COUNTRY COMPARATIVE GUIDES 2023

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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1. How often is tax law amended and what is the process?

Portuguese tax legislation is subject to frequent amendments. It is amended on a yearly basis, as a result of the yearly State Budget, which is drafted and proposed by the Government and must be approved by the Parliament and in which the most significative tax amendments are typically introduced.

Apart from the State Budget, tax legislation is also subject to amendments following the transposition of EU directives and the introduction of sectorial reforms or rules targeting specific issues, such as climate change or social welfare in recent years.

Other circumstances can also lead to amendments to the tax law, such as unexpected events like natural catastrophes or even war.

From a procedural perspective, the Portuguese tax legislative process is constitutionally reserved to the Parliament. The Government may, however, be issued an authorization to legislate on certain matters, although this authorization is issued under certain conditions, as its scope and duration are specifically established.

Once an amendment is approved, it is published in the Portuguese Official Gazette (*Diário da República*), so that it can then enter into force.

2. What are the principal administrative obligations of a taxpayer, i.e. regarding the filing of tax returns and the maintenance of records?

Portuguese taxpayers need to comply with certain administrative obligations, not only in terms of filing of tax returns, but also in terms of maintenance of records.

Portuguese taxpayers – either natural or legal persons – are required to submit electronically yearly income returns.

The Personal Income Tax return (PIT) is generally due until 30 June, whereas the Corporate Income Tax (CIT) return is generally due until 30 May, concerning both to the preceding year in which the income was obtained.

Other tax reporting obligations may also be applicable with respect to taxpayers subject to VAT, where the submission of the monthly or quarterly VAT returns should take place until the 20th day of the second month following the taxable moment or the 20th day of the second month following the taxable moment quarter, depending on the annual taxpayer's turnover.

Other deadlines may apply depending on the taxpayer's specific situation, namely in terms of Social Security.

In any case, taxpayers should keep records for 10 years.

3. Who are the key tax authorities? How do they engage with taxpayers and how are tax issues resolved?

The competent authority is the Portuguese Tax and Customs Authority (*Autoridade Tributária e Aduaneira*), whose organic division goes from the Director to the local tax office of the taxpayer's area of residency.

The Portuguese Tax Authority has been persuading taxpayers to solve their questions through the taxpayers' page at the Portuguese Tax Authority's website (*Portal das Finanças | e-balcão*), although this should only be used either for minor issues or simple information requests. Replies to these requests are not binding.

For a more in-depth information, the Portuguese Tax Authority still accepts appointments (exceptionally) and, of course, tax ruling requests, to formally bind the Tax Authority. Despite only being issued in respect to a specific situation and for the benefit of a given taxpayer, tax rulings can be used as guidelines.

4. Are tax disputes heard by a court, tribunal or body independent of the tax authority? How long do such proceedings generally take?

Tax decisions can be judicially challenged, not only as a first way to object the decision, but also as a subsequent means after elapsing the means of reaction within the administrative procedure (that is, at a non-judicial stage).

Taxpayers may, as well, and provided certain conditions are met, resort to arbitration, challenging the tax decision before an arbitration court. Usually, this course of action is timesaving, as the taxpayer can obtain a decision within six months to 1-year maximum.

The decision of the arbitration court is seldom subject to challenge, but it is possible to do so, should it not follow previous decisions taken with respect to the same matter. In this case, the challenge of the decision should take place before the Constitutional Court or Supreme Administrative Court, depending on the nature of the decision.

5. What are the typical deadlines for the payment of taxes? Do special rules apply to disputed amounts of tax?

The tax payment dates are established by law. There is no standard payment deadline, as the dates vary according to each tax.

On the one hand, and in general, natural persons are required to proceed with the personal income tax (PIT) payment until 30 August of the year in which the return is submitted, whereas corporate income tax (CIT) payment, due by legal persons, should take place up to the last day of the deadline for submitting the annual tax return.

On the other hand, VAT payment dates differ according to the periodicity of submission of the VAT returns. Taxpayers subject to VAT should proceed with VAT payment either until the 25th day of the second month following the one which the transaction concerns or until the 25th of the second month following the quarter on which the transaction took place, depending on whether they are under a monthly or quarterly regime.

Should, by any reason, the taxpayer challenge the respective tax assessment, the challenge of the decision does not suspend the payment obligation, rather it increases the outstanding amount, as interest would accrue. In situations where the tax payment does not take place nor any guarantee is provided, the Tax Authority may proceed with the enforcement procedure.

