

Outsourcing

Contributing editor
Mark Lewis



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GETTING THE
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Outsourcing 2016

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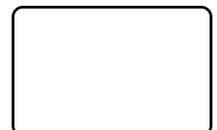


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Market overview

1 What kinds of outsourcing take place in your jurisdiction?

The types of services that are commonly outsourced in Spain include:

- general business services and facilities management outsourcing – including the provision of internal maintenance and repair, security services, door-keeping and access control, and waste collection;
- business process outsourcing – such as marketing and sales, translations, consulting, finance and accounting, research, telemarketing, analytics, HR management and logistics;
- property management outsourcing – including the management of real estate assets for the owner or occupier of the property, paying taxes and paying or collecting rents; and
- IT matters – including data centre services, networks and IT infrastructure outsourcing, applications development and maintenance outsourcing.

2 Describe the recent history of outsourcing in your jurisdiction. How well established is outsourcing? What is the size of the outsourcing market in your jurisdiction?

So far no official statistics concerning outsourcing have been made available. However, several institutions, such as chambers of commerce and private corporations, have carried out well-reputed surveys and analysis. One example is SubcontEx, an institution linked to the Association of Chambers of Commerce, which estimated that in 2014 outsourcing activities accounted for 11 per cent of Spanish GDP, with a total of 13,000 small and medium-sized enterprises (SMEs) devoted to outsourcing activities, resulting in a total turnover of over €50 billion and the creation of an estimated 270,000 jobs.

The company Adecco Outsourcing published a few months ago a survey outlining the sectors that are planning to carry out new outsourcing projects. According to the survey, 81 per cent of the pharmaceutical sector and 72 per cent of the IT sector is planning on outsourcing services in 2015. Similar percentages apply to the food and industry sectors. Other sectors mentioned in the report include logistics, transport and contact centres.

The results of the survey show that small and medium-sized companies outsource their services at the same pace as large ones.

Finally, the conclusions of the survey show that outsourcing is not only a tool used by large enterprises to gain flexibility and boost productivity, but also the tool of choice for smaller companies wishing to adapt the most current trends in their respective markets.

Policy

3 Has the government of your jurisdiction adopted policies to encourage the development of the jurisdiction as an outsourcing centre, either for the domestic market or to provide outsourcing services to foreign customers?

The Spanish government has not adopted any state policy in order to establish Spain as an international outsourcing centre or to attract international investments specifically related to outsourcing services. However, given the high economic impact of the outsourcing sector both at a national and international level, especially in the field of industrial subcontracting services, a national plan has been developed to support Spanish companies (to a large extent SMEs) dedicated to providing outsourcing services within the Spanish territory and abroad. The implementation of the plan and the

carrying out of related promotion activities is coordinated by SubcontEx, an institution linked to the Association of Chambers of Commerce working in close collaboration with the Spanish Foreign Trade Institute (ICEX). Regional chambers of commerce, as well as some local government bodies, also have a limited set of competencies for encouraging and supporting businesses dedicated to outsourcing activities, mainly through the organisation of trade fairs and the granting of aid.

4 Are there in your jurisdiction any fiscal or customs incentives, development grants or other government incentives to promote outsourcing operations within your jurisdiction?

In Spain there are no specific fiscal or customs incentives, development grants or other government incentives to promote outsourcing operations. Nevertheless, a general fiscal incentive is foreseen for newly established entities in Spain. In particular, newly established companies that meet certain requirements benefit from a reduced corporate tax rate during the first two years – 15 per cent on taxable income up to €300,000, and 20 per cent on taxable income exceeding €300,000.

Legislation and regulation

5 Is outsourcing as a commercial or operational concept specifically recognised and provided for in your legal system? How?

Outsourcing is not specifically recognised as a commercial or operational concept under Spanish law. Therefore, there is no specific legal framework regulating outsourcing activities. For this reason, the regulation applicable to outsourcing services depends on the actual type of the provided service and the contract type chosen by the parties. In addition, the sector of activity might also play a key role in determining the applicable legal regime, as there might be restrictions and special provisions as described below (eg, in the banking sector or regarding labour and employment matters). Furthermore, general provisions regarding contracts set forth in the Spanish civil and commercial codes also apply to outsourcing activities.

