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Portugal: Law & Practice

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MFA Legal

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Law and Practice

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MFA Legal is a new player in the Portuguese market, a boutique firm focused on tax, white-collar crime, compliance and risk management, combining the unique experience of a very senior team with a strong track record in tax advice and litigation, economic criminal law and compliance. MFA's tax team has more than two decades of experience, providing advice to large business groups, multinationals, SMEs, HNWIs and family businesses based in Portugal and African Portuguese-speaking countries. The firm represents clients in the energy, financial and insurance, telecoms, distribution and health sectors. Recognising the complex nature of the business environment, MFA prioritises understanding each client's unique needs. By combining the insights of its senior team with a commitment to innovation and excellence, the firm crafts effective tax strategies that deliver significant value. MFA has a strong track record in litigation, representing clients in more than 200 complex tax cases, including at the CJEU.

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1. Types of Business Entities, Their Residence and Basic Tax Treatment

1.1 Corporate Structures and Tax Treatment

Corporate entities are generally subject to corporate income tax (CIT) and taxed separately from their shareholders.

The most common corporate forms of business vehicles are private limited liability companies (*sociedades por quotas*) and joint stock companies (*sociedades anónimas*). Private limited liability companies can be incorporated with a minimum of two quota holders, but this requirement can be reduced to a single quota holder, in which case the company is known as an individual limited liability company (*sociedade unipessoal por quotas*). As a rule, there is no minimum share capital requirement, except for joint stock companies, which must have a minimum of at least five shareholders and a minimum share capital of EUR50,000.

There is also a special legal regime for pure holding companies (*sociedade gestora de participações sociais*), which can assume the form of private limited liability companies, individual limited liability companies or joint stock companies. Joint stock companies are required to have their annual accounts certified by a chartered accountant. These are all limited liability companies, and a shareholder's liability is limited to the share capital contributed by the shareholder (for joint stock companies) or the company's share capital (for private limited liability companies).

1.2 Transparent Entities

Certain entities are deemed fiscally transparent, such as:

- civil partnerships;
- professional civil firms (eg, lawyers, architects); and
- corporations engaged in passive management of assets for the benefit of a family group or when said entities have fewer than five shareholders.

Complementary business groupings and European economic interest groupings, treated as residents, are also tax transparent. However, investment funds are liable to CIT, although subject to a special tax regime set out in the Tax Incentive Statute.

Despite transparent entities being exempt from CIT, their annual taxable income is assessed under CIT provisions and the net profit is attributable to their shareholders, irrespective of any dividend distribution.

1.3 Determining Residence of Incorporated Businesses

A company is deemed tax resident when its head office (legal seat) or effective place of management is located in Portugal. There is no legal definition of the concept of effective place of management; instead, the criteria set forth under international tax law (eg, OECD Commentaries and EU Directives) and settled case law, etc, are commonly used.

Tax transparent entities, despite being deemed resident for tax purposes, are not eligible for benefits under double tax treaties (DTTs). The Portuguese tax authorities have clarified that shareholders of tax transparent entities cannot claim treaty relief under DTTs entered into by Portugal.

1.4 Tax Rates

As of 1 January 2025, the standard corporate income tax rate on the mainland is 20% (as opposed to the previous 21%). This rate is applicable to corporations that carry out a commercial activity and branches of permanent establishments (PEs) of non-resident entities (other corporations that do not carry out a commercial activity, such as foundations, and civil partnerships without legal personality are subject to CIT on their global income assessed as per the rules set forth for each category of income for personal income tax (PIT) purposes).

Micro and small to medium-sized enterprises (SMEs) benefit from a reduced 16% tax rate on taxable income up to EUR50,000. A further reduced 12.5% rate was introduced in 2024 for start-ups and mid-cap entities, also up to EUR50,000 of taxable income. Any income exceeding this amount is subject to the standard 20% rate.

Entities with head offices and places of effective management in the Autonomous Regions of Madeira or the Azores benefit from a 30% reduction of the general CIT rate (which results in a rate of 14% for year 2025). Some specific territorial areas in the Autonomous Regions may benefit from an additional reduction of this rate to 8.75%.

Non-resident entities without a PE are generally subject to a final 25% withholding.

A municipal surcharge (*derrama municipal*) of up to 1.5% of taxable income (to be approved on an annual basis by each municipality) may be applicable.

A state surcharge (*derrama estadual*) is applicable to corporations with a taxable income exceeding EUR1.5 million, as follows:

- Taxable profits higher than EUR1.5 million and up to EUR7.5 million are subject to a 3% surcharge.
- Taxable profits higher than EUR7.5 million and up to EUR35 million are subject to a 5% surcharge.
- Taxable profits in excess of EUR35 million are subject to a surcharge of 9%.

Autonomous taxation may also apply to certain costs and expenses, eg, car usage, travel expenses, amounts paid to entities domiciled in blacklisted jurisdictions, and non-documented expenses (among other costs subject to specific requirements), at rates that vary from 5% to 70%. Tax transparent entities are not subject to CIT but may be subject to autonomous taxation. Individual shareholders of tax transparent entities are liable to PIT at progressive rates up to 48%. A 2.5% and 5% solidarity surcharge applies to taxable income above EUR80,000 and EUR250,000, respectively.

