Tax on Corporate Lending and Bond Issues in Portugal: Overview

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A Q&A guide to tax on corporate lending and bond issues in Portugal.

This Q&A provides a high-level overview of finance tax in Portugal and focuses on pre-completion tax clearances and disclosure of finance transactions, corporate lending and borrowing (including withholding tax requirements), taxation of the borrower and lender when restructuring debt, the Foreign Account Tax Compliance Act (FATCA) and bank levies, bond issues, plant and machinery leasing, securitisation and proposals for reform.

Tax Authorities

1. What are the main authorities responsible for enforcing taxes on finance transactions in your jurisdiction?

The Portuguese Tax and Customs Authority (*Autoridade Tributária e Aduaneira*) is the main authority responsible for enforcing taxes on finance transactions.

As a rule, the completion of the documentation used for finance transactions (including creating a security package in Portugal) will require that those documents be notarised, resulting in the payment of notary's fees and stamp tax (and potentially property municipal transfer tax, notably when there is an irrevocable power of attorney that complies with certain conditions) to execute the transaction. Where documents are executed outside of Portugal but are presented in Portugal for any legal purpose (for example, for enforcement before the Portuguese courts or for certification by signature), stamp tax will also be due on those documents.

The tax authorities can assess finance transactions and/or carry out their own inspections/investigations within the assessment statute of limitation provided for in the law (which is a four-year period to assess taxes in general, and an eight-year period to assess property municipal transfer tax) at any time to both enforce the payment of taxes and to determine whether or not they are due.

Pre-Completion Tax Clearances

2. Is it possible or necessary to apply for tax clearances from the tax authorities before completing a finance transaction?

Circumstances for Obtaining Clearance

There is no mandatory requirement to obtain any tax clearances from the tax authorities before completing a finance transaction.

However, a binding information declaration can be obtained from the tax authorities prior to completing a finance transaction (on an optional basis) in order to cover debatable tax situations. Once a binding information declaration has been made, the tax authorities cannot subsequently proceed to treat that transaction differently from the information provided in that declaration for tax purposes (except in compliance with a court decision). A declaration is binding for four years following its issue unless a renewal of the declaration is requested.

After the submission of the application for a binding information declaration, the tax authorities will usually provide their response to the request within 150 days as standard (though where the declaration is urgently required and the tax authorities recognise the urgency of the request, a response can be given in between 75 to 105 days). Where an urgent request for a declaration is made, a fee of between EUR2,550 and EUR25,500 will be charged (the fee charged will depend on the complexity of the matter being considered).

Mandatory or Optional Clearance?

There are no mandatory requirements to obtain any tax clearances.

Procedure for Obtaining Clearance

See above, *Circumstances Where Disclosure is Required*, for an overview of the procedure to obtain an optional binding information declaration from the tax authorities.

Disclosure of Finance Transactions

3. Is it necessary to disclose the existence of any finance transactions to the tax authorities?

Circumstances Where Disclosure is Required

In order to obtain a withholding tax exemption on interest payments from the Minister of Finance where there is a loan between a non-resident lender and a borrower that is either a public entity or an entity that provides public services, it is necessary for the borrower to submit a tax request for that exemption to the Minister of Finance after the closing date of the transaction. The submission of such a tax request will necessarily involve the disclosure of the relevant documentation relating to that transaction to the tax authorities.

Manner and Timing of Disclosure

The request to obtain a withholding tax exemption must be made no later than the 20th day of the following month, counting from the date on which the first interest payment became due. Additionally, where either a full withholding tax reimbursement is claimed under the Interest and Royalties Directive (*2003/49/EC*), or a partial withholding tax reimbursement is claimed under an applicable double taxation treaty, the tax authorities will request to see the finance documentation (and any other relevant documentation) to check the purpose of the transaction and verify that all the legal requirements concerning the application of the exemption have been met.

Taxes on Corporate Lending/Borrowing

Taxes Potentially Chargeable on Amounts Receivable

4. What are the main corporate taxes potentially chargeable on interest and other amounts receivable under a loan?

Loans, together with payments related to those loans, are usually VAT exempt, but two other taxes may apply to them:

- Stamp tax.
- Corporate income tax (including in the form of withholding tax).