6 Is there any legislation or regulation that directly prohibits, restricts or otherwise governs outsourcing, whether in (onshore) or outside (offshore) your jurisdiction?

There is no legislation that specifically restricts outsourcing activities, whether onshore or offshore. However, there are general restrictions regarding the use of legal structures involving tax havens or data protection clauses, especially in outsourcing contracts related to IT services. On the other hand, some specific services, provided mainly within the banking and financial sector, are under the control of regulatory bodies such as the Bank of Spain. As a result, there are obligations to report before the aforementioned bodies regarding these kinds of activities.

7 What are the consequences for breach of the laws directly restricting outsourcing?

As there are no laws directly restricting outsourcing, legal consequences cannot be outlined here. Therefore, sector-specific legislation should be taken into account in the event of a breach of the above-mentioned restrictions. In certain cases, failure to comply with the applicable restrictions (eg, when the aforementioned obligation to report to the Bank of Spain is not fulfilled), might result in administrative sanctions.

As a general rule, a breach of an outsourcing contract can lead to the nullity of the contract or entail administrative sanctions and damage claims by the affected party, or both.

8 Describe any sector-specific legislation or regulation that applies to outsourcing operations.

As briefly described in question 1, outsourcing services are used mainly with respect to banking and finance, telecommunications and IT services and in the public sector.

Within the financial and banking sector, a key role is played by international and EU regulations, especially when it comes to determining capital requirements. The following EU Directives are noteworthy:

- Directive 2013/36/EU relating to the taking up and pursuit of the business of credit institutions, which provides the rules on the taking up and pursuit of the business of credit institutions and the prudential supervision of these institutions;
- Directive 2013/36/EU on the capital adequacy of investment firms and credit institutions, which deals with the risks run by credit institutions as a result of their activities; and
- Directive 2006/73/EC regarding organisational requirements and operating conditions for investment firms.

Additionally, on 14 December 2006, the Committee of European Banking Supervisors published its guidelines on outsourcing in the banking sector.

The aforementioned directives have been transposed into national legislation through the following acts:

- in the field of credit institutions: Act No. 36/2007 amending Act No. 13/1985 concerning the investment ratios, equity and reporting obligations of financial intermediaries and other financial sector regulations; and
- in the field of investment service companies: Act No. 47/2007 on the Securities Market, amending Act No. 24/1988.

In addition, Royal Decree No. 771/2011 on the equity of financial institutions sets out a specific framework for outsourcing in the financial services sector and has to be taken into account.

With respect to IT services, no specific legislation, at EU or national level, has been passed. However, the following regulations should be taken into account:

- data protection legislation: Organic Act No. 15/1999 of 13 December on Personal Data Protection, which is applicable to both the private and public sector, as well as the regulation for the implementation of said law, contained in Royal Decree No. 1720/2007 of 21 December, approving the regulation implementing the Organic Act on Personal Data Protection;
- intellectual property legislation: Intellectual Property Act approved by Royal Legislative Decree No. 1/1996 of 12 April, which regulates copyright matters; and
- telecoms legislation: the recently passed Telecommunications Act 9/2014 of 9 May.

Regarding outsourcing affecting the public sector, whether at a national or local level, EU Directive 2004/18/EC on the coordination of procedures for awarding public works and supply and service contracts, as well as the Spanish laws that transpose this Directive (ie, the Public Sector Contracts Law 30/2007 and Royal Decree-Law No. 3/2011 of 14 November), must be taken into account. According to these regulations, to guarantee equal opportunities to all companies, as a general rule, companies contracting with the public administration must previously win a public tender process.

At national level, the General Regulations of the Public Administrations Contracts Act approved by Royal-Decree No. 1098/2001 of 12 October, which develops the aforementioned provisions, are relevant. This highly technical Act sets different categories for companies contracting with the public administration based on their activity sector, and defines the procedure to enter into a contract with the administration.

Regional and local legislation may apply to companies with local administrations, such as Act No. 7/1985 of 2 April regulating local government, and Act No. 30/1992 on public administration and general administrative procedures, with the latter playing a key role in setting the rights and guaranties of private companies and individuals dealing with the administration.

