

ANDERSEN IBERIA CHINA DESK NEWSLETTER

ANDERSEN伊比利亚中国业务部简报



SECTION A: NOTARIAL

New changes in the Spanish notarial proceedings

The recent law 11/2023, of May 8, on the transposition of European Union Directives on the accessibility of certain products and services, migration of highly qualified persons, taxation and digitalization of notarial and registry proceedings has introduced the following new changes regarding the notarial materials:

1. This law allows the notarization through videoconference of, for example, the granting of commercial policies, letters of payment and cancellation of guarantees, testimonies of legitimization of signatures, minutes of general meetings, incorporation of companies, appointments, powers of attorney and revocation of powers of attorney (except general or preventive powers), granting of powers of attorney for procedural representation and for actions before public administrations, among others, allowing the regulation of additional acts and legal business.
2. The interested parties may appear electronically to provide background information, in those cases where it is required, or to request the issuance of simple and authorized copies.

章节A: 公证法

西班牙公证程序的新变化:

最近于5月8日颁布的11/2023号法律（旨在优化欧盟关于某些产品和服务的可访问性、高级人才迁移、税收以及公证及登记程序数字化）引入了以下关于西班牙公证程序的新变化:

1. 该法律允许通过视频会议进行公证，例如商业合同的授予、付款和取消担保的信函、签名合法化的证词、股东大会记录、公司设立、任命、授权书的授予和撤销（不包括一般或预防性授权书）、为诉讼代理和对公共行政机关采取行动的授权书的授予等。该法律还允许对其他附加行为和法律业务进行规定。
2. 当需要提供背景信息或请求简单认证副本的情况下，相关当事人可以通过电子方式进行出席公证会议。



3. Notaries will issue the authorized copies with their qualified electronic signature under the same conditions as the paper copies, making the electronic copies valid for any desired purpose. employees or director of companies who move to Spain (also known as the Beckham Law).
4. The electronic notarial protocols will be kept by the notary in their electronic deposit in the General Council of Notaries.
3. 公证人将使用符合法定条件的电子签名发行认证副本，该认证副本与纸质副本具有相同的效力，所以该电子副本在任何需要的情况下都具备有效性。
4. 电子公证记录将由公证人通过将其电子存档在公证员总委员会中并进行保存。

SECTION B: TAX

Corporate income tax: The double taxation deduction is applicable if it is proved that the transferor has been taxed for non-resident income tax:

The Spanish Corporate Income Tax Law sets out a right to apply a tax deduction amounting to 100% of the gross tax liability payable on dividends which correspond to shares in companies which are residents in Spain acquired before 1 January 2015. In this regard, one of the essential conditions to apply the above-mentioned deduction is that the taxpayer should provide the proof(s) of that an amount equivalent to the dividends has been included in the taxable income for the Spanish Corporate Income Tax or Spanish Personal Income Tax, as income obtained by the successive entities or persons owning the shares on its transfer.

A recent resolution issued by the Valencia Regional Economic-Administrative Court has analysed a similar case. In the concrete case, although the entity which transferred the shares was a non-resident entity and the income obtained was subject to the Spanish Non-Resident Income Tax, the court applied a finalist interpretation of the applicable rule, concluded that the deduction could be applied in this case since the deduction established by the Spanish Corporate Income Tax Law aims to avoid the double taxation.

章节B: 税法

企业所得税: 如果证明转让方已缴纳非居民所得税，则适用双重征税抵免:

西班牙企业所得税法规定了一项权利，即对在2015年1月之前获得西班牙的公司股份所对应的股息所应缴纳的总金额可以享受100%的税务抵免。在这方面，申请上述抵免的基本条件之一是纳税人应提供证明，即相当于股息金额已作为由持有股份的连续实体或个人在转让时获得的收入已包含在西班牙企业所得税或西班牙个人所得税的应纳税收入中的证明。

最近，瓦伦西亚地区经济行政法院发布了一项关于类似情况的决议。在具体案例中，尽管转让股份的实体是非居民实体，并且所获得的收入应缴纳西班牙非居民所得税，但法院采用了使用法规的目的性解释，得出结论认为在这种情况下可以适用抵扣，因为西班牙公司所得税法规定的抵扣旨在避免重复征税。



Individual taxation in Spanish Personal Income Tax:

In general, the option for joint or individual personal income taxation regulated under the Spanish Personal Income Law cannot be modified once the period for filing the self-assessment has ended.

