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# The Legal 500 Country Comparative Guides

## Portugal

# TAX

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This country-specific Q&A provides an overview of tax laws and regulations applicable in Portugal.

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# PORTUGAL TAX



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

Portuguese domestic tax legislation is subject to regular reviews and amendments. However, major amendments are usually performed on a yearly basis pursuant to the annual State Budget Law. The State Budget Law is proposed by the Government and submitted to Parliament.

Tax legislative amendments are a matter reserved to Portuguese Parliament, although the Parliament may authorise the Government to legislate on specific matters.

The approved amendments are published in the Official Gazette (*Diário da República*) and may only enter into force thereafter.

Although the main amendments to the tax law are usually made through the State Budget Law, specific changes may also be introduced during the year.

Amendments resulting in significant changes of tax law policy or taxpayers' guarantees are less frequent. The most relevant amendments to the Personal Income Tax Code and Corporate Income Tax Code date back to 2014.

## 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, records must be maintained by the taxpayers for a period of ten years.

Personal Income Tax (**PIT**) returns should be filed by individuals until the end of June, whereas Corporate Income Tax (**CIT**) returns are due before the end of May each year (or by the end of the fifth month of the relevant taxable period, in cases where the taxable year

does not correspond to the calendar year). Both tax returns are submitted by reference to the preceding taxable period which, in principle, corresponds to the calendar year.

Value Added Tax (**VAT**) returns are filed by taxable persons on a monthly or quarterly basis depending on whether the annual turnover is higher or lower than € 650,000 (if the annual turnover is below € 650,000 it is possible to opt to submit monthly returns). Monthly VAT returns should be submitted until the 10<sup>th</sup> day of the second month following transaction, whereas quarterly VAT returns should be filed until the 15<sup>th</sup> day of the second month following the transaction.

All the above returns are filed electronically.

## 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 the Tax Authority (*Autoridade Tributária e Aduaneira*). As a rule, any tax issue may be dealt before a tax office.

Standard and simple tax issues are usually solved immediately or within weeks. Very simple questions can be resolved over the Internet via the taxpayer's personal page on the Tax Authority's website using a feature designated "e-Balcão", which allows taxpayers to address any tax issue.

For more complex issues, taxpayers may submit formal clarification requests (tax rulings), which usually take up to six months to be replied. Taxpayers may also file urgent binding ruling requests (against payment of a fee to the Tax Authority and subject to the approval of urgency justification provided), which must be issued in 75 days. Under exceptional circumstances, the analysis from the Tax Authority may take more than 12 months.

#### 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?

Taxpayers may dispute any tax assessment or Tax Authority's decision before a judicial court. Such tax disputes may take several years until a definitive decision is taken.

Subject to certain requirements, taxpayers can also challenge tax assessments and Tax Authority's decisions on tax assessments before arbitration courts, which allows taxpayers to obtain a final decision within a maximum period of one year (the current average is four and a half months). Although the possibility of appealing against the outcome of a tax arbitration procedure is still very limited, it is possible to appeal against arbitration rulings that are in contradiction with previous decisions, not only from higher judicial tax courts, but also with previous arbitration decisions, provided that the same fundamental legal issue is at stake. Moreover, it is possible to appeal to the Constitutional Court whenever constitutionality issues are at stake.

#### 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 instalments. Three payments on account of the final tax due should be made in July, September, and up to 15<sup>th</sup> of 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 € 500,000).

Since disputes over tax assessments do not suspend the obligation to pay tax, where a tax dispute arises taxpayers may decide between paying the tax concerned or providing a guarantee (usually a bank guarantee, albeit other guarantees are also accepted by the Tax Authority) to suspend tax enforcement proceedings that would otherwise be aimed at coercively collecting the tax in dispute.

Either option (payment of tax or provision of guarantee) may have advantages in case of success of the pending case:

- If the taxpayer pays the tax in dispute and the pending case is successful, the taxpayer will

be reimbursed of the tax paid (plus interest at a rate of 4% per year, provided that it is demonstrated that there was an error by the Tax Authority in the tax assessment);

- If the taxpayer decides to provide a guarantee, the taxpayer does not need a request for reimbursement to the Tax Authority and will be reimbursed for any expenses related to the provision of the guarantee.

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

As a rule, Tax Authority's officials and agents 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:

- Authorisation of the taxpayer for the disclosure of his tax situation;
- Legal cooperation of the Tax Authority with other public entities;
- Mutual assistance and cooperation of the Tax Authority with the tax administrations of other countries resulting from international conventions to which the Portuguese State is bound, whenever reciprocity is contemplated;
- Collaboration with justice under the Code of Civil Procedure and Code of Criminal Procedure; and
- 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.

