Portugal Country Profile

EU Tax Centre

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Key tax factors for efficient cross-border business and investment involving Portugal

EU Member State Yes.

Double Tax Treaties With:

Algeria	Finland	Macau	Saudi Arabia
Andorra[(a)]	France	Malta	Senegal
Angola	Georgia	Mexico	Singapore
Austria	Germany	Moldova	Slovakia
Bahrain	Greece	Montenegro[(a)]	Slovenia
Barbados[(a)]	Guinea-Bissau	Morocco	South Africa
Belgium	Hong Kong SAR	Mozambique	Spain
Brazil	Hungary	Netherlands	Sweden
Bulgaria	Iceland	Norway	Switzerland
Canada	India	Oman[(a)]	Timor-Leste[(a)]
Cape Verde	Indonesia	Pakistan	Tunisia
Chile	Ireland	Panamá	Turkey
China	Israel	Peru	UAE
Colombia	Italy	Poland	UK
Croatia	Ivory Coast[(a)]	Qatar	Ukraine
Cuba	Japan	Romania	Uruguay
Cyprus	Rep. of Korea	Russia	US
Czech Rep.	Kuwait	San Marino	Venezuela
Denmark	Latvia	Sao Tome and Principe[(a)]	Vietnam
Estonia	Lithuania		
Ethiopia[(a)]	Luxembourg		

(a) Treaties signed, but not yet effective.

Most important forms of doing business Private Limited Liability Company, Public Limited Company, General Partnership, Limited Partnership, Partnership Limited by Shares.

Legal entity capital requirements

The minimum capital required will depend on the legal form of the entity:

- Private Limited Liability Company: EUR 1;
- Public Limited Liability Company: EUR 50,000;
- Partnership Limited by Shares: EUR 50,000;
- General Partnership: N/A

  The general partners have full liability for the company's obligations, while the limited partners have limited liability up to the amount of their investment.

Residence and tax system

Companies are deemed resident in Portugal for tax purposes if the head office or place of effective management (regardless of the head office's jurisdiction) is located there. These two requirements often occur simultaneously, providing consistency within tax law. Nonetheless, where this is not the case, the place of effective management is the decisive argument in the equation.

Resident companies are taxed on their worldwide income. Non-resident companies are taxed on their Portuguese source income only.

Compliance requirements for CIT purposes

- Generally, the tax year corresponds to the calendar year, but companies may opt for a different tax year.
- Filing the CIT return (Modelo 22) annually by the last day of May or the fifth month subsequent to the end of the tax year.
- Filing the Annual Return of Simplified Corporate Information (IES) by July 15 or the 15th of the seventh month subsequent to the end of the tax year.
- Statement returns regarding the beginning, change or termination of activity within 15 days after the request for the initial commercial registry information that is relevant for the tax authorities, or 30 days after the termination of activity.
- Filing a form regarding income subject to withholding tax paid or placed at the disposal of non-resident taxpayers (Modelo 30) by the end of the second month following the date of payment.

Corporate income tax rate

The standard corporate income tax rate is 21 percent (plus: municipal surcharge of up to 1.5 percent, state surcharge levied at 3 percent on profits between EUR 1,500,000 and 7,500,000, 5 percent on profits between EUR 7,500,000 and 35,000,000; and 9 percent on profits exceeding EUR 35,000,000).

In the Autonomous Region of the Azores, the corporate income tax is 16.8 percent.

Additionally, an autonomous flat-rate tax targeting certain expenses is levied depending on their nature (e.g. undocumented expenses, representation expenses, *per diem* allowances, light passenger vehicles, compensations/bonuses payable to board members or managers).

Withholding tax rates

On dividends paid to non-resident companies

25 percent, unless the EU Parent-Subsidiary Directive or a relevant DTT applies.

On interest paid to non-resident companies

25 percent, unless the EU Interest and Royalties Directive or a relevant DTT applies.

However, 35 percent is applicable if the entity obtaining the interest income is resident in a tax haven or the payment is being made to an account opened in the name of one or more owners but on behalf of a non-identified third party, except when the beneficial owner is identified, in which case the general rules apply.

