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law firms  
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# the **journal**

legal news

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FRANCE  
ITALIA  
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## Who are we?




Pragma is a European based network of law firms with members worldwide.

With 350 lawyers and *dottori commercialisti*, 46 law offices in 16 countries, Pragma is the first group of latin philosophy and culture which is renowned for its ability to solve complex economic juridical problems.

It was set up in 2001 as the result of a common will shared by a group of four European firms of lawyers and law advisers who, after having

worked together for over ten years, decided to unite all their resources at the service of companies with new demands brought about by the developing new Europe and the increasing globalisation of business relations.

 Pragma is an E.E.I.G. (European Economic Interest Grouping) with its head office in Brussels (Belgium).

In Pragma, we aim to deliver high quality services and to offer a comprehensive service to companies through small coordinated teams.

## News from our network



DIRECTOR Greg WOLTON	SECRETARY/ TREASURER Gilberto GELOSA	DIRECTOR Gustavo CUEVAS	DIRECTOR Cecilia CARIA MENDES	VICE CHAIRMAN Carlos MANUBENS	CHAIRMAN Michel LACROIX
					

Pragma's Board of Directors

In April 2007, the enlargement of the Board to a non-European Director, Gustavo Cuevas from Chile, was a step forward to make Pragma more international and more global.

At the same period, we celebrated the opening of Pragma's desk in Asia with the signature of a convention of cooperation with a Chinese service company, *Jesa Consulting*, located in China and Mongolia.

Last but not least, the new memberships of the offices *G.C.Consultants* in the USA, *Alvarez Valenzuela Abogados* in Mexico and *Del Carril, Colombres, Vayo & Zavallia Lagos* in Argentina strengthen our position in the American continent.

## Agenda of Pragma

Our annual Conference took place in Nîmes, France, in October 2007. 130 people attended, which is a record participation since Pragma was created.

Among European countries, France, Germany, Italy, Portugal, Spain, Switzerland and the United Kingdom were represented. Regarding the rest of the world, we thank the members from Argentina, Brazil, Chile, China, Mexico, the United States and Uruguay who participated. As every year, the October conference was a great opportunity to meet and develop exchanges, especially with people coming from further countries.

## New members in 2007

		<b>ARGENTINA</b> BUENOS AIRES <b>DEL CARRIL, COLOMBRES, VAYO &amp; ZAVALIA LAGOS</b> Partner Enrique V. DEL CARRIL
		<b>CHINA / MONGOLIA</b> 4 offices in China SHANGHAI, SHENZHEN, CHONGQING, HONG KONG 1 office in Mongolia ULAN BATOR <b>JESA CONSULTING</b> Manager Saro CAPOZZOLI (on the left) Pragma's contact for China Maurizio BOTTONI (on the right)
		<b>GERMANY</b> MÜNSTER <b>ASP ANWALTSKANZLEI</b> Partner Stephan PAHL
		<b>MEXICO</b> CIUDAD DE MEXICO, MONTERREY <b>ALVAREZ VALENZUELA ABOGADOS</b> Partner Herman Alvarez Valenzuela
		<b>USA</b> NEW YORK <b>G.C.CONULTANTS</b> Partner Giuseppe Brusa
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### Why do the French love Belgium?



Many French residents decide to move to Belgium for tax purposes and not only because of their love of Belgian French fries or Belgian beer.

The attraction is due to the Belgian legislation's tax advantages and the tax convention of March 10, 1964 between France and Belgium.

#### Social contributions

If they live in Belgium, the French do not have to pay social taxes on the majority of their incomes from France.

#### Wealth tax

There is no wealth tax in Belgium. Moreover, Belgian residents are exonerated from French wealth tax on their French financial investments. Only real estate goods located in France are taxable.

#### Real estate incomes (dividends, interests...)

In Belgium, real estate incomes are subjected to a withholding tax of 15 % or 25 % on dividends and 15 % on interests. What's more, the interests of a current account in a French company earned by its Belgian resident manager are subject to the French inclusive withholding tax of 16% without any limitation.