9 How does competition regulation apply to outsourcing contracts or structures?

Given that Spain is a member state of the European Union, EU competition rules regarding anti-competitive agreements and concentration controls play a key role. Especially noteworthy is Regulation (EC) 139/2004 on the control of concentrations between undertakings within the EU. This is especially important with respect to mergers and acquisition transactions, including joint ventures between companies of different EU states, as these are the commonly used means in the context of outsourcing. Moreover, Spanish merger control rules can set restrictions where EU law is not applicable.

With respect to rules regulating anti-competitive agreements, article 101(1) of the Treaty on the Functioning of the European Union (TFEU) provides general rules to avoid the formation of cartels and other agreements deemed incompatible with the common market that limit or distort free competition. In addition, article 101(2) prohibits the abuse of a dominant position. Equivalent restrictions contained in article 1 of the Antitrust Act 15/2007 are applicable to outsourcing agreements within the Spanish territory. Nevertheless, this is a complex area of law in which not only legal provisions, but also relevant EU and national case law should be taken into account.

In order to try to shed light on the question of how to interpret these competition restrictions, the European Commission, as early as 1978, issued a notice concerning the assessment of certain subcontracting agreements in relation to article 101 of the TFEU (formerly article 85 of the EEC Treaty). According to this notice, subcontracting agreements, defined as agreements under which one firm, called the 'contractor', whether or not as a consequence of a prior order from a third party, entrusts to another, called the 'subcontractor', the manufacture of goods, the supply of services or the performance of work under the contractor's instructions, to be provided to the contractor or performed on his or her behalf, are not themselves covered by the prohibition of article 101(1) of the TFEU in certain circumstances.

The European Commission has considered that certain clauses restricting the use of equipment or technology provided by the contractor to the subcontractor (such as the limitation of transfer of these technologies or equipment to third parties, or the limitation on the use of this equipment only to works intended to perform the subcontracting agreement) are in accordance with competition laws, as long as they do not deprive the subcontractor of the possibility of developing his or her own business in the field covered by the agreement and the technology or equipment could not have been obtained under reasonable conditions by the subcontractor.

10 Are there any draft laws or legislative initiatives specific to outsourcing that are being developed or are contemplated?

As mentioned above, outsourcing is not considered a unique commercial concept to which unified legislation applies. This should continue to be the case in the near future, as no legislation specifically applicable to outsourcing is expected to be passed soon.

However, in the aftermath of the global financial crisis Spain has passed numerous laws intended to reform key sectors of the Spanish economy. This is particularly the case within the banking sector, as discussed in question 8. Although no further laws are expected to be passed soon, the adoption of new measures that might affect outsourcing contracts cannot be ruled out.

In addition, at the EU level, talks regarding the strengthening of data protection regulations are currently being held. This type of regulation might also affect outsourcing services, especially in relation to IT services, and should, therefore, be taken into account.

Contractual considerations

11 What are the typical corporate or quasi-corporate structures or vehicles used to create outsourcing arrangements?

The typical corporate or quasi-corporate structures or vehicles used to create outsourcing arrangements in Spain are usually structured as follows.

Joint venture

This is a type of business agreement in which the parties agree a partnership for the outsourcing for a determined time. They exercise control over the company and consequently share revenues, expenses and assets.

Direct and indirect outsourcing

Most outsourcing transactions adopt the traditional outsourcing model, that is, a services agreement between supplier and customer. Outsourcing is considered as indirect when the supplier subcontracts the services simultaneously to a third supplier. This approach facilitates the addition of further services and can accommodate local service agreements where required under a multi-jurisdictional arrangement.

Multi-sourcing

The client enters into agreements with various suppliers. The purpose of the multi-sourcing strategy is to ensure that they are not dependent on a single supplier and to give them greater business flexibility.

Captive entity

Some companies have established captives in lower-cost offshore jurisdictions. These provide services to support the company's core business, often using a shared services structure. Captive arrangements enable the outsourcing company to exercise greater control over the outsourced services. However, the outsourcing company bears the cost of setting up and operating the captive.

