ECOVIS®

info

International Tax, Audit, Accounting and Legal News

ECOVIS **info** . Issue 4/2014

China

Leveraging the CEPA to enter the Chinese Market

Australia

Bringing Money into Australia

Malta

EU VAT taxation rules

Heath Stewart, ECOVIS Clark Jacobs, Sydney, Australia

"The free-trade agreement, CEPA, offers opportunities for investors eyeing the China market but its building-block nature requires careful long-term planning"

Richard Hoffmann, ECOVIS Beijing, China

CHINA

Leveraging the CEPA to enter the Chinese Market

Hong Kong's free-trade agreement with mainland China offers an alternative avenue to the China market.

Author
Richard Hoffmann
richard.hoffmann@ecovis.com

In 2003, the Closer Economic Partnership Agreement (CEPA) was established to reinforce better economic relationships between mainland China and Hong Kong. This free-trade agreement aims to open up large markets for Hong Kong goods and services, thereby enhancing cooperation and integration between the mainland and Hong Kong and creating an effective economic synergy. Both Hong Kong and mainland China benefit from this newly created channel of business but it also presents a business opportunity to all foreign investors. The Trade and Industry Department states: "Foreign investors are also welcome to establish businesses in Hong Kong to leverage the CEPA benefits and join hands in tapping the vast opportunities of the Mainland market." At the same time, CEPA provides mainland China with an opportunity to fully integrate into the world economy via Hong Kong's business relations.

CEPA covers three areas – trades in goods, services and investment facilitation. Since 2003, all goods originating from Hong Kong and entering the mainland benefit from tariff-free treatment, upon approval by local manufactures. The Hong Kong service sector, too, enjoys preferential treatment when entering binding contracts on mutual recognition of professional collaborations. Mainland China and Hong Kong have also agreed to enhance investment facilitation aspects to improve the overall business and trading environment. By adopting a building block approach (as stipulated in the CEPA legal text), the agreed liberalisation offers advantageous opportunities for foreign companies looking to expand into the China market. This approach requires an interested foreign company or firm to apply for Hong Kong Service Provider (HKSP) status, an application that is submitted in Hong Kong. The firm's scope of business, as stated in the HKSP application, must be identical to their intentions in mainland China. The company may be of any nationality but needs to meet certain requirements: it must have done business in Hong Kong for 3-5 years and thus be liable for Hong Kong tax, and to have employed over 50 percent national workers. It is important to note that there are certain industry restrictions in mainland China; the two major areas are telecommu nications and energy services.

Establishing a company as a HKSP to enter China through the CEPA can be difficult. However, foreign companies must take into consideration how long it takes to establish operations in China itself. Entering into a Restricted Industry (RI) in mainland China requires a Joint Venture (JV) with a domestic Chinese company, a process that can take over a year before operations can commence. If the foreign firm places a premium on establishing a Wholly Foreign-Owned Enterprise (WFOE) instead of a JV, it should consider entering China via the CEPA. Even though a WFOE inevitably comes with its own set of risks, many foreign firms feel a WFOE offers the time, control and ownership they desire.

Due to the social and economic ties between Hong Kong and mainland China, it has become virtually impossible for businesses to operate in one and not the other. To maintain the superior liberalization of CEPA, the Central Government has pledged to achieve the freedom of trade in services between the mainland and Hong Kong. Despite the abundant capital in mainland China, Hong Kong is still considered one of Asia's leading financial centres and it stands to benefit from the mainland's supply-side strengths when promoting further business and maintaining existing advantages.

Tip:
For more information, visit our website at www.ecovis-beijing.com

"This law allows for fee-free electronic payment of wages and benefits, thus contributing to security in a country where many still carry large amounts of cash."

Montserrat González, ECOVIS Uruguay, Montevideo, Uruguay

URUGUAY

Legislation paving the way for electronic financial products

On April 4, 2014, the Uruguayan Parliament approved Law No. 19, 210. The new ruling aims to promote electronic means of payment such as debit cards, credit cards, electronic money instruments and electronic funds transfers.

