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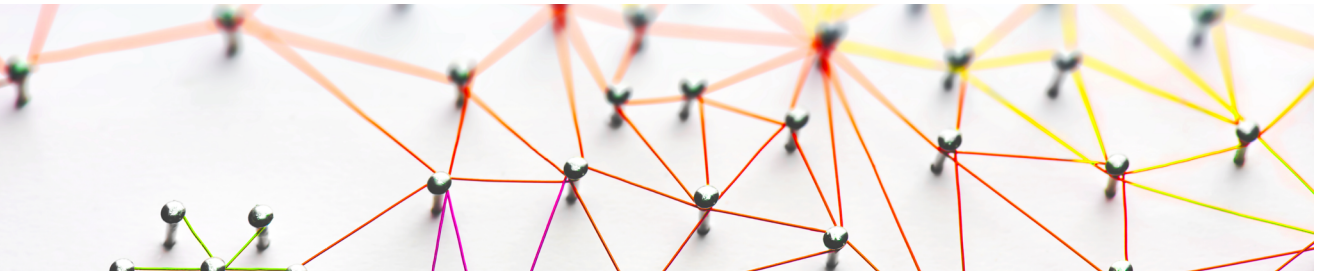

EMPLOYMENT

Working Time Recording System

The recent Judgment of the Supreme Court no. 85/2023, of 18 January 2023, has pronounced about the way how the Spanish companies should carry out the working time recording system.

Please recall that the European Court of Justice previous pronounced that the time recording system must be "objective", "reliable" and "accessible", but the time recording based on the employees' unilateral declaration was not a valid way. However, the above-mentioned judgement of the Spanish Supreme Court has pronounced in the opposite direction, stating that the "objectivity" and "reliability" of a working time recording system cannot be denied for the simple reason that it requires the employees' collaboration to record working time. In fact, it would be difficult to manage a time recording system without certain collaboration of each employee.

Therefore, the fact that the employees must register the required data of working time in the computer program provided by their companies, is a way equivalent to other valid working time recording system which also requires the employee's collaboration.

劳动法方面

工作时间记录系统

西班牙最高法院最近于2023年1月18日作出的第85/2023号判决，旨在明确西班牙公司应如何执行工作时间记录的问题。

需要指出的是，欧洲法院之前指出过，工作时间记录系统必须是"客观的"、"可靠的"和"容易操作的"，但基于员工单方面声明的时间记录不是一种有效的方式。然而，西班牙最高法院的上述判决却作出了相反的宣判，指出不能因为工作时间记录系统需要员工配合记录工作时间而否认其"客观性"和"可靠性"。事实上，如果没有每个员工的配合，很难有效管理一个工作时间记录系统。

因此，员工须在其公司提供的电子程序中登记工作时间数据的记录方式相当于其他有效的但是也需要员工配合工作时间记录方式。

Digital Disconnection Right

The Judgment of the High Court of Justice of Galicia nº 8117/2022, of 23 November 2022, has pronounced that the fact that an employee received calls and messages through the employee's WhatsApp group, during non-working hours, is not considered as a case of violation of the digital disconnection right.

Although in the concrete case judged, it was proven that the WhatsApp group created by the company operated out of the working hours and there were some questions made to the employees, the Court considers that there was not a request or order to the employees to provide an immediate response, stay connected and/or remain as member of the WhatsApp group.

In short, a violation of the digital disconnection right has not been proven, since the company did not penalize, warn, or remind the employee to immediately respond to the communications sent by the WhatsApp group.

数字断线权

西班牙加利西亚高等法院通过2022年11月23日第8117/2022号判决书宣布，员工在非工作时间通过公司的WhatsApp群组接收电话和信息的事实，不被视为违反员工的数字断线权。

虽然在本次被审判的具体案件中，公司创建的WhatsApp群组在工作时间之外被使用为客观事实，同时公司也在WhatsApp群组中向员工提出了一些问题，但法院认为，本案件中公司并没有要求或命令员工立即作出回应，持续保持联系或持续作为WhatsApp群组成员。

简而言之，由于公司没有惩罚、警告或提醒该员工立即回复在WhatsApp群组中收到的通讯，所以并没有违反员工的数字断线权。

TAX

The deductibility of directors' remuneration in a unlisted company

Historically, in order that the directors' remuneration of an unlisted company could be tax-deducible, (i) the bylaws of a unlisted company should establish the remuneration system, (ii) the shareholders' meeting of the company should approve the maximum amount of the remuneration payable to the directors and, (iii) a contract should be approved in the shareholders' meeting if the directors undertake executive functions.

However, the Spanish National Audience recently has issued a judgement nº 4786/2022, of 3

税法

非上市公司董事薪酬的税务可抵扣性

以往，为了使非上市公司的董事薪酬可以在税务上扣税，(i) 非上市公司的章程应明确董事薪酬制度，(ii) 公司的股东大会应批准支付给董事的最高薪酬额度，(iii) 如果董事承担行政管理职能，应在股东大会上批准其合同。

然而，为使非上市公司的董事薪酬的税务可扣除性更加灵活，西班牙国家法院最近发布

October 2022, with the purpose of making more flexible the deductibility of directors' remuneration in the unlisted company, by stating that although the bylaw of a unlisted company did not establish the remunerated nature of the position, the directors' remuneration could be deductible if the company could prove that the shareholders knew the existence of the directors' remuneration due to that there ware previous communications of the directors' remuneration duly received by the shareholders.