To avoid the interest accrual and any enforcement procedure, taxpayers may either (i) pay the tax due and then, should the challenge succeed, be reimbursed of the tax due, plus interest at 4% rate/year, if applicable, or (ii) provide a guarantee, which, if the challenge proceeds, may be reimbursed by the Portuguese Tax Authority (depending on the type of guarantee provided).

6. Are tax authorities subject to a duty of confidentiality in respect of taxpayer data?

Yes. Taxpayers' information and data is deemed confidential in any stage of the tax relationship and is kept by the Portuguese Tax Authority under the legal provisions for data storage applicable to a state entity.

Notwithstanding, the tax legislation provides for a confidentiality waiver in specific situations, namely (i) with the taxpayer's authorization, (ii) amid any criminal or civil procedure duly regulated by law, (iii) under the mutual assistance and cooperation with other tax authorities, resulting from international treaties binding Portugal, in cases of reciprocity, (iv) when cooperating with other Portuguese public entities or (v) with Portuguese entities responsible for registration procedures.

7. Is this jurisdiction a signatory (or does it propose to become a signatory) to the Common Reporting Standard? Does it maintain (or intend to maintain) a public register of beneficial ownership?

Regarding the Common Reporting Standard, Portugal is a signatory State, having transposed the Directive on 11.10.2016, with effects as of 01.01.2016.

The Ultimate Beneficial Ownership Register is also in force and is managed by *Instituto dos Registos e do Notariado* (Notaries and Registries Institute), a public institution.

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

Under the Portuguese CIT Code, companies are deemed resident in Portugal for tax purposes if either their registered offices/head-office or their place of effective

management is located in Portugal.

In terms of place of effective management, the Portuguese Tax Authority and courts generally follow the commentaries to the OECD Model Tax Convention on Income and on Capital. This means that, pursuant to Portuguese CIT legislation, a foreign company qualifies as a Portuguese taxpayer when demonstrated that its key management decisions are made in Portugal. Should that be the case, the company could be considered to be headquartered in Portugal for CIT purposes even though it is incorporated under the laws of a foreign country, (this being the case, the company's taxable income would be subject to Portuguese CIT).

9. Do tax authorities in this jurisdiction target cross border transactions within an international group? If so, how?

Following the developments at the OECD and EU levels over the past few years, cross border transactions and intra-group cross border transactions have been targeted by the Portuguese Tax Authority. In this regard, the focus on fighting bogus corporate structures through anti-abuse clauses and transfer pricing adjustments stands out.

Furthermore, the Portuguese Tax Authority, through information exchange systems, has access to much more data, which allows it to initiate tax inspections regarding this type of matters.

10. Is there a controlled foreign corporation (CFC) regime or equivalent?

The current wording of Portuguese Controlled Foreign Company (CFC) rules results from the ATAD Directive.

Portuguese CFC rules establish that the undistributed income of a non-resident entity subject to a more favorable tax regime is to be imputed to the Portuguese-resident taxpayer having a substantial interest in such entity. Should that be the case, the taxpayer will be taxed in proportion to its interest in the non-resident entity.

The consequences of the application of the Portuguese CFC rules are the following:

- the income of the foreign entity is allocated to the Portuguese tax resident person having a substantial interest in a non-resident company subject to a privileged tax regime in proportion to his participation or interest and is added to their taxable income, regardless of any effective distribution; and
- when the income is actually distributed, it will be reduced by the amount previously taxed under Portuguese CFC rules.

A "substantial interest" occurs where a Portuguese resident holds, directly or indirectly, even if through a proxy, a fiduciary or another interposed person, 25% or more of the share capital, voting rights or rights over the income or over the assets of a non-resident entity.

Even when the conditions referred to above are met, the CFC rules on profit attribution will not apply whenever the sum of the following categories of income of the entity in question does not exceed 25% of its total income:

(i) royalties or other income derived from intellectual property rights, image rights or similar rights;

(ii) dividends and income from the sale of shares of capital;

(iii) income from financial leasing, income from banking activity, even if not exercised by credit institutions, insurance business or other financial activities carried out with entities with which there are special relations;

(iv) income from billing entities that earn income from commerce and from goods and services purchased and sold to entities with which they have special relations, and that add little or no economic value; and

(v) interest or other investment income.