Author
Montserrat González
Montserrat.gonzalez@ecovis.com

Items to be paid for electronically

The law sets out a list of items that should gradually start being paid using electronic means. It includes:

- Salaries and any other salary item paid in cash to employees
- Professional fees
- Payment to self-employed workers who provide personal services
- Retirement, pensions
- Social benefits, family allowances, wage supplements, subsidies, temporary compensation and permanent disabilities income
- Provision of food that is not provided in kind
- Sale of goods or services for approx. USD 5,000 (today's value) and more
- Leases, subleases, and credit use of real property larger than approx. USD 4,600 (today's value) or its monthly equivalent
- Payment of national taxes, unless the amount is less than USD 1,250 (today's value)

Tax provisions

The law includes regulations on Value Added Tax (VAT), Personal Income Tax and Corporate Income Tax.

Value Added Tax

Regarding this tax, the law recently approved establishes an exemption to interests derived from loans granted by credit entities and reductions on tax rates for certain transactions provided that the payment is made using debit cards, electronic money instruments or similar instruments .

Personal income tax

There will be changes in terms of the computation of tax credit of for-lease properties, as well as lease expense; in this case, leases have to be paid by accreditation in bank accounts.

There also is a new constraint for the computation of the value of acquisition when calculating the taxable result of the sale of immovable property: the value at the moment of acquisition needs to have been paid by electronic means.

Corporate income tax

The law establishes new limitations for deductions of expenses in the settlement of the tax. It now requires certain expenses such as leases, freight services and professional fees to have been paid by electronic means or through accredited bank accounts.

Other considerations

When offering payment services for wages, fees, pensions, social and other benefits, financial intermediation institutions – as well as institutions issuing electronic money – must provide such services to all workers, pensioners and beneficiaries who request them and provide said services as a minimum, with certain basic conditions and, moreover, may not charge any fee for the provision of such services.

Conclusion

Apart from contributing to the improvement of general security in Uruguay by reducing the volume of cash circulating in the market, this law also creates an opportunity for a segment of the population that, until the ruling was approved, had limited or no access to electronic financial products.

"When bringing capital into Australia, documentation is key to avoiding undue taxation as income"

Heath Stewart, ECOVIS Clark Jacobs, Sydney, Australia

AUSTRALIA

Bringing money into Australia

Author
Heath Stewart
heath.stewart@ecovis.com

Australia has long been a country that is very attractive to immigrants. It boasts a very high standard of living, low crime, excellent climate, low levels of corruption and a relatively robust economy. The Economic Intelligence Unit's annual city liveability statistics have Australian (and Canadian) cities dominating the top 10 positions. Whilst many people immigrate to Australia for the good food or nice weather, a lot of people come to Australia because their family live here or are studying here.

Immigrating to Australia, or moving part of one's family to Australia, often requires bringing significant amounts of money – after all, university degrees and Sydney houses do not come for free. In many scenarios, people immigrating themselves, or assist their loved ones to immigrate, do not bring all of their capital with them in one tranche, consequently there are ever-increasing amounts of money coming into and going out of Australia for a variety of reasons.

Australian authorities are watching!

The Australian Government, the Australian Taxation Office (ATO) and the Australian Transaction Reports and Analysis Centre (AUSTRAC) are also exquisitely aware of this and are becoming increasingly vigilant in tracking movements of money. AUSTRAC notes on its website: "AUSTRAC's purpose is to protect the integrity of Australia's financial system and contribute to the administration of justice through our expertise in countering money laundering and the financing of terrorism." It should also be noted that AUSTRAC reports significant amounts of information regarding movements of money to the ATO.

