Sérvulo & Associados | Sociedade de Advogados, SP, RL

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Update

Tax

Termination of the tax agreement between Portugal and Sweden: Legal and tax consequences from a Portuguese perspective

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On June 16th, 2021, Portugal was informed by Sweden of the termination of the Convention for the Avoidance of Double Taxation (or Double Tax Treaty – DTT) existing between the two countries since 2003. According to such communication, the DTT between Portugal and Sweden ceased its effects as of January 1st, 2022.

In 2018, Sweden renegotiated the DTT signed with Portugal, and, in May of the following year, a Protocol was even signed amending such DTT. However, since Portugal never ratified such Protocol, Sweden has decide to terminate the DTT altogether.

From a tax perspective, in the absence of a DTT, Portugal and Sweden are bound to abide by their internal legislations in matter of payments of income to entities or individuals residing in the other country.

Thus, this article will focus on the general tax framework applicable to such made payments from a Portuguese tax standpoint. The equivalent Swedish tax consequences should also be considered when reviewing any specific situation.

As a first rule, the DTT was not applicable to sales of goods. Thus, the rules outline below concern only provision of services and other sources of income, such as dividends, interest, royalties, rents and capital gains.

Corporate Tax consequences

Payments made by Portuguese companies to Swedish entities

Under the rules of the Portuguese Corporate Income Tax Code, a 25% withholding tax should be made on payments performed by Portuguese entities to Swedish ones.

Since the DTT is no longer applicable, the previously existing documentation which was used to eliminate or mitigate such withholding tax – namely form Model 21-RFI and Certificates of Tax Residence – are no applicable. Consequently, their presentation to a Portuguese entity will not change the latter's obligations considering the mentioned Portuguese tax law.

Hence, and unless agreed otherwise, a Swedish company with clients in Portugal may expect to receive less 25% on payments from Portugal than it did before (the gross is no longer a match to the contract's net value).

Portuguese companies cannot choose to waive this withholding tax anymore and, therefore, must withhold this amount from the payments to be made and deliver such tax to the Portuguese Tax Authorities until the 20th day of the month following the one regarding which the withholding tax relates to.

Payments made by Swedish companies to Portuguese entities

If the scenario is the opposite, then a Portuguese company that, for instance, renders services to a Swedish company may also expect to eventually receive a lower amount in light of any withholding tax that may be due under Swedish law.

In this case, the Portuguese company may benefit from a tax credit for international double taxation.

To this end, the income obtained abroad should be included in the company's taxable income for that year and a deduction is available to the Corporate Income Tax corresponding to the lowest of the following amounts:

- Income tax paid abroad;
- Fraction of the Corporate Income Tax, calculated before deduction, corresponding to the income that may be taxed in Sweden, accrued of the income received abroad and net of expenses directly or indirectly incurred to obtain it.

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When it is not possible to perform this deduction entirely in the tax year in question because the Corporate Income Tax due is lower, the remainder of the tax credit may be carried-forward to be offset against the tax due in any of the following five tax years.

This tax credit is obtained in the Portuguese companies' Corporate Income Tax return (Declaração Modelo 22) to be filed until the last day of May of the year following the one to which the tax relates to.

In light of the above, a withholding tax made in Sweden will just mean a temporary financial difference for a Portuguese company since the tax amounts will be recovered in the tax return. Nonetheless, there may be a potentially significant time gap between the withholding tax deduction and their recovery, especially if the Portuguese company is not able to recover the full amount at once, as above explained.

Personal Income Tax consequences

Payments by Portuguese resident individuals to Sweden

When it comes to individuals, someone living in Portugal and making payments to Sweden, within the scope of its private/non-professional activity, will not see any changes to its situation. No withholding tax obligations existed before and no withholding tax obligations will henceforth exist.

Payments received Portuguese resident individuals from Sweden

Income received from Sweden, such as private and occupational pensions, which was not previously subject to tax when paid out, may now be subject to withholding tax in Sweden.

Nonetheless, similarly to what was mentioned above for companies, individuals may recover the tax paid in Sweden in their Personal Income Tax in Portugal, through the same tax credit mechanism above explained.

This tax credit is obtained in the Portuguese companies Personal Income Tax return (Declaração Modelo 3) to be filed between April 1st and Jun 30th of the year following the one to which the tax relates to.

In light of this new tax framework appliable as of January 1st, 2022, we recommend a careful analysis of the transactions made between Portugal and Sweden is made prior to any payments to assure all the due legal obligations are complied with in both countries.

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