On patent royalties and certain copyright royalties paid to non-resident companies

25 percent, unless the EU Interest and Royalties Directive or a relevant DTT applies.

However, 35 percent is applicable if the entity obtaining the royalties is resident in a tax haven or the payment is being made to an account opened in the name of one or more owners but on behalf of a non-identified third party, except when the beneficial owner is identified, in which case the general rules apply.

On fees for technical services

25 percent, unless a relevant DTT applies.

On other payments

25 percent, unless a relevant DTT applies.

Branch withholding taxes

The repatriation of profits by a branch to its head-office is not subject to dividend withholding tax.

Holding rules

Dividends received from resident/non-resident subsidiaries

In the case of a dividend distribution by EU subsidiaries and non-EU subsidiaries (resident in countries with which Portugal has entered into a DTT, which foresees an administrative cooperation mechanism regarding taxation similar to the one established within the EU), the exemption method can be applied if the following requirements are met:

- Subject to tax requirement: must be subject and not exempt from CIT, or similar tax;
- Participation requirement: 10 percent;
- Minimum holding period: one year uninterruptedly or commitment.

In order to apply the dividends exemption regime, proof of fulfillment of the requirements must be obtained.

This regime does not apply to entities established in tax havens.

The participation exemption regime also does not apply to dividends arising from hybrid instruments nor to dividends deriving from an arrangement or a series of arrangements which, having been put into place for the main purpose or one of the main purposes of obtaining a tax advantage that defeats the object or purpose of the participation exemption regime, are not genuine having regard to all relevant facts and circumstances.

Capital gains obtained from resident/non-resident subsidiaries

The participation exemption regime applies (participation requirement: 10 percent, minimum holding period: one year uninterruptedly, subject to tax requirement).The participation exemption regime for capital gains does not apply in case more than 50 percent of the assets of the company consist of real estate located in the Portuguese territory (some exceptions apply).

Tax losses

Losses may be carried forward for six years until 2010, four years in 2010 and 2011, five years for tax losses assessed in 2012 and 2013, twelve years for tax losses assessed in 2014, 2015 and 2016 and five years for tax losses assessed in 2017 and onwards (small and medium-sized enterprises may still benefit from the twelve year period from 2017 onwards). However, the deduction of tax losses assessed in prior years cannot exceed 70 percent of the taxable profit of the year in which they are being deducted.

In case more than 50 percent of the company's direct ownership or majority of voting rights changes the tax losses carried forward will be lost.

However, the right to carry forward tax losses may be maintained with the approval, by the Minister of Finance, of a request to be filed by the company to the Portuguese Tax Authorities up to 30 days after the change has occurred.

Tax consolidation rules/Group relief rules

Yes. The parent must hold, directly or indirectly, for a minimum of one year, at least 75 percent of the subsidiaries' share capital and 50 percent of the voting rights. All companies must be tax resident in Portugal, must be subject to Portuguese CIT on their worldwide income at the standard CIT rate and must take the form of a Public Limited Company, a Private Limited Liability Company or Partnership Limited by Shares. The parent company cannot be regarded as dominated by any other Portuguese resident company which meets the requirements to qualify as dominant and cannot have renounced to the tax group relief regime in the preceding three years.

Registration duties

The following acts are subject to commercial registration:

- Incorporation of a company. Once the company's incorporation is made, the VAT registration is needed.
- Transfers, divisions and unifications of shares in Private Limited Liability Company.
- Creation, transfer of the of use, seizure or attachment of the shares.
- Appointments and dismissals of members of the board of directors, supervisory board and secretary of the company.
- Dismissals and exclusions of shareholders in Private Limited Liability Company.
- Extension, winding up, merger or split-up of companies, transformation and dissolution of the Company.
- Capital increase, change of head office, corporate purpose or other changes in the articles of association.

