

International Tax Portugal Highlights 2017



Investment basics:

Currency – Euro (EUR)

Foreign exchange control – Portugal does not have exchange controls and there are no restrictions on the import or export of capital. Both residents and nonresidents may hold bank accounts in any currency. However, a transfer of EUR 10,000 or more outside Portugal in foreign banknotes, gold, travelers' checks or bearer securities must be declared to the Portuguese customs authorities.

Accounting principles/financial statements – Portuguese GAAP or IAS/IFRS financial statements must be prepared annually.

Principal business entities – These are the corporation (SA), limited liability company (Lda), general and limited partnership, partnership limited by shares (*Sociedade em Comandita por Acções*), branch of a foreign company and individual enterprise with limited liability. A company incorporated as an SA or Lda can have the additional legal status of a regulated holding company (an SGPS or *Sociedade Gestora de Participações Sociais*).

Corporate taxation:

Residence – A company is a resident if its legal seat or place of effective management is in Portugal.

Basis – Resident companies are subject to tax on worldwide profits; nonresident companies are taxed only on Portuguese-source profits. Foreign-source profits derived by residents are subject to corporate tax in the same way as Portuguese-source profits. By election, profits arising from a foreign permanent establishment may be tax exempt. Branches of nonresident companies are taxed only on Portuguese-source profits.

Taxable income – Corporate tax is charged on a company's profits, which consist of business/trading income, passive income and capital gains. Expenses are deductible to the extent that they are necessary for the purpose of generating taxable income and are properly documented. (See "Thin capitalization," below, for limits on the deduction of interest.)

Small businesses are eligible for a simplified tax regime, under which taxable income is determined as a percentage (depending on activity) of turnover.

Taxation of dividends – See "Participation exemption," below.

Capital gains – Realized capital gains are included in taxable profits for corporate tax purposes, but gains on the disposal of shares may be exempt from tax under the participation exemption regime (see "Participation exemption," below). The acquisition cost of capital assets disposed of after a minimum ownership period of two years may be adjusted for inflation, using official indices.

Fifty percent of gains derived from the disposal of tangible fixed assets and intangible assets held for at least one year may be excluded from taxation if the total disposal proceeds are reinvested within a prescribed period.

Losses – Operating losses may be carried forward for five years (12 years for small and medium-sized enterprises). The losses used in any year may not exceed 70% of the taxable profits. If at least 50% of the capital or the majority of the voting rights have been transferred, carryforward is allowed only if authorized by the Minister of Finance. The carryback of losses is not permitted.

Capital losses on the sale of shares that are not eligible for the participation exemption are deductible, subject to certain restrictions.

Rate – The standard corporate tax rate is 21%. A reduced rate of 17% applies to the first EUR 15,000 of taxable profits of small and medium-sized enterprises.

Surtax – A state surcharge is levied on taxable profits at the following rates: 3% for profits over EUR 1.5 million and up to EUR 7.5 million; 5% on profits over EUR 7.5 million and up to EUR 35 million; and 7% on profits exceeding EUR 35 million. A municipal surcharge is levied on taxable profits at rates up to 1.5%, depending on the municipality, resulting in a maximum possible combined tax rate of 29.5%.

Alternative minimum tax – No

Foreign tax credit – Portugal grants a tax credit up to the amount of Portuguese tax payable on foreign income, which is calculated net of expenses on a per-country basis.

By election, profits of foreign permanent establishments may be exempt. Credit for underlying tax may be available if the conditions for the participation exemption are not met.

Participation exemption – Under Portugal's participation exemption regime, dividends received and capital gains realized by a resident company from a domestic or foreign shareholding are exempt from tax, provided the shareholder is not considered a transparent entity and has held, directly or indirectly, at least 10% of the capital or voting rights of the other company for at least 12 months. The subsidiary may not be resident in a listed tax haven and must be subject to, and not exempt from, an income tax listed in the EU parent-subsidiary directive or an income tax rate that is equal to at least 60% of the Portuguese corporate tax rate. The exemption for dividends is not applicable if the payment is deductible for the payer. An ordinary credit is available when the conditions for the application of the participation exemption regime are not fully satisfied, with an option for an underlying tax credit for dividends on foreign shareholdings of at least 10% held for at least 12 months.

