PORTUGAL

1. INTRODUCTION

a. Forms of Legal Entity

Portuguese corporate legislation provides for several types of legal entities. The most common types of companies, are as follows:

- **A Limited Liability Company ("LLC")** ("Sociedade por quotas" or "Lda") is a commercial company formed by one or several members and the capital of an LLC is represented by and divided by "quotas". The issuance of shares (i.e. paper certificates) representing the"quotas" is specifically prohibited and the "quotas" can only be transferred with the LLC's permission. There is no minimum capital requirement for an LLC (but each quota cannot have a nominal value below EUR1) and its members are free to establish the agreed capital in the articles of association.
- **A Joint Stock Company ("SA")** ("Sociedade anónima" or "SA") is a commercial company incorporated, which needs to have at least five shareholders, but an exception is provided where another company may incorporate an SA as the sole shareholder of the SA. An SA's capital is divided by shares and the shares can be represented by paper certificates issued to the shareholders or as book entries (i.e. shares where no paper certificates are issued). The shareholders' liability is limited to the value of the shares subscribed and the minimum amount of capital of a SA is EUR50,000. Also, the nominal value of each share cannot be lower than EUR 0.01.

Each of these types of companies have the same tax treatment in Portugal and are subject to Corporate Income Tax ("CIT") on general terms.

b. Taxes, Tax Rates

The most relevant taxes and their respective rates commonly relevant in M&A transactions are those summarised in the following table:

Tax name	Taxable person	Subject	Tax base	Tax rate

Corporate Income Tax ("CIT")	Companies and entities (whether or not with legal personality); Permanent Establishments ("PE") of Foreign entities.
	(i.e. vehicles which are tax resident in Portugal).
		Activity of an agricultural, industrial or commercial nature.	Taxable income, i.e. accounting profit and other net wealth variations not recognized in P&L adjusted as per the relevant tax laws, loss carry forwards and certain tax incentives.	• General rule: 21%;
				• A reduced rate of 17% applies to small or medium-sized companies for the taxable base up to EUR25,000 and general rates for the exceeding taxable base.
				• Municipal Surtax: up to 1.5%;
				• State Surtax:
				  ◦ 3%, applicable on taxable profits in excess of EUR1.5 million up to EUR7.5 million;
				  ◦ 5%, applicable on taxable profits in excess of EUR7.5 million up to EUR35 million, and,
				  ◦ 9%, applicable on taxable profits in excess of EUR35 million.

Value Added Tax ("VAT")	Individuals and entities (with or without legal personality) that carry on business activities.	Supply of goods and services.	Price / value received for the supply of goods and services (may be adjusted according VAT rules).	Portuguese mainland: • 23% standard VAT rate • 13% intermediate VAT rate • 6% reduced VAT rate. Madeira islands: • 22% standard VAT rate • 12% intermediate VAT rate • 5% reduced VAT rate. Azores Islands: • 16% standard VAT rate • 9% intermediate VAT rate • 4% reduced VAT rate.

Tax name	Taxable person	Subject	Tax base	Tax rate
Stamp Duty ("SD")[1]	The lender, the borrower or certain third parties depending on facts and circumstances.	Use of credit and the interest charged thereto.	Principal.	- Credit with a term lower than 1 year, 0.04%, for each month or fraction thereof; - Credit with a term of greater than 1 year and lower than 5 years, 0.5 %; - Credit with a term greater than 5 years, 0.6%; - Revolving credit facility or any other form of credit with an undetermined or undeterminable term, 0.04% applicable on the average amount utilised monthly, determined by adding up the balance due for each day of a specific month, divided by 30.
SD	The lender, the borrower or certain third parties depending on facts and circumstances.	Guarantees.	Amount guaranteed.	- Term shorter than 1 year, 0.04% for each month or fraction of a month; - Term equal to or greater than 1 year but shorter than 5 years, 0.5%; - Term greater than 5 years and guarantees with no term, 0.6%.
SD	The lender, the borrower or certain third parties depending on facts and circumstances.	Interest and fees charged by credit institutions, financial companies and other financial institutions.	Amount payable	- 4%

c. Common divergences between income shown on tax returns and local financial statements

Taxable income is based on the accounting profit and other net wealth variations not recognised in the P&L adjusted as per the relevant CIT provisions. In general, the most common divergences are as follows:

- Limited relevant of fair value adjustments.
- Types of non-deductible expenses (e.g. fines and other penalties, undocumented and/or illegal expenses, some contributions for the banking sector, etc.);
- Limitation on depreciation/amortisation of assets (and other items, such as goodwill) for tax purposes and on provisions;
- Tax exemptions on dividends and capital gains if certain conditions are fulfilled;
- Losses carried forward;
- Transfer pricing rules and Interest deductibility limitation rules; and

1 Stamp duty is levied on contracts, acts, papers, documents, titles, books, and other facts occurred or deemed occurred within Portuguese territory listed in the General Stamp Duty Schedule and which are not subject or exempt from VAT, including but not limited to the use of credit and the interest charged thereto, guarantees and commissions charged thereto, as well as other financial services. It is also levied on other contracts that may be relevant in the context of M&A transactions, such as certain transfers of a business or the net asset value of certain collective undertakings.

- Computation of capital gains for tax purposes (e.g. official monetary devaluation index coefficients);

2. RECENT DEVELOPMENTS

The Portuguese Parliament did not approve the budget bill for 2022 leading to the anticipation of the electoral calendar to the legislative branch. A new bill should be presented in Parliament and it is likely that it may come into effect in the second half of 2022. Nevertheless, we highlight some measures that have been introduced in the last years into the Portuguese tax legislation and that may have an impact on an M&A transaction, as follows:

- *Amendments to indirect transfer of property rules:* The Portuguese budget law for 2021 introduced relevant tax measures that affect the indirect transfer of Portuguese situs immovable property.

  Until 31 December 2020 only the acquisition of quotas in a property-rich LLC owning immovable property would be liable to Real Estate Transfer Tax ("RETT") when a shareholder acquired quotas representing at least 75% of the share capital of the company.

  The new rule establishes, that from 2021, there are new conditions for the application of RETT to the transfer of quotas in an LLC and also expanded its scope to encompass the acquisition of shares issued by real estate-rich SAs. Pursuant to the new wording, the acquisition of quotas and shares, respectively in LLCs and SAs representing an interest equal or greater than 75% of the share capital of the Company is subject to RETT at a 6.5% rate. Under the new rule the following conditions should be cumulatively met:

  - The balance sheet value or the tax registry value (whichever is higher) of the real estate assets of the company is, directly or indirectly, equal to or greater than 50%;
  - Immovable property directly utilised in an activity of an agricultural, industrial or commercial nature, other than purchase/resale of assets are excluded from the ratio; and
  - As result of the acquisition, one of the shareholders holds or consolidates an interest in the share capital of the company equal to or greater than 75%.

  These new conditions were not extended to the transfer of real estate investment funds.

  In addition, several tax measures with a potential impact on ongoing or future real estate investments were introduced notably new aggravated RETT and Municipal Property Tax ("MPT") rates applicable to entities controlled through blacklisted jurisdictions. Indeed, if an entity is considered controlled, directly or indirectly, by an entity domiciled in a Portuguese blacklisted jurisdiction, the following rules may increase the tax burden, namely:

  - Application of 10% aggravated one-off transfer tax rate on the acquisition of Portuguese real estate property or shares in real estate rich companies;
  - RETT exemptions should not apply;
  - Application of 7.5% aggravated annual MPT; and
  - Loss of annual municipal real estate exemptions currently being applicable;

- *Qualification of income received by a UCI:* Portuguese tax law provides for a special regime applicable to UCIs (as referred to in section 11.e.), where rental income, capital income and capital gains described in the PIT code are exempt of CIT. The tax authorities published a tax ruling, sanctioned by order of the Secretary of State for Tax Affairs ("SEAF") of 9 March 2020, confirming that rental income and income related to the sale of assets (even if it involves construction works and development or related with assets exploited for obtaining rental income) should be classified as exempt income at the level of the UCI.
- *Clarification of the rules applicable to SIGI*: SIGIs ("Sociedades de Investimento e Gestão Imobiliária") are a type of Real Estate Investment Trust ("REIT") .The law expressly extended the special regime for UCIs to SIGIs (see in section 11.e. below for further details regarding special regime for UCIs). Note that the special regime for SIGIs has a particularity, in cases where there is income from an onerous transfer of rights in rem in immovable property, the CIT exemption will only be applicable if the immovable property has been held for lease for at least 3 years.

