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Portugal: Corporate Tax Comparative Guide

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1 Basic framework

1.1 Is there a single tax regime or is the regime multi-level (eg, federal, state, city)?

As a rule, there is a single tax regime, with the following deviations:

- The two autonomous regions (the archipelagos of Madeira and Azores) may adapt taxes to regional s practice has resulted in lower tax rates. However, taxes are still administered at a central level.
- For the purpose of allocating tax revenues to the archipelagos of Madeira and Azores, the taxable ba (permanent establishments) located therein must be calculated.
- Apart from other tax revenues earmarked for them (eg, real estate transfer tax), municipalities have tl final rate of municipal property tax and a surcharge to corporate tax. Again, these taxes are otherwise central level.

1.2 What taxes (and rates) apply to corporate entities which are tax resident in your jur

The normal corporate income tax (CIT) rate is 21% (for the mainland and the Autonomous Region of Made at 16.8% for the Autonomous Region of Azores). However, resident taxpayers certified as small or medium may benefit from a reduced 17% rate (16% in the Autonomous Region of Madeira and 13.6% in the Autono Azores) for the first €15,000 of taxable income. A municipal surcharge of up to 1.5% of taxable income also

- 3% for taxable profits from €1.5 million to €7.5 million;
- 5% for taxable profits from €7.5 million to €35 million; and
- 9% for taxable profits in excess of €35 million.

Autonomous taxation applies at different rates to certain expenses incurred by corporate taxpayers and de
totally or partially connected to their activity, or deemed to be an informal fringe benefit for employees.

Value added tax (VAT) is levied as follows:

- standard rate – 23% (22% in the Autonomous Region of Madeira and 18% in the Autonomous Regio
- intermediate rate – 13% (12% in the Autonomous Region of Madeira and 9% in the Autonomous Reg
- reduced rate – 6% (5% in the Autonomous Region of Madeira and 4% in the Autonomous Region of

1.3 Is taxation based on revenue, profits, specific trade income, deemed profits or som base?

Tax resident companies and permanent establishments of non-resident entities are subject to taxation on t determined under the terms of the accounting standards (based on International Financial Reporting Stand the corrections imposed by the CIT Code. Broadly, the principal determinant of the taxable base is the prof as computed according to the principles of commercial accountancy.

1.4 Is there a different treatment based on the nature of the taxable income (eg, gains opposed to trading income or dividend income)?

As a rule, taxable income is subject to the regular 21% CIT rate.

Dividends paid to resident companies are subject to a 21% CIT rate, whereas dividends paid to non-reside subject to withholding tax at a 25% rate or a reduced rate (of between 5% and 15%) foreseen under the te double tax treaty. Portugal has transposed the EU Parent-Subsidiary Directive, which results in a withholdi under the conditions set forth therein; and more recently a participation exemption regime was established dividends and capital gains, as long as the conditions set forth therein are met. Under this regime, dividend are exempt if the Portuguese company is not tax transparent and holds, directly or indirectly, a minimum of or voting rights of its subsidiary for a minimum period of one year. The participated company cannot be res jurisdiction and must be subject to and not exempt from CIT or, if EU resident, from a tax mentioned under 2011/96/EU; or if resident outside the European Union, from a tax similar to the CIT, provided also that the under such tax is not less than 60% of the Portuguese CIT rate.

In computing taxable capital gains, an inflation adjustment (broadly speaking) is applicable to the base cos

1.5 Is the regime a worldwide or territorial regime, or a mixture?

Portuguese tax resident taxpayers are subject to taxation on their worldwide income, whereas non-residen permanent establishment in the Portuguese territory are subject to taxation only on income deemed to be o

Portuguese permanent establishments of non-resident entities are subject to taxation on the profits attribut

1.6 Can losses be utilised and/or carried forward for tax purposes, and must these all l jurisdiction (ie, foreign losses cannot be utilised domestically and vice versa)?

Tax losses incurred in 2018 can be carried forward for five years, or for 12 years in the case of losses incur medium-sized companies that pursue directly and mainly agricultural, commercial or industrial activities; ho this mechanism is limited to 70% of the taxable profits assessed in any of the subsequent years.

In determining a tax group's taxable profits (ie, a group comprised of resident companies), the individual ta company may be offset in the same year against the individual profits of the other companies and the part carried forward (subject to the 70% limit).

The losses of a foreign permanent establishment of a resident company may be offset against the broader resident company. However, resident corporate taxpayers may opt to exclude from taxation the profits and permanent establishment (covering all permanent establishments located in the same jurisdiction), as long

- the profits attributable to such permanent establishment are subject to and not exempt from a tax fore the EU Parent-Subsidiary Directive or a tax similar to Portuguese CIT where the legal rate is not less standard CIT rate (currently 21%); and
- the permanent establishment is not located in a blacklisted jurisdiction.

