



SOCIEDADE DE ADVOGADOS, SP,RL
ROGÉRIO FERNANDES FERREIRA
& ASSOCIADOS



Nº29/21

NEWSLETTER

PORTUGAL AS A DESTINATION
AND A PLATFORM FOR
INTERNATIONAL INVESTMENT AND OF
RESIDENCY

This Information is intended for general distribution to clients and colleagues and the information contained herein is provided as a general and abstract overview. It should not be used as a basis on which to make decisions and professional legal advice should be sought for specific cases. The contents of this Information may not be reproduced, in whole or in part, without the express consent of the author. If you should require further information on this topic, please contact contact@rfflawyers.com.

*

This Information is sent in compliance with articles 22 and 23 of Decree-Law no. 7/2004, of 7 January, regarding unsolicited e-mails. If you wish to be removed from our mailing list and avoid similar future communications, please send an email with "Remove" to the email address newsletter@rffadvogados.com.

Legal 500 – Band 1 Tax "Portuguese Law Firm"/ Band 1 Tax "RFF Leading Individual" and highlighted in "Hall of Fame", 2013, 2014, 2015, 2016, 2017, 2018, 2019
Chambers & Partners – Band 1 Tax "RFF Ranked Lawyer", 2013, 2014, 2015, 2016, 2017, 2018, 2019 and Band 1 "Private Wealth Law" - HNW "RFF Ranked Lawyer", 2018
International Tax Review – "Best European Newcomer" (shortlisted) 2013 / "Tax Controversy Leaders", 2014, 2015, 2016, 2017, 2018, 2019 / "Indirect Tax Leaders", 2015, 2016, 2017, 2018, 2019 / "Women in Tax Leaders Guide", 2015, 2016, 2017, 2018, 2019 / "European Best Newcomer", 2016 / "Tax Firm of the Year", "European Tax Disputes of the Year" and "European Indirect Tax Firm of the Year", (shortlisted) 2017
Best Lawyers – "RFF Tax Lawyer of the Year", 2014 / "Recommended Lawyers", 2015, 2016, 2017, 2018
Who's Who Legal – "RFF Corporate Tax Adviser of the Year", 2013, 2015, 2016 / "RFF Corporate Tax Controversy Thought Leader", 2017 "Corporate Tax: Advisory and Controversy", 2017, 2018, 2019
Legal Week – RFF was the only Portuguese in the "Private Client Global Elite Lawyers" 2018, 2019
STEP Private Clients Awards - RFF "Advocate of the Year 2019" (shortlisted)
IBFD Tax Correspondent Angola, Mozambique and East-Timor, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020



www.rfflawyers.com
Praça Marquês de Pombal, 16 – 5th (Reception)/6th
1250-163 Lisboa • Portugal
Rua Eng.º Ferreira Dias n.º 924
4100-241 Porto
T: +351 215 915 220 • F: +351 215 915 244
contact@rfflawyers.com



1.

For more than 10 years, Portugal has been adopting a set of fiscal measures to increase its competitiveness and attract foreign investment.

To that effect, in recent years, Portugal, enacted a Personal Income Tax reform, alongside the implementation of tax regimes applicable to individuals, and also a Corporate Income Tax reform.

Furthermore, from the perspective of many foreign countries, Portugal is seen as the main liaison jurisdiction, not only with Europe - allowing the use of various community regimes that Portugal, as a Member State of the European Union (EU), benefits from -, but also with its former colonies, namely Brazil and the group of countries designated as African Portuguese Speaking Countries (PALOP), such as Angola, Guinea-Bissau, Cape Verde, São Tomé and Príncipe, Mozambique, and Equatorial Guinea. In fact, the historical ties that unite Portugal to these countries allowed the setting forth of several agreements that enable and encourage the circulation of individuals and goods between these jurisdictions.

In addition, Portugal benefits from an extensive network of Double Tax Treaties (DTT), including, with Macau which can provide a gateway to China.

Taking all the above into consideration, there is also, the Portuguese coast line, which grants a special geographical advantage – enhanced by deep-water harbors, such as the Sines harbor, and by the opportunities brought by the opening of the Panama and Suez canals – this seems to be the time for foreign investors to take advantage of the future opportunities in Portugal as a host country with a prominent position on the international tax panorama – therefore, as a natural investment platform – has to offer today.

2.

The Government established the “Golden Visa” (immigration) program in order to attract investment and high net-worth individuals (HNWI) to Portugal.

Under this regime, citizens of non-EU states who perform or carry out one of the investments legally foreseen – such as the transfer of capital in the amount

of at least € 1,000,000.00 or the acquisition of real estate with a minimum value of € 500,000.00 (among several others) - may obtain a residence permit in Portugal. This permit allows its holder (and close family members) to enter and reside in Portuguese territory, as well as to move freely in most European countries and countries within the Schengen Agreement Area. Additionally, this authorization may allow, in the long term, the acquisition of Portuguese nationality and, consequently, European citizenship.

