Portuguese Investment Funds – new tax regime

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Decree-Act 7/2015, of 13 January, has approved a new tax regime for Portuguese Securities Investment Funds and Real Estate Funds, covering both investment funds with a contractual and corporate nature ("Funds"), as well as the corresponding unitholders/shareholders ("Investors").

To summarize, under the new regime, most of the income obtained by Funds will become exempt from Corporate Income Tax (CIT). Non-resident Investors without a local permanent establishment (provided they do not have their residence in a 'tax haven' and no more than 25% of its share capital is held by Portuguese-residents) will remain exempt from Portuguese taxation in respect of income derived from Securities Investment Funds and, in respect of income derived from Real Estate Funds, they will become taxed in Portugal at a 10% rate. Income obtained by Portuguese-resident Investors will always be taxed, whether the Investors are individuals or collective undertakings.

With this new tax regime, Portuguese Funds will become more competitive and attractive to foreign investors.

In fact, under the former regime, still in force, CIT taxation of the Funds is levied in separate and independent tranches on the different categories of income provided in the Personal Income Tax Act (PIT) in accordance with the rules applicable to each of those categories.

In addition to the limitations on CIT-deductible expenses, the former tax regime does not allow for tax losses computed in a certain year in respect of a specific category of income to be offset against tax profits computed in respect of another category of income; on the other hand, tax losses computed in a certain year cannot be carried forward and deducted against future tax profits (even if computed within the same category of income).

Although income distributed by Portuguese Funds to non-resident Investors was already exempt from taxation in Portugal, non-resident Investors could not obtain, in their countries of residence, a tax credit on the CIT paid by the Portuguese Funds themselves.

The new tax regime will not trigger such downsides, because results obtained by the Funds related to capital income, real estate rental income and capital gains (i.e., most of the income obtained by the Funds) will be excluded from CIT.

Portuguese Funds will become subject to Stamp Duty, which will be levied over the global net value of the Funds, at a 0.0025% rate, for Funds which, exclusively, invest in money market instruments and deposits, and at a 0.0125%, for other types of Funds.

The new regime, now approved by Decree-Act 7/2015, of 13 January, will only come into force on 1 July 2015. Funds already existing by that date will have to file their CIT return by reference to 30 June 2015 and pay it in the following 120 days.