Portugal
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Income tax

Under Decree-Law 193/2005, in force since January 1 2006, investment income and capital gains arising from debt instruments issued by Portuguese entities are exempt from Portuguese income tax as long as the beneficiaries (i) have no residence, head office, effective management or permanent establishment in Portugal to which the income is attributable, (ii) are not domiciled in a blacklist jurisdiction, and (iii) are non-resident entities not held, directly or indirectly, in more than 20% by Portuguese residents.

Application for this exemption requires proof documents to be produced and the relevant debt instruments to be integrated for clearing purposes in the Portuguese centralised system for securities (CVM), two requirements that market players have coped with well in the past few months with a large number of new issues coming into a market in which there is a growing number of issuers.

The Portuguese government has brought in this regime to strongly encourage the bond market in Portugal and to facilitate the raising of financing for non-resident investors. The regime is coupled with other facilitating legal measures under which the legal limit applicable to the issuance of bonds has increased to twice the issuer's own funds, and the registration costs have been reduced until they represent minimal costs or are even dispensed with.

More amendments are expected to stimulate this market further:

- Option for direct integration in Euroclear/Clearstream.
- Preparation of the CVM for clearing securities in all currencies (now only euros but other currencies are expected shortly).
- Simplification of evidence of non-resident status.

Regarding this suggestion, the European Commission's Fiscal Compliance expert group (FISCO) issued information setting out solutions to fiscal compliance barriers regarding clearing and settlement of cross-border securities transactions (post-trading), when the withholding tax relief procedures differ substantially between member states. FISCO has recommended that a harmonised withholding tax relief procedure should be introduced, since market participants incur substantial costs in handling these differences, or may forgo the relief to which their clients are entitled because of the costs attached. Efficient refund procedures should be also standardised.

We hope the Portuguese government will be sensible to these suggestions to increase the use of debt capital markets that this regime has prompted.

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