Nevertheless, and as expected, the 2020 State Budget contained the legislative authorization to review the Golden Visa program, in this sense, the Portuguese Government approved the legislation pertaining to the limitation of the Golden Visa program. The Golden Visa program will be limited in the areas of Lisbon, Porto and along the coastal line, these changes will enter into force in January 2022.

3.

One of the tax regimes that was adopted in recent years was the Non-Habitual Residents (NHR) Regime. This regime, aimed at individuals, was implemented with the intention of attracting to Portugal professionals who develop

high added value activities, as well as high net-worth individuals (HNWI).

The NHR regime can be obtained by the individuals who actually transfer their residency to Portugal (i.e., become tax resident in Portugal) and, during the five years prior to their registration as resident taxpayers, were not domiciled, for tax purposes, in Portuguese territory.

Although it does not result as clear as it should from the wording of the regime, Portuguese expatriates and emigrants can also benefit from it.

In practical terms, this regime encloses undeniable advantages related to income taxation, such as the fact that the employment income and self-employment income rendering of high added value activities, with scientific, artistic, or technical nature are subject to PIT at a flat 20% tax when compared to the maximum possible effective taxation of 53%, and most of the income earned abroad by NHRs will be exempt in Portugal, as long certain conditions are verified.

Recently, further to the approval of the State Budget Law for 2020, and as a way of solving diplomatic tensions related to double non-taxation situations, a fixed tax rate of 10% has been introduced

over pensions received from abroad from individuals benefiting from the NRH status. This amendment applies to all individuals not registered as a tax resident in Portugal before 1 April 2020, the date on which the State Budget Law entered into force.

4.

Moreover, Portugal does not levy tax over the gratuitous transfer of assets (gifts or donations), during life or upon death (mortis causa), when the beneficiaries are the spouses, common law spouses and descendants or ascendants in a direct line of the owner, unlike France for example, there are no wealth taxes.

5.

Regarding Corporate Income Tax (CIT), it is relevant to note that Portugal has a Participation Exemption which is one of the most attractive participation exemption regimes at the European level.

The Participation Exemption regime foresees tax advantages for companies which are tax resident in Portugal (Portuguese companies and foreign companies that have a permanent establishment (PE) in Portuguese territory), such as the exclusion, for the

purposes of determining their taxable profit, of the profits and reserves distributed to these companies, or the exemption of capital gains from the onerous sale of shareholdings held by the taxable subjects, upon verification of certain legally provided conditions.

6.

Non-resident entities also benefit from a tax exemption on the profits and reserves distributed to them, provided that they are residents in the EU, in the European Economic Area (EEA) or in a State with which Portugal signed a DTT that provides for the exchange of information, considering that certain requirements are met.

A company resident in Portugal that carries out a cross-border activity through a PE, *i.e.*, without setting up a different legal entity in the other jurisdiction, may opt to exclude, from the determination of their taxable income in Portugal, the profits and tax loss derived from that PE.

7.

Another Portuguese attractive regime for business investment is the possibility of deducting and reporting tax losses. Therefore, the tax losses register

in a given tax period may be carried forward and deducted to tax profits for a period of 5 years (limited to 70% of the taxable income determined that same year).

It should be noted, however, that companies recognize as Small and Medium Enterprises (SMEs) benefit from an extension of the reporting period, being able to deduct tax losses for 12 tax years.

8.

Still regarding the reporting of tax losses, and following the economic lockdown due to the COVID-19 pandemic, the following transitional measures were approved:

- (i) The 2020 and 2021 tax years are to be disregarded for the purposes of counting the term of deductibility of the tax losses in effect on January 1, 2020; and
- (ii) Regarding tax losses arising in 2020 and 2021, the respective reporting period is increased from 5 to 10 years, and the deduction limit is also extended, from 70% to 80%, when this 10 percentage points correspond to a realized loss of 2020 or 2021.

In particular, regarding the concentration operations of SMEs carried out in 2020, the limit for the deduction of tax losses determined by the acquiring company - by reference to the assets of the companies involved in the operation - will be disregarded, as long as there is no distribution of profits for three years. During this same period, and whenever applicable, the application of state surcharge will be waived.

The tax losses obtained by the acquisition of shares in an SME which in 2020 was classified as a “company in difficulties”, can be used by the acquiring company, provided no profits are distributed, and the jobs are maintained for three years.

9.

Portuguese tax law also foresees “**Patent Boxes**” regime which is applicable to assignment contracts or temporary use of some industrial property rights and constitutes an incentive for businesses to invest in Portugal.

Under this regime, the income derived by the mentioned contracts is taxed at only half of their value, provided certain conditions are met.

Still, under the 2020 State Budget, this incentive was also extended to royalties resulting from software development.

10.

The Portuguese tax neutrality regime, with the provisions of the EU Merger Directive, applies to different corporate restructuring operations, foreseeing a tax exemption of capital gains arising from these corporate restructuring operations, provided certain conditions are met.

11.

Portugal has an Investment Tax Code, 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 establishes tax benefits on investment carried out by corporate taxpayers and results in a reduced CIT taxation.

