

## **SPANISH MUNICIPAL LEGISLATION CONCERNING MATTERS OF PRIVATE INTERNATIONAL LAW, 1995 AND 1996**

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### **I. SOURCES OF PRIVATE INTERNATIONAL LAW**

– Organic Law 1/1996 of 15 January, on Legal Protection of Minors, partially modifies the Spanish Civil Code and Civil Procedural Law. (*BOE* 15, 17.1.96).

*Note:* From the perspective of private international law, the following provisions are worth noting: The First and Second Final Provisions thereof modify, respectively, article 9.4 of the Civil Code, which provides choice of law rules in matters of filiation and parent-child relations, and article 9.5, paragraphs 3, 4 and 5, which provide choice of law rules in matters of adoption. See also *infra* Heading X for further reference.

### **II. INTERNATIONAL JURISDICTION**

### **III. PROCEDURE AND JUDICIAL ASSISTANCE**

– Resolution of 13 June 1995, passed by the Technical Secretariat-General for the Spanish Ministry of Foreign Affairs, on the Agreement relating to Simplification and Modernisation of Extradition Request Procedures between Member States of the European Communities, Donostia-San Sebastian, 26 May 1989. (*BOE* 167, 14.7.95).

– Royal Decree 1432/1995, of 4 August, approves the Transactional Agreement between Spain and Juan Negrín Jr. (*BOE* 210, 2.9.95).

– Act 1/1996 of 10 January on Legal Aid. (*BOE* 11, 12.1.96).

*Note:* From the perspective of private international law, the following provisions are worth noting: article 2 extends the scope of application of legal aid, *inter alia*, to aliens who prove they cannot afford litigation; articles 44 and 45 regulate application in

Spain of international agreements on legal aid. The Spanish Parliamentary Commissioner for Administration (Ombudsman) has been granted leave to proceed with Appeal number 1556/96 against the clause "who are legally resident in Spain" found in Section 2, subsection (a), on the grounds of unconstitutionality, by Order of 21 May 1996 of Spain's Constitutional Court. (*BOE* 132, 31.5.96).

— Royal Decree 2189/1996 of 4 October provides for agreed settlement regarding proceedings being conducted in New York South District Court against Spain upon Rose Associates' Application concerning flats 6-B and 21-E in Block 45 East, 89th Street, County and State of New York. (*BOE* 241, 5.10.96).

#### IV. RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS AND DECISIONS

#### V. INTERNATIONAL COMMERCIAL ARBITRATION

#### VI. CHOICE OF LAW: SOME GENERAL PROBLEMS

#### VII. NATIONALITY

— Act 29/1995, of 2 November, modifies Spanish Civil Code provisions concerning matters of recovery of nationality. (*BOE* 269, 4.11.95).

— Royal Decree 39/1996, of 19 January, grants Spanish nationality to International Brigade combatants during the Spanish Civil War. (*BOE* 56, 5.3.96).

#### VIII. ALIENS, REFUGEES AND CITIZENS OF THE EUROPEAN COMMUNITY

— Royal Decree 2489/1994, of 23 December, amends Royal Decree 511/1992, of 14 May, which creates the Spanish Interministerial Committee for Aliens. (*BOE* 23, 27.1.95).

— Order of 23 January 1995, develops Royal Decree 1665/1991, of 25 October, which establishes the general system of recognition of higher education degrees for

European Community member states. The Order refers to those degrees which affect professional practice as a Psychologist, Biologist, School Teacher, and University Professor. (*BOE* 24, 28.1.95).

– Royal Decree 4/1995, of 13 January, develops Act 14/1994, of 1 June, which regulates temporary employment agencies. (*BOE* 27, 1.2.95; errata *BOE* 88, 13.4.95). Note: Article 1.2, paragraph (a), requires natural persons intending to set up temporary employment agencies to enclose in their application, among other documents, a photocopy of their passport or their work and residence permit.

– Royal Decree 3/1995, of 13 January, develops the Agreement between the Kingdom of Spain and the Holy See on education and cultural matters concerning higher education syllabus and qualifications in Ecclesiastical Science. (*BOE* 30, 4.2.95; errata *BOE* 47, 24.2.95).

– Royal Decree 202/1995, of 10 February, creates an electoral register for resident aliens with regard to Spanish municipal elections. (*BOE* 38, 14.2.95).

– Order of 17 February 1995, provides rules and technical instructions to create an electoral Register for resident aliens with regard to Spanish municipal elections. (*BOE* 42, 18.2.95).

– Royal Decree 203/1995, of 10 February, enacts the Rules for enforcement of Act 5/1984, of 26 March. The Act provides for the right of asylum and refugee status as amended by Act 9/1994, of 19 May. (*BOE* 52, 2.3.95).

– Royal Decree 266/1995, of 24 February, enacts the Rules for application of conscientious objection and social service in lieu of military service. (*BOE* 64, 16.3.95).

*Note:* From the perspective of private international law, the following provisions are worth noting: Article 19, paragraph (c), provides for causes by exemption, being of special interest those arising out of international conventions and of the condition of resident abroad. With a job which cannot be secured during absence under any international convention; article 22 provides for causes for exemption and reciprocal validation under international conventions; and articles 36–38 provide for class four postponement of military service to be granted to residents abroad.

– Order of 28 March 1995 develops Royal Decree 1665/1991, of 25 October. The Decree establishes, for European Community member states, the general system of recognition of higher Education degree courses lasting a minimum of three years. The Order refers to those degrees which affect professional practice as a Qualified Social Worker. (*BOE* 81, 5.4.95).

- Order of 3 April 1995 modifies the “Asylum” data file controlled by the Directorate- General for Electoral Processes, Aliens and Asylum, a department of the Spanish Ministry for Justice and Home Affairs. (*BOE* 87, 12.4.95).
  - Order of 19 May 1995 develops Royal Decree 1665/1991, of 25 October. The Decree establishes, for the member states of the European Community, the general system of recognition of higher education degree courses lasting a minimum of three years. The Order refers to those degrees which affect professional practice as an Economist, Insurance Actuary, Qualified Business Manager, Business Studies Professor, Accounts Auditor and Paymaster. (*BOE* 124, 25.5.95; errata *BOE* 141, 14.6.95).
  - Royal Decree 737/1995, of 5 May, amends Royal Decree 766/1992, of 26 June, on the conditions of entry and stay in Spain of nationals of the member states of the European Communities. (*BOE* 133, 5.6.95).
  - Royal Decree 800/1995, of 19 May, regulates European Union member state nationals’ access to employment in certain civil service sectors. (*BOE* 135, 7.6.95; errata *BOE* 168, 15.7.95).
  - Resolution of 9 June 1995, passed by the Undersecretariat for the Spanish Ministry of the Presidency, publishes the Spanish Council of Ministers’ Agreement on the non-European Community foreign labour quota for 1995 (*BOE* 141, 14.6.95).
  - Order of 22 June 1995 establishes verification procedure concerning certain higher education degrees issued in the member states of the European Community. The Order refers to those degrees required for professional practice as a Physiotherapist, Chiropodist, Optician, and Specialist General Male Nurse. (*BOE* 155, 30.6.95).
  - Order of 21 July 1995 establishes general criteria for comprehensive tests prior to official approval of foreign higher education degrees. (*BOE* 178, 27.7.95).
  - Resolution of 1 August 1995, passed by the Undersecretariat for the Spanish Ministry of the Presidency, orders publication of the Resolution of 19 July 1995, passed by the Director-Generals of the Police, Consular Affairs, Electoral Processes, Aliens and Asylum, and Migrations. (*BOE* 191, 11.8.95).
- Note:* The Resolution of 19 July provides general instructions for establishing the non-European Community foreign labour quota for 1995, and fulfilment procedure thereof. This Resolution was partially amended by the Resolution of 1 December 1995, see also *infra* this same Heading for further reference.