Yes, Portugal is a signatory to the Common Reporting Standard (CRS) and has also 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 is 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.

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

A legal entity is qualified as resident for tax purposes in Portugal if its corporate seat or place of effective management is in Portuguese territory.

### 8. Have you found the policing of cross border transactions within an international group to be a target of the tax authorities' attention and in what ways?

Yes. The Portuguese Tax Authority often reviews cross-border transactions, as a result of tax inspections, in the context of tax refund procedures or due to information received pursuant to exchange of information procedures. In the context of the implementation of the Base Erosion and Profit Shifting (**BEPS**), the Tax Authority's main focus is on transfer pricing, corporate reorganisations, financial transactions and (aggressive) tax planning.

### 9. 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 Corporate Income Tax Code and the Personal Income Tax Code include Controlled Foreign Company (**CFC**) rules. Generally, any profits or income obtained by non-resident entities that are subject to a preferential tax regime (i.e. fully tax exempt or subject to minimal taxation), may be imputed to the Portuguese resident taxpayers that are deemed the beneficial owners of said structure. The relevant threshold corresponds to a direct or indirectly stake of at least 25% of the share capital, voting rights or attribution rights over the income or the assets of a non-resident entity. The current CFC rule has been adjusted in line with European legislation (the ATAD Directive).

Portugal has replaced the previous thin capitalization regime (in force up until 2013) 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 (earnings before interest, taxes, depreciation, and amortization). This rule was in force before the enactment of the EU Anti-Tax Avoidance Directive (**ATAD**) Directive but is essentially in line with the earning stripping rule foreseen in the ATAD Directive.

With respect to transfer pricing, Portugal has implemented since 2002 detailed transfer pricing legislation that broadly follows the guidelines of the Organization for Economic Co-operation and Development (**OECD**).

The Portuguese legislation follows the OECD's guidelines in respect of the taxpayers' ability to request the Tax Authority to enter into unilateral, bilateral or multilateral Advance Pricing Agreements (**APAs**). Bilateral or multilateral APAs can only be concluded with countries with which Portugal has entered into a double tax treaty (**DTT**).

Under the Portuguese transfer pricing regime, when the Portuguese Tax Authority makes a transfer pricing adjustment for one party to the transaction, a symmetrical adjustment must be made at the level of the other party. This is relevant for transactions between Portuguese resident related parties.

The abovementioned provisions are in accordance with the ATAD Directive and were amended in May 2019.

### 10. Is there a general anti-avoidance rule (GAAR) and, if so, in your experience, how would you describe its application 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-capitalisation 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. The Portuguese GAAR has been recently amended in line with the ATAD Directive, which may be seen as a broadening of the scope of the Portuguese GAAR. Given

that the amendments were introduced in 2019 there is yet no experience on how the Portuguese Tax Authority and the Portuguese tax courts will interpret and apply the new wording of said provision.

### 11. Have any of the OECD BEPs recommendations been implemented or are any planned to be implemented 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 (**B2C**) digital services – Already implemented;
- **Action 2:** Portugal already had anti-hybrids provisions before BEPS recommendations, which have now been strengthened with the ATAD 1 and ATAD 2;
- **Action 3:** Portugal already had CFC's legislation – Already implemented and amended in May 2019, in the context of the implementation of the ATAD Directive;
- **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 ATAD Directive;
- **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 DTTs, particularly 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:** No amendments were yet introduced in respect of the permanent establishment status;
- **Actions 8-9-10:** Provisions related to intragroup 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;
- **Action 13:** Portugal's Budget Law for 2016 introduced a Country-by-Country Reporting (**CbCR**) obligation for multinational enterprises (**MNEs**) that is intended to provide the Portuguese Tax Authority with additional information of the MNEs' activities for risk assessment purposes. Portugal is one of the countries that signed a multilateral competent authority agreement for the automatic exchange of CbCR reports – In progress;
- **Action 14:** Stage 2 of the Mutual Agreement Procedure (**MAP**) is reviewed and recommendations have been made. Waiting for the implementation of the binding arbitration procedure, to which Portugal is bound – In progress.
- **Action 15:** Multilateral Instrument (**MLI**) signed by Portugal and in force. Portugal's arbitration position under Part IV of the MLI as of 25<sup>th</sup> March 2021 is publicly available.