  Also, in cases where the special regime ceases to apply (e.g. an entity can no longer be qualified as SIGI), the taxable income determined from the date on which the regime ceases to apply up to the end of the year on which that event occurred should be taxed under the terms of the standard CIT regime. Likewise, any capital income or capital gains from the shares/units in a SIGI should also be taxed under the terms of the standard CIT regime.
- *New amendments and updates* to the transfer pricing rules: Recently, Portugal has published new amendments to the transfer pricing regime, reviewing the Advanced Pricing Agreements, and introduced new rules considering the new guidelines issued by the OECD.

  The main new features regarding the procedures to conclude Advance Pricing Agreements ("APA") were: i) clarification and description of the phases of the APA procedure (two phases: preliminary phase and proposal phase); ii) standardisation of the maximum term of APA to four years; iii) inclusion of the possibility of the APA to apply to previous FYs, as far as the relevant facts and circumstances of those FYs are identical or similar and if, at the closing of the agreement, no more than two years have elapsed after the deadline for delivery; iii) setting, for the preliminary evaluation request, of a deadline of three months before the end of the deadline for delivery the agreement proposal, which should be made 6 months before the beginning of the first FY included in the agreement; iv) introduction of the possibility of extinction of the evaluation proposal procedure of the APA in some cases; and, v) reduction of 25% of the fee due to conclude the agreement by micro, small and medium companies.

  In addition, Portugal also introduced new rules for transfer pricing regarding the regulation of transfer pricing in transactions established between a taxpayer subject to PIT or CIT and any other entity. Among others, we highlight the following rules:

  - Detailed definition of the application of transfer pricing methods and comparability analysis processes, in line with the OECD Guidelines;
  - Amendment of the threshold that grants exemption from preparing transfer pricing documentation, adopting a double criterion: (i) taxpayers with annual revenues lower than EUR10 million are exempt from preparing the documentation (EUR3 million in the previous version) during the fiscal year to which the obligation refers (instead of the previous fiscal year); and (ii) exemption of reporting the controlled transactions in an amount of less than EUR100,000 (per transaction, per counterparty) and, as a whole, of EUR500,000;
  - Introduction of the two-tier documentation model, Master File and Local File, and considering the documentation obligation fulfilled when the process includes all relevant elements and introduction of the concept of "Simplified File" to be adopted by micro, small and medium companies, obliged to prepare the transfer pricing documentation;
  - Transposition from the OECD Guidelines of the three year validity rule for benchmark analysis, without prejudice of the annual update of the financial data of the final set companies; and

  - Introduction of certain requirements and procedures to be adopted to open Mutual Agreement Procedures.
- *Termination of the Double Tax Treaties between Portugal and Finland and Sweden*, which ceased to apply as of 1 January 2019 and 1 January 2022, respectively.
- *Amendment of the domestic PE concept*: The domestic PE concept was amended by the Budget Law for 2021 and is now aligned with OECD (BEPS Action 7) and the UN. The main aspects updated were: (i) anti-fragmentation rules for the combination of preparatory or auxiliary activities; (ii) the extension of the agency clause (and restriction of the independent agency clause); and (iii) the introduction of the concept of "closely related enterprise".
- *Portugal Deposits MLI Ratification Instrument*: On 28 February 2020, Portugal deposited its instrument of ratification for the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (Multilateral Instrument or MLI) with the OECD. Therefore, the MLI came into force for Portugal on 1 June 2020. The MLI was signed by Portugal on 7 June 2017.

  Note that Portugal identified 79 tax treaties to be covered (and modified) by the MLI and, among other amendments, the MLI implemented the minimum standards (i.e., the mandatory rules) to counter treaty abuse and to improve dispute resolution mechanisms as recommended in the OECD BEPS Actions 6 and 14.

3. SHARE ACQUISITION

a. General Comments

A share deal is a transaction whereby a seller transfers shares or quotas of a company which owns a business or specific assets, (generally) for cash consideration. The transaction may concern an existing company or a newly incorporated company in which the relevant business is transferred as a pre-step.

As we note in further detail below, as a general rule, a share deal does not directly affect the underlying assets of the target company, with certain exceptions.

From a buyer's perspective:

In general, in a share deal the acquired entity (target) remains in existence and any of its historical or contingent liabilities remain with it after the completion of the transaction. There are some restrictions rules in what regards to tax attributes as referred in more detail in section 3.b. below.

In addition, acquisitions of shares generally do not have immediate tax implications for the buyer, unless the buyer acquires a participation of more than 75% of shares/quotas of a company that is mainly composed by real estate assets not connected to an economic activity located in Portugal (which is not the buy and sale of real estate). In this case, the acquisition of shares is subject to RETT at a rate of 6.5% (see section 3.f. below for more details).

From a seller's perspective:

As a rule, capital gains derived by resident entities with the disposal of shares of Portuguese entities are subject to CIT at the general rates in Portugal. Also, capital gains derived by non-resident entities with the disposal of shares of Portuguese entities are subject to CIT in Portugal at a 25% tax rate. Nevertheless, there is a specific participation exemption regime or domestic exemption regime available, depending on whether the seller is resident or non-resident in Portugal, respectively (see section 7. for more details).

b. Tax Attributes

As a rule, the target is entitled to carry over its tax attributes (such as tax losses or tax credits). However, the Portuguese CIT Code includes a limitation rule according to which tax losses carried forward will be forfeited upon a change in direct ownership of at least 50% of shareholding or voting rights. Nevertheless, this limitation rule does not apply to the following situations of change of ownership: (i) internal reorganisations whereby the shareholding of the company is changed from direct to indirect ownership or from direct to indirect or (ii) reorganisations undertaken under the tax neutrality regime.

Also, it is possible to carry forward excess interest deductions and unutilised interest deductibility credits for five taxable years. However, the carry forward rule ceases to apply when, at the end of the taxable period in which the expense is deducted or the limits are increased, a change of more than 50% in the shareholding or majority of voting rights has occurred, by reference to the date when such expenses were incurred or the interest deductibility credit was not utilised. Certain exceptions apply to this rule such as in the exceptional situations described above.

Outside the aforementioned safe harbours, a specific request to the Minister of Finance should be required to preserve these tax attributes in cases where there is a recognised economic interest.

c. Tax Grouping

General considerations

Portuguese entities are taxed on a standalone basis. However, upon election Portuguese companies may apply a tax grouping regime for CIT purposes (so called "RETGS"), but not for VAT or TT purposes, if certain requirements are fulfilled, in particular if there is a Portuguese dominant company which holds, directly or indirectly, at least 75% of the subsidiaries' share capital and such interest represents more than 50% of the voting rights.

In addition, a non-resident company may also be the dominant company of a "Horizontal tax grouping", provided that it has legal personality, is subject and not exempt to a tax similar to Portuguese CIT and is not resident in a country, territory or region subject to a more favourable tax regime. In such case, a representative company in Portugal must be appointed.

Tax grouping regime

The RETGS regime allows the companies of a tax group to be taxed according to the arithmetic sum of the individual taxable basis (therefore enabling tax losses assessed by a group company to be offset against taxable profits assessed in the same fiscal year by other group companies). Note that tax losses generated individually (assessed before entering the group) by each company may only be deducted against individual profits of the corresponding company up to a limit of 70% of the taxable income individually generated. There is a special regime for the interest deductibility limitation rules at group level.