– Royal Decree 1369/1995, of 4 August, establishes a second general system of recognition of vocational training qualifications for the member states of the European Union and of the rest of the European Economic Area. Related provisions included in Royal Decree 1665/1991 of 25 October are also complemented. (*BOE* 197, 18.8.95; errata *BOE* 200, 22.8.95).

– Circular 12/1995 of 28 August, issued by the Spanish Secretariat of State for Home Affairs, concerning entry into Spain of schoolchildren who are not nationals of a member state of the European Union or the European Economic Area, but who reside in a member state of the European Union. (*BOE* 239, 6.10.95).

– Order of 2 October 1995 develops Royal Decree 1665/1991, of 25 October. The Decree establishes the general system of recognition of higher education degree courses lasting a minimum of three years for the member states of the European Community. The Order refers to those degrees which affect professional practice as a Physicist, Geologist, Chemist, Industrial Engineer, Mining Engineer, Naval Engineer, Industrial Technical Engineer, Mining Technical Engineer, and Naval Technical Engineer. (*BOE* 240, 7.10.95; errata *BOE* 263, 3.11.95).

– Order of 9 October 1995 establishes the rules for determining syllabus equivalence in non-university education between the Andorran and Spanish systems. (*BOE* 247, 16.10.95; errata *BOE* 257, 27.10.95).

– Order of 23 October 1995 amends Order of 11 November 1994, which regulates Spanish Language and Cultural complementary studies for Spanish students resident abroad. (*BOE* 256, 26.10.95).

*Note:* For further reference to Order of 11 November 1994 see *SYIL*, vol. III, 1993–1994.

– Resolution of 1 December 1995, passed by the Undersecretariat for the Spanish Ministry for the Presidency, orders publication of the Resolution of 21 November 1995 issued by the Director-Generals of the Police, Consular Affairs, Electoral Processes, Aliens and Asylum, and Migrations. (*BOE* 288, 2.12.95).

*Note:* The Resolution of 21 November partially amends the Resolution of 19 July which provides general instructions for establishing the non-European Community foreign labour quota for 1995, and fulfilment procedure thereof. For further reference to Resolution of 19 July see *supra* this Heading.

– Act 4/1996, of 10 January, amends Act 7/1985, of 2 April, which regulates the fundamental provisions of Local Legal Systems regarding Municipal Census. (*BOE* 11, 12.1.96).

*Note:* Article 15, Act 7/1985, as amended by paragraph 2 in the only article in Act

4/1996, provides that: "All persons living in Spain must register with the Census Office in the municipality where they are ordinarily resident. Individuals living in different municipalities must only register at the one where they reside most of the time during the year." Article 16.2, Act 7/1985, as amended by paragraph 3 in the only article in Act 4/1996, requires that registration with the municipal Census Office shall include, among other particulars, the person's nationality, and, in the case of aliens, the number of the document used in place of the Spanish national identity card. Finally, article 18.2, Act 7/1985 is amended as follows: "Registration with the municipal Census Office shall not constitute proof of legal residence in Spain for aliens, nor shall it confer on aliens any right not otherwise acknowledged under prevailing law, especially regarding aliens' rights and freedoms in Spain."

— Royal Decree 2072/1995, of 22 December, amends and expands Royal Decree 1691/1989, of 29 December. The latter regulates, for European Union member states, recognition of diplomas, certificates and other qualifications for General Practitioners and Specialist Doctors, and effective exercise of the right of nationals of those states to engage in gainful occupation in the territory of other member states and the freedom to fix their residence in any of such states. (*BOE* 20, 23.1.96).

— Royal Decree 2073/1995, of 22 December, amends and expands Royal Decree 1665/1991 of 25 October. The latter establishes for European Economic Community member states the general system of recognition of higher education degree courses lasting a minimum of three years. (*BOE* 29, 2.2.96).

— Royal Decree 151/1996, of 2 February, partially amends the Rules for enforcement of Act 11/1986, of 20 March, on Patents, enacted by Royal Decree 2245/1986, of 10 October (*BOE* 33, 7.2.96).

*Note:* The Decree's single article amends article 59 of the Rules, which provides for persons intending to register with the Special Registry for Industrial Property Agents. It is of interest from the perspective of private international law that applications for registration must include the "trading licence showing registration under the appropriate tax heading on commercial and professional activities as proof of actual professional practice office in Spain, or equivalent document proving the same in a European Union member state".

— Resolution of 9 February 1996, passed by the Undersecretariat for the Spanish Ministry of the Presidency, orders publication of the Spanish Council of Ministers' Agreement of 9 February 1996. The Agreement authorizes the Spanish Minister for Foreign Affairs to conduct proceedings, under international law, in order to suspend application between the Kingdom of Spain and the Kingdom of Belgium of Chapters II and IV, Heading III, of the Convention on Application of the Schengen Agreement. (*BOE* 36, 10.2.96).

**Note:** See the Spanish Council of Ministers' Agreement of 31 May 1996 whereby this Agreement of 9 February is ratified *infra* this Heading.

– Royal Decree 190/1996, of 9 February, enacts the Prison Regulations. (*BOE* 40, 15.2.96; errata *BOE* 112, 8.5.96).

**Note:** The Regulations include many provisions concerning foreign sentenced persons specifically: Rules 15.5, 26, 27, 49.3 and 4, 52, 123, 135.2, 144.2, 197 and 230.4.

– Royal Decree 155/1996, of 2 February, enacts the Regulation for enforcement of Organic Law 7/1985, of 1 July, on Aliens' Rights and Freedoms in Spain. (*BOE* 47, 23.2.96; errata *BOE* 80, 2.4.96).

– Royal Decree 264/1996, of 16 February, modifies the title and expands the functions of the Spanish Autonomous Communities' Education Councils Abroad. (*BOE* 55, 4.3.96).

– Royal Decree 314/1996, of 23 February, partially amends Royal Decree 1081/1989, of 28 August. The latter regulates, for European Community member states, recognition of certificates, diplomas and other qualifications required for professional practice in the Architecture sector, and effective exercise of the right of nationals of those states to engage in gainful occupation in the territory of other member states and the freedom to fix their residence in any of such states. (*BOE* 64, 14.3.96).

– Order of 11 April 1996 on the exemption of visas. (*BOE* 93, 17.4.96).

– Resolution of 15 April 1996, passed by the Undersecretariat for the Spanish Ministry of the Presidency, orders publication of the Spanish Council of Ministers' Agreement of 12 April 1996. The Agreement develops the documentation procedure for illegal aliens provided in Royal Decree 155/1996, of 2 February, which adopts the Rules for enforcement of Organic Law 7/1985 (*BOE* 93, 17.4.96; errata *BOE* 108, 4.5.96).

– Resolution of 17 April 1996, passed by the Directorate-General for Migrations, establishes correspondence between work permits when choosing the second option set out in the second transitional provision in Royal Decree 155/1996, of 2 February, which enacts the Rules for enforcement of Organic Law 7/1985. (*BOE* 100, 25.4.96).