#### Private capital gains

Private capital gains carried out in Belgium on stocks and shares are generally exonerated. This exemption also applies to the stocks and shares of French companies held by Belgian residents. Currently, in accordance with the tax convention between France and Belgium of March 10, 1964, this exemption also applies to French real estate companies, including civil real estate companies.

Generally, capital gains on transfer of Belgian real estate are not taxable

## Updating of our website [www.pragma-eu.com](http://www.pragma-eu.com)



Our website has five language versions: English, French, Italian, Spanish and Portuguese.



The links with our new members' websites have been updated and our directory is on line.



You can get details about our professionals.



Our website provides our latest publications. You can also access old issues online. Our publications are:

#### Newsletter



**Description:**  
2 pages - Short snappy news items about our members and Pragma's life.

**Publication frequency:**  
Three times a year.

**Availability:**  
English, French.

#### The Journal



**Description:**  
8 pages - Brief client focused articles about legal, tax and economic

matters in the countries where our members are located. Presentation and list of our members.

**Publication frequency:**  
Three times a year.

**Availability:**  
English, French

#### The International Tax Letter



**Description:**  
2/3 pages - Worldwide tax news and analysis to help our clients and our members in their international tax strategy. International tax models.

**Publication frequency:**  
Monthly.

**Availability:**  
English, French.

Prepared in cooperation with Orienta Sagl, Lugano, Switzerland.

#### The Chinese Newsletter



**Description:**  
3/4 pages - Brief articles about legal and tax matters of interest in China. Short snappy economic news items.

**Publication frequency:**  
Monthly.

**Availability:**  
English, French.

Prepared in cooperation with Jesa Consulting, Shanghai, China.

and Belgian rents are taxed on a relatively low inclusive rate.

#### Taxes on donations and inheritance

"Manual" donations, that do not require notaries acts, are exempted from donation duties. However, if the giver dies within 3 years after the donation, the good is considered as part of the inheritance and taxed as an estate. It is possible to register a unilateral declaration of donation to record the date of the "manual" donation. In that case, the cost is a lump sum.

Concerning other types of donations, the donation duty applicable for direct heirs and between husband and wife is 3% for real personal estate (money, bonds<sup>1</sup>, stocks, shares, pieces of furniture...).

#### Salaries

Wages paid to a Belgian resident by a French company are subject to a withholding tax in France. The 2007 rates applicable to the net monthly wages taxable after deduction of 10 % are as follows:

- 0 % under 1'117 euros
- 12 % from 1'117 euros to 3'242 euros
- 20 % beyond 3'242 euros.

<sup>1</sup> The Belgian legislation decided that it will no longer be possible to emit bearer certificates from January 1, 2008. Bearer bonds emitted before this date will have to be dematerialised by December 31, 2013, at the latest.

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## Trusts and real estate businesses

Argentina is a country that has demonstrated certain contradictions and erratic behaviour on matters of legal security that were caused, in the last half of the past century, by its recurrent political instability and, at the start of this century, by the economic crisis suffered in the period 2001-2002.

Few markets or sectors in the economy have been protected from the effects of the devaluation that have taken place in recent times as a consequence of the abandoning of the so-called "convertibility" which tied the value of the Argentinean peso to the United States dollar.

Nonetheless, and to the astonishment of many people, the Argentine economy has recovered in recent years, fundamentally due to the increase in the value of agro-fisheries products in the world, a traditional and natural source of foreign currency for said country.

### Foreign investment after 2002 - The property market in Argentina.

The aforesaid occurrences and the default position declared with the consequent re-negotiation of external debt on conditions that are not very advantageous for creditors have generated a lack of confidence in making investments in Argentina. Nevertheless, the main characteristics of the country fundamentally consist of its natural wealth and the education of the population, enabling it to be seen as a place where profitable investments can be made.

Within this reality, the property market has been observed from Europe as being a good possibility for mid-term investment for two fundamental reasons:

a) Traditionally, in spite of the recurrent crisis, the property market is the one that has suffered least and which has recovered fastest. Thus it is

the case that the value of urban and suburban properties rapidly recouped their value in dollars that they had before the crisis;

b) The increase in the value of the properties in Europe and the exchange rate makes it possible for an investor on this continent to look favourably on the possibility of acquiring land or constructing estates in Argentina at high quality sites with a good rate of return.