12 What forms of outsourcing contract are usually adopted in your jurisdiction?

Subcontracting can be articulated in different forms of civil or commercial contracts under a business collaboration agreement. Usually, the business collaboration may be articulated as factoring, engineering, consulting, computing outsourcing, invoicing and payment management services, computing services, suppliers and transport, marketing services, auditing, property management, security, staff selection, etc.

Regarding onshoring, there are no specific regulations, as mentioned in question 5. However, depending on the nature of the contract (leasing service, execution of civil works, contracts for sale and supply/purchase), article 1,254 et seq of the Spanish Civil Code may be applicable in Spain. Additionally, the general rules of contracts and obligations are applicable.

13 Outline the contractual approaches that are adopted in your jurisdiction to address regulations affecting outsourcing.

Regarding financial services, Royal Decree No. 216/2008 authorises the Bank of Spain to specify the requirements and conditions under which credit institutions can delegate the provision of services or the exercise of functions. On the other hand, Bank of Spain Circular No. 3/2008 contains more details on the extent to which delegation is permitted.

In this regard, the delegation of services or functions carried out by credit institutions to a third party does not reduce their liability for compliance with all legal obligations. In particular, the credit institution must comply with the following requirements:

- delegation must never involve the transfer of liability by the institution's board and senior management;
- delegation does not affect the relations and obligations between the credit institution and its clients and the supervision authority;
- the conditions that the credit institution must comply with to obtain and conserve the authorisation to exercise its banking functions cannot be altered or eliminated as a result of the existence of a delegation agreement;
- the delegation agreement between the credit institution and the third party must be expressed in a written contract specifying the parties' rights and obligations; and
- the credit institution must formulate and execute an objective and integral policy for the management of its delegation of essential services or functions.

Furthermore, typical warranties and indemnities included in outsourcing documentation are allowed for customer protection, many of which a customer can seek to exercise before seeking remedies and relief under general law. For example:

- rights of termination (in whole or part) in the event of a material default or a number of persistent breaches which, when taken together, would amount to a material default;
- indemnity provisions to protect the customer against breaches of key obligations, usually around intellectual property rights infringements, data protection, confidentiality and loss of data;

- step-in rights enabling the customer or a third party nominated by the customer to step into the shoes of the supplier and take over the services for a period of time;
- escalation and dispute resolution processes;
- adjustment of the charging mechanisms, perhaps allowing a withholding of payment or the removal of any volume commitments;
- removal of any exclusivity granted to the supplier; and
- audit rights.

Data protection

14 Identify the principal data protection legislation applicable to outsourcing operations.

The Spanish Data Protection Act (Act No. 15/1999 of 12 December) is the key legislation in Spain. It transposed the EU Data Protection Directive 95/46/EC into Spanish law. Also of note is the Regulation developing the Spanish Data Protection Act (Royal Decree No. 1727/2007 of 21 December). There is no specific data protection legislation concerning outsourcing activities, however the general laws mentioned, as well as, very importantly, the doctrine of the Spanish Data Protection Authority (in the form of recommendations, legal reports, guidelines, etc) do impact outsourcing activities.

15 How do rules on the ownership, location, processing and distribution of data apply to outsourcing in your jurisdiction?

Regarding ownership, Spanish law establishes, following the above-mentioned EU Data Protection Directive, the distinction between data controllers and data processors. Data controllers are those that decide on the purpose, content and use of the data to be processed. Data processors are those who process data on behalf of the data controller as a consequence of the provision of a certain service. The provision of such outsourced services requires that an agreement setting the processor's obligations in respect of the processed data be put in place. The Spanish Data Protection law establishes, in this respect, that the processor should process data according to the data controller's instructions, should refrain from using data for purposes not included in the agreement and should not assign or sell the data to third parties.

The Regulation developing the Spanish Data Protection Act sets the security measures that the agreement must contain. Both the Act and the Regulation lay down three levels of security measures to be met (high, medium or basic), depending on the type of personal data processed. Sensitive data concerning, among other things, health, sexual life, ideology, religion, belief and race, are the object of high-level security measures. On top of these measures, additional contractual or regulatory obligations may be applied. Security and other standards, like the Payment Card Industry Data Security Standard or the Payment Application Data Security Standard, may apply as well, provided the data controller or the data processor voluntarily adheres to them.