– Order of 30 April 1996 adapts certain criteria on official approval and validation of non- university foreign qualifications and syllabi to the new legal provisions on education. The Order establishes the equivalence system for same level Spanish

qualifications and syllabi. (BOE 112, 8.5.96).

– Order of 30 April 1996 develops Royal Decree 1665/1991, of 25 October, concerning matters which affect professional practice as a Lawyer or Procurator. (BOE 112, 8.5.96).

*Note:* Royal Decree 1665/1991 provides that recognition of higher education qualifications required to practice professions which involve an essential and constant element of advice and assistance in matters concerning Spanish Law be subject to the applicant's passing an examination. The Order regulates the examination procedure with regard to professional practice as a Lawyer or Procurator.

– Resolution of 7 May 1996, passed by the Directorate-General for Scientific Research and Higher Education, develops the Order of 12 June 1992. The Order regulates entrance examinations required by Spanish University Faculties, Higher Education Technical Colleges and University Colleges to accept applications from students with foreign qualifications which can be validated in Spain. (BOE 118, 15.5.96).

*Note:* For further reference to the Order of 12 June 1992 see Heading VIII, *SYLL*, vol. II, 1992.

– Resolution of 31 May 1996, passed by the Undersecretariat for the Spanish Ministry of Justice, orders publication of the Spanish Council of Ministers' Agreement of 31 May 1996. The Agreement ratifies the Agreement of 9 February 1996 whereby the Spanish Minister for Foreign Affairs is authorised to conduct proceedings, under international law, in order to suspend application between the Kingdom of Spain and the Kingdom of Belgium of Chapters II and IV, Heading III, of the Convention on Application of the Schengen Agreement. (BOE 133, 1.6.96).

*Note:* For further reference to the Agreement of 9 February 1996 see *supra* this Heading.

– Resolution of 12 July 1996, passed by the Directorate-General for Labour and Migrations, adopts the new job offer form for foreign workers. (BOE 179, 25.7.96).

– Resolution of 11 July 1996, passed by the Directorate-Generals of the Spanish National Institute for Employment and of Labour and Migrations, gives instructions for registering foreign workers at the Spanish National Institute for Employment offices or at employment agencies, and for unemployment protection measures and exchange of information. (BOE 192, 9.8.96).

– Order of 16 October 1996 amends the Order of 14 October 1991. The latter establishes conditions and procedure for official approval of foreign qualifications required for the professional practice as a Chemist or Specialist Doctor, and



equivalence thereof to Spanish official qualifications. (*BOE* 253, 19.10.96).

#### IX. NATURAL PERSONS: LEGAL INDIVIDUALITY, CAPACITY AND NAME

– Direction of 17 April 1995, given by the Directorate-General for Registrarship and Notariate, to advise certain foreign Register Offices of certain births, marriages and deaths recorded in Spain. (*BOE* 101, 28.4.95).

*Note:* See also the Private International Law section, Heading XVIII (Business Associations/Corporations).

#### X. FAMILY LAW

– Direction of 9 January 1995, given by the Directorate-General for Registrarship and Notariate, on procedure prior to registration of a marriage when one of the spouses-to-be is domiciled abroad. (*BOE* 21, 25.1.95).

– Direction of 17 April 1995 given by the Directorate-General for Registrarship and Notariate to advise certain foreign Register Offices of certain births, marriages and deaths recorded in Spain. (*BOE* 101, 28.4.95).

– Organic Law 1/1996, of 15 January, on Legal Protection of Minors, partially amends the Spanish Civil Code and Civil Procedural Law. (*BOE* 15, 17.1.96).

*Note:* From the perspective of private international law, the following provisions are worth noting: article 3 refers to international instruments concerning children's rights; article 25 provides for international procedure for adoption to be applied by public authorities and accredited institutions; and the nineteenth final provision thereof modifies articles 1901 to 1909 of the Spanish Civil Procedural Law to include procedural rules concerning the return of children in the event of international child abduction. For further reference to this provision see *supra* Heading I.

#### XI. SUCCESSION

– Direction of 17 April 1995, given by the Directorate-General for Registrarship and Notariate, to advise certain foreign Register Offices of certain births, marriages and deaths recorded in Spain. (*BOE* 101, 28.4.95).

## XII. CONTRACTS

- Errata in Act 41/1994 of 30 December, on the State General Budget of Spain for 1995. (*BOE* 38, 14.2.95).

*Note:* For further reference to Act 41/1994 see Heading XII, *SYIL*, vol. III, 1993–1994.

- Act 13/1995 of 18 May, on Public Administration Contracts. (*BOE* 119, 19.5.95; errata *BOE* 159, 5.7.95).

*Note:* From the perspective of private international law, the following provisions are worth noting: article 15, on conditions for foreign natural and artificial persons to contract with the Spanish Public Administration; article 23, on special conditions for foreign firms from outwith the European Community; article 26, on the instances where appropriate classification and European Community classification certificates are not required to contract with the Spanish Public Administration; article 79, on publication of tenders in Official Journals, especially the “Official Journal of the European Communities”; articles 178 to 180, on publication, within the Community, of contracts for supplies; article 206, on certain contracts being excepted from publication in the “Official Journal of the European Communities”; first additional provision, on the requirement of the Spanish Council of Ministers’ authorisation to introduce certain changes such as amounts, deadlines and others arising out of annexes to Community Directives; second additional provision, on updating the figures established by the European Community Commission; and seventh transitional provision, on extending application of the provisions to the European Economic Area member states. See also Royal Decree 390/1996 *infra* Heading XVIII.

- Act 30/1995, of 8 November, on regulation and supervision of private insurance. (*BOE* 268, 9.11.95).

*Note:* See comment on this under Heading XVIII.

- Order of 11 April 1996 publishes the exchange value in Pesetas for the Ecu during 1996–1997 for the purpose of Spanish public administration contracts, and the exchange value limits for different currencies for the same purpose and period. (*BOE* 98, 23.4.96).

- Act 12/1996 of 30 December, on the State General Budget for 1997. (*BOE* 315, 31.12.96; errata *BOE* 45, 21.2.97).

*Note:* The ninth additional provision limits the maximum coverage for new contracting of export loan insurance policies, and the tenth additional provision limits the maximum amount for officially supported export loans.

## XIII. TORTS

- Act 30/1995, of 8 November, on regulation and supervision of private insurance. (BOE 268, 9.11.95).

*Note:* See comment on this under Heading XVIII.

- Act 35/1995, of 11 December, on aid and assistance to victims of violent crimes and crimes against sexual freedom. (BOE 296, 12.12.95).

*Note:* In article 2 the Act's scope of application *ratione personae* is set out, and includes anyone who, "at the time the crime is committed, is either a Spanish national or a national of any other European Union member state, or anyone who, being neither, is habitually resident in Spain, or is a national of a state which allows for reciprocal measures of assistance to be granted to Spanish nationals in its territory. In the event of death, the provisions set forth in the preceding paragraph shall apply to beneficiaries by way of indirect victims of the crime, regardless of the nationality or habitual residence of the deceased person." (art. 2.1).

- Royal Decree 44/1996, of 19 January, adopts measures to guarantee general safety conditions for products available to consumers. (BOE 46, 22.2.96).

