

Spanish Municipal Legislation Concerning Matters of Private International Law, 1997

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– Royal Decree 2612/1996, of 20 December, amending the Regulations on Population and Territorial Demarcation of Local Entities passed by Royal Decree 1690/1986, of 11 July (*BOE* 14, 16.1.97; correction of errors *BOE* 30.1.97).

Note: This regulation stems from the amendments made to the Law Regulating the Basis of the Local Government System by Law 4/1996, of 10 January, concerning the Municipal Register (see the reference to this Law in the 1995–1996 volume of this Yearbook). This Royal Decree provides a new wording for article 54, among others, making it compulsory for all persons living in Spain to be entered in the register of the municipality in which they reside habitually, thereby acquiring the status of “vecino”. Following the enactment of Law 4/

1996 and this Royal Decree, the former categories of “vecino” (Spanish citizens of legal age whose usual place of residence is in the municipality) and “domiciliado” (Spanish minors and foreign nationals whose usual place of residence is in the municipality) are no longer used in the Spanish Legal System.

– Resolution of 31 January 1997, of the Under-Secretariat providing for the publication of the 24 January 1997 Agreement of the Council of Ministers establishing the quota of authorisations for the employment of non-Community foreign nationals in 1997 (*BOE* 31, 5.2.97).

– Order of 14 April 1997 establishing the Spanish Language and Culture curriculum for Spanish pupils residing abroad (*BOE* 126, 27.5.97).

– Organic Law 1/1997, of 30 May, amending the Organic Law on the General Electoral System for the implementation of Directive 94/80/EC on Municipal Elections (*BOE* 130, 31.5.97).

– Law 10/1997 of the Autonomous Region of Catalonia, of 3 July, on Minimum Income for Participation in Society (*BOE* 198, 19.8.97).

Note: In order to be entitled to apply for a guaranteed minimum income in that autonomous region to foster their participation in society, article 6.1, subparagraph b), persons are required to prove a specified period of continued and effective residence in Catalonia. To this end, the law specifies that “foreign nationals living in Catalonia who apply must prove their legal residence”.

– Royal Decree 1248/1997, of 24 July, approving the Regulations on Voluntary Work for the purpose of Alternative Civilian Service and partially amending the Regulations on Conscientious Objection and Alternative Civilian Service (*BOE* 177, 25.7.97).

Note: The first of the final provisions amends article 22 of the Regulations on Conscientious Objection and Alternative Civilian Service, approved by Royal Decree 266/1995, of 24 February (see Section VIII of the 1995–1996 volume of this Yearbook). Article 22 refers to exemption from civilian service through international convention, and recognition when the person in question possesses certain characteristics linked to the completion of (or exemption from) military service, alternative civilian service or voluntary work in a foreign country.

– Royal Decree-Law 12/1997, of 1 August, adding a third paragraph to article 67.1 of the text of the Law on Traffic, Circulation of Motor Vehicles and Road Safety, approved by Legislative Royal Decree 339/1990, of 2 March (*BOE* 196, 16.8.97).

Note: For reasons of urgency, the aforementioned article 67.1 was amended by this Royal Decree-Law. The amendment was subsequently processed as a bill, giving rise to Law 59/1997, of 19 December (see *infra* in this same section).

– Order of 17 December 1997 regulating the system of equivalence of education received in the United Kingdom of Great Britain and Northern Ireland and Spain at non-university level, according to the new organisation of the educational system (*BOE* 309, 26.12.97).

– Order of 9 December 1997 regulating the aptitude test and period of work experience for the recognition of vocational training qualifications in the health sector in the European Union States (*BOE* 310, 27.12.97).

Note: This provision develops Royal Decree 1396/1995, of 4 August, regulating a second general system of recognition of professional qualifications awarded by the Member States of the European Union and by the other signatories of the Agreement on the European Economic Area (see Section VIII of the 1995–1996 volume of this Yearbook), and completing Royal Decree 1665/1991, of 25 October, regulating the general system of recognition of higher education qualifications in the Member States of the European Community (see also Section VIII of the 1991 volume of this Yearbook).

– Law 59/1997, of 19 December, adding a third paragraph to article 67.1 of the text of the Law on Traffic, Circulation of Motor Vehicles and Road Safety, approved by legislative Royal Decree 339/1990, of 2 March (*BOE* 304, 20.12.97).