Stamp Tax

Stamp tax is levied against the principal amount of a loan at rates that are determined by the duration of the loan, as follows:

- Loans with a duration of less than 12 months: stamp tax is levied at a rate of 0.04% against the principal amount of the loan (stamp tax is charged each month (or part of a month) for the duration of the loan).
- Loans with a duration of between one year up to five years: stamp tax is levied at a rate of 0.5% (stamp tax is charged as a lump sum against the principal amount of the loan).

- Loans with a duration of more than five years: stamp tax is levied at a rate of 0.6% (stamp tax is charged as a lump sum against the principal amount of the loan).
- Loans with no determined duration will attract a 0.04% stamp tax rate on the monthly average of the total daily negative balances.

Stamp tax is also levied against interest payments and commission payments received under a loan, at a rate of 4% against these payments, where these payments are charged by both resident and non-resident financial entities (this stamp tax is borne by the borrower).

However, stamp tax exemptions are available on loans in the following situations:

- Where the loan operates as funding between certain financial institutions.
- Where the European Investment Bank has intervened in the loan transaction.
- Where the loan is a shareholder loan or a short-term loan between companies within the same group.

Corporate Income Tax

Where interest payments are made to non-resident entities under a loan these are generally subject to corporate income tax (as a withholding tax) at the standard current rate of 25%. However, a corporate income tax exemption is available on loans granted by foreign financial entities to banks that are resident in Portugal. In addition, under the provisions of the Interest and Royalties Directive (*2003/49/EC*), a full corporate income tax exemption can be claimed provided the relevant formal and legal conditions are met to qualify for the exemption.

If a double taxation treaty is in place between Portugal and the country in which the lender is resident for tax purposes, a withholding tax reduction of 5%, 10%, 12% or 15% (as the case may be depending on the country where the lender is tax resident) on interest payments is available. To benefit from this partial tax relief, the lender must obtain formal certification of their entitlement to such relief by:

- Completing and signing a 21 RFI form and presenting this to the borrower.
- Presenting a certificate of residence (issued by the lender's tax authorities) to the borrower to evidence before the Portuguese tax authorities that the lender is tax resident in the relevant tax year in the country named in the certificate of residence and is subject to taxation in that country.

The certificate of residence must be valid on the income payment date (the certificate is valid for a maximum period of one year from its date of issuance).

The 25% corporate income tax rate also applies to a resident lender, but it is levied against the resident lender's final corporate tax bill, rather than being charged as a final withholding tax on a gross basis (with the result that a resident lender can deduct allowable expenditure from the taxable income, whilst a non-resident lender who effectively pays this through withholding by the borrower cannot make deductions for costs and expenses). However, financial institutions that are located and subject to corporate taxes in Portugal, venture capital funds and collective investment undertakings incorporated in Portugal, and certain other specific entities, benefit from an exemption from corporate income tax on interest payments. In addition, there are also corporate income tax exemptions for interest payments under shareholder loans and between entities within a Portuguese consolidated tax group (subject to certain legal conditions being fulfilled).

The difference between the tax treatment in Portugal (for corporate income tax purposes) of interest paid to resident and non-resident lenders was subject to the judgment of the ECJ in *Brisal-Auto Estradas do Litoral SA & KBC Finance Ireland v Fazenda Pública (Case C-18/15) (2016) BTC 39*. It was held in this case that the difference in the tax treatment of resident and non-resident lenders was an unjustifiable infringement of the freedom to provide services, because a Portuguese lender would be taxed at 25% on a net basis (after the deduction of allowable related business expenses, such as its financing costs in relation to the loan) whilst a non-resident lender would be taxed (through withholding) on a gross basis (with no such deductions being applied). The ECJ found that the net basis should instead also apply to calculating the withholding tax for non-resident lenders, and that the expenses of non-resident lenders should be deductible if they are "directly related" to the lending. Whilst the scope of these deductible expenses will need to be determined under national law, the ECJ stated that deductible expenses could include financing costs, legal and tax advice, and even a proportion of the general overheads which are necessary for the grant of any particular loan. No amendments to Portuguese domestic law to allow for the withholding tax on interest for non-resident lenders to be made on a net basis have been made so far, and therefore potential claims to recover overpaid withholding tax may continue to be presented in court.