*Note:* Article 2.4 provides that, for the purposes of this Royal Decree, producer shall mean, either the product manufacturer, provided that it is based in the European Union, or "the manufacturer's representative if the manufacturer is not based in the European Union, or the product importer if the representative is not based in the European Union".

## XIV. PROPERTY

- Royal Decree 1166/1995, of 7 July, substitutes the annex to Royal Decree 1370/1992, of 13 November. The latter permanently extends the provision of legal protection for semiconductor product topography to persons from certain countries and territories. (BOE 181, 31.7.95).

*Note:* For further reference to Royal Decree 1370/1992 see *SYIL*, vol. II, 1992.

- Royal Decree 1123/1995, of 3 July, concerning application of the Patent Cooperation Treaty, done at Washington on 19 July 1970. (BOE 214, 7.9.95).

- Act 27/1995, of 11 October, incorporates the Council of Europe Directive 93/98/EEC, of 29 October 1993, into Spanish domestic law. The Directive provides for harmonisation of the period covered by copyright and certain other author's rights.

(BOE 245, 13.10.95).

– Act 28/1995, of 11 October, incorporates the Council of Europe Directive 93/83/EEC, of 27 September 1993, into Spanish domestic law. The Directive provides for harmonisation of certain provisions concerning copyright and certain other author's rights within the scope of satellite and cable broadcasting. (BOE 245, 13.10.95).

– Order of 2 November 1995 temporarily extends legal protection for semiconductor product topography to nationals of the United States. (BOE 275, 17.11.95).

– Royal Decree 149/1996, of 2 February, extends legal protection for semiconductor product topography to World Trade Organisation member state nationals. (BOE 59, 8.3.96).

– Legislative Royal Decree 1/1996, of 12 April, enacts the consolidated text of the Spanish Copyright Act. The Act brings into line, clarifies and harmonises legal provisions on the matter. (BOE 97, 22.4.96).

*Note:* Articles 155 to 158 establishing the scope of this Act are of special interest in private international law.

## XV. COMPETITION LAW

## XVI. INVESTMENTS AND FOREIGN EXCHANGE

– Council of the Spanish Securities Market National Commission Agreement of 1 February 1995 authorises companies and investment funds to invest in securities which have been allowed to go public on the Chilean Stock Exchange. (BOE 33, 8.2.95).

– Order of 6 February 1995 on procedure for ordering and for effecting foreign exchange payment. (BOE 37, 13.2.95).

– Resolution of 10 May 1995, passed jointly by the Comptroller and Auditor General's Office and the Directorate General for the Treasury and Financial Policy, on foreign exchange payment procedures. (BOE 122, 23.5.95).

– Royal Decree 925/1995, of 9 June, enacts the Rules for enforcement of Act

19/1993, of 28 December. The Act provides certain measures regarding the prevention of money-laundering. (*BOE* 160, 6.7.95; errata *BOE* 172, 20.7.95 and *BOE* 260, 31.10.95).

– Act 42/1995, of 22 December, on cable telecommunications. (*BOE* 306, 23.12.95).

*Note:* Article 4 provides that cable operators must be domiciled in Spain, but natural and artificial persons domiciled abroad may invest in the share capital of Spanish telecommunications final and bearer service operators, under article 15 of Act 31/1987 on the Regulation of Telecommunications. Up to a maximum of 25% of the total capital is open to acquisition without restrictions. Authorisation from the Spanish Council of Ministers must be sought for an increase in that percentage. Share holding is also subject to article 26 of Royal Decree 671/1992, of 2 July, on foreign investment in specific sectors of the economy regarded as directly linked to national security. Article 15 of Act 31/1987 has been modified by articles 2.4 and 2.5 of Royal Decree-Law 6/1996, of 7 June, on liberalisation of the telecommunications market (see *infra* this Heading).

– Order of 23 February 1996 authorises the Official Credit Institute to make an agreement with the Banco Exterior de España on refinancing its lending terms and conditions for Official Export Loans. (*BOE* 65, 15.3.96).

– Order of 25 April 1996 regulates certain matters regarding official support for commercial credit to export. The support includes Agreements on reciprocal Loan Interest Adjustments. (*BOE* 104, 30.4.96; errata *BOE* 121, 18.5.96).

– Circular 6/1996, of 30 April, issued by the Bank of Spain, regarding resident aliens who hold accounts Abroad. It amends Circular 24/1992, of 18 December. (*BOE* 115, 11.5.96).

*Note:* See Circular 24/1992, issued by the Bank of Spain, under Heading XVI, *SYL*, vol. II, 1992.

– Royal Decree-Law 6/1996, of 7 June, on liberalisation of the telecommunications market. (*BOE* 139, 8.6.96; errata *BOE* 149, 20.6.96).

*Note:* Article 2.4 adds the following paragraph to article 15 of Act 31/1987, of 18 December, on the Regulation of Telecommunications: “The Government shall be entitled to vary the percentage (of the holding that natural and artificial persons domiciled abroad may have in the share capital of telecommunications bearer and final service operators) when enforcing international agreements signed by Spain, or by the European Union, subject to reciprocal enforcement”.

– Royal Decree 1638/1996, of 5 July, amends Royal Decree 1816/1991, of 20

December, on financial transactions with foreign parties. (*BOE* 165, 9.7.96).

*Note:* The Decree adapts Royal Decree 1816/1991 provisions to article 73B of the Treaty of Rome on matters concerning free movement of capital. The Judgment of European Union Court of Justice of 14 June 1995, Joined Cases C-163/94, C-165/94 and C-250/94 (criminal proceedings against Lucas Emilio Sanz de Lera and others), declared article 4.1 of Royal Decree 1816/1991 contrary to article 73B of the Treaty of Rome. Under Royal Decree 1861/1991, currency outflow from Spanish territory, whether in the form of coins, bank notes or bank cheques made payable to the bearer, was subject to obtaining administrative declaration thereof. The Court also ruled that article 73B, paragraph 1 of the Treaty, may be invoked before national courts to seek that domestic law provisions be declared inapplicable on the ground of being contrary to it (direct applicability rule). Article 4.1 of Royal Decree 1816/1991 was therefore not applicable since article 73B of the Treaty of Rome had entered into force for Spain on 1 January 1994.

- Order of 9 July 1996 amends Order of 27 December 1991, on financial transactions with foreign parties. (*BOE* 168, 12.7.96).

*Note:* The amendment to Royal Decree 1816/1991 (see above) required that the Order of 27 December 1991, which developed the Decree, also be amended.

- Resolution of 9 July 1996, passed by the Directorate General of Commercial Policy and Investment Abroad, provides rules for application of articles 4, 5, 7 and 10 of the Order of 27 December 1991, made by the Ministry of Economy and Treasury, on financial transactions with foreign parties. (*BOE* 168, 12.7.96; errata *BOE* 172, 17.7.96).

*Note:* After amending the Order of 27 December 1991 (see above), lower rank provisions which develop it also require amendment.

## XVII. FOREIGN TRADE LAW

- Order of 28 December 1994 authorises the outward processing traffic scheme. (*BOE* 1, 2.1.95).

- Order of 28 December 1994 authorises the inward processing traffic scheme. (*BOE* 1, 2.1.95).

- Resolution 7/1994, of 29 December, passed by the Directorate-General for Taxes, provides certain transitional measures to be applied as a result of the increase in the number of European Union member states from 1 January 1995. (*BOE* 8, 10.1.95).

