



The Legal 500 & The In-House Lawyer  
Comparative Legal Guide  
Portugal: Tax

This country-specific Q&A provides an overview to tax laws and regulations that may occur in Portugal.

It will cover withholding tax, transfer pricing, the OECD model, GAAR, tax disputes and an overview of the jurisdictional regulatory authorities.

This Q&A is part of the global guide to Tax. For a full list of jurisdictional Q&As visit <http://www.inhouselawyer.co.uk/index.php/practice-areas/tax-second-edition/>



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## 1. **How often is tax law amended and what are the processes for such amendments?**

Usually the tax law (such as the General Tax Law, the Personal Income Tax Code, the Corporate Income Tax Code, the VAT Code) is amended yearly with the State Budget Law. The amendments are proposed by the Government and submitted to vote in the Parliament. Members of the Parliament proceed to a thorough analysis of the amendments and may present alternative provisions and/or other amendments to the law. Afterwards, all amendments are discussed and a vote is held. The approved amendments to the law are required to be enacted by the Portuguese President and are published in the Official Gazette (Diário da República).

Although amendments to the tax law are usually made with the State Budget Law, they may also occur during the year with a specific law.

These amendments generally correspond to technicalities. Amendments resulting in significant changes of tax law policy or taxpayers guarantees are less frequent. For instance, the Personal Income Tax Code has been significantly amended in 2000 and suffered several amendments in 2014. Usually, the amendments set forth in the State Budget Law are mere technicalities, related with tax deductions limits and compliance rules.

**2. What are the principal procedural obligations of a taxpayer, that is, the maintenance of records over what period and how regularly must it file a return or accounts?**

According to the tax law, the records shall be maintained for the taxpayers for a period of ten years. As a rule, the income tax return, both by individuals and corporate entities, must be submitted yearly by the end of May, respecting to the tax period of the previous year.

**3. Who are the key regulatory authorities? How easy is it to deal with them and how long does it take to resolve standard issues?**

The key regulatory authority which handles tax issues is Autoridade Tributária e Aduaneira (Tax Authority). As a rule, any tax issue may be dealt before a tax office. Standard and simple tax issues are usually solved immediately or, if not, within weeks. It is important to note that very simple issues may be solved by phone or by internet through the Tax Authority website in a feature called e-balcao, which allow taxpayers to address any issue.

**4. Are tax disputes capable of adjudication by a court, tribunal or body independent of the tax authority, and how long should a taxpayer expect such proceedings to take?**

As a rule, taxpayers may dispute any tax assessment or tax authority decision before a judicial court. Such tax disputes may take several years until a definitive decision is

taken.

Since 2011 it is also possible for taxpayers to dispute tax assessments and tax authority decisions before arbitral courts, allowing taxpayers to get a definitive tax decision in a 6-8 months period.

**5. Are there set dates for payment of tax, provisionally or in arrears, and what happens with amounts of tax in dispute with the regulatory authority?**

Each of the existing taxes in Portugal has different dates and procedures for the respective payment.

As an example, the CIT is paid in installments. Three payments on account of the final tax due in July, September, and up to 15 December of the year in which taxable income arises corresponding to 95% of the previous year's corporate tax assessment (for taxpayers with a turnover above EUR 500,000).

Generally, for tax litigation pending before the Tax Authority or in judicial proceedings, instead of paying the amount of tax in dispute, taxpayers may provide bank guarantees.

This solution has two advantages, in case of success in the pending case:

- The taxpayer does not need a request for reimbursement to the Tax Authorities;
- The taxpayer may be reimbursed for expenses related to the provision of bank guarantee (including Stamp Duty), by means of a request to the Tax Authorities.

**6. Is taxpayer data recognised as highly confidential and adequately safeguarded against disclosure to third parties, including other parts of the Government?**

As a general rule, officials and agents of the Tax Administration are required to keep confidential the data collected on the taxpayers situation and the personal information obtained in the tax procedure, including those arising from professional secrecy or any other duty of secrecy legally regulated.

