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February 2011

MOVING FORWARD TO INVESTMENTS BETWEEN PORTUGAL AND CHINA

With the continuous increase of Chinese investments throughout the entire world and, particularly, in Portugal, along with the inverse phenomenon, it is extremely important to acknowledge that Portugal has already entered into double tax treaties with China and Macau, which became important instruments to be considered by companies and individuals when moving forward with their international planning strategies.

The Double Tax Treaty entered into between Portugal and China

Within this context, we would like to emphasize the Double Tax Treaty entered into between Portugal and China, for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, signed at Beijing in 1998.

The mentioned agreement applies to taxes on income imposed on behalf of a Contracting State, which, in case of China, are the individual income tax, the income tax for enterprises with foreign investment and foreign enterprises, and the local income tax; and, in Portugal, personal income tax (IRS), corporate income tax (IRC) and local surtax on corporate income tax (derrama).

The agreement specifically provides that dividends, interest and royalties paid or arising from a company which is a resident of a Contracting State to a resident of the other Contracting State, may be taxed in that other State. However, such dividends, interest or royalties may also be taxed in the Contracting State in which it arises and according to their internal laws, but if the recipient is the beneficial owner of the dividends, interest, or royalties, the tax so charged shall not, in any case, exceed 10% of the gross amount of the dividend, interest or royalties.

Pensions (not resulting from public sector pay), are taxed only in the state of residence.

On the other hand, capital gains from personal property (as long as such gains do not relate to immovable property located in the other Contracting State, nor property that forms part of the assets of a permanent establishment or fixed installation that a company from one of the contracting states has in another contracting State) may be taxed only in the contracting State where the alienator is resident.

The pay of director’s fees in his capacity as a member of the board of directors of a company which is resident in one of the contracting States may either be taxed in the State of source and in the State of residence. The same applies to salaries, wages and other similar remuneration derived by a resident of a contracting State in his capacity as an official in a top-level managerial position of a company which is resident of the other contracting State.

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The elimination of double taxation in Portugal should occur in the following way:

a) When a Portuguese resident receives income which, under the terms of the agreement, may be taxed in China, Portugal will allow the deduction from the income tax of an amount equal to the income tax paid in China. This amount is, however, limited to the fraction of the income tax, calculated before the deduction, corresponding to the income that may be taxed in China;

b) When the income received by a Portuguese resident is exempt from tax under the agreement, Portugal may, nevertheless, take the exempt income into account in the calculation of the amount of the tax on other income (exemption with progression).

The Double Tax Treaty entered into between Portugal and Macau

A few months before 20 December 1999, when Macau became a special administrative region within the People's Republic of China, the governments of Portugal and Macau - which, for the purposes of the agreement, includes the peninsula of Macau and the islands of Taipa and Coloane - signed an agreement to avoid double taxation and to prevent tax evasion in the area of income tax. The agreement, which was signed in Macau on 28 September 1999 and came into force retroactively as from 1 January 1999, closely follows the Organisation for Economic Co-operation and Development's (OECD's) model.

The agreement specifically provides for the taxation of dividends, interest and royalties in the source country at the reduced rate of 10%.

Pensions (not resulting from public sector pay), as well as capital gains from personal property (as long as such gains do not relate to property that forms part of the assets of a permanent establishment or fixed installation that a company from one of the contracting states has in another contracting state) are taxed only in the State of residence.

The pay of members of the board of directors and of higher level professionals of companies from one of the contracting states may also be taxed in this state of source as well as in the state of residence.

The pay of salaried employees is taxed in the state of residence, but it may also be subject to taxation in the contracting state where the activity is exercised. This taxation arises when: the beneficiary remains there for a period or periods which exceed 183 days in total in any 12 month period beginning or ending in the financial year in question; the pay is from an employer or in the name of an employer that is resident in that state and the pay is funded from a permanent establishment or fixed installation that the employer has in that state.

The elimination of double taxation in Portugal should occur in the following way:

1. When a Portuguese resident receives income which, under the terms of the agreement, may be taxed in Macau, Portugal will deduct from the income tax an amount equal to the income tax paid in Macau. This amount is limited to the fraction of the income tax, calculated before the deduction, corresponding to the income that may be taxed in Macau.

