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Exploding e -commerce market

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Entering the market

Fátima Gouveia,
ECOVIS COMARK, Porto, Portugal

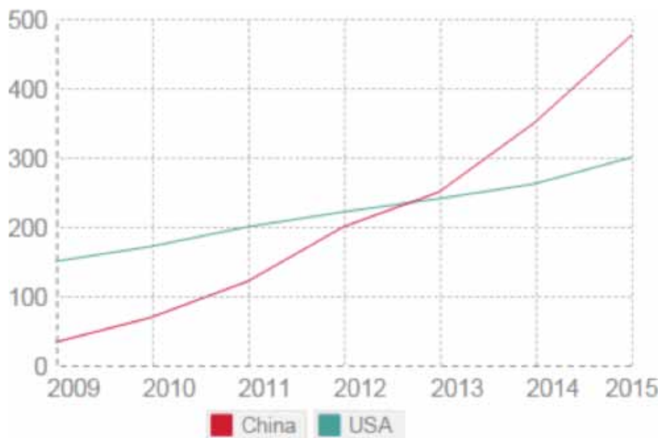
"The Chinese market for e-commerce is expanding at an incredible rate – and a second growth explosion is expected soon."

Richard Hoffmann, ECOVIS R&G Consulting Ltd, Beijing, P.R. China

CHINA

E-commerce market is exploding

Opportunities and challenges for foreign investors



Value of e-commerce transactions in billions of USD[6]

Author
Richard Hoffmann
richard.hoffmann@ecovis.com

Tip

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www.ecovis.com/en/Category/global-newsletter/03-2015

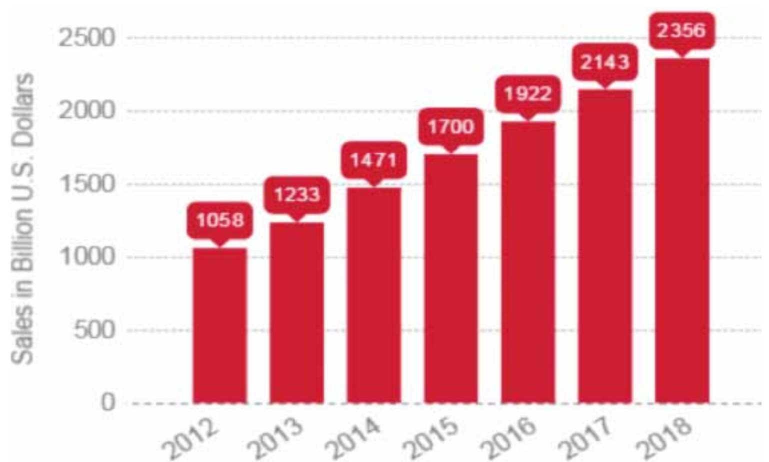
E-commerce market development worldwide

Worldwide Business-to-Customer (B2C) e-commerce sales have now reached 1.5 trillion US$ per year. As one of the fastest growing sectors in recent years, it has seen annual increases of around 20%, compared to global retail sales growth of around 6%[1]. And not just established retailers such as Amazon are profiting from this trend; the Internet has low market entry requirements and is attractive for start-ups. One example is the remarkable rise of German shoe and apparel retailer Zalando in Europe, starting from scratch and becoming a 1.2 billion euro business in only five years – and leaving market experts wondering why they didn't see it coming[2]. But the wave of growth is not only continuing in developed markets such as the US and Europe. A key driver of the worldwide trend are emerging markets, led by China, combined with the push into new markets by international brands[3].

China's e-commerce market is exploding

In China's 12th Five-Year-Plan (2011-2015), the government unveiled plans to make China a leading global e-commerce market, driving a transition from an investment-heavy growth model towards a more consumption-driven model. Only two years later, in 2013, China became the largest e-commerce market worldwide in B2C and C2C purchases, overtaking the United States. Jack Ma, founder of Alibaba, has said: "In other countries, e-commerce is a way to shop; in China it is a lifestyle."[5] Even in comparison to China's huge overall growth rate, the e-commerce market is topping the list, offering huge potential for foreign investors, too.

But how could this happen? While many western countries are largely saturated, China is still a developing country with a gigantic potential of 2nd and 3rd tier cities, many of them reaching a population of more than 10 million. Since they are not yet penetrated by organized retailers and consumer brands, e-commerce can become a mainstream retail format for these cities. Hand in hand with China's overall economic development, the growing middle-class' demand for consumer goods is enormous, followed by the development of brand awareness and brand loyalty as well as the increasing tendency to purchase high quality and individually satisfying products. In addition, China's cross-province express delivery capability has become No. 2 worldwide on the basis of its very low cost, while the cost for commercial property is rising significantly.