This regime does not apply to profits attributable to the foreign permanent establishment up to the amount to that permanent establishment which have been taken into account by the Portuguese resident company the respective taxable income of the previous five tax years (12 in the case of small and medium-sized con optional regime, if elected, must be maintained for a minimum three-year period.

1.7 Is there a concept of beneficial ownership of taxable income or is it only the namec of the income that is taxed?

Although the Portuguese CIT Code does not foresee the concept of beneficial ownership of taxable income which disregard the legal owner and tax the income obtained by the ultimate owner (the controlled foreign o

In the context of a double tax treaty to which Portugal is a party, the concept of beneficial ownership may h implications (eg, if it is a prerequisite for the applicability of a limitation to the rate levied by the source coun applies in the context of the EU Interest and Royalties Directive.

Investment income earned by a non-resident without a permanent establishment in Portugal is subject to a 35% unless the beneficial owner is disclosed.

1.8 Do the rates change depending on the income or balance-sheet size of the taxpaye

The rates may vary depending on the amount of taxable income. Although the normal CIT rate is 21% (for as the Autonomous Region of Madeira, but 16.8% in the Autonomous Region of Azores), resident taxpaye or medium-sized companies may benefit from a reduced 17% rate (16% in the Autonomous Region of Mac the Autonomous Region of Azores) for the first €15,000 of taxable income.

A state surcharge applies as follows:

- 3% for taxable profits from €1.5 million to €7.5 million;
- 5% for taxable profits from €7.5 million to €35 million); and
- 9% for taxable profits exceeding €35 million.

1.9 Are entities other than companies subject to corporate taxes (eg, partnerships or t

In theory, any entity not incorporated whose income is not subject to taxation under the personal income ta income of a physical person or corporation) is subject to CIT. This definition may encompass an unincorpo fund as well as a trust operating/managed (hypothetically) from or in Portugal.

That said, the Portuguese CIT regime also foresees the concept of transparent entities. Transparent entitie the terms of the CIT Code correspond to the following:

- civil companies with commercial capacity;
- professional firms;
- asset management civil companies whose equity capital is controlled, directly or indirectly, for more tl family group or a limited number of members, under certain conditions;
- complementary business groupings constituted and operating in accordance with the applicable law;
- European economic interest groupings which are treated as residents.

Under the transparent entities regime, which aims to promote tax neutrality, although income/profit obtaine entities is determined under the CIT Code rules, it is then directly imputed to the shareholders or participan income distribution, and taxed at the rates applicable to the latter (under personal income tax or CIT itself,

2 Special regimes

2.1 What special regimes exist (eg, for fund entities, enterprise zones, free trade zones particular sectors such as oil and gas or other natural resources, shipping, insurance, real estate or intellectual property)?

The Madeira International Business Centre (MIBC) regime was established for entities licensed to operate 2014 and extended to entities licensed to operate as from 1 January 2015 until 31 December 2027.

Under certain conditions, such entities benefit from a reduced 5% corporate income tax (CIT) rate for certa a 50% deduction to their assessed tax. Non-resident shareholders of such entities may also benefit from a dividends and interest.

Exemptions from stamp duty, property tax, property transfer tax and regional and municipal surcharges als an 80% limitation per tax and transaction or period.

Tax benefits for MIBC licensed entities cannot exceed annually the highest of the following limits:

- 20.1% of annual gross added value;
- 30.1% of annual labour costs; or
- 15.1% of annual turnover.

Entities resident in the Autonomous Region of Azores may also benefit from a contractual regime of incenti with strategic relevance made in that territory.

At a national level, there is also a contractual regime for granting tax benefits for relevant investment projec non-contractual (automatic) tax incentives for investments.

In 2016 Portugal adopted the international recommendations on intellectual property and patent box regim Base Erosion and Profit Shifting Action 5, and thus amended the special tax rules applicable to corporate i patents and other industrial property rights. The regime provides for a 50% reduction of the qualifying taxal was established that is a function of the total costs incurred in developing the asset protected by the IP righ

There are also special regimes for:

- investment funds (focused on taxing at the distribution level);
- securitisations (income tax, stamp duty and value added tax (VAT));
- casinos; and
- shipping (an optional special regime for the taxable profits of the shipping company, to be assessed a tonnage, and a special regime for ship crew).

2.2 Is relief available for corporate reorganisations or intra-group transfers of compani assets? Please include details of any participation regime.

Following the transposition of the EU Merger Directive, the Portuguese tax law foresees a special tax neutr certain operations performed as part of group reorganisations, including mergers, demergers, contributions exchanges of shares. Among other conditions, this regime applies only to operations performed for econor certain conditions, restructuring operations are automatically exempt from municipal tax on property transfe emoluments and legal fees. However, such exemptions may not be automatic in case of:

- an operation which is subject to the prior approval of the Portuguese Competition Authority; or
- a demerger operation for which the prior approval of the minister of finance is required (unless it is int demerged part will merge with existing companies or with parts of other companies).