Exceptions are provided for the following situations:

- (i) Authorization of the taxpayer for the disclosure of his tax situation;
- (ii) Legal cooperation of the tax administration with other public entities;
- (iii) Mutual assistance and cooperation of the tax administration with the tax administrations of other countries resulting from international conventions to which the Portuguese State is bound, whenever reciprocity is contemplated; and
- (iv) Collaboration with justice under the Code of Civil Procedure and Code of Criminal Procedure; and
- (v) Confirmation of the tax identification number and fiscal domicile to the entities legally competent to carry out the commercial, land or car registration.

It should be noted that under the Portuguese law, the publication of lists of taxpayers with outstanding tax debts does not constitute a breach of these confidentiality rules.

**7. Is it a signatory (or does it propose to become a signatory) to the Common Reporting Standard? And/or does it maintain (or intend to maintain) a public Register of beneficial ownership?**

Yes, Portugal is a signatory to the Common Reporting Standard (“CRS”). As such, the information concerning 2016 should to be reported by the financial institutions to the Portuguese Tax Authority until 31 July 2017 which, in turn, shall exchange information with the Tax Authorities of the remaining States until 30 September 2017.

Recently, it has been approved the Legal Regime of the Central Registry of Beneficial Ownership, transposing Chapter III of Directive 2015/849 of the European Parliament and of the Council of 20 May 2015.

This Registry shall be managed by the Institute of Registries and Notaries (IRN), a public institution that executes and monitors policies relating to registration, to ensure the

provision of services to citizens and companies in the field of civil identification and civil registration, nationality, land, commercial, movable and legal persons.

**8. What are the tests for residence of the main business structures (including transparent entities)?**

A legal entity is a tax resident if its legal seat or place of effective management is in Portugal.

**9. Can the policing of cross border transactions within an international group to be a target of the tax authorities' attention and in what ways?**

Yes. In the context of the implementation of the BEPS, the approach of the Tax Authorities on cross-border transactions occurs mainly in the areas of transfer pricing, aggressive tax planning and Country-by-Country.

**10. Is there a CFC or Thin Cap regime? Is there a transfer pricing regime and is it possible to obtain an advance pricing agreement?**

Yes. Both the Personal Income Tax Code and the Corporate Income Tax Code include CFC rules. Generally, any profits or income obtained by non-resident entities that are clearly subject to a more favorable tax regime, are imputed to the Portuguese resident taxpayers that hold either direct or indirectly, even if through a representative, fiduciary or intermediary, at least 25% of their share capital, voting rights or attribution rights over the income or the assets of those non-resident entities.

In what regards thin capitalization, the Corporate Income Tax Code used to have a rule preventing excessive debt between entities with special relations. Such rule was revoked in 2013 and was replaced by an earning stripping rule which limits the deductibility of net financial expenses to the higher of the following: (i) € 1,000,000; or (ii) 30% of EBITDA.

In what regards transfer pricing, it should be noted that Portugal has implemented since

2002 detailed transfer pricing legislation that broadly follows the guidelines of the OECD.

The Portuguese legislation follows the Organization for Economic Co-operation and Development's guidelines in respect of the taxpayers' ability to request the tax authorities to enter into unilateral, bilateral or multilateral APAs. Bilateral or multilateral APAs can only be concluded with countries with which Portugal has entered into a double tax treaty.

Under the Portuguese transfer pricing regime, when the Portuguese tax authorities make a transfer pricing adjustment for one party to the transaction, a symmetric adjustment must be made at the level of the other party. This is relevant for transactions between Portuguese resident related parties.

**11. Is there a general anti-avoidance rule (GAAR) and, if so, how is it applied by the tax authority? Eg is the enforcement of the GAAR commonly litigated, is it raised by tax authorities in negotiations only, etc?**

The Portuguese GAAR, introduced in 1999, was preceded in the mid-1990s by the introduction of specific anti-avoidance rules (SAAR) with an international focus, such as thin capitalization rules (1995), CFC rules (1995) and a series of rules dealing with low-tax jurisdictions, namely blacklisted jurisdictions.

The Portuguese GAAR entered into effect in 1999 and from the outset it has been considered that it would apply to both domestic and cross-border transactions alike. Therefore there has been no attempt to introduce any additional avoidance provision that would specifically target cross-border transactions.

