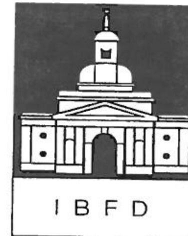
Share Buy-Backs by Listed Companies from Individual Minority Shareholders

Edited by

Dr Rijkele Betten



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FOREWORD

In many countries the acquisition by listed companies of their own shares has become a frequent phenomenon. In 1998, the Editorial Board of *European Taxation* organized a comparative study on such share buy-backs, which was published as a special issue of *European Taxation*, 1998, No. 11/12, pp. 363-446. Since then, some countries have introduced measures to enhance share buy-back transactions by listed companies, some have made major changes to their corporate tax systems that have an impact on the tax effects of share buy-back operations and yet others have amended the taxation of individual shareholders with respect to the proceeds of a share buy-back operation.

All in all, there appeared to be sufficient reason to update the 1998 survey, and to expand the survey with some then not covered countries (notably Spain and Sweden). This time the International Bureau of Fiscal Documentation has chosen to have the information published in the form of a bound book. The book is expected to become a useful tool for all those involved in this type of transactions worldwide.

Amsterdam, December 2001

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INTRODUCTION

Dr Rijkele Betten[1]

In many countries the acquisition by listed companies of their own shares has become a frequent phenomenon. In 1998, the Editorial Board of *European Taxation* organized a comparative study on such share buy-backs.[2]

Since then, some countries have introduced measures to enhance share buy-back transactions by listed companies. For instance, Austria introduced changes in its company law. In France clarity was provided regarding the tax treatment by a Guideline form the tax authorities. In Germany planning reliability was increased by a letter from the Federal Ministry of Finance. Japan repealed its rules regarding deemed dividend treatment for remaining shareholders. In the Netherlands certainty has been provided in the legislation regarding both the dividend and corporate tax aspects. However, new uncertainty has been caused in the Netherlands by the recently introduced "surtax". In Sweden legislation has been enacted that enabled share buy-back operations.

Some countries have enacted major changes to their individual income tax and/or corporate income tax systems that have an impact on the tax effects of share buy-back operations. The Netherlands introduced a new system for the taxation of investment income in the hands of individual taxpayers as of 1 January 2001. In the United Kingdom the ACT has been repealed. Other countries have introduced measures regarding the taxation of individual shareholders with respect to the proceeds of a share buy-back operation, or intend to do so yet. Belgium is considering the introduction of a 10% tax

1. International Bureau of Fiscal Documentation, Amsterdam. Tax advisor, Sint-Michielsgestel. The author gratefully acknowledges the useful comments by Prof. Mr D. Juch and Prof. Mr W.F.G. Wijnen on an earlier version of this introduction.
2. See 38 *European Taxation*, 1998, No. 11/12, November/December 1998, 363-446.

PORTUGAL

Ana Paula Dourado[1]

I. INTRODUCTION

Many listed companies in Portugal are currently considering acquiring their own shares for various interrelated reasons that do not differ much from the reasons for share buy-backs in other European countries. Although there is very little structured data on share buy-backs, they do often take place in Portugal and the tax regime for them was quite attractive until the recent tax reform introduced by Law G-2000 of 29 December 2000 (which has been in effect since January 2001; hereinafter: Law G-2000). Unlike the law in other European countries, Portuguese law neither prescribes the aims that may be pursued in share buy-backs nor requires that those aims be made public by the management or the general shareholders' meeting. Nevertheless, the company's annual report must provide information on the amount of its own shares that it has acquired during the year; the reasons for the acquisition and the costs thereof; the number of its own shares a company has sold, the reasons for doing this, and the proceeds obtained; and the number of shares owned by the company at the end of the financial year.[2]

Besides the traditional objective of reducing excess cash, share buy-backs may be used to achieve immediate or medium-term objectives, such as control of the share value on the stock market, as a defence against hostile takeovers, control of management, financing with warrants and convertible bonds, and providing stock options for the company's employees.[3] Reducing excess cash is of course an efficient way of reducing deadweight and implies devolution to the

1. Faculty of Law – University of Lisbon.
2. Under the *Código das Sociedades Comerciais* (Company Code; hereinafter: CC or the Code) and the Code of Movable Values.
3. Maria Vitória Ferreira da Rocha, *Aquisição de acções próprias no Código das Sociedades Comerciais,* Coimbra, 1994, at 103; João Labareda, *Das Acções das sociedades anónimas* (Lisbon: 1988), at 80, 98, 99.

shareholders of part of the company's assets. Share buy-backs and subsequent gratuitous alienation by a company of its own shares have also been used in Portugal to avoid paying tax.