The payment of CIT under the RETGS should be made by the dominant company with the other group companies remaining jointly and severally liable for the payment of that tax. The dominant company will, afterwards, have the right of recourse for the part of the tax that respect to each of the companies of the Group. In M&A deals, the SPA should provide for a reasonable allocation of tax risks considering this cross liability rule.

Tax compliance obligations of the tax group

As for the procedure for election for the tax group regime, the election should be filed with the PTA by the end of the third month of the fiscal year in which the regime is intended to apply. Also, any changes occurred in the composition of the group (e.g. new acquisitions or sales), its waiver or cessation of application must be communicated electronically to the PTA through the appropriate official form, within the following deadlines:

- In the case of changes in the composition of the group: (i) by the end of the third month of the taxation period in which the inclusion of new companies that meet the legally required requirements must be made; or (ii) by the end of the third month of the taxation period following the one in which companies leave the group due to the sale of participation or non-compliance with other conditions, or other changes in the composition of the group caused by mergers or divisions;
- Waiver, by the end of the third month of the taxation period in which it is intended that the waiver produces its effects;
- Termination by the end of the third month of the taxation period following that in which the conditions for the application of the regime are no longer applicable.

Note that a waiver or termination notice of the RETGS becomes effective with respect to: (i) the end of the taxation period before the period during which the waiver notice if filed; or (ii) the end of the taxation period before the period, which the causes for termination are verified.

d. Tax Free Reorganisations

Portugal has implemented the provisions of the EU Merger Directive in its domestic system to some qualifying corporate restructurings, such as mergers (merger by incorporation, merger by concentration, upstream merger), demergers (demerger, partial demerger, demerger-dissolution), contribution in kind and exchange of shares. Note that the Portuguese Legislator extended the tax neutrality regime to other restructuring operations that are not covered in the Merger Directive, such as side-stream mergers, downstream mergers, among others.

Therefore, Portuguese companies can reorganise their Portuguese activities in a tax neutral manner provided certain conditions are complied with, i.e., capital gains taxation is deferred and the acquiring entities receive a carryover basis in the assets acquired. This is configured like the standard regime for restructuring transactions and there are some tax compliance obligations when transactions eligible for the regime are carried out.

The main caveat to consider for tax neutral restructurings under the Portuguese tax regime based on the EU Merger Directive is the specific anti-abuse provision that requires the transaction to be carried out under valid economic purposes and not with the sole purpose of obtaining a tax advantage.

This regime provides for a tax neutral treatment for restructuring transactions, by providing that:

- Capital gains or losses realised on the transferred assets are not included in the CIT taxable base of the transferor party;
- The acquiring entities receive a carryover basis in the assets acquired.

The rules governing the qualification of a transaction for purposes of the mentioned regime are complex, and its applicability should be carefully analysed on a case by case basis.

e. Purchase Agreement

Share purchase agreements typically comprise representations, warranties and an indemnity clause to cover taxes and connected expenses relating to periods on or before the effective date or in relation to events which occurred on or before closing. There are no special provisions that should be considered to protect against tax exposures specific to the jurisdiction.

In recent years, insurance covering damages resulting from breaches of warranties and indemnities and therefore shifting risks to the insurer (W&I insurance) has become more common in Portuguese M&A market.

The general statute of limitation period in Portugal is four years. Thus, a review of all tax obligations of the last four tax periods opened to a tax audit is required. However, in some cases the expiration period may be longer, such as in RETT (which is eight years) or if the taxable events are connected with country, territory or region subject to a more favourable tax regime (twelve year period apply).

In the case of immovable property, the Portuguese Tax Authorities have a privilege over the assets for purposes of guaranteeing the current and past tax liabilities through the constitution of a pledge or legal mortgage on the real estate asset.

In addition, as a general rule, the Portuguese Tax Authorities have a general privileged security interest to guarantee claims for indirect taxes and also for direct taxes in the year on the date of the judicial attachment (or similar) and in the two previous years.

Note that the statute of limitations period has been extended during the period of time in which the state of alarm was in force. The impact of the extension of administrative procedures due to the COVID-19-related measures should be taken into consideration to compute the statute of limitation period.

f. Transfer taxes on share transfers (including mechanisms for disclosure and collection)

As a general rule there are no transfer taxes on the transfer of shares.

However, RETT is levied on the acquisition of quotas or shares of certain types of companies (including, but not limited to the limited liability companies and joint stock companies) owning real estate assets in Portugal, provided that certain conditions are cumulatively fulfilled as follows: (i) the assets of the acquired company is derived, in more than 50%, from Portuguese situs real estate property, (ii) the property is not directly used in an activity of an agricultural, industrial or commercial nature or is used in the purchase and sale of real estate; and (iii) through the acquisition any of the shareholders will concentrate, at least, 75% of the share-capital of the acquired company.

The acquirer of the aforementioned shares is subject to a 6.5% rate applicable on the Tax Property Value ("VPT") or the balance sheet value (whichever is higher) corresponding to the majority quota or shares, or by the total value of these assets.

In addition, the acquisition of at least 75% of the units in the capital of a closed-ended REIF is regarded as a deemed acquisition of real estate, and therefore, subject to RETT at the same rate.

An aggravated rate of 10% applies to the case of the acquisition of immovable property, both directly and through an assimilated transaction, by entities which are controlled, dominated (or deemed controlled or dominated), directly or indirectly by entities domiciled in a country, territory or region subject to a more favourable tax regime.

g. Share Purchase Advantages

The main typical advantages of the share deal are the following: (i) At the level of the purchaser the share deal does not trigger, in principle, indirect taxes (transfer of shares is not subject to VAT, SD or RETT); (ii) From a seller's perspective, the main advantage of a share deal is that the capital gain deriving from the disposal of shares is in principle fully exempt for both resident and non-resident entities; (iii) In addition, in some cases the target company may preserve its tax attributes, such as tax losses.

h. Share Purchase Disadvantages

In share deals the acquired entity (target) remains in existence and any of its historical or contingent liabilities remain with it after the conclusion of the transaction. The basis in the target's underlying assets carries over and is not stepped up. Consequently, it is not possible for the buyer to benefit from the additional tax amortisation or depreciation of underlying assets, if any. Nor can they benefit from the additional price paid that should be attributable to the goodwill of the business carried out by the entity whose shares the buyer acquires.

In Real estate deals it is common for the Purchaser to request a latent capital gain discount.

4. ASSET ACQUISITION

a. General Comments

From a buyer's perspective:

In asset deals, the acquiring entity is usually a Portuguese entity. If the acquiring entity is a non-resident entity, the potential risk that the activities that it will perform in Portugal determine the existence of a PE should be carefully reviewed.

In such cases, the basis in the acquired assets can be stepped up based on the price paid by the purchaser. Consequently, the buyer can benefit from the additional tax amortisation or depreciation of underlying assets. It can also benefit from the additional price paid that should be attributable to the goodwill of the business carried and depreciated for tax purposes (at a 5% rate).

However, the sale of assets is generally subject to indirect taxation, such as VAT, RETT and SD. Moreover, the buyer should take into account that, in the case of immovable property, the Portuguese Tax Authorities will keep a privilege over the assets for purposes of guaranteeing the current and past tax liabilities.

From a seller's perspective:

The sale of assets generally produces a taxable capital gain for the Portuguese selling company according to the general regime, which might be difficult to mitigate.

b. Purchase Price Allocation

In a taxable transfer of assets the purchase price paid should be allocated to each asset and the resulting value will be regarded as its tax basis. Such allocation is often a contentious issue for parties to the transaction, as the buyer and seller's interests in this respect may differ. The tax basis of the assets acquired should be stepped up to represent the assets' fair market value and will normally be used as the basis to amortise and depreciate the asset for tax purposes but also for the computation of any capital gain or loss at the level of the Seller.

c. Tax Attributes

Tax attributes, such as tax loss carry forwards are not transferred in an asset deal and remain at the level of the seller.

d. Tax Free Reorganisations

The Transfer of a Going Concern ("TOGC") under the terms of a "trespasse" (i.e., assignment of contractual position of a commercial establishment) is subject to CIT at the standard rates.