Both resident and non-resident entities generally benefit from a corporate income tax waiver on certain fees charged under loan agreements (namely, fees for the provision of loan facilities). In the case of other fees (such as for services other than the provision of loans) paid to:

- Entities not resident in Portugal, these may still be capable of payment without withholding (provided that the relevant procedural formalities are satisfied) as, under Portugal's double tax treaties, payments for such services are not usually subject to Portuguese tax. However, it is necessary to consider the application of the relevant treaty in each individual case.
- Entities resident in Portugal, there is a withholding tax waiver.

Tax Reliefs Available for Borrowing Costs

5. What corporate tax reliefs are available for borrowing costs (including interest and other amounts payable under a loan)?

Tax Deductibility of Interest

As a rule, interest payments that are made on loans that have been granted for a corporate business purpose qualify as tax deductible costs. Loans between related entities should be remunerated at arm's length. However, interest capping rules are applied which limit the deduction of net financing expenses, with this cap being the higher of either:

- EUR1 million.

- 30% of the earnings before depreciations, net financing expenses and taxes.

To the extent that a company's expenses arising from debt exceed its income from debt (in both cases, including items such as interest on bank overdrafts and interest on loans of any length), these are the company's net financing expenses. To the extent that these are not deductible in the current year due to the interest capping rules, they may be carried forward for up to five years and used in those future years in the same way (and subject to the same capping rules) as current year net financing expenses. Net financing expenses must be deducted in the first year possible; companies cannot defer deductions that would be permitted under the interest capping rules.

The limits on the tax deductibility of interest also apply to intra-group payments. However, credit and financial institutions (including branches of foreign entities) under the supervision of the Bank of Portugal (with the exception of securitisation vehicles), and insurance companies under the supervision of the Insurance Institute of Portugal, are excluded from these rules.

Tax Deductibility of Other Payments

Fee payments are also tax deductible if they are paid in respect of loans granted for the business purposes of Portuguese based companies.

Tax Payable on the Transfer of Debt

6. What corporate, transfer, stamp or other taxes are payable on the transfer of a debt under a loan?

Stamp Tax

No stamp taxes will apply on the mere transfer of a debt provided that it qualifies as a pure, unconditional sale (that is, provided that the consideration given for the sale does not contain any element that constitutes funding of the seller by the buyer rather than merely reflecting the price of the debt).

Corporate Income Tax

If the sale of a loan is made at a higher value than the book value as shown on the lender's balance sheet, then the gain made on the sale (that is, the difference between the book value and the price paid for the loan) will be included in the borrower's taxable income and subject to corporate income tax at a rate of 21%, to which may also be added a municipal surcharge of up to 1.5%. Corporate taxpayers with a taxable income of more than EUR1.5 million are also subject to a state surcharge, which is charged at progressive rates depending on the taxable income of the corporate taxpayer as follows:

- Taxable income exceeding EUR1.5 and up to EUR7.5 million: 3% state surcharge.
- Taxable income exceeding EUR7.5 million and up to EUR35 million: 5% state surcharge.

- Taxable income exceeding EUR35 million: 9% state surcharge.

Where losses are made on the sale of a loan below book value, those losses will be tax deductible.

Withholding Tax

7. Is there withholding tax on interest or any other payments under a loan?

When Withholding Tax Applies

See *Question 4* for information concerning the application of withholding taxes on interest and fee payments.

Applicable Rate(s) of Withholding Tax

See *Question 4*.

Exemptions from Withholding Tax

See *Question 4*.

For a comparative summary of withholding tax on interest, see table, *Withholding Tax on Interest on Corporate Debt, in this Global Guide*.

Guarantees

8. Do any particular tax issues arise on the provision of a guarantee?

Generally, security interests and guarantees of any nature or form that are granted in Portugal are subject to stamp tax (which is borne by the borrower), the rate of which is determined by the duration of the security interest/guarantee as follows:

- Security interests/guarantees with a duration of up to one year: 0.04% (payable per month or part of a month).