II. COMPANY LAW

A. Scope of prohibition

The law on share buy-backs is the result of the EC harmonized system (Directive 77/91/EEC of 13 December 1976, hereinafter: the Directive), and is thus guided by the principle of conservation of capital and protection of creditors and third persons in general. Both Article 316 of the Company Code and Article 18 (2) of the Directive prohibit a company's original acquisition of its own shares, but accept it at later points in time in certain cases as specified by law.

It is also forbidden for a company to advance funds in the form of credit to third persons or to give a guarantee for such persons to acquire shares in the company's name and on its behalf. Besides, it is not possible for a third person to subscribe or acquire company shares in his or her own name but on behalf of the company. An exception is made for share buy-backs related to the current operations of credit and financial institutions. Nevertheless, privileged conditions of credit given by these institutions to certain categories of investors/debtors are prohibited.[4] Privileged conditions of credit given by credit institutions when they were privatized, to small subscribers and emigrants,[5] are considered illegal if the credit company later buys those shares.[6] Another exception covers the employees of the company or associated companies, as long as the company capital is preserved.

4. Art. 322 CC.
5. Under the Law of Privatizations (Law 11/90 of 5 April 1990), a part of the capital being privatized is reserved to small subscribers and emigrants.
6. Raúl Ventura, *Estudos vários sobre sociedades anónimas, Comentário ao Código das Sociedades Comerciais*, Coimbra, 1992, at 380.

In the past, the Company Code distinguished a company's own shares from shares owned by another company, even if the latter were controlled by the former. However, in 1995 the regime applying to the share buy-backs was broadened[7] to include associated companies.[8]

B. Share buy-backs: formal obligations and limitations

Articles 317 and 318 of the Company Code specify the permitted cases of share buy-backs and provide for the amount of shares that may be acquired by a company in relation to the total amount of the company's capital, the assets that may be used to pay for the shares, and the prohibition of acquiring shares that are not completely paid up.

The 10% limit[9] corresponds to the limit approved by the Directive. However, this limit may be temporarily exceeded in the exceptional cases listed, which can be justified by the fact that otherwise the company might suffer losses.[10] In order to buy back shares, a company may only use as payment those goods that it might distribute to the shareholders, provided that the value of these distributable goods is equal to at least twice the value of the payment of the acquired

7. Arts. 325-A and 325-B CC.
8. Rui Barreira, "Notas sobre o regime fiscal da alienação de acções próprias", in *Estudos em homenagem ao Professor Doutor Pedro Soares Martinez*, Coimbra, 2000, at 405-407. Barreira believes that this identical company law regime has no correspondence in the tax regime (there is no difference between alienation by a company of its of own shares among associated enterprises and alienation by a company of its own shares to independent shareholders).
9. Art. 317 CC.
10. Id., at 363. These exceptional cases listed in Art. 317 (3) CC are: if the acquisition results from the fulfilment of legislative rules which bind the company; if the acquisition is for purposes of capital reduction; if assets are acquired gratuitously; if the acquisition is made through a court order to collect debts from third persons or through a court settlement for the same purpose; if the acquisition is the result of legal proceedings or the company contract; if the shares are not paid in.

shares.[11] As a rule the company is forbidden to buy back shares that are not completely paid in.[12]

As a result of the Directive's harmonized regime, the general meeting is the competent corporate body to decide on share buy-backs.[13] However, the management may decide on such a buy-back if the decision is taken to avoid serious and imminent damage to the company.[14]

If the company's own shares do not exceed 10% of the capital, they may be held indefinitely; if they exceed this limit but were legally obtained, the company may hold them for a maximum period of 3 years;[15] illegally owned shares must be sold during the year following acquisition in cases when the law does not declare the situation invalid. The author is not aware of any rule that directly declares the invalidity of the acquisition and therefore one must conclude that the invalidity would result from other, general legal grounds.

Decisions of the general meeting about share buy-backs must fulfil all the following formal prerequisites:
- the decision must indicate the maximum and possibly the minimum number of shares that are to be acquired;
- the decision must specify the term, not to exceed 18 months in any case, in which the acquisition must take place;
- the persons from whom the shares may be acquired, if the decision does not require that they be acquired on the stock market and if the acquisition from identified persons is permitted; and
- the minimum and maximum counterpart in payable acquisitions (in order to guarantee a more transparent process, namely to avoid violation of the principle of equality).

