



AMENDMENT ARTICLE 108 SECURITIES MARKET ACT ("LMV")

October 2012

On October 3, 2012 an amendment was proposed in order to, among others, modify Article 108 of the Securities Market Act ("LMV"). The proposed amendment is part of a broad program aimed at preventing and fighting against tax fraud.

Article 108 LMV currently provides an exemption from any indirect taxation (e.g. Value Added Tax and Transfer Tax) on the transfer of shares in companies. However, in order to prevent abuse, such tax exemption does not apply when both of the following requirements are met:

- At least 50% of the assets of such company are real estate assets located in Spain.
- As a consequence of said transfer, control of the company changes; it occurs when, direct or indirectly, more than a 50% stake is achieved or when a position of control is increased.

If the above-mentioned requirements are met, the transaction shall be subject to and no exempted from transfer tax as a real estate assets transmission (e.g. 7% of the actual value of the assets transferred).

Originally Article 108 was promulgated as an anti-abuse provision; however, it has been systematically applied to date, without bearing in mind this limited purpose. Consequently, the proposed amendment aims to reestablish the original function of levying taxes only in those transactions in which the stake of a company is transferred with the purpose of evading taxes. Thus, the amendment proposed would include the following changes:

- Real estate assets linked to the business activity of the company would not be taken into account in order to determine the percentage of real estate assets on the balance sheet of the relevant company.

This exclusion is very relevant as it would permit the tax-free transfer of companies with business activity whose principal assets are real estate assets and which cannot be currently transferred without triggering the 7% transfer tax. For example hotel companies,

mining companies, energy companies, photovoltaic plants. However, please note that said connection requirement must be analyzed on a case-by-case basis.

- Said exemption would be applied only when the transfer takes place on the primary securities market (and not in both, primary and secondary market, as currently is applied).
- Transactions meeting said requirements would be subject to and not exempted from the relevant tax applicable (e.g. Value Added Tax or Transfer Tax) and not just by transfer tax as per the current regulation.

Thus, should such amendment be approved, Article 108 LMV would become a real anti-abuse rule; therefore, it would allow the transfer of shares of companies whose main business activities are real estate without indirect taxation.

For further information on this topic, please contact:

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