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NEWSLETTER

PLATFORM OF INVESTMENT PT

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SUMMARY

In recent years Portugal has adopted a set of fiscal measures with the aim of increasing the country's competitiveness and attracting foreign investment, namely through the creation of special tax regimes applicable to individuals and a overhaul of the Corporate Income Tax (CIT). Moreover, Portugal is the natural hub, linking not only with Europe – allowing access to the advantages of the several European regimes of which Portugal, as a member of the European Union, benefits from –, but also with its former colonies, namely, Brazil and the Portuguese Speaking African countries, this is, Angola, Guinea-Bissau, Cape Verde, Sao Tome and Principe and Mozambique – given that, based on the historical links that tie Portugal with these countries, there are a number of agreements that facilitate and favour the circulation of people and goods among them.



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INTRODUCTION

In recent years Portugal has adopted a set of fiscal measures with the aim of increasing the country's competitiveness and attracting foreign investment, namely through the creation of special tax regimes applicable to individuals and a overhaul of the Corporate Income Tax (CIT).

Moreover, Portugal is the natural hub, linking not only with Europe – allowing access to the advantages of the several European regimes of which Portugal, as a member of the European Union, benefits from –, but also with its former colonies, namely, Brazil and the Portuguese Speaking African countries, this is, Angola, Guinea-Bissau, Cape Verde, Sao Tome and Principe and Mozambique – given that, based on the historical links that tie Portugal with these countries, there are a number of agreements that facilitate and favor the circulation of people and goods among them.

Furthermore, it is important to note that Portugal benefits from an extensive network of Double Tax Treaties (DTT), which include Macao, a relevant doorway from and to China.

Aware of this context, which includes the opening of the Panama and Suez Channels and the special geographic situation of Portugal before the ocean (and the potential of the Portuguese deep water harbor of Sines, in particular), it is the moment for foreign investors to seize the opportunities Portugal, as a fostering country with a relevant position in the international fiscal map – and, therefore, as a natural Platform for Investment –, has to offer.

INCOME TAX INCENTIVES FOR INDIVIDUAL INVESTMENT

One of the regimes applicable to individuals adopted in recent years was the Non-Habitual Resident's (NHR) regime, which was created with the intention of attracting to Portugal professionals of activities with high valued added and, also, high net worth individuals (HNWI), this is, individuals with high value assets.

Under this regime's terms, individuals may become NHR if they effectively transfer their residency to Portugal and if in the previous 5 years they have not maintained their tax domicile in Portuguese territory.

In practical terms, this regime encloses undeniable advantages, such as the fact that income from employment or self-employment, derived from an activity considered as an activity with high value added and scientific, artistic or technical character, is taxed at a 20% Personal Income Tax (PIT) rate, instead of a maximum current effective taxation of over 50%. Also, the majority of the income obtained abroad by NHR is exempt from PIT, in Portugal, under certain conditions.

With similar goals as the adoption of the NHR regime, the (immigration) regime of the **“Golden Visa”** was created.

Under this regime, citizens of non-EU member countries that perform or carry out one of the investment activities legally foreseen – the transfer of capital in the amount of at least € 1.000.000,00 or the acquisition of a real estate property valued at least at € 500.000,00, among others – may obtain a residency permit in Portugal. This permit allows its holder (and his or her close relatives) to enter and reside in Portuguese territory and, also, to move freely in the majority of the European and Schengen Area countries. Additionally, this permit may allow the acquisition, after a certain

period, of the Portuguese nationality and, consequently, of the European citizenship.

Moreover, and yet at the individuals’ level, Portugal does not levy **tax over the gratuitous transfer of assets** (gift or donation), **during life or on account of death** (mortis causa), when the beneficiaries are the spouses, unmarried partners and descendants or ascendants in a direct line. Furthermore, and contrary to what happens in France, for instance, Portugal does not impose a tax over wealth.

TAX REGIMES FAVOURABLE FOR CORPORATE INVESTMENT

The Portuguese **Participation Exemption** regime was introduced in 2014, with the CIT reform, being one of the most attractive at the European level.

This regime acknowledges tax advantages to companies resident in Portugal (Portuguese companies and foreign companies with a Permanent Establishment (PE) in Portuguese territory), such as the exclusion, for the purpose of determining their taxable profit, the profits or reserves distributed to these companies, or also, the exemption of the capital gains derived

from the transfer of the share capital they hold, as long as certain legally foreseen conditions are met.

On the other hand, it is also recognized to companies non-resident in Portuguese territory the exemption of their profits and reserves, as long as they are resident in the EU, the European Economic Area or in a country with which Portugal has entered into a DTT foreseeing exchange of information, if certain requirements are met.

A company resident in Portugal that carries on a cross-border activity through a PE, this is, without setting up a different legal entity in the other country, may opt to **exclude its profits and tax losses of that PE in Portugal**, thus benefiting from an income exemption.

Another Portuguese regime favorable to corporate investment regards the possibility of **deducting and reporting tax losses**. When a company ascertains tax losses in a given fiscal period, it has the possibility of deducting these losses from its potential profits during the 5 subsequent fiscal years.

That period is extended to 12 years for Small and Medium enterprises (with

fewer than 250 employees and a overall turnover lower than € 50.000.000,00 or a balance sheet lower than € 43.000.000,00).

The deduction of tax losses is, however, limited to 70% of the profit ascertained in the year in which the deduction is to be made.