11. Is there a transfer pricing regime? Is there a "thin capitalization" regime? Is there a "safe harbour" or is it possible to obtain an advance pricing agreement?

The current wording of interest limitation rules also results from the ATAD Directive.

Under interest limitation rules (also based on the ATAD Directive), net financing charges may be tax deductible up to the highest of the following thresholds: (i) 1,000,000 € or (ii) 30% EBITDA (earnings before interest, tax, depreciation and amortization).

Financing charges which exceed the applicable threshold may be carried forward for a period of 5 years provided that, after the use of net financing charges for any such year, the applicable threshold has not been met. Also, financing charges that fall below the applicable threshold may trigger the increase of the 30% threshold up to the 5th following year.

Portuguese transfer pricing legislation is covered by Article 63º of the CIT Code. In applying transfer pricing legislation, Portugal follows the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.

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 Advance Pricing Agreements (APAs).

12. Is there a general anti-avoidance rule (GAAR) and, if so, how is it enforced by tax authorities (e.g. in negotiations, litigation)?

In the wake of the ATAD Directive, the Portuguese GAAR has been recently changed. Over the years, the Portuguese Tax Authority has progressively applied the Portuguese GAAR and there are a considerable number of decisions issued by the Portuguese courts addressing the application of the GAAR.

The formalities required for the Tax Authorities to apply the GAAR have also changed – initially there was a 3-year statute of limitation that was revoked in 2012 – which may have contributed to this rule being applied more often. In any case, please note that there are still cases where one may ascertain that although the Tax Authorities actually understand that GAAR should apply, the additional assessment issued is based on less demanding tax rules (related for instance with costs deductibility for CIT or VAT purposes rather than proving that a transaction or set of transactions took place exclusively to obtain a tax advantage).

13. Is there a digital services tax? If so, is there an intention to withdraw or amend it once a multilateral solution is in place?

While some countries have unilaterally introduced digital services taxes, Portugal has not yet shown the intention to proceeding with a unilateral solution of this kind.

Notwithstanding, Portugal did introduce a 1% levy due by service providers on relevant income realized in Portugal associated with subscriptions or transactions for video-on-demand services (SVOD levy).

14. Have any of the OECD BEPS recommendations, including the OECD's recent two-pillar solution to address the tax challenges arising from digitalisation of the economy, been implemented or are any planned to be implemented?

Action 1 – Tax Challenges Arising from Digitalization

Although there are no official proposals for the implementation of the two-pillar solution on a national level, the European developments will impact the Portuguese tax law.

On the field of indirect taxation, B2C digital services VAT provisions are already in place.

Action 2: Portugal's tax system is already compliant with the BEPS anti-hybrids measures.

Action 3: Portugal's CFC legislation is already in line with the Action 3 standards.

Action 4: Portuguese CIT Code already establishes an interest deduction in line with BEPS standards through the ATAD Directive.

The EU has also advanced with the DEBRA proposal, which will reinforce the limitation of interest deductibility.

Action 5: Portugal's patent Box Regime was amended in 2016 to implement the "Modified Nexus Approach" and has been recently changed to become more competitive.

Action 6: Portugal has put in place Limitation of Benefits Clauses (LOB) in some double tax treaties, in line with BEPS recommendations.

Action 7: The concept of permanent establishment in Portuguese domestic law has been recently amended to include guidelines contained under BEPS Action 7.

Actions 8-9-10: Portugal generally follows the OECD guidelines in this regard.

Action 12: With DACs 1-6, Portugal is in line with the mandatory disclosure standards set by the OECD.

Action 13: Portugal introduced a Country-by-Country Reporting (CbCR) obligation for multinational enterprises. Recently, Portugal also introduced the obligations of preparing the Master File and the Local File.

Action 14: On this matter, Portugal has transposed into its domestic law (Law 129/2019) the Council Directive 2017/1852 on tax dispute resolution mechanisms in the EU.

Action 15: MLI has been signed and is already in force as of the25 March 2021.

15. How has the OECD BEPS program impacted tax policies?

Portugal has shown to be very active and compliant in implementing the BEPS actions. This is mainly motivated by Portugal's membership in the OECD and being part of the EU.

A considerable number of the BEPS actions have been implemented by the EU through Directives that Portugal has transposed into its domestic legislation.

