

Current Legislation

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I. Environment

On this subject, we consider the following new rules and regulations to be of interest:

1. **Royal Decree 773/2017, of 28 July, amending various royal decrees on industrial products and emissions¹.** It creates the Environmental Quality Cooperation Committee, promoting therewith assistance and coordination between public administrations, especially in the processing of the integrated environmental permit. The concept of “virtual focus” is clarified when the integrated environmental permit includes several potentially polluting activities; it also determines in which cases waste legislation is applicable and what is the content of the application for an integrated environmental permit.

It also explores the simplification elements for cases in which the revision of the integrated environmental permit may be necessary due to minor administrative changes, without entailing significant changes in the pollutant emission limit values or in the control systems.

2. **Royal Decree 564/2017, of 2 June, amending Royal Decree 235/2013, of 5 April, approving the basic procedure to certify the energy performance of buildings².** It updates Royal Decree 235/2013, concerning the exclusions from the scope of application, modifying paragraphs (a) and (d) of art. 2(2) of the basic procedure for certification, and the second additional provision regarding buildings with almost zero energy consumption, which refers to the Spanish Building Code to determine the minimum requirements that these buildings must meet at all times.
3. The **Fiscal, Administrative, Financial and Public Sector Measures (Creation and Regulation of Taxes on Large Commercial Establishments, Stays in Tourist Establishments, Radio-toxic Elements, Sweetened Beverages in Packaged Form and Carbon Dioxide Emissions) Act 5/2017 of 28 March 1997³.** This statute introduces a number of amendments to Catalonia’s environmental legislation and establishes two taxes of special relevance: the tax on the environmental risk of production, handling and transport, custody and emission of radiotoxic elements; and the regional tax on carbon dioxide emissions of certain vehicles with mechanical traction.

¹ *Real Decreto 773/2017, de 28 de julio, por el que se modifican diversos reales decretos en materia de productos y emisiones industriales.*

² *Real Decreto 564/2017, de 2 de junio, por el que se modifica el Real Decreto 235/2013, de 5 de abril, por el que se aprueba el procedimiento básico para la certificación de la eficiencia energética de los edificios.*

³ *Ley 5/2017, de 28 de marzo, de medidas fiscales, administrativas, financieras y del sector público y de creación y regulación de los impuestos sobre grandes establecimientos comerciales, sobre estancias en establecimientos turísticos, sobre elementos radiotóxicos, sobre bebidas azucaradas envasadas y sobre emisiones de dióxido de carbono.*

4. The **Climate Change (Catalonia) Act 16/2017 of 1 August**⁴. It lays down a tax on direct greenhouse gas emissions for the most polluting business activities; its collection should be used to subsidise the development of renewable energy and other sustainable projects.
5. **Legislative Decree 1/2017, of 20 June, approving the Recast Text of the Aragon Forestry Act (Regional Government of Aragon)**⁵. The new Recast Text of the Aragon Forestry Act systematizes and organizes current provisions with the force and effect of an act of parliament that regulate forestry in Aragon and which are scattered throughout numerous pieces of legislation.

Ignacio Álvarez Serrano and María Pascual Núñez

II. Agri-food

In the agri-food field, we must highlight **Royal Decree 772/2017, of 28 July, regulating wine production potential**⁶. Setting out the basic regulation concerning wine production potential and in force since 1 August, this royal decree can be implemented by the different devolved regions.

It improves the system for authorising new vineyard plantations, which until now was regulated by Royal Decree 740/2015 of 31 July 2005 (expressly repealed by the new Royal Decree).

One of the main amendments is the introduction of two new eligibility criteria: (1) adequate professional capability and competence and (2) indication of the commercial purpose of the vineyards in certain cases, so that protected designations of origin can exercise their area limitation powers. In addition, a new priority criterion is introduced in the granting of authorisations: preference will be given to, inter alia, applications to increase the area of small and medium-sized holdings. Finally, the recommendations on limitations to new plantations undertaken by interbranch organisations in the wine sector and the management bodies for protected designations of origin may last up to three years.