E-commerce sales worldwide in 2012 and 2013, plus forecast to 2018[4]

[1] *marketingcharts.com*
[2] *KPMG 2014: E-commerce in China: Driving a new-consumer culture*
[3] *emarketer.com*
[4] *Statita, Bain & Company*
[5] *'Inside Retail Hong Kong: E-commerce "a lifestyle" in China*
[6] *Bain & Company, Statista (combined and analyzed data)*

“Resolving disputes via arbitration in Latvia offers many benefits. A closer look at the details of those benefits is well worthwhile.”

Lauris Rasnacs, ECOVIS Convents, Riga, Latvia

LATVIA

Important aspects of arbitration

Latvia is not as popular as a place for international arbitration as Sweden, for example. However, some foreigners still choose Latvia and its arbitrations as the place and tribunal for settling their disputes.

Author
Lauris Rasnacs
lauris.rasnacs@ecovis.lv

What are the most important aspects to be taken into account regarding dispute resolution by Latvian arbitration?

Significantly faster dispute resolution procedure

While arbitration in general is known to be a faster dispute resolution method compared to litigation, Latvian arbitration can be seen as providing even faster dispute resolution than arbitration in other countries. Usually Latvian arbitrations provide awards within approximately 3 – 6 months from the moment of receipt of the claim statement. The former article 493 of Civil Procedure Law of January 1, 2015, regarding arbitration, replaced by new and separate Arbitration Law, even provided each party of the arbitration agreement with the rights to withdraw from the arbitration agreement without consent of the other party if the arbitration tribunal has failed to provide the award within one year and the parties have not agreed that the award may be provided within longer period of time.

Strict view of enforcement

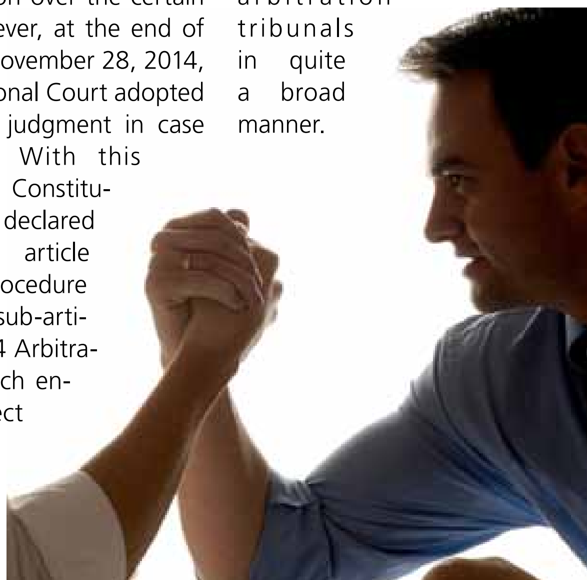
Latvian courts pay strict attention to the particulars of the arbitration awards when the matter of enforcement arises. For instance, it is provided by settled Latvian case law that the court may, during the examination of enforcement matters, allow compulsory enforcement only for the part of a contractual penalty which is granted by the arbitration to the claimant if the court finds the amount of that contractual penalty to be too excessive[1].

Absence of setting aside procedure for arbitral award

Unlike several other countries, Latvian law does not provide the unsatisfied party with the possibility to ask the court to declare the arbitral award to be set aside.

Broad possibilities for contesting the validity of arbitration agreements

As in many other countries, Latvian law also applies the principle of competence-competence, providing the arbitral tribunal with the right to decide on its own jurisdiction over the certain dispute. However, at the end of last year, on November 28, 2014, the Constitutional Court adopted an important judgment in case 2014-09-01. With this judgment the Constitutional court declared sub-article 1 article 495 Civil Procedure Law and also sub-article 1 article 24 Arbitration Law (which entered into effect only later, on January 1, 2015), as far as these norms provided the exclusive competence of arbitral tribunals to decide over their jurisdiction, and prohibited the court to deal with this matter, as incompatible with article 92 of Constitution of the Republic of Latvia. The respective amendments to sub-article 1 article 24 Arbitration Law are still to come. However, at least so far it may be said that Latvian law does not provide detailed and certain regulation (in comparison, for instance with sub-article 2 article 1040 German Civil procedure law), how the state court may examine the jurisdiction of arbitration tribunal. Therefore, taking into account the said judgment of the Constitutional Court, it may be supposed that the courts may apply their rights to examine the jurisdiction of arbitration tribunals in quite a broad manner.