Data processors are allowed to assign or communicate data to third parties, provided the data controller has given its prior authorisation to the data processor. Under certain conditions set by law, the data processor shall be entitled to subcontract (outsource) a part of the services provided to the data controller to a subcontractor, which will be a sub-processor in respect of the data process. This outsourcing (including the services involved and the subcontractor's identification) shall require the prior authorisation of the data controller.

Data movement out of the jurisdiction (covering all kinds of data) is subject to the authorisation of the Director of the Spanish Data Protection Authority if they are aimed at being transferred to countries other than those of the European Economic Area or to American companies that adhere to the 'Safe Harbor' system, unless, among other things, the appropriate consent of the data subjects in respect of the transfer is granted.

The Director's authorisation shall be granted if the data controller files an application whereby the agreement with the data processor is based on the EU Commission model contracts. Further to the EU Commission model contracts, envisaging the controller-to-controller and controller-to-processor transfers, the Spanish Data Protection Authority has drafted a model contract for processor-to-sub-processor transfers.

The Director's authorisation shall likewise be granted if the data controller and data processor belong to the same group of companies and both have adopted the Binding Corporate Rules, where these binding rules are enforceable according to Spanish legislation.

Labour and employment

16 What is the relevant labour and employment legislation for outsourcing transactions?

The Acquired Rights Directive 2001/23/EC has been transposed into national law, principally by articles 42 and 43 of Royal Legislative Decree 1/1995 of 24 March (the Workers' Statute).

Article 127 of Royal Legislative Decree 1/1994 of 20 June regulates the principal's responsibilities regarding social security obligations. Outsourcing of construction works is regulated by Law 32/2006 of 18 October.

Law 31/1995 of 8 November also establishes specific provisions regarding health and safety regulations for companies that share their premises.

17 In the context of an outsourcing, how does labour and employment law apply to a change in initial or subsequent service providers, or transfers of undertakings or parts of undertakings?

Change of service providers

In the case of a change in service providers, collective bargaining agreements can establish the obligation for the new service provider to hire the employees of the previous provider, so that the employees continue rendering the same services for the same client company and under the same conditions as prior to the change of service provider.

Transfers of undertakings or parts of undertakings

The Acquired Rights Directive 2001/23/EC has been transposed into the Spanish employment law through article 44 of the Workers' Statute.

The main aspects of this article are the following:

- the employment relations will continue after the transfer without change and the new employer will assume the labour and social security rights and obligations with regards to the workers of the former employer;
- the transferor and transferee will be jointly liable for three years for the obligations originated prior to the transfer and with no time restrictions if the transfer is deemed fraudulent;
- the right for the transferred employees to maintain the conditions of their employment contract and those regulated in the collective agreement - in the latter case only temporarily; and
- rights of information for the employees' representatives of the transferor and the purchaser companies.

18 Are there any requirements to consult or negotiate with organised labour, works councils or employees regarding an outsourcing?

The employees of the contractor or subcontractor must be informed by their employer in writing of the identity of the main company to which they are rendering services at any given time. Such information shall be given before the start of service provision and shall include name, corporate domicile and tax identification number of the main employer.

The contractor company must inform its employees' representatives of:

- the name, address and tax identification number of the contracting company;
- the purpose and duration of the contract;
- the place of execution of the contract;
- the number of employees; and
- health and safety coordination measures.

Where the main company, contractor or subcontractor continuously share a same work centre, the main company must maintain a register reflecting the above information with respect to all the companies cited at the disposal of the workers' representatives.

In case of transfer of undertaking or of part of an undertaking, both the transferor and the transferee must inform the affected workers' representatives of the following:

- expected date of the transfer;
- reasons for the transfer;
- legal, economic and social consequences for the workers; and
- measures foreseen with regards to the workers.

In case there are no workers' representatives in the company, the transferor and the transferee must provide each affected worker with the above-mentioned information.

Update and trends

The sector of logistics, focused on outsourcing, maintains its relevance in Spain despite the financial crisis. In spite of the current situation, the majority of the logistics directors interviewed for the survey carried out by Adecco Outsourcing consider Spain a good country to invest in logistics. New logistic platforms are expected to be launched in the next three years, mainly in the regions of Madrid, Catalonia, Aragón and Valencia.