2. Key General Features of the Tax Regime Applicable to Incorporated Businesses

2.1 Calculation for Taxable Profits

A resident company is subject to tax on its worldwide income assessed on its taxable income, which is based on the profit and loss accounts made under the applicable accounting framework, adjusted according to the rules set forth in the CIT code. Eligible tax losses from previous years may be carried forward and tax benefits may be deducted from the taxable income.

The tax adjustments mainly refer to non-deductible accounting costs or non-taxable accounting profits.

Non-resident entities with a PE in Portugal are subject to tax on the profit attributable to that PE. For non-resident entities without a PE, the taxable base is calculated on the net sum of the different categories considered separately for PIT purposes.

An optional regime is available to exclude from taxation the profits and losses of a foreign PE of an entity deemed tax resident in Portugal. The regime is not applicable to the profit allocated to the foreign PE up to the amount of the losses attributable to that PE that have been considered by the Portuguese head office in the previous 12 tax years. The optional regime must cover all PEs located in a given jurisdiction and must be maintained for a minimum three-year period.

CIT is also applicable to Portugal-source income attributable to a PE of a non-resident company in Portugal. Special withholding tax (WHT) rates apply to income generated in Portugal that is attributable to non-residents without a PE in Portugal.

2.2 Special Incentives for Technology Investments

SIFIDE II

For resident companies and PEs of non-resident companies, a tax credit for qualifying research and development (R&D) expenses (*Sistema de Incentivos Fiscais à Investigação e Desenvolvimento* – SIFIDE II) is available from 1 January 2014 until 31 December 2025, as follows:

- a base rate credit, corresponding to 32.5% of the R&D expenses incurred in a given year; and
- an incremental credit, equal to 50% of the difference between the R&D expenses incurred during that period and the average of the previous two, capped at EUR1.5 million.

To be eligible for this R&D tax credit, the qualifying investor must comply with certain substantive and formal conditions. Also, the SIFIDE benefit cannot be combined with any other similar tax benefit. Expenses that, due to an insufficient taxable basis, cannot be deducted in a given tax year can be carried forward for 12 years.

Patent Box

The Portuguese patent box regime provides an 85% exemption on the gross income derived from the assignment or temporary use of patents and industrial models or designs, copyrights, and indemnities deriving from the infringement of such IP rights, provided certain requirements are met (eg, the IP rights derive from R&D activities developed internally or contracted and the IP rights must be allocated to a commercial, industrial or agricultural activity). A limitation is applicable through the ratio between the eligible expenses and the total expenses incurred in developing or using the IP rights. The regime is in line with BEPS Action 5, and transactions with associated companies are excluded, including entities resident in a blacklisted territory.

Deductibility of IP Rights Costs

The CIT Code allows for the deductibility of costs associated with the acquisition of IP rights. These include trademarks, licences, production processes, and other similar rights acquired for consideration and without a predetermined life cycle. The costs can be deducted over a 20-year period using a straight-line method.

2.3 Other Special Incentives

Special Tax Incentives Regime

A set of tax benefits focused on the development of investment projects in strategic economic sectors is set out in the Portuguese Investment Tax Code.

These tax benefits may be separated into two regimes.

Contractual tax regime

This regime applies to investments with qualifying expenses of EUR3 million or more, materialised before 31 December 2027, and spanning up to ten years. This regime offers a range of benefits, including:

- a tax credit between 10% and 25% of the project's qualifying expenses, to be deducted from the CIT tax assessment (subject to certain limits);
- during the investment period, an exemption from or reduction in municipal real estate tax and municipal real estate transfer tax; and
- an exemption from or reduction in stamp duty owed on transactions or contracts required to complete the investment project.

Investment support tax regime (RFAI)

This applies to investments carried out in certain regions, provided certain conditions are met, and includes the following benefits:

- a CIT deduction of up to 30% of the qualifying expenses up to EUR15 million and of 10% of the qualifying expenses that exceed EUR15 million;
- during the investment period, an exemption from or reduction in municipal real estate tax and municipal real estate transfer tax; and
- an exemption from stamp duty on the purchase of buildings related to the relevant investment.

Both regimes require the fulfilment of certain requirements and cannot be combined with similar tax incentives.

Incentive for Capitalisation of Companies (ICE)

Companies can benefit from a tax incentive for increasing their capital (equity). This incentive allows a deduction against their taxable profit. The deduction is calculated as a percentage of the net increase in their eligible equity. The percentage used is the average 12-month Euribor rate, plus a 2 percentage point spread, applicable to all companies. An additional deduction is applied in the years 2025 and 2026. The increased deduction of 50% is valid for the year 2025.

There is a cap on the total deduction amount, namely the higher of the following:

- EUR4 million; or
- 30% of the tax EBITDA (earnings before interest, taxes, depreciation and amortisation, adjusted for tax purposes, as defined in Article 67 of the CIT Code).

Any excess can be carried forward for five years. In the event of the net increase in eligible equity being negative, the result is zero, and no deduction shall be applicable.