Transfer duties

On the transfer of shares

Real Estate Transfer Tax (RETT) is due on the acquisition of a Private Limited Liability Company (companies limited by "quotas"), a General Partnership or a Limited Partnership, when the company owns real estate and any of the "quota holders" or partners will hold at least 75 percent of the share capital or, whenever the number of quota holders or partners is reduced to two married individuals or unmarried life partners.

RETT will be due and must be paid by the acquirer of the share capital at a rate of 6.5 percent.

On the transfer of land and buildings

As a general rule, all onerous transfers of ownership rights or parts thereof on real estate located within the Portuguese territory, regardless of how such transfers are carried out, are subject to RETT.

RETT is due by any individual or legal person to whom the property is transferred and is levied on the amount shown in the respective deed or agreement or, on the property tax value, depending on which is higher, at rates that vary according to the nature of the property.

Stamp duties

Stamp duty is due on specified acts, contracts, documents, titles, etc., which take place in Portugal and are not subject to or exempt from VAT.

Funding operations (including guarantees) rank amongst the most relevant operations subject to Stamp Duty, although several exemptions are available, provided certain requirements are met.

Real estate taxes

The ownership of real estate triggers Municipal Property Tax (MPT) which is due on an annual basis (paid in three installments) at a rate that varies between 0.3 percent and 0.45 percent for urban buildings, 0.8 percent for rural properties and 7.5 percent for urban or rural properties held by a company resident in a tax haven.

In 2017, another tax was introduced in addition to the MPT and is levied on the sum of the tax value of the taxpayer's real estate assets that are not classified as commercial, industrial or for service use, according to the applicable legislation.

If the taxpayer is a company, the addition to the MPT is levied on the total real estate tax value at a rate of 0.4 percent.

If the taxpayer is an individual, the addition to the MPT is levied as follows:

- 0.7 percent, on the amount of the property tax value between EUR 600,000 and EUR 1,000,000;
- 1 percent, on the amount of the property tax value between EUR 1,000,000 and EUR 2,000,000;
- 1.5 percent, on the amount of the property tax that exceeds EUR 2,000,000.

For entities resident in a tax haven, the addition to the MPT tax is levied on the total real estate tax value at a rate of 7.5 percent.

Controlled Foreign Company rules

Yes. Profits or other income derived by a non-resident company that is subject to a more favorable tax regime can be attributed to the Portuguese resident shareholders who hold, directly or indirectly, at least 25 percent of the share capital, voting rights or equity rights of these entities.

Transfer pricing rules

General rules

Portuguese transfer pricing legislation generally follows the methodologies and principles foreseen in the OECD Transfer Pricing Guidelines. Nevertheless, specific rules are provided in Article 63 of the CIT Code and in Ministerial Order no. 1446-C/2001, of December 21 (which provides detail regarding, among others, documentation rules). Portuguese transfer pricing rules apply to both domestic and cross-border transactions undertaken by a Portuguese entity subject to CIT and other entities with a 'special relationship' to the former. For these purposes, a 'special relationship' is considered to

exist between two entities when one entity has or may have, directly or indirectly, a significant influence in the management of the other entity. This concept captures not only legal relationships (direct or indirect shareholdings in or excess of 20 percent), but also situations of economic dependency.

Transfer Pricing requirements

1. Transfer Pricing documentation

   Taxpayers that recorded a total revenue, with reference to the previous fiscal year, equal or higher than EUR 3,000,000 shall prepare and maintain, for a period of 10 years, contemporaneous transfer pricing documentation.

   Additionally, and according with the latest transfer pricing developments in Portugal, all Major Taxpayers shall submit the transfer pricing documentation to the Portuguese Tax Authority (PTA) 2020 onwards, no later than the 15th day of the 7th month after the corresponding tax year-end.

