Inheritance tax resurrected

VICKY RODRIGUES DISCUSSES THE RETURN OF INHERITANCE TAX IN PORTUGAL

PORTUGAL HAS A very beneficial inheritance tax system. In fact, inheritance tax has been replaced with stamp duty on gifts (lifetime and on death), payable at a fixed rate of 10 per cent, with total exemptions for spouses, issue and parents.

The recent elections in Portugal have brought the debate about the reintroduction of inheritance tax to the fore. The ruling Socialist Party (*Partido Socialista*) wishes to bring back the inheritance tax system, with the aim of inheritance tax contributing to a fairer and more inclusive society. There is also talk of the need to reinforce Portugal's current network of double-tax agreements, by including a specific provision for inheritance tax, which they currently do not have.

EVOLUTION OF INHERITANCE TAX

Inheritance tax was introduced in Portugal in 1911 (it was then called the registration contribution). It was replaced in 1958 by inheritance and gift tax.

In the 1970s, the country's *Constitution* was approved and it stated that the inheritance and gift tax should be progressive, so as to contribute to equality between citizens.[1] However, the inheritance and gift tax's contribution to the country's tax earnings was minimal and this led to it being abolished in 2004 and replaced with stamp duty on gifts (lifetime and on death).

CONCERNS FOR ADVISORS

It is presently unclear how the new inheritance tax will be structured. Traditionally, inheritance tax was a territorial tax (levied only on assets located within the Portuguese jurisdiction), with progressive rates depending on the degree of proximity between the deceased and the heir. There has been talk that there will be an exemption for estates valued at under EUR1 million, with either progressive rates or a fixed rate of 28 per cent above that value.

As a result of the present beneficial tax regime for lifetime gifts and transfers on death in Portugal, estate tax planning has not been a matter of primary concern. However, in light of the pending changes, advisors with clients who have assets in Portugal should ensure they are aware of these potential changes so as to make the most of the existing exemptions before the new tax is introduced.

Many clients have been opting to make lifetime gifts to their children, reserving the life interest (*usufruto*) for themselves. Others have restructured the ownership of their assets or invested in life insurance policies, which traditionally have fallen outside the scope of a deceased's estate.

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PORTUGAL'S TAX COMPETITIVENESS

There has been an appeal from all sectors of Portuguese society for the government to consider very carefully how it will structure this new tax, as Portugal has become an attractive destination for investors from a tax standpoint.

The non-habitual residents (NHR) tax regime has been an unprecedented success, bringing much-needed investment to the country. This regime provides that, as long as certain requirements are met, foreigners, as well as Portuguese individuals settling in Portugal after an extended period of living abroad, will receive their foreign income tax-free for a period of ten years. Qualifying income from certain categories received in Portugal is also subject to a flat rate of 20 per cent income tax. The NHR regime, coupled with the fact that no inheritance tax is payable by spouse, issue and parents on the investor's death, has made Portugal a retirement haven.

Portugal has also been able to attract non-EU nationals through its residency-by-investment scheme, known as the 'golden visa'. This is a fast-track scheme whereby investors who make a qualifying investment can obtain a fully valid residency permit in Portugal and visa-free travel throughout the 26 Schengen states for a minimum period of five years, with the option of applying for permanent residency thereafter. In addition, Portuguese citizenship may be applied for after six years, provided certain conditions are met.

It is hoped the new government will bear the above in mind when introducing its tax reforms, so as to ensure Portugal maintains its appeal for foreign investors. Equally important is that those who have already made their investment in light of the beneficial tax regimes currently available maintain their confidence in the Portuguese tax system.

As at March 2016, Portugal's state budget for 2016 was being analysed by the European Commission. There is no mention of inheritance tax in the budget at present, but we are keeping our ears to the ground.

1 Article 107, number 3; the text of the *Constitution* is available at www.servat.unibe.ch/icl/po00000_.html