Management may not carry out the buy-back if, at the moment of acquisition, the legal prerequisites have not been fulfilled.

11. Art. 317 (4) CC.
12. Art. 318 CC, with the exception of some of the cases listed in Art. 317 (3) CC.
13. Id., Art. 319 (1).
14. Id., Art. 319 (3).
15. Id., Art. 323.

The general meeting is also competent to decide about the sale of the company's own shares; however, the management may decide on the sale of the company's own shares when it is imposed by law. They must report on the reasons and circumstances for it in the following general meeting. The prerequisites of the alienation by the company of its own shares are the same as those in the case of acquisition.

As the holding by a company of its own shares means a coincidence between issuer and owner, the law has opted to suspend their juridical rights and effects.[16] In fact, rights attaching to a company's own shares are suspended while the company holds them[17] (except in the case of acquiring new shares if there is a capital increase resulting from the incorporation of reserves – unless determined otherwise[18]). In addition, an undistributable reserve corresponding to the amount of the company's shares must be formed[19] in order to save the company's capital stock.[20] Moreover, in case of company liquidation own shares have no autonomous value which avoids any damage among the other shareholders.

Shares acquired by the company as pledge or surety bond must be taken into account for the limit established,[21] with the exception of those used to guarantee the liabilities resulting from the exercise of corporate functions. In fact, every director must provide a surety bond as a guarantee for his possible responsibility towards the company.[22]

16. For a critical explanation of the Company Law regime, see Barreira, supra note 8, at 405-407.
17. Art. 324 (1) a) CC.
18. Labareda, supra note 3, at 106.
19. Art. 324 (1) b) CC.
20. However, as noted by Barreira, supra note 8, at 406-407, if this reserve was justified according to the accounting method determined by Decree-Law 47/77, of 7 February, such no longer exists with respect to the accounting method established by Decree-Law 410/89, of 21 November, because a company's own shares are now considered as negative value of the company capital
21. Arts. 325 (1) and 317 (2) CC.
22. Art. 396 CC.

Article 321 contains the principle of equal treatment of shareholders in the process of acquisition and sale of the company's own shares. The reasons for the acquisition (for example in the case of a merger or a demerger, or in the case of an acquisition resulting from a writ of execution, the principle of equality does not have to be observed) and price should be considered as elements of comparison.[23] The article aims at protecting minority shareholders and preventing an alteration of the company's internal equilibrium.[24] Decisions that do not respect the principle of equality may be invalidated by the competent court at the request of the fiscal board or any shareholder who voted against the decision taken.[25]

II. INDIVIDUAL SHAREHOLDER LEVEL

A. Acquisition by a company of its own shares that were held by individuals prior to Law G-2000

The company's acquisition of shares that were held by individuals may generate income treated as capital gains and taxed under the *Código do Imposto sobre o rendimento das Pessoas Singulares* (Individual Income Tax Code; hereinafter: IITC) like any other sale of shares – the income is not treated as a dividend.

Prior to Law G-2000, capital gains resulting from share buy-backs were only taxed if the shares were held by taxpayers (either resi-

23. See Ventura, supra note 6, at 369-370. It should be stressed that share buy-backs by a company always pose a problem of equality among shareholders, but sale may be directed to third persons, and the principle of equality among shareholders may not be converted into a shareholders' right of preference over third persons. It is furthermore argued that shareholders may accept a different treatment, which can be established in the company contract by unanimous decision.
24. Labareda, supra note 3, at 103. This is why the company has no preferential rights in the share buy-backs. See also Pedro de Albuquerque, *Direito de preferência dos sócios em aumentos de capital nas sociedades anónimas e por quotas* (Lisbon: 1993), at 203 et seq.
25. Art. 59 CC.

dent[26] or non-resident) for a period of not more than 12 months.[27] Thus if the shares were held for a period greater than 12 months, capital gains were not taxed; if there were capital losses, these were not deductible.

Non-resident taxpayers are usually subject to a final withholding tax, at different rates[28] depending on the category of income. This has been severely criticized by authors in the tax literature because the choice of different rates is considered to be arbitrary. However, taxation of capital gains has been provided for in a separate article.[29] Before the tax reform of Law G-2000 this article provided for a special final rate of 10%, which applied for both resident and non-resident taxpayers.