2. When a company resident in Portugal receives dividends from a company in Macau in which the former has a direct capital share of not less than 25%, and the Macau company fulfils either of the following conditions: its main activity is air transport; or it is an industry in the sector of the transformation, production and distribution of electricity, gas and water, or in construction, accommodation or catering and is located predominantly in Macau.

Portugal will allow a deduction of 95% of these dividends included in the tax assessment base, as long as the said share of 25% has been held continuously for the two preceding years or, or since the date of incorporation of the Portuguese company (when more recent).

Finally, when the income received by a Portuguese resident is exempt from tax under the agreement, Portugal may, nevertheless, take the exempt income into account in the calculation of the amount of the tax on other income (exemption with progression).

In turn, in the elimination of double taxation in Macau, it should be considered that, when a Macau resident receives income that under the agreement may be taxed in Portugal, this income is exempt from tax in Macau (therefore by the exemption method).

If the 1999 agreement was made in the light of the need to regulate the relationship between the two tax authorities, shortly afterwards the Special Administrative Region of Macau began to manifest its intention to widen its network of agreements in order to avoid double taxation in all Portuguese-speaking countries as a way of attracting investment from them. This intention was made clear by the government of the Special Administrative Region of Macau when it introduced a bill entitled "Tax system in the case of regional or international double taxation". The bill was justified by the fact that economic development on both a regional and international level has boosted both transnational economic relationships and the phenomenon of the movement of people between a number of tax jurisdictions and these two circumstances have inevitably given rise to double taxation situations.

With the same issue in mind, Macau has already presented proposals to the other Portuguese-speaking countries and has widened the application of the agreements to be made to mainland China. All the countries involved have shown their willingness to open negotiations on this proposal and, in the meantime, an agreement was signed with Mozambique in 2007 and negotiations are taking place with the rest of the countries.

So the agreement made between Portugal and Macau, apart from being groundbreaking in achieving the aims of the Special Administrative Region of Macau, is also an increasingly important factor to be taken into consideration by businessmen and women, Portuguese investors in particular and Portuguese speakers in general, when making decisions related to their wish to expand their activity to the continent of Asia.

General overview of international double taxation in Portugal

International double taxation is an obstacle to trade relations and to the free movement of goods, services, people and capital. The need to eliminate this obstacle has become more acute in the current context, dominated by new technologies and by the internet. By regulating the right of the countries involved to levy taxes, it is possible to avoid the relocation of income and capital to other countries merely for tax purposes and boost (economic and other) ties between the countries in question.

Over the years, Portugal has signed fifty-two double tax treaties for the avoidance of double taxation on income tax, following the OECD Model Convention, with some reservations which are aimed essentially at ensuring a broader concept of permanent establishment and seek to raise the level of taxation in the source country with regard to dividends, interest and royalties. As a rule, the method used in the concluded treaties is that of the ordinary tax credit, although it should be noted that in some of the treaties, provision has been made for a matching credit or tax-sparing credit.

By circular issued on 13 March 2009 (No. 20137), the International Relations Services Department of the Directorate- General of Taxation again released the official list of all the international double tax treaties entered into by Portugal. An updated list has recently been made available in the internet site of the Portuguese tax authorities (www.portaldasfinancas.gov.pt).

The reason behind this release is that traders need up-to-date information about the existing agreements and the legal instruments which preceded their publication, the date on which they came into force and easy access to the rates of tax for situations where withholding tax is partially waived.

The treaties concluded by Portugal in accordance with this OECD model come into play only when those paying the income have the necessary forms for this purpose (21-RFI to 24-RFI), duly completed and authenticated by the respective tax authorities. These forms replaced the old forms (7-RFI to 18-RFI) in 2008. However, according to Circular No. 5/2008, of 7 March, issued in the meantime by the International Relations Services Department of the Directorate-General of Taxation, the Portuguese and
Spanish versions of forms (7-RFI to 18-RFI) will remain in force until the new forms in these two languages have been approved, in view of the fact that internal legislation obliges the respective tax authority to certify only documents drawn up in Spanish.