There is also a participation exemption regime, under which dividends and capital gains are exempt if the F
is not tax transparent and holds, directly or indirectly, a minimum of 10% of the capital or voting rights of its
minimum period of one year. The participated company cannot be resident in a blacklisted jurisdiction and
and not exempt from CIT or, if EU resident, from a tax mentioned under Article 2 of Directive 2011/96/EU; c
the European Union, from a tax similar to CIT, provided additionally that the rate applicable under such tax
of the Portuguese CIT rate.

2.3 Can a taxpayer elect for alternative taxation regimes (eg, different ways to calculat base, such as revenue-based versus profits based or cash basis versus accounts basi

Resident taxpayers may opt for a simplified regime, provided that they are not exempt and not subject to sp
and that they undertake commercial, industrial or agricultural activities as their main activity. In addition, the
must be met in respect to such taxpayers:

- The annual gross income obtained in the immediately preceding taxation period may not exceed €20
- The total balance sheet for the immediately preceding tax period may not exceed €500,000;
- Their accounts must not be subject to statutory audits under the applicable law;
- More than 20% of their share capital must not be held, directly or indirectly, by companies that do not preceding conditions, except where such entities are venture capital companies or venture capital inv
- They must have adopted the accounting standards for micro-companies; and
- They must not have renounced the application of these rules in the previous three years, with referen which the application of the regime begins.

The taxable base covered by the simplified rules is calculated by applying coefficients to revenue/turnover
between 0.04 and 1, depending on the nature of the revenue. Some coefficients are reduced by 50% for th
the beginning of the taxpayer's activity and by 25% for the following taxation period.

The Portuguese State Budget Law for 2019 foresees that a discussion on the implementation of a new sim
occur during the first semester of 2019.

There is also an (optional) regime for shipping, where taxation is a function of the ship tonnage.

2.4 What are the rules for taxing corporates with different functional or reporting curre the jurisdiction in which they are resident?

The differences between the functional accounting currency and the currency in which some operations ma
dealt with by National Accounting Standard 23, which basically follows International Accounting Standard 2
regime accepts in principle the treatment provided for therein.

With regard to the articulation between the functional accounting currency and the tax reporting currency ('
are no specific rules foreseen in Portugal for CIT purposes (although some particular tax rules on capital ga
in this regard).

It has been argued that since the CIT regime accepts, as a starting point, the accounting rules and their ou the accounting rules allow for a functional currency which is different from the national currency, it is permis accounting profits, and thereafter taxable profits, in a different currency from the national currency.

However, as CIT must be paid in the national currency, a currency conversion must be made at some point specific rate. It has been argued that the relevant exchange rate should be that of the last day of the taxabl this issue has yet to be clarified through either legislation or a tax ruling.

For capital gains purposes, the Portuguese CIT Code foresees specifically that the sale or acquisition valu performed in a different currency shall be determined by the exchange rate on the date of the sale or acqui by the exchange rate of the previous quotation.

For VAT purposes, there are specific rules which - irrespective of the functional accounting currency - requi invoicing/operations in a different currency be converted to the national currency for VAT reporting purpose monthly basis, by applying the exchange rate on the first working day of the month in which the VAT becom *que se verificou a exigibilidade do imposto*").

2.5 How are intangibles taxed?

The cost basis of some intangible assets without a determined economic lifecycle is deductible, pursuant to method, for 20 tax years (5% per year), counting from the initial record of the asset in the company's accou regime applies to the following intangible assets:

- industrial property such as trademarks, licences, production processes, models and other similar righ consideration and without a determined lifecycle; and
- goodwill arising from business restructuring operations.

However, the following intangible assets are excluded from this regime:

- intangible assets transferred by virtue of mergers, divisions and transfers of assets made pursuant to neutrality regime;
- goodwill related to shares;
- intangible assets acquired from entities which are resident in a tax haven; and
- intangible assets acquired to entities with which there are special relations as defined under the trans (this exclusion is in force as from January 1, 2019 onwards).

If the intangible asset has a determined economic lifecycle, its cost base is deductible throughout.

A patent box regime applies to corporate income derived from patents and other industrial property rights, 50% reduction of the qualifying taxable IP income. A limit was established that is a function of the total cos developing the asset protected by the IP right.

2.6 Are corporate-level deductions available for contributions to pensions?

The Portuguese CIT Code foresees corporate deductions at the employer level for contributions to pensior equivalents, which may be deducted up to a maximum of 15% of the total amount of the expenses incurrec some conditions are met (eg, equal treatment of employees).

