

NATIONAL FRAMEWORK FOR COMPANIES' INCENTIVE SYSTEMS: DECREE-LAW NO. 6/2015, 6 JANUARY

Under the program «Estratégia Europa 2020» and according to national strategic options, the Government recently approved¹ the national framework for companies' incentive systems (herein referred to as NFCIS), by means of Decree-Law no. 6/2015, 8 January, which entered into force on 9 January 2015.

Recognising the importance of enterprises, especially small and medium-sized enterprises (SMEs), and the role that direct incentives have as an important instrument of public policy for economic dynamism, the decree-law establishes the general rules which regulate, in an economically rational way, supported investments and the means by which the State will grant incentives to companies from now on. The incentives granted to investments made in the territory of the Autonomous Regions of Madeira and Azores are excluded from the scope of the NFCIS.

The aim of the NFCIS is to establish a general framework under which will be approved, by ordinance, the specific regulations of each incentive system, which is the reason why this decree-law focuses only on matters common to all those systems, leaving the definition of most conditions of the incentive systems to those specific regulations.

The NFCIS shall apply, namely, to incentives granted under the Structural and Investment European Funds (SIEF), excluding, however, the following incentives: (i) of a fiscal nature; (ii) in the primary sectors of agricultural production, animal production, hunting and forests, apart from a few exceptions; (iii) in the fisheries and aquaculture sectors, apart from a few exceptions; (iv) granted by the IEFP, I.P., without prejudice to the European rules on State Aid.

Among the matters governed by the NFCIS are:

- a) the definition of the guiding principles for granting incentives;
- b) the creation of a technical commission, which will assess the compatibility of each incentive system with the NFCIS and with applicable European standards;

- c) the establishment of policy areas that may be subject to an incentive system, namely: (i) research and development (R&D); (ii) innovation and business competitiveness; (iii) internationalization; (iv) qualification of SMEs; (v) energy and environment; (vi) entrepreneurship; (vii) vocational training; (viii) job creation in SMEs; and (ix) culture, heritage conservation and audio-visual works.
- d) the prediction of some criteria and obligations of the beneficiaries of the incentives, the most relevant being: (i) the situation regularized before tax administration, social security, and entities paying the incentives; (ii) to own or guarantee the human and physical resources necessary for the development of the project; (iii) to present a balanced financial situation; (iv) to not affect to other purposes, lease, dispose of or otherwise encumber the goods and services acquired under the projects supported without prior authorisation, during the agreed period of the incentive; (v) to maintain the supported investment for the respective activity.

The NFCIS further regulates an important aspect of the incentives to be granted, providing the form that, under its scope, they may assume. Thus, incentives granted to companies may assume one of three forms:

- a) Redeemable incentives;
- b) Non-redeemable incentives;
- c) Interest-rate subsidy, provided that they are not integrated in securities.

However, the NFCIS allows a large number of conditions of the incentive systems to be set on specific regulations, thus allowing the ordinances to define, with the limits mentioned above, (i) policy areas, (ii) sectorial scope, (iii) special criteria of eligibility of the beneficiaries and projects, (iv) specific obligations of beneficiaries, (v) the majority of the rules on eligibility of costs and (vi) the arrangements for the submission of projects and the respective selection, decision and follow-up procedures. The decree-law does not set the deadline for the approval of the specific regulation.

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¹ Pursuant to the approval of Decree-Law No. 159/2014, 27 October, which establishes the general rules for the application of the Operational Programs and Rural Development Programs funded by the European Structural and Investment Funds.

TAX REFORM OF COLLECTIVE INVESTMENT UNDERTAKINGS
(UCI)**1. Taxation of UCI in CIT**

Decree-Law No. 7/2015, 13 January, which will enter into force in 1 July 2015, promoted the reform of the taxation of undertakings for collective investment ("UCI"), adopting a system for investors' taxation.

The income earned by UCI will not, in principle, be subject to withholding tax, therefore it is the investors that will predominantly be taxed when income is realized – which is a relevant issue regarding tax competitiveness of the UCI.

This new taxation regime for UCI is applicable to Real Estate Funds ("REF"), Securities Investment Funds ("SIF"), and to Securities Investment Company and Real Estate Investment Company.

The taxable profit of UCI is determined based on the net profit for the financial year; however, the following income is exempt:

- a) Investment income (interests and dividends);
- b) Income derived from movable and immovable capital gains; and,
- c) Real estate income, except when it comes from entities resident or domiciled in black listed jurisdictions.

Additionally UCI are exempt from municipal and State surcharge («*derrama municipal e estadual*»).

Non-exempt income is subject to taxation in accordance with the general rules of the PIT, including the general tax rate, currently 21%. The UCI may now benefit from the application of the general period for reporting tax losses (i.e., 12 subsequent taxation periods).

This decree-law further provides for the joint application of this regime with the regime of fiscal neutrality laid down for mergers, demergers or subscriptions in kind, and may in some cases allow an efficient transfer of assets (i.e., with the exemption of Municipal Transfer Tax («*Imposto Municipal sobre as Transmissões Onerosas*») and Stamp Duty «*Imposto do Selo*»), applicable to Portuguese resident entities, resident in the European Union or the European Economic Area.

2. Investors' Taxation

The income paid by UCI to their Portuguese resident investors (or investors with a permanent establishment in Portugal) is subject to taxation when it is realized in the following terms:

- i) Investor/natural person is subject to taxation in PIT (28% through final withholding tax);
- ii) Investor/collective person is subject to taxation in CIT (25%, in principle, deemed as payment on account of the final tax due).

Non -Portuguese resident investors who receive income from distribution or redemption of units in UCI in real estate are taxed at a rate of 10%.

Non -Portuguese resident investors who receive income due to the ownership of units in UCI in securities, including capital gains resulting from redemption or liquidation are exempt from PIT or CIT.

The income resulting from units in REF and shares in real estate investment companies, including capital gains resulting from the selling, redemption or liquidation of the units is considered income from immovable property obtained in Portugal.

This qualification has particular importance when applying the Double Taxation Treaties ("DTT") entered into by Portugal with other States, since, in principle, under DTTs the right to tax these incomes is attributed to the source State (i.e., the State where the property is located).

3. Taxation of UCI and Stamp Duty

These UCI are subject to specific Stamp Duty taxation.

The Stamp Duty is levied on the global net value (which corresponds to the average of the values reported to the Portuguese Securities Market Commission or disclosed by managing entities, with the exception of the value of assets relating to units or shares held in UCI covered by this regime) at a rate of 0.05%, through self-assessment (whose payment is made quarterly at a rate of 0.0125%), except for UCI which invest exclusively in monetary market instruments and deposits, which are subject to tax at a rate of 0.0025%.

4. Conclusions

- a) This regime enters into force on 1 July 2015;
- b) The entities that currently are UCI should carefully analyze this regime, in particular the transitional regime to be applicable;
- c) The entities that for the moment are not UCI should also carefully analyse this regime as it may be especially attractive under certain circumstances.

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