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FISCAL & EXPATRIATE SERVICES

ANTI-AVOIDANCE LEGISLATION

Portuguese anti-avoidance legislation has been approved that makes mandatory divulging any "abusive" tax planning schemes by promoters and/or beneficiaries. The purpose of the legislation is to make compulsory warning of tax authorities of strategies on the edge of the law, designed primarily to avoid paying tax. Individual clients need not necessarily be identified but rather the plans are entered in a data base to help prevent "abusive" schemes.

Unauthorised schemes are defined as follows:

a) involvement of entities resident in black-listed tax havens;
b) involvement of entities resident in jurisdictions not subject to taxation equivalent to "*IRS*" or "*IRC*";
c) if assessment would be 60% or less than the tax owed in Portugal were the entity resident;
d) if the beneficiary is partially or totally exempt from taxation;
e) when financial or insurance operations are involved that reclassify income or alter the beneficiary of the investment;
f) when the use of financial loses is implied;
g) when a confidentiality clause is present in covering contracts or if the sponsors contractually limit their responsibility.

Fines for non-compliance can be as high as €100,000 for companies and €50,000 for individuals. This legislation came into force in May of 2008.

Note: It is important to give careful attention to the fact that some of the above mentioned criteria may apply to tax planning schemes in "white listed" jurisdictions as well as black-listed tax havens. Professionals and owners alike may need to rethink their strategy.

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