- Security interests/guarantees with a duration of from one year up to five years: 0.5% (payable as a lump sum).
- Security interests/guarantees with a duration of five or more years, or without a specified duration: 0.6% (payable as a lump sum).

Where a security interest or guarantee granted in Portugal is materially ancillary to a contract that itself is specifically taxed under the Stamp Tax General Table, no further stamp tax is payable.

Restructuring Debt

Unpaid or Deferred Interest or Capital

9. What is the tax treatment of the borrower and the lender if interest or capital is unpaid or deferred?

Losses which are incurred as a result of bad or doubtful debts, and which have been duly accounted for as such in the lender's accounts (impairment losses), can give rise to tax deductions provided that it can be shown that the risk of non-recovery is duly justified, for example:

- Following a company's insolvency, and recovery or enforcement proceedings.
- Following a claim to recover the debt through a court or arbitration procedure.
- Where the debt is overdue.

Where a debt is overdue, only impairment losses deriving from debts outstanding for six months or more are qualified as tax deductible, within the following parameters that depend on how long the debt has been overdue:

- Debt overdue for between six up to 12 months: 25% impairment loss can be claimed.
- Debt overdue for between 12 up to 18 months: 50% impairment loss can be claimed.
- Debt overdue for between 18 up to 24 months: 75% impairment loss can be claimed.
- Debt overdue for more than 24 months: 100% impairment loss can be claimed.

Debt Write-Off/Release and Debt for Equity Swap

10. What is the tax treatment of the borrower and lender if a loan is:

- Written off or released (wholly or partly)?
- Replaced by shares in the borrower (debt for equity swap)?

Debt Write-Off/Release

Under the Portuguese Corporate Income Tax Code (CIT Code), the taxable profit of legal persons/entities corresponds to the gross profit for the relevant accounting period that has been adjusted by allowable accounting variations under the CIT Code (both positive and negative) to provide the net profit amount which is then subject to corporate income tax.

Where a loan is written off or released (wholly or partly), the amount of the loan that has been written off/released is reflected in the borrower's accounts as a positive gain which must be included in the borrower's taxable income and is subject to corporate income tax at a rate of 21% (to which a municipal surcharge of up to 1.5% may also be added). Corporate taxpayers with a taxable income of more than EUR1.5 million are also subject to a state surcharge, which is charged at progressive rates depending on the taxable income of the corporate taxpayer as follows:

- Taxable income exceeding EUR1.5 and up to EUR7.5 million: 3% state surcharge.
- Taxable income exceeding EUR7.5 million and up to EUR35 million: 5% state surcharge.
- Taxable income exceeding EUR35 million: 9% state surcharge.

The amount of the loan that has been written off/released is reflected in the lender's accounts as a negative loss and can be deducted from the lender's taxable income, provided that the reason for the write off/release corresponds to one of the reasons contained in the CIT Code (for example, where enforcement or insolvency proceedings have occurred, the result of which have determined that there are insufficient assets to repay the debt).

Debt for Equity Swap

Where there is a debt for equity swap, the borrower will not be considered to have made either a gain or a loss (for tax purposes) provided that the nominal value of the shares corresponds to the nominal value of the debt. Similarly, the lender will not be considered to have made either a gain or a loss provided that the market value of the shares corresponds to the nominal value of the debt. However, where there is a difference between the market value of the shares and the nominal value of the debt, this will trigger gains/losses for the lender which will be taxable/tax deductible for the lender.

Foreign Account Tax Compliance Act (FATCA)

11. Has your jurisdiction entered into an intergovernmental agreement (IGA) to implement FATCA, or do you intend to enter into an IGA to implement FATCA?

