

REPUBLIC OF CAPE VERDE

DRAFT

FISCAL LEGISLATION

LAW PROPOSAL TO ALTER THE TAXATION LAW

JUSTIFICATION NOTE

In compliance with the principle of legislative economy, the Government proposes to join into one law some alterations to the fiscal regime in effect, even if dictated by different considerations of public interest.

1. In the first place, by executing the public announcement of the extinction of double economic taxation, the regime whereby the entrepreneurial profits are first taxed in the company that generates them and, when distributed, they are again taxed, now at the level of the respective beneficiaries. The cape-verdian legislation, as many others, used to recognize the ill—foundation of this dual taxation and mitigated it by granting a partial tax credit to the receiver of the distribution. As with many other measures of commitment, it maintained an unjust distortion, all the more accentuated as the notion prevailing today that it must be eradicated, both by reason of justice, as well as for tributary competitiveness.

2. In another order of considerations, it is believed that the installation in Cape Verde of foreign capital enterprises may be an important factor in the creation of health. Thus it was judged by countries such as the United States, the United Kingdom, Ireland, Holland, Luxemburg and an appreciable number of insular states adjacent to Europe and to America. The latter, with minute populations lacking in extensive and varied natural resources, support their subsistence to a great measure by accommodating foreigners: the retreat for tourists and the shelter for capitals.

The legitimate capitals in search of fiscal shelter dispose of large supply of offerings from accommodating countries. It is difficult to compete with some from the United States of America and with the United Kingdom, to cite the most prominent examples of extension of the exemptions and the lightness of the formalities. Nevertheless, the offer of one more competitive fiscal environment, as long as it is free from practices considered harmful by the OCDE and designed against a civilized political and juridical background (democratic institutions, political stability, western political organization, efficient courts, security of persons and assets), supported by an extensive network of bilateral treaties of exclusion of dual taxation and served by infra-structures that are uncomplicated, modern, flexible and pro-actively cooperative in the areas of registration, notary, customs and taxation.

The creation of a receptive seductive environment for the foreign investor is not accomplished at once and by decree. It is an interactive process, in which experience shall go on suggesting the adjustments and necessary corrections, alongside the reform of the mentalities and attitudes of Public Administration and its employees, who are asked to evolve to less immediate and mechanically patrimonialistic criteria of public interest, without abandoning the best traditions of scrupulous and responsible observance of the law.

In the fiscal plan, it is essential to the desired competitiveness that, aside from the already spoken of fiscal exemption of the distribution of the cape-verdian corporate results and of the product of their liquidation, they observe that of:

- a) The results produced by participated non-residents of cape-verdian companies and the added value resulting from their alienation;
- b) The added value in the alienation of business parts on resident entities.

3. Finally, it is considered of the greatest importance that there be improvement in the operational conditions of the movable securities market by the concession of fiscal incentives to the institution of collective savings instruments, namely investment funds, both movable and non-movable. Traditionally, the funds reveal themselves very lucrative for three reasons:

- a) They are managed by experienced professional complements;
- b) They distribute the risks through a vast array of acquired assets;
- c) They promote the disciplined and rational demand of the assets in which they invest.

In this understanding, the Government promoted the publication of legislation regulating the operation of such funds, submitted to the supervision of the Bank of Cape Verde. It is now a matter of creating for them an attractive tributary environment, that foment the offers in instruments that expand, diversify and modernize the gamut of those pointed to collection of savings from the families. The regime now instituted is characterized by:

- a) Give equal value to the investment funds participation units to corporate parts for the purpose of exempting the distribution of the results;
- b) Tax exemption on the value added in their alienation;
- c) Reduction by 50% of the IUR tax in relation to the profits produced by the funds;
- d) Exemption of the funds with regard to the IUP pertaining to the transmission and added value of the non-movables in which they can legitimately invest and reduction of their rate by 50% in other cases where they may occur.

LAW N.º VI/04
of

By mandate of the People, the National Assembly, under the provisions of subparagraph h), number 1 of Article 176 of the Constitution decrees the following:

Article 1

1. A No. 4 is added to Article 2 of Law No. 127/IV/95 of 26 June, with the following reading:
"Article 2.º (General Principles)
 - 1.(...)
(...)
 4. *Dual economic taxation is eliminated and therefore the revenue from capitals consisting in the distribution of profits under any form, including those received in the liquidation of companies and collective investment organisms, are not subject to the IUR."*
2. New writing is given to the following provisions of Law No. 127/IV/95:
 - a) *"Article 5º (Of the personal taxation – Objective incidence)*
 - 1.(...)
(...)
 - 3.(...)
e) *Revenues from capitals: the interests, the revenues derived from participation shares or other analogous, with the exclusion of the certificates, or units, of collective investment organisms; the revenues originated by deferment in time of an installment or by late fees on the payment, the revenue from intellectual or industrial property or from experience acquired in the industrial, commercial or scientific sectors or yet those derived from technical assistance or from the use or the concession of the use or agricultural and industrial, commercial or scientific."*
 - b) *"Article 13º (IUR- Added values)*
 1. *The added-values are taxed by "liberating fees", after the added values have been deducted, the ones and the others attained by the onerous transmission of:*
 - a) *Corporate parts retained for less than one year by the transmitting party;*
 - b) *Other movable securities, with the exception of the certificates, or units, of participation in collective investment organisms, because they are exempt."*
 - c) *"Article 22º (IUR – "Liberating fee" for non-residents),*
 1. a) (...)
b) *Revenues obtained from the application of capitals, not exempt by force of No. 4 of Article 2."*
3. No. 3 is added to Article 21º, with the following writing:
"Article 21 (Fees – Taxing on companies)
 - 1.(...)
(...)
 4. *The fee applicable to the collective investment organisms shall be reduced to 50% of that due by the companies referred to in No. 1."*
5. Article 23 (*Attenuation of dual economic taxation*) of Law No. 127/IV/95 is eliminated.

Article 2

1. Article 72° of Decree-Law No. 1/96, of 15 January, is eliminated.
2. New writing is given to the following provisions of Decree-Law No. 1/96:
 - a) "Article 3° (Basis for personal taxation)
 - 1.(...).
 2. a) (...).
(...).
 - e) *Capital gains: the profits, the revenue deriving from participation shares or other analogous, with exclusion of the certificates, or units, of collective investment organisms; the revenues originated by deferment in time of an installment or late fee in the payment; the revenue from intellectual or industrial property or of acquired experience in the industrial, commercial or scientific sectors or yet those derived from technical assistance or from the use or concession of agricultural and industrial commercial or scientific equipment;"*
 - b) "Article 4° (Taxation Base for enterprises)
 - 1.(...)
(...).
 - 4.a) (...)
(...)
 - d) *Any revenues that derive from the application of capitals and are not exempted by law."*
 - c) Article 5° (Extension of the tax obligation)
 - 1.(...)
(...).
 3. a (...)
 - b) *Gains resulting from the onerous transmission of parts representative of the capital of enterprises with main office or effective leadership in cape-verdian territory, held for less than one year by the transmitting entity, or of other movable securities emitted by entities that have their main offices or effective leadership therein, with the exception of the certificates, or units, of collective investment organisms, because they are exempt."*
(...)
 8. *The following are excluded from the provisions of No. 1 of this article:*
 - a) *The revenues obtained by affiliates, branches, or any other overseas installation of cape-verdian enterprises;*
 - b) *The gains resulting from the onerous transmission of parts representatives of the capital of entities with main office or effective leadership in foreign territory, or of other movable securities emitted by entities that have main offices of effective leadership there;*
 - c) *The dividends and other forms of remuneration for the capital invested in shares, quotas, obligations and other debt titles emitted outside the cape-verdian territory by entities that do not have main-office or effective leadership in the latter, in compliance with the principle of elimination of double economic taxation."*
 - d) Article 27 (Profits)
 - 1.a)...

(...)

d) From financial operations, such as, interests, discounts, premiums, transfers, exchange oscillations and prizes for the emission of obligations, except for dividends and other participations in profit, in compliance with the principle of elimination of double economic taxation".

(...)

3. For the purpose of this tax, the profits or gains realized, by onerous transmission, no matter under what title it operates, in elements of the immobilized assets or in assets and securities maintained as reserve or for growth, with the exception of the profits realized with the onerous transmission of corporate parts held for one year or more by the transmitting entity and of units of participation in collective investment entities, are considered added values."

(...)

7. It is presumed that the profits from the application of the capitals referred to in Article 4 of this law, when gained or availed by contributors subject to the verification method, mainly those supplied by the partners to the corporations, are remunerated at the rate 10% per year, if a different rate is not included in the constitutive title or has not been declared."

Article 3

A new writing is given to No. 2 of Article 6 of Law No. 79N/98 of 7 December:

"Article 6 (Objective Innocence)

2. The following are excluded from this innocence:

a) The securities and added values referred to in subparagraphs b) and e) of No. 1, when the buildings are acquired by the patrimonies of non-movable investment funds or of pension funds, or alienated from them.

b) The added values realized by the enterprises that have as object and dedicate themselves to the purchase and sale of real estate property, that shall be taxed on the basis of the Sole Tax on Revenue."

Article 4 (Effective date)

This law goes into effect immediately.

Approved on _____

The President of the National Assembly, Aristides Raimundo Lima

Promulgated on _____

Publish it.

The President of the Republic, Pedro Verona Rodrigues Pires.

Signed on _____

The President of the National Assembly, Aristides Raimundo Lima