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Portugal promotes itself as gateway to world

Tiago Marreiros Moreira of Vieira de Almeida & Associados explains how Portugal is using tax policy to encourage foreign direct investment in the country and other territories with which it has historical links

The relevant cultural, economic and existing social relationships between Portugal and countries or territories such as Brazil, Angola and Mozambique, but also with India and China, means that Portugal may play an important role in the years to come as a business hub for investments in such places.

Portugal is using tax policy to create connections with colonial territories

Portuguese companies will be regarded as interesting business partners or simply because Portuguese companies and businessmen hold relevant market knowledge, experience and business contacts in such countries, skills and attributes that often make the difference between having a successful or an unsuccessful business experience.

Another important aspect to consider is the fact that most of these countries' legal and tax regimes are either influenced by or quite similar to Portuguese laws.

Since Portugal has always kept a close relationship with its former colonies, several double tax conventions were concluded with Latin American, African and Asian countries such as Brazil, Cape Verde, China, Guinea-Bissau, India, Mozambique and São Tomé e Príncipe.

Angola has not signed any double tax convention upto now but is in the process of negotiating one with Portugal.

Besides these conventions, the fact that Portuguese domestic tax legislation includes a specific rule providing for the elimination of economic double taxation of profits distributed by companies resident in Portuguese-speaking African countries (Angola, Cape Verde, Guinea-Bissau, Mozambique and São Tomé e Principe) and in the Democratic Republic of East Timor should also be highlighted.

New investment tax code and non-habitual resident tax regime

In view of the strategic importance that the international expansion of the Portuguese economy shall play in its sustainable recovery, the Portuguese government published a new investment tax code on September 23 2009 (with retroactive effect from January 1 2009).

The approval of this set of tax rules and benefits aims to create a new spirit of of Portuguese economic competitiveness and to bring unity to the proceedings applicable to the contractual tax benefits to investments in the Portuguese territory and to the international expansion of Portuguese companies.

The new Investment tax code updates the existing tax regime applicable to contractual investment and extends its applicability until the end of 2020.

Eligible investment projects may benefit from several tax incentives, such as a tax credit on corporate taxes up to 20% of the eligible investment made, real estate and stamp taxes reductions or exemptions, as well as new R&D incentives.

The new investment tax code also includes a new and rather competitive non-habitual resident tax regime for individuals that are "non-habitual" residents or "non-habitual" resident investors, also applicable retroactively from January 1 2009.

This regime is aimed at attracting high net worth individuals or highly skilled expatriates engaged in added-value activities to Portugal, offering them a more favourable tax regime than other similar regimes in France, the UK, Spain and Switzerland.

An individual shall be regarded as a non-habitual resident if they become a tax resident of Portugal and have not been taxed as such in the five years before their qualification as a Portuguese tax resident. This statute applies for a consecutive, renewable 10-year period.

A taxpayer that did not take advantage of this regime in one or more years of this 10-year period will not lose entitlement to apply for the regime if they meet the necessary conditions to be a tax resident in Portugal in any of the remaining years before the 10 year period elapses.

This regime seems therefore to apply to permanent or temporary residents of Portugal if they qualify as Portuguese tax residents.

In broad terms, the non-habitual resident tax regime provides for a 20% flat tax rate on the net amount of income earned in Portugal from employment and business income derived from high added value scientific, artistic or technical activities (that is, activities performed by architects engineers and similar technicians; fine artists, actors and musicians; auditors; doctors and dentists; professors; psychologists; liberal professionals, technicians and similar; investors, directors and managers).

The exemption method of taxation relief shall apply to any income obtained abroad (such as employment income, capital gains, real estate income or pensions) if it is taxed in a country that has concluded a double tax convention with Portugal or, if no double tax convention has been concluded, if it is taxed in another country, territory or region that is not considered as a tax haven and the income does not arise from Portuguese sources according to domestic tax rules.

The taxpayer may also opt to apply the foreign tax credit method in which case the foreign-source income will be aggregated to his taxable income and progressive rates of up to 42% will apply.

The fact that Portugal has a considerable treaty network (which it is extending, but that already comprises more than 50 double tax conventions) may also be relevant as taxpayers benefiting from this new regime, although being able to benefit from the application of the exemption method to foreign-source income, shall be subject to worldwide income taxation and may claim the application of these conventions.

Benefits to the internationalisation of Portuguese companies

At the same time as the new investment tax Code, other rules were also enacted clarifying the contractual tax benefits applicable to investments, with regard to the international expansion of Portuguese companies, with an amount equal to or more than €250,000 ($344,000).

These benefits include a corporate tax deduction corresponding to 10% (in certain cases up to 20%) of the relevant moneys invested in internationalisation processes.

Planning benefits

On top of these new competitive tax regimes, Portugal also offers other interesting tax planning opportunities, such as no taxation on capital gains from disposal of shares held for more than 12 months (provided companies' assets are not mainly immovable property), no wealth tax or inheritance or gift tax to spouse, descendants or ascendants.

The challenge

If an international company or entrepreneur is looking for an European country to use as a business investment hub or a high net worth individual is merely looking for the right place to enjoy a pleasant life, they should definitely consider learning more about Portugal and its tax and legal environment so that they may take advantage of a stable economic and political system.

It offers a tax friendly atmosphere and interesting investment opportunities within its territory or in Latin American, African and Asian countries.

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Tiago Marreiros Moreira joined Vieira de Almeida & Associados in 2001 and is the partner in charge of the tax practice group. In such capacity he has been involved in several transactions, in Portugal and abroad, mainly focused on the financing, acquisition and restructuring of national and multinational economic groups and corporations. He has also been actively providing domestic and international tax planning.

Before joining the firm, Moreira worked as a tax consultant in the tax division of Pricewaterhouse Portugal and as a senior consultant in Andersen Portugal's tax division.

He is admitted to the Portuguese Bar Association, by whom he was recognised as a specialist lawyer in tax law. He is also president of the International Association of Lawyers' Tax Commission, a member of the International Fiscal Association, of the Portuguese Tax Association and of the Portuguese Tax Consultants Association.