



ADVANCE

ACCOUNTANTS - AUDITORS - TAX CONSULTANTS

ASESORIA
ECONOMICA SC



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C/ Lagasca nº 79, San
Pedro Alcántara, Marbella,
29670 Málaga, España
Tel: 952783139
Fax: 952785644
E-mail: info@asesecon.com
www.asesecon.com

Dear Clients Associates & Friends,

That was the year that was!

Well 2005 came and went before we had a chance to say hello to all the people we would have liked to have made contact with.

As the song says "to all the girls I loved before...." We would like to say thank you to all our clients, colleagues and collaborators, past and present for all your support and loyalty in these 25 wonderful years.

We have learnt a lot in this time, and made mistakes along the way, but I would like to think that when all is said and done we can look back and remember the wonderful relationships we built up with all the friends of this practice. Thank you also to all our staff and partners, past and present, for all your incalculable support and allegiance, we could not have done it without you.

The past year has also seen many changes in legislation in Spain, on these issues we have regularly reported in the pages of our newsletters. We continue to maintain a firm determination to keep our clients and professional associates, up to date with all regulatory changes. In this issue we



bring you news on all the latest topics of interest.

My best wishes for 2006.

JUAN CARLOS RONCO CORSI
Senior Partner

GOOD NEWS FOR OUR CLIENTS.
At last the new underground car park here in San Pedro has been opened. With nearly 400 parking spaces available, and only 20 metres away from our offices, this is a positive step for the future of the town.



Who's New At Asesoría Económica, S.C.

We'd like to take the opportunity to introduce you to the newest members of our team.



María León

She moved to the "Costa del Sol" from the North of Spain in 1991 although all her family comes from the South. At the present time she has seven years working as an accountant and joined Asesoría Económica team in September 2005. She has declared to be delighted working in a busy firm such as ours.

Practicalities

N.I.E. & RESIDENCIA

The N.I.E. number is an identity number required by the Spanish government for foreigners, who are going to do any financial transactions here in Spain. This could entail opening a bank account or buying or renting a property. The application for this number is made at the National Police Station in the municipality where the client is residing in, and normally takes around 15 days. For citizens from the European Union you only need to fill in the application form and provide the original passport.

Once you have the N.I.E. number and if you are residing in Spain, it is a good idea although not a legal obligation in any way, to apply for the Residence card, again this will make it easier for numerous things whether it is starting a business or selling a property. The procedure normally takes quite a few months, as it entails going to the Police Station a couple of times, one of these would be to take a finger print. Apart from the original passport and application form, they would also require four passport photographs.

We provide a service in accompanying the client to the Police Station for the application of both NIE & RESIDENCIA. In the event that the client cannot attend for any reason then we would need a Power of Attorney from a Notary giving us the power to act on their behalf as well as a legalised copy of their passport plus either a Title Deed (Escritura) or a rental agreement for the property.

For further information contact: *Michele Dumas Ronco, michelle@asesecon.com*



LIVING IN SPAIN AS THE CHILD OF AN EX-PAT

A lot of parents who decide to move from one country to another always have the added worry of how their child will adapt to the new country and schooling.

I, as an example of one of those children, came to Spain with my parents when I was 5 years old. It was decided that both myself and my sister would go to a Spanish school as this was the country that was now going to be our home.

Not knowing a word of Spanish, in I went. I distinctly remember my first day; we were learning to write neatly and had to follow the dots on our text book, a little girl saw that I didn't understand the teacher and put her hand over mine to show me what to do. From then on I never looked back.

English was spoken at home, of course, and my mother made sure that we read English books and taught us how to spell.

Now I am totally bilingual and the world is my oyster with two of the most spoken languages and I work for Asesoría Económica as receptionist and PR assistant, which is pleasing to both myself, and the clients as there are no communication barriers.

The Spanish are very friendly and helpful people and I can assure you one adapts very quickly to their customs especially to such things as "Roscos de Vino", (it looks like a white doughnut) one of their Christmas specialities which I am very partial to and thoroughly recommend!

Katrina May P.R. Assistant

BREAKING NEWS!!

NEW TAX REGIME FOR EMPLOYEES WHO RELOCATE TO SPAIN.

