TAX INFORMATION

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PORTUGAL, ANGOLA AND THE UNITED ARAB EMIRATES

Portugal has been trying to bring investment to the so-called emerging countries, and not only to Portuguese-speaking countries but also to other countries and markets which, in light of the current difficult economic situation, especially in Europe, have also attracted foreign investors.

As regards Portuguese-speaking countries, there are already conventions in force to eliminate double taxation on income between Portugal and Brazil, Cape Verde, Guinea-Bissau and Mozambique and negotiations are currently taking place with a view to a convention to eliminate double taxation also being entered into with Angola.

In addition to this, on 17 January 2011 Portugal and the United Arab Emirates (UAE) signed a convention to avoid double taxation and to prevent tax evasion in respect of income tax, as well as the respective protocol, and provision is made for these agreements to come into force soon.

The Model Convention of the Organisation for Economic Co-operation and Development (OECD) is the one that was followed for the Convention made with the UAE. It established that any individual or corporate body will be considered resident in Portugal if they meet the requirements established in Portuguese tax legislation, with the exception of any person subject to income tax in Portugal only when their income is earned in Portugal. However, for the purposes of the Convention, any individual will be resident in the UAE when they are a national of that country and are resident there. This is also the case for a company set up in the UAE that has its management and control there, without it being necessary for them to be, in fact, subject to income tax.

In terms of taxation, the Convention provides that dividends may be taxed in the country of origin, although, in cases in which the effective beneficiary of the dividends is a company resident in another country and is one that directly holds at least 10% of the capital of the company that pays the dividends, the tax withheld at source may not exceed 5% of the gross value of the dividends. In all other cases, the reduced rate for withholding at source will be 15%.

As to interest, this may also be taxed in the country of source, although

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"Portuguese Law Firm of the Year"
Chambers Europe Excellence 2009, IFLR Awards 2006 & Who's Who legal Awards 2006, 2008. 2009

"Corporate Law Firm of the Year - Southern Europe"
ACQ Finance Magazine, 2009

"Best Portuguese Law Firm for Client Service"
Clients Choice Award - International Law Office, 2008, 2010

"Best Portuguese Tax Firm of the Year"
International Tax Review - Tax Awards 2006, 2008

Mind Leaders Awards ™
Human Resources Suppliers 2007

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in situations in which the respective beneficiary is resident in another country, the tax withheld at source may not exceed 10% of the gross value of the interest. When the effective beneficiary of the interest is not resident in another country, the interest will only be taxed in the country of source.

The payment of royalties also benefits from a reduced rate of withholding at source of 5%, to be applied by the country from which this income originates, as long as the effective beneficiary in question is resident in another country.

As to the elimination of double taxation, the Convention made with the UAE provides that the country of residence of an individual or a corporate body that earns income should allow a deduction corresponding to the amount of the income tax that this individual or corporate body had to pay in the other country. However, this is limited to the fraction of the income tax, calculated before the deduction, corresponding to the income taxed in the other country.

Finally, the result of the protocol referred to above is that, regardless of the provisions of the Convention, the income and profits of a company resident in Portugal that derive from prospecting for and exploitation of natural resources in the UAE may only be taxed in the UAE (and vice-versa).

However, the scope of these measures cannot fully be understood without putting the tax system that is currently in force in the UAE into context. This system arises out of the legislation that applies in each of the seven Emirates - Abu Dhabi, Dubai, Sharjah, Ajman, Umm Al Qaiwan, Ras Al Khaimah and Fujairah – all of which currently have free zones.

In general, we would point out the fact that only income earned by businesses (companies and others) involved in the exploitation and production of oil and gas is subject to taxation, at withholding rates that range from 50% in Dubai, to 55% in Abu Dhabi. The income of branches of foreign banks is also subject to taxation at a withholding rate which, as a rule, is 20%. On the other hand there is no withholding at source for payments of dividends, interest and royalties. In practice, this means that dividends, interest and royalties paid by an entity that is resident in the UAE to an effective beneficiary resident in Portugal may only be subject to taxation in Portugal.

As regards individuals, as a rule there is no taxation on the income they earn. On the other hand, contributions to social security do not cover foreign workers. It should also be added that the transfer of real property by individuals or companies is normally subject to tax at the rate of 2%.

We predict that the result of all this is likely to be that, after the Convention comes into force, the UAE will be removed from the list of regimes with privileged taxation that appears in Order in Council 150/2004, of 13 February under its current wording. This will give residents of the UAE access to the systems that exist under Portuguese legislation which they were previously excluded from by the application of anti-abuse legislation. On the other hand, the UAE are already the scene of external investments coming from Portuguese-speaking African countries, as it happens with Mozambique, due to the Convention entered into force between both countries. This means that entering into conventions to eliminate double taxation with those countries, such as Angola, will enable Portugal to become a platform for economic investment strategies in these countries.

This means that Portugal can take on a strategic role in face of the increase in investments in the emerging markets of the Portuguese-speaking countries and also in the Middle East. We must now wait both for the conclusion of the negotiations on the double taxation convention to be made with Angola, and for the entry into force of the Convention already made with the UAE, to see to what extent the economic agents, from Portugal and abroad, place their trust in these two pieces of tax legislation as factors in an increase in economic relations between the countries involved.

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