2.7 Are taxpayers from different sectors (eg, banking) subject to different or additional surtaxes?

Corporate taxpayers in certain sectors may be subject to additional taxes, such as:

- the contribution for the banking sector, whose tax revenue is intended to benefit a Resolution Fund cr address the systemic risks of Portuguese banks;
- the extraordinary contribution for the energy sector, established for the purpose of financing mechani: systemic sustainability of the sector, with revenue allocated to a fund which aims to reduce the tariff c and environmental energy policies; and
- the extraordinary contribution for the pharmaceutical industry, whose tax revenue is intended to bene service.

None of these additional taxes can be deducted for CIT purposes.

2.8 Are there other surtaxes (eg, solidarity surtax, education tax, corporate net wealth tax)?

Portuguese law foresees a municipal surcharge of up to 1.5% of taxable income, as well as a state surchar follows:

- 3% for taxable profits of €1.5 million to €7.5 million;
- 5% for taxable profits of €7.5 million to €35 million; and
- 9% for taxable profits exceeding €35 million.

Companies that own real estate are also subject to municipal property tax on the tax value of the property. as follows:

- between 0.3% and 0.45% for urban properties (fixed annually by the municipality and tripled if the prc for more than one year);
- 0.8% for rural properties; and
- 7.5% for properties owned by entities with their head office in a blacklisted territory.

An additional municipal property tax applies to the sum of the tax registered value of all urban properties (e classified as serving "trade, industry, or services" purposes and "others") held by each corporate (or individ January each year. Corporate taxpayers are subject to a 0.4% rate, or a 7.5% rate if the corporate taxpaye effective management is located in a blacklisted territory. Urban properties owned for the personal use of c shareholders, board members or members of any administrative, supervisory or management bodies are s

0.7% (and 1% for that part of the taxable amount which exceeds €1 million).

2.9 Are there any deemed deductions against corporate tax for equity?

A notional interest deduction to taxable profits applies upon the incorporation of an entity or a capital increa through the conversion of credits deriving from shareholder loans or third-party loans, or through reinvestin same tax period. The deduction corresponds to 7% of the capital contribution, up to a limit of €2 million. Su for the tax period in which the capital contribution is made and the following five tax periods, as long as:

- the company's taxable profits are not determined through indirect methods; and
- the beneficiary company does not reduce its equity by returning it to shareholders in the first relevant following five tax periods.

This regime does not apply if it has been applied, for the same tax period or the previous five tax periods, t directly or indirectly, a shareholding in the beneficiary entity, or which are held, directly or indirectly, by the s the amount of the capital contributions of the entities that have previously benefited from this regime.

3 Investment in capital assets

3.1 How is investment in capital assets treated – does tax treatment follow the accoun depreciation) or are there specific rules about the write-off for tax purposes of investm assets?

The starting point is that corporate income tax (CIT) follows the accounts. However, many specific tax rules treatment of capital assets.

As a rule, depreciation must be calculated through the straight-line method or the declining balance metho cannot be applied to buildings, passenger vehicles, furniture, social welfare equipment or second-hand ass

The maximum rates of depreciation are set by law. Tax deductions above such rates are not allowed and th deduction is 50% of the maximum rate (otherwise the deduction is lost).

Assets with an acquisition value of less than €1,000 can be depreciated in the acquisition year, unless the set of elements that should be depreciated as a whole.

Accounting write-offs are not automatically accepted for tax purposes. The reason for the write-off is subjec control/inspection for tax purposes, and the tax law has a *numerus clausus* of circumstances in which a wri relevant for CIT purposes. If the write-off is not accepted for tax purposes, the cost base not yet deducted f be deducted throughout the theoretical useful lifecycle of the capital asset.

In some circumstances quoted shares may be subject to fair value adjustments relevant for tax purposes.

3.2 Are there research and development credits or other tax incentives for investment

Portuguese law foresees several tax regimes aimed at promoting investment in innovation, including the fo

- The System of Tax Incentives for Business Research and Development grants a tax credit computed the relevant investment as follows:
  - 32.5% of the expenses incurred; and
  - the possibility of an incremental rate corresponding to 50% of the increase in expenditure incurr period as compared to the average of the two preceding years, up to a maximum of €1.5 millior

A 15% increase on the base rate applies for micro, small and medium-sized companies that have not yet c taxation periods (and have not benefited from the incremental rate).

- The Tax Regime for Investment Promotion generates a tax credit corresponding to 25% of the relevar first €10 million of the investment and 10% thereafter. The relevant municipality may grant a municipa exemption for 10 years for property used under the relevant investment, as well as a real estate trans for the acquisition of property under the relevant investment. A stamp duty exemption is also availabl of property within the relevant investment.
- The reinvestment of retained earnings regime allows micro, small and medium-sized companies to be credit corresponding to 10% of retained and reinvested earnings used for relevant investments as de limit of €7.5 million of retained and reinvested earnings. Earnings should be reinvested within three ye
- Contractual tax credit incentives (corresponding to between 10% and 25% of the relevant investment for investments amounting to or exceeding €3 million.

