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_ACCOUNTS_TAX_AUDIT_BUSINESS CONSULTANCY

ASEC NOTES

_Recession and All That Jazz

As we move into the second quarter of 2008 rumours abound as to the state of the Spanish economy.

The IMF considers that Spain's growth rate this year will be 1, 8%, the lowest in any EU country. This for the economists of this world is a technical recession. Yet if you dig deep into the underlying calculation you will find that this rate is heavily weighted by the estimated price downturn in the property market. Is this a fair assessment of the basic economic activity of a country? The Spanish economy has a large dependence on the tourist industry, and the expectations for this year based on the industry forecasts are showing an increase on 2007. Who's got it right?

The newly elected Spanish government has tried to kill the rumours of a recession by promising tax cuts, soft loans for SME's and more direct investment in protected housing. It remains to be seen whether these measures will work.

Many comments have been made in the UK press in recent weeks regarding tax rebates for non resident sellers of property in Spain. The rate of CGT applicable to owners of holiday homes up to the 31 December 2006 was 35%. The rate applicable to residents was 15%. As we have mentioned in earlier editions of this newsletter, Spain was taken to the European Court of Justice by the European Commission, who argued successfully that this differential in the rate of CGT applied to non residents was discriminatory. An appeal can therefore now be made for all claims of this nature where the taxpayer can prove that he paid the CGT on the gain at the higher rate of 35%. Such claims will be become statute barred in 2009, for taxes paid prior to 2005.

On the political front the socialist party got into power again in the general elections held on the 9 March, albeit with no overall majority. The economy will clearly be their main battle over the coming years. Political "sweeteners" will also be the order of the day, if they are going to make inroads in the modernisation of the civil service, the system of justice and education.

Finally the good news on the tax front is that the government has reduced the rate of Wealth Tax to zero. The tax itself has not been eliminated, as it is a devolved tax, and in addition it provides a useful means of keeping tabs on people's assets. This is good news for foreign owners of Spanish property.

Happy summer days.

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_Alternative Strategies

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Recently we have seen global equity markets suffer strong corrections as they struggle to come to terms with the twin forces of slowing economic growth in the developed economies and rising inflationary concerns. This situation has been exacerbated by the continued fallout from the sub-prime mortgage crisis and escalating commodity and energy prices.

The extent to which the global equity markets have fallen from their highs of last year, suggest, for some indexes that they have entered a bear market phase (based upon a traditional definition of a decline of more than 20%), and although we are currently experiencing a downshift in global growth expectations, the levels currently being seen, are creating potential entry points for value based investors. Our concern would be that if the global equity market lows of January be breached, we could then be in danger of moving from a bear phase into a longer term bear market.

Global emerging markets have taken the brunt of the sell off, so far this year; this was partly profit taking rather than fundamental, as these markets saw phenomenal returns last year. The economies of the emerging countries continue to have higher GDP growth prospects than those of their developed cousins and regardless of growth potential there are some themes within those economies that warrant further discussion. Emerging countries that have large budget and trade surpluses are committing to substantial investments in many large infrastructure projects within the energy, utility and telecoms sectors, and could provide investors with opportunities especially in the faster growing and more mature of the emerging market economies.

In times of excess equity market volatility it is not uncommon to see a "flight to quality" into other asset classes, and to a certain extent this goes part way to explaining the recent price rises in the energy and commodities sectors, albeit only a small part. The phenomenal run in the commodity markets, in contrast with a weakening global economy alludes to the possibility of a short term commodity market bubble that requires watching. It is important to remember that commodities in general can be broken down between "hard" (Metals) and "soft" (foods) and that this economic slowdown may only affect the former rather than the latter. The "softer" commodities; wheat, cattle and corn have benefited less from the "flight to quality" but from longer term agricultural fundamentals that are attractive due to low inventories, a switching of agricultural production to bio ethanol production and an increasing westernization of Chinese eating habits.

There are many more funds becoming available to investors that wish to invest in the different emerging markets and further funds that target specific trends. Likewise, there are commodity funds that offer differentiation between commodities allowing investors to gain exposure to either the "hard" or the "Soft" sectors. An alternative form of investment worthy of consideration for those wishing to part gain exposure in the emerging market sector could be made through a Capital Protected Note (CPNs). CPNs can provide a 100% capital guarantee on maturity of the initial investment and also offer, varying levels of participation in the prescribed equity market.

Investors who are still concerned with the situation in the global equity markets due to volatility and uncertainty, and are looking for higher returns than those offered from cash deposits could consider investing in a cautious fund. Cautious funds are generally designed to preserve capital and look to provide a better return than the money markets. They provide diversification within their portfolios, have a low volatility weighting, yet still target above cash returns.

_S.L. or S.A. - which one suits you best?

