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## ***Informative Note***

***The New Portuguese Tax Regime of Undertakings of  
Collective Investment***

***More favourable rules for non-resident investors***

***Decree-Law N.o 7/2015, of 13 January 2015***



## **The New Portuguese Tax Regime of Undertakings of Collective Investment**

### **More favourable rules for non-resident investors**

Decree-Law N.o 7/2015, of 13 January, which reforms the taxation of Undertakings of Collective Investment and that shall enter into force on 1 July 2015.

It was published at last the Decree-Law N.o 7/2015, which aims to reform the tax regime of Undertakings of Collective Investment (UCI) in order to make domestic UCIs more attractive at the international level and to stimulate foreign investment.

Actually, the currently applicable legal regime provides that capital gains, as well as other income earned by UCIs, shall be taxed without taking into account the costs incurred to obtain such income. Such rules have proved to be not internationally competitive and have been detrimental to the attraction of foreign investment by domestic UCIs.

Furthermore, the rules currently still in force result in the double taxation of income paid by UCIs to investors, notably to non-resident investors, who may not obtain a tax credit for the taxation incurred by UCIs in Portugal.

Consequently, following the trend of the applicable regimes in the majority of the European Union countries (notably in Spain) the new regime set forth in Decree-Law N.o 7/2015 provides that “exit” taxation shall be the general rule and thus income earned by investors shall be taxed in accordance with the rules governing Personal Income Tax and Corporate Income Tax.

The principle rules and amendments provided in the new regime, which is applicable to securities and real estate investment funds and companies, are as follows:

#### **1. Taxation of UCIs**

- UCIs shall be taxed in accordance with the Corporate Income Tax rules, at the general rate set forth in the Corporate Income Tax Code (which is currently 21%). Taxable profit corresponds to the net result of the corresponding financial year. However, capital returns, property income and capital gains (except if the source of such income is located in places which are considered as “tax heavens”) shall not be considered, as well as the expenditures incurred in connection the aforementioned income, non-deductible expenses for tax purposes, in

accordance with article 23-A of the Corporate Income Tax Code, and also income, including deductions and expenses related to management fees, that revert to the UCI;

- Tax losses incurred in given taxation periods may be brought forward during a period of 12 financial years;
- UCIs are exempted from State and municipal surtaxes;
- Mergers, de-mergers and subscriptions in kind made between UCIs may be subject to a tax neutrality regime;
- UCIs are hereinafter subject to the autonomous tax rates set forth in article 88 of the Corporate Income Tax Code;
- There is no obligation to withhold income earned by UCIs for Corporate Income Tax purposes;
- UCI are henceforth also subject, with due adaptation, to the ancillary obligations provided in the Corporate Income Tax Code (e.g. obligations to submit tax returns and to organise and centralise their accounts).
- UCIs shall be also hereinafter subject to Stamp Duty, which shall be levied on their global net assets. UCIs that exclusively invest in money market instruments and deposits shall be subject to Stamp Duty at the rate of 0,0025%, while all other UCIs shall be subject to Stamp Duty at the rate of 0,0125%.

## 2. Taxation of Investors

The new rules generally provide the transfer of taxation from UCIs to investors, as follows:

- **Income earned by Resident Investors**
  - i. Income distributed by domestic UCIs to investors that are natural persons resident in Portugal or that have a permanent establishment located herein to which such income may be attributable, as well as income arising out of the redemption of units or shares, shall be subject to withholding tax at a rate of 28%. In case such income was not obtained in connection with a commercial, industrial or agricultural activity, the said investors may elect to include such income. In this event, the general

progressive tax rates (ranging from 14,5% to 48% in 2015) shall be applicable, as well as the Personal Income Tax surcharges that may be levied (3,5% in 2015, to which shall be added a 2,5% solidarity tax on income exceeding € 80.000, as well as a 5% solidarity tax on income exceeding € 250.000) and the withheld tax shall have the nature of a payment on account for the final tax due.

- ii. Income earned by legal persons established in Portugal shall be subject to withholding tax at a rate of 25%. In this event, the withheld tax shall have the nature of a payment on account for the final tax due, except if investors benefit from a Corporate Income Tax exemption that excludes capital returns, in which case the withholding tax shall be definitive.

➤ **Income earned by Non-Resident Investors**

- i. Income distributed by domestic UCIs to non-resident investors (who must provide evidence of such capacity, as provided in the applicable rules) that do not have a permanent establishment located in Portugal to which such income may be attributable, including capital gains arising out of the redemption of shares or units or the winding up of the investment funds or companies, are exempted from Personal Income Tax or Corporate Income Tax. Such income shall be subject to withholding tax at the rate of 10%, in the case of income arising out of units in real estate investment funds or shareholdings in real estate investment companies.
- ii. Non-resident investors shall not benefit from these more favourable rules whenever they (i) do not provide evidence of their capacity of non-residents in Portugal (ii) are resident in places which are considered as “tax heavens” or (iii) are entities directly or indirectly held in more than 25% by entities or natural persons that are resident in Portugal. In these cases, non-resident investors are in general subject to the applicable rules to resident investors.
- iii. Non-resident investors that have not provided evidence of such capacity within the applicable time period may request the full or partial reimbursement of the tax withheld, within two years as of the end of the year in which occurred the event generating taxation, by filing an application form together with the documentation provided in the law for such purpose.

It should be emphasized that these new rules shall only be applicable to income obtained after 1 July 2015. UCIs are given a preparation and adaptation period of six months, during which a transitional regime shall be applicable, in order to avoid “variations of the value of the respective units and shares”.

The new regime is clearly more favourable to non-resident investors, since they will be hereinafter exempted from taxation (except in the case of income arising out of real estate investment funds or real estate investment companies to which a 10% withholding tax shall be applicable) and thus will clearly reduce situations of double taxation of these investors.

This reform is extremely significant, as it will improve fiscal competitiveness of the domestic UCIs and it has been well received by the investment sector. Moreover, as it brought the applicable rules in Portugal closer to those in force in the majority of the European Union countries, it will enable a greater comparability of the performance of the domestic UCIs with the international UCIs, as well it will allow domestic UCIs to make more effectively use in the future of the European passport.

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