3.3 Are inventories subject to special tax or valuation rules?

For the purposes of determining taxable profits, gains and losses derived from inventories result from the a valuation criteria defined for accounting purposes using:

- acquisition and production costs;
- standard costs determined according to adequate accounting techniques;
- sale prices deducted from the regular profit margin (the latter authorised only in certain circumstances
- sale prices of products collected from biological assets at the moment of harvest, deducted from the e the sale point, excluding transportation costs and other costs required to place such products on the r

The relevant acquisition or production costs are determined as follows:

- specific cost of the item;
- weighted average cost; and
- first in, first out.

The use of different valuation criteria is subject to authorisation by the tax authorities, which must be reque of the relevant tax period.

3.4 Are derivatives subject to any specific tax rules?

Derivatives are subject to specific tax rules. As a rule, gains or losses arising from the application of the fai valuation are relevant for the assessment of taxable profits. For hedging situations (as defined in the CIT C further specific rules aimed essentially at matching the recognition of losses and gains in the derivative inst hedged position or asset. An anti-abuse provision is also provided for, allowing for recharacterisation of the tax authorities.

Exemptions for certain repo operations are also available.

4 Cross-border treatment

4.1 On what basis are non-resident corporate entities subject to tax in your jurisdictior

Non-resident corporate taxpayers with a permanent establishment in Portugal are subject to taxation on th attributable to such permanent establishment. Non-resident corporate taxpayers without a permanent estal Portuguese territory are subject to taxation only on income deemed to be obtained (sourced) in Portugal.

4.2 What withholding or excise taxes apply to payments by corporate taxpayers to nor

Payments made by corporate taxpayers to non-resident entities related to dividends, interest, royalties, ren services are usually subject to withholding tax, normally at a corporate income tax (CIT) rate of 25%, which between 5% and 15% under the terms of an applicable double tax treaty as long as the following formalitie at the date on which tax is due:

- presentation of the relevant tax form (Model 21-RFI), duly certified by the foreign tax authorities; and/
- presentation of a certificate of residence issued by such foreign tax authorities with respect to a non-r of income paid by a Portuguese resident entity.

Dividends may not be subject to withholding tax in Portugal either due to the application of the participation or because of the application of the EU Parent-Subsidiary Directive provisions transposed in the CIT Code out under those regimes are met.

Interest and royalties may also be exempt from withholding tax under the terms of the EU Interest and Roy transposed in the CIT Code, as long as certain conditions are met.

An exemption applies to interest on bond issues (including public debt) held by non-residents and not attrib permanent establishment in Portugal, subject to controls as provided for in the relevant legislation.

An exemption applies in principle to interest on loans (not attributable to a permanent establishment in Por resident financial institutions to resident credit institutions, or to certain public bodies, and to gains on swap involving these entities.

Upon request, an exemption may apply to income (not attributable to a permanent establishment in Portug leasing operations between non-resident entities and certain public bodies.

Investment income paid to entities which are tax resident in backlisted countries or territories is subject to a withholding tax of 35%.

In general, when applied to income obtained by non-resident entities, such withholding tax is definitive and entities from the obligation to file a tax return in Portugal.

4.3 Do double or multilateral tax treaties override domestic tax treatments?

According to the Portuguese Constitution, international law prevails over national law. As a result, double a treaties signed by Portugal prevail over the domestic tax rules as long as they remain in force.

4.4 In the absence of treaties, is there unilateral relief or credits for foreign taxes?

In the absence of treaties, the CIT Code foresees a unilateral tax credit for the purposes of eliminating dou must correspond to the lowest of the following amounts:

- income tax paid abroad with respect to relevant income that is also subject to tax in Portugal; or
- the CIT fraction assessed before the deduction, corresponding to the net income that may be taxed ir country.

Where a double tax treaty applies, the tax credit may not exceed the tax that should have been paid abroa terms foreseen under the applicable double tax treaty.

4.5 Do inbound corporate entities obtain a step-up in asset basis for tax purposes?

If a non-resident entity makes an inbound investment in the Portuguese territory by means of an asset acq business unit acquisition), such operation may result in a step-up in the acquired asset basis for tax purpos registered for accounting purposes taking into consideration its new acquisition value), thus allowing for a h depreciation (which includes depreciation of the goodwill in a concentration of business activities), unless tl tax neutrality regime.

On the other hand, in the case of the acquisition of a company (or shares in a company), there is no step-u the assets of the company (and the goodwill concerning the shares is not tax deductible).

In the past, in times of high inflation, a step-up in the asset basis for tax purposes was recurrently provided

For companies under privatisation, a step-up in the asset basis for tax purposes has also been provided fo

More recently, an optional one-off step-up in the asset basis was provided for in exchange for a 14% tax or tax basis (ie, pay tax now in exchange for a lower tax rate tomorrow – a synthetic loan in substance).