Wage Increase Incentive (*"Incentivo Fiscal à Valorização Salarial"*)

Companies increasing at least in 4.7% employees' average annual base wage, in comparison with the previous year, benefit from a 200% deduction on the costs associated with the

increase of such wages for purposes of assessment of taxable profit, up to an annual maximum of five times the National Minimum Wage per worker (the monthly National Minimum Wage is set at EUR870 for the year 2025).

2.4 Basic Rules on Loss Relief

Carry-back of losses is not allowed. From 2023, losses can be carried forward without any time limit, although they are capped at 65% of taxable income.

Carry-forward is not applicable in case of a change of more than 50% of the share capital or the voting rights of a company, except for operations that have been carried out for sound business purposes, and the above limitation does not apply.

Further, no limitation applies if:

- there is a change from direct to indirect ownership (and vice versa);
- the special tax neutrality regime is applicable to the transaction;
- the change of ownership occurs upon the death of the previous shareholder;
- the acquirer has held, directly or indirectly, 20% of the share capital or the majority of voting rights, since at least the beginning of the tax year in which the tax losses were incurred; or
- the acquirer is an employee or a board member of the acquired company, provided that such person has held that position since at least the beginning of the tax year in which the tax losses were incurred.

2.5 Imposed Limits on Deduction of Interest

An interest barrier rule applies to net financing expenses up to the higher of the following:

- EUR1 million; or
- 30% of the tax EBITDA.

The above limitation is also applicable to PEs of non-resident entities, while entities subject to the supervision of the Portuguese Central Bank and the Portuguese Insurance and Pension Fund Supervisory Authority are excluded.

Net financing expenses exceeding the above thresholds (not deductible) in a certain fiscal year may be carried forward and deducted in the following five tax years provided that, when computing the net financing expenses of that year, the aforementioned limits are not exceeded.

Net financing expenses consist of, inter alia, any amounts due in connection with financing payments, including interest on overdraft facilities, short-term loans, bonds, and financial expenses related to financial leases.

For entities that have adhered to the special regime of group taxation, the net financing expenses may be assessed for the whole group considering the sum of the tax EBITDA of all members, provided that the option is kept for a minimum three-year period. Special rules apply for pre-group and post-group tax years.

2.6 Basic Rules on Consolidated Tax Grouping

Tax grouping is permitted and allows group companies to offset the tax losses incurred by one company against profits of other companies. Tax grouping is available provided that the parent company holds, directly or indirectly, at least 75% of the share capital and more than 50% of the voting rights. For each accounting period covered by the grouping regime, the group's taxable profit is calculated by the dominant company and corresponds to the sum of the taxable

income and tax losses recorded in the individual tax returns of each member of the group.

Tax losses prior to the beginning of the tax grouping can be carried forward and offset against the company's taxable income where such loss was accounted for. The regime is also available to a dominant company with a registered seat in an EU or EEA country provided certain requirements are met and a resident company is appointed as representative of the tax group.

Upon termination of the regime, or whenever the grouping ceases to apply to one particular entity, tax losses obtained within the group cannot be offset against individual taxable income of the companies.

2.7 Capital Gains Taxation

Capital gains and losses are treated as business income in Portugal and assessed on the difference between the sales proceeds, net of related costs, and the acquisition value, net of impairment depreciation, adjusted by the inflation index (for assets owned for a minimum two-year period). The positive net difference is included in the yearly taxable income, and a 50% reinvestment regime for tangible fixed assets, and intangible and biological assets held for at least one year, may be available.

A participation exemption regime is available for capital gains deriving from the disposal of shares, provided that the following requirements are met:

- the parent company holds, directly or indirectly, at least 10% of the share capital or voting rights of its subsidiary;
- the shares have been held continuously for a minimum holding period of at least 12 months;
- the shareholder is not deemed a transparent entity;
- the subsidiary is not resident in a blacklisted jurisdiction;
- the subsidiary is subject to, and not exempt from, an income tax listed in the EU Parent-Subsidiary Directive or an income tax rate not lower than 60% of the Portuguese CIT rate (ie, 12%, given the standard rate of 20%); and
- the non-resident entity is not part of an artificial arrangement whose main purpose is to obtain a tax advantage.

Capital gains and losses covered by the participation exemption regime are excluded from the annual taxable income of the Portuguese entity.

The above regime is not applicable to corporations more than 50% of whose assets consist of real estate located in Portugal, except if they are allocated to an agricultural, industrial or commercial activity.

2.8 Other Taxes Payable by an Incorporated Business

Property tax is a municipal property tax on the tax value (TV) of urban and rural properties located in Portuguese territory. Property tax is payable by the real estate owner, the usufructuary, or the holder of the surface right of a real estate unit with reference as of 31 December of the year to which it pertains. Rates vary from 0.3% to 0.45% of the TV for urban properties, while a 7.5% rate applies to properties owned by entities located in blacklisted jurisdictions.

Additional property tax is payable by individuals and corporations, as well as by structures or collective undertakings and undivided inheritances, that are owners, usufructuaries, or holders of surface rights of urban properties. Addi-

tional property tax is not applicable to properties registered for commercial or industrial activities.