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One of the most frequently asked questions in our everyday life is the structure of a future company: what is more beneficial or has more advantages, a Limited Liability Company (Sociedad Limitada) or a Corporation / PLC (Sociedad Anonima)? To give an opinion based on the correct judgement, involves having a profound understanding of the differences and similarities of both company structures:

Similarities

From the Companies Registry point of view, both companies, are trading companies that have their own legal personality; incorporated before a notary public, pay taxes on incorporation (stamp duty), and must be registered in the Companies Registry of the province where the registered address is located.

Both must obtain clearance for the company name, at the central companies' registry in Madrid.

They are obliged to deposit their annual accounts, every year, at the Companies Registry.

From the tax point of view, both are subject to company tax with the same fiscal deductions, and tax rates applicable. There are no differences in terms of, accounting, VAT, etc..

Differences

The main difference (which is probably the most determining factor when deciding between one or the other), lies in the minimum capital required for its incorporation. Whereas the minimum capital for the SL is 3.005,06€. And this has to be fully paid up at incorporation; for the SA the figure is 60.101,20€ which must be fully subscribed but only 25% has to be paid up.

The share capital of the SL is divided in participating stock and the SA will divide its share capital in shares, which can be quoted on a stock exchange. In both cases the capital of the entity can be subscribed to by way of an asset swap. However the PLC will require an independent expert to provide a report on the value of the assets being assigned.

Management in both cases can be by way of one or more administrators (they have full powers to act on behalf of the company, or through the more traditional Anglo Saxon method of a board of directors.

As for the transfer of shares, SA's have an open regime (unless the bylaws state the contrary). SL's abide by stricter rules, in such cases transfers must be made in a public document and the rest of the shareholders will have a preferential right of purchase. (In specific cases such as transfers to family members, etc this is not applicable)

To conclude, an SL is more suitable for small and medium sized businesses, probably family run or with just a few shareholders. The low level of setting up costs and flexibility in operations, make It the most advisable company structure in most cases. They are mainly personal companies, closed off to third parties and do not precise external investments.

On the contrary, SA's are more beneficial in businesses where the capital is a core element; because they have the flexibility to acquire and sell shares, investments by third parties is easier, and they can even trade in a stock market.

_Healthy, wealthy and wise: it's high time to think about your retirement plan

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All of us have witnessed an impressive increase in average life expectancy in all the developed nations. We know that typical retirement is getting longer, but the question is: "Are we prepared to face that problem in our life? How do we consider our own retirement planning? "

Its easy to be wise after the event, but if we had started saving as soon as we get our first serious wage packet, we would be now coming up for retirement having a huge range of options to choose from, but unfortunately it isn't like that.

Most of us who are or have been employed have got used to a system of contributing to **an occupational pension scheme** (public and/or private), with the confidence that we would receive retirement guaranteed annuities when we got to retirement age, based on how long we worked during your professional career and our salary at retirement age.

However, for better or worse, all of that is about to change. In the last several years, there has been a huge shift in terms of the number of people aged over 65 and also aged over 85, which, paired with the decrease in the number of children being born, is creating an ageing population.

Increased longevity thanks to improved diet, health-awareness, and medical innovation, among other factors, has already led to substantial shift in the lifestyle expectations of those at retirement age.

Nowadays we already know that our **current retirement savings are inadequate**, that our pensions are far less valuable than those of the previous generation, so we are worried about how we will be able to afford to maintain our standard of living for this extended period of retirement.

To this we have to add **the danger of inflation** eroding savings by half in under 20 years, combined with rising costs in the later stage of life are offering a daunting prospect for soon-to-be retirees.

It is high time to look around and find the most satisfactory solution for your future retirement – especially nowadays where we have more financial choices with new regulations and innovative products being launched on the market.

Until now the **Spanish system of pension fund investments** has been unsophisticated, with little flexibility in the way they invested the core funds. Some of the Spanish pension funds provide lower rates of return than the country's inflation rate, and less than returns from government bonds and the stock market. Many people in Spain are confident that their pension plans will enable them to enjoy their golden years without worrying about the economy.

Unfortunately the situation is not so good, in many cases the "selling" of pension funds is more focus on its potential tax advantages, rather than looking deep into the returns that people actually get from those investments.

Why do these investments get such poor results? First of all, they charge investors high commission rates; sometimes even as high as 2.5%, and the second reason is that in many cases the investment strategy is inadequate for the age and future necessities of the participants.

Maybe this is the right moment to ask you financial adviser for opinion regarding to your existing private pension fund.

Especially as recent regulatory changes indicate that Spanish pension funds are for the first time able to invest in alternative classes of assets, introducing a wealth of opportunities for investors and providers alike. Thanks to that regulation it is possible to search for stronger returns investing in hedge funds, commodities and private equity.
This new regulation came into force in December 2007 and affects all private sector funds.