[1] *Decision from April 18, 2013, of Senate’s Civil Department of Latvian Supreme Court in case No. SPC-14/2013. Available in Latvian at: http://at.gov.lv/lv/judikatura/judikaturas-nolemumu-arhivs/senata-civillietu-departaments/hronologiska-seciba_1/hronologiska-seciba/*

“Non-regular resident status in Portugal can have tax benefits – and help the country attract professionals, investors and recipients of foreign pensions.”

Fátima Gouveia, ECOVIS COMARK, Porto, Portugal

PORTUGAL

Special tax for non-regular residents

In making Portugal more attractive regarding taxation, the Portuguese government created and implemented a tax system for non-regular residents through Decree Law no. 249/2009, dated September 29.

Author
Fátima Gouveia
fatima.gouveia@ecovis.com

The aim of this regime is to attract to Portugal highly qualified professionals and investors as well as beneficiaries of pension schemes granted abroad.

Requirements for benefiting from the non-regular resident tax regime

- To be considered a tax resident in Portugal, namely by having stayed in the Portuguese territory more than 183 days, whether these days are consecutive or not, or by having in the Portuguese territory on a dwelling on December 31 under circumstances that lead to the presumption of an intention to hold and occupy it as a place of habitual abode.
- To not have been a tax resident in Portugal in the 5 years preceding the year of the application of the regime.
- To apply for the non-regular resident status by March 31 of the year following the year for which the status has been requested.

Benefits associated with the status of the non-regular resident

The non-regular resident tax regime is granted for a period of 10 consecutive years and it maximizes fiscal advantages in relation to the following income:

Portuguese source income

- Income deriving from employment and self-employment obtained from high added value activities are taxed at the special rate of 20%, provided that the aggregation option is not exercised.
- The remaining income from employment and self-employment not considered of high added value and income of other categories are aggregated and taxed according to the general rules of the Portuguese income tax.

Foreign source income

- Income from employment is exempt provided that:
  The income is taxed in the source state, according to the double taxation treaty established between Portugal and the source state.
  In the absence of a double taxation treaty, the income is taxed in the source state and cannot be considered to have been obtained in Portugal.
- Income from self-employment obtained from high added value activities, capital gains, real estate and increase in wealth is exempt provided that alternatively:
  It can be taxed in the source state in accordance with the respective double taxation convention concluded between Portugal and the source state.
  It can be taxed in another country, whenever there is no double taxation convention, as long as that territory is not subject to privileged tax regimes and provided that they cannot be considered to have been obtained in Portugal.

- Income from pensions is exempt provided that:
  The income is taxed in the source state, according to the double taxation treaty established between Portugal and the source state, or
  In the absence of a double taxation treaty, the income cannot be considered to have been obtained in Portugal, according to the Portuguese Personal Income Tax.

The non-regular resident status has been quite successful, especially with regard to foreign pensioners looking for a place where they can avoid paying taxes on their pensions, thus ensuring a higher and sunnier standard of living. For highly skilled professionals (foreigners or Portuguese living abroad for more than 5 years) this regime is quite interesting when compared with other tax regimes in other parts of Europe. Ultimately, the Portuguese government’s goal is to attract citizens with high purchasing power (to increase internal demand) and highly productive and entrepreneurial professionals who help boost the Portuguese economy.

"Entering the South African market by incorporating a subsidiary can be tricky; it's best to consult an expert to make sure you take the right steps."

Werner Botha, ECOVIS ARB Auditors Inc., Gauteng, South Africa

SOUTH AFRICA

Entering the South African market: Some considerations

There are many ways that a foreign company can establish a presence in South Africa, such as a joint venture, acquiring a controlling share in an SA company, registering an external company or incorporating a subsidiary. Each of these has its own prerequisites, pros and cons, but this article will focus on incorporating a subsidiary and on considerations regarding its capitalization.

If you have R1 million to invest in South Africa you may choose:

- To invest the full amount in the equity of the subsidiary, or
- To invest a nominal amount in the equity of the subsidiary and advance the remainder on loan account.

Investing in the equity of the subsidiary will give rise to an increase in the contributed tax capital of the subsidiary. This is relevant as it determines whether a distribution to shareholders is a dividend or a return of capital. If a distribution does not result in a reduction of the subsidiary's contributed tax capital then that distribution will be a dividend and be subject to a withholding tax of 15%[1]. Dividends may be transferred to non-resident shareholders without prior SARB approval provided the shares have been endorsed "non-resident" as described above. Authorised Dealers will require documentary proof that the company has profits (e.g. audited financial statements) before authorizing the remittance of the dividends.

