



# EALG

## EURO-AMERICAN LAWYERS GROUP

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### ***CHANGES TO THE PORTUGUESE TAX LAW CONCERNING THE PORTUGUESE PRIVATE INVESTOR***

*AN EURO-AMERICAN LAWYERS GROUP BRIEFING ARTICLE*

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#### **Preliminary Note**

This brief presentation summarises the Portuguese tax frame for the year 2006 on the perspective of a Portuguese individual investing in typical financial products (Equity/Bonds/Investment Funds) issued by Portuguese and non-Portuguese entities.

In this presentation we will compare the tax regimes for each financial product in order to obtain clear conclusions about «tax discrimination» among the financial products.

#### **Concept of Portuguese Resident for tax purposes**

The criterion: More than 183 days in a year

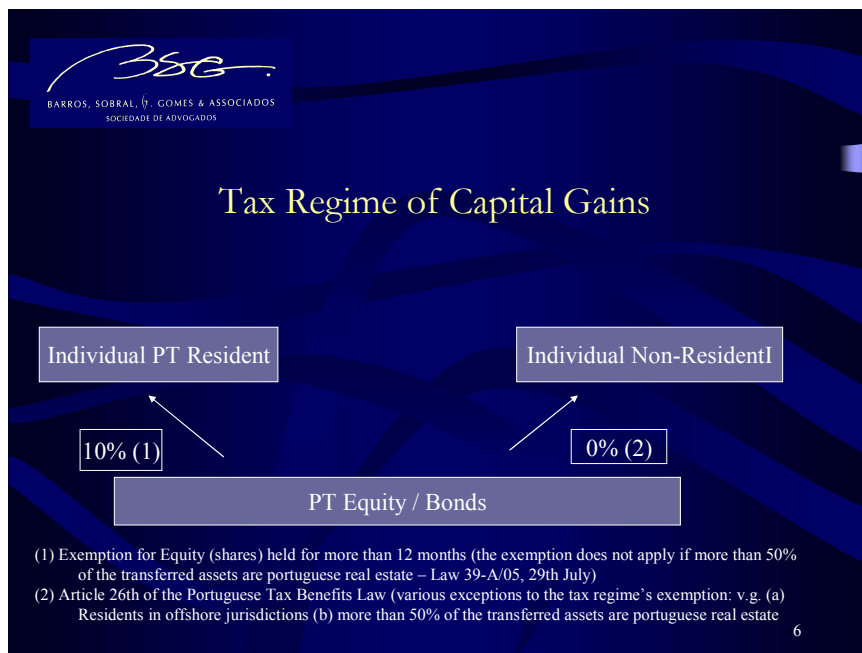
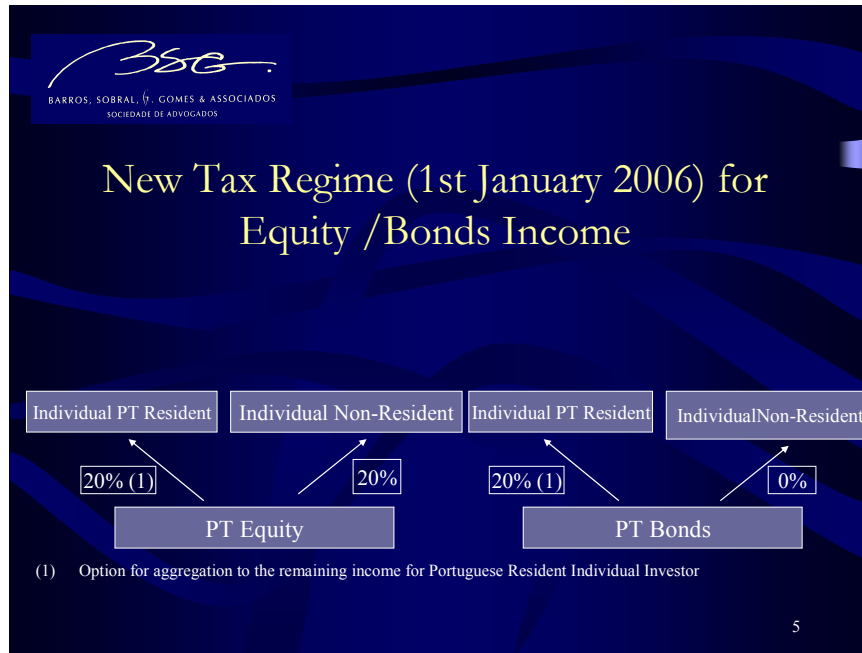
Other «residual» criteria, v.g.: When one of the spouses is a tax resident in Portugal, the other members of the family unit are also considered as Portuguese Tax residents.