Holding company regime – No (see "Participation exemption," above).

Incentives – Profits from activities of licensed industrial, shipping and international services and financial companies established in the Madeira or Santa Maria Island (Azores) free-trade zones (where the income is not derived from mainland Portugal or in Madeira or the Azores outside the free trade zones) are subject to a reduced corporate tax rate of 5% if the company has

been granted a license to operate in that territory and certain conditions are satisfied; no withholding tax is levied on dividends, interest (subject to certain conditions), royalties (subject to certain conditions) and other business-related fees paid to nonresidents.

A corporate tax credit of 32.5% of qualifying R&D expenses is available in the relevant year and may be carried forward for eight years. Taxpayers can take an additional incremental credit of 50% of qualified R&D expenses exceeding the average amount spent in the prior two tax periods, limited to EUR 1.5 million.

A corporate tax credit between 10% and 25% of the amount of the relevant investment may be granted on the acquisition of new tangible and intangible fixed assets (with some exceptions and limitations), as well as a total or partial exemption from real property tax, transfer tax and stamp duty.

Up to 50% of income derived from licensing of patents, designs and industrial models is exempt.

Companies may benefit from a 7% notional interest deduction calculated based on the company's share capital increase each year (up to EUR 2 million), provided no capital reduction (with a corresponding payment to shareholders) is carried out in that same year, or in the five subsequent years.

Withholding tax:

Dividends – Dividends paid to a nonresident company are subject to withholding tax at 25% (35% if paid to a resident of a listed tax haven). The rate may be reduced to 0% where the conditions for the domestic participation exemption regime are met and the recipient of dividends is resident in the EU/European Economic Area (EEA) or a tax treaty jurisdiction. If the participation exemption does not apply, the rate may be reduced under a tax treaty.

Interest – Interest paid to a nonresident company is subject to withholding tax at 25% (35% if paid to a resident of a listed tax haven), unless reduced under a tax treaty.

Under the EU interest and royalties directive, payments to qualifying EU recipients are exempt.

Royalties – Royalty payments made to a nonresident company are subject to withholding tax at 25% (35% if paid to a resident of a listed tax haven), unless the rate is reduced under a tax treaty. Under the EU interest and royalties directive, payments to qualifying EU recipients are exempt.

Technical service fees – Technical service fees paid to a nonresident company are subject to withholding tax at 25%, unless the rate is reduced or eliminated under a tax treaty.

Branch remittance tax – No

Other – Other payments made to nonresidents may be subject to withholding tax at various rates.

Other taxes on corporations:

Capital duty – No

Payroll tax – No

Real property tax – A real property tax is levied annually by municipalities, and is payable by the registered owner on 31 December. The rates range from 0.3% to 0.8% of the taxable value of the property and the tax is deductible for corporate tax purposes. A rate of 7.5% applies if the owner of the real property is located in a listed tax haven.

As from 2017, entities or individuals owning residential real estate or “building land” will be subject to an additional real property tax (AIMI). The AIMI tax base corresponds to the sum of the fiscal value of all the eligible urban properties owned by each taxpayer. For individuals, the AIMI will be levied at progressive rates up to 1%, depending on the amount of the AIMI tax base. For corporate taxpayers, the AIMI rate is 0.4%, regardless of the amount of the AIMI tax base. For entities domiciled in listed tax havens, the AIMI rate is 7.5%.

Social security – An employer is required to contribute 23.75% of the uncapped monthly gross salary of its employees, including board members; the employee contributes 11%. The contribution is deductible for corporate tax purposes.

Stamp duty – Subject to exemptions, stamp duty is levied on various types of agreements, deeds and documents, as well as certain transactions not subject to VAT, such as the acquisition of real estate, leases and subleases, financial transactions, insurance premiums and certain bets.

Transfer tax – Real estate transfer tax is levied by municipalities at a maximum rate of 6% on the transfer of residential property, 5% on the transfer of rural property, 6.5% on the transfer of urban property and 10% if the purchaser is located in a listed tax haven.

