not submit annual accounts to the Spanish mercantile register for years, while only 150 fines have been issued annually.

These figures do not come as a surprise to Zafo Law, because it is more the rule than the exception that a new business client with an already existing Spanish (subsidiary) company has not been aware of submitting annual accounts to the Spanish mercantile register.

This situation now seems to be taken somewhat more seriously by the authorities, who with new legislation from January 2021 in their hands, focus on non-submission of annual accounts, and a huge amount of fines of 1,200 euros - 60,000 euros is expected to be issued to the companies that have not submitted their annual accounts.

Private, tax

## Spanish wealth tax and remaining debt on mortgage in Spanish property

A recent judgment by the Mallorca court recognises that the outstanding debt on a foreign loan secured by a mortgage on a real estate, but taken out three years after the purchase of the property, will be included when calculating the Spanish net worth of a non-tax resident.

Over the years, Zafo Law has often been asked about this issue, as the practice of the Spanish tax authorities has been to require that the foreign loan be used to acquire the property in Spain, in order to have an impact on the Spanish net worth for non-tax residents. A requirement that does not exist directly in the legislation itself, which states that it must either be debt that is in Spain, or a liability that reduces the value of the property.

The judgment from Mallorca concerns a Danish loan secured by a Spanish mortgage deed on the property, and the court found that the loan was not in Spain, but that the liability (the mortgage deed) reduced the value of the property. The outstanding debt on the loan could therefore be included in the calculation of the Spanish net worth.

The court also found that it had not been proved that the mortgage had been subject to tax speculation, as alleged by the Spanish tax authorities, as they themselves had chosen to cancel a fine earlier in the process.

As the calculation of Spanish net worth and Spanish net inheritance is based on the same principles, the remaining debt on loans secured by a mortgage on real estate in the Balearic Islands can be included in the calculation of Spanish wealth tax and Spanish inheritance tax.

It is important to emphasize that a minimum of two identical Supreme Court decisions are required before being considered case law. It is therefore too early to consider this decision, which in principle only applies to the Balearic Islands, as a final criterion. There will (easily) come divergent decisions, both in the Balearic Islands and especially from the other autonomous regions, which will not feel bound by this decision.

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Private, tax

## Spanish tax resident or tax non-resident?

Most people believe that they can stay in Spain for up to 183 days a year, before they have to pay tax to Spain as a tax resident, but other factors are also important when assessing whether one is a tax resident or a tax non-resident.

*“..the tax residency is settled after the end of the income year, and it then applies to the entire past income year..”*

Thus, it also matters whether the center or base for activities or economic interests are located directly or indirectly in Spain. This has been interpreted as:

- The place where you have most of your investments concentrated.
- The place from which you carry out your business.
- The place from which you manage your assets.
- The place from which one receives the majority of his income.

The biggest difference in relation to Scandinavian countries, however, is that the tax residency is settled after the end of the income year, and it then applies to the entire past income year.

On our website you will find our Fact Sheet, where you can read more about this topic.

Litigation, Business

## The acquisition of productive units in Spain

Throughout the years, we have had many Scandinavian client asking us to be attentive to the possibility of buying productive units (factories, shops, warehouses, offices, real estate, etc.) in Spain. Lured by a good investment, our clients are often not keeping in mind the complexity, that this eventual operation has in Spain.

The acquirer of a productive unit in Spain must be aware of the responsibilities that comes from the acquisition:

**Employment relationship:** Three years jointly liability for unpaid salaries and compensation (dismissal).

**Social security (*seguridad social*):** Liability for payment of social security contributions and incorrectly previously obtained benefits.

**Tax:** Joint liability in relation to tax for acquirer and transferor. However, liability can be ruled out by a decision of a judge in the case of the acquisition of productive units in bankruptcy.

When acquiring a productive unit from a company in bankruptcy proceedings, a recurring question is whether it is in fact an acquisition of a productive unit or an actual acquisition of the company itself (subrogation).