The following table lists the treaties for the avoidance of double taxation entered into by Portugal and published by the tax authorities, as it stands in the Portuguese tax authorities' internet site, at the present date:

COUNTRIES (alphabetical order)	LEGAL INSTRUMENT	EXCHANGE OF RATIFICATION INSTRUMENTS/ ENTRY INTO FORCE	REDUCTION RATE					
			DIVIDENDS		INTEREST		ROYALTIES	
ARGELIA	Parliamentary Resolution No.22/06 of 23 March	Notice 579/2006 published on 05-05-2006 **IN FORCE SINCE 01-05-2006**	10º	10% m) 15% b)	11º	15%	12º	10%
AUSTRIA	DL 70/71 of 8th March	Notice published on 08-02-1972 **IN FORCE SINCE 28-02-1972**	10º	15%	11º	10%	12º	5% b) 10%c)
BARBADOS	Signed in 22.10.2010	Not into force yet						
BELGIUM	DL 619/70, of 15 December Additional Convention (Parl. Res. No. 82/00 of 14 December)	Notice published on 17-02-1971 **IN FORCE SINCE 19-02-1971** Additional Convention IN FORCE SINCE 05-04-2001	10º	15%	11º	15%	12º	10%

BRAZIL d)	Parliamentary Resolution No. 33/01 of 27 April	Notice published on 14-12-2001 **IN FORCE SINCE 05-10-2001** effective from 01-01-2000	10º	10% m) 15% b)	11º	15%	12º	15%
BULGARIA	Parliamentary Resolution No.14/96 of 11 April	Notice 258/96 published on 26-08-1996 **IN FORCE SINCE 18-07-1996**	10º	10% e) 15% b)	11º	10%	12º	10%
CANADA	Parliamentary Resolution No. 81/00 of 6 December	Notice published on 17-10-2001 **IN FORCE SINCE 24-10-2001**	10º	10% m) 15% b)	11º	10%	12º	10%
CAPE VERDE	Parliamentary Resolution No. 63/00 of 12 July	Notice 4/2001 published on 18-01-2001 **IN FORCE SINCE 15-12-2000**	10º	10%	11º	10%	12º	10%
CHILE	Parliamentary Resolution No. 28/06 of 6 April	Notice 243/2008 published on 29-12-2008 **IN FORCE SINCE 25-08-2008**	10º	10% f) 15% b)	11º	5% r) 10% r) 15% b)	12º	5% r) 10% r)
CHINA	Parliamentary Resolution No. 28/2000 of 30 March	Notice 109/2000 published on 02-06-2000 **IN FORCE SINCE 08-06-2000**	10º	10%	11º	10%	12º	10%
COLOMBIA	Signed in 30.08.2010	Not into force yet						
CUBA	Parliamentary Resolution No. 49/01 of 13 July	Notice 187/06, published on 23-01-2006 (and Notice 279/05 of 29-07-2005) **IN FORCE SINCE 28-12-05**	10º	5% f) 10% b)	11º	10%	12º	15%
CZECH REPUBLIC	Parliamentary Resolution 26/97, of 9 May	Notice 288/97, published on 08-11-1997 **IN FORCE SINCE 01-10-1997**	10º	10% d) 15% b)	11º	10%	12º	10%
DENMARK	Parliamentary Resolution No. 6/02 of 23 February	Notice 53/2002, published on 15-06-2002 **IN FORCE SINCE 24-05-2002** effective from 01-01-03	10º	10%	11º	10%	12º	10%
ESTÓNIA	Parliamentary Resolution No. 47/04 of 8 July	Notice 175/04 published on 27-11-2004 **IN FORCE SINCE 23-07-2004** effective from 01-01-05	10º	10%	11º	10%	12º	10%
FINLAND	DL 494/70, of 23 October	Notice published on 22-08-1980 **IN FORCE SINCE 14-07-1971**	10º	10% f) 15% b)	11º	15%	12º	10%
FRANCE	DL 105/71 of 26 March	Notice published on 13-11-1972 **IN FORCE SINCE 18-11-1972**	11º	15%	12º	10% h) 12% b)	13º	5%

