



15 January 2015

## Reform of the tax regime applicable to Collective Investment Undertakings

The Decree-Law no 7/2015, of 13 January ("DL 7/2015"), which produced a reform to the tax regime applicable to Collective Investment Undertakings ("UCI"), was published yesterday.

With this new legislation, it is the Government's intention to strengthen the fiscal competitiveness of the UCI established and operating in Portugal when compared with its international counterparts and, thereby, to foster the attraction of foreign capital from potential investors. Thus, following the existing practice in other EU countries, it is intended to implement an exit taxation method, becoming the income of investors deriving from UCI subject to the Personal Income Tax ("IRS") and the Corporate Income Tax ("IRC").

DL 7/2015 also amends the current General Stamp Duty Table introducing a new field aiming at the taxation of UCI's global net assets.

We would like to highlight the following measures and amendments introduced by DL 7/2015, which shall be in force as from 1 July, 2015:

### 1. Taxation of UCI:

- > UCI shall be subject to IRC at the general corporate tax rate (currently set at 21%), being, however, exempted from Municipal Tax and State Surtax;
- > UCI taxable income shall correspond to the net profit assessed in accordance with their respective accounting standards, without prejudice to certain types of income (capital returns, income deriving from property and capital gains) and expenses (related to these type of income, as those established on article 23 -A of the IRC Code, and to management fees), which may be disregarded for profit assessment purposes;
- > UCI tax losses shall become entitled to be carried forward for a period of 12 years;
- > The fiscal neutrality regime shall become applicable to mergers, divisions and subscriptions in kind made between UCI;
- > Autonomous taxation rates established in the IRC Code shall apply to UCI which will also become subject to new ancillary obligations (e.g. ensuring organised and centralised accounting systems and the organization and maintenance of tax documentation procedures);
- > UCI's income shall not be subject to withholding tax;
- > UCI exclusively investing in money market instruments and bank deposits shall become subject to stamp duty calculated over their global net assets at the rate of 0,0025% (per quarter), being the remaining UCI subject to a 0,0125% (per quarter) tax rate.

## 2. Taxation of Investors:

- > Portuguese resident investors (natural persons) shall be subject to IRS at a withholding tax rate of 28% (unless the relevant investors choose to aggregate their income, in which case the general progressive tax rates and the IRS surcharges shall apply, becoming the tax withheld to be qualified as a payment on account for the final tax due);
- > Portuguese resident corporate investors shall be subject to IRC at a provisional withholding tax rate of 25% (unless the relevant beneficiaries are exempt of withholding tax, e.g. credit institutions, venture capital funds or pensions funds established in Portugal);
- > Non-Portuguese resident investors who receive income (i) distributed by real estate investment funds or by real estate investment companies, or through the redemption of such funds/companies' participations shall become subject to withholding tax at the rate of 10%; (ii) deriving from mutual funds or investment companies, including capital gains resulting from redemptions of such entities participations or their liquidation, shall be exempt from IRS or IRC;
- > Non-Portuguese resident investors domiciled in tax havens, directly or indirectly, in more than 25% by Portuguese residents and by beneficiaries which do not present proof of non-residence in Portugal, shall be subject to withholding tax at the definitive rates of 25%, 28% or 35% (as applicable);
- > Non-Portuguese residents which have failed to timely prove their non-residence status may request a total or partial refund of the tax withheld during a two years period (counted as from the end of the year in which the event that originated the tax liability took place);
- > For the purpose of this regime, income deriving from real estate investment funds' units and from real estate investment companies' shares, including capital gains from the sale or redemption of such units/shares or from such funds/companies liquidation, shall be classified as income deriving from property.

Given the fact that several questions may arise in connection with specific situations resulting from the analysis of this new regime (which shall enter into force on 1 July 2015), notably regarding its articulation with the current applicable fiscal framework, VdA is naturally available to clarify any queries concerning this matter

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