This "compliant" policy is especially evident in the context of the exchange of information directives, namely the DAC-6, where Portugal, when transposing it, went beyond the minimum standards to include not only cross-border arrangements, but also certain domestic arrangements.

Moreover, recently Portugal also transposed (i) Directive 2021/514 – known as "DAC 7" – into the Portuguese legal system under Law 36/2023, 26th of July, which enforces new reporting and due diligence obligations for digital platforms and (ii) Directive 2021/2101 (under Decree-Law No. 73/2023, implementing the Public CbCr.

Additionally, the national "tax haven" list (Ordinance no. 150/2004) contains approximately 80 non-cooperative jurisdictions. In this regard, national law imposes, in many instances, aggravated taxation of outbound (and inbound) investment involving those non-cooperative jurisdictions.

Portugal was also one of the first countries to ratify the MLI and put it into force, even opting in on the mandatory arbitration procedure, one of the few countries to do so.

With more European and international developments on the horizon, it can be expected that Portugal will continue its pattern of compliance, thus strengthening its anti-abuse tax policy.

16. Does the tax system broadly follow the OECD Model i.e. 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 how are they applied?

The tax system of Portugal follows the OECD Model.

Portuguese resident corporations are subject to CIT on their worldwide net income at a tax rate of 21% (in case of small and medium-sized companies, the first € 50,000 of taxable income is taxed at a rate of 17%, the remaining is taxed at 21%).

A local surcharge tax (*derrama municipal*) may be levied at a tax rate of up to 1.5% of the taxable profit before the deduction of any carried-forward tax losses. The rate of the municipal surcharge is set yearly by the respective municipalities.

Portuguese resident entities that have as their main activity a commercial, industrial or farming activity as well as non-resident entities with permanent establishment in Portugal with a taxable income exceeding € 1.5 million will be subject to progressive surtax (*derrama estadual*) of:

(i) 3% over their taxable profit that exceeds € 1.5 million up to € 7.5 million;

(ii) 5% over the amount exceeding the € 7.5 million up to € 35 million; and

(iii) 9% over the amount exceeding the € 35 million threshold.

As for individuals, general PIT rates are progressive and vary from 14.5% to 48%. The maximum tax rate applies to taxable income exceeding EUR 78,834. An additional solidarity surcharge of 2.5% applies to income between EUR 80,000 and EUR 250,000. The part of income that exceeds EUR 250,000 will, in turn, be taxed at a 5% rate. This regime applies to all income from employment and / or self-employment (the latter also known as business or professional income) and also to pension income.

Other types of income sourced in Portugal are taxed through the application of special rates or final withholding tax rates. That is the case of interest, dividends, rental income and capital gains, which are taxed at 28%. The taxpayer can opt to aggregate such income to their other income and be taxed at the progressive tax rates.

On a final note, it is worth highlighting that Portugal signed a large network of double tax treaties.

In terms of indirect taxation, the Portuguese VAT legislation generally follows the EU common system of VAT. The standard VAT rate applicable in mainland

Portugal is 23%. A reduced or intermediated rate can also be applicable to some supplies of goods and services which can be 6% or 13% in the mainland. Those rates are 22%, 12% and 5% or 18%, 9% and 4% in the Autonomous Regions of Madeira and Azores, respectively. Furthermore, excise duties are also a relevant part of the Portuguese indirect tax system.

There is a range of different situations which are subject to Stamp duty, such as financing operations, acquisition of real estate assets, gifts to individuals, etc. The tax rates vary depending on the concrete situation.

The tax on legacies and gifts was abolished in Portugal in 2003 and replaced by the Stamp Duty on not-for-value transfers, as follows:

- Stamp duty in Portugal is due on a territorial basis, which means that only a legacy or gift of assets physically or legally situated in Portugal is subject to stamp duty in Portugal; and
- Gifts and legacies of assets physically or legally situated in Portugal to non-legal donees or heirs are subject to stamp duty on the tax value of the assets in question at a rate of 10%
- Gifts and legacies are exempt when the beneficiaries are the spouses, children, grandchildren, parents and grandparents of the donor/deceased (with the exception of gifts of real estate, which are always subject to stamp duty at a rate of 0.8%).

17. Is business tax levied on, broadly, the revenue profits of a business computed in accordance with accounting principles?

Regarding CIT, the taxable income is determined according to accountancy rules and adjusted in accordance with the CIT code.