4.6 Are there exit taxes (for disposed-of assets or companies changing residence)?

The CIT Code foresees an exit tax regime applicable to tax resident companies (including Societas Europa European cooperative societies) that transfer their head office and effective management abroad. Under th apply to the taxable gain or loss corresponding to the difference between the market value of the assets ar tax basis (even if they are not expressed in the company's accounting records), as of the date on which the except for assets and liabilities remaining in Portugal as part of a Portuguese permanent establishment of t company if certain conditions are met. If residence is transferred to a member state of the European Union administrative cooperation for tax purposes) the European Economic Area (EEA), the transferor may choos according to one of the following methods:

- full payment in one immediate instalment upon the transfer of residence;
- payment in the year following the extinction, transmission or detachment from the entity's activities of asset(s) or their transfer, in full or in part, to a territory outside the European Union or (if there is no m administrative cooperation for tax purposes) the EEA, in which case payment is due in respect of the
- payment in equal instalments over a five-year period.

5 Anti-avoidance

5.1 Are there anti-avoidance rules applicable to corporate taxpayers – if so, are these c (jurisprudence) or statutory, or both?

The Portuguese law foresees several specific anti-avoidance rules and a general anti-avoidance rule (GAA implemented in the General Tax Law in 1999 and has already generated substantial case law. There are no rules created by case law.

Apart from the statutory GAAR, the tax authorities often try to bypass the demanding requirements of the G their case under the general provision that governs the tax deductibility of costs.

5.2 What are the main ‘general purpose' anti-avoidance rules or regimes, based on eith cases?

In theory, the GAAR aims to prevent the structuring of operations in an unusual or awkward way (there is m what is considered ‘unusual'; the language of the law speaks in terms of artificiality and abuse of juridical fo order to achieve a tax advantage. This latter criterion is decisive: if the operation has economic substance something in substance apart from the tax advantage it produced - it can be argued that the main aim was advantage; that the transaction was merely a way of achieving a different goal while also making use of tax a specific transaction has enough substance to defeat the GAAR provision is the million-dollar question.

In case law, however, the GAAR is not always treated under these lines of reasoning and more weight thar sometimes ascribed to the perceived unusualness versus normality of the transaction or operation as a wh

As regards specific anti-abuse rules, these are as diverse as their specific goals. An important rule concern was eliminated with the enactment of the participation exemption regime in 2014.

5.3 What are the major anti-avoidance tax rules (eg, controlled foreign companies, trar (including thin capitalisation), anti-hybrid rules, limitations on losses or interest deduc

Portuguese law foresees several anti-avoidance tax rules, including the following:

- Under the controlled foreign corporation rules, profits or income obtained by non-resident entities tha to a more favourable tax regime are imputed to Portuguese tax resident taxpayers which hold, directl (including through a representative, fiduciary or intermediary), at least 25% of the share capital, votin over the income or assets of such non-resident entities. This percentage is reduced to 10% if at least capital, voting rights or rights over the income or assets of such non-resident entity are held, directly Portuguese tax resident taxpayers. An exception arises if the non-resident entity is resident or establi or (where there is administrative cooperation for tax purposes) EEA member state if the Portuguese t that the non-resident entity was incorporated for valid economic reasons and carries out business ac
- The deductibility of financing expenses is limited to the higher of the following:
  - € 1 million; or
  - 30% of earnings before interest, tax, depreciation and amortisation.

Financing expenses over this amount incurred in a certain tax year may be deducted over the following five deducting the financing expenses of the relevant year, to the extent that the limits are not exceeded.

- The deductibility of losses that have been carried forward is limited to 70% of taxable profits (it is dou may qualify as an anti-abuse provision).
- If ownership of shares (or voting rights) changes by more than 50%, tax losses of the company that h forward cease to be deductible (there are several exemptions from this provision, mainly related to re
- The participation exemption regime does not apply if more than 50% of the company's assets compri Portugal that serves no business purpose other than the trading of real estate.
- Capital losses on shares are not deductible to the extent that there was elimination of double taxatior distributed in the relevant year or the preceding four years, and to the extent that in the same period gains benefiting from the participation exemption with respect to shares of the same company.
- The tax neutrality regimes foreseen for reorganisations will not apply if the tax authorities conclude th was primarily aimed at tax evasion, which may be the case if the intervening companies are not subj corporate income tax regime or if the operations were not carried out for valid economic reasons.
- The relevant price for tax purposes in real estate transactions cannot be lower than the tax value of t estate transfer tax purposes. The taxpayer may trigger a specific procedure aimed at proving that the was effectively lower than that.
- Transfer pricing rules apply in alignment with Organisation for Economic Co-operation and Developm guidelines.
- Payments to low tax jurisdictions are not tax deductible and are subject to autonomous/separate taxa taxpayer can prove that the expense corresponds to a real transaction or service, that the latter was the price has not been exaggerated.
- A disclosure obligation applies to certain tax planning schemes (eg, use of hybrid instruments or entit tax losses) by the promoting entity or the user under certain conditions.