The responsibilities and obligations that result from a takeover of the company itself are both strict and hard, and it cannot be stressed enough how important it is to ensure that the acquisition of a productive unit cannot be confused with a takeover of the company.

You can read our entire article on this topic on our website.

Private, tax

## Spanish capital gain tax for residents

If you are a tax resident in Spain, you must remember to declare capital gains and losses from trade, both in and outside Spain, with, among other things, real estate and securities on your Spanish tax return.

A capital gain or loss may arise in connection with the sale of, for example, a secondary home in Scandinavia or securities in a deposit with a Scandinavian or other non-Spanish bank, and you must include this on your Spanish tax return and pay Spanish tax on the capital gain.

Capital gains and losses are calculated as the difference between acquisition value and disposal value. The acquisition value consists of the purchase price plus costs associated with the acquisition as well as subsequent improvements and depreciation, while the disposal value consists of the sales price deducted costs associated with the sale.

Capital gains and losses can be either ordinary income or savings income, *renta del ahorro*. Savings income is taxed at 19% -23% depending on the amount of the capital gain. Foreign-paid capital gains tax can be deducted from the Spanish capital gains tax, so that there is no double taxation of the capital gains.

If the seller of primary residence is over 65 years old, the capital gain is tax-free. The same occurs regardless of the age of the seller, when a capital gain from the sale of the primary residence is reinvested in a new primary residence. Capital gains and losses must be submitted on the ordinary Spanish tax return.

On our website you will find our Fact Sheet, where you can read more about this topic.

Business, corporate

## Mandatory company books in a Spanish company

There are basically two types of books for companies that the administrator / board of directors must ensure are kept and legalized in the Spanish mercantile register, and they are the company books, *libros societarios* and the accounting / bookkeeping books, *libros contables*. The legalization is done digitally, and the deadline is 4 months after the end of the financial year.

Referring to the company books, *libros societarios*, they consist of the following:

A) Shareholder register, *libro registro de socios*. This includes information about the shareholders of the company and subsequent transfers of their shares as well as any liabilities on these.

B) Book of minutes, *libro de actas*. Decisions made by the shareholders or the board of directors must be found in the book of minutes.

C) Book of contracts with the sole shareholder, *libro de contratos con el socio único*. In this book states, for example, a contract entered into between a Danish parent company and a Spanish subsidiary on the provision of services, agency or distribution contracts, commission etc.

On our website you will find our Fact Sheet, in which you can read more about legalization and keeping of the mandatory company books.

*The responsibility for ensuring that the company books have been correctly legalized lies with the administrator / board of directores.*

Business, employment law

## Spanish employment contracts

The Spanish labor market is known for being rigid and Scandinavian companies operating in Spain often find it difficult to understand that the employer does not have a notice of termination, but terminates an employment contract from day to day against payment of a compensation.

There are basically two types of employment contracts. The ordinary employment contract and the executive contract. Both contracts must be drawn up in Spanish and are subject to Spanish law. In general, the vacation is 30 days or 23 working days a year and cannot be waived.

When negotiating salaries, it is important to keep in mind that the real costs for the company consist of the gross salary plus an additional 32.30% in the form of Spanish *seguridad social*, which, among other things, ensures the employee the right to a number of social benefits in the event of unemployment, pension, etc.

The ordinary employment contract allows for a probationary period of up to 6 months, after which it can be terminated by both parties without notice and without payment of compensation. If the employment contract is extended, the employer can then terminate it without notice, but compensation must be paid to the employee calculated on the basis of the number of years the employee has been employed, with 33 days' salary per year for the period after 12.02.2012 and 45 days salary per year before this date.

In the executive's contract, the parties have more freedom of contract, and a notice period and a pre-determined compensation can be agreed, which, however, must not be less than 7 days' salary per year the executive has been employed by the company.