**12. Are there any plans for the implementation of the OECD BEPs recommendations and if so, which ones?**

As an OECD member country, Portugal has progressively implemented BEPS recommendations. Each of the BEPS Actions has been implemented according to the following schedule and measures:

- Action 1: Implementation of VAT on business to customers digital service - Already implemented;
- Action 2: Portugal already contained anti-hybrids provisions before BEPS recommendations, which have now been strengthened with the Council Directive (EU) 2016/1164 of 12 July 2016 - Already implemented;
- Action 3: Portugal already contained CFC's legislation - Already implemented;
- Action 4: Existing legislation already has limitations on deductibility of financing costs, through the implementation of Earnings Stripping Rules, in line with the equivalent provision of the Council Directive (EU) 2016/1164 of 12 July 2016 - Already implemented;
- Action 5: Portugal enacted its 2016 Budget via Law No. 7-A/2016, which amends its existing Patent Box regime to be compliant with the OECD BEPS Action 5 recommendations;
- Action 6: Portugal has several Limitation of Benefits Clauses (LOB) in the network of Double Taxation Conventions, in particular focused on treaty-shopping and abuse of residence;

This framework was reinforced by Portugal's signing of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS. The Multilateral Convention offers solutions for Governments to close the gaps in existing international tax rules by transposing results from the OECD/G20 BEPS Project into bilateral tax treaties worldwide;

- Action 7: Review has not yet occurred;
- Actions 8-9-10: Provisions related to intra-group transactions are being reviewed, in line with the recent publication of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations - In progress.
- Action 12: Disclosure obligations relating to aggressive tax planning structures have already been implemented - Already implemented;
- Action 13: Portugal's Budget Law for 2016 introduced a Country-by-Country reporting obligation for multinational enterprises (MNE's) that is intended to provide the Portuguese Tax Authorities additional information of the MNE's activities for risk assessment purposes.  
Portugal is one of the countries that signed a multilateral competent authority agreement for the automatic exchange of Country-by-Country reports - In

progress;

- Action 14: Waiting for the implementation of binding arbitration procedure, to which Portugal is bound - in progress.

### 13. **How will BEPS impact on the government's tax policies?**

Priorities of the BEPS project in Portugal must be placed in the context of Portugal's membership of international organizations and their tax policies.

Because Portugal is an OECD member country, its tax policy has complied with the OECD recommendations on tax transparency and measures aimed at aggressive tax planning and abuse.

These are some current impacts on Portuguese tax policy:

- Higher taxation of outbound investment in non-cooperative jurisdictions;
- Anti-abuse rules such as CFC rules; and
- Limitations on interest deductibility, through the implementation of Earnings Stripping Rules.

In the future, it is expected that Portugal will continue to be guided by OECD standards, in particular through the implementation of the BEPS Actions that have not yet been completely transposed into the Portuguese tax system.

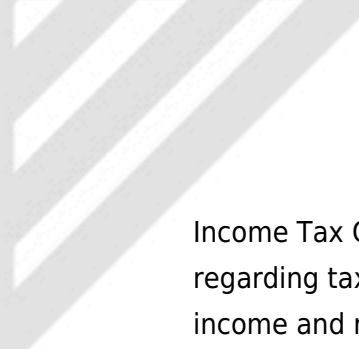
### 14. **Does the tax system broadly follow the recognised OECD Model?**

**Does it have taxation of; a) business profits, b) employment income and pensions, c) VAT (or other indirect tax), d) savings income and royalties, e) income from land, f) capital gains, g) stamp and/or capital duties.**

**If so, what are the current rates and are they flat or graduated?**

The OECD Model is broadly followed by the Portuguese Tax System. The Corporate





Income Tax Code and Personal Income Tax Code provide the specific domestic rules regarding taxation of business profits, employment income and pensions, savings income and royalties, income from land and capital gains. Such legislation is complemented by secondary legislation that deals with specific regimes (e.g. special tax regime for debt securities), as well as the 74 Double Tax Treaties signed by Portugal and currently in force.

The tax rates differ depending on the type of income and its beneficiary (individual or legal entity).