*Note:* The transitional measures affect imports and the Value Added Tax rate.

- Circular 9/1994, of 30 December, issued by the Customs and Special Taxes Department of the State Agency for Tax Administration, on the import of fish products. (*BOE* 10, 12.1.95).
- Circular 1/1995, of 24 January, issued by the Spanish Department of Customs and Special Taxes, on outward processing traffic. (*BOE* 29, 3.2.95).
- Circular 2/1995, of 25 January, issued by the Spanish Department of Customs and Special Taxes, on inward processing traffic. (*BOE* 29, 3.2.95).
- Errata regarding Circular 8/1994, of 22 December, issued by the Spanish Customs and Special Taxes Department of the State Agency for Tax Administration, provides directions to draw up the Single Administrative Document. (*BOE* 34, 9.2.95).

*Note:* For further reference to Circular 8/1994 see Heading XVII, *SYIL*, vol. III, 1993–1994.

- Resolution of 31 January 1995, passed by the Spanish Secretariat of State for Foreign Trade, modifies the Annexes to the Order of 21 February which regulates import and export procedures. (*BOE* 35, 10.2.95).

- Royal Decree 158/1995, of 3 February, on physical protection of nuclear materials. (*BOE* 54, 4.3.95).

*Note:* Under the single additional provision thereof, this Royal Decree does not exempt from compliance with the rules on foreign trade control of defence and double use material, nor from application of trade schemes for nuclear materials.

- Order of 24 February 1995 provides directions for inspection and control procedure to be conducted by the Inspection Centres for Foreign Trade (SOIVRE). (*BOE* 56, 7.3.95).

- Resolution of 10 March 1995, passed by the Directorate-General for Foreign Trade develops the Order of 28 December 1994 on outward processing traffic. (*BOE* 69, 22.3.95).

- Order of 10 April 1995 authorises the temporary imports scheme. (*BOE* 87, 12.4.95).

- Resolution of 30 March 1995, passed by the Spanish Customs and Special Taxes Department of the State Agency for Tax Administration, updates the Applicable Integrated Tariff (TARIC). (*BOE* 99, 26.4.95).

- Order of 18 May 1995 amends the Order of 24 February 1995. The latter provides directions for inspection and control procedure to be conducted by the Spanish Inspection Centres for Foreign Trade (SOIVRE). (*BOE* 135, 7.6.95).
- Circular 3/1995, of 28 June, issued by the Spanish Customs and Special Taxes Department, on outward processing traffic. (*BOE* 160, 6.7.95).
- Recommendation of the Council for Customs Cooperation regarding the data required to obtain prior information on passengers (IPRV). (*BOE* 167, 14.7.95).
- Resolution of 10 July 1995, passed by the Spanish Customs and Special Taxes Department of the State Agency for Tax Administration, updates the Applicable Integrated Tariff (TARIC). (– 176, 25.7.95).
- Order of 14 July 1995 regulates consignment and export procedure and establishes special schemes thereof. (*BOE* 179, 28.7.95; errata *BOE* 192, 12.8.95).  
*Note:* Annex II thereto has been amended by Order of 2 April 1996, which is further referred to *infra* this Heading.
- Circular 4/1995, of 27 July, issued by the Spanish Customs and Special Taxes Department of the State Agency for Tax Administration, updates the text of Circular 8/1994, of 22 December. The latter provides directions to draw up the Single Administrative Document. (*BOE* 188, 8.8.95).
- Order of 27 July 1995, amends the Order of 26 February 1986. The latter regulates import and export bonds. (*BOE* 192, 12.8.95).
- Resolution of 31 July 1995, passed by the Directorate-General for Foreign Trade, adopts the model for the commercial quality control certificate SOIVRE. The certificate is to be issued by the Spanish Foreign Trade Inspection Centres (SOIVRE), which are dependent on the Ministry of Trade and Tourism. (*BOE* 193, 14.8.95).
- Order of 7 September 1995, on the Canary Islands specific supply scheme. (*BOE* 216, 9.9.95).  
*Note:* This Order rules that export of processed products obtained from raw materials which have been admitted under the Canary Islands specific supply scheme, be subject to filing a declaration complying with the model of the Single Customs Document prescribed by Order of 12 August 1987. Export means here any consignment outside Spanish customs jurisdiction as well as to Ceuta and Melilla (see paragraph two). The preceding Order results from application of Article 8 of the EEC Council Regulation 1601/92, of 15 June 1992, on specific measures for the benefit of the Canary Islands. The Article prohibits consignment or export of agricultural



products which benefit from the specific supply scheme, except when such products have been processed in the Canary Islands and do not exceed traditional commerce trends.

– Order of 15 November 1993, on inspection and control of fresh fruit and vegetables imported from third countries. (*BOE* 279, 22.11.95).

– Order of 23 November 1995 modifies certain Annexes to Royal Decree 2071/1993, of 26 November. The Decree provides protective measures against entry and distribution in Spain and the rest of the European Economic Community of organisms harmful to vegetables and vegetable products, as well as against export and transit of such organisms to third countries. (*BOE* 285, 29.11.95).

– Organic Law 12/1995, of 12 December, on the Suppression of Contraband. (*BOE* 297, 13.12.95).

– Order of 19 December 1995 establishes statistical thresholds for simplification and assimilation determined in article 28 of EEC Council Regulation 3330/1991, *OJEC* L 316, of 16 November. (*BOE* 306, 23.12.95).

– Resolution of 18 December 1995, passed by the Spanish Customs and Special Taxes Department of the State Agency for Tax Administration, updates the Applicable Integrated Tariff (TARIC). (*BOE* 310, 28.12.95).

– Circular 5/1995, of 14 December, issued by the Spanish Customs and Special Taxes Department of the State Agency for Tax Administration, provides directions to draw up the Single Administrative Document (DUA). (*BOE* 310, 28.12.95).

*Note:* This circular has been amended by Circular 3/1996 mentioned *infra* this Heading.

– Circular 6/1995, of 21 December, issued by the Spanish Customs and Special Taxes Department of the State Agency for Tax Administration, substitutes the text of Circular 7/1994. The Circular provides directions for the enforcement of provisions on statistics on exchange of goods between European Community member states. (*BOE* 312, 30.12.95).

*Note:* See Circular 7/1994, *SYIL*, vol. III, 1993–1994.

– Order of 10 January 1996 modifies the commercial scheme for import of certain goods. (*BOE* 20, 23.1.96).

*Note:* Annex VII thereof has been modified by Order of 2 April 1996; Annexes I and II have been modified by Order of 26 July 1996. For further reference to both Orders see *infra* this Heading.

– Order of 23 February 1996 modifies Model 349, used for filing summary returns of intracommunity operations, to comply with the provisions on Community harmonisation set out in Royal Decree-Law 12/1995, of 28 December. The Decree-Law provides for urgent measures on budget, tax and financial matters. (*BOE* 51, 28.2.96).

– Order of 2 April 1996 modifies Annex II to the Order of 14 July 1995. The Order regulates consignment and export procedure and establishes the commercial schemes thereof. (*BOE* 98, 23.4.96).

*Note:* For further reference to the Order of 14 July 1995 see *supra* this Heading.

– Order of 2 April 1996 modifies Annex VII to the Order of 10 January 1996. The Order modifies the commercial scheme for the importation of certain goods. (*BOE* 98, 23.4.96).

