GARRIGUES updates

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PORTUGUESE SUPER TAX CREDIT IMPACTS ON CIT DURING 2013

In a moment where the government prepares to publicly unveil the corporate tax reform for FY2014, a Draft Bill was presented to the Portuguese Parliament for a special investment tax regime for qualified investments made in the second half of 2013.

The Super Tax Credit is part of a drive for promoting competitiveness and stimulating employment and direct investment still during this fiscal year and is expected to draw attention from taxpayers due to its very beneficial conditions.

As the word indicates, this incentive is an investment tax credit tax that may provide a significant offset against taxes otherwise payable. In general terms, the Super Tax Credit is equal to 20% of eligible investments made during 1 June 2013 and 31 December 2013 up to a maximum amount of €5 million per taxpayer, which then may be set off against 70% of the corporate tax due. The Super Tax Credit may be carried forward for five years, where the taxpayer is unable to (partially or fully) credit this amount.

Another interesting feature is that the Super Tax Credit is excluded from the minimum corporate tax liability mechanism – which currently determines that the final tax due cannot be less than 90% of the CIT payable in the absence of certain listed tax incentives.

This ultimately means that the Super Tax Credit may represent a decrease up to 7.5% of the effective CIT rate (excluding surtaxes) – as currently the headline CIT rate is 25%.

The following are examples of eligible investments:

(i) Investments on tangible fixed assets (except land, certain vehicles and non-productive assets) and non-consumable biological assets purchased in new condition and that come into operation or use by the end of the fiscal year starting on or as from 1 January 2014.

(ii) Capital expenditure on intangible assets subject to depreciation, namely expenditure on development projects; transfer of technology through the acquisition of patents, trademarks, licenses, production processes, models or other similar rights, additions to ongoing investments started after 1 July 2013.

Garrigues Portugal, SLP Sucursal

Av. Engº Duarte Pacheco, Torre 1 - 15º - 1070-101 Lisboa - Portugal – Tel. +351 213 821 200 Fax +351 213 821 290
Av. da Boavista, 3523 - 2º - 4100-139 Porto - Portugal – Tel. +351 226 158 860 Fax +351 226 158 888

There are a number of exclusions of the eligible investments, including expenditure relating to intangible assets acquired from related parties. Eligible investments should be maintained for a five-year period subject to a recapture rule.

Finally, the Super Tax Credit is open to all corporate taxpayers (companies or branches) whose profits are not determined under indirect methods and have their tax situation duly regularized.

COMMENT

International and national groups should review the terms of this Super Tax Credit as this may allow reducing effective CIT rate, which in Portugal may go beyond 30% due to the effect of the municipal and state surtaxes. A corporate taxpayer with eligible investments of €5 million with a potential headline CIT payable of €1 million may claim a Super Tax Credit of €700k for FY2013 - reducing its effective tax rate from 25% to 7.5% (excluding surtaxes). This Super Tax Credit is rather favorable when benchmarked with other similar investment tax credits in place in Europe. The Draft Bill although technically still subject to minor changes during the legislative process is expected to be approved rather swiftly and enter into force in the coming month.

For more information or if you wish discuss in detail any issues related to this alert, please contact your local Garrigues professionals:

Lisbon Office

Fernando Castro Silva
Tel. + 351 21 891 32 32
e-mail: fernando.castro.silva@garrigues.com

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