The taxable basis corresponds to the sum of the TV of all the urban properties held by each taxpayer, reported as of 1 January each year, and the applicable rates vary from 0.4% for corporations, to 0.7% for individuals and undivided inheritances, to 7.5% for urban properties owned by entities located in blacklisted jurisdictions.

Transfer property tax is a municipal tax levied on the onerous transfer of real estate located in Portuguese territory. The tax is payable by the acquirer and is calculated on the higher of the TV or the agreed price. In the event of the acquisition of at least 75% of a Portuguese company's shares, where more than 50% of that company's assets are either directly or indirectly derived from real estate located in Portugal, the transfer property tax becomes applicable. However, this is contingent on the real estate not being allocated to a commercial activity. Additionally, the acquisition of at least 75% of the units of closed-ended real estate investment funds triggers the transfer property tax, with rates of 6.5% or 10% for transactions involving acquirers located in a blacklisted jurisdiction.

Stamp duty is applicable to a wide variety of acts, transactions and documents, provided they are deemed to have occurred or are signed in Portuguese territory (eg, loans, leases, securities, transfers of a going concern, etc), and provided they are not subject to VAT. Rates are based on a percentage and specified in the Stamp Duty Schedule.

2.9 Incorporated Businesses and Notable Taxes

VAT is due on the supply of services, sale of goods and importation into Portuguese customs territory at a standard 23% rate. Reduced rates may apply to certain essential goods and services.

Customs duties on importation and excise duties are also applicable to certain products such as oil and energy products, alcohol and alcoholic beverages, tobacco and vehicles.

Also, employers are required to make monthly social security contributions at the standard rate of 23.75% on the monthly gross remuneration paid to their employees.

Social security contributions are deductible for CIT purposes. A carbon tax due by the user in the amount of EUR2 applies to air, sea and river travel.

There are also certain sector-specific contributions, namely in the financial, energy, telecoms and pharmaceutical sectors.

3. Division of Tax Base Between Corporations and Non-Corporate Businesses

3.1 Closely Held Local Businesses

Closely held local businesses mostly operate under a corporate form.

3.2 Individual Rates and Corporate Rates

As mentioned in **1.2 Transparent Entities**, professional firms are mandatorily subject to the tax transparency regime. Taxable income is assessed under the rules set forth in the CIT

Code, while net income is attributed to the shareholders, at the progressive PIT rates.

Outside the scope of listed professional activities, nothing prevents an individual investor from incorporating an individual limited liability company (*sociedade unipessoal por quotas*), subject to 20% CIT on the net profit, while the subsequent distribution of dividends shall be taxed at the autonomous rate of 28% for PIT purposes (with the option to aggregate the dividends to other categories of income and subject to the progressive PIT rates).

3.3 Accumulating Earnings for Investment Purposes

There are no rules to prevent the accumulation of earnings, and until 2023, a tax incentive was in place applicable to micro and small to medium-sized enterprises granting a CIT deduction of 10% of the retained and reinvested earnings (up to a maximum of EUR5 million per year) used to acquire qualifying assets.

Retained earnings may fall within the scope of the CFC rules if the closely held corporation is resident in a blacklisted jurisdiction (see **6.5 Taxation of Income of Non-Local Subsidiaries Under Controlled Foreign Corporation-Type Rules**).

3.4 Sales of Shares by Individuals in Closely Held Corporations

Dividends are generally subject to a final 28% withholding tax. Dividends paid by non-resident entities to resident individuals are also subject to a flat rate of 28% (a tax credit to avoid or reduce international double taxation is usually available). A higher 35% rate may apply to dividends received from blacklisted jurisdictions.

If the resident shareholder opts to aggregate dividends with their annual taxable income, for dividends from resident entities and companies resident within the EU or EEA, a 50% relief is available and the dividends shall be subject to the progressive PIT rates up to 48% (plus surtax, if applicable).

As to capital gains, the annual positive difference between capital gains and losses on the disposal of shares is subject to a special tax rate of 28%, unless the taxable person opts to aggregate the net gains on his or her annual taxable income, subject to the personal income progressive rates up to 48% (plus solidarity surtax, if applicable).

Capital gains from the sale of shares in micro and small to medium-sized enterprises resident in Portugal and within the EU/EEA benefit from a 50% tax relief, resulting in an effective tax rate of 14%.

3.5 Sales of Shares by Individuals in Publicly Traded Corporations

The same tax treatment applies as set out in previous sections.

4. Key Features of Taxation of Inbound Investments

4.1 Withholding Taxes

Dividends, interest and royalties paid to non-resident companies are subject to a 25% CIT withholding, while a higher 35% rate applies to payments made to undisclosed third parties or if the beneficiary is resident in a blacklisted jurisdiction.

Under the participation exemption regime, an exemption is available on the distribution of

dividends, provided the following requirements are met:

- the parent company holds, directly or directly, at least 10% of the capital or voting rights of the other company;
- the shares have been held continuously for at least 12 months;
- the shareholder is not a transparent entity;
- the entity that distributes dividends is not resident in a blacklisted jurisdiction; and
- it is subject to, and not exempt from, an income tax listed in the EU Parent-Subsidiary Directive or an income tax rate not lower than 60% of the Portuguese CIT rate.