If, as a consequence of the transfer, employment measures are foreseen with regards to the workers, both transferor and transferee must initiate a consultation with the workers' representatives regarding these employment measures and the consequences for the workers. The consultation period must be of sufficient duration before the measures enter into force. During the consultation period the parties must negotiate in good faith to reach an agreement. If the foreseen measures imply a collective geographical change or collective modifications of the working conditions, the consultation period must meet the requirements set forth in articles 40(2) and 41(4) of the Workers' Statute.

If there is no transfer of undertaking or of part of an undertaking, no consultation or negotiation is necessary. However, if an outsourcing has as its consequence a mass dismissal, a geographical change of the place of work or a collective modification on the working conditions, the procedures to carry out these modifications will have to respect the consultation period provided for in articles 51, 40 and 41 of the Workers' Statute.

19 Are there any notification or approval requirements that apply to an outsourcing transaction?

The contractor or subcontractor shall inform the General Social Security Treasury of the identity of the main company but no approval to enter into an outsourcing transaction is needed.

20 What are the legal implications, including penalties, for non-compliance with the labour and employment rules and procedures?

Article 42 of the Workers' Statute establishes an obligation of the contracting companies to verify that the contractor company is up to date with their social security contributions. They shall request a negative certification as to unpaid dues with the General Social Security Treasury, which must issue the certificate within thirty days without fail, in the terms established by regulations. Once this interval elapses, the petitioning employer shall be exonerated of liability. The principal will be held jointly and severally liable for three years following completion of the outsourced work or services, for obligations entered into by contractors and subcontractors during the term of the outsourcing contract.

Additionally and regardless of the request of the above-mentioned certification:

- if the employer has been declared liable for the payment of a contribution and the work has been hired, the contracting company will remain liable if the contractor company is declared insolvent;
- the principal will be held, regarding the salary, jointly and severally liable for obligations entered into by contractors and subcontractors with their workers for one year following completion of the outsourced work or services.

Article 43 of the Workers' Statute establishes in the case of unlawful temporary transfer to another company, that the client company shall be liable jointly for the obligations contracted with their workers and for social security. Additionally, employees subject to unlawful transfer may acquire permanent status in the transferor or transferee company at their choice. The rights and obligations of the worker in the benefiting company shall be those corresponding to a worker rendering services in the same or in an equivalent work post under ordinary conditions, although seniority shall be calculated from the start of the unlawful transfer.

Lastly, the Labour Infringements and Penalties Law (LISOS) establishes the penalties for non-compliance with the labour and employment rules and procedures. The amount of these penalties will depend on many factors, such as the size of the companies, former non-compliance with other legal requirements, etc.

21 What are the key immigration and visa requirements for employees of customers or providers entering your jurisdiction to manage outsourced operations or to receive or provide training?

Non-EU residents must have a residence permit and a working permit to reside and work in Spain.

In the case of EU residents, if they are going to work in Spain for longer than eight days, the Labour Authority must be notified. Also, form A1 must be completed and submitted to the authorities in their country of origin in order to allow the workers to continue being included in its social security system.

Taxation

22 Outline the taxation rules that apply to the establishment and operation of outsourcing captives or similar establishments in your jurisdiction.

The 'establishment' of outsourcing captives does not in itself incur any specific taxation (the setting up of an entity is exempt from 1 per cent capital tax), although some tax formalities should be fulfilled, such as obtaining a Spanish tax identification number and declaring the commencement of business activities in Spain. In any event, before setting up an entity in Spain, it is recommended to carry out a tax structuring analysis in order to make efficient future dividend distributions, capital gains derived from eventual disposals, etc.

Nevertheless, 'operations' are indeed subject to a number of direct and indirect taxes in Spain. As regards direct taxes, the profits of outsourcing captives established in Spain are subject to Spanish corporate income tax as a general rule. The tax base is determined by the accounting rules, although there are a number of specific tax rules. For instance, in the case of operations carried out between related parties, specific transfer pricing rules should be followed, which are essentially in line with the OECD criteria in this regard. The current corporate income tax rate is 28 per cent, thought this tax rate will be reduced to 25 per cent in 2016.

