Portugal Issues New Tax Form for Payments to Nonresidents

by Francisco de Sousa da Câmara and Nuno de Oliveira Garcia

Francisco de Sousa da Câmara is a partner and Nuno de Oliveira Garcia is an associate with Morais Leitão, Galvão Teles, Soares da Silva & Associados in Lisbon.

The Portuguese government has issued a new tax form (model form 30) for payments to nonresidents regarding the tax identification number system for nonresidents who obtain income from Portuguese sources that are subject to withholding tax. The new form applies to payments made to nonresident individuals or entities without a permanent establishment in Portugal, and it must be filed via the tax authorities' official Web site (www.e-financas.gov.pt), asserting the amount of income paid to the nonresident and the amount of the corresponding withholding tax.

The form must be filed by 31 July each year, although an exceptional regime set up for 2004 allows for filing until the end of October 2004. The new regulation establishes that all forms claiming a waiver of withholding tax or a tax reduction under a double tax treaty must be set aside for a 10-year period.

Tax Treaty Applications

Until 31 December 2002, the procedures in force in Portugal for the application of double tax treaties, specifically those concerning the application of reduced rates, were not established by law. In fact the procedures were set out in Administrative Ruling 18/99 from the General Directorate of Taxes. However, many tax court decisions confirmed that the ruling was not binding on taxpayers. The ruling was revoked in 2002, and the applicable procedures are now regulated by the Corporate Income Tax Code (article 90 (3)-(5)), albeit in similar terms.

Nevertheless, beginning 1 January 2003, the deadline for claiming a refund of Portuguese tax withheld in excess of treaty rates was reduced from four years to two years. The new deadline begins on the date of the taxable event, instead of the date the tax was paid, as under the previous regime.

According to the new procedures, a beneficiary of Portuguese-source income can choose between two mechanisms for claiming reduced rates under a double tax treaty: application of the treaty rate on payment of the income, meaning that Portuguese tax would be withheld immediately at the treaty rates; or a refund of the Portuguese tax withheld in excess of the treaty rates, meaning that on payment, the tax is withheld at rates established by Portuguese domestic tax law.

New Standard Forms

According to article 90 (3) of the Portuguese Corporate Income Tax Code, the nonresident beneficiary must prove to the Portuguese paying entity that it meets the conditions to claim treaty treatment to avoid withholding tax or to benefit from reduced rates on the payment of income.

The nonresident beneficiary must deliver to the Portuguese paying entity a standard form duly filed and authenticated by the foreign tax authorities. Recently, the Portuguese Ministry of Finance approved new forms for claims for the avoidance of withholding tax or a reduction in the source of the Portuguese tax, and for claims for the partial refund of Portuguese tax, both under the terms of the double tax treaty signed by Portugal.

Previously, there were three forms: one for a reduction in the source of the Portuguese tax on dividends, interest, and royalties; one for a refund of excess tax withheld on the same three types of income; and, to benefit from other treaty dispositions, one that certifies tax residence, addressed to the beneficiary of the income that is resident in a state with which Portugal has signed a double tax treaty.

The number of forms has increased to 11, covering a variety of income. In fact a specific form now is required for two claims (one for tax reduction and the other for refund) for each of the following types of income:

- interest from debt securities;
- dividends from shares;
- dividends and interest, excluding dividends from shares and interest from debt securities;

- royalties; and
- income from pensions and dependent employment.

A residual category also has been created for "other income" derived from commissions, services rendered, and capital gains.

The new forms are more exhaustive about the identification of the financial intermediary resident in Portugal, which must have a tax identification number, and about the status of the beneficiary — notably, if it holds a participation, and in what percentage, in the share capital of the debtor/issuer of the income. Individual beneficiaries must further declare whether they belong to the statutory body of the debtor/issuer of the income.

All forms include three copies: one addressed to the Portuguese tax authorities, a second one for the tax authorities of the beneficiary's country of residence, and a third for the beneficiary of the income.

For every claim for a reduction in the source of tax, duly filed by the beneficiary and certified by the tax authorities of its country of residence, the form must be forwarded to the Portuguese tax withholding agent/debtor of income, which will allow for the application of the reduced tax rate provided for in the double tax treaty.

For every claim for a partial tax refund, duly filed by the beneficiary and certified by the tax authorities of its country of residence, the form must be presented to the Portuguese tax administration within two years from the date of the taxable event.

Finally, for every claim for the application of other benefits foreseen in the treaties signed by Portugal, the beneficiary must file the other income form, certifying it in the office of the tax authorities of its country of residence, and forwarding it to the Portuguese debtor of income.

A special regime was introduced for income derived from securitization units and bonds registered or deposited with a nonresident entity participating in an international liquidation system established in an EU member state, an OECD country, or a country that has concluded a double tax treaty with Portugal that complies with the conditions set forth in EC Directive 98/26/EC.

For the regime to be applicable, the nonresident entity must have agreed before the entity managing the international liquidation system not to provide registration or deposit services related to securitization units or bonds to Portuguese residents for tax purposes or to the PEs of nonresidents. The new standard forms described above are not applicable in that case, as the nonresident status that benefits from the tax exemption will be confirmed by the entity managing the international liquidation system to the resident entity with whom the securitization units and bonds are deposited or registered.

Conclusion

The new regime, together with the new forms and tighter control of payments to nonresidents, is expected to simplify the procedures for application of double tax treaties signed by Portugal and to allow for closer scrutiny of applicants. Taxpayers should ensure that they comply with the new regime. ✦