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International
Legal Barometer on insolvency

China
Annual financial and tax audits

Great Britain
Closer focus on tax compliance

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“Anyone buying a vacation home in Spain just to use it once to four times a year should be doing so for pleasure and not purely as an investment.”

Dr. Jörg Hörauf, ECOVIS Barcelona, S.A., Barcelona, Spain

SPANISH REAL ESTATE

An opportunity for foreigners to buy?

Taxation and other costs have to be kept in mind when deciding on purchasing property.

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Due to the real estate and economic crisis in Spain, real estate prices have fallen, even in prime locations. As a result, Germans now have what appear to be favorable opportunities to buy properties in Spain. Should one take a chance now, or wait to see how things develop? That is the question many prospective buyers are asking themeselves now.

Many foreign and resident investors are still hesitating, because real estate prices are expected to fall even further. Once the economy starts picking up, one could consider reacting swiftly and purchasing property in preferred locations.

In any case, private buyers would be well advised to weigh the pros and cons carefully before coming to a final decision. Anyone buying a vacation home in Spain just to use it once to four times a year should be doing so for pleasure and not purely as an investment.

Spanish tax authorities impose considerable taxes on any property purchases – in the form of the TIP (real-estate transfer tax) at a rate of at least 7% to 8% of the purchase price. If a company handles the purchase of a building site, as much as 21% in value added tax plus stamp duty of 1.5% to 2.5% can be added (see table). The real-estate transfer tax is charged to the customer, as is the value added tax. Of less importance, relatively speaking, is the municipal capital gains tax, usually only a few hundred or a thousand euros.

Notary fees are money well spent.

A notarized bill of sale and an entry made in the land register are not necessary to validate the purchase of real estate in Spain. However, it is highly recommended if you want to save yourself some nasty surprises. There have been cases of real estate having been sold several times over. Trying to get your money back is a long ordeal. When the services of a notary are employed to have the real estate recorded in the land register, the transaction can be regarded as watertight.

Private individuals who own real estate in Spain are responsible for filing their own income tax returns. Not only rental income earned is taxable (at a rate of 24.75% of the gross rental revenue), but also personal use, at a rate of 24.75% on 1.1% - 2% of the cadastral value. Spanish municipalities also impose property tax, at rates of 0.6% to 1.3% of the cadastral values.

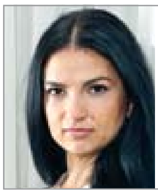
The Spanish inheritance tax law and the gift tax may be time bombs waiting to go off for foreign owners of Spanish estate if they are not familiar with the Spanish tax system. Therefore expert advice is essential.

Costs, assuming normal purchase transaction

Taxation of transaction (typical)	
Purchase of houses and apartments, including lot	
from a company, new building	10% VAT (IVA) + 1.2% to 1.5% stamp tax (AJD)
from a company, not new	7% to 8% real estate transfer tax (ITP*) or, for example, if the property is being sold to another corporation: 10% VAT (IVA) + 1.2% to 1.5% stamp tax (AJD)
from a private person, not new	7% to 8% real estate transfer tax (ITP*)
Purchase of a building site	
from a private person	7% to 8% real estate transfer tax (ITP*)
from a company	21% VAT (IVA) + 1.2% to 1.5% stamp tax (AJD)
Other taxes and costs	
tax on capital appreciation (Plusvalia)	normally 1% to 3% (depending on locally accepted land value, number of inhabitants and duration of possession)
notary fees	about 1% to 2% of the purchase price
entry in the land register	about 0.5%

*probably to be raised to 10% in 2013

TIP
More about Real Estate under www.ecovis.com/realestatespain



"Legislators in nearly every country strive to give a second chance to those bankrupt businesses capable of submitting a credible concept as a going concern."

Monica Esterka, ECOVIS Monica Esterka Law Office, Bucharest

BANCRUPTCY LAW BAROMETER

A gap between theory and practice

Despite different legal systems the results of the survey show some common trends

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Ecovis' offices in 21 countries participated in a comparative survey which reflects a cross-section of different legal systems and levels of economic development, from Argentina to Vietnam, Romania to Great Britain. The objectives of their bankruptcy legislation vary widely in their intent, too. In most countries (71%), the creditors' interests take priority. In roughly two in every three countries (62%), the fair distribution of assets among the creditors is also one of the prime objectives.

Bankruptcy proceedings primarily designed to make it easier for debtors to make a new financial start take only second place in the priority of most countries (71%), for example by exonerating them of residual debt. However, in contrast, finding ways for them to save their businesses and thus the jobs that go with them takes top priority in 38% and second priority in 52% of the responding countries.