The ATO contacts a substantial number of taxpayers every year about transfers of money into their Australian accounts from foreign sources. The default position from the ATO is that these transfers are income. When the ATO contacts the taxpayer, it makes the point clear that it intends to tax this transfer as income unless you, the taxpayer, have compelling substantiation to prove that it is not income. The disturbing statistic is that only one in five taxpayers produce evidence to dispute the income tax assessment.

In our experience, many taxpayers are too frightened to engage with the ATO about it lest they risk the pending visa application of a loved one, or are concerned about the costs of a dispute with the ATO. Our experience also is that, when we produce appropriate evidence that the transfer is not income, the ATO is both professional and reasonable to the taxpayer and that these disputes are often very quickly resolved.

Documentation is the key

So how do you go about substantiating or proving that an inwards transfer of funds to your bank account in Australia is not income? Documentation is absolutely key to this and it must be prepared when the transfer occurs, not when the ATO asks for the information. If the money brought into Australia is indeed income, and there has been no previous declaration of investment earnings in Australia, then my recommendation is to declare it. The ATO are a lot less likely to fine or penalise you if you voluntarily disclose your foreign income. Australia has a well-earned reputation as being highly regulated – and it is!

Experience tells us that the ATO is very efficient in tracking money transfers. Document these transactions – do it once, do it properly and if the ATO review comes, your good documentation may very well make the ATO review go away instantly.

Finally, I'd recommend that if you are moving significant amounts of money around, sit down with your solicitor and your accountant and discuss a sensible asset protection strategy and succession planning with your assets. It's the perfect time to do so.

"Latvia has significantly increased the number of documents requiring notarized signature but this change is less cumbersome than it may seem at first glance"

Katrina Salmgrieze, ECOVIS Convents, Riga, Latvia

LATVIA

Virtual escape from administrative burden in Latvian commercial law

More than a year ago – on May 2, 2013 – the Latvian Parliament adopted changes to Latvian Commercial Law (Komerclikums – LV., KCL). These amendments took effect on July 1, 2013. Their aim is to prevent the unlawful takeover of companies. With a view to achieving this objective, the Latvian legislature has chosen to significantly increase the number of documents requiring notarized signature and to regulate more strictly the recording of the shareholders register and transfer of shares. It should be noted that the above mentioned amendments are not evaluated unequivocally by legal practitioners and scholars. There is an opinion that Latvian legislature has failed to achieve its own objective – to bring security to the business environment. Instead the new order has created a disproportionate burden for business activities.

The requirement for notarized signatures is often described as one of the most cumbersome, but in reality, this request is not as severe as it may seem at first glance.

Notarized signature

Following these amendments, the signature of a person shall be notarized on documents – such as applications regarding procuration, minutes of shareholders' and council meetings, change of board members, register of shareholders, amendments to the articles of association, etc. At the same time KCL provides that the requirement to notarize the signature is deemed as complied with if the signature has been certified by a sworn notary or an official of the Commercial Register Office or – if the document is drawn up in electronic form – it has been signed by a secure electronic signature. Hence the person, whose signature in this case must be notarized, has two options: first, he or she can go directly to the sworn notary or the official of the Commercial Register Office; second, the person can sign documents electronically at a time and place convenient for him or her.

Secure electronic signature

Until relatively recently, in Latvia an electronic signature was used rarely and with scepticism. Now, however, it is being used more and more frequently. It should be emphasized that the use of an electronic signature is particularly suitable for foreign investors. Still, when using the opportunities offered by an electronic signature, one must take into account two important factors: (1) if at least one of the persons who has to sign the document uses a secure electronic signature, it must also be used by the others, and (2) all such persons shall have a secure electronic signature issued by the certified service provider in the same EU jurisdiction. In Latvia the only certified service provider is the Latvian State Radio and Television Centre (Latvijas Valsts Radio un Televīzijas centrs), whose secure electronic signature can be issued to foreigners if they obtain a Latvian residence permit. Inter alia, a Latvian temporary residence permit is also available to foreigners who have been registered in the Commercial Register as a members of the board of directors or a member of the council, proctor, administrator, liquidator or a member of a partnership having the right to represent the partnership.