Other – Special taxation rules apply to entities engaged in certain activities, including oil exploration, exploitation and production (which are subject to a number of specific oil-related levies), and to those operating in the gaming industry.

Various other taxes apply, including a tax on carbon emissions and a “Fat Tax” on the sale of sugar-added drinks.

Anti-avoidance rules:

Transfer pricing – Portugal’s transfer pricing rules generally follow OECD transfer pricing guidelines. The tax authorities may make pricing adjustments if special relations exist between the parties. Companies must prepare documentation to support their transfer pricing policies. Advance pricing agreements are available (see “Rulings,” below).

Thin capitalization – Specific limitations apply to the tax deductibility of interest expense. Net financial costs are deductible only up to the greater of the following thresholds: EUR 1 million or 30% of EBITDA as adjusted for tax purposes. Companies reporting under a tax group regime may apply the relevant thresholds at the group level. The amount exceeding the threshold in a given year may be carried forward for the following five years, up to the 30% threshold.

Controlled foreign companies – Under the CFC regime, undistributed profits of a nonresident company resident in a low-tax jurisdiction may be attributed to Portuguese resident participators with a substantial interest therein and taxed in proportion to their holdings. A substantial interest is a direct or indirect ownership (including a beneficial interest) of at least 25% of the capital, voting rights or rights to income or assets, or a 10% stake where more than 50% of the capital, voting rights or rights to income or assets is owned by Portuguese resident participators.

The CFC regime is not applicable if the nonresident company is resident in an EU member state or in an EEA member state with which an agreement for administrative cooperation in tax matters equivalent to that established for the EU has been concluded.

Disclosure requirements – Taxpayers or their agents are obliged to disclose to the Portuguese tax authorities certain corporate restructurings or transactions in which they are involved that may lead to substantial tax benefits.

For accounting periods beginning on or after 1 January 2016, resident entities that are included in multinational groups are required to file a declaration disclosing certain financial and tax information, on a country-by-country basis.

Other – Under the general anti-abuse clause, the tax authorities may disregard a transaction for tax purposes if one of the main objectives of the transaction is to reduce or eliminate tax. Payments to entities located in listed tax havens are, in principle, not deductible. Also, an entity

located in a listed tax haven will not benefit from the exemption on gains from the disposal of shares or other securities otherwise available to nonresidents.

Compliance for corporations:

Tax year – The tax year generally corresponds to the calendar year, although a different tax year is possible for resident companies and nonresident companies with a permanent establishment in Portugal.

Once selected, the same tax accounting period must be maintained for at least five years.

Consolidated returns – Consolidated returns may be filed by resident groups. A group consists of the dominant company and 75% or more directly or indirectly held subsidiaries (with more than 50% of voting rights held by the dominant company).

The following requirements must be met to file a consolidated return: (1) all members of the group must have their seat or place of effective management in Portugal (group members may be held indirectly by a company resident in an EU/EEA member state, provided the latter is held, directly or indirectly, at least 75% by the dominant company), and must be subject to the general tax regime; (2) the dominant company must hold the participation in the group companies for more than one year; (3) the dominant company may not be considered dominated by another Portuguese eligible company; and (4) the dominant company may not have opted out of the consolidated regime within the previous three years.

Filing requirements – Self-assessment applies and electronic filing is mandatory. The tax return must be filed within five months of the end of the accounting period. The supporting accounting and tax report must be filed by the 15th day of the seventh month following the company's year end. Advance corporate tax and the national surtax are payable in installments.

Penalties – Penalties and interest are imposed for late filing, failure to file or other instances of noncompliance with the tax law.

Rulings – Three types of rulings are available to taxpayers: general, advance and advance pricing agreements (APAs). A general ruling provides the tax authorities' general interpretation of the law. An advance ruling provides the taxpayer with the tax authorities' position on a specific transaction. In an APA, the taxpayer obtains an agreement on the transfer pricing policies to be adopted in transactions between related entities.

Personal taxation:

Basis – Resident individuals are taxed on their worldwide income; nonresidents are taxed only on their Portuguese-source income.

