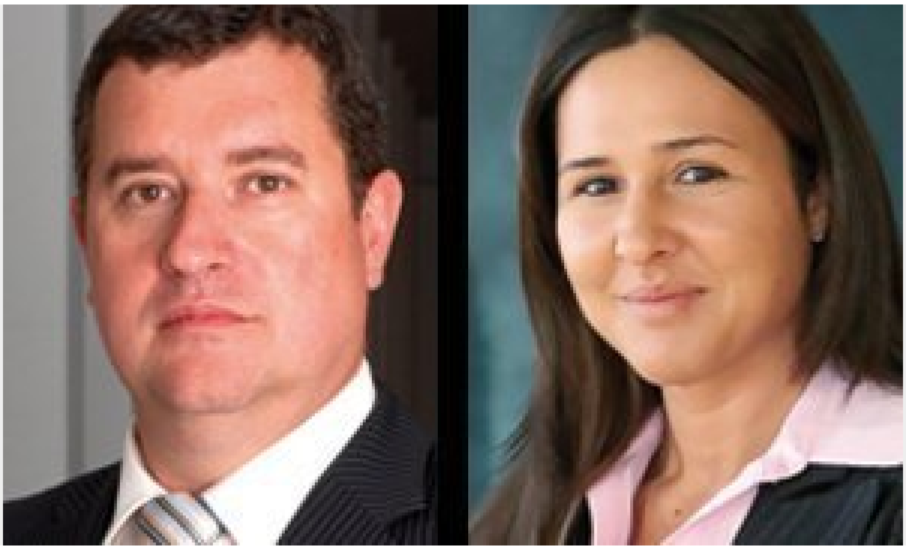
TAXING ITSELF OUT OF THE RACE - AVM ADVOGADOS

Posted on 29/10/2012



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While there are double taxation treaties and exemptions in place with Mozambique and Angola, respectively, says António Vicente Marques, Founding Partner at AVM Advogados, when investors bring dividends back to Portugal, many are being re-taxed.

For example, corporate income tax (CIT) on profits of a local company is 35 percent in Angola and 32 percent in Mozambique. However, where the local entity's shareholder or parent in these jurisdictions resides in Portugal, dividends distributed from profits and repatriated back to Portugal are, in theory, taxed again. This is at a rate of 25 percent unless a double taxation agreement (DTA) exists or the dividends fall within the article 42 exemption of the Portuguese Tax Benefits Statute.

While appearing to act as an incentive to Portuguese entities repatriating their dividends and profits from abroad, says Vicente Marques,were it not for the express exception that where the local subsidiary benefits from any form of tax exemption from paying tax on profits in those jurisdictions, then the Portuguese resident shareholder can no longer rely on the DTA or article 42 exemption above.

Given the emerging market status of countries like Angola and Mozambique, that wish to attract foreign investment and therefore inevitably offer tax exemptions, in most cases the Portuguese shareholders end up paying tax on profits or dividends repatriated back to Portugal.

For this reason, and also because the CIT rates in Portugal are high anyway and expected to increase under the austerity drive, many are restructuring their operations and moving their holding company to countries with more beneficial taxes, like Malta, Ireland, and the Netherlands where the holding companies receive a far more advantageous tax treatment, he adds. “The business community has no other option besides moving the holding company to a more tax friendly country.”

When many investors go to these countries, they do so to make substantial investments, says Claudia Santos Cruz, Lisbon Managing Partner, and the respective local governments provide them with reductions.
We have seen a recent trend of companies foreseeing high profits and moving their headquarters to other countries, which harms the Portuguese economy and growth, because potential investors are fearful of bringing profits back into Portugal.
The State has focused its efforts on foreign investments and promoting Portuguese companies abroad and under the austerity programme increasing tax revenues and privatising state interests, says Santos Cruz, however, very little has been done to ensure and facilitate the return of investments from our own companies that are successful abroad. “They are not taking steps to alleviate the tax burden or attract reinvestment back into Portugal.” This would require a reduction in general tax rates. Conversely, the Government is instead increasing the amount of taxes with higher incomes also now subject to a State surcharge.
Until 2011, there was also a holding company exemption for dividends from Portuguese or EU subsidiaries but this was revoked in 2011. Portugal also introduced an exit tax for companies wishing to move their operations outside of its borders. “The EU has said this breaches the freedom of establishment principle under the EU Treaty,” says Santos Cruz.
They are, however, seeing clients restructuring, moving out and taking a short-term hit by paying the exit tax because in the long-term the tax benefits and level of profits will be significantly better. Most are of Portuguese origin with international operations, but because of the measures at home they are moving, they say.
Smaller clients are also thinking twice, says Vicente Marques, as they don’t have a holding structure, so they set up in Angola or Mozambique and just reinvest there or start over somewhere else. It’s a question of optimising business decisions. “We are likely looking at a future where many of the successful Portugal-based companies will have their registered offices or holdings abroad,” he adds. Aside from the EU, companies are already investing in, for example, San Tomé, Mauritius, in other African countries or even Hong Kong.
The Government wants reinvestment into Portugal, he adds, but you don’t do this by imposing more taxes, you get exactly the opposite effect. What this all means, ultimately, is that the investment is not coming back into Portugal at a time when it is sorely needed. And law firms are having to refocus to ensure they are following their clients as they redomicile their operations.