GERMANY	Law 12/82 of 3 June	Notice published on 14-10-1982 **IN FORCE SINCE 08-10-1982**	10º	15%	11º	10% a) 15% b)	12º	10%
GREECE	Parliamentary Resolution No. 25/02 of 4 April	Notice 85/2002, published on 24-09-2002 **IN FORCE SINCE 13-08-2002** effective from 01-01-03	10º	15%	11º	15%	12º	10%
GUINEA BISSAU	Parliamentary Resolution No. 55/09 OF 30 July	No Notice (not into force yet)	10º	10%	11º	10% r)	12º	10%
HOLLAND	Parliamentary Resolution No. 62/00 of 12 July	Notice 177/2000 published on 24-08-2000 **IN FORCE SINCE 11-08-2000**	10º	10%	11º	10%	12º	10%
HUNGARY	Parliamentary Resolution No. 4/99 of 28 January	Notice 126/2000 published on 30-06-2000 **IN FORCE SINCE 08-05-2000**	10%	10% e) 15% b)	11º	10%	12º	10%
INDIA	Parliamentary Resolution No. 20/2000 of 6 March	Notice 123/2000 published on 15-06-2000 **IN FORCE SINCE 05-04-2000**	10%	10% m) 15% b)	11º	10%	12º	10%
INDONESIA	Parliamentary Resolution No. 64/2006, of 6 December	Notice 42/2008, published on 04-04-2008 **IN FORCE SINCE 11-05-2007**	10%	10%	11º	10%	12º	10%
ICELAND	Parliamentary Resolution No. 16/02, of 8 March	Notice 48/2002, published on 08-06-2002 **IN FORCE SINCE 11-04-2002** effective from 01-01-03	10º	10% m) 15% b)	11º	10%	12º	10%
IRELAND	Parliamentary Resolution No. 29/94, of 24 June Review Protocol - Parl. Res. No. 62/2006, of 06-12-2006	Notice 218/94 published on 24-08-1994 **IN FORCE SINCE 11-07-1994** Notice 45/2008, published on 17-04-2008 – Review Protocol **IN FORCE SINCE 18-12-2006**	10º	15%	11º	15%	12º	10%
ISRAEL	Parliamentary Resolution No. 02/08 of 15 January	Notice 94/2008, published on 13-06-2008 and rectified by Notice 129/2008 published on 22-07-2008 **IN FORCE SINCE 18-02-2008**	10º	15%	11º	15%	12º	10%

ITALY	Law 10/82, of 1 June	Notice published on 07-01-1983 **IN FORCE SINCE 15-01-1983**	10º	15%	11º	15%	12º	10%
KOREA	Parliamentary Resolution No. 25/97 of 8 May	Notice 315/97 published on 27-12-1997 **IN FORCE SINCE 21-12-1997**	10º	10% e) 15% b)	11º	15%	12º	10%
KOWEIT	Signed in 23.02.2010	Not into force yet						
LATVIA	Parliamentary Resolution No. 12/03, of 28 February	Notice 138/2003 published on 26-04-2003 **IN FORCE SINCE 07-03-2003**	10º	10%	11º	10%	12º	10%
LITHUANIA	Parliamentary Resolution No. 10/03 of 25 February	Notice 123/2003, published on 22-03-2003 **IN FORCE SINCE 26-02-2003**	10º	10%	11º	10%	12º	10%
LUXEMBOURG	Parliamentary Resolution No. 56/00 of 30 June	Notice 256/2000, published on 30-12-2000 **IN FORCE SINCE 30-12-2000**	10.º	15%	11º	10% h) 15% b)	12º	10%
MACAO	Parliamentary Resolution No. 80-A/99, of 16 December	Notice 72/2001 published on 16-07-2001 **IN FORCE SINCE 01-01-1999**	10.º	10%	11.º	10%	12.º	10%
MALTA	Parliamentary Resolution No. 1/02 of 25 February	Notice 33/2002, published on 06-04-and rectified on 30-04-2002 **IN FORCE SINCE 05-04-2002** effective from 01-01-03	10º	10% m) 15% b)	11º	10%	12º	10%
MEXICO	Parliamentary Resolution No. 84/00, of 15 December	Notice 49/01 published on 21-05-2001 **IN FORCE SINCE 09-01-2001**	10º	10%	11º	10%	12º	10%
MOLDOVA	Parliamentary Resolution n.º 106/2010, of 2 September	Notice n.º300/2010 Published on 08-11-2010 **INTO FORCE SINCE 18-10-2010**						
MOROCCO	Parliamentary Resolution No. 69-A/98 of 23 December	Notice 201/2000 published on 16-10-2000 **IN FORCE SINCE 27-06-2000**	10º	10% e) 15% b)	11º	12%	12º	10%

