CAPITAL GAINS TAX RULES ON SHARES

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 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 tax rate also applies to mixed or closed (private subscription) investment funds.

Old Rules

Under the previous regime, capital gains on shares of listed companies were taxed at a flat-rate of 10% with a full exclusion being conceded for holdings of more than one year. These former rules have been revoked with the exception of open investment funds that continue to benefit as in the past under the previous rules. However this exempt is only on shares traded within the structure by fund managers and not on the transfer of units by the investor. (This exclusion merely avoids double taxation on internal and external trading.)

Also noteworthy is the fact that small investors enjoy a partial reprieve from the rate hike with the **first €500** of Capital Gains from listed shares excluded from assessment for resident taxpayers. New reporting obligations also apply to intermediaries involved in these operations in line with other measures combatting fraud and tax evasion.

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 28% formally applies, these companies will now benefit from a 50% exclusion, leaving a net effective tax rate of 10% 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 the flat 28% 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 28% flat-rate assessment as is now 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.

This is the latest in numerous attempts over the years to overturn CGT exemptions. Under the *Guterres* administration in 2002, Capital Gains rates were lifted to 30%. Needless to say, after a year of capital flight, the old rules were reinstated. It remains to be seen whether this attempt will have more long-lasting results.

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