

Portugal to Go Before ECJ Over Discriminatory Taxation

by Francisco de Sousa da Câmara and
José Almeida Fernandes

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The European Commission on March 6 filed a case in the European Court of Justice (C-105/08) against Portugal, citing its discriminatory provisions on the taxation of outbound interest payments.

After notifying Portugal of the discrimination in December 2005 and in July 2006 finding its response unsatisfactory, the commission has now decided to take to the ECJ its infringement procedure against the Portuguese state. (For the case filing, see *Doc 2008-9291* or *2008 WTD 82-10*.)

As a rule, nonresident lenders are currently subject to a 20 percent withholding tax levied on the gross interest paid by entities located in Portugal, whereas Portuguese-resident financial institutions benefit from an exemption on withholding tax and hence are taxed only on the net interest at the normal Portuguese corporate income tax rate.

Therefore, nonresident financial institutions may be subject to higher taxation than Portuguese-resident competitors, which the commission found discriminatory and thus contrary to the freedom to provide services and the freedom of capital established in articles 49 and 56 of the EC Treaty.

In light of recent ECJ case law regarding the establishment of temporal limitations to its decisions — whereby only pending cases at the date a decision is rendered may benefit from a ruling finding a tax provision contrary to EC tax law — foreign financial institutions that may have been or will be subject to Portuguese withholding tax on outbound interest payments should consider promptly initiating proceedings in the Portuguese tax courts. ♦

♦ *Francisco de Sousa da Câmara and José Almeida Fernandes, Morais Leitão, Galvão Teles, Soares da Silva & Associados, Sociedade de Advogados R.L.*