Irrespective of all the differences, legislators in nearly every country strive to give a second chance to those bankrupt businesses capable of submitting a credible concept as a going concern. For the creditors too, this is often a better solution than liquidation. Of all the countries surveyed, 86% consider financial reorganisation, following the model of Chapter 11 of US insolvency law or in line with the German voluntary scheme of arrangement (literally "insolvency plan"), to be a viable possibility. In such cases businesses come to an agreement with their creditors on a plan designed to alleviate their financial burden and to refloat them financially.

Challenges of reorganisation

In actual practice, however, bankruptcy proceedings usually result in liquidation, i. e. the exploitation of any assets still available to creditors and the ensuing closure of the company. All the 21 international Ecovis partners who replied to the question about the most common treatment of bankruptcy gave liquidation as their only answer, while only eight cited reorganisation and establishment of a going concern as another choice.

The problem on the one hand is an inherent one: in many cases the insolvent business is in such financial distress, or even bled white, that there is only a slim chance of a new start being successful. It is often the managers, partners or creditors themselves who shy away from the challenges associated with keeping the business going, prefering to bite the bullet and make a clean cut rather than contemplate taking further risks. Drawing up an insolvency plan to establish reorganisation arrangements places greater demands on the expertise of the liquidator and the management of the company itself.

Another challenge is the procedural hurdles to be overcome. In Great Britain, for example, one of two turn-around options is only seldom used, because 75% of the creditors and the courts have to agree to this, and any such arrangement, should it even ever be put in place, would take too long.

In Germany the German Insolvency Act of 2012 makes it easier to adopt a voluntary scheme of arrangement to create a going concern – one of the measures being to make it much harder for individual creditors to veto the project.

TIP

If you would like more details please download the full document under www.ecovis.com/legabaro2012

“Compliance with tax regulations isn’t just a burden, it’s a great chance to optimize your structure, save money and implement control mechanisms.”

Richard Hoffmann, Partner Ecovis Beijing, China

TAX COMPLIANCE IN CHINA

Preparation is everything

Plan ahead – to avoid headaches and improve your business

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Due to new laws and regulations, 2012 was a year of change for foreign companies in China. During the annual compliance process, the Chinese authorities will check if you are in compliance with the requirements of your tax entity. But don’t look at it as just another burden on your company. Rather, it is a great chance to optimize your structure, save money and implement control mechanisms to avoid fraud. This article points out the main issues to consider for your annual compliance process in China.

Overview of annual compliance work

	Rep office	JV/WFOE/FICE	Individual	Timeline
Annual audit	√	√		Before tax filing and annual inspection and Group audit deadline
Annual tax filing	√	√		May 31, 2013
Annual FCI inspection		√		May 31, 2013
Annual combinative audits		√		June 30, 2013
Annual individual income tax declaration			√	March 31, 2013

→ 1st level: Annual Audit Local Chinese GAAP

The first round in annual compliance is the annual audit. All foreign-invested enterprises (representative office, WFOE, joint venture or FICE) are required to prepare annual statements including balance sheets, income statements and cash flow statements for the annual audit, based on Chinese GAAP. The annual financial statements and the relevant accounting records need to be audited by a Chinese-licensed CPA firm. Many problems occur due to incomplete monthly bookkeeping and accounting. Try to adjust your accounting before the audit.

International GAAP

International companies need consolidated financial statements for group consolidation. Therefore, the local Chinese entity should facilitate a special purpose audit of the financial statements in line with the International Standards on Auditing (ISA) by December 31, 2012. It should be prepared according to the internal accounting principles of headquarters (IFRS, US GAAP or HK GAAP). The results of this audit are reported in standard format or in a reporting package as defined by headquarters.

→ 2nd level: Annual foreign currency audit and inspection

Every foreign enterprise in China needs to go through a “Foreign Currency Inspection” (FCI) for the period ending on December 31, 2012. This inspection is facilitated by an authorized CPA firm, and the findings are summarized in a report. This report is required for the annual inspection of the State Administration for Foreign Exchange (SAFE). Each company is responsible for preparing the Statement of Foreign Investors’ Equity of Foreign Invested Enterprise, according to the regulations of the State Administration of Foreign Exchange.

→ 3rd level: Annual tax audit and clearances

According to the requirements of the tax authorities, each foreign entity must participate in an annual tax clearance. Its main component is the annual Corporate Income Tax clearance. The costs and profits are listed to evaluate taxable profit or loss. Outstanding tax liabilities must be cleared.