Portuguese companies resident in Portugal, but also permanent establishments of foreign companies, should keep accounts for both financial planning and tax purposes.

As regards PIT, business income subject to taxation in Portugal can be determined through:

(a) the simplified regime: the taxable income will be obtained by applying a coefficient to the gross income earned that represents an assumption of the amount of the expenses borne (for example, if a 35% coefficient applies to a certain activity, this means that the taxable income will be 35% of the gross income earned and the rest the law presumes to be expenses); or

(b) the organized accounts regime: in this case the assessment of the taxable income is made by reference to accounting rules and principles. In this scenario, the taxpayer is able to deduct all costs related to the activity and to the income obtained, under the same terms as companies.

Independent workers who did not exceed an annual gross income of more than EUR 200,000.00 in the previous fiscal year, can choose between the simplified regime or the organized accounts regime whereas independent workers who have exceeded such threshold are obliged to keep organized accounts.

18. Are common business vehicles such as companies, partnerships and trusts recognised as taxable entities or are they tax transparent?

In addition to commercial companies, there are other structures, such as foundations and associations, which are recognized as taxable entities.

Provided the requirements are met, some types of entities are exempt from CIT, namely legal entities with public utility status which pursue, exclusively or predominantly, among others, scientific or cultural purposes. Furthermore, the income of associations engaged in cultural, recreational, and sports activities may also be exempt from CIT.

Portuguese domestic law does not make any provision for the legal institute of the trust, and the country has not signed the Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition. As a civil-law jurisdiction, Portugal’s legal framework instead adopts the absolute theory of property, which proscribes the division of rights in rem between different entities or individuals. In other words, the legal owner is also deemed to be the beneficial owner (BO) of the property. However, within the institutional scope of the Madeira Free Trade Zone (MFTZ), the establishment of trusts is possible, under the terms of Decree-Law 352-A/88, October 3. Despite the fact that there is no legal framework for trusts (except the MFTZ regime the legislator introduced rules that deal with the taxation of income generated and distributed by the trust as well as its liquidation.

The following companies are transparent for tax purposes:

- civil law companies not having a commercial form;

- companies of professionals;
- companies of mere administration of assets, the capital of which is controlled directly or indirectly, for more than 183 days in a fiscal year, by a family group or is controlled, during any day of the fiscal year, by a number of shareholders not exceeding 5 and none of them is a public corporate entity.

The law defines as companies of mere administration of assets the ones that:

(i) limit their activity to the administration of assets or values kept as a reserve or for fruition, or to the purchase of buildings for the dwelling of its shareholders;

(ii) beyond the administration of assets, exercise other activities and whose income deriving from these assets, values or buildings reach, on the average of the last three years, more than 50% of the average, during the same period, of its total income.

Additionally, Complementary Business Groupings and European Economic Interest Groupings are also considered transparent for CIT purposes.

The Portuguese transparency system follows a "partial" transparency model: the taxable income is determined at the entity level, and is then attributed to the shareholders proportionally to their participation in the company. Therefore, the taxation of transparent companies' shareholders is not dependent upon distribution of profits.

When looking at income paid by tax transparent entities abroad, recent rulings have displayed that the Portuguese Tax Authority has been assessing the situation of foreign entities using its domestic rules, which might create challenges for individuals who hold Partnerships and LLC's in other countries and wish to move into Portugal.

According to Portuguese tax law, a transparent company resident in Portugal is deemed as a permanent establishment of a non-resident shareholder.

19. Is liability to business taxation based on tax residence or registration? If so, what are the tests?

Business taxation is based on the concept of residence.

Companies are deemed resident in Portugal for tax purposes if either its registered offices/head-office or its place of effective management is located in Portugal. Portuguese resident companies are subject to CIT on their worldwide net income, irrespective of the source of such income or gains. Nevertheless, depending on the concrete case, Portugal grants, under double tax treaties or Portuguese domestic law, double taxation relief for the income obtained abroad.

Non-resident companies without a permanent establishment in Portugal are taxed on the income sourced in Portugal. In this regard, domestic rules on the taxation of nonresident companies are in some cases overridden by the rules established in tax treaties.

In case of non-resident entities with a permanent establishment in Portugal, the tax will be levied over the worldwide income attributable to the permanent establishment. As abovementioned, the domestic concept of permanent establishment has been amended in 2021 State Budget Law so as to integrate some of the guidelines of the OECD on this matter.