The exemption under the participation exemption regime is also available to dividends paid to a PE in another EU or EEA country. Dividends from non-qualifying participations will be subject to tax, but a tax credit may be available.

Interest and royalties may also benefit from a withholding exemption under the EU Interest and Royalties Directive, provided that the following requirements are met:

- an equity stake of at least 25% is directly held by one of the companies or a third entity holds the same equity interest in the share capital of both entities for a minimum holding period of two years;
- the entity that receives the interest and/or royalties must be the effective beneficial owner;
- both the paying entity and the receiving entity must be deemed resident within the EU; and
- both entities must be subject to, and not exempt from, an income tax listed in the EU Interest and Royalties Directive and adopt one of the legal forms listed in the Directive.

The above exemptions applicable to dividends, interest and royalties are not available in case of an arrangement or series of arrangements whose purpose is to obtain a tax advantage that defeats the purpose of eliminating double taxation, and such arrangement or series of arrangements is not regarded as genuine. An arrangement or series of arrangements, if it is not carried out for valid economic reasons and has no economic substance, shall not be regarded as genuine.

4.2 Primary Tax Treaty Countries

Portugal has entered into 79 DTTs, while the treaty with Kenya has not yet entered into force. According to the information publicly available, the primary tax treaty countries utilised by investors are the Netherlands, Spain, Luxembourg, the UK, France, Brazil, Belgium, Germany, Ireland, Switzerland, the USA and Italy.

4.3 Use of Treaty Country Entities by Non-Treaty Country Residents

The Portuguese tax authorities have been increasing their focus on tackling cross-border abusive practices and preventing treaty shopping practices. According to the 202 *"Fight Against Fraud and Tax and Customs Evasion Report"* released by the Portuguese government in July 2024, the focus has been on identifying and curtailing abusive tax planning and treaty shopping. This includes scrutinising the actual place of effective management, adherence to substance requirements, identification of the ultimate beneficial owner of income, and utilising mechanisms such as information exchange, derogation of bank secrecy, and applying limitations on treaty benefits. The report includes specific recommendations to define a strategy to control tax benefits for investment and to improve the mechanisms for controlling tax fraud risk linked to real estate leases. Regarding major taxpayers,

the following were defined as key areas under audit:

- Capital losses on the transfer of equity instruments of entities subject to a clearly more favourable tax regime
- The unlawful use of the benefits of Council Directive 2003/49/EC of 3 June 2003, and/or DTTs
- Transfer pricing regime
- CFC rules
- GAAR

4.4 Transfer Pricing Issues

The main transfer pricing issues relate to management and licensing fees and intra-group arrangements. The Portuguese tax authorities have already ruled out that intra-group service agreements should be covered by advance pricing agreements (APAs) in a tax ruling issued in the end of year 2023.

4.5 Related-Party Limited Risk Distribution Arrangements

Risk distribution arrangements are increasingly subject to scrutiny and also covered by APAs.

4.6 Comparing Local Transfer Pricing Rules and/or Enforcement and OECD Standards

The OECD guidelines are generally enforced as Portugal follows the OECD standards.

4.7 International Transfer Pricing Disputes

Specific transfer pricing tax audits are relatively uncommon, although transfer pricing documentation is frequently requested and scrutinised by the Portuguese tax authorities.

According to OECD data (cf *"2023 Mutual Agreement Procedure Statistics"*), most mutual agreement procedures (MAPs) ended with an agreement fully eliminating double taxation. Most transfer pricing MAPs are with Spain, Italy, Germany, Belgium and the UK.

5. Key Features of Taxation of Non-Local Corporations

5.1 Compensating Adjustments When Transfer Pricing Claims Are Settled

Correlative adjustments are mandatory under Portuguese tax legislation whenever a transfer pricing adjustment is made to the taxable profit of the related party.

5.2 Taxation Differences Between Local Branches and Local Subsidiaries of Non-Local Corporations

Local branches are taxed similarly to subsidiaries of non-resident corporations. A few specific rules on the taxation of PEs of foreign entities must be considered, namely:

- Income remitted by a branch to its head office is not subject to withholding tax.
- As a general rule and following certain criteria, general administrative expenses incurred by the head office may be allocated to the branch.
- There may be certain restrictions concerning the deductibility of certain expenses (such as interest and royalties) charged by the head office to the branch.

5.3 Capital Gains of Non-Residents

Capital gains obtained by non-resident entities on the disposal of equity stakes held in Portuguese companies may be exempt from tax in Portugal, provided that none of the following circumstances is the case:

- More than 25% of the non-resident company is owned, directly or indirectly, by Portuguese tax residents.
- The non-resident company is domiciled in a blacklisted jurisdiction.
- The capital gains derive from the direct or indirect disposal of shares in a resident company, where more than 50% of the company's assets consist of real estate located in Portugal.

Should the exemption not apply, capital gains obtained by non-resident entities are subject to CIT at a 25% rate. Indirect disposal of Portuguese equity stakes may be subject to tax provided that more than 50% of the value of the shares derives from immovable property located in Portugal and is allocated to a commercial activity during the 365 days preceding the sale.