José Luís Palma Fernández and Yago Fernández Darna

⁴ Ley 16/2017, de 1 de agosto, de cambio climático de Cataluña.

⁵ Decreto Legislativo 1/2017, de 20 de junio, del Gobierno de Aragón, por el que se aprueba el Texto Refundido de la Ley de Montes de Aragón.

⁶ Real Decreto 772/2017, de 28 de julio, por el que se regula el potencial de producción vitícola.

III. Tax

In this quarter, new legislation has been passed that is of special relevance to the field of taxation:

1. In view of its importance, we should note the **Spanish Government Budget for 2017 Act 3/2017 of 27 June**⁷ which incorporates, among others, the following measures: (a) the determination of the statutory interest and late payment interest, set at 3% and 3.75%, respectively; (b) the establishment of priority patronage activities and the tax benefits applicable to various events classified as being of exceptional public interest or regulation; and (c) the introduction of certain developments in the regulation of the value added tax - including notably, with effect from 29 June 2017 and for an indefinite duration, a 10% levy on prescription spectacle frames and the lowering of the tax rate applicable to live cultural events, which will also be taxed at 10% - and of the corporate income tax as regards the modification of the business investment relief for investment in Spanish productions of feature films and audiovisual series and of the tax credit for expenses incurred in Spanish territory in executing foreign productions of feature films or audiovisual works.
2. We must also draw attention to **Royal Decree 683/2017, of 30 June, amending the Corporate Income Tax Regulations approved by Royal Decree 634/2015, of 10 July, with regard to credit risk hedging in financial institutions**⁸. In particular, art. 13 of the Corporate Income Tax Act 27/2014 of 27 November 2004 is amended to establish the rules relating to the circumstances determining the deductibility of provisions for impairment on loans and other assets derived from the possible insolvencies of the debtors of financial institutions and those relating to the amount of losses to cover said risk.
3. Equally noteworthy is **Order HFP/816/2017, of 28 August, approving Form 232 for the information return in respect of related-party transactions and transactions and situations relating to countries or territories classified as tax havens**⁹. For the taxable periods beginning on or after 1 January 2016, information on transactions with related parties and entities and on transactions and situations relating to countries or territories classified as tax havens is transferred from the previous corporate income tax return form to a new information return which only affected entities need to complete. For the financial years ending on 31 December of each financial year, the reporting period will be November of the following financial year.

⁷ *Ley 3/2017, de 27 de junio, de Presupuestos Generales del Estado para el año 2017.*

⁸ *Real Decreto 683/2017, de 30 de junio, por el que se modifica el Reglamento del Impuesto sobre Sociedades, aprobado por el Real Decreto 634/2015, de 10 de julio, en relación con la cobertura del riesgo de crédito en entidades financieras.*

⁹ *Orden HFP/816/2017, de 28 de agosto, por la que se aprueba el modelo 232 de Declaración informativa de operaciones vinculadas y de operaciones y situaciones relacionadas con países o territorios calificados como paraísos fiscales.*

Exceptionally, for financial years beginning in 2016, but ending before 31 December, the aforementioned period will also be that of November 2017.

4. In the 'historical territory' of Gipuzkoa, **Provincial Decree 14/2017, of 27 June 2007, amending the Corporate Income Tax Regulations and Provincial Decree 49/2006, of 5 December, regarding previous specific tax proposals**¹⁰. This decree defines certain terms of the corporate income tax and lays down additional reporting obligations for economic interest groups, among other matters. **Likewise, Provincial Decree 15/2017, of 27 June 1997, amending the Regulations implementing certain formal tax obligations and the Regulations governing invoicing obligations**¹¹, which expressly provides the different date of implementation of the immediate supply of information (SII).
5. In the historical territory of Araba, **Provincial Act 13/2017, of 28 June, amending Provincial Act 33/2013, of 27 November, in order to introduce a tax treatment of Long-Term Savings Plans**¹². It enables the exemption of income generated by the deposit account or life insurance through which such savings are channelled (Long Term Savings Plan) provided that certain requirements under the same are met. Also, the **Tax Emergency Decree 5/2017, of 3 August, adapting to Alava's tax legislation various amendments introduced in the value added tax, excise duties and late payment interest**¹³.
6. In the Region of Navarre, we should highlight **Regional Act 10/2017, of 27 June, partially amending Regional Act 26/2016, of 28 December**¹⁴. It amends the transitional period of the corporate income tax's patent box to allow its application only until 31 December 2016 in the event of transfer of certain intellectual property assets acquired from 1 January 2016 to related entities. Also, **Regional Legislative Decree 2/2017, of 23 August, amending Provincial Act 19/1992, of 30 December**¹⁵, so that, with regard to