Nowadays financial institutions specializing in retirement income solutions have entered a golden period offering plenty of solutions such: pension plans, investment funds, alternative secured pension funds, saving programs, unit linked fund, life insurance options etc.

It is therefore worth investigating the so called **Individual Plans for Systematic Saving (PIAS).**

The individual plan of systematic saving is commercialized on the Spanish market since 1st of January of 2007, by insurance companies.

The main purpose of this new product is to **stimulate savings of capital for a long term period** which in the end can serve as a complement to the public pension receivable at retirement.

The accumulated capital invested can be paid monthly as a life time pension. This assured life rent can be paid to the beneficiary once 10 years have passed from the payment of the first premium. The fiscal benefit of these products consists of the exemption of all the accumulated returns that have been generated over its life, from tax, once the retiree starts to receive his annuity.

One of the main advantages of this product, as opposed to the lack of liquidity of the pension plans, is that it allows **the recovery of the accumulated savings at any time**. Even, if it is rescued before ten years have passed from its inception; the holder, however, will lose the accumulated tax benefits of the product.

Of course most of our readers may say, that they have contributed to a pension scheme during their working life, and right now being retired in Spain they would like to get the most they can from their investments.

Unfortunately in many cases as Expat you will be subject to **the exchange rate** risk when you receive your pension in Spain.

Until recently, British pensions have had to remain under UK rules, even if you retired to Spain. In April 2006 a new regulation was announced that British expatriates could move their pension fund out of the UK, in that way avoiding the various boundaries that the UK imposes on how you take your pension benefits.

That legislation has created international pension products identified as **Qualifying Recognized Overseas Pensions Schemes (QROPS)**.

QROPS hold significant advantages for expatriates. Anyone with a UK pension scheme who lives overseas as an Expatriate, or is planning to leave the UK can now transfer their existing pension provisions into QROPS.

If you are non-resident in the UK for at least 5 complete tax years (or know that you will be) your UK pension funds can be transferred without tax deduction and ultimately drawn without UK tax consequence once the 5 year period is up.

UK Pensions have traditionally been tied up in many layers of restrictions and regulations on how and when you draw down your benefits and in most cases you are forced to buy an annuity at age 75. At that point in a QROPS you won't have to purchase an annuity and you can leave your un-spent pension to your beneficiaries.

Transferring your pension out of the UK and avoiding such restrictions could help you improve your retirement years in Spain.

Not all kind of pensions can be transferred, you are allowed to transfer personal and occupational pension schemes, also pensions that are in drawdown and protected pension rights. It is not possible to transfer a basic state pension, or in the situation when you have already purchased an annuity.
Pension transfers are heavily monitored by the Financial Services Authority in the UK. Being a Spanish tax resident careful consideration should be given to only taking recommendation from advisers who are both regulated in the UK and in Spain and are particularly authorized to give advice on transferring UK pensions.

Should you be interested in any further information regarding retirement options please contact our Financial Services Department and we will be delighted to assist you.

_New Spanish regulations on Data Protection

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It is now twelve years since Spanish legislation started to follow the rules established by the European Commission which was demanding a regulation adjusted to the Community rights in what refers to the protection of personal data. New rules have now been introduced to comply with EU changes.

The new legislation controls not only the electronic information files but also the ones kept on paper, giving them a series of security measures and specific ways of treatment based on their classification according to the information they contain. But, what does complying with the Law of Data Protection mean? All companies and professionals have some kind of a filing system (physical or computerised) where the information is stored and classified into suppliers, clients, employees. A Doctor for instance, has got the medical history of his clients on his computer; a salesman has the details of the results of his contact with potential clients, and not to say the least, companies that use databases for mailings, etc. All these files must not only be registered with the Spanish Agency of Data Protection but also the company or professional that stores them has serious responsibilities in what refers to their treatment, custody and security to such a level that a simple report made via Internet by someone who feels violated by the treatment that is being made of his personal data could trigger an inspection by the Tax Office that could end up in fines of up to 600.000,00€ if we aren't complying with the new rules.

If a businessman was complying with the previous Spanish regulations, he has one year to adapt his organization to the new rules which came into force on the 14th of April. But if he still doesn't have his system audited or his files registered, time is against him, as the new Spanish legislation is proving to be most restrictive and firmer in sanctioning than the rest of the European Community.

At Asec, we are conscious of the responsibility that the treatment of the information from all our clients entails; we have already started the necessary steps not only to adapt to the new rules, but also to compensate the confidence given to us by the clients of our firm. We are preparing a catalogue of professional services related to the Protection of Personal Data regulations for all those companies or individuals who wish to count on our help to place internal systems for the treatment of information which will cover the audit of the systems and recommendations designed to meet the latest legislative changes.