Portugal has implemented a legal framework for the reciprocal exchange of information on financial accounts subject to disclosure in order to comply with the provisions of FATCA (*Decree Law No. 82-B/2014 of 31 December 2014* (as amended)). In addition, by enacting Decree Law No. 64/2016 of 11 October 2016 (as amended), the Portuguese Government approved this complementary legislation to further comply with the FATCA requirements relating to the provision of information on certain accountholders. Under this complimentary legislation, foreign financial institutions must obtain information regarding certain accountholders and report this information to the Portuguese tax authorities, which, in turn, will report the same information to the United States Internal Revenue Service. The deadline for financial institutions to report this annually required information to the Portuguese tax authorities is 31 July of each year.

12. Have there been any particular difficulties in light of your jurisdiction's domestic legislation with implementing the FATCA requirements?

There were no specific difficulties with implementing the FATCA requirements that directly relate to existing Portuguese domestic legislation, though naturally some other difficulties were experienced in its implementation (for example, the issues and high costs associated with adjusting the tax information system to implement the FATCA regulations on banks; the requirement for clear information on the reporting obligations to be provided to corporate compliance teams; and the qualification of specific entities (such as public funds) for FATCA purposes).

13. Are there any provisions of your jurisdiction's IGA and/or domestic implementing legislation, if any, that are more onerous than the US FATCA requirements?

There are no provisions of Portugal's IGA and/or domestic implementing legislation that are more onerous than the US FATCA requirements.

Bank Levies

14.Are there any bank levies or similar taxes imposed specifically on financial institutions?

There are two main bank levies that are imposed in Portugal:

- Banking Sector Contribution (created by Decree Law No. 55-A/2010 of 31 December 2010).
- Additional Solidarity Tax on the Banking Sector (created by Decree Law No. 27-A/2020 of 24 July 2020).

The Banking Sector Contribution is levied on:

- All credit institutions with a head office and/or effective place of management in Portugal.
- Portuguese subsidiaries of foreign credit institutions and Portuguese branches of foreign credit institutions that have their head office located outside the EU.

The Additional Solidarity Tax on the Banking Sector is levied on:

- All credit institutions with their main and effective headquarters of administration located in Portugal.
- The subsidiaries and branches of credit institutions that are located in Portugal that do not have their main and effective headquarters of administration located in Portugal.

This means that most financial sector institutions which have either their headquarters or a subsidiary/branch located in Portugal will need to pay these taxes.

15. On what are any such levies or taxes charged?

For both the Banking Sector Contribution and the Additional Solidarity Tax on the Banking Sector, the taxable base is calculated by reference to the annual average of the monthly balance of the items identified as taxable, as shown in the approved accounts for the year to which each levy relates. Each tax is due on 30 June of each year (each tax is payable annually), and responsibility for each tax's assessment resides with the taxpayer.

Both the Banking Sector Contribution and the Additional Solidarity Tax on the Banking Sector are charged on the amount of the taxpayer's liabilities as shown in its approved accounts for the chargeable period, less any such amounts constituting the taxpayer's own funds and any amounts that the taxpayer is legally required to contribute to the Portuguese Deposit Guarantee Fund, plus a notional amount representing derivative contracts that do not appear on the taxpayer's balance sheet. Neither payments of the Banking Sector Contribution nor payments of the Additional Solidarity Tax on the Banking Sector are deductible for Portuguese corporate income tax purposes.

16. At what rate(s) are the levies or taxes charged?

The rate of the Additional Solidarity Tax on the Banking Sector is 0.02% of the chargeable amount (as described in *Question 15*) except in the case of off-balance sheet derivative contracts, in which case, the rate is 0.00005% of the notional value of those contracts.

The rate of the Banking Sector Contribution is between 0.01% and 0.110% of the chargeable amount (as described in *Question 15*) except in the case of off-balance sheet derivative contracts, in which case, the rate is between 0.00010% and 0.00030% of the notional value of those contracts (the exact rate depends on the chargeable amount or notional value, as applicable).

17. Are there any thresholds or exemptions?

There are no thresholds or exemptions that apply to either of the bank levy regimes.

Bond Issues

18. For corporate taxation purposes, are bonds treated any differently from standard corporate loans?

Bonds do not attract stamp tax on either principal or interest (when compared with standard loans) and non-resident investors may also benefit from withholding tax and capital gains tax exemptions under Decree Law No. 193/2005 of 7 November 2005. However, where a guarantee is granted within the Portuguese territory it will be subject to stamp tax at the applicable rates (*see Question 8*).