Note: This regulation stems directly from Royal Decree-Law 12/1997, of 1 August (see *supra* in this same section). The new third paragraph of article 67.1 establishes that, “When the offender does not prove that he resides habitually in Spain, the officer reporting the offence shall establish the amount of the fine provisionally and, if this amount or guarantee of payment by any means allowed by law is not deposited, he shall immobilise the vehicle according to the terms and conditions established by the relevant regulations. In any event, the provisions of the previous paragraph on a 20 percent reduction shall be taken into account”.

IX. NATURAL PERSONS: LEGAL INDIVIDUALITY, CAPACITY AND NAME

X. FAMILY LAW

XI. SUCCESSION

XII. CONTRACTS

– Correction of errors of Law 12/1996, of 30 December, on the General State Budget for 1997 (*BOE* 45, 21.2.97).

Note: Law 12/1996 is contained in Sections XII and XXIII of the 1995–1996 volume of this Yearbook.

– Law 65/1997, of 30 December, on the General State Budget for 1998 (*BOE* 313, 31.12.97).

Note: It is interesting to note the eleventh additional provision (upper limit on cover for the new transactions involving export credit insurance).

XIII. TORTS

– Royal Decree 738/1997, of 23 May, approving the Regulations on assistance to the victims of violent crimes and offences against sexual freedom (*BOE* 126, 27.5.97).

Note: Article 2 establishes that, “For the purpose of the provisions of article 2.1 of the Law (referring to Law 35/1995, of 11 December, on aid and assistance to the victims of violent offences and offences against sexual freedom [see Section XIII of the 1995–1996 volume of this Yearbook]), foreign nationals remaining in Spain as legal residents as regulated in article 13 of Organic Law 7/1985, of 1 July, on the rights and freedoms of aliens in Spain, shall be deemed to reside habitually in Spain”.

XIV. PROPERTY

– Order of 20 February 1997 provisionally increasing the legal protection of the surveying of semiconductor products to persons of the Isle of Man (*BOE* 60, 11.3.97).

– Royal Decree 1523/1997, of 26 September, designating the Spanish authority competent to extend the form of implementation of the decisions of the Office for Harmonization of the Internal Market (*BOE* 244, 11.10.97).

Note: The Technical Secretary General of the Ministry of Justice shall be designated the Spanish authority responsible for verifying the authenticity and for extending the form of implementing the final decisions emanating from the Office for Harmonization in the Internal Market (*OAMI*), establishing the expenses this procedure entails.

XV. COMPETITION LAW

XVI. INVESTMENTS AND FOREIGN EXCHANGE

– Law 12/1997, of 24 April, on the Liberalisation of Telecommunications (*BOE* 99, 25.4.97).

Note: Article 2, number four, adds a new paragraph to section 2 of article 15 of Law 31/1987, of 18 December, on Telecommunications: “The Government, in

executing international treaties signed by Spain or by the European Union, may vary the aforementioned percentage in applying the principle of reciprocity". This refers to the fact that the same article, 15.2, liberalises generally up to a ceiling of 25 per cent the stake held by foreign individuals or legal persons domiciled abroad in the share capital of companies operating carrier services and providing telecommunications services to end users. The aforementioned paragraph had previously been introduced by article 2, number four, of Royal Decree-Law 6/1996, of 7 June, on the liberalisation of telecommunications (see Section XVI of the 1995–1996 volume of this Yearbook). The single abrogative provision of Law 12/1997 abrogates Royal Decree-Law 6/1996.

– Agreement of 14 May 1997, of the Council of the National Stock Exchange Commission (*CNMV*), authorising investment trusts and funds to invest in securities traded on the stock markets of Sao Paulo (*BOVESPA*) and Rio de Janeiro (*BVRJ*), in Brazil (*BOE* 121, 21.5.97).

– Law 66/1997, of 30 December, on Fiscal, Administrative and Social Measures (*BOE* 313, 31.12.97).

Note: Articles 112 and the following establish three Funds designed to encourage Spanish investment abroad.

XVII. FOREIGN TRADE LAW

– Resolution of 30 December 1996, of the Department of Customs and Excise of the National Tax Office (*AEAT*), on management rules and procedure for the use of the document classifying class T2M fish products as Community products (*BOE* 42, 18.2.97).