As we commented in the last edition of our newsletter "Advance", a new fiscal regime has been set into motion for workers who have applied for their fiscal residence in Spain as a consequence of their relocation to this country. The relocation must be due to a job designated to the person in question to carry out effectively in Spain for a Spanish company or a branch of a foreign company. Those that adopt this regime will only have to pay taxes in our country in regard to the income generated in Spain, applying the non resident rules. So, for example, those workers that can opt for this fiscal regime will pay their taxes at a rate of 25% independently of the level of income that they receive for this concept (high incomes will be greatly benefited). But one must not forget that to adopt this beneficial regime, a series of requirements need to be complied with and an application must be made at the Tax Office.

CAPITAL GAIN TAX

The Spanish Executive has not yet pronounced on the formal request sent by the European Commission with reference to the discrimination in the tax treatment for residents and non residents capital gains. At the moment, a 15% rate is applied to the capital gains obtained by a fiscal resident in Spain in relation to the sale of properties with a generation period longer than a year; the tax rate applied to the same capital gains obtained, in this case, by a non resident is of 35%. We hope that the Spanish executive pronounces on this soon and proceeds to reduce the

cont...

Breaking News

“extremely high” tax charge that affects the benefits obtained by a non resident in the sale of a property, although we believe that the reduction of the said tax rate, will only affect those fiscal residents in the European Community.

REDUCTION OF CORPORATE TAX. NEW INCOME TAX.

The Spanish Executive, during all of the year 2005, has reiterated constantly its intention of undertaking to reform the corporate and income tax for the year 2006, and with that, put us at the same level as the other countries with which we compete internationally.

The Spanish Government has confirmed its objective of reducing the corporate tax rate by 5 points, with this, it foresees a rate of 25% for small and medium companies and 30% for bigger companies (at the moment the corporate tax rate is between 30% and 35%). They have not given a date or time for this reform, only that it will be done “progressively” and at the “right economical moment”.

With reference to the “much commented”

reform on income tax that the Government intends to deal with, we must say that there is still nothing concrete on this. The Executive has only pronounced on it in a generic way, saying that all that it pursues with this reform is to establish a tax that is “simpler and more just”, with the purpose of not penalising the earned income as much as it is now and in that way reduce the maximum tax rate. It has pointed out that the new income tax will recoup the deduction on home rentals. They will also maintain the deduction on the acquisitions of permanent homes.

MORE SURPRISES!

The Spanish Constitutional Court has declared unconstitutional those ratios which left tax-exempt some capital gains derived from the sale of properties; specifically, those properties acquired before 1.986. Up to the said judgment of the Spanish Constitutional Court, this capital gain was tax-exempt, but from that moment on there is an uncertainty surrounding this regulation which has created a great polemic between collectives and professional associations

considering it is at present out of place. The said associations have made a request to the Spanish Tax office in order for it to make a statement as soon as possible in this respect. But, up to date no news has been heard from them. We will see.....

STOP PRESS.

The council of ministers at their last meeting on the 31 December 2005 approved proposals to make substantial modifications to tax legislation, largely to reinforce the tax avoidance legislation.

The main focus of the changes are expected to be:

1. All deeds of sale of property will need to record the detailed method of payment, and the tax identification number of the parties.
2. Sales of second hand cars will require the prior approval of the tax authorities as to their value.
3. Companies resident in offshore centres (the so called fiscal paradises) whose principal activities, assets, or interests are located in Spain, will be considered to be resident for tax purposes.

Maria Jose Lima Cabello
Tax Partner

FINANCIAL IMPORTANCE OF AUDITING A PROPERTY OWNERS ASSOCIATION

From the entry into force of the Financial Audit Law in Spain, our firm has been providing auditing services to all kinds of entities. Our experience in the sector allows us to emphasize the importance of having the Annual Accounts of a Property Owners Association i.e. Community duly reviewed by professionals. As a Property Owners Association is not required to have double entry accounting due to the fact that it is not a commercial company, this can cause a widespread distrust about the financial/accounting transparency of the Community and management by the Board.

Both the recent economic and urban development on the Coast and the integration of Spain into the European Union gave rise to a great number of individuals selecting this area to invest in second homes. Consequently, a majority of residential estates have an average occupancy rate of 50 % during most of the year.