5.4 Change of Control Provisions

The Portuguese tax legislation establishes certain change to control provisions, notably:

- a limitation on the carry-forward of tax losses in case of a change of ownership of 50% or more of the target company's stock or the majority of the voting rights;
- impact on the composition of a tax group; or
- forfeiture of unused deductions under the interest barrier rule upon a change of ownership of 50% or more of the equity stake or voting rights.

Outside the scope of these specific anti-abuse provisions, changes of control do not trigger any adverse tax consequences.

5.5 Formulas Used to Determine Income of Foreign-Owned Local Affiliates

Locally owned companies and foreign-owned local affiliates are subject to the same rules for the purposes of the assessment of the respective taxable income.

5.6 Deductions for Payments by Local Affiliates

Payments made by local affiliates to non-resident affiliates related to management and administrative expenses are generally deductible provided they are directly linked to the corporate purpose and the company's commercial activity and are properly documented. These transactions need to be completed in line with the arm's length principle and additional limitations apply to affiliates resident in blacklisted jurisdictions, as the taxpayer has the burden of proof to evidence that the transaction is material and carried out for sound business purposes.

5.7 Constraints on Related-Party Borrowing

Intra-group borrowing needs to comply with transfer pricing regulations and with the ultimate beneficial owner requirement under the EU Interest and Royalties Directive, and a higher 35% withholding tax applies to interest paid to affiliates located in a blacklisted jurisdiction. Additionally, the interest rate on shareholder loans is capped at the 12-month Euribor rate plus a 2 percentage point spread (6 percentage points for SMEs).

6. Key Features of Taxation of Foreign Income of Local Corporations

6.1 Foreign Income of Local Corporations

Resident entities are subject to CIT on their worldwide income, which is assessed on the yearly net accounting profits as amended for tax purposes.

Portugal adopts, as a rule, the credit method, and therefore international double taxation relief is achieved through a credit deduction to be offset against foreign-sourced income included in the company's taxable basis. The tax credit, assessed on a country basis, corresponds to the lower of the following amounts:

- the income tax paid abroad; or
- the CIT portion assessed before the deduction, corresponding to the net income that may be taxed in the source country.

Whenever a DTT is applicable, the tax credit may not exceed the tax that should have been paid abroad according to the terms set out under the DTT. Any excess credit that has not been offset may be carried forward for a five-year period.

The exemption method is applicable for dividends, capital gains deriving from the disposal of shares obtained by non-resident shareholders and profits of outbound PEs.

6.2 Non-Deductible Local Expenses

The symmetric refusal of deduction of local expenses is applicable to taxpayers that have elected the exemption method for foreign PEs' profits.

6.3 Taxation on Dividends From Foreign Subsidiaries

Dividends received by a corporate shareholder shall be included in the taxable base and subject to CIT.

If the participation exemption regime applies, inbound dividends obtained by resident companies may be excluded from CIT, provided the following conditions are met:

- The Portuguese shareholding company holds at least 10% of the share capital or voting rights of the distributing entity.
- The participation has been continuously held in the year prior to the distribution of the dividends (or, if held for a shorter period, is held long enough to complete the one-year period).
- The Portuguese shareholding company is not subject to a tax transparency regime.
- The distributing entity is subject to and not exempt from CIT, or any of the corporate income taxes 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 (ie, 12%); this condition is not applicable if the permanent establishment is deemed incorporated for valid economic reasons in accordance with the definition laid down for CFC purposes.
- The distributing entity is not a resident in a blacklisted jurisdiction.

Where the participation exemption is not applicable, the double taxation may be waived by means of a tax credit.

Following a legislative authorisation approved in July 2024, it was expected that the participation exemption threshold would be reduced from 10% to 5%; however, the alteration was rejected by the Portuguese Parliament.

6.4 Use of Intangibles by Non-Local Subsidiaries

When transferring, assigning or using intangibles developed by resident entities for the benefit of non-resident subsidiaries, the arm's length principle must be adhered to, and the resulting income must be included in the taxable basis. The patent box regime may apply, as described

in **2.2 Special Incentives for Technology Investments**.

6.5 Taxation of Income of Non-Local Subsidiaries Under Controlled Foreign Corporation-Type Rules

Portuguese CFC rules are aligned with the Anti-Tax Avoidance EU Directive.

Profits or income derived by an entity resident in a blacklisted jurisdiction, or in a jurisdiction where it is subject to an effective taxation below 50% of the taxation that would have been applied if such entity were resident for tax purposes in Portugal, are allocated to the Portuguese taxpayer, provided it holds, directly or indirectly, at least 25% of the share capital, voting rights, or rights on income or assets of that entity.

CFC rules do not apply if the CFC is resident in another EU or EEA member state, provided that the CFC engages in genuine business or commercial activities for sound business reasons, with its own personnel and premises.

Any income tax paid in the state of residence of the CFC may be offset against the tax due in Portugal, although any unused tax credit cannot be carried forward to subsequent tax years.

6.6 Rules Related to the Substance of Non-Local Affiliates

Besides CFC rules mentioned in previous sections and the effective place of management provision, there are no specific rules addressing substance requirements of non-local affiliates.

The expected approval and implementation of the ATAD 3 Directive will introduce within the EU a harmonised set of substance tests.

