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From Crisis to Opportunity: Portugal is becoming a Gateway for Investment

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The Portuguese economy has been facing significant challenges particularly in the past few years, not only as an immediate result of the financial crisis, but also and in a more structural manner, in the general context of the worldwide globalisation.

Whilst it may be argued that Portuguese enterprises took some time to break new grounds and expand their business towards the European market and even other economies further beyond, is also holds true that the Portuguese legal and tax systems were not totally investor-friendly and have been discouraging both inward and outward investment.

In spite of the foregoing, it is often pointed out that times of crises ultimately give way to interesting opportunities and to new waves of development fostered, to great extent, by the need to be innovative and make a difference – preferably a positive one. The authors are truly convinced that this is currently the case of Portugal, and hopefully this article will succeed to evidence that.

Portugal is in fact internationally recognised as a technologically developed country with significant know-how, e.g. on research and development, biotechnologies and software development, thanks to considerable investment made in public infrastructures, such as schools, universities, hospitals and research centres. Portuguese universities developed valuable international partnerships and are nowadays very well ranked worldwide.

In addition to that, Portugal as a nation benefits from long lasting cultural, politic and economic ties with some of the most relevant emerging economies, such as China, Brazil, Angola, Mozambique (and other Portuguese speaking countries). For all these reasons, it is fair to say that Portugal may easily become a privileged gateway for investments ranging from Latin America, to Africa and even to Asia.

The last step in Portugal's globalisation is an important Corporate Income Tax Reform ("CIT Reform") currently undergoing, which places Portuguese tax system at an international level playing field, alongside with the most relevant European countries. The CIT Reform, which should be in force as of 1 January 2014, allows for Portuguese companies to arise as an efficient international investment vehicle.

A Worldwide Participation Exemption

Portugal is due to have one of the most efficient participation exemption regimes in Europe, which grants a full exemption applicable to dividends received from, and capital gains derived from the sale of, participations representing at least 2 per cent. of the subsidiary's share capital or voting rights, and held for a minimum period of one year. This regime will apply to subsidiaries established worldwide, except for those established in blacklisted jurisdictions.

The participation exemption will also apply to permanent establishments of Portuguese companies, so that profits attributable to foreign permanent establishments will be fully exempt in Portugal. Nevertheless, for multiple tier structures it will also be possible for Portuguese companies to switch over from the exemption to the credit method, benefiting from an indirect foreign tax credit for income taxes borne by underlying subsidiaries.

Moreover, the participation exemption will also apply to outbound dividends, provided that the participation in the Portuguese company paying out the dividends represents at least 2 per cent. of the subsidiary's share capital or voting rights, is held for a minimum period of one year. Such dividend exemption will apply not only to European parent companies, but also to parent companies established in third Countries that have double tax treaties in force with Portugal.

Carry-forward of Tax Losses

Typically the Portuguese tax system is very restrictive concerning the carry-forward of tax deductions. In order to ensure that Portugal becomes more competitive, fosters startups and recognises long-term investments, the CIT Reform extends the carry-forward of tax losses to fifteen years (instead of the current five years limitation).

Similarly, any excess foreign tax credit (due to international double taxation) may be carried-forward up to five years (whereas currently it may not be carried forward).

Non-habitual Tax Residents' Regime

In order to become competitive, Portuguese companies also need to be able to attract high-value individuals. To this end, a special tax regime is in force since 2009 and applies to expatriates that transfer their residence to Portugal.

Any individual may apply to the non-habitual tax residents' regime, as long as such person was not resident for tax purposes in Portugal in any of the five years prior to the transfer of residence. With no additional requirements, the applicant is granted a full tax exemption on passive income sourced outside Portugal (such as pensions, interest, dividends and rents) even if the funds are transferred to and/or used in Portugal. In addition to that, the applicant may benefit from a tax exemption or a reduced flat rate of 23.5 per cent. on active income (employment income or professional services' income) provided some requirements are complied with.

This regime is one of the most efficient expatriates' tax regime within the European Union, as there are no application fees payable to the Treasury, no specific limitations on the transfer of funds, no minimum tax payable in Portugal (ultimately the applicant may end up with double non-taxation) and the tax benefits provided under this regime are granted for a period of ten years.

Beyond European Borders: The "Golden Visa" Residence Permit

Together with the CIT Reform and the non-habitual tax residents' regime, Portugal has enacted a new regime that allows for non-EU citizens to obtain a Portuguese residence permit ("Golden Visa"), as long as such individuals perform a relevant investment in Portugal for a minimum period of five years.

Three types of investments are covered by the Golden Visa:
a) A financial investment worth at least EUR 1Million;
b) The purchase of real estate worth at least EUR 500,000;
c) The creation of at least 10 new jobs.

The Golden Visa implies the payment of an application fee of EUR 5,000 (valid for one year) and renewal fees of EUR 2,500, however it entitles the applicant to freely circulate within the Schengen Area (which includes most of the European Member States).

Moreover, the Golden Visa requires minimum physical presence in Portugal (an average of seven days per year) which is particularly interesting for individuals with extensive international mobility, that do not intend to stay long periods of time in a single country.

All in all, it is fair to say that once the CIT Reform is fully in force (expected by 1 January 2014) Portugal will be able to provide international (corporate and individual) investors interesting and very effective tools for worldwide investments. This adds to other intangibles, such as a stable social environment and strong economic and cultural ties with Portuguese speaking countries (and to many other countries thereafter), which place Portugal in a unique position towards emerging economies. A true gateway for investment.

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