The management of the funds, which every owner pays into the bank account of the Community i.e. Property Owners Association for the maintenance of the estate and the accounts which are submitted for approval every year to a

General Meeting, must be therefore painstakingly informative and transparent.

The owners trust the Board with the management of these funds. The Board includes a certain number of elected members, depending on the Articles of Association of every Community i.e. Property Owners Association. In any case, the Board consists of at least a President and an Estate Manager. The Articles of Association grant powers to the elected individuals on the Board and, in most cases, to make estate management easier, the Estate Manager is the only person able to access the Community bank accounts. Such a great responsibility in the hands of a third party, who usually does not belong to the Community, causes a number of owners to suggest during a General Meeting that an independent professional ought to voice an expert opinion on the transparency of the accounting tasks carried out during the financial year.

The extensive experience of our firm with the auditing of Community accounts enables us to underline the issues that most worry our clients, who are co-owners of a property:

- Availability of funds.
- Transparency regarding collections and

payments of Community fees.

- Commercial Agreements signed with suppliers.
- Assessment of currently implemented quality controls.

The purpose of auditing Financial Statements is to issue a report on the accuracy of the audited accounting documents; it is not limited to the mere checking of whether the balances indicated in the bookkeeping entries actually coincide with those indicated in the Annual Balance and Loss and Profit account. The review and monitoring techniques we apply allow us, with a high degree of accuracy and without the need to re-do the entire accounting process, to give a reliable opinion on the bookkeeping as a whole and on a series of other facts that are not mentioned in the documents provided by the Estate Manager.

A Financial Audit is not only of interest to the members of the Community i.e. Property Owners Association, but also to outside parties, which have relations with it and would like to hear the opinion of an independent auditor.

Luisa Puertas - Audit Senior

Due Diligence in Company Purchases

You have just finished negotiations with the seller of a target company and have finally reached agreement on the price. You both decide that it is time to instruct your lawyers to prepare the necessary documents. However, when speaking to your solicitor, he tells you that you need to start the due diligence process. What is this process?

Due diligence is basically the name for the formal investigations that are carried out in relation to the company/business that you are intending to purchase and will take place in the period before completion.

What is the purpose of due diligence?

The purpose of the due diligence process is for the buyer to obtain as much information as possible about the target company/ business. A proper due diligence exercise will root out any potential problems and avoid any unpleasant surprises after completion. If any problems are discovered then these can be addressed during negotiations with the seller. This may lead to an adjustment of the purchase price or other amendments to the commercial terms of the deal. In more extreme circumstances it could cause the buyer to pull out of the acquisition.

Company or business sales

If you are acquiring the shares of a company, then you will indirectly inherit all liabilities of the company, even if you were not aware of them. Due diligence is

therefore very important to assist with identifying any such liabilities. In a business acquisition you can pick and choose which assets or liabilities that you will take on, so due diligence may not have to be so wide ranging. The exception to this general rule is in relation to the employees of a business.

Employees in a business sale

All employees of the business will automatically transfer to the buyer. Generally speaking, the employees will transfer on their existing terms and conditions together with all their existing rights and liabilities arising from their employment with the seller. Therefore it is very important to identify all existing employment related liabilities and understand the terms and conditions of employment that they buyer is inheriting. One of the recommended proposals is to introduce an obligation on the seller to notify the buyer of all the rights and obligations in relation to employees who will be transferred and the identity of every employee who will be transferring.

Areas subject to review

A full due diligence exercise will generally cover three main aspects legal, financial and commercial and should establish certain key information about the target. The buyer and its lawyers will produce detailed questionnaires for the seller to answer which will cover all the relevant areas, and in particular the following:



- Constitutional documents
- Customer lists and key contracts in order to identify any contractual impediments such as change of control clauses or the need to obtain third party consents.
- Borrowings
- Property and environmental issues
- Title to assets
- Employment agreements and pensions
- Insurance
- Tax
- Intellectual property
- Licences and permits related to the operation of the business
- Litigation

*Juan Carlos Ronco Corsi
Managing Partner*

Working Regulations In Spain For The Nationals Of The Countries joining The EU after 1st May 2004



From the 1st May 2004 the following countries effectively joined the European Union as members in all their rights: Cyprus, Slovakia, Slovenia, Estonia,

Hungary, Latvia, Lithuania, Malta, Poland, and the Czech Republic.

