

EXPANDING THE SCOPE OF CORPORATE INCOME TAX - CCA FRONTIER

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In accordance with the State Budget proposal for 2018, gains arising from the onerous transfer of shares, or similar rights, held in companies or other entities non-resident in Portugal shall be considered obtained in Portugal.

This will happen when, at any time during the previous 365 days, more than 50 per cent of the value of those shares (or similar rights) is derived, directly or indirectly, from real estate located in Portugal. The exception is when the real estate is related to an agricultural, industrial or commercial activity that does not relate to the purchase and sale of real estate. That is to say that, for Corporate Income Tax (CIT) purposes, the onerous transfer of shares in non-resident companies or entities whose asset is essentially composed of real estate located in Portugal shall be deemed a taxable event.

Specifically, this measure is aimed at partners and shareholders (legal or natural persons) who receive gains from the onerous transfer of the aforementioned shares, held in non-resident companies or entities, which have (directly or indirectly) more than 50 per cent of assets in the form of real estate located in Portugal.

Therefore, any transfer of shares of companies not based in Portugal, irrespective of the number and composition of the entities interposed between the company whose shares are sold and the real estate whose gains are sought, shall be subject to tax. The above mentioned measure exceeds the national territory. It should be noted, moreover, that similar measures have been adopted in other European jurisdictions.

This measure shall have a strong effect when, for example, a double tax treaty (entered into between Portugal and the State of the transferring company's headquarters) enables Portugal to levy tax on gains arising from the transfer of a company that, although not domiciled in Portugal, has assets that consist mainly of real estate therein located.

Furthermore, one should bear in mind that although those gains could be, in theory, subject to taxation in Portugal (within the scope of some of the double tax treaties), it was not provided for in domestic legislation, in particular in the CIT Code.

It should also be noted that, despite the fact that this measure only covers real estate held under a sale or resale activity – therefore presenting an objective limited scope – it is strengthened by a number of other measures, such as those concerning exchange of information between tax administrations, as well as the need to identify the ultimate beneficial owners of companies and other entities.

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