However, in some cases a TOGC may be reorganised under the terms of a tax neutrality regime. For instance, it is possible to perform a contribution in kind through the contribution of the going concern to a company in exchange for company's shares assuming that all conditions for application of the tax neutrality regime are met.

Nevertheless, as said before in order to benefit from the tax neutrality regime, it is necessary to take into account the specific anti-abuse provision and the scope of the tax neutrality regime (e.g. considering that the neutrality regime requires the continuity of ownership by the same owner of the TOGC, a contribution in kind followed by the sale of the shares could either be considered outside the scope of the tax neutrality regime or could be considered abusive for tax purposes, see section 3.d. above).

e. Purchase Agreement

In an asset deal, the purchaser directly acquires certain assets from the company running the business through an asset purchase agreement. Its main advantage is that there is generally no automatic transfer of liabilities, apart from certain exceptions. It is common to include general representations and warranties related to tax compliance obligations namely related with real estate taxes. In specific cases, it is common to include:

- Tax representation / warranty clauses and/or indemnity clauses related to historical tax risks;
- The Agreement should also include the price allocated to each of the acquired assets in order to determine the tax basis for their future deprecation or amortisation and determine the resulting goodwill, if any.

f. Depreciation and Amortisation

In an asset deal, the tax basis of the assets acquired should be stepped up to represent the assets' fair market value according to the price allocation of the Purchase agreement. This step up may increase the amount of the future tax depreciation or amortisation deductions corresponding to the assets acquired.

Subject to financial accounting rules, an excess of the sum of each individual asset fair market value may in certain circumstances be registered autonomously as goodwill. As a general rule, goodwill is not amortised for tax purposes. However, there is a tax incentive applicable to the amortisation of intangible assets, for a period of 20 years, which includes, inter alia, goodwill resulting from business combination transactions. Goodwill originated in related parties' transactions has been excluded from the scope of this incentive. ´Portuguese tax law does not provide a definition of "business combination". Hence, the concept provided in accounting rules should be followed. This regime is not applicable to the following situations: (i) intangible assets acquired in a merger, demerger or contribution in kind qualifying for non-recognition (tax neutrality); (ii) intangible assets acquired by entities that are resident of a blacklisted country, region or territory, as listed under Portuguese Tax legislation; and (iii) intangible assets acquired in related parties' transactions.

g. Transfer Taxes, VAT

A transfer of assets is considered a supply of goods for VAT purposes. A Transfer of a Going Concern ("TOGC"), however, is excluded from the scope of VAT but may be subject to SD at a rate of 5%. Some court and administrative case law has established that the 5% SD only applies when together with the transfer of the assets, there is also a transfer of the contractual position of a lease agreement where the activity is operating (this is a debatable issue).

The acquisition of Portuguese situs immovable property is generally subject to RETT on the highest of sales' value or the cadastral value. For residential buildings, a progressive rate ranging from 1% to 7.5% apply (depending on the features and value of property). For commercial buildings and plots of land, a 6.5% rate applies. In addition, the acquisition of immovable property is subject to SD at a rate of 0.8%.

h. Asset Purchase Advantages

From a buyer's perspective, an asset deal would give rise to a step up in the assets' tax basis and could create amortisable goodwill. In addition, it has the advantage of leaving behind with the seller most of these historical tax contingencies of the business.

Mostly in real estate deals, the parties avoid asset deals for indirect taxes, but also as a seller might prefer to avoid the double layer of taxes (at the level of the company selling the assets and its shareholders if they are not exempt) that could result from an asset deal.

However, circumstances that might make the seller lean towards an asset deal include the existence of a pending offsetting of tax losses (although the potential limitations to offset them should be taken into consideration), or, from an economic perspective, when the seller can factor into the sale price the buyer's potential savings in connection with the step up in tax basis of the assets transferred, among other considerations.

i. Asset Purchase Disadvantages

On an asset deal, the purchaser may have higher tax costs, since:

- The acquisition of assets is generally not exempt from VAT (unless the assets are not subject to VAT, such as real estate, or qualify as a going concern). This has to be carefully considered if the input VAT is not fully deductible for the buyer (e.g. in the event of a VAT exempt turnover).
- The transfer of a going concern may be subject to SD.
- In case of real estate assets, generally RETT and SD is due.
- Tax attributes will not be transferred to the buyer.
- Asset purchases may also give rise to relevant non-tax issues. For instance from a corporate law perspective an asset purchase may sometimes not be advisable where licenses, agreements and contracts might not be transferred (or renegotiated) without incurring additional costs or resulting in a cumbersome administrative procedure.

From a seller's perspective, capital gains derived from the sales of assets are subject to standard CIT at the level of the seller and the participation regime cannot be applied.

5. ACQUISITION VEHICLES

a. General Comments

As a general rule, there are no restrictions to invest in Portugal for foreign investors. The selection of the proper acquisition vehicle depends on various factors. For tax reasons and in order to limit liability exposure, special purpose vehicles are frequently used for acquisitions.

b. Domestic Acquisition Vehicle

The most common types of companies in Portugal are the Limited Liability Companies ("LLC") and Joint Stock Corporations ("SA") as referred to in section 1.a. in more detail.

The choice of an LLC or an SA is neutral from a tax standpoint.

Domestic acquisition vehicles are often tax efficient where the acquisition of a Portuguese target is financed with a substantial amount of debt. In such case the domestic acquisition vehicle enables the pooling of the target corporation's operating profits with the interest expenses of the acquisition vehicle via, for example, the implementation of an RETGS (i.e. a tax grouping).

c. Foreign Acquisition Vehicle

There are no restrictions to invest in Portugal through a foreign vehicle. Any foreign individual or legal entity may freely be a shareholder of a Portuguese company provided that they apply for a tax identification number ("NIF").

In our experience, in the framework of share deals, acquirers tend to invest in Portugal through an EU holding entity. The substance and structure of the foreign holding as well as the business reasons to invest though the said jurisdiction should be duly reviewed. Otherwise, the foreign investor may suffer withholding taxes on Portuguese source income as exemptions / tax treaties may not apply. Conversely, assets deals are generally made through the incorporation of Portuguese companies.

Assets or shares can also be acquired through a branch of a foreign entity. Although branches are taxed in a similar way to resident companies, they have the advantage of not attracting withholding taxes on remittance of profits abroad, since Portugal does not have profit remittance taxes.

d. Partnerships and joint ventures

Portuguese law does not provide for entities comparable with common law partnerships as all entities have a legal personality. Notwithstanding this point, some entities give more emphasis to the relationship between the members than others, (i.e. “sociedades de pessoas”). In the “sociedades de pessoas” the owners have “social rights” or “quotas” and the capital is not divided into shares. For the purposes of this guide, “sociedades de pessoas” are designated as partnerships and three types of partnerships may be formed in Portugal:

- A General Partnership (“GP”), (“Sociedade em nome coletivo”), is a legal entity formed by two or more partners in which the partners are not only liable for their capital contribution to the GP, but are also jointly and severally liable with the other partners for the GP’s debt. The partner’s interest in a GP can only be transferred with the express consent of all partners of the GP and a new partner may be admitted into the GP only if all partners unanimously agree to it. There is no minimum capital requirement for a GP. A GP is taxed just like other commercial companies.
- A Limited Partnership (“LP”), (“Sociedade em comandita simples”) is a legal entity formed by one or more general partners with unlimited liability and one or more limited partners with limited liability. The partners of an LP may be natural persons, LLCs or SAs. Unless otherwise provided in the Articles of Association, the transfer of a general partner’s interest in an LP only becomes effective after all the partners agree to the transfer. The provisions relating to the transfer of “quotas” of an LLC are also applicable to the transfer of limited partner’s interest in a LP. There is no minimum capital requirement for an LP. An LP is taxed just like other commercial companies as a tax opaque entity.
- Civil Partnership (“CP”), (“Sociedade civil”) is formed under an agreement by which two or more persons undertake to contribute goods or services to conduct an economic activity for profit purpose. A CP may either be taxed just like other commercial companies or be deemed to be a transparent entity for tax purposes (see below).

