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Corporate Tax

Portugal: Trends & Developments
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Trends and Developments

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Portugal: a Hub for Investment

In recent years, Portugal has become a leading hub for investment, mostly due to its investment-friendlytax regime, coupled with its location and the country's political, economic and social stability.

In fact, in a clear effort to become an increasingly attractive country for domestic and foreign investment, the Portuguese government has focused on the establishment of several tax measures favourable to the investment of both companies (operating in a wide range of sectors) and individuals, notably the following:

The participation exemption regime

Under the participation exemption regime, introduced in 2014 in the context of the Corporate Income Tax ("CIT") reform, capital gains (but also capital losses) obtained by local companies (holdings and operational companies) on the sale of other corporations may be excluded from CIT, provided that the following conditions are met at the date of the transaction:

- The selling company holds at least 10% of the share capital or voting rights in the entity from which the shares are transferred;
- The participation has been continuously held for 12 months prior to the sale;
- The selling company is not subject to a tax transparency regime;
- The entity from which the shares are transferred is subject to and not exempt from:

(i) CIT; or

(ii) Any of the corporate income taxes referred to in the Parent Subsidiary Directive; or

(iii) A tax of a similar nature with a rate not lower than 60% of the Portuguese CIT rate – this condition may be waived under certain circumstances;

- The entity from which the shares are transferred is not resident in a blacklisted jurisdiction; and
- The assets of the entity from which shares are transferred do not comprise, directly or indirectly, more than 50% of real estate located in Portugal and acquired on or after 1 January 2014 (except if that real estate is allocated to an agricultural, industrial or commercial activity that does not consist of buying and selling real estate).

This rule is also applicable to capital gains on the transfer of shares derived from a non-tax neutral merger, division, transfer of assets, or exchange of shares, and in the case of a transfer of supplementary capital.

This regime also applies to capital gains (and capital losses) obtained by a Portuguese permanent establishment of:

- A company resident in an EU Member State, which complies with the requirements provided for in the EU Parent-Subsidiary Directive;
- A company resident in a Member State of the EEA, subject to tax co-operation obligations similar to the ones established within the EU, provided that the entity complies with requirements that are comparable to those provided for in the EU Parent-Subsidiary Directive.
- A company resident in a State with which Portugal has concluded a Double Tax Treaty ("DTT") that provides for the exchange of information, and subject to and not exempt in its State of residence from an income tax similar to the Portuguese CIT (not applicable to companies resident in a blacklisted territory).

If the participation exemption regime described above is not applied, the positive net difference between capital gains and capital losses arising from the transfer of shares will be taxed as part of the normal income for CIT purposes.

Madeira's International Business Centre

Although Madeira's International Business Centre ("MIBC") was created in the 1980s, it is worth mentioning that this is still an attractive free trade zone with a tax regime that was extended through 2027. In 2015, the European Commission (EC) approved the extension of the favourable tax regime applicable to the MIBC, which encompasses tax benefits (including a 5% CIT rate, provided that some requirements are met) for companies incorporated and licensed to operate in the MIBC until 31 December 2020.

The Wide Range of Double Tax Treaties Signed by Portugal

Portugal has already signed 80 DTTs, 77 of which are already in force, with 3 more signed and waiting to enter into force.

In 2018, Portugal reached an historical agreement with Angola, through the signing of a DTT. This rare circumstance – as this is the first DTT ever signed between Angola and an EU country – will strengthen economic relations between the two countries and attract new investment.

Although this DTT is not currently in force, it is a clear sign that both Portugal and Angola are committed to opening up to foreign investment and consolidating the relations between the two countries. In addition, with the signature and entrance into force of this DTT, Portugal will have executed DTTs with all Portuguese-speaking countries.

The Golden Residence Permit ("GRP") and the Non-Habitual Tax Residents ("NHR") Regimes

The GRP is a special residence permit aimed at fostering new investments in the Portuguese economy. This regime

opens the possibility for non-EU citizens to apply for a Portuguese residence permit and freely circulate within most of the European countries, through a broad range of eligible investments (eg real estate, research and development activities, artistic production, jobs creation, transfer of capital) and as long as the investors spend a minimum period of permanence in Portugal (at least seven days in the first year and 14 days for each of the following periods of two years).

The NHR foresees a very favourable tax regime applicable for a period of 10 years to individuals transferring their tax residence to Portugal. The benefits provided under this regime – regarded as one of the most competitive EU regimes – range from a full exemption on certain types of income and a reduced flat tax rate to other types of income. Besides this, the NHR has also the following key features: no "lump sum" taxation, no limitation on the remittance of funds, no wealth tax and no gift/inheritance tax on funds transferred to spouses, ascendants (eg parents) and descendants (eg children).

These two regimes are currently in force and have proven to be attractive regimes for individuals that wish to invest in the country.

The State Budget Law Proposal for 2019 ("SB Proposal")

On the goal to reaffirm Portugal as a strategic investment hub, the SB Proposal foresees additional measures aimed at attracting investment into the country. Among others, it is important to highlight the strengthening of the tax benefits currently in force related to: (i) the contractual tax benefits for productive investment projects, (ii) the deduction for reinvestment of retained earnings, (iii) the tax regime to support investments ("RFAI"), (iv) the system of tax incentives for corporate R&D ("SIFIDE II") and (v) collective investment bodies in forest resources.

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On the other hand, the SB Proposal includes a measure aimed at attracting individuals who were resident for tax purposes in Portugal before and left the country, who may wish to return to Portugal.

This new regime applicable to former residents provides a 50% Personal Income Tax exclusion on employment income and on business and professional income earned by individuals who transfer their tax residence to Portugal in the 2019 and 2020 tax years, and who meet the following criteria:

- They have not been considered tax residents in the Portuguese territory in any of the previous three tax years;
- They have been tax residents in Portuguese territory before 31 December 2015; and
- Have no tax debts.

This tax exclusion will apply in the year of the transfer of tax residence to Portugal (provided that it occurs in the 2019 or 2020 fiscal year) and in the following four tax years. This set of rules, aimed at re-attracting former residents to Portugal is not cumulative with the NHR regime.

Considering the attractive tax regimes mentioned above, Portugal is currently a great choice for foreign investors who want to invest in the country or who want to use Portugal as a platform to invest abroad.