   The criteria of selection of the Major Taxpayers are the following:

   a) Entities:
      i. Under the supervision of the Bank of Portugal;
      ii. Under the supervision of the Insurance and Pension Funds Supervision Authority, with the exception of those that exercise the insurance mediation activity (insurance brokers);
      iii. Covered by the Collective Investment Scheme and under the supervision of the Securities Market Commission (CMVM);
      iv. With a turnover higher than EUR 200 million.
   b) Holding companies incorporated under Decree-Law no. 495/88 dated of 30 December, with total income higher than EUR 200 million;
   c) Entities with a global amount of taxes paid higher than EUR 20 million;
   d) Companies not covered by any of the preceding paragraphs that are considered relevant, in particular in view of their corporate relationship with the companies covered by those paragraphs;
   e) Companies under the tax group relief, if any entity of the tax group, either dominant or dominated, is covered by the conditions defined in any of the preceding paragraphs [(a) to (d)];
   f) Individuals with a total income higher than EUR 750,000;
   g) Individuals who hold, directly or indirectly, or are the beneficial owners of assets, including property and rights, exceeding EUR 5 million;
   h) Individuals whose wealth income are consistent with the income or assets referred to in paragraphs (f) and (g); or
   i) Individuals, as well as companies and other entities, which are not covered by any of the preceding paragraphs that are considered relevant in view of their legal or economic relationship with the taxpayers covered by those paragraphs.

   For those taxpayers which do not fall under the above criteria and meet the EUR 3 million threshold, the transfer pricing documentation is only submitted if requested by the PTA.

The concept of Masterfile/Local File in line with Action 13 was not yet introduced in the local legislation, with exception to the Country by Country Report (CbC Report).

Nevertheless, Portuguese multinational corporations have been adopting the Master File/Local File documentation approach in line with the 2004 Code of Conduct issued by the European Union Joint Transfer Pricing Forum (EU JTPF).

Local documentation must be prepared in Portuguese, as a rule, and the local independence criterion must be attended for benchmarking purposes. Moreover, if appropriate local comparables cannot be identified, or if the available data about the local comparable companies is incomplete or not reliable, then a Pan European benchmark is acceptable.

2. Appendices A and H of the Annual Return of Simplified Corporate Information (IES)

   The main transfer pricing disclosure requirements are contained in appendices A and H of IES form, which shall be filled on a yearly basis with the following information:

   a) Amounts of domestic and cross-border related-party transactions, per transaction category;
   b) Selection of the transfer pricing methods on cross border transactions and indication if any changes occurred compared to the previous year;
   c) Identification of the special relationships;
   d) Indication whether transfer pricing documentation was prepared;
   e) Indication of any changes on the taxpayer's business model; and
   f) Amount of transfer pricing adjustments, if applicable.

   The deadline for the submission of IES corresponds to the 15th day of the 7th month after the corresponding tax year-end.

3. CbC Report

   a) CbC Report (Form 55)

      Multinational groups must submit a CbC Report, provided that they have recorded total consolidated revenue exceeding EUR 750,000,000 with reference to the previous tax year. The CbC Report must be filled within twelve months from the last day of the reporting period. This obligation falls on the Group's parent/surrogate entity.

   b) Notification of the Group's reporting entity (Form 54)

Each local entity belonging to a MNE Group that is subject to the obligation to file the CbC Report needs to notify to the local tax authorities the Group's reporting entity, by the last day of the fifth month following the fiscal year end.

Thin capitalization rules / Earnings Stripping rules

Thin capitalization rules were replaced by earnings stripping rules as of January 1, 2013. Under the earning stripping rules currently in force, interest is deductible up to the higher of the following amounts: EUR 1 million or 30 percent of the "Taxable EBITDA" which corresponds to the taxable profit or

loss before tax deductible net financial expenses and tax deductible depreciations and amortizations.

The interest which, during a certain period, exceeds the abovementioned limits and therefore is not deductible for tax purposes may be carried forward for the five subsequent periods. The full amount of interest deductible in each of the subsequent periods may not exceed the said limits.

Also, the unused thresholds of the 30 percent Taxable EBITDA limit, may also be carried forward for the five subsequent periods.

General Anti-Avoidance rules (GAAR)

Yes.

Specific Anti-Avoidance rules / Anti-Hybrid rules / Anti Treaty Shopping Provisions

1. Specific Anti-avoidance rules

There a significant number of specific anti-avoidance rules.