5.4 Is a ruling process available for specific corporate tax issues or desired domestic o tax treatments?

Portuguese law does not foresee a ruling process for specific corporate tax issues or desired domestic or c treatments, although a taxpayer can request a binding ruling from the tax authorities regarding the applicat regime to a certain operation to be performed. The binding ruling must be issued within 150 days, unless th an urgent ruling, in which case it must present a ruling proposal which will be analysed by the tax authoritie and pay a fee set by Portuguese tax authorities according to the complexity of the subject. If the taxpayer r issuance of an urgent binding ruling and the Portuguese tax authorities do not comply within the 75-day tim taxpayer's ruling proposal will be deemed to have been accepted by the Portuguese tax authorities.

Upon issuing a binding ruling, the tax authorities cannot act differently with respect to the subject matter of otherwise required by a judicial decision. The ruling ceases to be binding after four years (unless a renewa after the first year it can be revoked without retroactive effects.

5.5 Is there a transfer pricing regime?

There is a transfer pricing regime and it is in line with the OECD guidelines, under which the tax authorities adjustments to taxable profits in respect of transactions between related parties in order to ensure complia length principle.

Transactions between related parties must be fully documented in the transfer pricing file, which must be k resident taxpayer with net sales and other income amounting to or exceeding €3 million in the previous tax

In addition, the Portuguese transfer pricing regime foresees the possibility of entering into unilateral, bilater advance pricing agreements with the tax authorities, which remain valid for up to three years and may be r other obligations, the taxpayer must prepare an annual report on the application of the advance pricing agr the agreement will be deemed to have expired. The execution of an advance pricing agreement is subject to the tax authorities based on the taxpayer's turnover.

5.6 Are there statutory limitation periods?

The statutory limitation periods are as follows:

- four years as a general rule;
- three years where an error is evidenced in the taxpayer's tax return;
- eight years for real estate transfer tax;
- 12 years where the taxable event relates to:
  - a country, territory or region benefiting from a clearly more favourable tax regime which should l to the Portuguese tax authorities; or
  - deposit or securities accounts held in financial institutions outside the European Union, or in bra financial institutions located outside the European Union, which were not reported to the Portug

by the taxpayer in its annual tax return; and

- in case of the deduction of tax or a tax credit, the period foreseen for the exercise of such right.

The statutory limitation period may be suspended in case of inspections, criminal proceedings and other in the law.

For periodic taxes, the statutory limitation period begins to run from the end of the year in which the taxable For other taxes, it begins to run from the date on which the taxable event occurred, except for value added withholding taxes, in which case the statutory limitation period begins to run from the start of the civil year f which the chargeability arose or the taxable event occurred.

6 Compliance

6.1 What are the deadlines for filing company tax returns and paying the relevant tax?

Final corporate tax is due upon the filing of the tax return by the end of May of the following year.

Resident corporate taxpayers are also obliged to file a simplified annual statement of corporate information electronically by 15 July of the following year. Apart from the final payment made with the tax return, and ap taxes on account of the final tax due which may also apply to certain transactions, companies are subject t account of the final tax due, to be made in three instalments (July, September and 15 December of the rele starting 1 January and ending 31 December), corresponding to 95% (if turnover in the previous year was h €500,000) or 80% (if turnover in the previous year was equal to or less than €500,000) of the tax assessed net of withholding taxes.

Corporate taxpayers may also be subject to special payments on account (in one instalment payable in Ma instalments payable in March and October), as well as to additional payments on account (under a surchar due by entities that are subject to the regime of both payments on account and special payments on accou a taxable profit exceeding €1.5 million in the previous tax year.

6.2 What penalties exist for non-compliance, at corporate and executive level?

There are several tax penalties for non-compliance, at corporate and executive level, including the followin non-compliance resulted from mere negligence; in the case of wilful misconduct, it may qualify as a crime):

- failure to file a statement of commencement of, change in or cessation of activities (for corporate inco value added tax (VAT) purposes) - a fine of between €600 and €15,000;
- failure to file a tax return or late filing of a tax return (including CIT and VAT returns) - a fine of betwee
- failure to pay or late payment of tax due (including VAT, withholding tax, payment on account, special account, additional payment on account) – a fine of between 30% and 100% of the tax due, up to a s (€45,000 for negligence);
- omissions or inaccuracies in tax filings in general (that do not amount to tax fraud, which is subject to

proceedings) - a fine of between €750 and €45,000;

- omissions or inaccuracies regarding acts, facts or documents which are relevant for the analysis of u requests - a fine of between €750 and €45,000;
- omissions or inaccuracies regarding acts, facts or documents which are relevant for the analysis of n ruling requests - a fine of between €187.50 and €11,250;
- failure to file transfer pricing documentation by the legal deadline - a fine of between €1,000 and €20, 5% for each day of delay; and
- failure to file, by the deadline established by the tax authorities, the financial and tax reporting statem ('country-by-country reporting') or jurisdiction in respect of the entities of a multinational group – a fine and €20,000, increased by 5% for each day of delay.