Taxes Payable on the Issue and/or Transfer of a Bond

19. What stamp, transfer or similar taxes are payable on the issue and/or transfer of a bond?

Withholding Tax

Accrued interest may be subject to a 25% final withholding tax when a transfer of bonds occurs to a new acquirer. However, this rate increases to 35% for both:

- Income obtained by individuals or legal persons domiciled in a country, territory or region that is subject to a clearly more favourable tax regime and included on the banned list approved by Ministerial Order No. 150/2004 of 13 February 2004 (as amended).
- Income paid into accounts opened in the name of one or more accountholders acting on behalf of one or more unidentified third parties, where the relevant beneficial owner(s) of the income is/are not identified.

The applicable rate of withholding tax on the transfer of a bond may also be reduced for residents of certain jurisdictions under an applicable double taxation treaty.

Capital Gains Tax

Capital gains tax at a rate of 25% will generally be triggered if bonds issued by Portuguese issuers are transferred by the seller for an amount that is higher than the acquisition value that the seller originally paid for those bonds. However, where there is an applicable double taxation treaty in place capital gains on bonds are not usually subject to Portuguese capital gains tax (the applicable rules will need to be confirmed on a case-by-case basis). No other taxes apply on the issue or transfer of bonds.

Exemptions

20. Are any exemptions available?

Under Decree Law No. 193/2005 of 7 November 2005, interest paid on, together with capital gains derived from, a sale or other disposition of bonds to non-Portuguese resident bondholders will be exempt from Portuguese income tax where the effective beneficiaries of that sale/disposition can provide adequate evidence of their non-resident status. To qualify for the exemption, the bonds must be traded through the Portuguese central securities depository (Interbolsa), or an international clearing system operated by Euroclear or Clearstream, or by a clearing system operated in an EEA member state (provided that member state has in place an administrative co-operation agreement in tax matters with Portugal). The exemption does not apply to beneficiaries domiciled in a banned list jurisdiction (as set out in Ministerial Order No. 150/2004 of 13 February 2004 (as amended)).

Plant and Machinery Leasing

Claiming Capital Allowances/Tax Depreciation

21. What are the basic rules for enabling the lessor or lessee of plant and machinery to claim capital allowances/tax depreciation?

The cost of an asset for tax purposes is its acquisition cost. Tax depreciation must be calculated by using either the straight-line method or the declining-balance method (the latter cannot be applied to certain types of assets, such as buildings and furniture). Straight-line rates of depreciation are normally consistent with the rates privately used by business and industry and are increased, for the purposes of applying the declining-balance method, by a co-efficient of:

- 1.5 if the assets have a useful life of less than five years.
- 2 if the assets have a useful life of between five and six years.
- 2.5 if the assets have a useful life of more than six years.

For leasing agreements (including when the lessee exercises the option to acquire the asset), the tax depreciation of leased assets is considered to constitute part of a lessee's costs.

Rate of Capital Allowances/Tax Depreciation

22. What is the rate of capital allowances/tax depreciation; does it depend on the type of assets?

Yes, the rate of tax depreciation depends on the type of asset on which depreciation is being applied. For example, applying a straight-line rate of depreciation, the following types of asset will depreciate by the following percentages each year:

- Industrial buildings: 5%.

- Office and commercial buildings: 2%.
- Light machinery/tools: 20%.
- Heavy machinery/tools: 12.5%.
- Office equipment (for example, photocopiers): 20%.
- Furniture: 12.5%.
- Computers: 33.3%.

Lessees Not Carrying on Business in the Jurisdiction

23. Are there special rules for leasing to lessees that do not carry on business in your jurisdiction?

There are no special rules for leasing to lessees that do not carry on business in Portugal.

