

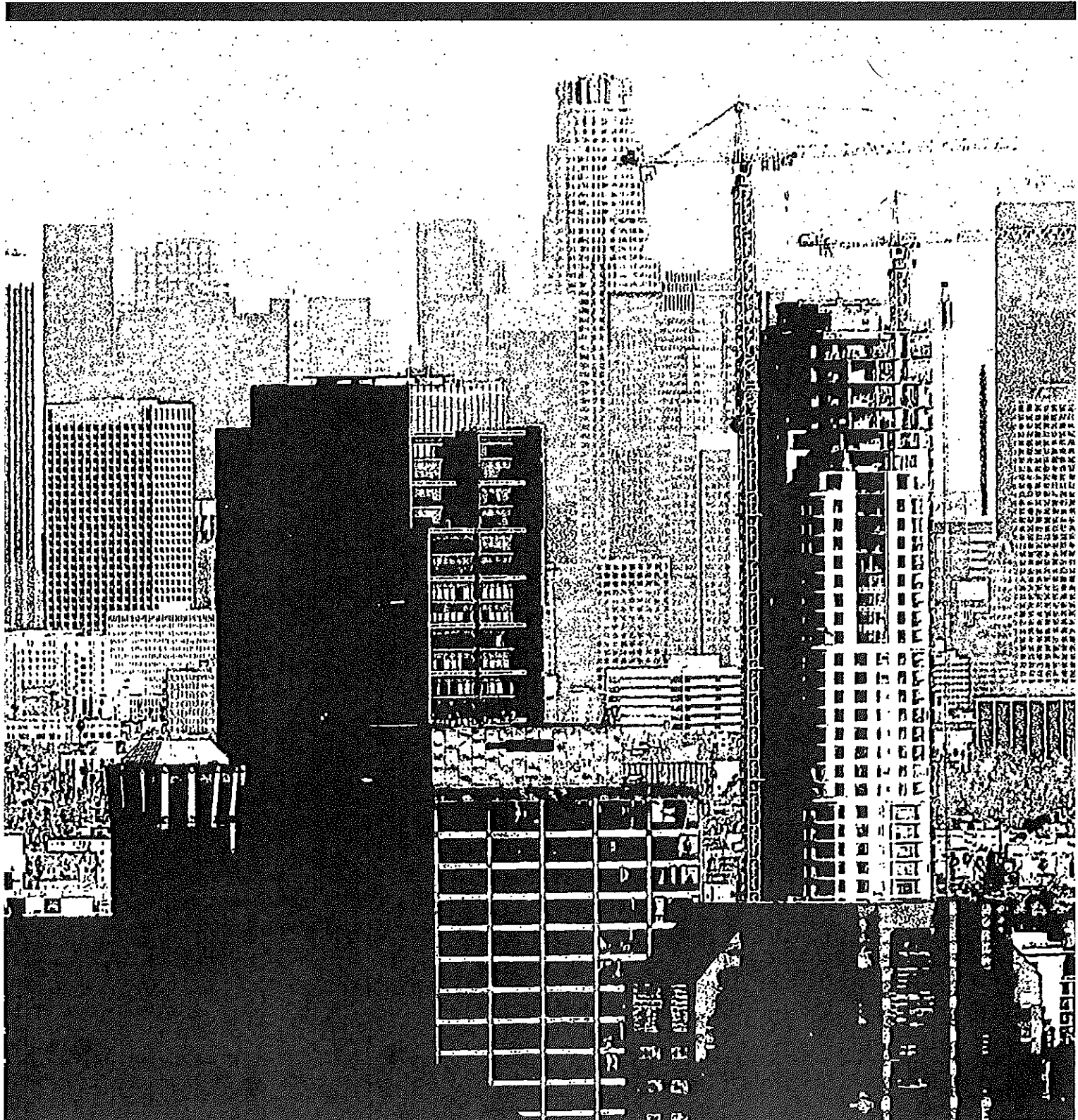


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Real Estate

Newsletter of the International Bar Association Legal Practice Division

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Court) and the Supreme Court of Russia. Ms F appealed to the European Court of Human Rights. On 28 January 2011, a single judge, Judge G Nicolaou, declared the submitted application inadmissible (case 65836/10 *Frolkova v Russia*).

Comment

Having closely analysed the decision, it is obvious that it is inconsistent with Article 1 (Protection of Property) of the Protocol of 20 March 1952 to the Convention for the Protection of Human Rights and Fundamental

Freedoms, since Ms F illegally lost part of her parcel of land and her shed was destroyed. Thus, one more sticking point is the leverage that ensure to restore the parcel square 4,000 square metres that had been rendered Ms F by the authorities, and to restore the shed to straighten out her statutory position. In respect of this particular argument, the national courts had been decided on the merits, inter alia stated nothing, therefore the decision is blatantly divergence and biased. In fact, it is a breach of Ms F's right to a fair trial under the Convention for the Protection of Human Rights and Fundamental Freedoms (Article 6).

SPAIN

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A new approach to tax planning in regard to real estate property in Spain

The introduction of a new double taxation treaty between Spain and Germany, initially scheduled for 1 January 2013, as well as ongoing tax consultations regarding succession matters in Spain, has given rise to various tax planning options involving real estate properties in Spain.

One such option applies to non-resident naturalised persons, for example, naturalised persons residing in Germany who own shares in a Spanish company, which, in turn, owns property in Spain.

The possibility of transferring the shares of a Spanish company to a German company, for example, a 'GmbH' type company, has been brought on several occasions. Thus, as a result of the exchange of securities transaction, the GmbH company will become the owner of the Spanish company's shares.

Nevertheless, execution of such transaction used to present a serious controversial issue, specifically – a possible tax liability in Spain for the 'Property Transfer Tax', at seven or eight per cent rate of the market value of the real property, depending on the rate adopted in the Spanish Autonomous Community where the property is located.

Nevertheless, this eventual issue has been resolved by virtue of a recent binding ruling issued by the General Directorate for Taxation of Spain (V0185-12, January 2012), which states that, as a rule, exchange of securities transactions will not be subject to the aforementioned tax.

This ruling gives rise to a new approach to tax planning in regard to real estate properties located in Spain. We recommend that each specific case is reviewed on an individual basis in order to evaluate the actual applicability of the ruling to the case.