6.7 Taxation on Gain on the Sale of Shares in Non-Local Affiliates

Capital gains obtained by local companies on the sale of non-resident affiliates may be excluded from CIT under the participation exemption regime, as described in **2.7 Capital Gains Taxation**.

7. Anti-Avoidance

7.1 Overarching Anti-Avoidance Provisions

The Portuguese GAAR provision disregards, for taxation purposes, artificial arrangements that are not grounded in valid economic reasons, are abusive in form or substance and whose main purpose is to obtain a tax advantage that otherwise would not be achieved, in whole or part, without the use of such artificial or fraudulent means. In these cases, the Portuguese tax authorities shall deem such artificial or fraudulent arrangements ineffective for tax purposes and, as a result, the income from said arrangements will be taxed in accordance with the rules applicable to the equivalent taxable events that would have been chosen if the tax advantage had not been pursued. The above regime is also extended to the paying entity, whenever such entity should have been aware of the artificial series of arrangements that triggered the application of the GAAR provision. This follows a special procedure under the Tax Procedural Code.

Besides the GAAR, Portugal has several specific anti-abuse provisions, notably on payments made to entities in blacklisted jurisdictions, higher withholding and tax rates, tax losses, change of control provisions, denial of application of tax neutrality regimes, CFC rules, and refusal to deduct certain expenses, just to name a few.

8. Audit Cycles

8.1 Regular Routine Audit Cycle

Tax audits need to be initiated within the four-year statute of limitations. Despite not being subject to routine audit cycles, large taxpayers, as defined by Ministerial Order, are monitored by a special tax unit and subject to regular tax audits.

The Portuguese tax authorities annually approve a National Plan of Activities of the Tax Inspection (*Plano Nacional de Atividades da Inspeção Tributária*, or PNAIT). This plan sets the priorities for tax inspections each year, identifying specific sectors, actions and targets.

9. BEPS

9.1 Recommended Changes

Portugal has already implemented a number of changes in line with BEPS recommendations, namely:

- implementation of VAT on B2C digital services (under BEPS Action 1);
- anti-hybrid rules (under BEPS Action 2);
- CFC rules (under BEPS Action 3);
- earnings-stripping rules to limit interest deductibility (under BEPS Action 4);
- revised patent box regime (under BEPS Action 5);
- anti-treaty shopping provisions (under BEPS Action 6);
- obligation to disclose aggressive tax planning schemes (under BEPS Action 12);
- mandatory country-by-country reporting (under BEPS Action 13);
- signature of the Multilateral Instrument – MLI, in force since June 2020 (under BEPS Action 15); and
- introduction of global minimum tax (under BEPS 2.0 – Pillar 2).

9.2 Government Attitudes

The Portuguese government has been consistently adopting and implementing the OECD BEPS Action Plan and BEPS 2.0 into domestic law, with the purpose of enhancing transparency and preventing aggressive tax planning.

In November 2024, Law 41/2024 of 8 November transposed Council Directive (EU) 2022/2523 of 14 December 2022 into domestic legislation, ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups, reinforcing the efforts to tackle aggressive tax planning. Law 41/2024 ensures the application of a global minimum tax when the effective tax rate of a covered group, in any of its jurisdictions, is lower than 15%.

Portugal exercised the option to implement the undertaxed profits rule (UTPR) in the form of a complementary tax, rather than a disallowance of deductions for income tax purposes.

The global minimum tax includes three key elements:

- an income inclusion rule (IIR), according to which the parent entities of large-scale multinational or domestic groups must pay a complementary tax in relation to group entities resident in low-tax jurisdictions;
- a UTPR, which requires Portuguese entities of large-scale multinational groups to pay a portion of any complementary tax not assessed under the IIR; and
- the Portuguese complementary national qualified tax (ICNQ-PT), which sets a supplementary tax on Portuguese low-tax entities, requiring the 15% to be paid in Portugal

(rather than at the level of the parent entity through the IIR or other entities through the UTPR).

The legislation includes the option for a safe harbour based on country-by country reporting for tax years beginning on or before 31 December 2026 and ending on or before 30 June 2028.

There are specific fines for companies that do not fulfil their obligations to submit the relevant tax returns. Failure to submit a tax return or late submission may trigger penalties ranging from EUR5,000 to EUR100,000, plus 5% for each day of delay. Errors or omissions may trigger penalties ranging from EUR500 to EUR23,500. Penalties may be waived in the first year of application of the new rules (tax years beginning on or before 31 December 2026 and ending on or before 30 June 2028) provided that certain conditions are met.

In July 2024, the government approved a package of 60 measures to boost the Portuguese economy, including some measures on tax issues, such as: (i) gradually reducing the corporate income tax to 15%; (ii) creating a VAT group regime; (iii) reviewing the fiscal deductibility regime for goodwill; (iv) expanding access to the participation exemption regime; and (v) providing tax deductions for capital gains and dividends earned by individuals in the capitalisation of companies.

In January 2025, the government approved a set of 30 measures intended to simplify some tax rules and regimes. Regarding corporate tax, we would highlight the following: (i) simplification of the Annual Accounting Return (IES); (ii) pre-filling of the Model 22 declaration form with the tax losses generated in previous years; and (iii) harmonisation of deadlines for compliance with reporting obligations, among other improvements on the tax authorities' website.