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

Business, corporate

## Company set up in Spain

In Spain, a company is established by the owner / owners appearing at a Spanish notary and signing the necessary document. This will have been preceded by a lengthy process of obtaining a name certificate, opening a bank account and paying in the share capital, just to address a few necessary expeditions.

As the paperwork in Spain is extensive and each expedition seems to take far too long, it becomes important that the basic considerations in relation to the company's set-up have resulted in well-considered decisions, so that no changes need to be made after the company's founding, which would require the involvement of a Spanish notary.

Therefore, consider carefully from the start, among other things, who shall own the company, and if there are to be several owners, the percentage each one shall own. It must be considered in particular how the company will be administrated, and how can you transfer powers for everyday tasks to another person, so you do not have to waste too much time with these tasks yourself, but still will be able to control this other persons actions.

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

*The employer shall not give notice of termination prior to dismissal, but a compensation must be paid to the employee.*

Boutique, sports law

## Professional sportsmen in Spain are entitled to compensation at the end of their contract

In Spain, many lawsuits are regarding the possible claim of professional athletes for a compensation in the event of expiration of their temporary contract, which other employees in temporary employment have outside sport.

Thus it follows from art. 49.1 (c) of the general Spanish law on employment, *Estatuto de los trabajadores*, that an employment contract is, inter alia, deemed to have expired at the end of the period for which it was agreed and that this entitles the worker to 12 days' compensation per year, in which the employee has been employed.

However, Spain has a special law that specifically regulates the special employment relationship for professional athletes, and it does not mention compensation for the athlete in the event of a contract expiring. Many Spanish courts have therefore refused to award compensation to professional athletes in Spain at the end of their contract.

However, the Spanish Supreme Court has recently handed down a judgment uniting criteria, so that this judgment can now be regarded as current case law.

In the judgment, it was decided that the general Spanish law on employment must be applied supletorically, ie to the extent that the special law for professional athletes does not contain provisions on the payment of compensation in the event of contract expiration, the general law on employment applies.

Private, tax

## Spanish tax office increases focus on tax non-resident owners of real estate

As a tax non-resident property owner in Spain, you must submit an annual Spanish tax return, regardless of whether you have had rental income or not from your property in Spain, and the Spanish tax authorities are, according to the Spanish press, focused on non-tax resident owners of real estate in Spain to check that they remember to submit this annual Spanish tax return.

However, it is not only in the press that this has been warned. Thus, already on 01.02.2021 in the Spanish *Boletín Oficial del Estado*, one could find the publication of a decision of 19.01.2021 taken by the Spanish General Directorate of State Tax Administration approving the general guidelines of the annual tax and customs control plan for the year 2021, and in this document read more about the various proposed initiatives.

It is a comprehensive, closely written 46-page document in which tax control of tax non-resident property owners in Spain is mentioned as an independent sub-item, but without the same level of detail as for most other focus points.

It thus appears that a centralized control in relation to income tax for tax non-residents will continue to be carried out and also in relation to the Spanish inheritance tax, without prejudice to the control carried out by the other inspection bodies. In other words, Spanish tax office is increasing the focus on tax non-resident property owners.

On our website you will find a Fact Sheet about Spanish tax returns for tax non-residents property owners.





## Zafolaw covers the whole of Spain

From our offices in Barcelona, Marbella and Alicante, we cover the whole of Spain. By this we mean that we also offer our assistance in, among other places, Madrid and Mallorca.

This has actually been the case ever since we opened our first office in Barcelona back in 2004 and has since been reinforced with the opening of additional offices in Alicante and Marbella in 2006 and 2013 respectively.

We have therefore also gained considerable experience with the differences and similarities that apply in the various Spanish autonomies in relation to the issues that not only our clients face, but also in relation to the requirements placed on our company, Zafolaw, by the authorities of the three different Spanish autonomies, which the company is operated from.

What applies in one region is not necessarily the same in another region, and it contributes greatly to making Spain the complex country it is for better or worse.

Zafolaw 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.



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.