### Trusts - a safe and useful tool

The professionals and businessmen who are involved in the processes of construction, commercialisation and/or administration of properties, that is to say, architects, engineers, building companies, estate agents and administrators of consortiums, have created a form of operation that enables savers to directly invest in the process of the construction of new housing units and also in the business of renting these out, together with other investors.

This is all done within the legal framework of a trust agreement that offers savers greater security and control over the progress of the business.

This is now a question of an outline similar to the one used in the so-called harvesting pools which, in summary, consist of grouping together a set of investors that contribute money so, acting through an administrator that they trust, they can deal with harvesting process in different fields, with the aim of periodically distributing the produce from their harvests, in proportion to what each one of them has contributed. For these purposes, the people involved in this process sign a private trust agreement in which they set out the rights and obligations that correspond to each participant.

### Main characteristics of Trusts

The trust property is transferred following the formalisation of the Trust Agreement.

The essential characteristic of the transfer of the trust ownership is that the party that receives it (trustee) has to meet a set goal that is established by the transferors (trustors), and this is expressly agreed to in the agreement.

Trust assets constitute a trust fund, separate from the capital of the trustee and of the trustor.

This provides a great deal of security to those who contract with the trustee because the ownership is not integrated into the capital of the latter and cannot be threatened by its creditors. It can only be utilised to meet the objective imposed.

### Trust Agreements

Given that the assets contributed to the trust are allocated to a specific purpose, it is of utmost importance that the contract defines all of the aspects related to this aim with the highest possible degree of accuracy.

The clearer and more precise are the instructions that the trustee has to follow, the greater degree of security the investors will have regarding the destination that will be given to their contributions and the achieving of the objective that is sought.

For this reason, the ideal thing is for the developer or the Project leader to have been able to define and set the boundaries to the whole construction process, such as for example:

- The acquisition of the land at a particular value;
- A drafted architectural design, with the fees and costs related to the professionals responsible for preparing it and the site management, as appropriate;
- A work location agreement plan to be signed with the building company that carries out the work, with the defined and/or budgeted work costs that are as accurate as possible.
- The implementation of an impartial system of approval of work progress certificates and payments authorisation;
- A procedure for carrying out the adjudication, sale or rental of the built units.

Argentina continues being attractive for foreign investors. Real estate activity is a safe opportunity, with the time that has allowed investors to be safeguarded against the economic changes in fortune of the country. Trusts, in turn, are a useful tool, simple and safe, so as to guarantee the investor the proper destination of the money invested.

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## Focus on G.C.Consultants, New York, USA



### “Doing Business” in the United States

The U.S. is a wide and complex market place. It is advisable to face it with “someone” that has already been working in the market for years. Someone professional and reliable; on the spot!

#### Market Accessibility

##### Selling: two separate worlds

###### - Selling without

###### representatives in the U.S.A.

###### Pros:

- Reduced investment risks
- No direct tax on U.S. earnings

###### Cons:

- Less control of the expansion of the business
- Low trade mark development

###### - Selling with representatives in the U.S.A.

###### Pros:

- Overall control over business activities and trade mark
- Minor involvement of European management
- Gradual market development

###### Cons:

- Investment risk
- Taxable income in the U.S.A.:

###### “Permanent and organized” establishment

- Up to 34% on U.S. income
- Possible “branch profit tax” between 5% and 30% based on existing treaties
- Tax on state and local income
- Tax credit in Europe

###### Subsidiary

- Up to 34% on the world net income
- Possible withholding tax on distributed dividends between 5% and 30% based on existing treaties
- Tax on state and local income

The choice between either of the two has significant implications from the commercial, legal and fiscal point of view.

G.C. Consultants was founded in 1987 in the State of New York by Giuseppe Brusa, CPA.

G.C. Consultants is specialized in administrative management for foreign companies doing business in the U.S.A.

#### Competitive advantage

G.C. Consultants’ main objective is to provide full services to the foreign companies during the start up of their activities and follow the growth and expansion of their businesses.