In conclusion, although positive development is taking place slowly, Latvian legislation is moving toward a more secure and modern business environment. Merchants must be flexible and ready to use the opportunities provided by law and technical development.

Author
Katrina Salmgrieze
katrina.salmgrieze@ecovis.com

"A change in EU rules unifies the place of supply to where customers are located but suppliers will still need to verify their B2B or a B2C status."

Josef Debono, ECOVIS Malta Consultants Limited/Mdina Trust Services Limited, Balzan, Malta

MALTA

EU VAT taxation rules to shift focus on customer location

With EU rules changing, suppliers of telecommunications, broadcasting and electronic services are set to face new challenges in determining correct VAT taxation in 2015.

Author
Josef Debono
Josef.debono@ecovis.com

The Council Implementing Regulation (EU) No 1042/2013 comes into effect on January 1, 2015. It stipulates that the place of supply of all telecommunications, radio, television broadcasting and electronically supplied services rendered to a non-taxable person shall be where the customer is established.

The current legislation follows the general place of supply rules that apply to EU to EU-B2C transactions, that is, the place of supply would be where the supplier is established. On the other hand, in the case of a non-EU taxable person supplying an EU consumer, currently the place of supply would shift to where the customer is located.

Where is the customer established?

In the case of a customer being a taxable person, the general rule applies: The taxable person is established where he or she is registered or where the fixed establishment the service is being given to is located.

When the customer is a non-taxable person, his place of establishment may be more difficult to determine. As a general rule, however, this should either be where the customer is established, has his/her permanent address, or usually resides.

Changes taking effect on January 1, 2015

With the new place of supply rules kicking in, the supply is always taxed where the customer is established, irrespective of whether the customer is a business or a consumer, and irrespective of whether the supplier is based in the EU or outside the EU. Until the end of 2014, jurisdictions with a lower VAT rate have an advantage over businesses either located outside the community or in a higher VAT rate jurisdiction. The new stipulations will lead to uniformity in VAT rates applied to B2C transactions.

Under the present regulation, e.g. an Italian non-taxable person subscribing to broadcasting services by a US service provider will be charged Italian VAT (22%) on the supply given. If the same consumer subscribes to the same type of services but provided by another EU country – say Malta – Maltese VAT (18%) will apply. As of 2015, Italian VAT will apply, irrespective of where the supplier is located.

Issues arising from the new place of supply rules

→ Electronic and telephone supply services: Are they provided through the internet and supplied by an intermediary?

In the case of an intermediary in a business transaction, verifying the role of the intermediary will be key. If the intermediary is undertaking the transaction with the final consumer on his own behalf, it would be his duty to verify the location of the customer and charge VAT accordingly. This will generally depend on how the contract of each transaction is drawn up and, for instance, how invoicing is structured between the Electronic Service Provider, the intermediary and the final consumer.

→ Status of customer: Is it B2B or B2C?

Be it a B2B or a B2C transaction, the new place of supply where the customer is established will not make a difference. So is it necessary to verify the customer's status? Yes, it is: Status verification is necessary mainly due to VAT liability collection. In the case of any B2C supply or a B2B supply (within the same member state), the liability shifts onto the supplier, whereas in the case of a B2B supply (with different member states) the liability is on the customer using the reverse charge mechanism (and reported in the recapitulative statement by the supplier).

→ Location of customer: Where is the customer established or residing?

In order to apply the correct VAT rate to a transaction, the supplier needs to establish the location of the final consumer. Issues arise where a customer is deemed to reside in more than one country, or the service is being provided in a particular fixed establishment. A few examples include: a WiFi hotspot in a hotel lobby (the

"The new insolvency proceedings now also cover legal and natural persons as well as undertakings that are both commercial and public in nature."

