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PORTUGUESE 2011 BUDGET BILL CHANGES INTERCOMPANY DIVIDEND TAXATION

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The 2011 Portuguese State Budget Bill ("2011 Budget") changes in a substantial way the current taxation of intragroup dividends. Such changes affect the taxation of inbound as well as outbound dividend

Hereinafter are the scenarios that are more likely to be impacted by the new rules.

Changes to the deduction for dividends received by resident companies (participation exemption)

1. Up to the entry into force of the 2011 Budget, dividends received by Portuguese resident companies were fully deductible from their taxable profits provided that:

   - The company distributing profits had its residence in Portugal or in another EU Member State and was subject to (and not exempt from) CIT or a similar tax;
   - The beneficiary was not subject to the fiscal transparency regime; and
   - The beneficiary had directly held – for a minimum period of one year – at least 10% of the share capital of the distributing company or had a shareholding with an acquisition value of at least € 20.000.000.

   Should the beneficiary be subject to the fiscal transparency regime or should the shareholding fail to comply with the requirements set out above, only 50% of the dividends received would be deductible from the beneficiary's taxable profits.

2. Under the new rules, dividends received become fully taxable if:

   - The shareholding is below 10% of the share capital of the distributing company (irrespective of its acquisition value) or in case the shareholding is directly held for less than one year; or
   - The beneficiary is subject to the fiscal transparency regime.

Changes to the taxation of dividends obtained by holding companies (participation exemption)

1. Up to the entry into force of the 2011 Budget, dividends received by a holding company (Sociedade Gestora de Participações Sociais – SGPS) were fully deductible from the company´s taxable profits provided that:

   - The company distributing profits had its residence in Portugal or in another EU Member State and was subject to (even if exempt from) CIT or a similar tax; and
   - The holding company had directly held a participation in the share capital of the distributing company for a minimum period of one year (irrespective of the shareholding percentage or acquisition value).

2. Under the new rules, dividends received by a holding company are treated in the same way as dividends received by any other company. Hence, dividends received by a holding company become fully taxable if:

   - The shareholding is below 10% of the share capital of the distributing company (irrespective of its acquisition value) or in case the shareholding is directly held for less than one year; or

- Dividends received derive from profits that were not subject to effective taxation.

This last consideration is extremely relevant since dividends paid out by a holding company to another Portuguese resident company are now fully taxable if said dividends were not subject to effective taxation (even when the beneficiary is another holding company), which may lead to economic double taxation.

Changes to the taxation of dividends within tax groups

1. Up to the entry into force of the 2011 Budget, the overall taxable profit of a group of companies was computed by adding up the taxable profits and tax losses of each company of the group covered by the taxation of groups regime (Regime Especial de Tributação dos Grupos de Sociedades – RETGS), net of any dividends paid out within the group (even if all general requirements to benefit from the deduction for dividends received had not been met).

2. Under the new rules, dividends paid out within group companies covered by the taxation of groups regime are treated in the same way as dividends received by any other company. These changes may lead to economic double taxation should the general requirements to benefit from the deduction for dividends received not be met.

Changes to the taxation of outbound dividends paid out to EU corporate shareholders

1. Up to the entry into force of the 2011 Budget, no withholding tax would apply to dividends paid out by a Portuguese resident company to a corporate shareholder resident in another EU Member State provided that:

- The beneficiary had directly held a participation of at least 10% in the share capital of the distributing company or had a shareholding with an acquisition value of at least € 20.000.000; and

- The participation had been held for at least one year.

2. Under the new rules, dividends paid out by a Portuguese resident company to a corporate shareholder resident in another EU Member State are subject to withholding tax when the participation held is below 10% of the share capital of the distributing company (irrespective of its acquisition value) or when the shareholding is held for less than one year.