

## LEGAL ALERT

# APPLICABILITY OF THE TAX REGIME OF UCI INCORPORATED UNDER PORTUGUESE LAW TO UCI INCORPORATED UNDER A FOREIGN LAW

### ARBITRATION DECISION (CAAD) – PROC. NO. 194/2019-T

An arbitration decision was recently published in a case where a branch in Portugal of a *société civile de placement immobilier* incorporated under French law (and, according to it, equivalent to the variable capital real estate investment companies – SIICAV – under Portuguese law) claimed that it was being discriminated against Units of Collective Undertakings (UCI) incorporated under Portuguese law because branches in Portugal of non-resident companies are taxed according to the general framework foreseen in the Portuguese Corporate Income Tax Code whilst UCI incorporated and operating according to Portuguese law are taxed according to the special tax regime foreseen in article 22 of the [Portuguese Tax Incentives Statute](#).

The court upheld the company claim concluding that the difference in treatment represents an inadmissible discrimination as it is a restriction of the fundamental freedom of movement of capital foreseen in Article 63.º of the [TFEU](#), similarly to what the Court of Justice had decided in the *Emerging Markets Series of DFA Investment Trust Company* case ([EU:C:2014:249](#)).

The arbitral court acknowledges that the application of a more onerous tax regime to foreign UCI is a deterrent to their entry in Portugal and has declared illegal Article 22, no.1, of the Portuguese Tax Incentives Statute insofar as it limits the regime therein to

UCI in corporate form incorporated under Portuguese law, not including UCI in corporate form incorporated under the laws of other Member States of the European Union.

Tax team

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