Spain has set a transitional period of 2 years, before the full regime for the free circulation of wage-earning nationals from these eight countries takes effect (excepting Cyprus and Malta), which finalises, unless it is brought forward, on the 1st of May 2006.

This regime will be applied to:

1. Nationals from Slovakia, Slovenia, Estonia, Hungary, Lithuania, Latvia, Poland and the Czech Republic which as from the 1st of May 2004 wish to come to Spain to work.
2. Nationals from the eight abovementioned countries that from the 1st May 2004 have been authorised temporarily to work in Spain, to practise a profession or, in the case of students, are authorised to do jobs that are compatible with their studies, or are exempt from a work permit.

The issuing of the work visa and residence will be free of charge, will be applied for and collected by the person concerned and the process will be initiated at the Spanish Consulate general or embassy, in the country of origin or the worker's last place of residence. It is important to bear in mind that the above procedure includes, as the first step, the application for and obtaining of the N.I.E. number. (See separate article in the newsletter on Identification numbers for foreigners).

Regime applicable to workers who seek to work in Spain temporarily:

The national workers from Slovakia, Slovenia, Estonia, Hungary, Latvia, Lithuania, Poland and the Czech Republic, will not need a visa granted when they are contracted for periods no longer than 180 days from the date of joining the European Union (1st May 2004).

*Luisa Romero Montes
Manager Payroll*

Customs: European Commission Proposes A New Customs Environment To Face Globalisation Challenges

The European Commission has adopted two proposals to modernise the EU Customs Code and to introduce an electronic, paper-free customs environment in the EU. The first proposal aims to simplify and streamline customs processes and procedures. The second proposal is designed to make Member States' electronic customs systems compatible with each other; introduce EU-wide electronic risk analysis and improve information exchange between frontier control authorities; make electronic declarations the rule; and introduce a centralised customs clearance arrangement. The result should be to increase the competitiveness of companies doing business in Europe, reduce compliance costs and improve EU security.

The proposal for a Regulation to modernise the Customs Code would simplify legislation and administration procedures both from the point of view of customs authorities and traders. It would

§ Simplify the structure and provide for more coherent terminology, with fewer provisions and simpler rules;

§ Provide for radical reform of customs import and export procedures to reduce their number and make it easier to keep track of goods;

§ Rationalise the customs guarantee system; and

§ Extend the use of single authorisations (thereby and authorisation for a procedure issued by one Member State would be valid throughout the Community).

The proposal incorporates the amendments provided for in the Regulation

to improve the security and safety of goods crossing Community borders that the Council and Parliament adopted earlier this year.

The proposal for a Decision promoting electronic customs contains actions and deadlines for making Member States' electronic customs systems compatible with each other and creating a single, shared computer portal. This would facilitate communications between traders and customs and would allow for faster and better exchange of information between European customs authorities. Electronic declarations would become compulsory, with paper-based declarations becoming the exception.

The proposal also suggests the setting up of an electronic "Single Window" whereby traders of proven trustworthiness ("authorised importers") would only have to deal with one body instead of several frontier control authorities as happens at present. Customs and other policy-related information relating to any given import consignment would then only have to be sent once. The goods would then be controlled by customs and other authorities (e.g. police, border guards, veterinary and environmental authorities) at the same time and at the same place



under a "One Stop Shop" arrangement.

The Customs Union is one of the pillars of the European construction and is at the heart of the Internal Market. Current legislation on customs procedures and processes is generally complicated and is based on paper declarations. While all Member States have electronic customs systems, they are not inter-connected. The Commission considers that, if customs legislation were simplified, customs processes and procedures streamlined and IT systems converged, traders would save money and time in their business transactions with customs. In addition to improving safety and security checks, this would contribute to the competitiveness of European business.

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The Simplified System Of Bookkeeping For Companies.



The simplified bookkeeping system for companies was approved by the government at the beginning of 2004.