9.3 Profile of International Tax

Over the last decade, Portugal has concluded a tax reform in 2014, reshaped the tax regime applicable to collective undertakings, refreshed its transfer pricing regulations and continued to enter into DTTs (currently 79 in total), and has in place 12 exchange of information agreements. The DTTs and investment agreements with African Portuguese-speaking countries are also a key element of Portuguese international tax policy.

9.4 Competitive Tax Policy Objective

Please see **9.3 Profile of International Tax**. Despite the European Commission's decision to recover unlawful tax benefits granted in the years 2014-2017, the State Budget for 2025 extended the Madeira Free Trade Zone scheme to new entities licensing until 31 December 2026. It is expected that the preferential tax scheme – which provides a reduced corporate tax rate of 5% – will stay in force until the end of 2028.

There is increasing focus on attracting new investments in technology and innovation, with the SIFIDE incentives, the patent box and the new legal framework approved for start-ups and mid-cap companies.

Although more modest than expected, the State Budget for 2025 brought in a 1% reduction in the statutory CIT rate and introduced changes to some incentives already in force (such as the Incentive for Capitalisation of Companies).

9.5 Features of the Competitive Tax System

Portugal has several tax incentives in force, some of them specifically designed to attract

investment to certain zones of the country. As a member of the EU, Portugal is subject to several restrictions when granting tax benefits.

A recent example is the Madeira Free Trade Zone case, where the European Commission has challenged the benefits offered under European state aid restrictions legislation, with significant repercussions for several companies, both national and international.

9.6 Proposals for Dealing With Hybrid Instruments

Anti-hybrid mismatch arrangement rules were implemented in Portugal by means of Law 24/2020 of 6 July 2020, which transposed into national legislation the European Anti-Tax Avoidance Directive ATAD I, as amended by ATAD II. These rules were introduced into the CIT Code and came into force in January 2022.

9.7 Territorial Tax Regime

Portugal does not have a territorial tax regime as resident companies are subject to CIT on their worldwide income. However, a global participation exemption regime applies in Portugal to dividends obtained by Portuguese entities (inbound) and capital gains, provided some requirements are met (see **2.7 Capital Gains Taxation** and **4.1 Withholding Taxes**).

9.8 Controlled Foreign Corporation Proposals

Portugal does not have a territorial tax system; however, it has adopted CFC rules in line with BEPS Action 3 (see **6.5 Taxation of Income of Non-Local Subsidiaries Under Controlled Foreign Corporation-Type Rules**).

9.9 Anti-Avoidance Rules

Portugal has included *"limitation on benefits"* clauses in some DTTs, in line with the commitments taken within the OECD's BEPS recommendations, particularly Action 6. This framework is further strengthened through the MLI, ensuring all new DDTs adopt the Principal Purpose Test.

Also, over the years, the Portuguese tax authorities have become more aware of abusive treaty shopping practices and have intensified scrutiny of abusive arrangements.

9.10 Transfer Pricing Changes

The transfer pricing regulations were amended in November 2021 to accommodate the 2017 OECD Transfer Pricing Guidelines. The previous regulations were already consistently enforced by the courts and the Portuguese tax authorities in line with OECD standards. Transfer pricing controversy in Portugal is still relatively nascent, particularly in areas related to IP rights.

9.11 Transparency and Country-by-Country Reporting

Portugal has adopted several measures to promote a tax transparent legal environment, notably through the adoption of exchange of information mechanisms and mandatory disclosure rules. Decree-Law No 73/2023 has recently transposed the EU Public Country-by-Country Reporting Directive into national legislation, enacting new reporting obligations for multinational enterprises carrying out activities in Portugal. Since June 2024, companies meeting certain criteria have to publicly disclose information related to the activity carried out, income obtained and effective tax paid. The reporting obligations apply, firstly, to multinational enterprises with a consolidated revenue of EUR750 million or more over the last two financial years.

The effectiveness of these regulations is yet to be assessed. A key consideration will be finding

a balanced approach that promotes co-operation, transparency and public scrutiny, while also avoiding imposing excessive administrative and reporting burdens on corporations.

9.12 Taxation of Digital Economy Businesses

Law No 36/2023 of 26 July 2023 transposed EU Directive 2021/514 (DAC 7) into national legislation. Under this legal framework, digital platform operators are required to provide information to the Portuguese tax authorities regarding transactions carried out by their customers. Sellers of goods with fewer than 30 transactions and an aggregate turnover below EUR2,000 per reporting period are excluded from these obligations. The first reporting obligation was due by 31 January 2024. Failure to disclose mandatory information may result in fines ranging from EUR500 to EUR22,500.

9.13 Digital Taxation

Please refer to **9.1 Recommended Changes** and **9.12 Taxation of Digital Economy Businesses**.

9.14 Taxation of Offshore IP

Domestic tax law does not set out any specific provisions to deal with the taxation of income from offshore intellectual property, other than the higher 35% withholding tax for payments made to entities resident in blacklisted jurisdictions.

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