→ 4th level: Annual combinative inspection

Each foreign entity must facilitate an annual combined audit from various authorities. These are the same authorities who approve the registration of the company (e.g. AIC, MOFCOM, Financial Bureau, Customs, Tax Authorities, etc.). Each of these authorities must confirm that the foreign company is in compliance. Upon relevant approvals, the foreign entity can proceed with its business in China.

"How should companies mitigate the chances of an unwanted encounter with HMRC? First and foremost, they should ensure all records are accurate and up to date."

Peter Owen, ECOVIS Wingrave Yeats, London

GREAT BRITAIN – AVOIDING TAX PROBLEMS

Keeping the taxman happy

The closer government focus on tax compliance needn't cause problems

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Whilst George Osborne, the British Minister of Finance, has suggested that multinationals that use aggressive tax planning tactics to reduce their corporation tax liabilities will face far greater levels of scrutiny, there have been indications that HM Revenue & Customs (HMRC) are expected to step up their overall pursuit of tax investigations, and small businesses are thought to be vulnerable targets as HMRC look for ways to diminish the 'tax gap'.

Chancellor Osborne has made a joint statement with the German finance minister Wolfgang Schäuble at the G20 summit in Mexico calling for co-operation to reduce corporation tax opportunities which currently exist for the likes of Google, Amazon, Starbucks and Pfizer, who have been reported to pay between 0 and 2.5% UK corporation tax. However going after the 'big corporates' is likely to be a long and drawn out affair, whilst a 'short term fix' to the problem would be to target smaller businesses.
It has been estimated that the UK tax gap for the year 2010/11 stood at £32bn, which is a billion pound increase from the previous financial year. It is hardly surprising that the Government has allocated £917m to tackling the problem, and HMRC's Chief Executive, Lin Homer, has voiced her opinion, "to support the honest majority and to crack down on evasion, avoidance and fraud … We are determined to do more and we are devoting increasing resources to pursuing those who do not pay the tax they owe."

One of HMRC's new initiatives is the use of the social media portal Twitter. '@hmrcgovuk' was initially set up to remind taxpayers about their impending deadlines, but HMRC have amended the application so that individuals can tweet numerous types of information. This includes the opportunity to report tax-evading activities in local neighbourhoods. A simple tweet may eventually lead to an Inspector knocking on the door of an unsuspecting small business.

Leaving social media aside, HMRC can generate compliance checks on a company at any time by virtue of iXBRL tagging. Even an out of place figure on a tax return would give reasonable grounds for the tax inspector to pay a visit to a small business. In these threatening times, how should companies mitigate the chances of an unwanted encounter with HMRC? First and foremost, they should ensure all records are kept accurately and are up to date. Filing tax returns with sufficient levels of disclosure and on time is a good indication to HMRC that your business is doing its upmost to adhere to HMRC's filing criteria.

General tips for small businesses to keep the Inspectors at bay:

- → Ensure that all accounting records are accurate and kept up to date along with supporting documentation.
- → Submit all relevant corporation tax documentation and make payment of corporation tax to HMRC in a timely manner.
- → Comply fully with PAYE & VAT regulations, including making full and timely payments of taxes as they fall due.
- → Ensure that your corporation tax documentation contains a substantial level of tax disclosure, i.e. answer the questions HMRC would raise before they can ask the question.
- → Respond as soon as possible to all correspondence from HMRC– if you cannot meet the deadline; make sure you keep in touch with them and explain why you need more time.
- → Remember the Inspectors are human at the end of the day, and if you have genuine reasons for default of the submission and/or payment it is better to discuss with them in person rather than waiting for them to knock on your door.

ABOUT ECOVIS

Ecovis is a leading global consulting firm with its origins in Continental Europe. It has over 4,000 staff operating in over 40 countries. Its consulting focus and core competencies lie in the areas of tax consultation, auditing, legal advice and accounting and management consulting services. The particular strength of Ecovis is the combination of personal advice at a local level with the general expertise of an international and interdisciplinary network of professionals. Every Ecovis office can rely on qualified specialists in its back offices as well as on the specific industrial or national know-how of all the Ecovis experts worldwide. This diversified expertise provides clients with effective support, especially in the fields of international transactions and investments - from preparation in the client's native country to support in the target country. In its consulting work Ecovis concentrates mainly on mid-sized firms. Both nationally and internationally, its one-stop-shop concept ensures all-round support in legal, fiscal, managerial and administrative issues.

The name Ecovis, a combination of the terms economy and vision, expresses both its international character and its focus on the future and growth.

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