The companies/businesses that meet the following criteria are the ones that can use it:

- Total assets can't exceed one million Euros.
- Turnover can't be more than two million Euros.
- The number of employees can't exceed 10.

Our firm has prepared a spreadsheet, based on excel, with all the necessary explanations for its use, which will be supplied to any client that wishes to make use of this system. This program is made up of individual spreadsheets relating to: banking and cash movements, sales & purchase, debtors & creditors. All of which consolidate into a master summary.

If you do opt for the use of this system you must take into account the following:

- It is a basic bookkeeping model that establishes its own basic financial criteria. It does not seek to provide a full set of accounts on a double entry system.
- You must have some basic knowledge in bookkeeping.
- The client is responsible for maintaining the system and for checking the accuracy of the data.

This simplified system of bookkeeping is useful for those companies that have few transactions and whose bookkeeping problems are minimal.

José Vega Matquez
Accountants Coordinator

Money Laundering: Legal Definition And Obligations

Money laundering affects the integrity of financial systems by hurting the reputation of financial institutions and professionals and/or firms, which are under the obligation to comply with the rules and regulations currently in force in Spain concerning the Prevention of Money Laundering. The Prevention of Money Laundering was introduced by Law 19/December 28, 1993 and Royal Decree 925/June 9, 1995, as partially amended by Law 19/July 4, 2003 and Royal Decree 54/January 21, 2005.

In accordance with art. 1.2 of Law 19/1993, money laundering is either the acquisition, use, conversion or conveyance of properties through funds that come from some of the criminal activities, which are punished by imprisonment for over three (3) years or from participating in such criminal activities. This includes knowingly concealing or covering up the origin of the funds or helping anyone involved in such criminal activity to avoid the legal consequences of his/her acts as well as concealing or covering up the actual nature, origin, location, disposition, transactions, properties or rights arising from those, even if the illegal activities that generate the money is carried out outside Spain.

All those, who are under the obligation to comply with the current Spanish Money Laundering Regulations, are enumerated in art. 2.2 of the aforementioned Law; professionals and/or firms that act in the exercise of their profession as auditors, independent accountants or consultants are among them.

Their legal obligations are, as follows:

1.- To identify each client, which includes the nature of their client's profession or the actual business of their client's company. For this purpose, such professionals must implement a "Know Thy Client" policy by asking their clients to provide the following documents:

a) Individual: Passport, national ID card, residence permit or any other identification document that is valid in the client's country of origin and includes his/her photograph. Information that will enable the professional and/or firm to find out about the actual nature of the client's profession or the client's company business.

b) Company: Documents evidencing name, legal status, registered address and corporate purpose. Information that will enable the professional and/or firm to learn about the nature of the actual company business. Likewise, documental evidence will have to be provided by the client concerning any power of attorney granted to individuals, who act on behalf of the company. Whenever there is any indication or certainty that the clients or individuals, whose identification is compulsory, are in fact not acting on their own behalf, the professionals and/or firms, who attend them and are under the

forementioned legal obligation, must obtain any information necessary to find out about the identity of representatives, proxy holders and duly authorized individuals as well as the identity of the individuals on behalf of whom these are acting.

2.- To scrutinize any transaction, which given its very nature might be related to the laundering of money coming from any criminal dealings and particularly, any complex or unusual transaction or any transaction that does not have any perfectly clear financial or legal purpose.

3.- To keep in their custody all documents evidencing completion of such transactions and identifying the individuals involved for a period of at least five (5) years.

4.- To cooperate with the Executive Branch for the Prevention of Money Laundering Prevention (SEPBLAC), as follows:

a) To report, of his/her own initiative, any transaction giving any indication or certainty that it is related to money laundering. This report will be filed by the person designated by the professional and/or firm that is under the aforementioned legal obligation to do so.

b) To provide any information required by the SEPBLAC in the exercise of his/her functions as a professional and/or firm. Auditors, independent accountants, tax consultants, notaries, attorneys and barristers are not under the legal obligation mentioned in paragraph 4, with regard to the information they either receive from their clients or obtain about their clients whenever they need to determine a legal position in favour of their clients or carry out their assignment for the purpose of either defending or representing their clients in administrative or court proceedings or any other matter arising from those. This includes any advice on whether it is relevant to take legal action and on how to avoid legal action, irrespective of the fact that such information was obtained before, during or after such proceedings.