Thus, resident taxpayers were also subject to this regime, unless they opted to include the capital gains (or the difference resulting from deducting capital losses from capital gains) with all other categories of income, which, after personal and other deductions, would form the tax base for the progressive personal income tax.[30] Resident taxpayers could only opt for this special regime if the capital gains resulted from the sale of assets and other movable values as indicated in Articles 75 (1) and 10 (1) b) IITC. Other capital gains should be included with other categories of income in order to calculate the progressive tax rate. If the special regime was chosen, the tax rate applied to the difference of capital gains and capital losses was final.

As regards resident taxpayers, and as imposed by Article 104 (1) of the Constitution, personal income tax should take into account global income and subject it to tax at progressive rates. However, until the deduction of personal allowances, the Individual Income Tax Code uses the technique of isolating categories of income,

26. References to residents in this chapter are to those who are resident in Portuguese territory.
27. Art. 10 (2) b) IITC.
28. Id., Art. 74.
29. Id., Art. 75.
30. Id., Art. 75 (1) and (2).

which form a partially analytical system in order to determine net income. Furthermore as illustrated by the just mentioned capital gains regime, some categories were not subject to global and progressive taxation and this raised doubts about the constitutional character of such a regime.

The justification for the special rate was the "irregular feature" of capital gains for most taxpayers.[31] According to this reasoning, which was highly questionable, it would be unfair to impose a progressive tax rate on this type of income.[32] Other reasons have been mentioned that seemed to be more significant, namely the aim of attracting savings and stimulating the stock market.[33] However, as mentioned above, the law provided for the possibility of including capital gains with the other categories of income, so that all income was subject to progressive taxation.

Whether the resident taxpayer opted for the final tax rate regime or preferred the general taxation system, if there were capital losses resulting from the sale of other shares or bonds, they could be deducted from the capital gains.[34] However, if the result was negative, the possibility of deducting capital losses was dependent on the taxpayer choosing the general taxation regime. In this case the capital losses could only be deducted in the following 2 years and only from the same category of income.[35] In any case, the option of general taxation was not very advantageous. It was, however, one way of preventing a loss of tax revenue.[36]

It was considered important at the time this regime of capital gains taxation was introduced to include the possibility of the capital gains

31. Miguel Cadilhe, "Em Defesa da reforma fiscal", *Fisco* 3 (1988), at 31 et seq. (Cadilhe is the Finance Minister responsible for the tax reform that introduced the personal income tax and the present regime of capital gains taxation).
32. Before the tax reform of 1988, most capital gains were not taxed.
33. See Cadilhe, supra note 31, at 32.
34. Art. 75 (1) IITC
35. Id., Art. 54 (3).
36. This aspect is referred to in the preamble to the tax code project. Cadilhe, supra note 31, at 33.

tax being withheld if the final tax rate regime was applied.[37] However, it is in fact very difficult to apply this solution in most cases. One example in which the tax in theory could be withheld, would occur if the shareholder concentrated shares and bonds in one institution responsible for administering his assets.[38]

Finally, the law required the shareholder, either resident or non-resident, to declare the capital gains which will be subject to assessment by the tax authorities.[39] Thus, a non-resident taxpayer must appoint a person to act as representative for this purpose.

It was also assumed by the Minister of Finance, at the time the regime was enacted, that the option of general taxation is not attractive as long as the rate was 10%, unless there is a very modest capital gain. Nevertheless, it was argued that this possibility was in line with the personal (and total net) income taxation principle and that there was no guarantee the tax rate would remain so low.[40]

As mentioned before, capital gains were excluded from taxation if the shares were held by an individual for more than 12 months.[41]

The tax authorities have been using the following methods to audit share buy-backs:

- financial institutions must communicate to the tax authorities, every year before the end of February, the total amount of shares and other movable property held by a taxpayer and subject to personal income tax, sold with their intervention, and the value of the disposed-of shares;[42]
- taxpayers buying shares or other bonds subject to capital gains taxation may not exercise any rights connected with those shares or bonds, directly or indirectly, unless they either prove that the

37. Id., at 33.
38. Id.
39. Pinto Fernandes, *Código do imposto sobre o rendimento das pessoas singulares – Anotado e Comentado* (Lisbon: 1997), at 342-343.
40. See Cadilhe, supra note 31, at 33.
41. Art. 10 (2) b) IITC.
42. Id., Art. 117.

acquisition was made with the intervention of a financial institution or that they notified the tax authorities of such acquisition;
- deposit of shares or other movable property subject to capital gains taxation must be substantiated by a document identifying the deposited property and issued by the financial institution; and
- drawing of shares or other movable property must be substantiated by a document issued by the financial institution, containing the identification of the property and the declaration that they were acquired with the intervention of the financial institution.