¹⁰ Decreto Foral 14/2017, de 27 de junio del territorio histórico de Gipuzkoa, de modificación del Reglamento del Impuesto sobre Sociedades, así como del Decreto Foral 49/2006, de 5 de diciembre, en relación con las propuestas previas de tributación específicas.

¹¹ Decreto Foral 15/2017, de 27 de junio del territorio histórico de Gipuzkoa, por el que se modifican el Reglamento por el que se desarrollan determinadas obligaciones tributarias formales y el Reglamento que regula las obligaciones de facturación.

¹² Norma Foral 13/2017, de 28 de junio, del territorio histórico de Araba/Álava, de modificación de la Norma Foral 33/2013, de 27 de noviembre, del Impuesto sobre la Renta de las Personas Físicas, al objeto de introducir tratamiento fiscal de los Planes de Ahorro a Largo Plazo.

¹³ Decreto Normativo de Urgencia Fiscal 5/2017, de 3 de agosto, del territorio histórico de Araba/Álava, del Consejo de Gobierno Foral, que adapta a la normativa tributaria alavesa diversas modificaciones introducidas en el impuesto sobre el valor añadido, en los impuestos especiales y en el interés de demora.

¹⁴ Ley Foral 10/2017, de 27 de junio, de la Comunidad Foral de Navarra, de modificación parcial de la Ley Foral 26/2016, de 28 de diciembre, del Impuesto sobre Sociedades.

¹⁵ Decreto Foral Legislativo 2/2017, de 23 de agosto, de la Comunidad Foral de Navarra, de armonización tributaria, por el que se modifica la Ley Foral 19/1992, de 30 de diciembre, del Impuesto sobre el Valor Añadido.

the value added tax, the same substantive and procedural rules in force in the State may be applied in the Region of Navarre.

Mariana Díaz-Moro Paraja and Enrique Santos Fresco

IV. Business

There are also interesting developments in commercial and company law:

1. **Royal Decree Act 9/2017, of 26 May, transposing European Union directives in the financial, commercial and health fields and on the posting of workers¹⁶**, contains the (late) transposition of Directive 2013/50/EU of 22 October 2013, which regulates transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market. To this end, it amends art. 234(2) of the Securities Market Act (*Ley del Mercado de Valores - LMV*), which regulates the supervisory and inspection powers of the Spanish Securities Market Authority (CNMV), in order to add a new power in paragraph p: “to provisionally suspend, at the time of instituting or conducting penalty proceedings, the exercise of voting rights attached to acquired shares until compliance with the information obligations set out in art. 125 is evidenced”. It should be noted that this is an interim remedy affecting only the *voting rights* (not all governance rights) *attached to the shares acquired* (not all the voting rights held by the infringer).
2. The Official Journal of the European Union (OJEU) of 30 June 2017 has published **Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law**.

This directive (which came into force on the twentieth day following that of its publication in the OJEU, art. 167) recasts in a single text a set of directives on company law which are, of course, repealed (without prejudice to the obligations of the Member States relating to the time limits for transposition into national law and the dates of application of the directives indicated in Annex III, part B of the directive – time limits already expired and dates now past us).