As a rule, the total income received by resident individuals (except certain passive income as dividends and interests, and capital gains derived from the sale of securities) is aggregated and subject to taxation at progressive rates, which start at a minimum of 14.5% to taxable income above EUR 7,091 and goes up to 48% for income above EUR 80,640. These rates are currently increased by a general “extraordinary surtax” which will be due for the tax year of 2017 as follows:

(i) 0% for taxable income up to EUR 20,261.00;

(ii) 0.88% for taxable income exceeding EUR 20,261.00 up to EUR40,522.00;

(iii) 2.75% for taxable income exceeding EUR 40,522.00 up to EUR80,640.00;

(iv) 3.21% for taxable income exceeding EUR 80,640.

If the taxable income exceeds EUR80.000, another “solidarity surtax” applies, which has a rate of 2.5% (between EUR80.000 and EUR250.000) and of 5% (to the taxable income exceeding EUR250.000).

Interest, dividends and capital gains derived from the sale of securities, received by individuals are, as a rule, subject to a definitive withholding tax at a rate of 28%, although the aggregation is possible.

As per legal entities, a flat CIT rate of 21% applies on the global amount of taxable

income realized by tax resident companies. The following surtaxes may also apply:

- A local surtax (“Derrama”) of up to 1.5% of taxable income, prior to the deduction of any available carry forward tax losses, is levied in certain municipalities;
- A state surtax (“Derrama Estadual”) applies (prior to the deduction of any available carry forward tax losses) at the following rates: (i) 3% applicable to the taxable profit exceeding EUR 1.5 million and up to EUR 7.5 million; (ii) 5% applicable to the taxable profit exceeding EUR 7.5 million and up to EUR 35 million; (iii) 7% applicable to the taxable profit exceeding EUR 35 million.

Autonomous taxation applies at different rates on certain expenses incurred by entities subject to CIT. All the rates of autonomous taxation are increased by 10% if the taxpayer has tax losses in the tax year in which the expenses are incurred.

The Portuguese tax system also comprises stamp duty. Stamp duty is due on acts, contracts, documents, titles, books, papers and other facts foreseen on the General Table, which occur in Portugal and are not subject or exempt from VAT.

The facts subject to Stamp Duty in Portugal are as follows, according to the respective rates:

- Acquisition for consideration or donation of property: 0,8%;
- Free acquisition of goods by individuals (Inheritance and gifts): 10%;
- Letting or subletting (applied on the amount of a month of rent): 10%;
- Guarantees (except when materially related to contracts already taxed in Stamp Duty): 0,04%, 0,5% or 0,6%, depending on whether the period is less than one year, more than one year or more than five years;
- Bet on games not subject to the special taxation regime: 25% (Mutual betting and other betting’s);
- Bingo prizes: 25%;
- Other prizes: 35%;
- Social State Games (included in the bet price): 4,5%;
- Social State Games (on the amount of the debt price that exceeds € 5.000): 20%

- Use of credit: 0,04% (depending on whether the period is less than one year or not determined), 0,5% or 0,6% (for period more than one year or more than five years, respectively);
- Consumer's credit: 0,07% (depending on whether the period is less than one year or not determined), 0,5% or 0,6% (for period more than one year or more than five years, respectively);
- Operations of/with financial institutions: 4% - interest and commission for financial services, including fees related to card-based payment operations; 3% - commission for guarantees; 2% - commission for insurance brokers.
- Bills and notes of hand: 0,5%;
- Sale of business: 5%;
- Net asset value of the collective investment vehicles: 0,0025% (for collective investment vehicles investing exclusively in money market instruments and deposits - assessed quarterly); 0,0125% (Other collective investment vehicles - assessed quarterly).

We also note that, in Portugal it does not exist neither wealth tax nor inheritance tax. Further to that, donations between parents/sons/spouses are exempt from Stamp Duty.

**15. Is the charge to business tax levied on, broadly, the revenue profits of a business as computed according to the principles of commercial accountancy?**

Portuguese resident companies and local permanent establishments of foreign entities are taxable on their taxable income, determined in accordance with accounting standards and subject to the Portuguese CIT Code provisions.