Advancing funds on loan account will result in the foreign company earning interest on the funds advanced. This interest payment will, similar to a dividend, also be subject to a withholding tax of 15%[1] when it is paid. The rate and terms at which interest may be remitted must be approved either by SARB or an Authorised Dealer at the time of introduction of the loan. Prior Exchange Control approval for the terms of repayment of the capital portion of the loan is also required. The interest rate charged on the funding must fall within certain prescribed limits. Generally, if the interest rate payable on the foreign loans is within the prescribed limits, the loans are approved.

From the subsidiary's point of view the interest payments will be deductible provided that:

- From a transfer pricing[2] perspective the subsidiary is not thinly capitalized and the interest rate is not deemed excessive.
- The loan is not deemed to be a "hybrid debt instrument,"[3] which will see the interest payment being treated as a dividend in specie, or
- The interest payment is not deemed to be "hybrid interest,"[4] which will see the interest payment being treated as a dividend in specie.

The above is just the tip of the iceberg when considering a presence in South Africa and companies considering this are well advised to seek professional advice regarding the above and other considerations before committing to a plan of action.

Please contact Werner from ECOVIS ARB Auditors Inc. regarding any further details regarding the above or to obtain more information on how we can assist you with income tax-related services.

Author
Werner Botha
werner.botha@ecovis.com

[1] *Without taking into account the provisions of any possible Double Taxation Agreements*
[2] *Section 31 of the Income Tax Act (Act 58 of 1962)*
[3] *Section 8F of the Income Tax Act (Act 58 of 1962)*
[4] *Section 8FA of the Income Tax Act (Act 58 of 1962)*

“The Coalition Government’s second budget contains details that businesses, investors and visitors to Australia need to note.”

Scott Hogan-Smith, Associate, ECOVIS Clark Jacobs, Sydney, Australia

AUSTRALIA

Budget 2015 – A safe and steady budget with a small business focus

Author
Scott Hogan-Smith
scott.hogan-smith@ecovis.com

In May 2015, the Coalition Government handed down its second budget. Given the controversy around its first budget last year and the failure of the Government to negotiate passage of the more contentious elements of its package through the Senate, it was expected that this year’s budget would be less ambitious than last year’s. This was confirmed on budget night, but there are several items coming from the budget and from related changes to other legislation that businesses, investors and visitors to Australia need to be aware of.

The Small Business Package

The centerpiece of this year’s budget was a package of measures aimed specifically at small businesses. At its heart was a series of measures to reduce taxes and simplify small business deductions, including:

- For companies with revenue of less than $2 million per year, a reduction in the company tax rate from 30% to 28.5%
- For unincorporated small businesses (i.e. those who operate their business through a trust, a partnership or as a sole trader), a 5% tax discount capped at $1,000 per individual
- A temporary increase in the threshold for which small businesses can immediately write off assets from $1,000 to $20,000 to apply to assets acquired and installed ready for use from budget night through June 30, 2017
- The ability to immediately deduct business establishment costs including professional, legal and accounting advice rather than having to deduct them over 5 years under the current “Black Hole” provisions
- An exemption for small businesses with revenue of $2 million or lzess from capital gains tax if they change their legal structure,
- Small businesses will be able to access a broader exemption from fringe benefits tax on portable electronic devices beginning April 1, 2016.

A large number of foreign companies with subsidiaries in Australia will benefit from these changes, as will new businesses. Along with this package the Government will also implement two more changes to help all businesses establish themselves and grow. These are:

- The development of a single online portal for business and company registration, allowing significant streamlining of the current processes
- The Government will introduce a new regulatory framework to facilitate the use of crowd source equity funding, which will include simplified disclosure and reporting requirements for small businesses.

These two changes are intended to significantly cut the red tape around starting a business and allow for new and innovative ways of funding business development and growth while encouraging entrepreneurship and growth.

Changes for larger businesses

The Government hopes that the combination of the Small Business Package budget along with the continued crackdowns on multinational profit shifting will not only assist in bringing down the deficit more quickly but also encourage Australian businesses to grow while ensuring the laws around foreign investment are enforced properly. Next quarter we will outline the proposed changes to foreign investment laws and their impact on investors.