The recast (with amendments) and repealed directives are as follows:

- (a) Sixth Council Directive 82/891/EEC of 17 December 1982 based on Article 54(3)(g) of the Treaty [establishing the European Economic Community], *concerning the division of*

¹⁶ *Real Decreto Ley 9/2017, de 26 de mayo, por el que se transponen directivas de la Unión Europea en los ámbitos financiero, mercantil y sanitario, y sobre el desplazamiento de trabajadores.*

public limited liability companies (this directive had been successively amended by Directives 2007/63/EC, 2009/109/EC and 2014/59/EU).

- (b) Eleventh Council Directive 89/666/EEC of 21 December 1989 *concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State* (previously amended by Directive 2012/17/EU).
- (c) Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 *on cross-border mergers of limited liability companies* (previously amended by Directives 2009/109/EC, 2012/17/EU and 2014/59/EU).
- (d) Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009 *on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent* (amended by Directives 2012/17/EU and 2013/24/EU). It is important to recall that Directive 2009/101/EC, in turn, had already recast the text of the First Council Directive 68/151/EEC of 9 March 1968.
- (e) Directive 2011/35/EU of the European Parliament and of the Council of 5 April 2011 *concerning mergers of public limited liability companies* (already amended by Directives 2013/24/EC and 2014/59/EU). This 2011 directive had in turn replaced the Third Council Directive 78/855/EEC of 9 October 1978 based on Article 54 (3) (g) of the Treaty concerning *mergers of public limited liability companies*.
- (f) Directive 2012/30/EU of the European Parliament and of the Council of 25 October 2012 *on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 54 of the Treaty on the Functioning of the European Union, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent* (previously amended by Directives 2013/24/EU and 2014/59/EU). It should be noted that Directive 2012/30/EU contained the recast text of the *Second Council Directive 77/91/EEC* of 13 December 1976.

Finally, it should be recalled that references to the repealed and recast Directives will be construed as references to the new Directive (EU) 2017/1132 in accordance with the “correlation table” in Annex IV to that Directive (table which will undoubtedly considerably facilitate the handling of the new text).

Inés Fontes Migallón and José María Álvarez Arjona

V. Employment and labour

Several pieces of legislation have been passed on employment and labour matters that merit attention:

1. The aforementioned **Spanish Government Budget for 2017 Act 3/2017 of 27 June** contains a series of significant Social Security and employment rules. It covers both contribution and appreciation rules for pensions. Among the former, and in accordance with art. 106(1), the contribution base ceiling for each of the social security 'schemes' (classes) that have one is fixed at € 3,751.20 per month or € 125.04 per day. The contribution base floor will match the national minimum wage applicable at any given time, plus one-sixth, unless expressly provided otherwise (in particular, € 825.60). Moreover, pensions will be increased by 0.25 % and may not exceed the full amount of € 2,573.70 per month.

In employment matters, this act includes provisions that mainly affect the public sector, such as limitations on staff hiring by the same - including, among others, the workers of public works or services concessionaires or of any other awarded a contract by the Public Administrations - (twenty-sixth additional provision), limits on the remuneration or economic compensation of public employees and other representatives of the national public sector in the boards of directors of private commercial companies or of the managerial and other staff positions of the mutual societies collaborating with the Social Security and their joint centres (31st additional provision). However, the content of the 34th additional provision of this act, which imposes a set of responsibilities on the Public Administrations and entities dependent on them for the use of employment contracts, must be noted. In addition, this act includes measures to support permanent employment and entrepreneurship.

2. Aside from budgetary legislation, the aforementioned **Royal Decree Act 9/2017, of 26 May, transposing European Union directives in the financial, commercial and health fields and on the posting of workers** is also ratified. In particular, Title IV of the same amends the Posting of Workers (Transnational Provision of Services) Act 45/1999 of 29 November 1999 with the aim of increasing cross-border administrative and judicial cooperation in the posting of workers within the territory of the European Union.
3. **Royal Decree 694/2017, of 3 July, implementing the Occupation-Oriented Vocational Training System Act 30/2015 of 9 September**¹⁷. Arts. 9 et seq. thereof set out the rules governing the training programmed by companies. This type of training must be related to the business activity and adapted to the training needs of the employees and their employees. These training needs may be covered by the training actions programmed by companies for their workers, including