5.- To refrain from contributing to the completion of any transactions indicated in the previous paragraph without informing the SEPBLAC.

6.- To refrain from revealing to their clients or to any third parties that the SEPBLAC was duly informed about such transactions.

7.- To establish procedures to be implemented and to set up an internal control body that will be in charge of reports to the SEPBLAC for the purpose of anticipating and preventing completion of any money laundering schemes. This particularly means having a clear clients' admission policy. These procedures will be supervised by the SEPBLAC and examined



once a year by an independent expert. The mission of such internal control bodies is to analyze, check and report to the SEPBLAC any information relating to either transactions or facts, which may be related to money laundering. Such control bodies are headed by the individual, who will appear in any procedures arising from the reports filed in that respect.

8.- To establish internal training schemes for the purpose of making the entire staff aware of the provisions of this legal regulation; this will enable them to detect any suspicious dealings that they will report to the individual, who acts as representative of the professional and/or firm before the SEPBLAC, who will decide whether there are sufficient facts indicating that illegal dealings may be taking place.

9.- To declare the origin, purposes and individual or company in possession of funds within the limits set forth by article 2.4 of Law 19/1993:

- In- or outflow of amounts of money higher than € 6,000 through any means of payment.
- Transactions on Spanish territory higher than €80,500 for use as means of payment.

Any breach of the aforementioned obligations by a professional and/or firm under such legal obligation is considered as a serious, and even extremely serious, offence and gives rise to sanctions. Those sanctions range from an either public or private admonition and payment of the highest of the following fines: 5% of the equity i.e. own funds of the firm; either a fine that is equivalent to double the amount of the illegal financial transaction or (€1,502,530.26).

Likewise, the directors and executives of the institution/firm, which are under such legal obligation, can be held liable if there is sufficient evidence of fraudulent conduct and sanctions can be imposed on them. Sanctions range from a private admonition to being banned from exercising any administrative functions during a period of 10 years or having to pay the highest of the following fines: € 60,101.21 up to € 601,012.10.

In both cases, the fine is unavoidable and will have to be paid in addition to one of the other two sanctions.

Mar Cuevas Criado
Money Laundering Coordinator

Liberalisation Of '.es' Domains And Personal Data Protection

From the early days of the Internet up to the second half of the eighties, computer users, who were connected to the Net, identified themselves by indicating their "IP address", which consisted of a series of numbers (up to ten digits) that users had to remember each time they visited an Internet site, as if it was a telephone number. In 1984, the Americans Jon Pastel, Paul Mockanpetris and Craig Partridge introduced a so-called 'Domain Name System' (DNS), which considerably simplified surfing on the Net and quickly replaced the less practical IP addresses by making Internet access much simpler on a daily basis. Thereafter there were two main categories of domains:

- The generic domains i.e. gTLD (Generic Top Level Domain) a.k.a. '.com'. These are names of domains that do not coincide with any particular geographical location. They are managed by an international organization called ICANN (Internet Corporation for Assigned Names and Numbers). There are currently 34 million registered domains worldwide. The only requirement for any person, company or association that wishes to register a '.com' domain to their name being that nobody ever registered that particular domain name before.

- The territorial domains i.e.. ccTLD (Country Code Top Level Domain). These are domains that are associated with a specific geographical area. For example, the domains located in Spain end with '.es'. These domains are managed by national organizations in every country, although they are at all times under the supervision and control of ICANN.

In the case of Spanish domain names, the regulation did quite extensively limit the use of domains with an '.es' ending. Solely the names of private individuals, registered brands, companies with registered trade names and government bodies could legally get their own name registered. From last November 8, the Spanish regulation concerning the registration of '.es' domains got more flexible, up to the point that it could be compared to the '.com' domains, which registration is governed by the 'First Come, First Served' principle.

This new regulation reminded many of us that there is a very specific legislation in force in Spain regarding the data a company of any kind trading in Spain works with. In fact, a company that owns any Internet domain must register this domain with the Trade Registry, in the very same way it would register its Memorandum of Association or its Annual Accounts and official books on a yearly basis.