As regards indirect taxes, 'operations' will typically be subject to VAT, at the current general tax rate of 21 per cent. However, if the addressee of the services is a company not established in Spanish VAT territory, typically the service will not be subject to Spanish VAT (reverse charge system).

23 Outline the indirect taxes in your jurisdiction that apply to the import of offshore outsourcing services by companies within your jurisdiction.

Concerning indirect taxes regarding the import of offshore outsourcing services by companies within Spain, the above-mentioned 'reverse charge system' rule will typically apply. In other words, the offshore outsourcing provider will not charge VAT, but the Spanish company will have to self-charge the corresponding amount.

Nevertheless, in most cases this mechanism will be neutral from a financial perspective, because the Spanish company will typically be entitled to deduct 100 per cent of this self-charge VAT in the same VAT tax period.

Current issues

24 Identify and give details of any notable cases or administrative or regulatory determinations within the past three years in your jurisdiction that have directly involved outsourcing.

In its ruling of 20 February 2013, the Spanish Supreme Court considered DTS' outsourcing of its information and technology department to be a transfer of undertaking in the sense of Directive 2001/23/EC, in spite of the fact that the outsourcing had taken place through a lease contract. It pointed out that, in order to determine if there has been a transfer of undertaking or not, it is not relevant whether the new employer is the owner of the material elements necessary for the activity. What is relevant is the fact that there has been a change of employer and the transfer affects an economic entity that maintains its identity.

In its ruling of 7 February 2012, the Spanish Supreme Court determined that the subrogation clause contained in the collective bargaining agreement for the cleaning sector is applicable for all companies included in the scope of the collective bargaining agreement, regardless of their nature (even if the new provider is a company with only disabled employees). Thus, when the client company changes from one cleaning company to another, the employees of the former provider are entitled to continue working for the same client company as employees of the new provider.

The European Court of Justice determined in its ruling of 20 January 2011 (case C-463/09) that the mere taking over by the town hall of Cobisa of the cleaning services previously provided by the company CLECE should not have been considered a transfer of undertaking, especially since the collective bargaining agreement was not applicable to the town hall as a public entity.

25 What are the main challenges facing outsourcing within, from or to your jurisdiction?

There are no major legal or regulatory challenges facing outsourcing at present or in the short term, to the best of our knowledge.

The financial situation and the very high unemployment rate have resulted in salary cuts that have rendered the Spanish labour market cheaper and, therefore, more competitive.

The three rounds of labour market reforms have contributed significantly to making the labour market more flexible.

The above factors have helped minimise the trend of increasing delocalisation of businesses, in particular industrial production, to Asia and central Europe, which had been the trend in the past few years.

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Air Transport	e-Commerce	Life Sciences	Restructuring & Insolvency
Anti-Corruption Regulation	Electricity Regulation	Loans & Secured Financing	Right of Publicity
Anti-Money Laundering	Enforcement of Foreign Judgments	Mediation	Securities Finance
Arbitration	Environment	Merger Control	Securities Litigation
Asset Recovery	Executive Compensation & Employee Benefits	Mergers & Acquisitions	Ship Finance
Aviation Finance & Leasing	Foreign Investment Review	Mining	Shipbuilding
Banking Regulation	Franchise	Oil Regulation	Shipping
Cartel Regulation	Fund Management	Outsourcing	State Aid
Climate Regulation	Gas Regulation	Patents	Structured Finance & Securitisation
Construction	Government Investigations	Pensions & Retirement Plans	Tax Controversy
Copyright	Healthcare Enforcement & Litigation	Pharmaceutical Antitrust	Tax on Inbound Investment
Corporate Governance	Initial Public Offerings	Private Antitrust Litigation	Telecoms & Media
Corporate Immigration	Insurance & Reinsurance	Private Client	Trade & Customs
Cybersecurity	Insurance Litigation	Private Equity	Trademarks
Data Protection & Privacy	Intellectual Property & Antitrust	Product Liability	Transfer Pricing
Debt Capital Markets	Investment Treaty Arbitration	Product Recall	Vertical Agreements
Dispute Resolution	Islamic Finance & Markets	Project Finance	
Distribution & Agency		Public-Private Partnerships	

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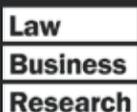
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