*Note:* For further reference to the Order of 10 January 1996 see *supra* this Heading.

– Resolution of 29 April 1996, passed by the Spanish Customs and Special Taxes Department of the State Agency for Tax Administration, terminates operation of the simplified procedure to formalize export documents. (*BOE* 120, 17.5.96).

– Royal Decree 691/1996, of 26 April, establishes the scheme for certain transactions between Spain and the Federative Republic of Yugoslavia. (*BOE* 126, 24.5.96).

– Order of 25 June 1996 regulates imports of certain textile products. (*BOE* 172, 17.7.96).

– Order of 26 July of 1996 modifies Annexes I and II to the Order of 10 January 1996. The Order modifies the trade scheme for certain imports. (*BOE* 183, 30.7.96).

*Note:* For further reference to the Order of 10 January 1996 see *supra* this Heading.

– Circular 3/1996, of 26 July, issued by the Spanish Customs and Special Taxes Department of the State Agency for Tax Administration, amends Circular 5/1995, of 14 December. The Circular provides directions to formalise the Single Administration Document (DUA). (*BOE* 189, 6.8.96).

*Note:* For further reference to Circular 5/1995 see *supra* this Heading.

– Royal Decree 1787/1996, of 19 July, enacts the Regulation which establishes certification procedure of telecommunications equipment. Reference to this equipment is found in article 29 of Act 31/1987, of 18 December, on the Regulation of Telecommunications. (*BOE* 209, 29.8.96).

*Note:* Articles 16 and 17 regulate recognition of certificates issued and of tests

carried out by public bodies and laboratories of other European Union member states, on terminal telecommunications equipment used for connection to public networks.

– Order of 5 September 1996 on outward processing traffic of textiles. (*BOE* 220, 11.9.96).

– Resolution of 16 December 1996, issued by the Spanish Customs and Special Taxes Department of the State Agency for Tax Administration, updates the Applicable Integrated Tariff (TARIC). (*BOE* 308, 23.12.96).

– Circular 5/1996, of 20 December, issued by the Spanish Customs and Special Taxes Department of the State Agency for Tax Administration, substitutes the text of Circular 6/1995. The Circular provides directions for enforcement of provisions on statistics on exchange of goods between European Union member states. (*BOE* 314, 30.12.96).

*Note:* For further reference to Circular 6/1995 see *supra* this Heading.

– Order of 23 December 1996 establishes statistical thresholds for simplification and assimilation as prescribed in article 28 of European Community Council (EEC) Regulation 3330/1991 (*OJEC*, L 316, of 16 November). (*BOE* 315, 31.12.96).

*Note:* For further reference see also Heading XXIII (Tax Law).

## XVIII. BUSINESS ASSOCIATIONS/CORPORATIONS

– Royal Decree 2364/1994, of 9 December, enacts the Private Security Regulation. (*BOE* 8, 10.1.95; errata *BOE* 20, 24.1.95).

*Note:* Article 5.1, (a), 1st, provides that any company intending to offer services involving security staff must be Spanish.

– Act 2/1995, of 23 March, on Limited Liability Companies. (*BOE* 71, 24.3.95).

*Note:* The following provisions are of particular interest in private international law: article 6 on the nationality of companies; article 8 on the opening of branches abroad; article 19.1 on foreign currency contributions; article 72.2 on moving a company's registered office abroad; and article 95(b) on moving a company's registered office abroad as grounds for dissolution of partnership.

– Royal Decree 1245/1995, of 14 July, on the creation of banks, on transfrontier financial operations, and on other matters regarding legal schemes applicable to lending institutions. (*BOE* 181, 31.7.95).

*Note:* Some of the provisions have been amended by the first additional provision,

(1) of Royal Decree 692/1996, of 26 April. See *infra* this Heading for further reference to this Royal Decree.

– Circular 5/1995, of 31 October, issued by the Bank of Spain, directed at lending institutions, on information regarding agents of such institutions and agreements on habitual rendering of financial services. (*BOE* 272, 14.11.95).

*Note:* This Circular develops paragraphs 4 and 10, article 22, of Royal Decree 1245/1995, by prescribing the model forms and the system whereby lending institutions operating in Spain must inform the Bank of Spain of the list of their agents, of any changes thereto, and of the scope of the agents' powers, especially concerning agreements with other lending institutions, whether national or foreign, involving habitual rendering of financial services to clients in the name and at the risk of the Spanish institution. They must also report on the agreements between Spanish lending institutions and foreign lending institutions involving habitual rendering of financial services to clients in the name and at the risk of the foreign institutions, as well as of agency and correspondence agreements.

– Act 30/1995, of 8 November, on regulation and supervision of private insurance. (*BOE* 268, 9.11.95).

*Note:* This Act is of special interest in private international law. Firstly, because of the subject matter covered by the Act: operation of Spanish insurance institutions in the European Economic Area by exercising the right to set up registered offices and to render services freely with EEA territory (articles 49 to 56), or operation in Spain of foreign insurance institutions (articles 78 to 89). Secondly, because of some of the provisions themselves: the sixth additional provision modifies particularly articles 107, 108 and 109, of Act 50/1980, on insurance contracting; the eighth additional provision substantially amends the old law on motor vehicle use and traffic, giving it a new title ("Act on Civil Liability and Insurance in Motorvehicle Traffic"); article 4 on compulsory insurance territorial boundaries and premium limits; and article 8 on the territorial boundaries of the Insurance Compensation Consortium.

– Act 42/1995, of 22 December, on cable telecommunications. (*BOE* 306, 23.12.95).

*Note:* Article 4 provides that cable operators must be domiciled in Spain. For further reference to this Act regarding foreign natural and artificial persons holding stakes in the operators' share capital see *supra*, Heading XVI.

– Act 41/1995, of 22 December, on ground wave local television. (*BOE* 309, 27.12.95).

*Note:* Article 13 provides that where service operation be subject to the grant of a licence by the Public Administration, public tender procedure shall be applied (paragraph 1). Should that be the case, "Spanish natural and artificial persons and those from the rest of European Union member states, as well as Spanish companies

and non profit-making institutions" may submit their tenders (paragraph 2). When dealing with companies, "the stake in the share capital held by persons who are not European Union member state nationals shall not directly or indirectly exceed 25 per cent of the total" (paragraph 3).

— Royal Decree 316/1996, of 23 February, enacts the Nationwide Foundations Regulation. (*BOE* 57, 6.3.96).

*Note:* Rule 1 prescribes that the Regulation "shall apply to foreign foundations' agencies acting mainly in more than one Spanish Autonomous Community, with regard to their property and activities in Spain".

— Royal Decree 390/1996, of 1 March, partially develops Act 13/1995, of 18 May, on Public Administration Contracts. (*BOE* 70, 21.3.96).

*Note:* Article 5 provides for legal capacity accreditation procedure for foreign firms from European Community and European Economic Area member states. Article 6 provides for legal capacity accreditation procedure for all other foreign firms. For further reference to Act 13/1995 see *supra* Heading XII.

— Royal Decree 384/1996, of 1 March, enacts the Nationwide Foundations Register Regulation. (*BOE* 77, 29.3.96).

*Note:* Pursuant to this Regulation (see also *supra* this Heading), article 3, (b), of this Royal Decree, provides that "foreign foundations intending to establish delegations in Spain, when subject to registration in the National Register" shall do so with the Nationwide Foundations Register.