However, the Spanish Central Economic-Administrative Court in a recent resolution considered that due to the incomplete, deficient, and inaccurate information provided by an officer of the Spanish Tax Administration, a taxpayer's declaration of intention was vitiated. Hence the taxpayer had the right to change individual taxation to joint taxation, after the spouse of the taxpayer has been requested to ratify the joint taxation.

The Spanish Central Economic Administrative Court has also considered in a separate resolution that the option for joint income taxation could be changed in those cases where there is a substantial change in the circumstances that initially led to the exercise of the option that is out of the control of the taxpayer.

Therefore, with these resolutions the Spanish Central Economic Administrative Court establishes a more flexible interpretation in favor of the taxpayer regarding the potential change of the option for joint or personal income taxation.

SECTION C: REAL ESTATE

The new housing law regarding the large housing holders:

The new Law 12/2023, of 24 May, on the right to housing has included the following main changes in relation to the "large housing holders":

The law defines the "large housing holders" as below:

在西班牙个人所得税中的个人征税:

一般而言，在西班牙个人所得税法规定的自主申报期结束后，纳税人一般无法修改已经选择的联合或个人征税方式的选项。

然而，根据西班牙中央经济行政法院最近的决议，考虑到西班牙税务管理机构的一名官员提供的不完整、不足和不准确的信息，纳税人的在完成意向声明受到了影响。因此，在要求纳税人的配偶确认联合征税后，纳税人有权将个人征税方式更改为联合征税方式。

西班牙中央经济行政法院还在另外一项决议中考虑到，在纳税人无法控制的情况下，当初导致行使联合征税方式的情况发生实质性变化时，该选项可以进行更改。

因此，西班牙中央经济行政法院通过这些决议，在涉及联合或个人所得税选项可能变更的问题上，为纳税人确立了更为灵活的解释，旨在倾向于保护纳税人的利益。

章节C: 不动产

关于大型房产持有人的新住房法:

于5月24日颁布的第12/2023号关于住房权利法已针对“大型房产持有人”的规定做出了以下主要变化:

该法律对“大型房产持有人”进行了以下定义:



- the law defines it as “the natural or legal person who owns more than ten urban properties for residential use or a built-up area of more than 1,500 m² for residential use, excluding in any case garages and storage rooms”.
- Notwithstanding, the above criteria could be reduced when a stressed residential market environment is declared, in which case “those owners of five or more urban properties for residential use located in that area” may also be considered large housing holders.
- 该法律将“大型房产持有人”定义为“拥有超过十个用于居住的城市物业或用于居住的建筑面积超过1,500平方米的自然人或法人，但不包括车库和储藏室”。
- 如上所述的标准在一个区域被宣布为紧张住宅区会有所减少。所以，如果在该地区拥有五套或更多城市住宅物业的业主”也可以被视为大量持有者。

The legal consequences to be considered as a large housing holder are the following:

- The large housing holder should accept an extraordinary extension (under the same terms and conditions) for a maximum period of one year if the lessee proves the social and economic vulnerability situation.
- When the property is located in a stressed residential area, the rent agreed at the beginning of the new contract cannot exceed the last rent of the habitual residence rental contract that had been in force in the last five years in the same property, once the annual rent update clause of the previous contract has been applied, or the maximum limit of the price applicable according to the reference price index system.
- The law also stipulates that, during 2023, rent increases agreed by large housing holders in habitual residence rental contracts cannot exceed the result of applying the annual variation of the Competitiveness Guarantee Index, taking as the reference month for the update which corresponds to the latest index published on the date on which the contract is updated.
- 如果承租人证明其处于社会和经济弱势状况，大型房产持有人应接受其租约在相同条款和条件下的特殊延期，最长延期为一年。
- 当房产位于紧张住宅区时，新合同开始时约定的租金不能超过针对同一房产过去五年内生效的常住住宅租赁合同最后一次租金（经前一合同的年度租金更新条款适用后，或根据参考价格指数系统适用的最高价格限制）。
- 该法律还规定，在2023年期间，大型房产持有人在常住住宅租赁合同中同意的租金增加幅度不能超过适用竞争保障指数的年度变动结果，以合同更新日期对应的最新指数发布月份作为更新参考。