– Circular 1/1997, of 7 January, of the Department of Customs and Excise of the National Tax Office, amending Circular 4/1996 concerning instructions for completing the formalities for the Single Administrative Document (*SAD*) (*BOE*, 24.12.96) (*BOE* 12, 14.1.97).

Note: Circular 4/1996 (see Section XVII of the 1995–1996 volume of this Yearbook) was also subsequently amended by Circulars 2/1997 and 7/1997, which can be found *infra* in this section.

– Order of 6 March 1997 amending the trade regime with Iraq (*BOE* 62, 13.3.97).

– Circular 3/1997, of 28 February, of the Department of Customs and Excise, Transit System. Temporary ban on the use of full cover for goods posing greater risk of fraud (*BOE* 79, 2.4.97).

Note: This provision was subsequently amended by Circular 5/1997, of 25 August, which is published *infra* in this same section.

– Circular 2/1997, of 24 March, of the Department of Customs and Excise of the National Tax Office, amending Circular 4/1996, of 9 December, concerning instructions on completing the formalities for the Single Administrative Document (SAD) (*BOE* 82, 5.4.97).

Note: Circular 4/1996 (see Section XVII of the 1995–1996 volume of this Yearbook) had already been amended by Circular 1/1997, which can be found *supra* in this section.

– Correction of errors in Circular 5/1996, of 20 December, of the Department of Customs and Excise of the National Tax Office, substituting the text of Circular 6/1995, which specifies the instructions concerning the application of the provisions on statistics of the trade in goods between the Member States of the European Union (*BOE* 162, 8.7.97).

Note: Circular 5/1996 can be found in Section XVII of the 1995–1996 volume of this Yearbook.

– Circular 5/1997, of 25 August, of the Department of Customs and Excise, amending Circular 3/1997, of 28 February, on the temporary ban on the use of full cover for goods posing a greater risk of fraud (*BOE* 225, 19.9.97).

Note: Circular 3/1997 can be found *supra* in this same section.

– Circular 7/1997, of 24 November, of the Department of Customs and Excise of the National Tax Office amending Circular 4/1996, of 9 December, concerning instructions on completing the formalities for the Single Administrative Document (SAD) (*BOE* 291, 5.12.97).

Note: Circular 4/1996 (see section XVII of the 1995–1996 volume of this Yearbook) had already been amended by Circulars 1/1997 and 2/1997, which can be found *supra* in this section.

– Resolution of 24 November 1997, of the Department of Customs and Excise of the National Tax Office, on simplified procedure applicable to national transit (*BOE* 294, 9.12.97).

– Resolution of 16 December 1997, of the Department of Customs and Excise of the National Tax Office, updating the Integrated Community Tariff (TARIC) (*BOE* 305, 22.12.97).

– Order of 23 December 1997 establishing the statistical thresholds for simplification and assimilation defined in article 28 of Regulation (EEC) 3330/91 (*BOE* 312, 30.12.97).

– Order of 23 December 1997 establishing the limits for abolishing the compulsory reporting of the statistical value of goods in the Intrastat declaration, implementing Regulation (EC) 860/97 (*BOE* 312, 30.12.97).

- Law 66/1997, of 30 December, on Fiscal, Administrative and Social Measures (*BOE* 313, 31.12.97).

Note: In articles 112 and ff. three Funds are established to encourage Spanish investment abroad.

XVIII. BUSINESS ASSOCIATION/CORPORATIONS

- Law 10/1997, of 24 April, on the right to information and consultation of the employees of Community undertakings and groups of undertakings (*BOE* 98, 25.4.97).

- Order of 27 November 1997 regulating the authorisation of intra-Community air carriers and the registration of tariffs (*BOE* 300, 16.12.97).

Note: The purpose of this provision is to establish the rules applicable to the authorisation of air carriers on intra-Community air routes and the registration of air tariffs, as established in Council Regulations (EEC) 2408/92 and 2409/92, of 23 July 1992.

XIX. BANKRUPTCY

XX. TRANSPORT LAW

- Order of 7 March 1997, developing Chapter IV of Title IV of the Regulations of the Law on Land Transport, concerning the granting of authorisation for the international transport of goods by road (*BOE* 62, 13.3.97).