Despite the above, it is worth noting that tax transparency in Portugal does not rely on the legal nature of the entity but instead on the nature of the activity. In general, an entity that undertakes a commercial, industrial or agricultural activity will normally be treated as opaque. Certain closely held (or deemed closely-held) entities may be subject to a tax transparency scheme. That should be the case of entities qualifying as “professional activities’ entities” as well as of entities qualifying as “Companies for the mere Administration (and fruition) of goods, provided that certain conditions are fulfilled.

An entity subject to the tax transparency scheme is required to determine its taxable income in accordance with the same rules that apply to non-transparent entities, which are subject to CIT, however for the transparent entity the taxable income is instead attributed to and taxed at shareholder level.

e. Strategic vs Private Equity Buyers

No specific tax rules apply to private equity investments.

The option to invest through a company structure or other vehicle structure depends on the type of investment as well as the investors’ preferences. The use of limited liability companies tends to be the preferred choice of acquisition vehicle.

However, there are specific regulated vehicles that are often used by private equity investor or institutional investors that have certain tax advantages such as Venture Capital funds/corporations, REIFs/REICs for real estate investment (see section 11.e below).

6. ACQUISITION FINANCING

a. General Comments

There are no restrictions to bring funds into Portugal, but there are certain restrictions on deductibility of interest according to a general rule of thumb, transfer pricing and Portuguese interest barrier rules as mentioned in further detail below.

Portuguese entities may be fully debt leveraged or obtain the funds with a mix of equity and debt.

In terms of equity, it may be used share capital, with or without share premium, as well as Supplementary capital contributions ("prestações acessórias" that follow the regime of "prestações suplementares"). Supplementary capital contributions may be stated in the by-laws and, in general, can only be refunded to the shareholders who made them upon shareholders resolution and provided the equity of the company does not become lower than the sum between the share capital and the legal reserve (5% of the annual profit until reaching 20% of the share capital amount).

The reimbursement of equity should not trigger adverse tax implications in Portugal as these contributions may not bear interest. Portuguese tax law provides for a notional interest deduction on subscribed share capital contributions with limited scope. The notional interest deduction corresponds to a CIT deductible deemed interest expense in the year of the capital contribution and the following five fiscal years computed through the application of a 7% rate over the share capital contribution not exceeding EUR2 million.

Regarding debt, it may be considered a direct shareholders loan, a loan from another group entity, or external debt (from a financial institution). Other debt instruments (such as bonds and commercial paper) may also be considered (as being tax efficient, since such instruments are not subject to SD and a WHT exemption should apply on the interest due and paid to a non-resident qualifying lender).

b. Foreign Acquirer

There are no specific restrictions or limitations for foreign acquirers to Fund Portuguese investments.

The CIT Code establishes a withholding tax exemption applicable to outbound dividends provided that certain conditions are fulfilled, including: that the beneficiary entity (i) resident in a country (other than Member State of European Union and similar) with which Portugal has executed a DTT that is in force, provided that the same foresees the possibility of exchange of information and (ii) must be subject and not exempt from any of the income taxes referred to in the EU Parent Subsidiary Directive, or is subject and not exempt from a tax of a similar nature with a rate that cannot be lower than 60% of the Portuguese CIT rate (i.e. currently such tax rate cannot be lower than 12.6%).

However, the WHT exemption for outbound dividends is not applicable if the foreign shareholder has not complied with the reporting obligations foreseen in the Central Register of Beneficial Ownership to register the ultimate beneficial owner.

Note that this WHT exemption does not apply where any of the beneficial owners reported under that regime have residence or domicile in country, territory or region subject to a more favourable tax regime, unless the taxpayer proves that the company receiving such income is not part of an arrangement, or several arrangements which are not genuine, put in place which has as its primary purpose, or as one of its primary purposes, the obtainment of a tax advantage which defeats the object and purpose of eliminating the double taxation of dividends.

Please note that according to recent case law of the Court of Justice of the European Union (the so called Danish Cases), an entity that is not legally and economically entitled to dispose of these payments, that is considered a mere conduit, based on all relevant contractual arrangements and relationships, actually passes the economic benefit of such payments to a different entity and / or that lacks economic substance (namely when such other entity would not be entitled to these benefits), should, in principle, not fulfil the conditions to be considered the beneficial owner of these payments.

c. Debt

The use of intragroup or external debt to fund equity deals is common in Portugal. Indeed, there are no specific limitations on the use of debt or thin capitalisation rules, and there is a flexibility in the mix of equity and debt to be used, although this should always be reviewed according to transfer pricing standards.

It is also worth noting that there are some rules that limit the deductibility of interest payments as explained below in further detail.

In addition, the following events are subject to SD:

- The use of credit, in the form of funds (including credit assignments, factoring, and treasury operations which represent a financing in whatever form to the assignee, or debtor is subject to SD, based on its respective value and applicable rate for these purposes, the prorogation of the contractual term should be always considered a new financing.
- Guarantees, regardless of their nature and form, including (personal guarantees, mortgages, pledges, security deposits, bank guarantees are subject to SD, on their respective value at the applicable rates, depending on the relevant term, unless such guarantees are substantially ancillary to other contracts subject to SD and offered simultaneously with the guaranteed obligation (albeit in a different, contract instrument or title).
- Interest and fees charged by credit institutions, financial companies or financial institutions.

The rates and some conditions are referred to in section 1.b. in more detail. Note that a number of exemptions and exclusions may apply. Considering the relatively high cost of SD on raising capital, this is often a very crucial point in structuring a Portuguese deal.

i Limitations on Interest Deductions

Portuguese tax law sets forth interest deductibility limitation rules. Interest expenses are, in general, tax deductible, provided that they are incurred or borne to “obtain or ensure” the receipt of income liable to CIT. Deductibility of interest expenses is therefore subject to a “correlation test” according to which expenses should only be deductible to the extent they can be considered linked to the income liable to tax, (i.e. that they were incurred to obtain or ensure the receipt of income liable to tax).

Nevertheless, interest barrier rules have been enacted and should apply irrespective of the debt being intragroup or external financing. According to the Portuguese interest barrier rules, the deductibility of net financing expenses (i.e. the difference between interest paid and interest received) will be limited to the higher of the following: (i) EUR1 million; or (ii) 30% of EBITDA as determined by accounting rules and adjusted for tax purposes. Excess interest and unused limits may be carried forward for five years.

In the context of the RETGS, the dominant company may elect to apply the interest deductibility limitation rule at group level in the following terms: (i) EUR1 million; or, when higher, 30% of the consolidated EBITDA corrected for tax purposes corresponding to the algebraic sum of the tax EBIDTA assessed for each of the companies of the group.

Note the net financing costs of group companies relating to the taxation periods prior to the application of the regime and not yet deducted can only be considered, up to the limit corresponding to the company to which they respect, calculated individually. Also, the portion of the limit not used by group companies in tax periods prior to the application of the regime may only be added under the terms of that number to the maximum deductible amount of the net financing expenses of the company to which they relate, calculated individually. Furthermore, the net financing costs of group companies, as well as the unused portion of the limit relating to the taxation periods in which the regime applies, can only be used by the group.

ii Related Party Debt

In respect to intragroup loans, such transactions or operations should respect transfer pricing rules. Whenever transfer pricing rules do not apply, interest expenses paid in the context of shareholder financing are only tax deductible to the extent the interest rate applied does not exceed a rate determined by Ministerial Order.

