

The European Court of Justice invalidates the Safe Harbour agreement for transferring data to USA

On 6 October the European Court of Justice ruled invalid the so-called “Safe Harbour” Agreement on the transfer of data, which was signed by the European Commission in 2000, and which had served as a basis for the transatlantic digital market for the last 15 years. Specifically, this agreement permitted the transfer of data to USA as easily as within the European Union.

The conflict stems from a complaint lodged by a citizen with the Irish data protection authorities, based on the fact that a company’s servers and data were located in USA where they were processed by the State Intelligence Services, with no type of control or legal protection.

The Irish national data protection

authorities rejected the complaint because in EU decision 2000/520 the Commission considered that the US ensures a level of protection comparable to that of the European Union. The High Court of Ireland brought the case to the European Court of Justice.

The Court has ruled that the agreement does not sufficiently ensure that the US observes the fundamental right to respect for the private life of European citizens by US state agencies or government bodies.

Around 4,500 US companies operating in Europe and transferring user data could be affected by this judgment.

Since this agreement has been ruled invalid, we are now working in a legal

vacuum and will need to consider the possible alternatives to enable the flow of data to the USA while guaranteeing legal certainty.

From now on, the companies affected could be obliged to keep user data in Europe or to ask for administrative authorisation on a country by country basis from the relevant data protection authorities. Companies could even be required to obtain unequivocal consent from all users affected by a possible transfer.

According to a press release posted on the Spanish Data Protection Agency’s website, European regulators will set out common action criteria in order to apply the decision consistently in all European Union countries.

The Constitutional Court suspends the ADSL charge in Cataluña

The Constitutional Court has provisionally suspended the so-called Catalan ADSL charge and allowed the appeal filed by Central Government against Law 15/2014 on the tax on the provision of content by electronic communication service providers and the promotion of the audio-visual sector and digital cultural promotion in Cataluña.

Central Government considers that this tax which is levied on electronic communication services providers at a rate of 25 euro cents a month for each user line contracted, impinges on central government Treasury competences and exceeds the powers of the regional authorities.

The suspension does not entail a pronouncement as regards substance on which the Court should rule.

Working time and itinerant workers

A judgement of the European Court of Justice has recently been published deriving from a question concerning the interpretation of Article 2.1. of Directive 2003/08 in relation to working time and specifically, whether travel by workers without a fixed or habitual workplace between the first and last customer of the day constitutes working time.

The European Court of Justice considers that during travelling times, workers are subject to their employer. It therefore concludes that where the workers have no fixed or habitual place of work, the time that these workers devote to daily travel between their homes and the workplace of their first and last customers assigned by their employer is working time.

The ICAC publishes its draft Resolution on Corporate Income Tax

Last 9 July the ICAC published on its webpage the draft ICAC resolution, setting out the rules on the accounting, measurement and preparation of annual accounts and the recognition of corporate income tax.

Noteworthy in light of their significance are the amendments introduced in relation to the recognition of deferred tax assets:

- When tax legislation provides for the possible future conversion of deferred tax assets into a tax credit vis-à-vis the tax authorities, it will be assumed that

the deferred tax assets (DTAs) will be recovered.

- In order to recognise an asset on tax loss carryforwards, it should be probable that the entity will have deferred tax liabilities against which to offset them, unless the reversal period for this liability exceeds the period envisaged in tax legislation to offset such losses. Otherwise, it should be probable that the company will obtain tax profits, enabling the offset of tax losses in a period which does not exceed the legal maximum, up to 10 years as from the

year end in those cases where tax legislation permits longer offset periods, except if there is clear evidence to the contrary.

- For other deferred tax assets, the ten year limit is maintained as the assumed future economic projection period. However, if clearly evidenced, the recovery period may be higher.

Final publication is expected shortly without significant changes compared with this draft.

BEPS and international transparency

On 5 October 2015 the OECD submitted its final package on measures with respect to its BEPS Project, with fifteen specific actions to be developed and G20 backing. One of its main objectives is to eliminate both the use of preferential tax regimes to artificially transfer profits and the absence of international transparency.

Action 5 of the Project includes a series of measures consisting of the promotion of transparency, including the spontaneous and mandatory exchange of information concerning tax rulings affecting preferential regimes, and the need for substantial activity in order to benefit from any preferential tax regime.

General State Budgets for 2016

On 21 October the Plenary Meeting of Congress approved the General State Budgets for 2016 including several tax measures, noteworthy of which is the change in the tax incentive reducing income from certain intangible assets (Patent Box) for corporate income tax purposes, the extension of Wealth Tax, the introduction of technical changes in certain VAT exemptions, the updating of the scale applicable to the transfer and rehabilitation of titles of nobility for transfer tax and stamp duty and the modification of the exemption for certain facilities for the Special Electricity Tax.

The rates and fixed amounts of the levies applied to games of luck, betting and chance are maintained as well as the method for quantifying the rate on the reservation of the radio-electric public domain generally.

Approach to Labour inspections

The Labour and Social Security Inspectorate (ITSS) is currently focusing on detecting the following irregularities :

(i) Contributions for accidents at the work place and occupational illness: the contribution rates applied to employees who are exclusively office workers are reviewed. The ITSS is proposing levying assessment for the absence of contributions due to differences between the occupation rate under occupation code letter "a" and the CNAE rate applied by the company; (ii) Contracts and the illegal assignment of workers : relations between the principal company, contractors and subcontractors are coming under increasing scrutiny; (iii) Absence of registration and contributions of employees: those situations where employees have no type of coverage and those where they are formally registered as self-employed but where indications are detected of the existence of a labour relationship are pursued; and (iv) Control over the working day involving part-time workers: employers are required to keep a daily record.

Resolutions of the Directorate General for Registrars and Notaries (DGRN) regarding the electronic legalisation of books

The DGRN has recently issued several resolutions regarding the electronic legalisation of books, where it explains the systematic application of the Instructions of 12 February and 1 July 2015, issued by that Management Centre. As a general rule, books for the years starting on and after 2013 should be filed electronically and it is not possible to legalise them on paper and blank beforehand . Exceptionally books previously legalised blank may be used until the relevant year end. For years ended up to 31 December 2014, when there is just cause, duly alleged, precluding their electronic legalisation, books may be filed on paper.

For additional details concerning any of the matters discussed in this publication, please contact your PwC contact or send an email to ticeposts@es.pwc.com.

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