20. Are there any favourable taxation regimes for particular areas (e.g. enterprise zones) or sectors (e.g. financial services)?

From a natural person standpoint, in 2009, Portugal introduced the Non-Habitual Tax Residents Regime (NHR Regime) aiming at attracting talent in high value-added activities and Ultra and High Net Worth Individuals (UHNWI) and their families to Portugal. This regime aimed at boosting Portuguese competitiveness both in the R&D and new technologies and other listed high value-added sectors. UHNWI and their families may also benefit from this regime as it also includes tax advantages for foreign-sourced passive/investment income.

Broadly speaking, the NHR status entitles its beneficiaries to a specific set of tax advantages for PIT purposes, ranging from the taxation of Portuguese-sourced employment or business income derived from a high value-added activity at a 20% flat tax rate, instead of progressive PIT rates to the exemption of certain categories of foreign-sourced income or application of a 10% tax rate to foreign pensions, provided certain conditions are met.

From a legal person standpoint there are several tax regimes and/or tax benefits:

Madeira Free Trade Zone: The regime IV of Madeira Free Zone currently in force. The regime in Madeira Free Zone grants, amongst other benefits, a reduced CIT rate of 5%. This current regime is applicable to the entities licensed as of 1 January 2015 and until 31 December

2023. Such entities are taxed at the mentioned reduced CIT rate of 5% until 31 December 2027.

– The reduced CIT rate only applies to the income derived from transactions between licensed entities and non-residents in Portugal or between licensed entities and other licensed entities. The reduced CIT rate only applies to a certain amount of the taxable income which depends on the number of employees.

– Furthermore, the licensed entities must initiate their activity within a period of 6 months as of the date in which the license was granted and must also meet one of the following requirements:

- Creation of one to five job positions, in the first six months of activity and a minimum investment of € 75,000 in the acquisition of tangible fixed assets or intangible assets in the first two years of activity;
- Creation of six or more job positions, in the first six months of activity.

Recently, the European Commission issued a decision in which it declared that regime III of Madeira Free Zone had been applied illegally. As a consequence (i) the regime IV has been amended to incorporate some of the conclusions of the European Commission; (ii) and Portuguese Tax Authority has initiated procedures to recover the state aid granted by means of the reduced CIT rate.

Tax Regime for Investment Promotion (RFAI), in force until 2027 and aimed at incentivizing the investment in certain sectors and regions.

Entities intending to benefit from the regime will be granted a deduction against the taxable income (capped) of 25% or 10%, depending on the investment amount. In addition, other exemptions and reductions, regarding property and property transfer taxes, among others, may also apply.

21. Are there any special tax regimes for intellectual property, such as patent box?

Portugal has a BEPS Action 5 compliant Patent Box regime.

Recently, the 2022 State Budget amended the regime, which now provides for a CIT deduction of 85% of the gross income derived from the assignment or temporary use of patents, industrial models or designs, including income from the infringement of those rights, instead of the previous deduction of 50%.

The regime requires, however, that the assignee is not tax resident in a blacklisted territory, as per the Portuguese tax legislation.

22. Is fiscal consolidation permitted? Are groups of companies recognised for tax purposes and, if so, are there any jurisdictional limitations on what can constitute a tax group? Is there a group contribution system or can losses otherwise be relieved across group companies?

CIT legislation provides for a group taxation regime for companies with registered office and effective management in Portugal.

To benefit from such regime, generally speaking, the parent company should hold, at least, 75% of the others' capital, and more than 50% of the voting rights.

In addition, certain conditions regarding the group structure should be met, for instance, with respect to the holding participation level, residence, the level of activity (as the company cannot be dormant) or the tax year.

Tax losses obtained during the regime cannot be deducted against a single taxable income of a company, instead of the whole group, nor can they be carried forward.

On the contrary, tax losses obtained prior to the tax grouping can, in fact, be carried forward and offset against a certain level of taxable income of one company.

On a final note, the parent company, which may be resident in the EU or EEA, cannot be held by other Portuguese-resident company which meets the criteria to act as the parent company nor should it have benefited from this regime in the preceding three fiscal years.

23. Are there any withholding taxes?

Yes, both for natural and legal persons. The rates vary according to the tax status of the taxpayer and are levied on certain income categories. The levy may be deemed as ongoing tax payment to the Portuguese Tax Authority, in case of tax residents, or as the final tax due, in case of non-tax residents.

