Portuguese Tax Authorities publish Administrative Order on the new UCIs tax regime

Executive summary

On 17 June 2015, the Portuguese Tax Authorities (PTA) published Administrative Order no. 6/2015, providing clarification on the Undertakings for Collective Investment (UCIs) tax regime.

As background, the Portuguese Government published Decree-Law no. 7/2015 on 13 January 2015, introducing a new UCIs tax regime in order to increase the competitiveness of these investment vehicles by exempting taxation at the level of the investors and significantly reducing taxation for the UCI. This new tax regime is applicable to Securities Investment Funds (SIFs), Real Estate Investment Funds (REIFs), Securities Investment Companies (SICs) and Real Estate Investment Companies (REICs), and will enter into force on 1 July 2015.¹

Detailed discussion

Taxable income definition and exemptions

Under the new regime, UCIs will be subject to Corporate Income Tax (CIT) on their book profit, although certain exemptions are granted to qualifying income (e.g., dividends, interest, rental income and capital gains).

With respect to capital gains, it is worth noting that the GAAP applicable to UCIs provides that assets (including real estate) held by UCIs should be accounted for at fair value. The Administrative Order clarifies that the capital gains’ exemption applies not only to realized capital gains upon disposal of the real estate but also to any potential and unrealized gains such as fair value gains booked by UCIs.

Additionally, it is clarified that UCIs will not be able to claim a deduction for expenses related to or connected with exempt income.
**Taxation of nonresident Investors**

Income derived by nonresidents from SIFs and SICs, including income distributed by these entities, capital gains from the disposal of the units/shares, or income generated from the redemption of units/shares, is fully exempt from tax in Portugal.

Income derived by nonresidents from REIFs and REICs, including income distributed by these entities, capital gains from the disposal of the units/shares, or income generated from the redemption of units/shares, is subject to a 10% flat rate tax in Portugal.

Notwithstanding, if the nonresident investor is held, directly or indirectly, more than 25% by Portuguese residents, any income derived from a UCI will be subject to tax under domestic rules (25%).

If the nonresident investor is resident in a blacklisted jurisdiction, income derived from a UCI will be subject to the following rules:

- Income distributed by UCIs will be subject to withholding tax at a 35% rate
- Capital gains from the disposal or redemption of units/shares will be subject to tax at a 25% rate (of 28% rate if beneficiary is an individual)

Finally, the Administrative Order describes a list of documents which should be made available to the paying entity prior to any distribution or redemption in order to trigger the tax exemptions (for SIFs and SICs) or reduced 10% withholding tax rate (for REIFs and REICs) mentioned above.

Nonetheless, if withholding tax was levied (by mistake because the beneficiary didn’t meet the compliance requirements on a timely basis), it will be possible to claim a reimbursement for the excess tax withheld. This reimbursement should be requested within two years from the end of the year when the taxable event took place, through the filing of a special form and presentation of a residence certificate.

**Units/shares acquired in secondary market**

Income generated from the redemption of units/shares will be subject to withholding tax whenever the beneficiary is a Portuguese resident or, if nonresident, whenever the UCI is a REIF or a REIC. As a result, prior to any redemption, the acquirer of units/shares in the secondary market should inform the custodian or management entity of the acquisition price, otherwise, the withholding tax will be levied over the gross redemption amount.

**Qualification of the income generated from REIFs and REICs**

The Administrative Order confirms that income generated from REIFs and REICs (including dividends distributed by REICs) should qualify as immovable property income, which grants Portugal taxing rights under articles 6 and 13 of the Organisation for Economic Co-operation and Development Model Tax Convention – which is followed by all of the double tax treaties Portugal has signed.

**Stamp Duty levied on the global net asset value**

UCIs are also subject to Stamp Duty on their global net asset value, which is due on a quarterly basis. The tax rates are the following:

- 0.0025% for UCIs investing only in money market instruments and deposits
- 0.0125% for other types of UCIs (including real estate funds and companies)

According to the Administrative Order, the global net asset value is determined according to the average market value of its assets with reference to the last day of the respective quarter, as communicated to the Portuguese Securities Market Commission (CMVM) or announced by the management entity.

**Transitional regime**

As a final note, for the transitional regime applicable to currently existing UCIs, the Administrative Order provides for a series of practical examples of the applicable rules.

---

**Endnote**

1. For further information on the new tax regime, see EY Global Tax Alert, *Portugal issues new tax regime for UCIs*, dated of 27 January 2015.
For additional information with respect to this Alert, please contact the following:

**Ernst & Young S.A., Lisbon**

- Antonio Neves  
  +351 21 791 2249  
  antonio.neves@pt.ey.com

- Pedro Fugas  
  +351 22 607 9698  
  pedro.fugas@pt.ey.com
About EY
EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit ey.com.

© 2015 EYGM Limited.
All Rights Reserved.

EYG No. CMS557