MOZAMBIQUE	Parliamentary Resolution No. 36/92 of 30 December – Review Protocol (Parl. Res. No. 36/2009, of 8 May)	Notice 55/95, published on 03-03-1995 **IN FORCE SINCE**	10º	15%	11º	10%	12º	10%
NORWAY	DL 504/70 of 27 October	Notice published on 15-10-1971 **IN FORCE SINCE 01-10-1971**	10º	10% f) 15% b)	11º	15%	12º	10%
PAKISTAN	Parliamentary Resolution No. 66/03, of 2 August	Notice 6/08 published on 21-01-2008 **IN FORCE SINCE 04-06-2007**	10º	10% m) 15% b)	11º	10% o)	12º	10% p)
PANAMA	Signed in 27/08/2010	Not into force yet						
POLAND	Parliamentary Resolution No. 57/97, of 9 September	Notice 52/98 published on 25-03-1998 **IN FORCE SINCE 04-02-1998**	10º	10% e) 15% b)	11º	10%	12º	10%
ROMANIA	Parliamentary Resolution No. 56/99, of 10 July	Notice 96/99, published on 18-08-1999 **IN FORCE SINCE 14-07-1999**	10º	10% e) 15% b)	11º	10%	12º	10%
RUSSIA	Parliamentary Resolution No. 10/02, of 25 February	Notice 32/2003, published on 30-01-2003 **IN FORCE SINCE 11-12-2002** effective from 01-01-03	10º	10% m) 15% b)	11º	10%	12º	10%
SAN MARINO	Signed in 19/11/2010	Not into force yet						
SINGAPORE	Parliamentary Resolution No. 85/00, of 15 December	Notice 45/01, published on 11-05-2001 **IN FORCE SINCE 16-03-2001**	10º	10%	11º	10%	12º	10%
SLOVAKIA	Parliamentary Resolution No. 49/04 of 13 July	Notice 191/04 published on 04-12-2004 **IN FORCE SINCE 02-11-2004** effective from 01-01-2005	10º	15% b) 10% m)	11º	10%	12º	10%
SLOVENIA	Parliamentary Resolution No. 48/04 of 10 July	Notice 155/04 published on 31-08-2004 **IN FORCE SINCE 13-08-2004** effective from 01-01-05	10º	5% f) 15% b)	11º	10%	12º	5%