Felix Tudoriu, ECOVIS Jantea & Partners Law Firm, Bucharest, Romania

place of supply would be where the location of the hotspot is); on board a passenger transport aircraft (the place of supply would be the country of departure); a mobile network (the place of supply would be the country code of the SIM card used when receiving those services).

Conclusion

More issues are expected to arise with the new place of supply rules; they can only be resolved through case law and court decisions over time. Furthermore, explanatory notes on the subject matter have been issued and we recommend them as preliminary guidelines on the new place of supply rules. Such explanatory notes are also meant to assist taxable persons in different member states in adopting a consistent approach towards different types of services which may or may not fall under these definitions in order to avoid the possibility of double taxation or non-taxation.

ROMANIA

New insolvency and bankruptcy law: More protection for creditors

Law No. 85 of 2014 came into force at the end of June 2014, amending the Romanian legislation on insolvency and bankruptcy.

This law on insolvency proceedings covers what is generally known as an "undertaking", irrespective of the form of organisation – be it legal person or a natural person. In a completely new ruling, these insolvency and bankruptcy proceedings will now also apply to "regii autonome," i.e. undertakings that are both commercial and public in nature. Professional practitioners such as lawyers or notaries, however, do not fall under the scope of this law. Other changes involve the rules applying to corporate groups in insolvency. Although there have been proposals to broaden bankruptcy proceedings to include natural persons acting as private individuals – but not as individual undertakings – these persons are not subject to insolvency and bankruptcy procedures. The law has a uniform approach regulating issues that were previously subject to specific legislation, such as insolvency prevention procedures or credit institutions insolvency. Under the new law, insolvency is presumed when a debtor has not paid his debts for more than 60 days after the due date and those debts exceed 40,000 lei (approximately 9,000 euro).

The new law allows a more flexible approach to the process of recovering the State's debts. The newly introduced "private creditor test" allows the State to participate in the proceedings of reorganisation of the creditor, even if it provides a reduction of its claim, without such reduction of the claim being regarded as State aid.

Position of creditors strengthened

Clearer rules now allow creditors to become involved in the choice of the court-appointed receiver or liquidator. This is to counter previous practice where the debtor in insolvency could impose a receiver convenient to the debtor – a practice that had led to numerous suspicions of fraud against the interests of creditors.

Furthermore, the new law establishes an observation period: It may not exceed one year from the date of initiation of the procedure. In this period a restructuring plan must be approved. If this does not take place, the liquidation procedure must be initiated against the debtor. This rule puts an end to abuses by which the procedure could be extended indefinitely, against the interests of creditors. New rules also apply to the rights of creditors that act as financers under leasing contracts. Within three months of the initiation of the procedure, the financer may choose to take possession of the property, or leave the property to the debtor, instead becoming a creditor whose claim will be paid first. The law offers better protection to creditors who finance the activity of the company during insolvency proceedings. If they are not paid and their claims exceed 40,000 lei for payments due for more than 60 days, they may request bankruptcy and the immediate initiation of liquidation proceedings against the debtor.

Author
Felix Tudoriu
felix.tudoriu@ecovis.com

ABOUT ECOVIS

Ecovis is a leading global consulting firm with its origins in Continental Europe. It has over 4,500 people operating in over 50 countries. Its consulting focus and core competencies lie in the areas of tax consultation, accounting, auditing and legal advice. 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 the 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 home 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.

LEGAL NOTICE
Publisher . ECOVIS International, Ernst-Reuter-Platz 10, 10587 Berlin, Germany, tel. +49 (0)30-31 00 08 55, fax +49 (0)30-31 00 08 56
Realization . EditorNetwork Medien GmbH, 80337 Munich, Germany
Editorial Department . Kurt Bülow, Denmark; Van essa Hadinegoro, Netherlands; Robert McCann, United Kingdom; Dr. Ferdinand Rüchardt, Germany; Andreas Karaolis, Cyprus; Carmen Vasile, Romania
ECOVIS info is based on information which we consider to be reliable. However, due to constantly changing laws, liability may not be assumed.