- Order of 23 July 1997, developing the Regulations of the Law on Land Transport, concerning freight transport and forwarding agents and warehouse-owners/distributors (*BOE* 181, 30.7.97).

Note: Article 6 b), which is of particular interest to Private International Law, establishes as a requirement for becoming an authorised freight transport operator, “having Spanish nationality or that of another State of the European Union or another foreign country in which, pursuant to the provisions of the international treaties or agreements to which Spain is party, the aforementioned condition is not required”. Article 7 accordingly establishes the manner of proving this condition.

- Order of 23 July 1997, developing the Regulations of the Law on Land Transport, concerning authorisations for the transport of goods by road (*BOE* 182, 31.7.97).

Note: Article 9 b) is of interest in that it requires those authorised to operate freight transport by road to have “Spanish nationality or that of another State of the European Union or other foreign country in which, pursuant to the

provisions of the international treaties or agreements to which Spain is party, the aforesaid condition is not required". Article 10 establishes the manner of proving this condition.

– Order of 23 July 1997, developing the Regulations of the Law on Land Transport, concerning authorisations for discretionary and supplementary private transport of passengers by bus (*BOE* 182, 31.7.97).

Note: It is interesting to note article 8 b), which establishes as a requirement for being authorised to provide discretionary public transport by bus "having Spanish nationality or that of another State of the European Union or other foreign country in which, pursuant to the provisions of the international treaties or agreements to which Spain is party, the aforesaid condition is not required". Article 9 goes on to establish the means of proving fulfilment of this requirement.

– Order of 23 July 1997 developing Chapter I of Title II of the Regulations of the Law on Land Transport with respect to the issuance of certificates of professional training (*BOE* 182, 31.7.97).

Note: It is interesting for the purpose of Private International Law to note article 15 (recognition of certificates of professional training for the exercise of the profession of transport operator issued in other states of the European Union) and article 16 (recognition of the requirement of professional training for the exercise of activities of freight transport agency, forwarding agency or warehouse-owner/distributor in the case of persons who have been performing such activities in other States of the European Union).

– Royal Decree 1316/1997, of 1 August, extending the validity of the system of compensation for the transport of freight to or from the Canary Islands (*BOE* 207, 29.8.97).

Note: This provision extends throughout 1997 the validity of the transport system established by Royal Decree 1054/1995, on compensation for air and maritime transport of goods between the Canary Islands and Member States of the European Union, and between the former and the Spanish mainland or between the different islands of the Canary archipelago (see the same Section of the 1995–1996 volume of this Yearbook).

– Royal Decree 1466/1997, of 19 September, establishing the legal system of scheduled coastal shipping routes and shipping of public interest (*BOE* 226, 29.9.97).

Note: Article 2 establishes that "Coastal shipping for commercial purposes is reserved to Spanish merchant vessels and those of the other European Union states, pursuant to the provisions of article 81 of the 1st Law on State Seaports and the Merchant Marine and to Community rules. In exceptional cases, when no suitable Spanish or Community vessels are available, in this event and for as long as this circumstance applies, Spanish and Community shipping companies

may be authorised by the Directorate-General of the Merchant Marine to contract and use merchant vessels of States that do not belong to the European Union for coastal shipping”.

XXI. LABOUR LAW AND SOCIAL SECURITY

– Law 10/1997, of 24 April, on the right to information and consultation of the employees of community undertakings and groups of undertakings (*BOE* 98, 25.4.97).

– Resolution of 21 April 1997, of the Secretariat of State for Social Security, establishing instructions on special healthcare agreements for Spanish emigrants returning to Spanish territory and beneficiaries of social security pensions in Switzerland residing in Spain (*BOE* 107, 5.5.98; correction of errors *BOE* 29.5.97).

– Order of 23 April 1997 establishing a new period within which emigrants referred to in Royal Decree 996/1986, of 25 April, may avail themselves of the special Agreement regulated therein (*BOE* 109, 7.5.97).

Note: Royal Decree 996/1986 applies to Spanish emigrants and children of the latter having Spanish nationality, irrespective of whether the countries in which they work have entered into a Social Security Agreement covering all or some of the benefits for retirement, disability and death and survival (art. 1). This Order of 23 April 1997 establishes a new period between 9 May 1997 and 1 June 1998.