The recent modifications introduced in the Beckham Law

The recent Law 28/2022, of 21 December, on the promotion of the start-up ecosystem, has introduced certain important novelties in the special personal income tax regime for the foreign employees or director of companies who move to Spain (also known as the Beckham Law).

As known, the Beckham Law allows the foreign employees or director of companies who move Spain to be taxed as non-residents, subject to the compliance of certain requirements, and to be taxed on their income at a fixed rate of 24% (47% from €600,000).

Please note that historically it was required that the foreign employees or directors of companies should not have resided in Spain in the previous 10 years. However, the above-mentioned law has made this criterion more flexible by lowering the previous period in which the foreign employees or directors of companies had not resided in the country to 5 years.

REAL ESTATE

Compensation for withdrawal from lease contracts for use other than as a dwelling

In the current economic traffic, it could be possible that two parties sign a lease contract for the use of an office without the inclusion of the clause

了2022年10月3日的第4786/2022号判决指出，尽管非上市公司的章程没有明确该董事职位的薪酬制度，但如果公司能够证明本公司股东知晓董事薪酬的存在事实（公司股东此前已经正式收到关于董事薪酬的书面通知），则董事的薪酬可以在税务上被抵扣。

贝克汉姆法最新修改

12月21日颁布的关于促进创业生态系统的第28/2022号法对以往的西班牙公司的外国员工或董事的特殊个人所得税制做出了重要修改（该特殊个人所得税制度也称贝克汉姆法）。

众所周知，贝克汉姆法允许西班牙公司的外国员工或董事在符合特定要求的情况下作为西班牙非居民纳税，并对其收入按24%的固定税率征税（从60万欧元起为47%）。

请注意，被修改前的特殊税制曾要求公司的外国员工或董事在过去10年内没有在西班牙居住过。然而，上述法律将这一条件变得更加灵活，将外国员工或公司董事此前未在西班牙居住的时间要求降低到5年。

不动产

对提前终止非住宅用途的租赁合同的赔偿

在目前的经济活动中，有可能发生的一个情况是，不动产租赁合约双方在签订办公室使

about the consequences if the lessee withdraws from the lease contract before the expiry of the lease contract duration. In this sense, if the lease submits the withdrawal request and the lessor accepts it, the lessee should compensate the lessor for the damages caused by the withdrawal from the contract.

With the purpose of determining the amount of the compensation, a very common practice in the Spanish Courts has been to take into consideration, as a guideline, the compensation criterion established in the Spanish Urban Lease Law for the case of withdrawal from the lease of a dwelling (one month's rent for each year that remains to be fulfilled in the contract).

However, our Spanish Supreme Court has stated that the above-mentioned criterion cannot be applied directly to leases for use other than as a dwelling as a universal criterion but as a guideline. Therefore, the specific circumstances of each case should be considered, such as the remaining term of the lease, the investments made by the lessor in the property, the possibility of concluding a new lease, the price of the new lease, etc.

Legislative novelties introduced by the Omnibus Law in the Community of Madrid

On 22 December 2022, the official gazette of Madrid published the Law on urgent measures to boost economic activity and modernise the Administration, approved by the Assembly of the Community of Madrid, known as the Omnibus Law. It covers a series of legislative measures to reactivate the economic activity and the employment.

The Omnibus law introduces several important novelties in the areas of zoning, planning instruments, land use, licences, and urban planning discipline. It also contains an ambitious regulation of the urban development collaboration entities, fermenting their development throughout the Madrid Community and extending their competences to the inspection and control phase.

用的租赁合同时，未明确约定关于承租方在租赁合同期满前终止租赁合同的后果。一般来说，如果承租方提出退租要求而出租方予以接受，承租方应该赔偿出租方因退租而造成的经济损失。

为了确定赔偿金额，西班牙法院的一个非常普遍的做法是，将西班牙城市租赁法中规定的提前终止住房租赁的赔偿标准（按租赁的剩余期限的每一年以一个月的租金作为赔偿标准）作为准则加以考虑。

然而，西班牙最高法院指出，上述标准不能作为一个普遍的标准直接适用于非住宅用途的租赁，所以该标准仅为指导性原则。因此，确定赔偿金额应考虑每个案件的具体情况，如租赁的剩余期限、出租方对房产的投资、签订新租赁合同的可能性、新租赁的价格等。

马德里自治区的综合法引入的新法规

2022年12月22日，马德里官方公报公布了由马德里大区议会批准的关于促进经济活动和行政管理现代化的紧急措施法，即综合法。它涵盖了一系列的立法措施，以重新刺激当地经济活动和劳动就业市场。