The Budget at a glance

Cash deficit	$35 billion	down from $41.1 billion in 2014
Fiscal deficit	$33 billion	down from $39.4 billion in 2014
GDP growth	2.75%	up 0.5% from 2014
Unemployment	6.5%	up 0.25% from 2014
Inflation	2.5%	up from 1.75% in 2014

"A recent report by METI concerning tax assessment cases in emerging countries contains some vital information. This article outlines that report."

Yoshiaki UNO, ECOVIS XAT Tax Corporation, Japan

JAPAN

Tax exposures in emerging countries

In May 2015, the Ministry of Economy, Trade and Industry of Japan ("METI") announced a report regarding tax exposures in emerging countries. This article outlines that report.

Tax assessment cases in countries where Japanese companies are making inroads:

- The METI conducted a taxation survey of 4,286 Japanese companies with subsidiaries overseas and received responses from 1,081 of them.
- Tax assessment cases which result in double taxation have been reported in a total of 145 cases. China had the most, with 39.3%, India 15.9% and Indonesia 13.1%.
- These assessment cases related to transfer pricing (46.2%), PE assessment (20.7%), and royalties (16.6%).

Subject matter of the assessment cases (within the past 6 years)[1]

Current issues in tax assessment cases

In recent years, tax assessments have been occurring frequently in emerging countries in accordance with the unique tax assessment approaches of those countries as distinct from global standards. It has become essential to deal with these cases effectively to overcome global competition.

There are the following reasons / background for such assessments by tax authorities in emerging counties:

- Lack of human resources who are experts in cross-border taxation,
- Ambiguity in legal system,
- Considerable discretion on part of tax examiner, etc.

On the other hand, overseas subsidiaries of Japanese companies cannot handle tax matters approxiprimately in emerging countries because of lack of human resources who are tax experts, who have only limited knowledge, or given a lack of communication between parent companies and subsidiaries.

Taking these factors into account, it is necessary to consider from various angles the character of individual assessment cases in each country and the development of human resources for handling future tax cases in emerging countries. **Read more online.**

Author
Yoshiaki UNO
yoshiaki.uno@ecovis.com

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To read more, please see the expanded version of this article online:
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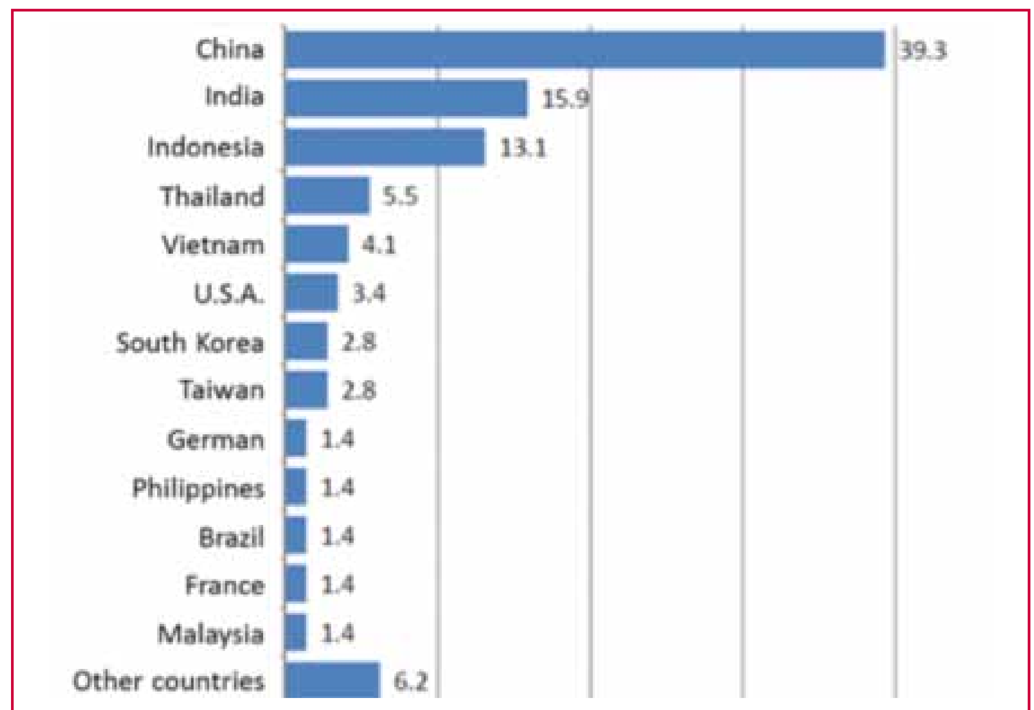

Tax assessment cases by country (within the past 6 years)[1]

[1] Report by METI issued in May, 2015

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.

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