– Order of 22 December 1997 establishing that Spanish nationals residing in Spain who render services at the Spanish Delegation of the United Nations High Commission for Refugees are included under Royal Decree 2805/1979, of 7 December (*BOE* 313, 31.12.97).

Note: Royal Decree 2805/1979 includes in the scope of the general Social Security scheme Spanish nationals who are civil servants or employees of international intergovernmental organisations.

– Law 66/1997, of 30 December, on Fiscal, Administrative and Social Measures (*BOE* 313, 31.12.97).

Note: Article 44 amends article 7.1, first paragraph, of the Law on Social Security passed by legislative Royal Decree 1/1994, of 20 June, which now reads as follows: “Spanish nationals residing in Spain and foreign nationals residing or abiding legally in Spain shall be included under the Social Security system for the purpose of contributory scheme benefits irrespective of their gender, marital status and profession, provided that, in both cases, they perform their activity within Spain and are included in any of the following categories: ...”.

XXII. CRIMINAL LAW

XXIII. TAX LAW

– Statutory Law 24/1996, of 30 December, of the Community of Navarra, on company tax (*BOE* 26, 30.1.97).

Note: The following precepts are of particular interest: article 4 (scope), article 11.2 (the income of the taxpayer is assessed for tax irrespective of the place in which it has been earned and of the residence of the taxpayer), article 31 (rules on assessment in the case of transactions carried out with or by individuals or corporations residing in tax havens and change of residence outside Spanish territory), articles 60, 61 and 62 (deductions to prevent international double taxation), articles 100 to 106 (international system of fiscal transparency), articles 107 and 108 (Spanish and foreign economic interest groupings), article 145 (rules for preventing double taxation), articles 147 to 150 (system of holding companies representing the equity of non-resident undertakings) and the fifteenth temporary provision (allowance for international double taxation).

– Correction of errors for Law 12/1996, of 30 December, on the General State Budget for 1997 (*BOE* 45, 21.2.97).

Note: Law 12/1996 can be found in Sections XII and XXIII of the 1995–1996 volume of this Yearbook.

– Correction of errors in Law 10/1996, of 18 December, on urgent fiscal measures to correct internal double taxation between undertakings and on incentives to the internationalisation of undertakings (*BOE* 54, 4.3.97).

Note: Law 10/1996 can be found in Section XXIII of the 1995–1996 volume of this Yearbook.

– Royal Decree 537/1997, of 14 April, approving the Regulations on Company Tax (*BOE* 98, 24.4.97).

Note: The following precepts of the Regulations developing Law 43/1995, of 27 December, on Company Tax (see this Section in the 1995–1996 volume of this Yearbook) are worthy of note: articles 46 to 49 (system governing foreign holding companies); article 65 (deductible items for undertakings having no permanent establishment who are liable by real obligation to pay taxes); article 66 (liability by real obligation to file tax returns on income earned in Spain for undertakings having no permanent establishment in the country); article 67 (application of treaties to prevent double taxation); article 68 (withholding tax on acquisition of real estate from non-residents); article 69 (special lien on immovable property of non-resident undertakings); Second additional provision (application of arts. 66 and 67 to the payers of Personal Income Tax or Capital Tax owning assets in Spain); and the second temporary provision (rules on filing returns and income for undertakings liable by real obligation to pay taxes).

– Circular 4/1997, of 29 May, of the Department of Customs and Excise of the National Tax Office, on the accumulative system of collection of certain import duties in the rice sector (*BOE* 146, 19.6.97).

– Resolution of 6 June 1997, of the Department of Customs and Excise, clarifying certain matters relative to the change of residence of persons from the Canary Islands, Ceuta and Melilla (*BOE* 146, 19.6.97; correction of errors *BOE* 9.7.97).

– Resolution 6/1997, of 10 July, of the Directorate General for Taxes, on the application of Valued Added Tax in contracts concluded by the State and other Public Administrations concerning goods or services provided from abroad (*BOE* 170, 17.7.97).

– Royal Decree-Law 14/1997, of 29 August, amending Law 37/1992, of 28 December, on Value Added Tax (*BOE* 208, 30.8.97).

