

Portugal to Go Before ECJ Over Discriminatory Taxation

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The European Commission on September 18 announced it will take Portugal before the European Court of Justice, citing Portugal's discriminatory provisions on the taxation of payments of services to non-resident service providers. The commission first notified Portugal of the discrimination in January 2007. (For the commission's news release, see *Doc 2008-19965* or *2008 WTD 183-15*.)

Nonresident service payments are currently subject to a final 15 percent withholding tax levied on the gross amount paid by entities located in Portugal, whereas Portuguese-resident service providers are taxed on a net basis at the normal Portuguese corporate income tax rate of 25 percent. Therefore, service payments received by nonresident service providers may be

subject to higher taxation than their Portuguese resident competitors'. The commission found this treatment discriminatory and contrary to the freedom to provide services established in article 49 of the EC Treaty.

In light of the recent ECJ case law on the possibility of the Court establishing temporal limitations to its decisions — whereby only cases pending at the date a decision is rendered may benefit from a ruling that finds a tax provision contrary to EC tax law — non-resident service providers that may have been or will be subject to the Portuguese withholding tax on outbound service 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.*