In cases where transfer pricing rules are not complied with, the portion of interest in excess of amounts considered arm's length, may be considered non-deductible and WHT exemptions may also not apply.

iii Debt Pushdown

Typical debt pushdown strategies may be used, including establishing an RETGS, a downstream merger of channelling funds via debt financing, notably shareholder loans.

It is important that these strategies be carefully reviewed and considered to ensure, on the one hand, that all the legal requirements for each solution are complied with and, on the other hand, that any solution adopted has substance, as otherwise, the tax authorities could attempt to challenge the deductibility of interest on the basis of the existing anti-avoidance rules.

d. Hybrid Instruments

Portugal transposed the ATAD 2 (Directive (EU) 2017/952 of 29 May 2017) regarding hybrid mismatches and has set forth rules aimed at tackling hybrid instruments. In this sense, any hybrid instrument used in funding local acquisitions may be neutralised by these anti-hybrid mismatches rules. However, these rules require two tests in order to be applied, as follows (i) if the entities at hand are associated enterprises or the instrument is deemed as a structure agreement and if so, (ii) if there is a hybrid instrument or entity (see section 11.b. below).

e. Other Instruments

Income from qualifying bonds issued by Portuguese resident companies derived by certain non-resident beneficial owners may be exempt of capital gain taxation, accrued interest and interest upon maturity, provided that the conditions established in Decree-law no. 193/2005, of 7 November 2005.

Proper structuring is required as the bonds must be integrated in a domestic Central Securities Depository ("CSD") or in an International Central Securities Depository ("ICSD") to benefit from the exemptions. Qualifying beneficial owners exclude entities or individuals resident, for tax purposes, in a blacklisted jurisdiction that has not entered into a double tax treaty ("DTT") or Exchange of Information ("EoI") Agreement with Portugal.

f. Earn-outs

The negotiation of earn-out clauses are common in private equity deals.

Portuguese tax legislation does not have specific provisions addressing the taxation of earn-outs nor the recognition of instalment sales. Therefore, the taxation of this income component (in the case of companies and individuals) is mainly dependent on the accounting treatment (i.e. the timing in which the income is recognised for accounting purposes). Generally, earn-outs should be included as part of the sales price for income tax purposes and therefore, should be used for the computation of an eventual capital gain or loss. Where the earn-out consideration is contingent and unascertainable at the date of the disposal it may be taxed at a later date, when received (in which case a substitute tax return may be considered).

In addition, earn-outs in respect of individual recipients may be requalified as employment income (and not as a capital gain) for personal income tax ("PIT") purposes. Note that employment income is registered on a cash basis and capital gains are registered on a financial/economic benefit basis.

7. DIVESTITURES

a. Tax Free

Capital gains obtained by Portuguese resident entities arising from the transfer of assets (including shares) are subject to the general rate of 21% (plus surtaxes).

However, the sale of shares and other equity instruments connected to the shares (e.g. supplementary capital contribution) may be exempt according to the participation exemption regime if some requirements are met, in particular, if the shareholder held directly, or directly and indirectly, an interest equal to or greater than 10% in the share capital or voting rights of the entity for a minimum consecutive period of one year.

The participation exemption does not apply, inter alia, if the company whose shares are disposed qualifies as a real estate rich company (i.e. the value of real estate located in Portugal represents, directly or indirectly, more than 50% of the company's assets, unless the real estate is allocated to an agricultural, industrial or commercial activity which does not consist of real estate buy and sell). In addition, the participation exemption does not apply when the entity is resident or domiciled in a country, territory or region subject to a clearly more favourable tax regime.

b. Taxable

The tax treatment of the sale of an asset by a corporate resident taxpayer will depend on the specific accounting registration of that asset.

An asset held for resale/trading will most likely be accounted for as inventory, any gain or loss will be accounted for currently in P&L account (e.g. no depreciation applies). Assets accounted for as investment property or fixed tangible asset should be granted capital gain treatment.

Capital gains are computed as the difference between the value for which they are disposed of (realisation value) and their acquisition value (basis), corrected for monetary devaluation according to official coefficients. Acquisition value it should be reduced by the accumulated depreciation/amortisation and impairment losses.

The Portuguese Code provides for a rollover relief mechanism regime for assets accounted for as fixed tangible assets, intangible assets and non-consumable biological assets. Under this regime, 50% of the positive difference between capital gains and capital losses can be excluded from taxation to the extent that the total amount of the sale's proceeds is reinvested in the acquisition, manufacture or construction of tangible fixed assets, intangible assets or non-consumable biological assets and used for the activity of the acquiring company (i.e. only assets and not shares). Such reinvestment must be done in the year prior to the disposal or before the end of the second year after the disposal following year (i.e. N-1, N, N+1 and N+2). In order for the reinvestment regime to apply, the assets in which the proceeds are reinvested: (i) may not have been acquired from a related party for transfer pricing purposes; and (ii) must be held for a one year period. Any potential capital gain obtained by a Portuguese entity can be offset against tax losses and should be taxed at the general rates.

c. Cross Border

Taxable gains obtained by non-residents corporate investors are taxed at a flat 25% CIT rate.

A domestic exemption is available for capital gains realised by non-resident entities without a PE in Portugal from the onerous transfer of shares in Portuguese resident companies. The domestic exemption for capital gains obtained by foreign entities with no PE in Portugal is not applicable (among other conditions) if:

- More than 50% of the assets of the Portuguese company whose shares are disposed of are composed of immovable property located in Portugal or in case of holding companies the main assets of its affiliated companies are composed of real estate.
- In any of the 365 days prior to the disposal of the shares in a non-resident company, the value of such shares is derived, in more than 50%, from immovable property (or other rights in rem) located in Portugal, with the exception of immovable property used in an activity of an agricultural, industrial or commercial nature which is not the purchase and sale of immovable property.
- The non-resident entity is resident or domiciled in a country, territory or region subject to a clearly more favourable tax regime.

In addition, certain tax treaties still provide capital gain taxation protection from the source State even after the MLI entered into force.

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or Territorial Tax System

Portuguese CIT is, in general, levied on Portuguese resident entities' worldwide income. EU source dividend distributions have been exempt from CIT, based on the transposition of the Parent Subsidiary Directive. However, with the 2014 CIT reform, certain measures were introduced that widened the use of the exemption method. The participation exemption applicable to dividends was extended to non-EU dividends under certain conditions; a new exemption for capital gains was created in line with the requisites that apply to the dividend participation exemption and a new optional exemption applies to the profits attributed to foreign situs PEs of Portuguese resident companies.

Income obtained by non-resident entities and individuals is levied based on the territorial tax regime, (i.e. only Portuguese sourced income will be taxable).

b. CFC Regime

Portuguese tax law enacted controlled foreign corporation ("CFC") rules applicable to individual persons and corporations subject to Portuguese resident taxation. These rules, which were recently adapted to transpose the provisions of ATAD I (Directive (EU) 2016/1164 of 12 July 2016), provide, under certain circumstances, for the attribution of profits of a CFC in respect of a qualifying interest to a taxpayer qualifying as a Relevant Taxpayer.

This regime applies to any shareholder resident, for tax purposes in Portugal, that holds, directly or indirectly, including through a nominee, fiduciary, or an intermediary, an interest representing, at least, 25% of the capital, vote, rights to income or assets of a CFC.

According to the Portuguese law, a CFC is a non-resident corporate entity that is subject to a "clearly more favourable tax regime" and this concept is defined as: (i) the territory where the entity is a resident for tax purpose is listed in the list of countries, territories, and regions with a clearly more favourable tax regime; or; (ii) the income tax effectively paid is lower than 50% of the hypothetical income tax due, under the rules of the CIT code.