#### Our Services

- Compilation and review of financial statements according to the U.S. General Accepted Accounting Principles (GAAP)
- Audit of financial statements according to the U.S. GAAS and GAAP
- Preparation of income tax returns for corporations, partnership, individuals, non-for-profit and estate/trust
- Preparation of other tax returns: payroll, sales, etc.
- Tax research, tax planning and tax audit
- Bookkeeping administrative management
- Accounting and assistance in the implementation of accounting software
- Real estate management.

#### Our Team

- 5 CPAs
- 5 European professionals
- Administrative staff
- Multicultural mix of people to better serve the demands of clients and the market place.

Giuseppe Brusa, CPA LLC is CPA firm, specialized in accounting, auditing and fiscal assistance for foreign companies doing business in the U.S.A.



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## Shareholders' rights in quoted companies

### The new directive no. 2007/36/CE of the European Parliament and of the Council of 11th July 2007

The objective of the European Parliament's July directive is to strengthen shareholders' rights, principally through the extension of transparency standards, the exercise of voting rights by proxy and the possibility of taking an active part in company meetings via electronic systems.

The goal of the new community standard is the adoption of measures to harmonise the legislation of Member States in order to safeguard the exercise of rights by all shareholders.

Significant percentages of the shares of quoted companies are held by shareholders who are non-residents of the Member State in which the company is legally domiciled. Non-resident shareholders ought to be in a position to exercise their rights relating to shareholders' meetings with the same ease as shareholders who reside in the Member State in which the company is legally domiciled. The attainment of this objective requires the elimination of the obstacles that currently prevent non-resident shareholders from having access to relevant information concerning shareholders' meetings and from exercising their voting rights without being physically present at the meetings. The elimination of such obstacles should also work to the advantage of resident shareholders who do not participate in or are unable to attend meetings.

This directive reflects the European Parliament's commitment to determining the requirements for the exercise of any rights of shareholders who have been allocated shares with the right to vote at meetings of companies that are legally domiciled in a Member State and the shares of which are quoted on a regulated

EU - USA

## Personal data protection under threat in EU treaty draft

Negotiations on the new EU treaty have thrown up sensitive questions about how citizens' personal data should be kept and accessed in the future.

The balance between data protection and counter-terrorism measures has been a source of major controversy in the EU over the last years, particularly with regards to the US. Washington requires up to 34 pieces of personal information from people flying to the US - as a direct consequence of the 2001 terrorist attacks.

Exactly how this information should be stored, for how long and who has access to it has been a thorny long-running squabble between the two sides, with EU civil liberties groups crying foul of the data-sharing arrangements.

Under the current draft, personal data - such as those of air passengers - could be passed on to third countries without the controlling scrutiny of the European Parliament and the European Court of Justice.

The EU Council - representing member states - will lay down rules on the protection of the individual when it comes to the processing of their personal data in the foreign relations area. "Compliance with these rules shall be subject to the control of independent authorities" says the current wording - leaving out democratic oversight of MEPs and the EU court.

Member states were urged to re-examine the wording now while everything is on the table or risk having the data protection article cause "huge debate" and controversy when the treaty is completed and going through the ratification process.

Source: <http://euroserver.com>

market that is located or operates in a Member State.

This directive is aimed at ensuring the equality of treatment between shareholders. According to the provisions of article 4, the company is held to ensure the equality of treatment of all shareholders who are in the same position insofar as concerns participation and exercise of voting rights at meetings. A contrario, the purpose of article 5 is to ensure the release of information prior to meetings. The Member State must therefore require of the company that it uses means of communication that can reasonably be expected to guarantee the efficient release of information into the public domain throughout the Community. The Member State cannot impose the use of means of communication whose the operators are based exclusively in the said State's territory.

In accordance with directive 2007/36, Member States must ensure that shareholders (jointly or severally) have the right to add points to the agenda.

In addition, Member States must guarantee shareholder participation in

meetings according to the number of shares held at a date (i.e. the registration date) prior to meetings.

Member States must also ensure:

- the participation in meetings via electronic means in order to secure real-time communication;
- the right to raise questions concerning the agenda;
- the right to vote by proxy and/or by mail.

