NewsAlert

Real Estate Tax Services

Portugal *January 2014*

New tax measures for 2014

New tax measures have been introduced for 2014 that impact real estate investments in Portugal. A brief overview of the most significant changes is provided below.

Corporate income tax

Standard rate

The standard Corporate Income Tax (CIT) rate has reduced from 25% to 23%.

It is also envisaged that this rate will further reduce to 21% in 2015, and possibly to 19% - 17% in 2016, depending on the macroeconomic environment.

The local and state surcharges also levied on the taxable profit remain unchanged.

Tax losses carried forward

The period a tax loss can be carried forward for has been extended from 5 to 12 years (this is only applicable for losses generated from 2014 onwards).

Tax losses brought forward can only offset 70% of the taxable profit of the year (75% in 2013).

Interest capping rules

Interest capping rules were introduced in 2013 to limit the tax deduction of net financial expenses at the higher of €3 million or 70% of EBITDA.

This percentage cap will be reduced to 60% for 2014, 50% for 2015, and 40% for 2016 before reaching 30% in 2017.

For 2014 onwards, the fixed threshold is reducing from €3 million to €1 million.

In the case of group taxation, the parent company can opt to apply this rule on a tax group basis.

The group taxation has to be maintained for a minimum period of 3 years. It must be reported to the tax authorities before the end of the third month of the tax year in which it applies to.

Participation exemption

The participation exemption regime is applicable to dividends, capital gains and capital losses arising from shareholdings of 5% or more, held consecutively for a 24 month period.

To apply for this regime, the entity distributing profits must be:

- Subject to and not exempt from Portuguese CIT; or
- Subject to similar taxes referred to in the Parent-Subsidiary Directive; or

- Subject to other similar taxes provided that the applicable statutory rate is not lower than 60% of the Portuguese standard CIT rate. In certain cases this requirement is not mandatory.

The regime is not applicable to profit distributions that qualify as tax deductible expenses in the distributing entity.

Capital gains and capital losses derived from the sale of shareholdings, where the value of real estate held, directly or indirectly, represents more than 50% of the assets (except immovable property allocated to an agricultural, industrial or commercial activity excluding the acquisition and sale of immovable property) are excluded from this regime.

Value added tax

Real estate not effectively used for business purposes (e.g. vacant areas)

Currently under the Value Added Tax (VAT) claw-back rules, a 3 year period triggers the need to repay part of the VAT, recovered relating to the acquisition or construction of real estate, back to the Revenue, where the real estate is not being effectively used for business purposes (this includes vacant areas for letting) by the end of the period. This has been increased from 3 years to 5 years.

Property taxes

Partial abolishment of exemptions for funds

Buildings owned by open-ended real estate investment funds, publicly placed closed-ended real estate investment funds, pension funds and retirement savings funds, are no longer fully exempt from both real estate transfer tax (IMT) and local annual property tax (IMI). The funds are now required to pay IMT and IMI but the applicable rates for the funds are 50% of the normal rates.

Real estate with tax registration value of at least € 1 million

Residential properties and plots of land for housing located in Portugal with tax registration value of at least €1 million are subject annually to stamp duty at 1%.

Any type of properties located in Portugal with a tax registration value of at least €1 million owned by companies domiciled in blacklisted jurisdictions, as per the Portuguese “black-list”, are subject annually to stamp duty at 7.5%.

This has a significant impact on real estate owned by companies domiciled in blacklisted jurisdictions as, together with the applicable IMI rate of 7.5%, there is a total tax burden of 15%.

Our view

Setting a trend for the reduction of the CIT rate is very positive.

Although the tax losses carried forward period has increased, CIT needs to be paid on 30% of the taxable profit in the year, to minimize the erosion of the tax base.

The reduction of the fixed threshold of the interest capping rules to €1 million will mean that more companies are caught by the % of EBITDA cap and this may have adverse consequences for highly leveraged companies.

The increase of the VAT claw-back rules to 5 years for vacant properties eases the impact, mostly on the office market, arising from the financial crisis.

For more information, please contact your local PwC real estate tax service provider or one of the contacts below.

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