Taxation of Rentals

24. How are rentals taxed?

Rents paid to a non-resident lessor are subject to a final withholding tax at a rate of 25%. Rents received by a Portugal resident lessor are included in that lessor's taxable income and are subject to corporate income tax at a rate of 21% (to which may be added a municipal surcharge of up to 1.5%). Corporate taxpayers with a taxable income of more than EUR1.5 million are also subject to a state surcharge, which is charged at progressive rates depending on the taxable income of the corporate taxpayer as follows:

- Taxable income exceeding EUR1.5 and up to EUR7.5 million: 3% state surcharge.
- Taxable income exceeding EUR7.5 million and up to EUR35 million: 5% state surcharge.
- Taxable income exceeding EUR35 million: 9% state surcharge.

Rulings and Clearances

25. Is a ruling or clearance necessary or common?

Generally, it is not necessary to obtain any ruling or clearance for leasing arrangements. However, they can be obtained where there is uncertainty, for example, on the qualification of the rental payments, and rulings can be used to confirm how the rental payments of the leasing of certain types of machinery will be qualified under a specific double taxation treaty.

In addition, on prior application a withholding tax exemption may be granted by the Minister of Finance in Portugal for rental payments on imported equipment where the leasing agreement is both:

- Contracted with a Portugal resident company that provides public services or is qualified as a public entity.
- Contracted with a lessor who is not resident in Portugal and has no permanent establishment in Portugal.

Securitisation

26. Briefly explain the key features of the tax regime applicable to securitisations, including details of any specific tax rules that apply or issues that arise in relation to securitisations.

The Securitisation Tax Law (enacted by Decree Law 219/2001 of 4 August 2001, as amended) establishes the tax regime applicable to securitisation transactions carried out under the Securitisation Law (enacted by Decree Law No. 453/99 of 5 November 1999, as amended). The main goal of the Securitisation Tax Law was to ensure the tax-neutral treatment of securitisation transactions entered into by all of the special purpose vehicles (SPVs) provided for in the Securitisation Law. Therefore, no withholding tax applies to payments:

- Made by the SPV to the seller to purchase the receivables.
- Made by the obligors of the receivables in their capacity as such.
- Of collections by the servicer (who usually is also the seller) to the SPV.

The nature or the characteristics of the receivables and the seller's location have no effect on the tax regime outlined above. However, the purchaser must be an SPV as defined by law and must be tax resident in Portugal to benefit from this tax regime.

Under Article 4(1) of the Securitisation Tax Law, income generated by the holding or transfer of notes issued by an SPV as part of a securitisation is generally subject to the usual Portuguese tax regime applicable to debt securities. Decree Law No. 193/2005 of 7 November 2005, as amended, therefore applies to such notes, notably regarding the requirements on registration of notes in the relevant clearing systems and on the exemption applicable to income obtained by non-resident holders of such notes. In this regard, payment of interest and principal on notes issued by securitisation SPVs are exempt from Portuguese income tax, including withholding tax, provided the relevant noteholder qualifies as a non-Portuguese resident having no permanent establishment in Portugal. To qualify for the exemption, noteholders must provide the direct registry entity with adequate evidence of non-residence status prior to the relevant interest payment.

Such exemption does not apply to non-resident individuals or companies if the individual's/company's country of residence is any jurisdiction listed as a tax haven in Ministerial Order No. 150/2004 of 13 February 2004 (as amended from time to time) and with which Portugal does not have in force a double taxation treaty or a tax information exchange agreement.

Under the Securitisation Tax Law, no stamp tax is due on:

- The sale of receivables being securitised.
- Interest charged and credit granted by credit institutions and financial companies to securitisation funds and securitisation companies.
- The fees and commissions charged by the servicer to the purchaser for management of the receivables, collection services and other administrative services relating to the receivables (including all relations with the debtors under the receivables).
- Fees charged by the servicer to the purchaser for maintaining, modifying and extinguishing any guarantees.
- Fees payable for the services of the depositary.

In addition, no documentary taxes are due in Portugal.

The sale of receivables is VAT exempt. Under the Securitisation Tax Law, no VAT is due on the administration or management of securitisation funds, or on the fees and commissions payable for the management and depositary services referred to above.

Reform

27. Please summarise any proposals for reform that will impact on the taxation of finance transactions described above.

There are no current plans for legislative reform in this area.

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