¹⁷ Real Decreto 694/2017, de 3 de julio, por el que se desarrolla la Ley 30/2015, de 9 de septiembre, por la que se regula el Sistema de Formación Profesional para el Empleo en el ámbito laboral.

those aimed at fulfilling the worker's entitlement to 20 hours of paid time off for occupation-oriented vocational training per year. To this end, representative employers' and trade union organisations may commit themselves to integrating training schemes in collective bargaining. In addition, the participation of a worker in training actions may not exceed eight hours per day, except when in the training programmed by the companies for their workers, the training action is delivered in a single day with duration greater than that indicated. For their part, companies will have an annual "training credit" which can be cashed in by means of rebates on employers' social security contributions.

4. On another note, and in contrast to the austerity of previous years, **Royal Decree 702/2017, of 7 July, approving the public employment offer for the year 2017¹⁸**, and **Royal Decree Act 13/2017, of 7 July, approving an extraordinary and additional public employment offer to strengthen the fight against tax fraud, in the field of Social Security, employment and expenditure control, and to improve the provision of certain services to citizens, creating specialities in professions and grades of the National Administration and its public bodies¹⁹**.
5. Lastly, Order ESS/739/2017 of 26 July, laying down the conditions for the granting of subsidies to activities promoting self-employment, social economy and corporate social responsibility, and to cover the operating expenses of self-employed workers' associations, cooperatives, employee-owned companies, insertion companies and other nation-wide entities representing the social economy²⁰. To this end, the following are considered eligible actions: support and consultancy, programmes to promote an entrepreneurial culture, self-employment, social economy and corporate social responsibility, the preparation and publication of studies, documentation, analysis and research, training aimed at initiating, improving and qualifying knowledge in self-employment, social economy and corporate social responsibility or the organisation of conferences, seminars, workshops, attendance at fairs and other activities of a similar nature, with a public announcement of the activity. The activities carried out by associations in pursuit of their own aims to defend and represent self-employed workers and social economy enterprises and to generate operating costs for these associations shall also be eligible.

Lourdes López Cumbre

¹⁸ Real Decreto 702/2017, de 7 de julio, por el que se aprueba la oferta de empleo público para el año 2017.

¹⁹ Real Decreto Ley 13/2017, de 7 de julio, por el que se aprueba una oferta de empleo público extraordinaria y adicional para el refuerzo de la lucha contra el fraude fiscal, en la Seguridad Social, en el ámbito laboral y del control del gasto, para la mejora en la prestación de determinados servicios a los ciudadanos, y por el que se crean especialidades en cuerpos y escalas de la Administración del Estado y sus organismos públicos.

²⁰ Orden ESS/739/2017, de 26 de julio, por la que se establecen las bases reguladoras de la concesión de subvenciones a las actividades de promoción del trabajo autónomo, de la economía social y de la responsabilidad social de las empresas y para sufragar los gastos de funcionamiento de las asociaciones de trabajadores autónomos, de cooperativas, de sociedades laborales, de empresas de inserción y de otros entes representativos de la economía social de ámbito estatal.

VI. Intellectual Property

In this matter we consider the following rules and regulations to be of interest:

1. Following the European Court of Justice's decision of 9 June 2016, the Spanish Supreme Court (Judicial Review Division), in Judgment no. 2394/2016 of 10 November 2016, voided Royal Decree 1657/2012 regulating the procedure for the payment of fair compensation for private copying charged to the General State Budgets.

This situation, in which copyright holders in Spain lacked a system to compensate for the damage caused by the rights lost as a result of the recognition of the limit of private copying in our legal system, is what determines that the government of Spain has resorted to the instrument of the royal decree act, in the understanding that there is an extraordinary and urgent need where art. 86 of the Spanish Constitution requires the use of such an instrument.

Royal Decree Act 12/2017, of 3 July 2007, amending the Recast Text of the Copyright Act, as regards the system of fair compensation for private copying²¹, which will enter into force on 1 August 2017, has thus been approved.