— Royal Decree 692/1996, of 26 April, on the legal scheme applicable to lending financial institutions. (*BOE* 126, 24.5.96).

*Note:* The following provisions are of special interest in private international law: article 4, on authorisation procedure for lending financial institutions under the control of foreign persons; and the first additional provision, paragraph 1, modifies several provisions in Royal Decree 1245/1995 (see *supra* this Heading for further reference to this Decree).

— Royal Decree 1709/1996, of 12 July, amends the Aircraft Registration Regulation. The Regulation was enacted by Decree 416/1969, of 13 March. (*BOE* 187, 3.8.96).

*Note:* Article 1 of this Royal Decree modifies, *inter alia*, article 7 of the Regulation, which now reads: "Natural persons domiciled in Spain and artificial persons with an agent in Spain, who are nationals of a European Union member state, shall be entitled to register civil aircraft in Spain and obtain a certificate to that effect. International agreements or special provisions shall apply to applicants from other countries."

— Royal Decree 1784/1996, of 19 July, enacts the Spanish Mercantile Register

Regulation. (BOE 184, 31.7.96).

*Note:* The following provisions are of special interest in private international law: article 6 provides that Registrars shall decide, bearing full responsibility for their decision, on whether documents comply with formal legal requirements, on whether persons have the legal capacity and are entitled to execute such documents, and on whether the content thereof is valid in law; article 20, on registered persons moving their domicile abroad; article 38.1, paragraph 4, and 38.2, paragraph 3, on entering the nationality of natural and artificial persons in the Register; article 81, on registration of foreign company branches and other foreign institutions, as well as of foreign companies moving to Spain; articles 295 to 309, on registration of foreign branches and businessmen; articles 375 and 376, on presentation and deposit of the accounts of foreign company branches in Spain; article 389, paragraphs 5 and 6, on data relating to registered foreign company branches which must be entered in the Central Mercantile Register.

## XIX. BANKRUPTCY

## XX. TRANSPORT LAW

— Royal Decree 1054/1995, of 23 June, on compensation schemes for transport of goods to and from the Canary Islands. (BOE 160, 6.7.95).

*Note:* This provision regulates compensation schemes for sea and air transport of goods between the Canary Islands and the European Union member states during 1994, as well as between the Canary Islands and mainland Spain, and between the islands in the Canary Archipelago, during the same period.

— Order of 13 July 1995, develops Royal Decree 1054/1995, of 23 June, on compensation schemes for transport of goods to and from the Canary Islands. (BOE 173, 21.7.95).

## XXI. LABOUR AND SOCIAL SECURITY LAW

— Legislative Royal Decree 1/1995, of 24 March, consolidates provisions of the Spanish Workers Statute Act. (BOE 75, 29.3.95).

*Note:* Article 1.4 of the Spanish Workers Statute Act provides that: "Spanish labour law shall apply to the work which Spanish workers under contract in Spain carry out for Spanish firms abroad, without prejudice to what may otherwise be provided under

public policy in the foreign country where the actual work takes place. In any case, Spanish workers shall at least enjoy the economic rights to which they would be entitled should they carry out their work in Spain”.

- Royal Decree 800/1995, of 19 May, regulates European Union member state nationals’ access to employment in certain sectors of the Spanish civil service. (*BOE* 135, 7.6.95).
- Resolution of 9 June 1995, passed by the Undersecretary’s Office, publishes the Spanish Council of Ministers’ Agreement of 9 June 1995. The Agreement establishes the authorised non-European Community foreign labour quota for 1995. (*BOE* 141, 14.6.95).

## XXII. CRIMINAL LAW

- Organic Law 10/1995, of 23 November, enacts the Spanish Penal Code (*BOE* 281, 24.11.95; errata *BOE* 54, 2.3.96).

*Note:* The following provisions are of special interest in private international law: article 312, paragraph 1, penalises illegal traffic in labour, and paragraph 2 provides that it is an offence to “employ aliens without work permits under conditions which violate, suppress or restrict their legal rights as set out in national legislation, collective agreements or individual contract”; article 313, paragraph 1, provides that it is an offence to “promote or favour, by any means, clandestine immigration of workers into Spain”, and paragraph 2 prescribes sanctions for anyone who, “by falsifying work contract or placement, or by any other similarly deceitful means, determines or favours an individual’s emigration from one country to another”; articles 314, 510, 511 and 512 provide that it is an offence to discriminate anyone on the grounds of belonging to an ethnic, racial or national group.

- Organic Law 12/1995, of 12 December, on the Suppression of Contraband. (*BOE* 297, 13.12.95).

*Note:* Title I thereof defines the statutory offence of contraband.

## XXIII. TAX LAW

- Resolution 7/1994, of 29 December, passed by the Spanish Directorate-General for Taxes, establishes transitional measures to be applied as a result of the expansion of the European Union which takes effect from 1 January 1995. (*BOE* 8, 10.1.95).

*Note:* The transitional measures affect Value Added Tax and import schemes.

— Resolution of 29 March 1995, passed by the Spanish Directorate-General for Taxes, on application procedure with regard to secondhand goods, works of art, antiques and collector's items. (*BOE* 78, 1.4.95).

*Note:* This Resolution attempts at solving matters concerning the special VAT scheme to be applied to the above-mentioned goods. Paragraph 2 refers to goods imported by the re-seller between 1 January 1986 and 31 December 1994, on which VAT has been paid and deduction rights have been exercised. Paragraph 4 refers to Spanish re-sellers acquiring goods within the European Community.

— Royal Decree 1165/1995, of 7 July, enacts the Special Tax Schemes Regulation. (*BOE* 179, 28.7.95; errata *BOE* 222, 16.9.95).

*Note:* This Royal Decree develops Act 38/1992, of 28 December (see SYIL, vol. II, 1992). It contains tax rules for levying European Community movement of goods which are subject to special tax schemes.

— Order of 13 October 1995, adopts the model tax form to be used in declaring Value Added Tax on operations assimilated with imports. (*BOE* 249, 18.10.95; errata *BOE* 258, 28.10.95).

— Order of 22 December 1995, regulates Value Added Tax refund payments to non-residents. (*BOE* 309, 27.12.95).

— Act 43/1995, of 27 December, on Corporation Tax. (*BOE* 310, 28.12.95; errata *BOE* 184, 3.8.96).

*Note:* The following provisions are of special interest in private international law: article 8 determines that personal tax liability results from residing within Spanish territory, thus, entities incorporated or founded under Spanish law or having their registered office or effective domicile in Spain, are deemed liable to pay taxes in Spain; article 17 prescribes rules to assess changes of residence, end to permanent establishment, and operations carried out with or by individuals or corporations residing at tax havens; article 32 refers to tax rebates for export and local public services; article 34 deals with tax allowances for export; articles 40 to 64 refer to actual tax liability (non-resident corporations which receive income in Spain); article 67 refers to the European economic interest grouping; article 68.2 and 3 refers to temporary associations of firms operating abroad or taking part in carrying out works or providing services or supplies abroad; article 74 refers to tax liability regarding partners or shareholders in collective investment entities incorporated or founded in tax havens; article 121 prescribes the inclusion of certain sources of positive income for non-resident entities in their gross tax base; articles 129 to 132 determine the legal scheme for foreign securities holding corporations; the sixth additional provision



refers to non-residents' investments in Treasury bills; the seventh additional provision refers to tax on net worth increases for the purpose of actual tax liability; the twenty-first transitional provision deals with tax returns and payment concerning actual tax liability; the twenty-third transitional provision refers to tax allowance for double taxation on dividends from joint accounts; the fifth final provision refers to amendments to actual tax liability; the seventh final provision refers to modifications to article 6 of Act 19/1991 on Capital Tax concerning non-resident taxpayers' agents in Spain; and the eighth final provision refers to international fiscal transparency on income tax matters. Finally, Royal Decree-Law 8/1996 (see *infra* this Heading) adds a new article 30 (bis) to this Act and an amended new text to article 130 thereof; Act 10/1996 (see *infra* this Heading) adds two new articles, 29 (bis) and 30 (bis) and further amendments to article 130, and new amendments to article 131; Act 12/1996 (see *infra* this Heading) amends, inter alia, article 57.1 and the seventh additional provision.

