CAPITAL GAINS
Investment Portfolios

With the introduction of Decree Law 15/2010 of 26 July, a new Capital Gains Tax Regime has been approved and implemented that, despite several important exceptions, defines a new level of flat-rate assessment on the disposal of shares, bonds, derivatives, warrants, and other similar securities. In general, these gains were be subject to a flat-rate tax of 20% in 2010 & 2011. In 2012, this rate increased first to 21.5% and then to 25%. Since 2015, the charge stands at 28%. This principle also applies to mixed or closed (private subscription) investment funds. Small investors enjoyed a partial reprieve from the rate hike with the first €500 of Capital Gains from listed shares excluded from assessment for resident taxpayers. This relief was eliminated in 2013.

New reporting obligations also apply to intermediaries involved in these operations in line with other measures combatting fraud and tax evasion. Capital losses can be carried forward two years. Even if your portfolio had a net loss with no tax income, it is important to report for two reasons: a) it is a statutory requirement and b) if you fail to report a loss in the year that it occurred, you will not be able to carry the losses forward to offset future gains.

A Key Exception

One significant exemption is the assessment of gains from the sale of *shares of micro and small companies* not listed on the stock exchange. Although the new 28% formally applies, these companies will now benefit from a 50% exclusion, leaving a net effective tax rate of 14% as existed prior to the changes. This means that most small businesses

(“*Limitadas*”) as well as Portuguese Nominee Companies *(“Sociedade Civil)”* should be unaffected by the new CGT rules. Portuguese Nominee Companies are non-trading companies - sharing certain similarities with “*trusts*” in English Common Law - used to hold real property and other assets in Portugal and elsewhere in Europe. Nominee Companies have become increasingly popular with Non-Residents in recent years due to their tax efficiency, moderate cost and fully compliant structure.

Overall Strategy

The introduction of a flat tax rate to Capital Gains completes the application of the new general tax rate rule for all income from Capital. Already both Interest and Dividends also suffer the identical basic flat-rate assessment as is being applied to Capital Gains. Likewise, exemptions may be available to accommodate particular situations.

Flat-rate taxes are assessed autonomously, thereby avoiding the “top-slicing” effect customary with most additional income. Simultaneously, they fail to allow for any deductible expenses being applied against them, *restricting their benefit to certain taxpayers*.

Although this legislation was only approved in July of 2010, these new rules apply to Capital Gains arising at any time throughout the fiscal year. Numerous voices of protest have raised serious doubts regarding the constitutionality of retroactive application of this and other austerity tax measures.

This is the latest in numerous attempts over the years to overturn CGT exemptions. Under the administration in 2002, Capital Gains rates jumped to 30%. After a year of capital flight, the old rules were reinstated. It remains to be seen whether this change will have more long-lasting results than preceding attempts.

Questions & Answers

How is the sale of shares of a Limited Liability Company assessed?

While a flat tax rate of 28% applies, small and micro companies enjoy a 50% exclusion, thereby reducing the final levy to 14%.

I sold shares and my broker charged a commission. Are these expenses deductible?

Yes. Brokers' selling expenses are deductible for the purchase (but not the sale) and reported on Annex G.

I sold some shares and made a small profit. How do I report the gain?

Capital Gains on corporate shares are taxed at a flat rate of 28%. (*Note: Capital Gains are exempt when less than €500.*)

I was not so lucky. I had to sell shares at a loss. Is there any relief?

Net losses may be carried forward up to two years within the same income category. To be eligible, losses are reported in the year that they occurred.

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28 March 2018