B. Treatment under Law G-2000 of the acquisition by a company of its own shares that were held by individuals

Taxation of capital gains at the individual shareholder level has been altered by Law G-2000, which was motivated, among other factors, to reducing taxation of dependent workers and to enlarging the tax base in order to reaffirm taxation according to the ability-to-pay principle (as one can read in the Preamble of the Law).

Thus taxation of capital gains (including those resulting from share buy-backs) is now taxed under Articles 10(2)b), 41 and 75(1) IITC.

In the case of a non-resident taxpayer, under the Individual Income Tax Code, capital gains are subject to the special rate of 20%.[43] However, Article 33 of the Statute of Tax Benefits[44] exempts these capital gains as long as:
- the individual is both a non-resident without a permanent establishment in Portugal and not a resident of any country or territory included in the list to be published by Ministerial Order of the Minister of Finance. (This list includes tax havens); and

43. Id., Art. 75 (1)
44. The scope of Art. 33 of the Statute of Tax benefits is now applied to non-resident individuals under Law G-2000 (Art. 39 (3)).

- the capital gains are not obtained on the sale of shares in the capital stock of resident companies, whose business assets are mainly composed by estate situated therein.

In the case of resident taxpayers, capital gains are now subject to global progressive taxation.[45]

The value of taxable capital gains is in both cases (residents and non-residents) the difference between capital gains and capital losses realized in the financial year.

However, determining the taxable base of capital gains accruing to resident taxpayers depends on the period during which the shares were held.[46] If the shares were held for a period of less than 24 months, then only 75% of the capital gains are subject to tax. If they were held for a period of 24 months or more, then only 50% of capital gains are considered. Finally, if the net value of capital gains is inferior to 100, they are not taxed, although they will be taken into account in order to determine the progressive tax rate.

III. COMPANY LEVEL

A. Acquisition

The company buying back its shares may not deduct the price paid to the selling shareholder if the objective of the acquisition is an immediate reduction of company capital.[47] In other cases, if the price paid is lower than the par value of the acquired shares, the question would be whether it may be deducted as a latent capital loss.[48]

45. Arts. 10 and 41 IITC.
46. Id., Art. 41.
47. Art. 24 (1) c) Corporate Income Tax Code (hereinafter: CITC)
48. Id., Art. 24 (1) a).

B. Period of ownership

As already mentioned, under the Code of Trading Companies, all rights attaching to a company's own shares are suspended during the ownership. Thus, because the company does not receive any income from its own shares, they are not subject to taxation during the period of ownership.

C. Alienation

If the company redistributes its own shares, the result is not treated as a capital gain under the rules of the Official Accounting Regulation. However, in the case of resident companies and permanent establishments of non-resident companies, the results may be treated under the category "variation in assets", which can lead to the same tax results.[49] Non-resident companies without a permanent establishment will be subject to a 25% corporate income tax rate,[50] in the absence of an applicable income tax treaty.

1. Alienation of a company's own shares to individual shareholders

In principle, individual shareholders will not be taxed as a result of the alienation of the company's own shares because there is no income resulting therefrom. The real value of the previously held shares already included the value of the company's own shares.[51] Thus, as the rights related to the company's own shares are suspended, the company's own shares are not relevant to the effect of distribution of profits. Taking into account that the Individual Income Tax Code, only taxes accruing income (as defined in the different predicted categories of income), alienation of a company's own shares to individuals is not taxed at this level. Only and if these

49. Id., Arts. 21 and 24.
50. Id., Art. 69 (2).
51. As results from the above-mentioned Art. 324 n. 1 (a) CC. In this sense, see Barreira, supra note 8, at 408-409, 418-419.

shares are later sold by these individual shareholders will capital gains be subject to tax.[52]

However, if the attribution of a company's own shares is not onerous, the problem of the company's tax avoidance may be raised. In this case the tax authorities have not allowed a deduction for the company's capital losses.[53]

It may also be asked if the gratuitous attribution of the company's own shares is not a disguised dividend distribution to shareholders. In principle the answer is negative if one considers that attribution of the company's own shares does not alter the amount of dividends that shareholders will receive.[54] However, this issue has not been clearly resolved, either by the tax authorities or by the courts.