– Order of 18 December 1995, determines the exchange value in Pesetas for the European currency unit, the Ecu, for the following purposes: customs duties and VAT exemptions concerning imports resulting from marriage, low value imports, travellers' imports schemes, small consignments and deliveries to travellers in duty free shops resulting from travelling within the European Community. (*BOE* 1, 1.1.96; errata *BOE* 16, 18.1.96).

– Royal Decree-Law 3/1996, of 26 January, partially amends Act 19/1994, of 6 July. The Act amends the Tax and Economic Legal Schemes for the Canary Islands. (*BOE* 24, 27.1.96).

*Note:* Act 19/1994 (see Heading XXIII, *SYIL* vol. III, 1993–1994) is amended to prevent incompatibility with Community law. Most modifications affect the so-called "Special Canary Islands Area" (ZEC) scheme. Article 42, which provided that ZEC entities were to be considered non-resident for exchange control legal purposes, is annulled.

– Royal Decree 254/1996, of 16 February, amends Royal Decree 1856/1995, of 17 November, in matters concerning elite sportsmen and women. (*BOE* 58, 7.3.96).

*Note:* The single article in Royal Decree 254/1996 modifies, inter alia, article 3 of Royal Decree 1856/1995, by adding the following as paragraph 3 thereof: "For the purpose of enjoying the benefits set forth in this Royal Decree, only sportsmen and women personally liable to file income tax returns in Spain or otherwise holding a certificate of residence in Spain for tax purposes may be included in the list of elite sportsmen and women".

– Royal Decree-Law 8/1996, of 7 June, provides urgent tax measures to correct intercompany internal double taxation and incentives to company

internationalisation. (BOE 139, 8.6.96).

*Note:* Article 2 adds article 30 bis to Act 43/1995, of 27 December, on Corporation Tax. The article provides for tax allowances to prevent international economic double taxation on foreign source dividends and capital gains. Article 3 provides a revised text for article 130 of the same Act, on the subject of income arising from holding securities which represent non-resident corporations' net assets. Article 130 has been further amended by article 3, paragraph 1, of Act 10/1996 (see *infra* this Heading). See *supra* this Heading for further reference to Act 43/1995.

– Resolution of 31 July 1996, passed by the Spanish State Agency for Tax Administration, on victuals supplied from Ceuta and Melilla. (BOE 190, 7.8.96).

– Resolution 2/1996, of 25 September, passed by the Spanish Directorate-General for Taxes, on VAT rebate payments to residents in Ceuta and Melilla under the Legal Scheme for Travellers. (BOE 237, 1.10.96).

– Order of 7 October 1996, adopts the model application form for taxpayers who do not reside within the area where such tax applies to request VAT rebates. (BOE 252, 18.10.96).

– Act 10/1996, of 18 December, on urgent tax measures to correct intercompany internal double taxation and incentives to company internationalisation. (BOE 305, 19.12.96; errata BOE 54, 4.3.97).

*Note:* article 2 thereof adds two new provisions to act 43/1995, of 27 December, on Corporation Tax (see *supra* this Heading): article 29 (bis) provides for tax allowances to prevent international double taxation on income received through permanent establishment; and article 30 (bis), provides for tax allowances to prevent international economic double taxation on foreign source dividends and capital gains. Article 3 provides a revised text for article 130 of Act 43/1995, on income arising from holding securities which represent non-resident corporations' net assets; and for article 131, on profits shared out from income not included in the gross tax base.

– Act 12/1996, of 30 December, on the Spanish General State Budget for 1997. (BOE 315, 31.12.96; errata BOE 45, 21.2.97).

*Note:* Article 52 thereof modifies article 19.1 (b), of Act 18/1991 on Personal Income Tax, regarding actual tax liability: article 19 sets out the purchaser's obligation to deduct and pay 5 per cent on the transfer of real estate situated in Spain by non-resident taxpayers acting without permanent domicile. Article 56 modifies article 57.2 of Act 43/1995 on Corporation Tax (see *supra* this Heading), concerning actual tax liability: article 57.1 sets out the purchaser's obligation to deduct and pay 5 per cent on the transfer of real estate situated in Spain by non-resident taxpayers acting without permanent domicile. Article 59 modifies the seventh additional

provision of Act 43/1995, on Corporation Tax, regarding tax on net worth increases for the purposes of actual tax liability.

– Order of 23 December 1996, whereby the Special Real Estate Tax Return and Payment model forms for non-resident corporations is adapted to the new Special Tax on Non-resident Corporations' Real Estate. (*BOE* 315, 31.12.96).

*Note:* See also Heading XVII on Foreign Trade Law.

#### XXIV. INTERLOCAL CONFLICT OF LAWS

– Organic Law 1/1995, of 13 March, on the Statute of Autonomy for Ceuta. (*BOE* 62, 14.3.95).

*Note:* Article 4 provides for the status of “Ceuti” (inhabitant of Ceuta): paragraph 1 thereof provides that such status shall be enjoyed by Spanish nationals who have their administrative residence in Ceuta; paragraph 2 provides that “Spanish nationals residing abroad, whose previous administrative residence was in Ceuta, showing proof of it at the appropriate Spanish Consulate, shall be entitled, as “Ceuties”, to the political rights set forth in the Statute; so shall their descendants, when registered as Spanish nationals, if they should request it under Spanish legal procedure to that effect”.

– Organic Law 2/1995, of 13 March, on the Statute of Autonomy for Melilla. (*BOE* 62, 14.3.95).

*Note:* Article 4 provides for the status of “Melillense” (inhabitant of Melilla): paragraph 1 thereof provides that such status shall be enjoyed by Spanish nationals who have their administrative residence in Ceuta; paragraph 2 provides that “Spanish nationals residing abroad, whose previous administrative residence was in Melilla, showing proof of it at the appropriate Spanish Consulate, shall be entitled, as “Melillenses”, to the political rights set forth in the Statute; so shall their descendants, when registered as Spanish nationals, if they should request it under Spanish legal procedure to that effect”.

– Act 4/1995, of 29 March, for the Autonomous Community of Aragon, modifies Aragon's Consolidated Civil Law provisions and the Autonomous Community of Aragon Act on Estate Inheritance, concerning matters of intestacy. (*BOE* 101, 28.4.95).

– Act 4/1995, of 24 May, for the Autonomous Community of Galicia, concerning matters of Galician Civil Law. (*BOE* 152, 27.6.95).