作为大型房产持有人，应考虑以下法律后果：



SECTION D: CORPORATE

Corporate sustainability reporting:

The recently Corporate Sustainability Reporting Directive (CSRD) adopted in the UE has set up the aim to improve the accountability of companies by means of imposing the obligation to report regularly regarding the impact of their activities on people and the environment. The main purpose of the CSRD is to promote sustainability reporting in line with financial reporting, allowing the public to access reliable and comparable data.

In this regard, the following types of companies are affected by the CSRD and will be required to publish a sustainability report:

1. All companies listed on EU regulated markets, including SMEs unless they are micro-enterprises. That is, companies that, at balance sheet closing, do not exceed two of these three thresholds:
 - 10 employees on average during the year.
 - total of balance of €350,000 or,
 - net turnover of €700,000.
2. The rest of the large companies, understood as those companies that, on the date balance sheet, exceed two of these thresholds:
 - 250 employees.
 - total of €20M balance sheet or,
 - €40M net turnover.
3. Companies from third countries with a significant activity in the territory of the EU. That is, companies that:
 - have a net turnover of more than €150M and,
 - have in the EU (i) a subsidiary company that meets the requirements of an EU

章节D: 公司法

企业可持续性报告:

最近在欧盟范围内通过的《企业可持续性报告指令》旨在通过强制要求公司定期报告其活动对人类和环境的影响，提高公司的问责能力。CSRD的主要目的是促进可持续性报告与财务报告保持信息一致，使公众能够获得可靠且可比较的数据。

以下类型的公司受到企业社会责任披露准则的影响，且将需要发布可持续发展报告:

1. 所有在欧盟监管市场上挂牌上市的公司，包括中小企业（除微型企业）。也就是说，在资产负债表结算时，不超过以下三个门槛中的两个的公司：
 - 年平均雇员人数不超过10人。
 - 资产负债合计不超过350,000欧元，或
 - 净营业额不超过700,000欧元。
2. 其余大型公司，指的是在资产负债表日期上超过以下两个门槛的公司：
 - 雇员人数超过250人。
 - 资产负债合计超过20,000,000欧元，或
 - 净营业额超过40,000,000欧元。
3. 在欧盟领土上有重要业务活动的第三国公司。也就是说，公司必须满足以下条件：
 - 实现的净营业额超过1.5亿欧元，并且
 - 在欧盟拥有 (i) 符合欧盟报告公司要求的子公司（即挂牌公司，除微型



reporting company (i.e., being a listed company—except microenterprise—or a large company that meets the thresholds at which we referred to above) or (ii) a branch with a higher net turnover to €40M.

4. Small and non-complex financial institutions (as defined in article 4, paragraph 1, point 145, of Regulation 575/2013/UE9 and insurance and captive reinsurance (as defined in Directive 2009/138/EC).

Gender equality on boards of directors:

The new Directive (EU) 2022/2381 of the European Parliament and of the Council of 23 November 2022 on a better gender balance among directors of listed companies and related measures, has regulated a new normative framework in relation to the gender equality on boards of Directors in listed companies. In this regard, the new directive requires that the UE Member States should establish a target to obtain the result of that the members of the under-represented sex on the boards of directors of listed companies should occupy at least 40% of non-executive members.

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企，或满足上述大公司门槛，或 (ii) 具有超过4000万欧元净营业额的分支机构。

4. 小型和非复杂的金融机构（根据欧盟法规 575/2013/UE 的第4条第1款第145点的定义）以及保险和受控再保险机构（根据指令 2009/138/EC 的定义）。

董事会的性别平等：

欧洲议会和理事会于2022年11月23日颁布的新指令（EU）2022/2381，旨在要求上市公司董事中实现更好的性别平衡以及相关措施，为董事会的性别平等制定了新的规范框架。在这方面，新指令要求欧盟成员国设定一个目标，即在上市公司董事会中，代表性别少数的成员应占据至少40%的非执行成员职位。

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