Gratuitous acquisition of shares may furthermore be considered to be outside the scope of the gifts and inheritance tax if it is understood that there is no patrimonial benefit resulting from it.[55] However, there is also no clear solution to this issue, although one could argue that future alienation of the shares will bring capital gains.

2. Alienation of a company's own shares to the company's workers

The tax regime is different in the case of either gratuitous attribution to the company's workers or alienation of the company's own shares to the company's workers at prices less than those in effect on the market. In fact, these two cases normally correspond to stock option plans taxed as dependent labour income.[56] Income is either obtained at the moment of exercise of the stock option or similar right, or at

52. Id., at 418.
53. Arts. 17 and 23 IITC.
54. Due to Art. 324 n. 1 (a) CC. In this sense, see Barreira supra note 8, at 418-421, who considers that classification as dividends was only possible if the law expressly provided that gratuitous attribution of own shares was to be treated as distribution of dividends (at 421).
55. In this sense, see Barreira, supra note 8, at 411-412.
56. Art. 2 n. 3 (c) (7) IITC.

the moment of alienation or repurchasing of the option or similar right to/by the employer. In general, the resulting income corresponds to the positive difference between the market value at the time of granting the option and the price of exercising the option, minus what has been paid by the worker to acquire it.[57]

In 1991 a transitional special regime was applied if the shares were redistributed to the company's employees under a stock option plan. In this case, the employees benefited from a deduction of 50% of the income resulting from subscription and/or acquisition of shares under a stock plan in 1991, with a maximum of PTE 250,000.[58] Furthermore, the company could consider the "capital losses" resulting from the subscription[59] – and from alienation by a company of its own shares – to be costs. It was questioned whether the Statute of Tax Benefits attributed a new characterization (i.e. capital losses) to the "asset variation".[60]

3. Alienation by a company of its own shares to corporate shareholders

Considering that, as a result of the alienation of the company's own shares, there is no income resulting from it and that the real value of the previously held shares already included the value of the company's own shares;[61] considering that even if it is taken into account that the Corporate Income Tax Code contains a broad definition of profits,[62] which includes positive and negative variation in assets, it is understood that acquisition of these shares by corporate shareholders does not alter the assets and therefore is not taxed at this level.[63] Again, if the attribution of a company's own shares is not onerous, the problem of the company's tax avoidance may be raised.

57. Id., Art. 2 n. (14).
58. Art. 32-A (1)(a) Statute of Tax Benefits.
59. Id., Art. 32-A (1)(b).
60. For a critical review of this regime, see Barreira, supra note 8, at 426-427.
61. As results from the above-mentioned Art. 324 (1) a) CC. In this sense, see Barreira, supra note 8, at 408-409, 418-419.
62. "The difference between the values of net assets at the end and at the beginning of the tax period", under Art. 3 (2) CITC.
63. See Barreira, supra note 8, at 416-417.

IV. SUMMARY

In Portugal, the reasons why listed companies are currently considering share buy-backs do not differ much from the reasons companies have for doing so elsewhere. Under the harmonized company law rules, original share buy-backs are prohibited, but later acquisition is accepted in the situations specified by law. There are material and formal conditions established by law in order to guarantee the company's capital and the equality of shareholders. All rights attaching to the company's own shares are suspended, which has consequences for the tax regime.

With respect to the case where shares are sold to a company by individuals (individual minority shareholders), a new tax regime on capital gains was introduced by Law G-2000. Under this new regime, non-residents are exempt if the conditions of Article 33 (3) of the Statute of Tax Benefits are fulfilled, and residents are subject to global progressive taxation, although only a portion of the capital gains are included in the tax base. If the shares were held for a period less than 24 months, only 75% of the capital gains would be subject to tax. If they were held for a period of 24 months or more, only 50% of capital gains are considered.

During the period of ownership, because a company does not receive any income from its own shares, such shares are not subject to taxation.

If the company redistributes its own shares, the result is not treated as a capital gain.[64] However, in the case of resident companies and permanent establishments of non-resident companies, the results may be treated under the category "variation in assets", which can lead to the same tax results.[65] Non-resident companies without a permanent establishment will be subject to a 25% corporate income tax rate[66] in the absence of an applicable income tax treaty.

64. Under the rules of the Official Accounting Regulation.
65. *Arts. 21 and 24 CITC.*
66. *Art. 69 (2) CITC.*