From 2010 onwards, the Portuguese accounting standards (Generally Accepted Accounting Principles - GAAP) follow closely the International Financial Reporting Standards (IFRS).

**16. Are different vehicles for carrying on business, such as**

## **companies, partnerships, trusts, etc, recognised as taxable entities? What entities are transparent for tax purposes and why are they used?**

There are different vehicles through which it is possible to develop a business activity in Portugal. There are companies (including transparent companies) and other structures (such as foundations, associations and cooperatives) recognized as taxable entities, similar to what happens in most states.

By means of the Decree-Law 352-A/88, the Portuguese Government authorized the establishment of trusts exclusively devised to off-shore activities within the institutional framework of the Madeira International Business Centre (IBC).

As Portugal is a non-Common Law jurisdiction it does not possess internal legislation to regulate Trusts which are limited - to the Madeira IBC. In accordance with the applicable Decree-Law, the Settlor shall expressly designate the law that will regulate the Trust.

The trust is fully exempt from taxation on dividends received from shares, royalties or interest received on the deposits. All (non-financial) income distributed from the trustee to the trust's beneficiaries is fully exempt of taxation provided these beneficiaries are corporate entities licensed to operate within the Madeira IBC or non-Portuguese resident entities/individuals.

Transparent entities in the Portuguese tax system are: civil-law companies not incorporated under a commercial form, incorporated firms of professionals and holding companies the equity capital of which is controlled, directly or indirectly, during more than 183 days by a family group or a limited number of members, under certain conditions.

For CIT purposes, the tax transparency regime also applies to ACE's Complementary Business Groupings (ACE's) constituted and operating in accordance with the applicable law and to European Economic Interest Groupings (AEIE's), treated as resident.

The transparency regime is essentially characterized by attributing to the shareholders or members of the transparent entity its taxable amount (or, in case of ACE or AEIE,

respective profits or losses), even in case of undistributed profits. Thus, the transparent entity is not liable to IRC, and the amounts attributed to the taxable income of its shareholders or members being therefore embodied for CIT or PIT purposes, depending on the specific case.

Where the shareholders or members of companies covered by the tax transparency regime are non-resident, there shall be considered derived income attributed to them through a permanent establishment situated within the Portuguese territory.

**17. Is liability to business taxation based upon a concepts of fiscal residence or registration? Is so what are the tests?**

Yes, liability to business taxation depends on the residence concept.

- Residents in Portugal are taxed on their worldwide income.
- Non-Residents are liable to income tax only on Portuguese-sourced income, which includes that portion of income that can be allocated to the activity carried out in Portugal.

**18. Are there any special taxation regimes, such as enterprise zones or favourable tax regimes for financial services or co-ordination centres, etc?**

Portugal has an International Business Centre in Madeira (MIBC). Among the list of activities and companies which are allow the current legislation allows the incorporation of new entities in MIBC until 2020, which may benefit of a reduced CIT rate of 5%, applicable over the taxable income until the end of 2027. Such tax rate is only applicable to profits derived from operations exclusively carried out with non-resident entities or with other companies operating within MIBC (Profits derived of business carried out with Portuguese companies is taxed at the general CIT rate of 21%) and are limited to a ceiling placed upon the annual taxable income, which varies according to the number of employees.

The applicability of this special tax regime depends on compliance with one of the following requirements:

(i) Creation of five jobs in the first 6 months of operation and undertake a minimum investment of €75.000 in the acquisition of fixed assets, tangible or intangible, in the first two years of operation;

(ii) Creation of six or more jobs in the first 6 months of operation.

**19. Are there any particular tax regimes applicable to intellectual property, such as patent box?**

In 2016, Portugal adopted a new patent box regime that follows closely the OECD BEPS Action 5 “modified nexus” approach. The Corporate Income Tax Code provides 50% exemption on the gross income derived from the assignment or temporary use of patents and industrial models or designs, as well as to any indemnities resulting from the infringement of those IP rights, as long as certain conditions are met. This regime is not applicable for income derived from an assignee resident in a blacklisted territory.