Therefore, under CFC rules, any Portuguese entity that holds an interest in a CFC will automatically include in its taxable income, for the period that integrates the CFC financial year ("FY"), a portion of the CFC's income or profits corresponding to a direct and indirect qualifying interest, such income being computed according to the rules prescribed in the CIT code. No inclusion is due on the part of the interest which is only constructively held.

However, CFCs rules should not apply when income arising from the following categories derived by a CFC does not exceed 25% of the CFC's global income in any given period: (i) royalties or similar; (ii) dividends and income from the disposal of shares; (iii) income from financial leasing; (iv) income from banking activities; (v) income from invoicing companies that earn sales and services income from goods and services purchased from and sold to associated enterprises and add no or little economic value; (vi) interest and other investment income.

Subsequent distributions from the CFC or the realisation of capital gains from the disposal of the CFC's shares should not be taxable to the extent of the previously taxed CFC income.

The CFC rule establishes an exclusion that applies to EU /EEA (except Liechtenstein) CFCs, provided that the taxpayer demonstrates that the formation and functioning of the CFC corresponds to valid economic reasons and that the CFC undertakes an activity of an agricultural, commercial or industrial nature or that consists in the supply of services, resorting to personnel, equipment, assets and premises.

c. Foreign Branches and Partnerships

- Foreign Branches

Portuguese companies are liable to tax on their worldwide income including also activities of a foreign PE. According to Portuguese law, the concept of foreign PE is the one that results from the provisions of a tax treaty in force by Portugal or, in its absence, from the application of the domestic concept of PE provided for in CIT code. Note that the domestic concept of PE has recently adopted the last updates from OECD (and UN).

As a rule, the double tax treaties and domestic legislation in force generally provide for a direct tax credit equal to the lower of the following amounts: (i) the foreign tax paid; or (ii) the CIT due on that income (as computed before the tax relief), excluding all costs or losses directly or indirectly borne to obtain the income.

As mentioned above, it is possible to opt for the application of the exemption method in which case the income and losses attributable to a PE located outside Portugal would be excluded from taxation in Portugal, provided that some requirements are met.

This regime has some limitations that should be taken into consideration in case this regime ceases to apply. In particular, any losses attributable to the PE will not be offset up to the amount of the profits attributable to the foreign PE that has been exempt (were not include in the tax base) from CIT at the level of the Portuguese entity.

- Foreign Partnerships

Portuguese law does not provide for clear foreign entity classification rules. Most foreign partnerships as well as other tax transparent entities should default to being treated as opaque. In a ruling, the Portuguese Tax Authorities have considered that foreign entities that present similar features to entities subject to the domestic transparency regime could be considered transparent for Portuguese tax purposes.

d. Cash Repatriation

There are no legal restrictions to repatriate cash and there is no need to obtain an authorisation for cash repatriation.

The tax consequences of cash repatriations depend on the type of investment of the Portuguese resident taxpayer. If the taxpayer invests through a foreign PE under the tax credit method, the cash repatriation does not trigger Portuguese tax consequences since the income is already taxed or exempted (as the case may be).

In case of an investment of a Portuguese tax resident taxpayer in a foreign corporation the dividends received by the Portuguese corporate taxpayer are subject to Portuguese CIT at the standard rate of 21%, plus municipal surcharge (if applicable) and state surcharge (if applicable).

Nevertheless, under the Portuguese participation exemption regime, profits and reserves distributed by qualified entities should not be taxed in Portugal at the level of the recipient company, if the following requirements are cumulatively fulfilled:

- The Portuguese recipient holds, directly, or directly and indirectly, at least 10% of the share-capital or voting rights in the distributing entity;
- The shares are held for a consecutive period of at least 12 months prior to the distribution date. Please note that in respect to dividends, this criterion may be complied prospectively;
- The Portuguese recipient entity is not tax transparent;
- The distributing entity is subject and not exempt from: (i) Portuguese CIT; or (ii) a tax referred in article 2 of the PSD; or (iii) a tax of a similar or identical nature to the Portuguese CIT, provided that, in this last case, the applicable legal rate is not lower than 60% of the Portuguese standard CIT rate (current Portuguese CIT is 21%, thus 12.6%); and
- The distributing entity is not tax resident or domiciled in a tax haven.

Certain anti-abuse provisions apply for the application of this exemption, namely to guarantee that the entity paying the dividends is subject to tax and that the dividend is not deductible cost at the level of the foreign entity.

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

Portuguese tax legislation provides some special rules addressed to the sale of real property or real estate rich companies as follows:

- RETT

RETT is levied on the transfer of property rights and other rights in rem over immovable property as well as other transactions which the law assimilates to the transfer of immovable property as they may produce similar economic results.

As a rule, the onerous acquisition of property (and other events assimilated to onerous acquisition) should be subject to RETT over the highest of the sales value allocated to the asset and its VPT. For residential buildings, a rate ranging from 1% to 7.5% apply depending on the features and value of the property). For commercial buildings and plots of land, a 6.5% rate applies.

Among the list of assimilated transactions is:

(i) the acquisition of quotas or shares of certain types of companies (including, but not limited to, the Portuguese equivalents to LLCs and SAs) owning real estate assets in Portugal, provided that certain conditions are fulfilled as described in section 3.f, which is subject to RETT rate of 6.5%; and

(ii) the acquisition of at least 75% of the units in the capital of a close-end REIF is regarded as a deemed acquisition of real estate, and therefore, subject to RETT at the same rate.

The Budget Law for 2021 introduced new aggravated tax rates (10% RETT and 7.5% MPT/AMPT) applicable to:

(i) the acquisition / ownership of immovable property by residents in a blacklisted jurisdiction; and

(ii) the acquisition / ownership by an entity controlled, directly or indirectly, within the terms prescribed in the Portuguese Company's Code, by an entity domiciled in a blacklisted jurisdiction.

In these cases, no RETT reductions or exemptions should apply.

- SD

The transfer of Portuguese-situs immovable property is subject to SD at a 0.8% rate.

- CIT Indirect transfers of Portuguese-situs immovable property

As mentioned above Portuguese domestic legislation has enacted on the indirect transfer of Portuguese situs immovable property which is directly or indirectly held via both domestic or foreign entities.

b. CbC and Other Reporting Regimes

Portugal has aligned its domestic law to EU Directives and OECD guidelines. The Portuguese law implemented the EU Directive on country by country reporting that extends administrative cooperation in tax matters to country by country (CbC) reporting. Multinational ("MNE") groups with a consolidated revenue exceeding EUR750 million are required to prepare a CbC report and file it with the Portuguese Tax Authorities within 12 months of the last day of their reporting fiscal year.

An MNE group should only be required to file a CbC report in the jurisdiction of its Ultimate Parent Entity ("UPE"). However, in some cases a constituent entity (i.e an entity that is part of the MNE group, but it is not the UPE) has to file the CbC report in its local jurisdiction (also known as 'local filing') but only if one or more of the following conditions have been met:

- If the UPE of the MNE Group is not obligated to file a CbC report in its jurisdiction of tax residence;
- There is an international agreement allowing automatic exchange of information between the jurisdictions of the UPE and the constituent entity but there is no competent authority agreement in effect providing for the automatic exchange of CbC Reports (i.e the exchange relationship has not yet been activated); and
- There has been a systemic failure by the residence jurisdiction of the UPE to exchange CbC Reports that has been notified to the constituent entity by the local tax authority.

Form 54 (Modelo 54) is the form through which entities obliged to submit this information ("Country-by-Country Report") must fulfil this obligation in Portugal.

Portugal also entered into the CRS and FACTA agreements, concerning automatic exchange of information relating to financial accounts.

Furthermore, Portugal has transposed the so-called DAC 6 Directive regarding disclosure of information about aggressive tax planning arrangements in relation to reportable cross border arrangements, which means that any M&A transaction that gives rise to an arrangement covered by the Directive shall be disclosed. Note that Portuguese law also extended the disclosure obligation to the arrangements that take place entirely in Portugal. Form 58 (Modelo 58) is the form that should be used for "disclosure obligation report against aggressive tax planning Return".