Residence – An individual is resident if he/she is present in Portugal for 183 days or more in any twelve-month period or, if the individual's main residence is located in Portugal, if he/she is present in Portugal at any time during the year. Individuals that were not Portuguese resident in any of the five tax years before moving to Portugal may request a special non-habitual tax residency status for 10 years. Non-habitual residents are taxable on worldwide income, but exempt from tax on certain foreign-source income. Portugal also has the concept of part-year residency.

Filing status – Married individuals are taxed separately, but may choose to file a joint tax return unless one spouse is nonresident, in which case the resident spouse files a separate tax return.

Taxable income – There are six categories of income that are subject to personal income tax: employment income, business and professional income, investment income, real estate income, increases in net worth and pensions. Investment income, real estate income and capital gains on securities are taxed at a flat rate of 28%. The remaining income is taxed at progressive rates.

Capital gains – Capital gains on the sale of an individual's main residence are exempt if the proceeds are used to purchase another permanent residence in Portugal, or in another EU/EEA member state, provided that, in the latter case, arrangements are in place for an exchange of information in tax matters. Only 50% of gains from the sale of immovable property is subject to tax as income at the progressive rates. Capital gains on shares are subject to tax at 28%. A 50% exemption applies to capital gains on the disposal of participations in unlisted small and micro companies.

Deductions and allowances – Deductions (up to specified limits) are available, including deductions for health and education expenses. Personal tax credits in varying amounts also are available, depending on the number of family members.

Rates – Rates are progressive up to 48%. In 2017, the surcharge tax applicable to income in excess of the minimum wage will be reduced to a maximum of 3.21% (from 3.5% in 2016), and the surcharge withholding obligation will be gradually abolished during 2017. An

additional surcharge of 2.5% applies to income between EUR 80,000 and EUR 250,000. For income over EUR 250,000, the additional surcharge rate is 5%. Non-habitual resident individuals are eligible for a flat 20% rate on income related to work or services rendered in Portugal involving activities defined in a ministerial order.

Other taxes on individuals:

Capital duty – No

Stamp duty – See “Stamp duty,” above.

Capital acquisitions tax – See “Inheritance/estate tax,” below.

Real property tax – See “Real property tax” under “Other taxes on corporations,” above.

Inheritance/estate tax – For gifts and inheritances, stamp duty is imposed at 10% (unless the heir is the spouse, descendant or ancestor of the donor/deceased, in which case an exemption applies).

Net wealth/net worth tax – No

Social security – The employee contributes 11% of his/her gross salary, and the employer contributes 23.75%.

Other – Various environmental taxes apply, including a tax on plastic bags. There are tax incentives for the acquisition of electric and hybrid cars.

Compliance for individuals:

Tax year – Calendar year

Filing and payment – From 2017 onward, the filing dates for the personal tax return will be the same for all types of income (i.e. from 1 April to 31 May following the year end). Final payment of tax is due by 31 August in the year following the year to which the income relates. There is an optional filing extension to 31 December if the taxpayer requests foreign tax credits.

Penalties – Penalties apply for failure to comply with tax payment and filing obligations.

Value added tax:

Taxable transactions – VAT generally is levied on the supply of goods and services, and on imports.

Rates – For the mainland, a standard rate of 23%, an intermediate rate of 13% and a reduced rate of 6% apply. The rates are 22%, 12% and 5% in Madeira, and 18%, 9% and 4% in the Azores.

Registration – A reverse-charge mechanism may apply to local supplies made by nonresident entities, avoiding the registration obligation for the supplier. However, nonresident suppliers generally are required to register for VAT in Portugal on the transfer of their own stocks to Portugal for the purposes of their own undertakings, or if they sell goods or supply services to private customers.

Filing and payment – Monthly returns must be filed when annual turnover exceeds EUR 650,000 (otherwise, returns are filed quarterly). Monthly VAT returns must be filed by the 10th day of the second month following the end of the relevant month.

Quarterly returns must be filed by the 15th day of the second month following the end of the relevant quarter. Payment is required by the deadline for filing the return.

Source of tax law: Portuguese Constitution, the codes regarding the various taxes in force, the General Tax Law and other tax legislation

Tax treaties: Portugal has 68 tax treaties in force.

Tax authorities: Tax and Customs Authority (*Autoridade Tributária e Aduaneira*)

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