Penalty reductions may apply if the taxpayer voluntarily complies and there may be subsidiary liability for e

6.3 Is there a regime for reporting information at an international or other supranationa country-by-country reporting)?

Portugal's adherence to the automatic exchange of information under country-by-country reporting has ulti the approval and publication of specific forms through Ordinance 367/2017 and Ordinance 383-A/2017, in the obligations foreseen in the Portuguese CIT Code (as amended by Decree-Law 98/2017), further to the Economic Co-operation and Development recommendations under Base Erosion and Profit Shifting Action 2016/881.

As such, each ultimate parent entity or other reporting entity of a group that registers a consolidated turnov million must complete and file a country-by-country report. In this respect, Portuguese law foresees that ea that is resident or has a permanent establishment in the Portuguese territory must communicate electronic authorities (through Form 54) which entity constitutes the reporting entity of the group, the respective tax ju identification number and address. This form must be filed by the end of May of the following tax year. The reporting obligation is fulfilled by filing Form 55 in the 12 months following the last day of the financial state multinational company.

7 Consolidation

7.1 Is tax consolidation permitted, on either a tax liability or payment basis, or both?

Portuguese companies operating within an economic group may choose to be taxed under the group taxat following conditions are met:

- The parent company holds, directly or indirectly - including through a company which is tax resident i state of the European Union or (where there is administrative cooperation for tax purposes) the Euro - at least 75% of the share capital of the controlled companies and more than 50% of the voting rights
- All group companies are tax resident in Portugal and subject to the corporate income tax general reg
- The parent company has held the relevant shareholding for more than one year (or from the date of i

not controlled by any other Portuguese resident dominant company and did not renounce the applica
within the previous three years.

This regime is also available where the parent company is tax resident in another member state of the Euro (where there is administrative cooperation for tax purposes) the European Economic Area and has a Portu through a permanent establishment in Portugal. However, in such case one of the Portuguese tax resident companies must be appointed as responsible for fulfilling all obligations under this regime (save for its perr establishment in Portugal, the parent non-resident company will not be part of the Portuguese tax group).

In determining the group's taxable profits, the individual tax profits and individual tax losses are aggregatec base, a single payment is made (or non-payment if there is a tax loss in aggregate) and a single tax return dominant company. For control purposes, individual tax returns are also filed.

This regime is only a sum of individual profits and losses. It is not true consolidation, since transactions witl relevant (are not eliminated) in assessing the final tax base.

8 Indirect taxes

8.1 What indirect taxes (eg, goods or service tax, consumption tax, broadcasting tax, v excise tax) could a corporate taxpayer be exposed to?

Value added tax (VAT) applies to:

- the supply of goods and supply of services for consideration;
- the importation of goods; and
- intra-EU acquisitions of goods.

The rates of VAT are as follows:

- standard rate - 23% (22% in the Autonomous Region of Madeira and 18% in the Autonomous Regior
- intermediate rate - 13% (12% in the Autonomous Region of Madeira and 9% in the Autonomous Reg
- reduced rate - 6% (5% in the Autonomous Region of Madeira and 4% in the Autonomous Region of /

To the extent that the output of a corporate taxpayer is subject to VAT and not exempt, or is exempt but wit the VAT on inputs (eg, exporting activity), the VAT will not be a final burden (financial effect only).

There are also other indirect taxes, such as:

- the tax on fuel, electricity and energy products (with exemptions, subject to some requirements, wher produce energy, for example);
- stamp duty on loans and interest (with some exemptions for loans between financial institutions and s loans);

- stamp duty on insurance policies;
- stamp duty on some transfers of business units;
- transfer tax on real estate; and
- autonomous/separate taxation of car expenses, representation expenses and travel expenses (poten expenses, incurred both for company activity and for the private benefit of the employee), to the exte subject to personal income tax as fringe benefits.

8.2 Are transfer or other taxes due in relation to the transfer of interests in corporate e

On the transfer of business units, stamp duty may apply at a rate of 5%, to be paid by the acquirer. Howev on the transfer of shares. Capital gains on the transfer of shares may or may not be taxed: there is a partic regime; and for non-residents without a permanent establishment in Portugal to which the gain may be attr exemption may apply. Taxation may further be prevented by an applicable double tax treaty.

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