The tax rates may be aggravated should the income flow or be linked to a blacklisted jurisdiction, as set forth in

the Portuguese tax legislation, or reduced, as per the application of a Double Tax Treaty (DTT).

24. Are there any environmental taxes payable by businesses?

The main tax to consider is the “ISP”, an excise duty, which applies to both fossil fuel products and electricity products.

Portugal also has other taxes of an environmental nature:

(i) CO2 tax, applicable to the same fuels taxed by the “ISP”;

(ii) Road Service Tax (“CSR”): although it has been recently declared illegal by the CJEU, the Portuguese government has incorporated it into the “ISP”.

In the field of sectorial taxes, the most important one is the “CESE”, a Special Contribution on the Energy Sector, applicable to the tangible fixed assets held by companies operating in the sector.

25. Is dividend income received from resident and/or non-resident companies taxable?

With respect to domestic and inbound dividends, resident companies are subject to tax on the dividends received at the general CIT tax rate of 21%. However, Portuguese tax law establishes a participation exemption regime applicable to Portuguese companies on the income derived from dividends. Profits distributed to a resident company will not be subject to CIT if certain conditions are met, in particular if the company directly or indirectly holds a minimum 10% participation or voting rights in the distributing company and such participation is held (or maintained) for a minimum period of one year, among other requirements.

Regarding outbound dividends, the general rule is that dividends paid by a Portuguese entity to a non-resident corporate shareholder are subject to a withholding tax rate of 25%. However, under the CIT Code, which transposes the Parent-Subsidiary Directive, an withholding tax exemption may apply provided the following requirements are met:

(i) a minimum 10% shareholding;

(ii) held for a minimum one-year period;

(iii) the non-resident company is (a) resident in the EU, (b) resident in the EEA with an exchange of information agreement with Portugal, or (c) resident in a country that has signed a double tax treaty with Portugal and such treaty provides for the exchange of information in similar terms as within the EU;

(iv) the non-resident company is subject to and not exempted from a tax mentioned under article 2 of Directive 2011/96/EU or, if resident outside the EU, from a tax similar to the CIT and the rate applicable under such CIT is not below 12.6% (60% of the Portuguese CIT).

Provided all these requirements are met and the entities receiving the dividends are the effective beneficiaries of such income and have complied with the UBO registration, no taxation should arise.

Even if the exemption does not apply, the 25% domestic tax rate may be reduced if a DTT is applicable.

26. What are the advantages and disadvantages offered by your jurisdiction to an international group seeking to relocate activities?

On the upside, following Brexit, a UK corporate shareholder may still benefit from a withholding tax exemption on dividends distributed by Portuguese resident companies under the Portuguese domestic participation exemption regime, provided certain conditions are met (one of them is the existing DTT celebrated between Portugal and the UK).

In terms of outbound interests to the UK, as the Brexit transition period agreed upon the Withdrawal Agreement has elapsed, the payment of interest by a Portuguese company to a UK company, even if these are associated companies, no longer benefits from the withholding tax exemption provided for under the EU Interest and Royalties Directive. Nonetheless, following Brexit, the UK recipient company may still benefit from a reduction to 10% of the withholding tax rate due in Portugal on interest payments, through the application of the double tax treaty concluded between Portugal and the UK, provided all the conditions for its application are met and subject to the MLI principal purpose test.

With respect to royalties, following Brexit’s transition period, if, on the one hand, the anti-abuse provision is applicable to royalties paid to EU corporate residents controlled by UK residents provided the main purpose test is satisfied, on the other hand, the same UK residents bound to receive Portuguese-source royalties may still rely on the double tax treaty concluded

between Portugal and the UK to reduce their tax exposure in Portugal.

On the downside, group taxation will no longer be applicable when the dominant company is resident in the UK or where the Portuguese dominant company holds its participation in the Portuguese controlled companies which are part of a corporate group through a company resident in the UK.

Another disadvantage relates to the corporate restructuring, as the EU Merger Directive will no longer be applicable.

Currently UK nationals intending to move to Portugal may do so by combining the Golden Visa Program (legal program to obtain a visa and after the investment phase the passport) with the Non Habitual Tax Residency Regime. The Golden Visa Program which provides for a Schengen visa does not require that the individual moves to Portugal.

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