综合法在分区、规划工具、土地使用、许可证和城市规划等方面引入了一系列重要的新规定。综合法还包含了对城市发展合作实体的新规定，旨在使城市发展合作实体在整个马德里大区得到发展，并将其权限扩展到检查和控制阶段。

CORPORATE AND M&A

Amendments of the suspension of the regime of liberalization of certain foreign direct investments in Spain

The Royal Decree-Law 20/2022, of 27 December, on measures in response to the economic and social consequences of the war in Ukraine and in support of the reconstruction of the island of La Palma and other situations of vulnerability, has amended once again the current regime for the control of foreign direct mainly in the following aspects:

- The concept of the "foreign direct investments" has been modified and now means all the investments executed as a result of which the investor acquires a holding equal to or greater than 10% of the share capital of a Spanish company, and all others which as a result of the corporate transaction, act or legal activity carried out acquire control of all or part of it, by application of the criteria established in Article 7 of Law 15/2007, of 3 July, on the Defence of Competition, provided that one of the following circumstances is met:

  — The investments are executed by residents of countries outside the EU and the EFTA.

  — The investments are executed by residents of the EU or the EFTA countries whose real beneficial ownership corresponds to residents of countries outside the EU and the EFTA. Such beneficial ownership shall be deemed to exist when the latter ultimately own or control, directly or indirectly, more than 25% of the capital or voting rights of the investor, or otherwise exercise control, directly or indirectly, over the investor".

- The second amendment is the extension of the deadline for the suspension of the liberalization of foreign direct investment executed by residents of other EU and EFTA countries until 31 December 2024.

公司和并购

对暂停在西班牙的某些外国直接投资自由化制度的修正

12月27日第20/2022号皇家法令，关于应对乌克兰战争的经济和社会后果以及支持拉帕尔马岛的重建和其他脆弱情况的措施，再次修正了现行的外国直接投资管制制度且主要体现在以下方面:

- 对 "外国直接投资 "的概念进行了修改，现在是指所有执行的投资且其投资结果使投资者获得等于或大于被投资西班牙公司10%的股份，以及所有其他由于公司交易、行为或合法活动而获得公司全部或部分控制权的投资。在此方面上述外国直接投资也需要满足2007年7月3日第15/2007号保护竞争法第7条规定的以下情况之一:

  — 投资是由欧盟和欧洲自由贸易联盟以外的国家的居民完成的。

  — 投资虽是由欧盟或欧洲自由贸易联盟国家的居民完成的，但其真正的实际所有权被欧盟和欧洲自由贸易联盟以外的国家的居民持有。当后者直接或间接拥有或控制投资者25%以上的公司资本或投票权，或以其他方式直接或间接对投资者行使控制权时，应视为存在这种实际所有权持有者。

- 第二项修正是将暂停欧盟其他国家和欧洲自由贸易联盟国家居民执行的外国直接投资自由化的期限延长至2024年12月31日。

The new whistleblowing law

The Law 2/2023, of 20 February, regulating the protection of persons who report on regulatory infringements and the fight against corruption has established for both public and private entities the obligation to implement internal protected information reporting canals for the person who reports any corruption or fraud and violations of EU and national law. To make a special mention, the following kinds of private entities has the obligation to implement internal protected information canals:

- Legal entities in the private sector with 50 or more employees.

- Legal entities in the private sector that fall within the scope of application of the European Union acts on financial services, products and markets, prevention of money laundering or terrorist financing, transport security and environmental protection referred to in parts I.B and II of the Annex to Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019, must have an internal information system that will be regulated by their specific regulations, regardless of the number of employees they have.

  In these cases, this law shall be applicable in all matters not regulated by their specific regulations. Legal entities shall be deemed to be included in the preceding paragraph if, despite not having the corporate address in national territory, they carry out activities in Spain through branches or agents or through the provision of services without a permanent establishment.

The incompliance of the above-mentioned obligation implies the penalties ranging from very serious, serious, and minor: Up to 1 million euros.

For further information, please contact:

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新的举报法

2023年2月20日颁布的第2/2023号法律，对保护举报违规行为和打击腐败作出了新规定，规定公共和私营实体有义务为举报任何腐败或欺诈行为以及违反欧盟和国家法律的人员建立内部信息保护渠道。要特别指出的是，以下类型的私人实体有义务建立内部信息保护渠道：

- 拥有50名或以上员工的私营法律实体。

- 属于2019年10月23日欧洲议会和理事会第2019/1937号指令附件第一部分B和第二部分提及的关于金融服务、产品和市场、防止洗钱或资助恐怖主义、运输安全和环境保护的欧盟法案的适用范围内的私营法律实体，必须有一个内部信息保护系统。该系统将由其对应特殊条例加以规定，无论上述机构有多少员工。

  在这些情况下，本法应适用于其适用的特殊条例未规定的所有事项。如果一实体在西班牙领土上没有公司地址，但通过分支机构或代理人或通过提供服务的方式在西班牙开展活动，但没有常设机构，则应被视为包括在前款中。

不遵守上述义务意味着可能受到非常严重、严重和轻微三个等级的处罚：最高处罚达100万欧元。

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