value exceeded the value of the consideration paid must be deemed a gift subject to the donor's tax.

Even without the BIR ruling, the FMV of the shares was clearly indicated on the CGT returns filed by Metro Pacific, the court found. It said that it could not simply ignore the company's own admission of what the FMV for the shares was.

The *en banc* court also rejected Metro Pacific's claim that the 2011 revenue memorandum circular, which found the initial BIR ruling lacked any factual or legal basis, was invalid. It said the company failed to show that it sought a review of the BIR ruling by the secretary of finance, as required under Revenue Memorandum Circular No. 44-2001, which grants 30 days for such an appeal.

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Portugal

Government Establishes Criteria for High-Net-Worth Designation

The Portuguese government has defined the term ''high-net-worth individual'' (HNWI) for the purpose of monitoring by the Large Taxpayers Unit (LTU).

An order approved by Secretary of State for Fiscal Affairs Fernando Rocha Andrade (Portaria No. 130/2016 of May 10) established the following criteria:

- income above €750,000;
- ownership, directly or indirectly, of wealth (including assets and rights) worth more than €5 million;
- a lifestyle commensurate with the above-mentioned income or wealth and/or possession of the related accoutrements; or
- the existence of a legal or economic relationship with HNWIs or with companies or entities that are followed by the LTU.

Other entities, including companies, continue to be subject to LTU monitoring if:

- they have turnover higher than €100 million, if they are supervised by the Central Bank or Insurance and Pensions Funds Authority, or have turnover higher than €200 million, in other cases;
- they are holding companies with an income in excess of €200 million;
- they have a total tax bill in excess of €20 million per year;
- they are companies that are considered relevant despite not meeting the above-mentioned criteria because of their relationship with the entities that do meet the criteria; or
- they make up part of a tax group for corporate income tax purposes and any of the companies meet the above-mentioned criteria.

In calculating income, it appears that individuals should include all types of categories of income, including capital gains and income that might be exempt from tax. This may be of particular relevance for a specific category of taxpayer — the nonhabitual resident (usually a foreign citizen who adopted Portuguese residence) — who might eventually benefit from specific income tax exemptions. However, because the majority of those exemptions require that some criteria are met, it is clear that the LTU will probably scrutinize this group of taxpayers, too.

As mentioned above, there is enough leeway and discretionary power for the tax authorities and the LTU to include some individuals who do not meet the objective criteria in the HNWI group by association with other taxpayers. This may lead to some quarrels, particularly considering that HNWIs are notified by the LTU that they are being monitored, and they remain within the monitored group for four years even if they fail to meet the criteria that led them to be considered an HNMI.

Given the strong media impact of the recent Panama Papers leak, the LTU will likely place a particular focus on all types of transactions or deals with offshore entities. However, other domestic and international aspects of the transactions of HNWIs, including payments of bonuses and restructuring operations, will certainly also be considered relevant.

It remains to be seen if the LTU will wait for HNWIs to meet the new criteria by the end of 2016 or if it will try to review and monitor previous tax years. Currently, the Portuguese statute of limitation is generally four years, which means that in 2016, the tax authorities may reopen tax assessments from 2012 onward.

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