2. In order to have a consolidated version of the European Union Trade Mark Regulation, **Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union Trade Mark** has been adopted. The new regulation has been published in the Official Journal of the European Union (OJEU) L 154/1 of 16 June 2017. Although the entry into force of the Regulation is set at 20 days after its publication in the OJEU, it will apply as of 1 October 2017.

Ángel García Vidal

VII. Competition

In the field of competition law, we would also like to point out here that the aforementioned **Royal Decree Act 9/2017, of 26 May, transposing European Union directives in the financial, commercial and health fields and on the posting of workers²²**, has amended the Competition

²¹ *Real Decreto Ley 12/2017, de 3 de julio, por el que se modifica el Texto Refundido de la Ley de Propiedad Intelectual, en cuanto al sistema de compensación equitativa por copia privada.*

²² *Real Decreto Ley 9/2017, de 26 de mayo, por el que se transponen directivas de la Unión Europea en los*

Act 15/2007 of 3 July with regard to the bringing of actions for damages for infringements of competition law.

The amendment involves transposing Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union.

Similarly, a new section I. bis is introduced in chapter V (“On proof: general provisions”) of Title I (“On provisions common to declaratory proceedings”), of book II (“On declaratory proceedings”), with the following heading: “Section 1 bis. On access to sources of evidence in competition law infringement proceedings”.

Ángel García Vidal

VIII. Insolvencias

Regulation 2015/848 of the European Parliament and of the Council on insolvency proceedings (recast). The most relevant aspects of the reform are the inclusion in the European text of pre-insolvency proceedings and the establishment of a system for coordinating insolvency in groups of companies. In addition, measures are introduced to prevent fraudulent shifts of the COMI or to limit the opening of territorial proceedings, together with other minor changes.

Elisa Torralba

IX. Electricity

Just a few lines on the following rules for the electricity sector:

1. **Commission Regulation (EU) 2017/1485 of 2 August 2017 establishing a guideline on electricity transmission system operation.** Considering that a fully functioning and interconnected internal energy market is crucial for maintaining security of energy supply, increasing competitiveness and ensuring that all consumers can purchase energy at affordable prices, Regulation (EC) No. 714/2009 already regulated access to the network for cross-border exchanges in electricity

ámbitos financiero, mercantil y sanitario, y sobre el desplazamiento de trabajadores.

in order to ensure the proper functioning of the internal market in electricity. Now, this new Regulation (EU) 2017/1485 goes one step further. It contains harmonised rules or minimum requirements on system operation for transmission system operators ('TSOs'), distribution system operators ('DSOs') and significant grid users ('SGUs') should be set out in order to provide a clear legal framework for system operation, facilitate Union-wide trade in electricity and ensure system security. Among other things, the new regulation sets out a framework for the mandated cooperation of TSOs via the appointment of regional security coordinators ('RSCs'), which should issue recommendations to the TSOs of the capacity calculation region for which it is appointed, and provides rules and responsibilities for the coordination and data exchange between TSOs, between TSOs and DSOs, and between TSOs or DSOs and SGUs. The regulation, which entered into force 20 days after its publication in the Official Journal of the European Union on 25 August, is retroactive in that it requires all relevant clauses in contracts and general terms and conditions of TSOs, DSOs and significant grid users relating to system operation to comply with the requirements of this Regulation.

2. At the national level, the **Decision of the Directorate-General for Energy Policy and Mines, of 24 July 2017, fixing the average energy price to be applied in calculating the payment for the demand-side interruptible load management service in non-mainland territories to which Order ITC/2370/2007, of 26 July, applies during the third quarter of 2017**²³. This value is set at forty-eight euros with seventy-four cents per megawatt hour (€48.74/MWh).

Ana Isabel Mendoza Losana

²³ *Resolución de 24 de julio del 2017, de la Dirección General de Política Energética y Minas, por la que se fija el precio medio de la energía a aplicar, en el cálculo de la retribución del servicio de gestión de la demanda de interrumpibilidad prestado por los consumidores de los sistemas eléctricos de los territorios no peninsulares a los que resulta de aplicación la Orden ITC/2370/2007, de 26 de julio, durante el tercer trimestre del 2017.*