

THE NEW TAX REGIME FOR UCI'S IN PORTUGAL

The Decree-law n. 7/2015, of January 13rd, approved the new tax regime applicable to Collective Investment Undertakings (UCI), covering securities investment funds, real estate investment funds, securities investment companies and real estate investment companies incorporated and operating under the Portuguese legislation. Following the publication of the said Decree-Law, the Portuguese Tax Authorities issued Circular n. 6/2015, thus aiming to clarify any interpretation doubts arising from the new regime.

With the entry into force of the new regime, its main purpose was to review the tax regime of UCI, foster international competitiveness and foreign investment, as well as to promote and attract savings in Portuguese territory, being one of the most attractive UCI regimes in the EU.

Until 2014, the tax regime of UCI was considered uncompetitive and was an obstacle to the attraction of foreign investment, as non-residents investing in Portuguese UCI's were not able to obtain, in their country of residence, a tax credit for the taxation supported herein, thus resulting in a situation of economic double taxation. The new regime, by implementing the "exit taxation", inverts the paragon.

It should be noted that **the new rules only apply to the income obtained after 1st of July 2015.**

TAXATION OF UCI'S

CORPORATE INCOME TAX (CIT)

The **determining of the taxable profit of the UCI** shall correspond to the net profit assessed in accordance with their respective accounting standards.

Certain types of income, such as capital returns, income deriving from property and capital gains, subject to Personal Income Tax (PIT) are disregarded for profit assessment purposes, except if the relevant income was earned via entities domiciled in tax haven countries.

Additionally, expenses considered as not relevant for CIT purposes, as well as income, discounts, expenses and costs relating to management commissions and other commissions reverting to the UCI, are disregarded for profit assessment purposes.

Moreover, **tax losses** shall become entitled to be carried forward for a period of 12 years, having a deduction limit of 70% of UCI taxable profits.

The taxable amount is levied at the **CIT general rate** (21% to 2015), being also applied the general rates concerning the **autonomous taxation** with necessary adaptations. Additionally, UCI are exempted from Municipal and State Surtax.

Furthermore, UCI are expected to benefit from the tax neutrality special regime applicable to mergers, divisions and subscriptions in kind.

It is also necessary to refer that (i) UCI are not subject to withholding tax and (ii) management entities are jointly and severally liable for the tax liabilities arising from companies and funds under their management.

Finally, UCI have to submit a periodic income statement, through which they should proceed to a tax due reverse charge.

STAMP DUTY TAXATION

Within Stamp Duty, it is necessary to refer that the free transfer of shareholdings of companies investing in securities or real estate are excluded of taxation for Stamp Duty purposes, being also excluded the compliance of any obligation, namely of declarative nature.

The paragraph 29 in the General Stamp duty Table was added, subjecting UCI's global net value to this tax.

UCI exclusively investing in money market instruments and bank deposits shall become subject to stamp duty calculated over their global net assets at the rate of 0,0025%, per quarter, being the remaining UCI subject to a 0,0125% per quarter tax rate.

The UCI global net value, taxable under the terms of that paragraph, shall be determined according to the average of the values reported to the Portuguese Securities Market Commission (CMVM), or disclosed by the managing entities, in the last day of each quarter, with the exception of the value of assets relating to units or shares held in UCI covered by the regime established in article 22 of the Tax Benefits Statute.

TAXATION OF INVESTORS

As referred above, the regime applicable to the holders – natural or legal persons – of UCI's investment units (funds) or shares (Investment Companies) was amended in what concerns with its taxation – both PIT and CIT – being the Investor taxed when the income associated to their own participation unit/ social participation is received.

A. Portuguese Resident Investors or with Permanent establishment in Portuguese Territory:

- i) Portuguese resident investors (natural persons) shall be subject to CIT at a withholding tax rate of 28%.
- ii) Portuguese resident corporate investors shall be subject to IRC at a provisional withholding tax rate of 25%, unless the relevant beneficiaries are exempt of tax or withholding tax.
- iii) In all other cases, the general rules provided for PIT and CIT Code shall be applied.

B. Non- Portuguese resident Investors and without Permanent establishment in Portuguese Territory:

- i) Non-Portuguese resident investors who receive income (a) distributed by real estate investment funds (b) or by real estate investment companies, or (c) through the redemption of such funds/companies' participations shall become subject to withholding tax at the rate of 10%;
- ii) Non-Portuguese resident investors who receive income deriving from securities investment funds or securities investment companies, including capital gains resulting from redemptions of such entities participations or their liquidation, shall be exempt from PIT or CIT;

The above mentioned regime is not applicable should non-Portuguese resident investors be domiciled in tax havens, directly or indirectly, in more than 25% by Portuguese residents and by beneficiaries which do not present proof of non-residence in Portugal.

TRANSITORY REGIME

The transitory regime foresees that the new rules are applicable to income obtained after 1st July of 2015, both for UCI and Investors.

Existing UCI should:

- i) Compute the tax due in accordance with the law still in force, with reference to period between 1st January and 30th June 2015 and to proceed to its delivery within 120 days;
- ii) In the case of:
 - (a) Advanced income not yet recognized in P/L, but having already delivered the due tax; and
 - (b) Income not yet received, but accounted as income, not having delivered the due tax;the tax net balance accounted on the respective assets and liabilities, should (i) if creditor, be handed over to the State coffers and (ii) if debtor, be requested the reimbursement, both within 120 days after the entry into force of the new rules.
- iii) Gains and losses arising from the sale of net assets purchased during the period between 1st January and 30th June 2015 should be taxed under the rules in force upon those dates, but only with reference to the period upon which the assets are being sold, reimbursed, recovered, amortised or liquidated, but (i) in case of real estate, the period to be held as should be proportional to the assets' detention period until 30th June, whereas (ii) in the case of remainder assets the amount to be considered as realization value should be its market value on this date, thus applying the FIFO method.

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