The **Patent Box** regime is another incentive to corporate investment and research and development, applicable to contracts of cession or temporary use of a right over intellectual property.

Within this regime, income derived from those contracts is taxed in only half of its value, as long as some conditions are fulfilled.

The **tax neutrality regime**, aligned with the envisaged in the Mergers, Divisions and Transfers of Assets European Directive, applies to different types of company restructuring operations, foreseeing, in the condition that some requirements are met, that if from these operations, in the moment they are carried out, a capital gain arises, this gain will not be subject to taxation at that time.

Along with the CIT reform in 2014, Portugal also introduced the **Tax Code of Investment** which foresees tax

benefits of contractual nature, namely the Tax Regime for Investment Support (Regime Fiscal de Apoio ao Investimento) and the System of Tax Incentives in Research & Development II (Sistema de Incentivos Fiscais em Investigação e Desenvolvimento Empresarial II), which, in a nutshell, provide CIT taxpayers benefits of fiscal nature that translate into CIT reductions.

THE FREE ZONE OF MADEIRA

The Free Zone of Madeira and the “International Business Center of Madeira” are a special tax regime, of regional scope, authorized by the European Commission, that offers companies located therein (or to be set up therein until December 2020) that, within certain conditions, create jobs, wide tax benefits, such as a reduced CIT rate of 5%, which can be enjoyed until December 2027.

CORPORATE RESTRUCTURING

Portuguese law foresees the possibility of taxing company groups over their global result if the option for the application of the Special Taxation Scheme for Groups of Companies is made.

In order to opt for this regime, a number of conditions must be met, namely, the existence of a dominant company that holds, directly or indirectly, at least, 75% of the share capital of the other (dominated) companies and that the companies of the group are tax resident in Portugal, in the EU or in the European Economic Area.

EXIT TAX

Exit taxation is strictly linked to the growing phenomenon of circulation and establishment of individuals and companies within the EU, favored by the existence of an internal market: the change of residence has, as such, beginning to be the cause of taxation.

The European Court of Justice (ECJ) has already pronounced itself about this matter, in particular, regarding the Portuguese exit taxation regime (case C-38/10), which foresaw that, in the exiting moment, a Portuguese company would be taxed, even if it had not yet effectively obtained any profit or gain, having the ECJ concluded, in that case, that it was an obstacle to the European freedom of establishment.

In this sense, some legislative changes were introduced in the Portuguese legal

framework in order to align the internal law with the European law.

INTERNATIONAL DOUBLE TAXATION

Certain aspects concerning the elimination of international double taxation are harmonized within the EU, particularly through a number of Directives (Parent-Subsidiary, Interest and Royalties, Mergers, Divisions and Transfers of Assets). This harmonization allows, along with the OECD Model Convention (as the basis for the celebration of the DTTs), the implementation of a certain coherence between the existing tax systems.

In this sense, the DTTs, as bilateral agreements that envisage the elimination or reduction of the (juridical) double taxation, impose restrictions to the taxation rights of the contracting states and dictate the situations in which these are restricted in their taxing rights or obliged to grant a tax exemption or a tax credit.

Portugal has entered into DTTs with 78 countries, including all the Portuguese speaking countries, except Angola, 12 American countries, 20 Asian countries and 34 European countries.

In the absence of a DTT, Portugal still offers unilaterally a reduction or even the elimination of international double taxation to resident taxpayers.

LEGAL CERTAINTY

The Portuguese tax law foresees the possibility of taxpayers requesting **binding information** on tax rulings to the Tax Authorities, which, as their name indicates, bind the Tax Authorities, after their emission (if favorable), to not proceed against it, except when complying with a judicial sentence, reason why a binding information incorporates a mean for granting legal certainty to the positions taxpayers assume in the course of their activity. Therefore, this mechanism may be used to prevent or reduce potential controversy.

Another mean at the disposal of taxpayers in Portuguese tax law is the possibility of requesting the Tax Authorities to enter into Advanced Pricing Agreements, unilateral or bilateral, this is, with foreign Tax Authorities, that aim to establish arm's length pricing in advance, that is, the method or methods able to assure the determination of the terms and conditions that would normally be agreed upon by independent parties

within their commercial or financial operations, carried out with entities with which they are in a special relationship with.

At last, it is worth noting the existence of a Legal Regime of **Tax Arbitration**, which created the possibility of resolving the conflicts arising between taxpayers and the Tax Authorities through a tax arbitration court.

Arbitration has a number of advantages when compared to the judicial path. In particular, it allows the resolution of litigation through a simpler manner, for the procedure is simplified, dematerialized and faster. In fact, as a rule, the final decision is delivered in 6 months (it actually takes an average of 4,5 months). Additionally, it is undertaken in a more specialized form, given that the decisions are made by individuals with proven professional experience in the tax law area and, also, with resumes linked to economic areas.

INTERNATIONAL TAX COMUNICATION

For investors to seize all of the above mentioned regimes and for Portugal to effectively become hub and platform for investment, it is crucial that an

efficient and clear international tax communication is put in practice. It is, therefore, essential to promote the Portuguese tax system and its advantages abroad near the proper entities, such as foreign Chambers of Commerce and international business fairs, and, also, that the lawmakers and the Tax Authorities have (or begin having) a concern with the stability of the adopted fiscal regimes.

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