

TAX

NEW TAX REGIME FOR LOAN FUNDS

VdA EXPERTISE



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The final step is completed: the tax regime applicable to Loan Funds (*fundos de crédito*) has been finally approved.

Loan funds were recognized, back in 2019, as a form of alternative investment funds, raising awareness of international investors. Unfortunately, the enactment of the regulatory framework was not followed by the corresponding tax framework.

Last week the Loan Fund's tax regime was finally approved in the Portuguese Parliament and the new rules should be published shortly in the Official Gazette

Loan Funds in a nutshell

Loan Funds qualify as alternative investment funds and may grant and acquire credits (performing and non-performing loans – "NPLs"), as well as participate in loans (subject to some limited exceptions). Despite the interest drawn by this novelty of the Portuguese lending market, the fact that the Loan Funds' regulatory framework did not include a clear a tax regime has been stalling the setting up of these vehicles.

Loan Funds tax regime

Loan Funds will qualify for the same tax treatment of Venture Capital Funds (*fundos de capital de risco*), which is the most favorable tax regime available in Portugal for fund structures.

Taxation of the Fund

Loan Funds will be fully exempt from Corporate Income Tax regarding any income or gains. Unlike ordinary investment funds, which are subject on a periodic basis to Stamp Duty on the respective net asset value, Loan Funds will not be subject to any such taxation. In practice, Loan Funds will operate as a tax neutral collective investment vehicle.

Taxation of the Investors

Non-resident investors will also benefit from a full withholding tax exemption on distributions made by the Loan Funds, as well as on capital gains realized upon the redemption or disposal of participation units in the Loan Fund. As an exception, the above exemption shall not apply to investors that are (i) legal entities directly or indirectly owned, in excess of 25%, by Portuguese-resident investors, or (ii) entities resident in blacklisted jurisdictions.

Resident investors may also invest in Loan Funds. For natural persons, Loan Funds will grant a favorable tax rate of 10% applicable to distributions made by the Loan Funds, as well as on capital gains realized upon the redemption or disposal of participation units (instead of the standard personal income tax rate of 28%). For corporate resident investors, the main benefit will be the deferral of the taxation (taxation will only occur upon distribution or disposal of the participation units).

The enactment of this tax regime is a testament to Portugal's commitment to fostering a dynamic and competitive financial sector and will certainly represent a very competitive funding mechanism, especially compared to the tax impacts that arise on cross-border financing structures.

The new tax regime is expected to be published soon, and it will enter into force one day after its publication.

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