

The Window To Resign Is About To Close

Costa Rican Congress approved an annual tax on all Corporations registered in the National Registry, whether they are established as *Sociedades Anónimas –SAs-, Limitadas –LLCs-, En Comanditas –Silent Partnerships- or Sociedad en Nombre Colectivo – Collective Name Companies-*. It also includes Foreign Corporations that obtained a corporate ID number at the Registry for their Costa Rican divisions. This law was published on the official Gazette on December 27th, 2011.



The tax started being collected in April, 2012, the first year, then is payable every January. The amount due for January, 2014 was 199,700 colons for Active and 99,850 colons (50% less) for Inactive corporations, depending on the status registered in the Tax Department. If a person owns a corporation classified as Active when really there are no economic activities generating income it is necessary to submit a form declaring it as Inactive in order to pay half the tax the following year.

Most expats residing in the country have one or more corporations to protect assets or run businesses, but this change affected everyone's budget making it necessary to do some changes, such as merging companies into one, moving assets among corporations or dissolving unused corporations. One problem is that before any procedure can be registered it is mandatory to be up to date with the tax, otherwise the National Registry will not permit registration of any changes or the transfer any assets.

The truth is that a large number of companies have not paid the tax since it began on 2012 (approximate 275,000) and the law says every corporation that reaches three periods without paying will be dissolved by the National Registry. A major concern is that the law states that Directors holding a power of attorney are personally liable for the unpaid tax. However, there is

a window of opportunity to avoid the problem of facing an eventual collection suit from the Government for the company's debts.

Directors or individuals holding a power of attorney are allowed to resign their directorship by preparing a letter of resignation that must be delivered to the legal address of the company. It is then necessary to appear before a Notary Public to declare that the letter was properly delivered or the reasons if it could not be delivered. A document is then prepared by the notary and sent to the National Registry where they will eliminate the appointment of the person resigning.

The company does not need to be up to date with the tax in order to file the above mentioned resignation. This is the fastest way to get rid of a company that has not paid the tax and to avoid personal liability for the debt. It is very important to take into consideration that this window was opened for two years only, and that the term expires April 1st, 2014. Another point of importance is that those directors without representation or power of attorney will not be deemed responsible for the tax.

Resigning is a great tool for those companies that have not paid the tax since 2012 and don't have any assets. The National Registry will proceed to dissolve the corporation without extra costs to the owner who has legally resigned. Doing so is also less expensive than paying the tax and dissolving the company voluntarily. Obviously if the company owns any assets it is necessary to pay the tax, and then move the assets before eliminating the company.

The three year period for corporations that have not paid the tax since it began in 2012 expired last January 31st, 2014. The question now is: How Judgment Day will take place for all of those 275,000 plus corporations? To clarify this I made a visit to the Coordination Department of the Registry of Corporations where their answer was: We don't know yet. The answer clearly shows Congress approved the law without checking first with the authorities in charge of applying it.

The person I spoke with in that department told me that even though last January 31st was the date set by law to start dissolving corporations that have not paid three periods in a row, the same law opened the window for Directors who want to resign, therefore the registry

cannot do anything until after April 1st, and even after that date is not clear how they will proceed. According to Herman Mora Vargas, a specialist in Notarial Law this will be the probable scenario at the National Registry:

- The Registry of Corporations cannot simply “delete” the companies or implement a system that will automatically dissolve corporations that have not paid the tax during three periods in a row. They will need to publish an advertisement for each corporation and wait 30 days according to article 207 of the Code of Commerce.
- Because of the large number of corporations to be dissolved, the Registry of Corporations will need to do it by groups, and that will take a number of months. Supposedly any corporation should be able to be saved by paying the total amount due right before it gets deleted by Registry.
- Probably the Registry will have a separate

group consisting of those corporations that own assets, or whose representatives own assets, because of the personal liability created for those Directors who hold a power of attorney over the company and did not file a resignation in time.

It is important to take into consideration all the above scenarios in order to make a decision about what to do with an unwanted corporation. Also, check carefully to ensure there are no forgotten appointments as Directors of corporations from the past, as there are people who might have been appointed as Directors or Legal Representatives of Companies they don't have any control over or relation with any longer. The Window opened to resign is about to close.

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