**20. Is fiscal consolidation employed or a recognition of groups of corporates for tax purposes and are there any jurisdictional limitations on what can constitute a group for tax purposes? Is a group contribution system employed or how can losses be relieved across group companies otherwise?**

Taxation under the special tax regime for groups of companies is available, to companies with head office and effective management in Portugal. The group taxation regime may apply, provided one of the companies directly or indirectly holds 75% or more of the statutory capital of the others and more than 50% of the voting rights.

The application of this tax regime depends on the fulfillment of the following requirements:

- Companies must be tax residents in Portugal (even if held through an EU or EEA group company);
- Companies must be subject to the normal regime of taxation at the highest corporate tax rate;
- Companies must maintain a minimum holding participation of 75%;

- All companies must be held by the parent company for more than one year (excluding newly incorporated companies);
- Companies cannot be inactive for more than one year;
- Companies cannot be dissolved or insolvent;
- Companies cannot have tax losses in the three years prior to the regime application, unless the companies have been held by the parent company for more than two years;
- Companies cannot have a tax period different from that of the parent company.

Additionally, the parent company:

- Should not be controlled by any other Portuguese-resident company that fulfils the requirements to be the parent company;
- Should not have renounced to the application of this regime in the three previous years.

The application of this tax regime normally allows the group to offset losses incurred by one company against profits of another company. Tax losses obtained prior to the beginning of the tax grouping can be carried forward and offset only up to the particular company's taxable income.

It is possible to apply the group taxation regime if the dominant company has its registered head office or place of effective management in an EU or EEA country (in the latter case, provided there is administrative cooperation on tax matters similar to the one in place with the European Union).

## 21. **Are there any withholding taxes?**

Personal Income Tax Code and Corporate Income Tax Code present specific withholding tax applicable over certain type of income (e.g. interest, dividends, royalties) with source in Portugal. As a rule, such withholding taxes are usually definitive on payments to non-resident entities and individuals, and merely on account of the final tax due on payments to resident entities and individuals.

## 22. **Are there any recognised environmental taxes payable by businesses?**

Yes. However, the expression of such environmental taxes should take into account the following considerations:

- In the first place, there is no Carbon Tax in Portugal, as in other Member States.
- In second place, at the level of indirect taxation, there are Special Consumption Taxes that affect petroleum and energy products (in particular, motor fuels).
- In third place, in every sector of economic activity (in particular in the energetic and waste sectors) there is a significant amount of applicable fees and contributions with environmental nature.

## 23. **Is dividend income received from resident and/or non-resident companies exempt from tax? If not how is it taxed?**

Under Portuguese domestic tax rules, dividends paid by Portuguese resident companies to non-resident entities are subject to a definitive withholding tax at a rate of 25% (which may be reduced to rates ranging from 5% to 15% under a double tax treaty and provided certain formalities are complied with). As per dividends paid to Portuguese resident companies, they are to be included in the taxable profit assessment and subject to CIT at the general rate of 21%.

Notwithstanding the above, Portuguese Corporate Income Tax Code provides a participation exemption regime which has a wider scope than the mere compliance of the EU Parent-Subsidiary Directive provisions, according to which the withholding tax can be eliminated provided that the following conditions are met:

- (i) The beneficiary of the income is resident in Portugal or in:
  - a. Another EU country;
  - b. An EEA country bound to administrative co-operation similar to that applicable between EU countries; or
  - c. A country with which Portugal has concluded a DTT providing administrative co-operation similar to those applicable between EU countries;





(ii) The beneficiary of the income:

- a. Holds at least 10% of the share capital or voting rights of the distributing company;
- b. Holds the participation continuously for 12 months prior to the distribution of the dividends (or, if held for a lesser period, is kept until the period of 24 12 months is completed); and
- c. Is subject to and not exempt from any of the CITs referred to in the EU Parent Subsidiary Directive, or a tax of a similar nature with a rate not lower than 60% of the Portuguese CIT rate.

(iii) The distributing entity is not a resident in a blacklisted jurisdiction.

It is important to refer that the participation exemption regime is not applicable if there is an arrangement or a series of arrangements which, having been put into place for the main purpose or one of the main purposes of obtaining a tax advantage that defeats the object or purpose of eliminating the double taxation of dividends, are not genuine having regard to all relevant facts and circumstances.