

# Franco Caiado Guerreiro & Associados

Attorneys at Law

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### Legal

#### **MADEIRA FREE TRADE ZONE TAX BENEFITS**

**Portuguese Government confirms its commitment to maintain and perfect the Madeira Free Trade Zone tax benefits.**

**Companies duly licensed prior to 1<sup>st</sup> January 2003 to operate within the institutional scope of the Madeira Free Trade Zone are tax exempt until 2011 of: (i) corporate income tax, (ii) stamp duty, and (iii) withholding tax on profit distribution, among other benefits.**

Companies licensed after 1<sup>st</sup> January 2005 will be subject to corporate income tax at a special reduced rate of 2% (for 2005 - 2006) and 3% (for 2007 - 2011).

Holding, trading, management, trust and service providing companies in general can be incorporated.

**Holding companies (SGPS)** are privileged vehicles that may be used by European companies who seek to reduce the tax burden on their income from EU subsidiary companies, and by multinational companies located outside the EU who may set up holdings in Madeira as part of the world-wide network for fine tuning their fiscal planning with reduced costs.

The Madeira SGPS Holding Companies meet the basic requirements to qualify for exemption of withholding on dividends received from EU subsidiaries, according to the EU's Parent Subsidiary Directive.

Where the provisions of said directive do not apply, Madeira SGPS Holding Companies can rely on an extensive network of double taxation treaties (please find attached a full list of Double Taxation Agreements Portugal has entered into). The main advantage is the elimination of double taxation through a tax credit system (by allowing the deduction of taxes paid).

**Dividends paid to non-resident shareholders are not liable to withholding tax.**

**The Madeira SGPS Holding Companies also benefit from capital gain participation exemption regime.**

Madeira SGPS Holding Companies are also a tax-effective way of holding participations in subsidiary or related trading companies, including licensing

companies, and those for the collection of royalty, franchise or interest income, wherever located. If a trading subsidiary is in the Madeira International Business Center, then its income will be completely tax-free until 2011 if the subsidiary was registered before 2001. Taxation will rise to a maximum of 3% for companies founded after that date. Dividends distributed by such companies to non-resident shareholders are also free of withholding tax.

#### **DIRECT EFFECT OF EUROPEAN PROSPECTUS DIRECTIVE 2003/71/CE**

The CMVM (the Portuguese Market and Exchanges Commission) has recently published an opinion on the application of **European Prospectus Directive 2003/71/CE**.

The term for the transposition of said directive into National law was July 1st 2005. Nevertheless Portugal has not yet transposed said directive. Thus, it is the understanding of the CMVM that some of the rules of said directive that are not yet foreseen by Portuguese law have a direct effect and therefore individuals may enforce some of its rules. The CMVM considers that the following rules have a direct effect:

- 1) the definitions of "home Member State" and of "host Member State";
- 2) the non-application of the obligation to publish the prospectus for some determined types of offers;
- 3) the non-application of the obligation to publish the prospectus for certain types of securities;
- 4) the possibility of, in some cases, elaborating a prospectus composed of separate documents and the possibility of having a base prospectus;
- 5) the rules concerning the validity of the prospectus
- 6) the admission of incorporation of information on the prospectus by reference to previously or simultaneously approved documents and/or information;
- 7) the time limits for the approval of the prospectus by the competent authorities;
- 8) the community scope of approval of prospectus (which concerns the validity of prospectus approved in the host member state in another member state).

#### **THE "COMPANY ON THE HOUR" SERVICE**

The Portuguese Government has approved a special regime of immediate incorporation of companies in one day only. The "Company on the Hour" service will be available in any Commercial Register Office, regardless of the location of the future company's head office. It is a requirement that the share capital be paid in money and to choose one of the model articles of incorporation provided by the Commercial Register Office. The Commercial Register Office will also have a list of ready to use company names, but in alternative a company name previously approved by a certificate from the National Registry of Collective Persons can be used.

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### **Business**

#### **A 2530 MILLION EURO INVESTMENT – WIND GENERATING POWER PLANTS**

Wind energy was set out as a priority by the Portuguese Government for 2005-2009. Pursuant to this priority new wind generating power plants will be created in Portugal.

The investment associated with the project is estimated in a total sum of 2530 million euro, being carried out both by private and public entities, and will imply the implementation of an industrial cluster in Portugal.

For these purposes, the Portuguese Government will be launching soon public biddings for different energy capacity generating levels.

**PORTUGUESE GOVERNMENT IS TO SPEND BILLIONS ON INFRASTRUCTURE**

Prime Minister José Sócrates has announced a 25 billion euro investment programme to renovate infrastructures in Portugal over the coming four years through public-private partnerships, the biggest slice of spending, 33 percent or 8.3 billion euros, being allocated to transport projects.

A new airport at Ota, 40 km north of Lisbon, to replace the capital's airport is also amongst those investments.

A high-speed train (TGV) project linking Lisbon with Oporto and Madrid will also be given green light.

It was further announced that some of the investment package will be used to boost power-generating capacity in Portugal's energy sector, with the wind farm sector.

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This Newsletter is designed to provide a summary of the subject matter. It does not purport to be comprehensive or a substitute for specialist legal advice in individual circumstances.

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## DOUBLE TAXATION AGREEMENTS

Listed below are all the Double Taxation Agreements Portugal entered into:

Countries	Dividends	Interests	Royalties
Austria	15%	10%	5% / 10%
Belgium	15%	15%	10%
Brazil	10%/ 15%	15%	15%
Bulgaria	10%/ 15%	10%	10%
Cape Verde	10%	10%	10%
Czech Republic	10% / 15%	10%	10%
Denmark	10%	10%	10%
France	15%	10% / 12%	5%
Finland	10% / 15%	15%	10%
Germany	15%	10% / 15%	10%
Hungary	10% / 15%	10%	10%
Italy	15%	15%	12%
Ireland	15%	15%	10%
Luxemburg	15%	10% / 15%	10%
Malta	10% / 15%	10%	10%
Marrocos	10% / 15%	12%	10%
Netherlands	10%	10%	10%
Norway	10% / 15%	15%	10%
Poland	10% / 15%	10%	10%
Spain	10% / 15%	15%	5%
Switzerland	10%	10%	5%
UK	10% / 15%	10%	5%
United States	5% / 10% / 15%	10%	10%
Canada	10% / 15%	10%	10%
China	10%	10%	10%
Korea	10%	15%	10%
Cuba	5% / 10%	10%	5%
Slovakia	15% / 10%	10%	10%
Slovenia	5% / 15%	10%	5%
Estonia	10%	10%	10%
India	10% / 15%	10%	10%
Iceland	10% / 15%	10%	10%
Latvia	10%	10%	10%
Lithuania	10%	10%	10%
Macao	10%	10%	10%
Mexico	10%	10%	10%
Mozambique	15%	10%	10%
Pakistan	10% / 15%	10%	10%
Romania	10% / 15%	10%	10%
Russia	10% / 15%	10%	10%
Singapore	10%	10%	10%
Tunisia	15%	15%	10%
Ukraine	10% / 15%	10%	10%
Venezuela	10% / 15%	10%	10% / 12%