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COUNTRY DIGEST

Government Offers Details on Large Corporate Taxpayer Regime

Following a path already taken in countries such as Australia, Spain, and the U.K., Portugal recently introduced a tax unit dedicated to large corporate taxpayers (LCTs), and on March 25, the government announced the criteria for that tax category.

Major Portuguese companies and large multinationals operating in Portugal will be subject to closer tax scrutiny under the new LCT regime, which was established partly in response to OECD reports on improving tax risk management and compliance by major companies. It is not yet clear whether the regime will extend to branches of foreign entities.

Matters that will receive closer attention by the tax authorities include internal reorganizations (mergers, demergers, spinoffs, transfers of businesses, and so on); agreements with nonresident entities, especially those involving the payment of interest or royalties; transfer pricing; and operations that are at risk of being subject to specific antiavoidance rules or the Portuguese general antiavoidance rule.

A list of companies classified as LCTs will be issued soon and may be updated every year upon a decision adopted by the General Tax and Customs Authority.

Taxpayers covered by the new rules might view the LCT program as an opportunity to enhance cooperation with tax authorities and to clarify issues that may have led to unnecessary litigation in the past.

Portuguese law upholds the principle of equality in tax matters, but the government is taking the view that a tailored treatment of large taxpayers does not violate that principle because, despite being in the minority, LCTs contribute the largest portion of corporate tax revenue. The special tax unit was created to:

- ensure more personal assistance for LCTs;
- appoint a single tax agent to deal with LCTs;
- render pre-assessment assistance through a joint analysis of more technically complex tax matters;
- provide information about these taxpayers' positions, and address questions;
- evaluate and propose the acceptance of advance pricing agreements;
- promote inspections of taxpayers' accounts;
- rule on administrative claims presented by these taxpayers; and
- cooperate with the tax authorities in court.

The following entities are classified as LCTs:

- entities under the supervision of the Bank of Portugal or the Portuguese Insurance Institute with annual turnover (interest and commissions or gross premiums received) of more than €100 million;
- entities with annual turnover (relating to sales and services rendered) exceeding €200 million;
- holding companies (incorporated in accordance with Portugal's holding company regime) with total annual income exceeding €200 million (corresponding to the total shown on the profit and loss statement);
- entities that pay more than €20 million in taxes worldwide;
- companies that are members of a group that is subject to the special corporate income tax regime for groups of companies; and
- other entities that may be considered relevant.

The main benefit of the new regime is that LCTs will be able to confirm beforehand the tax authorities' position in relation to complex operations, including operations that may, a priori, be subject to antiabuse provisions. LCTs may request binding decisions from the tax authorities up to 90 days before the deadline for submission of the tax return, and the tax authorities must respond within the same time frame.

Nevertheless, LCTs operating in Portugal are advised to seek the counsel of their legal advisers in Portugal in order to avoid potential pitfalls while ensuring that they take full advantage of the features of the new regime. ◆

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