### 12. In your view, how has BEPS impacted on the government's tax policies?

The priorities of the BEPS project in Portugal must be placed in the context of Portugal's membership of international organisations and their tax policies.

Insofar as Portugal is a member of the OECD, its tax policy complies with the OECD recommendations on tax transparency and measures aimed at preventing and tackling aggressive tax planning and abuse.

The main effects of BEPS on the Portuguese government's tax policies so far are as follows:

- Higher taxation of outbound investment in non-cooperative jurisdictions;
- Anti-abuse rules such as CFC rules;
- Limitations on interest deductibility, through the implementation of Earnings Stripping Rules; and
- Increased control over domestic and cross-border transactions that may imply the implementation of tax abusive mechanisms – which is expected to impact tax inspections post-2021 as a result of the full implementation of the DAC 6 Directive.

In the future, it is expected that Portugal will continue to be guided by the OECD standards, notably through the

implementation of the BEPS Actions that have not yet been fully incorporated into the Portuguese tax system.

**13. 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 Portuguese tax system broadly follows the OECD Model. The CIT Code and PIT 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 78 DTTs signed by Portugal and currently in force (the DTTs between Portugal and Timor-Leste and between Portugal and Kenya are already signed but not yet 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. In principle, income tax will be levied only over and above a minimum threshold of € 9,310. The tax brackets start at a minimum of 14.5% and goes up to 48% for income above € 80,882.

If the taxable income exceeds € 80,000, an additional solidarity surcharge applies, at a rate of 2.5% (between € 80,000 and € 250,000) and 5% (to taxable income exceeding € 250,000).

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 regards legal entities, a *flat* CIT rate of 21% applies to the global amount of taxable income derived by tax resident companies (located in Portugal mainland). The CIT rate applicable in the Autonomous Regions of Madeira and Azores is of 14.7%. The following surtaxes may also apply:

- A local surtax ("*Derrama municipal*") 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 € 1.5 million and up to € 7.5 million; (ii) 5% applicable to the taxable profit exceeding € 7.5 million and up to € 35 million; (iii) 9% applicable to the taxable profit exceeding € 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.

Portugal implemented VAT in 1986 to fulfil one of the conditions to join the European Union. Portuguese VAT is generally in line with the European VAT Directive (Directive 2006/112/EC).

The standard VAT rates in Portugal are 23% for the mainland, 22% for the Autonomous Region of Madeira and 18% for the Autonomous Region of Azores.

There are also six reduced rates:

- the intermediate rates of 13% for the mainland, 12% for the Autonomous Region of Madeira and 9% for the Autonomous Region of Azores; and
- the reduced rates of 6% for the mainland, 5% for the Autonomous Region of Madeira and 4% for the Autonomous Region of Azores.

The intermediate rates apply for instance on listed foodstuffs, including takeaway meals and table wine; oil and diesel oil, dyed or marked, traded under the conditions and for the purposes legally defined, and fuel oil and respective mixtures.

The reduced rates apply for instance on listed foodstuffs, including, among others, cereals, bread, meat, fish, milk, fresh or dehydrated fruit and vegetables; pharmaceutical products; passenger transport; and hotel accommodation.

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% (where the period is less than one year or non-determined), 0.5% or 0.6% (where the period is one to four years or five years or more, respectively);
- Consumer's credit: 0.141% (where the period is less than one year or non-determined) or 1.76% (where the period is one year or more);
- 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 (with the minimum amount of € 1): 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).

In Portugal there is neither wealth tax nor inheritance tax. Furthermore, donations between descendants, ascendants and spouses are exempt from Stamp Duty.

#### **14. 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 taxed on their

taxable income, determined in accordance with accounting standards and subject to the provisions of the Portuguese CIT Code.

#### **15. 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. As in most countries, there are companies (including transparent companies) and other structures (such as foundations, associations and cooperatives) recognised as taxable entities.

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

As Portugal is a non-Common Law jurisdiction, no domestic legislation exists to regulate trusts which are limited to Madeira's IBC. Under 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 Madeira's 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 Complementary Business Groupings (**ACEs**) constituted and operating in accordance with the applicable law and to European Economic Interest Groupings (**EEIGs**), treated as resident.

The transparency regime is essentially characterised by attributing to the shareholders or members of the transparent entity its taxable amount (or, in case of ACE or EEIG, respective profits or losses), even in case of

undistributed profits. Thus, the transparent entity is not liable for CIT and its taxable income is attributed to its shareholders or members and subject to taxation at their level for CIT or PIT purposes, as applicable.