The most relevant can be found in:

- the participation exemption regime in respect to capital gains on the sale of a Portuguese company which holds directly or indirectly real-estate located in the Portuguese territory;
- the participation exemption regime in relation to dividends distributed to a Portuguese resident entity arising from hybrid instruments or deriving from an arrangement or a series of arrangements which were put into place with the purpose of obtaining a tax advantage;
- the interest and royalties exemption regime in relation to payments made to an EU entity, if more than 50 percent of its share capital or the majority of its voting rights are held by residents in countries outside the EU;
- the regime applicable to payments indirectly made to entities resident in tax haven jurisdictions through related parties;
- the tax depreciation regime applicable to intangible assets acquired from residents in a tax haven jurisdiction and from related parties;
- the reinvestment relief regime applicable to intangible assets sold to or acquired from related parties;
- the sale of real estate assets below its property tax value;
- the special tax regime applicable to mergers, demergers, contributions of assets and share for share contributions whenever they were not performed for valid economic reasons;
- the liquidation of companies resident in tax haven jurisdictions.

2. Anti-Hybrid rules

The legislation regarding ATAD II Directive has not yet been transposed into domestic legislation. It was discussed and approved by the Portuguese

Parliament, although it is still pending from the President's approval. The legislation is aligned with the text of the Directive and does not introduce new rules.

3. No anti-treaty shopping rules

Advance Ruling system

Yes.

IP / R&D incentives

Tax credit of 32.5 percent of total R&D expenses.

In addition, 50 percent of the increase in R&D expenses relative to the average of the two preceding years is also deductible, up to EUR 1,500,000.

Other incentives

Under specific eligibility conditions, incentives on some qualifying investment expenses are available. These incentives may achieve 35 percent of the qualifying investments and the corresponding tax credit may be deducted up to 50 percent of the tax due (or 100 percent in the case of recently created companies).

A notional interest deduction is available for share capital contributions in cash or arising from the conversion into share capital of shareholder loans or the annual profits of the company. The deduction for CIT purposes corresponds to 7 percent of the amount of the share capital increase up to EUR 2,000,000, and will be made in the taxable period in which the share capital contribution or the conversion takes place as well as in the following 5 fiscal years.

VAT

According to the Portuguese Value Added Tax (VAT) Code, a sale of assets (or services) is considered a supply of goods (or services) subject to VAT.

However, the transfer of assets as a going concern, whether for consideration or not, or as a contribution to a company, is not subject to VAT, provided certain requirements are met.

This no-supply rule serves the purpose of simplicity and is aimed at preventing the successor from being overburdened with a large VAT payment, which can normally be recovered through the input VAT deduction.

Where the assets being transferred do not constitute a business unit, the transferred assets (or services) have their own VAT treatment, and the seller is normally required to charge VAT on the goods (or services) that are being sold, such as stocks and movable goods.

There are three different VAT rates applicable to taxable transactions performed in Portugal mainland: a reduced rate of 6 percent, an intermediate rate of 13 percent and a standard rate of 23 percent. Regarding the transactions performed in the Autonomous Region of Azores the rates are 4, 9 and 18 percent, respectively. With respect to the transactions located for VAT

	purposes in the Autonomous Region of Madeira, the rates are 5, 12 and 22 percent.
Other relevant points of attention	There are contributions applicable to specific economic sectors (e.g. Banking and Finance, Energy and Natural Recourses, Pharmaceutical Industry).
Mandatory Disclosure Rules Updates	For country specific information and updates on the EU Mandatory Disclosure Rules please visit KPMG's EU Tax Centre's MDR Updates page.
COVID-19 Resources	An overview of tax developments being reported globally by KPMG member firms in response to the Novel Coronavirus (COVID-19) is available here. For further insight into the potential tax, legal and mobility implications of COVID-19, please refer to the dedicated KPMG page.

Source: Portuguese tax law and local tax administration guidelines, updated 2020.

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