Under the 2021 State Budget, the investors can only be granted tax benefits for System of Tax Incentives in Research & Development II if they realize investments in companies whose projects of

I&D, represent at least 7,5% of his turnover.

12.

Portuguese law foresees the possibility of taxing company groups by their overall net income through the application of the Special Taxation Regime for Company Groups.

The application of this regime is dependent on several requirements being met, namely, there must be a dominant company which holds, directly or indirectly, at least 75% of the capital of other so-called dominated entities and the group companies must be resident in Portugal, the EU or the European Economic Area.

13.

The Madeira Free Trade Zone and the International Business Center of Madeira comprise, on one hand, a special tax regime, of regional scope, authorized by the European Commission, which offers companies therein, incorporated before December 2020, and which create jobs, ample tax benefits such as the application of a reduced CIT rate of 5% until December 2027.

It should also be noted that on 22 December 2020, the Portuguese

Government approved a proposal to extend for 1 more year the deadline for issuing licenses to operate at Madeira Free Trade Zone.

Besides the reduced general rate of 5% applicable until 2027, the industrial companies established in the Industrial Free Zone may also benefit from a 50% reduction on taxable profit, provided certain requirements are met.

In addition, the tax benefits applicable to companies registered in the Madeira Free Trade Zone also extend to exemptions of up to 80% in Stamp Duty and property taxes (IMT and IMI), if the legal requirements are met.

It should also be noted that Madeira and the International Business Center are a part of the Portuguese legal system, despite some regional autonomy, and the companies registered therein can benefit from the wide network of Double Taxation Conventions celebrated by Portugal, as well as from the application of European Union Directives, offering a great competitive advantage over other international markets.

14.

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, become the cause of taxation.

The European Court of Justice (ECJ) had already addressed this topic, in particular, regarding the Portuguese exit taxation regime (case C-38/10), which provided that when a Portuguese company opted to change tax residency, it would be taxed regardless of the fact that it had not actually obtained any gain or surplus-value, and the Court considered that this regime constituted an obstacle to the freedom of establishment.

In this sense, some legislative changes were introduced in the Portuguese legal system, in order to align domestic legislation with European law.

15.

Certain aspects related to the elimination of international double taxation are harmonized within the EU, particularly through a number of directives (Parent-Subsidiary Directive, Interest and Royalties Directive, Mergers, Divisions and Transfers of Assets Directive). This harmonization, in conjunction with the OECD Model Convention (as a basis for

the conclusion of the DTT), provides a certain coherence between the existing tax systems.

In this sense, the DTTs, as bilateral agreements aimed at the elimination or reduction of international (juridical) double taxation, imposes restrictions on the taxation rights of the contracting states themselves, and dictate the situations in which they are obliged to grant a tax exemption or a tax credit.

Portugal signed DTT with 80 countries, including all Portuguese speaking countries, 12 American countries, 17 Asian countries and 39 European countries.

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

16.

Portuguese tax law foresees the possibility for tax subjects to submit binding information requests to the Portuguese Tax Authority (PTA), which unilaterally bind the PTA not allowing it to proceed in a different direction from the information provided, except in compliance with a judicial decision reason why the submission of a binding information request appears to be a means of

providing legal certainty to taxable persons during their activity.

17.

The Portuguese legal tax system also allows taxable persons to enter into Advanced Transfer Pricing Agreements with the PTA which may be unilateral or bilateral, *i.e.*, which may involve foreign tax administrations. These agreements are aimed at establishing, on a preliminary basis, the method or methods most likely to ensure the determination of the terms and conditions that would normally be agreed between independent entities, in their commercial and financial operations, carried out with entities with which they are in a special relationship with.

18.

At last, it is important to note that the existence of the Legal Regime of Tax Arbitration, which created the possibility to resolve conflicts arising between taxpayers and the Tax Administration through an arbitration court.

Arbitration has several advantages in comparison to the judicial process. It allows the resolution of disputes in a simpler way since the processing is simplified and the process is

dematerialized, electronic and faster. In fact, as a rule, the final decision is issued within a maximum period of 6 months (on average 4.5 months). Additionally, the process is undertaken in a more specialized form since the decisions are made by arbitrators with proven professional experience in Tax Law and with resumes linked to economic areas.

19.

For investors to seize all the above-mentioned regimes and for Portugal to effectively become an investment hub and platform, it is crucial that an efficient and clear international tax communication is put into practice. With that aim, it is essential to promote the Portuguese tax system and its advantages abroad, with the appropriate entities, such as, for example, foreign chambers of commerce and trade fairs and, above all, it is essential that the legislator and the Tax administration provide stability to the adopted tax regimes.

Lisbon, March 11th 2021

Rogério M. Fernandes Ferreira
Filipa Gomes Teixeira
Duarte Ornelas Monteiro
Joana Marques Alves

Yasser Tavares Vali
Raquel Cabral Duarte
(*Private Clients Team*)

www.rfflawyers.com