Where the shareholders or members of companies covered by the tax transparency regime are non-resident, the income derived through a permanent establishment located in Portuguese territory will be attributed to them.

### **16. 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. Hence:

- Residents in Portugal are taxed on their worldwide income;
- Non-residents without a permanent establishment are liable to income tax only on Portuguese-sourced income; and
- Non-residents with a permanent establishment in Portuguese territory are taxed on a worldwide income basis, insofar as such income is attributable to the Portuguese permanent establishment.

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

As mentioned above, Portugal has an International Business Centre located in Madeira. The current legislation allows the incorporation of new companies (provided they comply with the requirements for obtaining a licence to conduct business within the IBC, notably as regards the activities carried out) within Madeira's IBC until the end of 2021, granting 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 Madeira's IBC (profits derived from business carried out with Portuguese companies are taxed at the general CIT rate applicable in Madeira of 14.7%) 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:

- 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;
- Creation of six or more jobs in the first 6 months of operation.

### **18. 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 CIT Code provides a 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.

### **19. 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 fulfilment 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 standard 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 usually 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 parent 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 within the EU).

## 20. Are there any withholding taxes?

The PIT and the CIT Codes foresee specific withholding taxes applicable over certain types 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 a payment on account of the final tax due on payments to resident entities and individuals.

The standard withholding tax is of 28% for non-resident individuals and of 25% for non-resident corporate entities. These rates may be increased in case of blacklisted jurisdictions (to 35%) or reduced under the applicable DTTs.

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

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

considerations:

- At the level of indirect taxation, there are Excise Duties on electricity products that apply to most forms of electricity consumption and on energy products that apply to most forms of fossil fuel use;
- A CO2 tax also applies to the same fuels under certain conditions;
- A Road Service Tax applies to oil products used in road transport, in addition to carbon and energy excise;
- Portugal participates in the EU emissions trading system (ETS);
- In every sector of economic activity (notably in the energy and waste sectors) there is a significant amount of applicable fees and contributions with environmental nature.

## 22. 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 DTT and provided certain formalities are complied with). As regards dividends paid to Portuguese resident companies, these must be included in the taxable profit assessment and subject to CIT at the general rate of 21%.

Notwithstanding the above, the Portuguese CIT Code foresees 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:
  - Another EU country;
  - An EEA country bound to administrative cooperation similar to that applicable between EU countries; or
  - 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:
  - Holds at least 10% of the share capital or voting rights of the distributing company;

- 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 12 months is completed); and
  - 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; and
- 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 set up with 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.

### **23. If you were advising an international group seeking to re-locate activities from the UK as a result of Brexit, what are the advantages and disadvantages offered by your jurisdiction?**

The Portuguese tax system is very competitive as compared to other European jurisdictions, given that there are several CIT rates higher than the Portuguese one (21%) and that Portugal has adopted a participation exemption with a worldwide reach (EU + treaty partner jurisdictions).

In addition, Portugal offers very qualified working force and top-quality infrastructure, which is becoming very appealing for the development of investments and business ventures – several MNEs have been setting up shared service centres, excellence centres and think tanks in Portugal.

On the other hand, the existence of regimes such as the

Non-Habitual Residents and Golden Visa continues to bring to Portugal investors, many of them being particularly active in the real estate sector, where major operations are planned for the coming years. Indeed, the real estate market remains quite active and continues to offer very interest opportunities to private and corporate investors.

We emphasise once again that Portugal has neither wealth tax nor inheritance tax, besides the fact that donations between parents/sons/spouses are exempt from Stamp Duty.

Furthermore, the strategic location of Portugal between three continents – Europe, America, on the other side of the Ocean, and Africa – provides unique conditions for the development of international trade relations in various sectors of activity, making Portugal a gateway to several markets.

At the tax level, the main advantages are:

1. A modern tax system, endowed with the latest instruments of tax optimisation, such as the *participation exemption* regime or the *patent box*;
2. Legal and political stability;
3. Advantageous tax regime for real estate investment funds, real estate investment companies and real estate investment and asset management companies;
4. A broad set of incentives and tax benefits to productive investment;
5. A favourable Non-Habitual Resident tax regime;
6. The existence of an extensive network of DTTs – currently there are 80 Conventions, 78 of which are in force.

The main disadvantages are related with:

- The high progressive income tax rates applicable to resident individuals;
- Lengthy tax litigation proceedings on judicial courts despite the possibility of resorting to arbitration courts, which is being increasingly used.

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