SOUTH AFRICA	Parliamentary Resolution No. 53/08 of 22 September	Notice 222/2008 published on 20-11-2008 **IN FORCE SINCE 22-10-2008**	10º	10% m) 15% b)	11º	10%	12º	10%
SPAIN	Parliamentary Resolution No. 6/95, of 28 January	Notice 164/95 published on 18-07-1995 **IN FORCE SINCE 28-06-1995**	10º	10% f) 15% b)	11º	15%	12º	5%
SWEDEN	Parliamentary Resolution No.20/03, of 11 March	Notice 3/2004 published on 02-01-2004; Notice 32/04, de 10-04-2004 **IN FORCE SINCE 19-12-2003** effective from 01-01-2000	10º	10%	11º	10% q)	12º	10%
SWITZERLAND	DL 716/74, of 12 December	Notice published on 26-02-1976 **IN FORCE SINCE 18-12-1975**	10º	10% f) 15% b)	11º	10%	12º	5%
TUNISIA	Parliamentary Resolution No. 33/2000, of 31 March	Notice 203/2000, published on 16-10-2000 **IN FORCE SINCE 21-08-2000**	10º	15%	11º	15%	12º	10%
TURKEY	Parliamentary Resolution No. 13/06, of 21 February	Notice 2/2007, published on 10-01-2007 **IN FORCE SINCE 18-12-2006**	10º	5% m) 15% b)	11º	10% p) 15% b)	12º	10%
UNITED ARAB EMIRATES	Signed in 17.01.2011	Not into force yet						
UNITED KINGDOM	DL 48497, of 24 July 1968	Notice published on 03-03-1969 **IN FORCE SINCE 20-01-1969**	10º	10% f) 15% b)	11º	10%	12º	5%
UKRAINE	Parliamentary Resolution No. 15/02, of 8 March	Notice 34/2002, published on 11-04-2002 and rectified on 30-04-2002 **IN FORCE SINCE 11-03-2002** effective from 01-01-03	10º	10% m) 15% b)	11º	10%	12º	10%
URUGUAI	Signed in 30/11/2009	Not into force yet						
USA	Parliamentary Resolution No. 39/95, of 12 October	Notice 35/96 published on 09-01-1996 **IN FORCE SINCE 01-01-1996**	10º	5% g) 10% g) 15% b)	11º	10%	13º	10%
VENEZUELA	Parliamentary Resolution No. 68/97, of 5 December	Notice 15/98, published on 16-01-1998 **IN FORCE SINCE 08-01-1998**	10º	10% i) 15% j)	11º	10%)	12º	10%k) 15% l)

NOTES:
a) When paid by banking entities;
b) In all other cases;
c) When the company controls 50% or more of the share capital;
d) Between 01-01-1972 and 31-12-1999, there was a double tax treaty between Portugal and Brazil approved by DL 244/71 of 2 June which was unilaterally terminated by Brazil. The lowest rate for dividends, interest and royalties was 15% and 10% on royalties, whenever literary, scientific or artistic work was in question. Its application was regulated by Circular No. 17/73 of 19 October;
e) When the actual beneficiary is a company that held 25% of the share capital of the payer for a consecutive period of two years prior to the time the dividends were paid, the rate may not exceed 10% of the gross amount of dividends paid after 31-12-1996. However, under Article 28 or 29 of the treaties in question, as this lower 10% rate is a withholding tax, it will only apply to situations where the chargeable event came about on or after January 1st of the year immediately after the year the treaty came into force;
f) When the actual beneficiary is a company which controls 25% or more of the share capital;
g) When the member is a company which directly held 25% or more of the share capital for two consecutive years prior to the payment of the dividends, the rate is 10% from 01-01-1997 to 31-12-1999 and 5% after 31-12-1999;
h) For bonds issued in France after 01-01-1965;
i) As from 01-01-1997. However, under Article 29(2)(a) of the treaty with Venezuela, as this lower 10% rate is a withholding tax, it will only apply to situations where the chargeable event came about on or after 01-01-1999;
j) Until 31-12-1996, as set out in Article 10(2) of the treaty with Venezuela. However, as this treaty only came into force on 08-01-1998, the lower 15% was never applied, nor will it be;
k) Technical assistance rate;
l) Rate for royalties in general;
m) When the actual beneficiary of the dividends is a company which directly held at least 25% of the share capital of the company paying the dividends for an uninterrupted period of two years prior to the payment of the dividends;
n) If the interest is paid by one company from a Contracting State where interest is considered a deductible expense to a financial establishment resident in another Contracting State;
o) However, interest deriving from a Contracting State will be exempt in that State under the terms of Article 11(a), (b) or (c) of the Treaty with Pakistan, if the condition set out therein are met;
p) The lower 10% rate still applies to "technical assistance payments" under Article 12(4) and (5) of the Treaty with Pakistan and has the same range.
q) However, the interest may only be taxed in the Contracting State where the actual beneficiary is resident if one of the conditions set out in Article 11(3)(a) to (d) of the Treaty with Sweden have been met;
r) See the article in question.

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Lisbon, 25 of February 2011
10/ 2011