Furthermore, the directive determines that the company shall publish the voting results on an internet site no more than 15 days after the meeting.


This directive should be adopted by Member States by 3rd August 2009.

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## New tax policy to promote house renting

For some time now, and very particularly following the significant increase in the price of housing that has taken place in recent years, different sectors have repeatedly requested the adopting of measures that promote renting. As usually happens, these measures include those of a tax nature that have been amongst the most controversial that have been generated, to the point that during the processing of the new Personal Income Tax [IRPF] Act, it was proposed to eliminate the deduction of the purchase of a first residence. What is true is that with the measures finally adopted, but perhaps which are scarcely remarked on and publicised, a regulation has now come into force that makes it possible to have a set of possibilities by means of which, for example, housing leaseholds can even be subject to

## Contents

- **Who are we?** page 1
- **News from our network** page 1
- **Agenda** page 1
- **New members in 2007** page 1
- **FRANCE: Why do the French love Belgium?**  
by Bruno Vince, page 2
- **Updating of our website** page 2
- **ARGENTINA: Trusts and real estate businesses**  
by Enrique del Carril, page 3
- **FOCUS ON G.C.Consultants**  
page 4
- **EU: Shareholders' rights in quoted companies**  
by Monica de Magistris, page 5
- **EU-USA: Personal data protection under threat in EU treaty draft** page 5
- **SPAIN: New tax policy to promote house renting,**  
by Salvador Balcells, page 6

zero taxation.

Thus, with the new IRPF Act, the profits obtained from the renting of housing will, from the outset, continue being calculated by the difference between income and all of those costs that may be necessary in order to obtain them. But amongst these necessary costs, it will not be possible for only interest and the costs of repair and conservation to exceed the particular income figure (this was not the case prior to the reform, in which the calculation was made for the set of rented assets). In order to compensate for this limitation, the rule regulates that this negative excess will not be lost, but rather it will be possible to deduct it with the positive profits that are obtained during the following four years.

With this calculation (income less costs), we obtain the so-called net profit. However, if the profit deriving from the renting of a residence (and not from the renting of business premises) is directly reduced by 50%.

However, and this is the main new feature of the new Act, said reduction will be 100%, that is to say total, if the lessor obtains a positive net profit and the lessee is between 18 and 35 years of age and there are certain net profits from its economic activity (as a worker, as a professional or as a businessperson) higher than the Public Indicator of Taxes of Multiple Effects [IPREM] (an index which, so that the reader can make an estimate, amounts to only €6,988.80 during 2007).

That is to say, for the rent obtained for a flat leased to a 30-year old person with a salary of €30,000, its owner plainly and simply is not taxed under the IRPF. The owner will only need to obtain and keep a communication signed by the lessee, which has recently been regulated for under the RD 439/2007 of March 30, so as to be able to apply said deduction in its income. This basically requires that the lessee confirms the requirements set out above (personal identification and identification of the property, age and profits).

However, from other parameters, the advantages for the lessors of housing do not end here. Thus, the regulatory improvement that is entailed by the 23/2005 Act means that if they own – in this case within a Company – a number of residences that is equal to or greater than ten, leased or offered for lease during the next seven years as a minimum, whose surface area does not exceed 135 square metres (excluding the common parts, but including terraces, courtyards, etc....that are privately used by the residence) and that represent at least 55% of the other income obtained from the Company, it will be possible to choose a special regime whereby the effective type of tax for said income, rather than the general one of 30%, will be 4.5%. In short, an allowance is applied which of a general nature is 85%. Under this special regime, which is optional, the acquisition of residences is furthermore taxed at a reduced rate of 4%. This regime, which also has the advantage that when particular requirements are met, the ownership of the assets is exempt from General Property Tax and there is a 95% allowance for Inheritance and Gift Taxes.

In short, finding out about the possibilities that the tax regulations offer can make it possible to save on taxes. And at this time, there is a tax regulation that covers it all and is subject to technical improvements, making it possible to have a substantial reduction in the chargeable costs for the lessors of residences and accordingly, perhaps to ensure that this reduction is transferred to the definitive cost of the particular rental, which is what the regulation seeks in the final analysis.

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The journal is available on line  
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