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# New Tax Benefits to Aid Corporate Reorganizations, Competitiveness

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## New Tax Benefits to Aid Corporate Reorganizations, Competitiveness

Decree-Law 185/2009, dated August 12, introduces several measures in Portugal to simplify the procedures for granting tax benefits for mergers and divisions or cooperation agreements.

Reorganizations involving companies resident in Portugal, in any other EU member state, or in a country with which Portugal has concluded a tax treaty — companies resident in listed tax havens are excluded — may benefit from the following tax benefits:

- exemption from the real estate transfer tax and stamp duty on the transfer of immovable property for the purposes of the merger or cooperation agreement;
- exemption from stamp duty on the incorporation, increase of capital, or assets of capital companies necessary for the corporate reorganization; and
- exemption from legal fees and charges on the deeds relating to the reorganization process, including notary fees and commercial registry fees.

Decree-Law 185/2009 amends the procedure taxpayers must follow to benefit from these tax benefits. Although these exemptions are still granted on a case-by-case basis and by request, the new decree-law introduces deadlines for the examination and assessment by the competent authorities of each application request and other clearances.

The decree-law simplifies and reduces the advance clearances required from other agencies. A project reorganization no longer requires clearance from the Portuguese Competition Authority. The relevant ministry responsible for the taxpayer's business sector must still confirm the substance and advantages of the projected reorganization, but that ministry must now provide its opinion within 10 days. Failure to comply with that deadline will result in a tacit approval of the taxpayer's request to confirm fulfillment of the necessary substance and advantage of the reorganization; any subsequent opinion of that ministry granted after the deadline will have no legal relevance.

The latter amendments will speed up the approval process and avoid delays caused by the failure of the authorities to timely reply to or confirm taxpayers' requests, which unnecessarily delayed taxpayers from successfully obtaining approval confirming entitlement to the tax exemptions.

Finally, the taxpayer should deliver the required written request to the Minister of Finance, as well as any other request for clearance required from other public entities, through electronic means. This is also aimed at simplifying and reducing red tape in obtaining the tax benefits.

### Competitiveness of Key Sectors

Tax benefits have been approved for investment in specific key sectors of the Portuguese economy. The package, known as the Regime Fiscal de Apoio ao Investimento (RFAI 2009), was approved by Law 10/2009, dated March 10, and is designed to enhance the competitiveness of those sectors in 2009. (For prior coverage, see *Tax Notes Int'l*, Feb. 2, 2009, p. 405, *Doc 2009-1768*, or *2009 WTD 17-3*.)

Companies eligible to benefit from RFAI 2009's incentives must be active mainly within the sectors of agriculture and agro-industries, forestry, energy, tourism, extractive and transformative industries (except for steel, shipbuilding, and synthetic fiber industries), and new generation broadband networks. For the purpose of this amendment, relevant investment is defined as tangible fixed assets, excluding investment that is not directly and strongly connected to the activities pursued by the company (for example, construction of buildings besides factory or administrative facilities); and investment in intangible fixed assets, such as costs associated with the transfer of technology, namely through the acquisition of patents, licenses, know-how, or technical knowledge not protected by any patent.

RFAI 2009 is expected to provide the following benefits:

- Corporate income tax benefits: an automatic earned income allowance of 20 percent of the relevant investment for investments not exceeding €5 million; 10 percent if the investment exceeds that amount. A company may not deduct more than 25 percent of the tax assessed. If the tax assessed is insufficient to achieve a full deduction (that is, if it is lower than 20 percent or 10 percent of the relevant investment), the regime also allows the remaining amount to be deducted over the next four years, on the same basis, until it has been fully deducted.

- Exemptions from the annual municipal real estate tax, up to a maximum period of five years, and from the real estate transfer tax for relevant investment to be determined by the competent municipal assembly.
- Exemption from stamp duty on the acquisition of buildings that constitute relevant investment.

## Conclusions

The above amendments are indeed favorable to companies willing to swiftly proceed with reorganizations or to invest in Portugal in a tax-friendly framework, but they are nevertheless legally complex because they still impose some significant additional obligations. Therefore, and considering that the particularities of a given case might change the legal framework, proper legal advice is recommended before making any reorganization and investment decision on the assumption that the above tax benefits are applicable to a specific operation. ◆

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