_Tax rebate in Capital Gains Tax prior to 2007

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During the years 2003 to 2006 the Spanish Tax Office has been levying a 35% tax on the capital gain generated on the sale of property in Spain by non resident European citizens. Resident individuals however where taxed on the same type of gain at 15%.

This different treatment is contrary to European regulations and hence the authorities of the E.U. declared that this principle violates the non discrimination rules between citizens of the European members. ASEC Group has and offers the resources at its disposal to apply for and obtain from the Spanish Revenue the reimbursement of the taxes wrongfully paid, plus the corresponding interest, which represents approximately 6% annually from the date of payment of this tax.

The requirements to apply for the said reimbursement are very simple:

1. To be an individual.
2. To have sold a property in Spain between June 2004 and December 2006.
3. To be a non resident in Spain at the date of completion.
4. To have paid the tax to the Spanish Revenue (form 212).

What do we need for the application of the rebate in your name? Even easier!

1. Copy of form 212.
2. A Power of Attorney, conferring fiscal representation, granted by a Notary public.
3. Service Agreement between yourself and our company.

What about the fees?

Here at Asec we are convinced of the feasibility of obtaining the rebate of the taxes wrongfully levied. This is why our fees only rise to 20% of the amount to be recuperated, and shall only be charged if the lawsuit against the Spanish Tax Office is won. For the initiation of the process, we require a payment equal to 1% of the amount to be reclaimed, as a provision of funds. Should the lawsuit be won, the 1% shall de deducted from the final fees.

_Ex-pat workers under the Spanish Social Security Law

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Every day more and more companies, for economic, financial and market reasons opt to send their employees abroad, in this case Spain; which produces a displacement of the employee from the work centre.

In general the employees who are sent to member countries of the European Union will be subjected to the Social security legislation currently in force in the country where the employee carries out his duties. However in the case of temporary assignments, the employee will maintain the Spanish Social security legislation.The initial procedure will be executed if the displacement is foreseen for a period of time no longer than one year. In this case the company will be obliged to complete the relevant form TA – 200 from the Spanish Treasury.

The relevant department will issue form E-101. This form certifies that the employee will be subject to the Spanish Social Security law during his displacement to a member country of the European Union and subsequently the employee will be exempted from contributions to the Social Security in this other country.

Besides this form the employee must have a valid European medical card (TSE) for his medical coverage in the country where he will carry out his duties. The validity of this card will be for one year and it will be applied for at the Spanish Social security offices.

If the initial period of displacement which is one year has expired and the employee who works for the company should have to remain in the displaced country for business reasons, the company will have to apply for an extension of time for a maximum of 12 extra months.

Upon the expiry of the maximum period of time, the company will have to opt for returning the employee to Spain or for registering the employee in the Social security system of the country where he has been displaced, and subsequently in this case the employee will be subject to the Social Security legislation currently in force in the said country.

It is important to point out that the company must apply for the relevant forms and deal with the information required for the displacement before it takes place, because otherwise the Spanish authorities will not be responsible for the employee's medical assistance or coverage, and also the company will commit an illegality by the displacement of employees without having the relevant authorization from the Spanish authorities.

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_Questions and Answers

Please welcome back this section to our magazine! We are positive that it will be interesting and useful to many of you. It is a known fact that sometimes the accounting "lingo" can be tricky, and even more if it's in Spanish! So we have decided to answer many of the questions that you ask in this section.

What is the European VAT Number?

Those traders who carry out EU transactions need to be registered in a special Spanish Tax office data base which can be looked up by your EU supplier and other EU Tax offices. The confirmation of the said registration is a number given by the Spanish Tax Authorities which can be provided to your EU supplier.

What paperwork do we need to prepare the quarterly taxes returns for businesses?

It is necessary to have all the invoices issued and received by the business/company in their proper form. In addition we require bank statements and all the backup documentation.

What is the 214 form?

This is the annual income & wealth tax return for non residents who own one holiday home in Spain. The tax has to be paid annually in arrears.

What is withholding tax?

Generally speaking, its money retained by the payee of a salary, rent or professional fee to an individual or partnership. This has to be paid to the Tax office quarterly.

What paperwork is required for the Annual Income Tax Return for residents?

Full details of worldwide income, assets and liabilities.

Frequently used vocabulary, which is something difficult to understand!

IVA soportado - VAT paid when goods are purchased or services are acquired.

IVA repercutido - VAT charged when goods are sold or services are rendered.

Balance a compensar - This means VAT balance in your favour to be recuperated from the Tax office.

_What do you think?

Please let us know which areas of this newsletter you found most helpful, and what, if anything, you would like to see added:

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