Recently projected Changes: It will be possible (after 1st January 2006) to remove the above mentioned rule if one of the spouses provides evidence of the inexistence of a connexion between his/her activities and the Portuguese territory. (Under these circumstances, the Portuguese resident spouse must submit a single tax return for his/her own income).



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CHANGES IN THE PORTUGUESE TAX LAW  
AFFECTING INDIVIDUAL INVESTORS  
JANUARY 2006  
PAGE 2 OF 4

**New Tax Regime (1st January 2006) for Equity /Bonds Income**





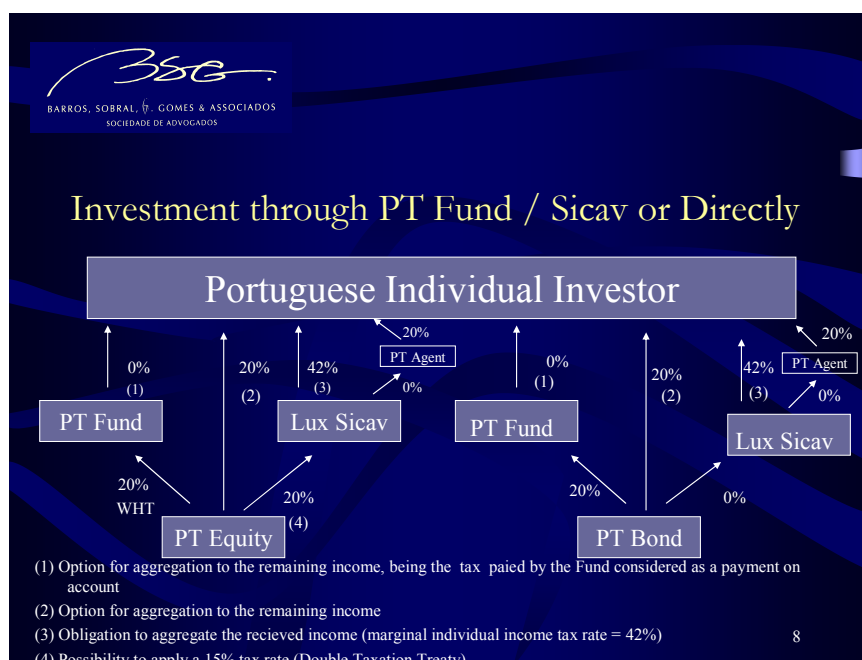
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CHANGES IN THE PORTUGUESE TAX LAW  
AFFECTING INDIVIDUAL INVESTORS  
JANUARY 2006  
PAGE 3 OF 4

**Participation Units:**

Acquisition of Participation Units by the Fund itself Redemption is not qualified as capital gain.

Acquisition of Participation Units by the Fund itself Redemption is qualified as Securities Income for tax purposes.

**Portuguese Tax Discrimination of Foreign Funds**



Any investment in a foreign fund with no Portuguese payment or collecting agent will typically be taxed at the highest marginal rate (42% since 1st January 2006) and not subject to the flat rate of withholding tax applicable to holdings in domestic investments or foreign investments that we apply to a Portuguese paying agent or collecting agent.

**European Court decisions against Tax Discrimination:**

- European Court (C-118/96 «Safir»): The court decided that the national legislation which made the discrimination between resident and non-resident companies was precluded by article 59 (now article 49) of the Treaty related to the freedom of providing services through the EU.



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CHANGES IN THE PORTUGUESE TAX LAW  
AFFECTING INDIVIDUAL INVESTORS  
JANUARY 2006  
PAGE 4 OF 4

## Conclusions

- The Portuguese tax discrimination is less clear than other EU countries discriminations (like France discrimination - withholding tax discrimination)
- Portuguese government can argue that local paying agents or collecting agents are required to ensure fiscal cohesion in the tax regime
  - Namely Portuguese paying agents have reporting obligations to national tax authorities which provide them information to control the payments to Portuguese tax residents and bring cohesion to the tax regime.

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