Note: Paragraphs one and seven of the single article rewording article 19.5 of Law 37/1992 on Value Added Tax (see this same section in the 1992 volume of this yearbook) and the fifth paragraph of the Appendix, respectively, are of particular interest. By excluding transactions relating to certain commodities listed on foreign stock markets (tin, copper, zinc, aluminium, lead, indium, silver, platinum, palladium and rhodium), the new wording is intended to encourage the establishment of foreign operators trading in these commodities. Also of interest is paragraph four of the single article adding an eighth paragraph to article 70.1 of Law 37/1992. This new paragraph establishes criteria for locating telecommunications services for the purpose of taxes, in order to avoid cases in the community sphere both of double taxation and of non-taxation on the consumption of such services. The latter is also affected by the second and third temporary provisions of the Royal Decree-Law.

– Royal Decree 1467/1997, of 19 September, on top-level sportsmen (*BOE* 248, 16.10.97).

Note: This regulation is designed to regulate access to the category of top-level sportsman and the consequences thereof, as well as to establish criteria for drawing up annual lists of such sportsmen. Article 3.3, which is of particular interest to this publication, states that “only those sportsmen who are liable for and pay Personal Income Tax in Spain may be included in the list of top-level sportsmen and enjoy the benefits provided for in this Royal Decree...”.

– Order of 23 December 1997 dictating the rules for filing tax returns for Personal Income Tax, Company Tax and Capital Tax, due by persons and undertakings subject to taxation by real obligation, and the special lien on the immovable property of non-resident undertakings, establishing the percentage of

expenses of permanent establishments whose operations do not cover a whole business year, establishing the rule for converting payments in foreign currency to the national currency, regulating the certification of liability by personal obligation and amending the Orders of 15 June 1995 and 15 October 1992 (*BOE* 312, 30.12.97).

– Law 66/1997, of 30 December, on Fiscal, Administrative and Social Measures (*BOE* 313, 31.12.97).

Note: Particularly worthy of note are the amendments made to different precepts of Law 43/1995, of 27 December, on Company Tax, in different paragraphs of article 4: paragraph five gives a new wording to article 29 bis, paragraph 1, of Law 43/1996 (deductions from the total tax liability in the case of personal obligation to pay taxes when the taxable income includes income obtained from permanent establishments located overseas); paragraph six rewords article 30.1 of Law 43/1995 (deduction of taxes effectively paid by a corporation not residing in Spanish territory in respect of taxes liable by personal obligation when the taxable income includes dividends or shares in the profits paid by the non-resident corporation); paragraph nine rewords subparagraph 46.1 f), of Law 43/1995 (exempted income); paragraph ten, which rewords article 57.2 of Law 43/1995 (withholding and advance of 5 percent in the conveyance of immovable property located in Spain by non-resident taxpayers operating without a permanent establishment).

Article 6, paragraph twenty three, of Law 66/1997 amends article 129 of Law 37/1992, of 28 December, on Value Added Tax (obligations of taxpayers who avail themselves of the special system for agriculture, stockbreeding and fisheries when they carry out imports or intra-community acquisitions of goods) (for Law 37/1992 see the same Section of the 1992 volume of this Yearbook).

Article 7, paragraph four, of Law 66/1997 introduces in Title I of Law 38/1992, of 28 December, on Special Taxes (see this same Section in the 1992 volume of this Yearbook) a new Chapter IX on the tax on electricity, the new article 64 paragraph six of which contains special provisions on intra-Community trade in electric power.

Article 9 of Law 66/1997 amends different precepts of Law 20/1991, of 7 June, on the Amendment of the Fiscal Aspects of the Economic-Fiscal System of the Canary Islands. Paragraph two amends article 17.2, paragraph 4, of Law 20/1991, which, among other things, refers to the provision of telecommunications services when the provider of the service is based in a Member State of the European Union other than Spain. For its part, paragraph fourteen of article 9 of Law 66/1997 regulates the reimbursement of the Canary Islands Indirect General Tax on imports of goods through customs agents.

Article 11 of Law 66/1997 introduces amendments to Law 8/1991, of 25 March, on the Tax on Production, Services and Importation in the Cities of Ceuta and Melilla (see the reference in this same Section of the 1991 volume of

this Yearbook). Specifically, articles 8 and 9 of Law 8/1991 on exemptions in exports and imports of goods, are amended.

XXIV. INTERLOCAL CONFLICT OF LAWS