The Spanish Personal Data Protection Agency compels all companies to create and implement a standardized system for the purpose of processing and filing personal data they store, irrespective of the origin of such data, and to register the data files stored by any company with the aforementioned Agency, by giving details about the person, who is in charge of the safety and integrity of the data in their files.

Depending on the nature of the data that these company files contain, the regulation establishes three different safety levels (low, medium and high). Depending on the level at which a company is positioned, the measures that it will have to take and the specific rules that it will have to follow whenever its data processing gets more complex. However, even at the lowest safety level, the company must put into practice, e.g., automatic back-up systems for the purpose of safe-keeping copies whenever data is stored on an electronic data medium (such as a CD or floppy disk), set forth specific rules that have to be followed whenever such protected data is passed on to third parties, etc...

Many small and medium business owners are of the opinion that they do not have to comply with this regulation as it seems much too stringent for their small-scale activity, particularly those who do not have a large-scale commercial activity. This is a mistake that many people are

paying for through sanctions in the wake of increasingly numerous inspection visits that are being carried out on the computer data files of their company. They are finding out the hard way that what looked like a mere data file in which they were keeping the names, addresses and ways of contacting with suppliers and clients, is in fact a file that must be duly registered and stored according to specific rules imposed by the Spanish Data Protection Agency. If the company has, for example, a file that contains curriculum vitae sent by a series of potential candidates for jobs that are stored in accordance with criteria such as education, race, training or financial position, the safety level of such data is even more drastic.

To avoid any problems arising from failure to comply with this regulation, the best thing is to talk to a consulting firm that will assess the current situation of your company, large or small, to ensure that you are doing the right thing under the Data Protection Law currently in force in Spain.

*Vicente Miralles
Office Manager*

Properties and Pension Funds

From the 6th April 2006 UK pension planning will be revolutionised. New rules bring together a raft of pension legislation into a unified system. There will be winners and losers, but on balance, the changes are welcome.

Poor performance and Stock Market volatility has caused many investors to diversify their retirement planning away from investment funds into "buy to let properties." From next year it was hoped that investment properties could be held directly within a pension fund. At the last moment, in his Pre-Budget Statement, the Chancellor abandoned plans to allow direct holdings of property via 'Self Invested Personal Pensions' (SIPPS).

Huge interest was shown in 'buy to let' and holiday homes being purchased through personal pension schemes, as the tax incentives were so attractive.

On the Other Hand

Having looked at the possibilities there were, however, several obstacles to property ownership through a pension. The first are the UK pension laws which require the asset to be held in a trust. Overseas jurisdictions, by and large, do not recognise trusts as legal entities so the mere transfer of ownership from an individual to a trust cannot move forward. Despite various Hague Conventions there are very few countries which recognise the legal structure of a trust.

The alternative strategy would have been to convey the property into a company and then transfer the shares in the company into the pension fund. Owning property through a company can however give rise to local tax difficulties in terms of charges on rental value and capital gains on sale. These additional taxes on property ownership through a company can negate the benefits of direct ownership. From a UK perspective, owning property through a company is a minefield. Because these companies would be closely controlled by the pension fund owner, and may, for example, include the ability to rent the property or stay in it as a holiday home, the Inland Revenue can treat the investors as "shadow directors" and levy a "benefit in kind" income tax liability on the use of the property. Conveying property into a company therefore required very careful consideration.

From a practical management point of view, pensions schemes with less than GBP500,000, say EUR750,000, value of assets, should not have contemplated owning direct property. This is for reasons of diversification and cost. The costs of running, purchasing and selling a property



would all have to be borne by the fund which would reduce the overall return as an investment.

Summary

Property as an investment can be very rewarding and in the right set of circumstances, can achieve startling results. Now that direct ownership of property is not possible via pensions, it could have a damaging effect on 'frothy' property markets, which rose in expectation of a bonanza. On the other hand property funds and real estate investment trusts could do very well out of the changes, providing an alternative to traditional equity and bond funds.

*STEVE TRAVIS Dip PFS
MANAGER
INTERNATIONAL DIVISION
THE FRY GROUP*

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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