10. TRANSFER PRICING

Portuguese transfer pricing rules (rules on related party transactions) are in line with OECD transfer pricing guidelines, whereby related party transactions should be valued on an arm's length basis, i.e., transactions between associated companies should be subject to the terms and conditions identical to those which would normally be accepted and agreed upon between independent entities in comparable transactions.

In order to determine the terms and conditions in these transactions, the taxpayer shall adopt one of the following transfer pricing methods: (i) acceptable methods, such as comparable uncontrolled price, resale minus, cost plus, transactional profit split method, transactional net margin method; or (ii) other method, technical or economic acceptable asset assessment model, in case the acceptable methods cannot be used given the specificity of the transaction, or the lack or little information and reliable comparable data.

Recently, Portugal has published new amendments to the transfer pricing regime (see section 2. for further detail). Among others, we briefly highlight the following rules:

- Detailed definition of the application of transfer pricing methods and comparability analysis processes, in line with the OECD Guidelines;
- Amendment of the threshold that grants exemption from preparing transfer pricing documentation, adopting a double criterion: (i) taxpayers with annual revenues lower than EUR10 million are exempt from preparing the documentation (EUR3 million in the previous version) during the fiscal year to which the obligation refers (instead of the previous fiscal year); and (ii) exemption of reporting the controlled transactions in an amount of less than EUR100,000 (per transaction, per counterparty) and, as a whole, of EUR500,000;
- Introduction of the two tier documentation model, Master File and Local File, and considering the documentation obligation fulfilled when the process includes all relevant elements and introduction of the concept of "Simplified File" to be adopted by micro, small and medium companies, obliged to prepare the transfer pricing documentation;
- Confirmation of the need of translation into Portuguese of documents to be presented to PTA, that are written in foreign language, without prejudice of exemption;

Note that there are other tax compliance obligations to take into consideration, such as the report of transfer pricing information in the Company Simplified Information/Annual Statement. Also, in some cases, the ultimate parent entity of a multinational group of companies may be required to file the Country-by-Country Reporting form, where turnover in the preceding tax year is equal to, or higher than, EUR 750,000,000.

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities

Portugal transposed the ATAD 2. As a result, it has also transposed the concept of a hybrid entity, which is defined as any entity or arrangement that is regarded as a taxable entity under the laws of one jurisdiction and whose income or expenditure is treated as income or expenditure of one or more other persons under the laws of another jurisdiction. The implications will depend on the rules applicable to the case: for instance, under the terms of the reverse hybrid mismatches rules, a hybrid entity may be regarded as a resident of Portugal and taxed on its income to the extent that that income is not taxed under the laws of any other jurisdiction.

The Portuguese Tax Authorities have not issued any tax position or guidance on this matter. Nevertheless, the Portuguese Tax Authorities tend to follow the OECD guidelines, so it is understood that these recommendations (specifically, Action 2) should be important sources for interpreting these rules.

b. Use of Hybrid Instruments

Portugal transposed the ATAD 2 regarding the hybrid mismatches, and, as a result, also transposed the concept of a hybrid instrument. This concept corresponds to any financial instrument that gives rise to a mismatch outcome (e.g. a deduction without inclusion outcome). The concept of financial instrument means any instrument to the extent that it gives rise to a financing or equity return that is taxed under the rules for taxing debt, equity or derivatives under the laws of either the payee or payer jurisdictions and includes a hybrid transfer.

Any instrument that fulfils the concept above may be deemed as a hybrid instrument and, therefore, the anti-hybrid mismatches rules may apply, which means Portugal may deny a deduction of that payment, or, where the deduction is not denied in the payer jurisdiction, the amount of the payment that would give rise to a mismatch outcome may be included in income of the Portuguese resident (beneficiary).

c. Principal/Limited Risk Distribution or Similar Structures

Portugal generally follows the OECD approach with regard to arm's length standards of intercompany distribution structures. Thus, transfer prices for distribution services can generally be calculated by means of the standard methods (comparable uncontrolled price method, resale price method and cost plus method).

d. Intellectual Property

The Portuguese patent box regime has a different approach depending if the taxpayer is an Intellectual Property purchaser or an Intellectual Property creator as follows:

- **From an Intellectual Property purchaser's perspective**: under the regime, qualified Intellectual Property may be amortised over 20 years based on a straight line method.

    (i) Qualified Intellectual Property:

Intellectual Property has to be related with industrial intangible property, such as patents, trademarks, licenses, production processes, models or other similar rights.

In addition, the following cumulative conditions should be also met: (i) the Intellectual Property is recognised as such in the accounts of the company, as per the Portuguese GAAP; (ii) the Intellectual Property is acquired for a consideration; and (iii) the Intellectual Property elements do not have a limited life.

However, the regime does not apply to Intellectual Property that: (i) is acquired from entities resident in a blacklisted jurisdiction; (ii) is acquired as a consequence of a merger, demerger or contribution in kind that benefited from the tax neutrality regime; or (iii) is acquired from a related party.

    (ii) Qualifying income:

Tax amortisation of 5% (over a 20 year period) of the acquisition cost of the Intellectual Property is allowed.

- **From Intellectual Property creator's perspective:** this regime applies to qualified Intellectual Property and foresees that only 50% the qualifying income, as it results from the computation rules is taxed at the general rates.

    (i) Qualified Intellectual Property:

Intellectual Property rights covered by the patent box regime exclusively include patents and industrial designs or models;

In addition, the following should be cumulatively verified: (i) Intellectual Property is effectively used for activities carried out by the licensee; (ii) if licensee is a related company, the Intellectual Property cannot be used to create deductible expenses for the taxpayer (licensor); (iii) licensee is not domiciled in a country, territory or region with a more favourable tax regime (blacklisted jurisdiction); and (iv) there are expenses incurred in order to perform eligible R&D activities connected with the qualified Intellectual Property that generates the qualifying income. Such expenses, as well as the qualifying income, shall be segregated through accounting records, which shall be organised in such a way that the Intellectual Property income and related expenses are clearly distinguishable from the remaining income and expenses.

(ii) Qualifying income:

Qualifying income will be a result of the application of three tiers of computation rules.

- 1st tier of computation: the taxable basis of the qualifying income is the positive net amount resulting from the qualifying income and the expenses incurred in order to perform the R&D activities during the relevant fiscal year;
- 2nd tier of computation: the 1st tier taxable basis computation shall be adjusted by the negative net amount resulting from the qualifying income and the expenses incurred in order to perform the R&D activities during the previous fiscal years; and
- 3rd tier of computation: nonetheless, the final deduction from the taxable basis of the qualifying income may not exceed the amount computed under a specific formula, described below.

In line with the above, the deduction from the taxable income shall not exceed the amount resulting from the following formula:

TB = QE/OE x OI x 50%

Where:

TB: Tax benefit (deduction from the taxable income)

QE: Qualifying expenditures incurred to develop an IP asset

QE must have been incurred by the taxpayer;

QE must be directly connected to the IP asset; and

QE shall be related with R&D actives incurred by the taxpayers or by non-related parties for TP purposes.

A 30% "up-lift" is permitted on the QE but the total QE (with up-lift included) may not exceed the OE.

OE: Overall expenditures incurred to develop IP asset

OE include all qualifying expenditures, acquisition costs, and expenditures for outsourcing that do not count as qualifying expenditures.

OI: Overall income from IP asset resulting as per 1st tier and 2nd tier computation rules.

e. Special Tax Regimes

In Portugal there are several special tax regimes that investors often elect into. We describe below some of the most important regimes.

- Tax Grouping ("RETGS")

Portuguese law foresees a tax grouping regime (so called "RETGS") for some groups of companies. According to this regime, Portuguese companies may apply a tax grouping regime for CIT purposes, if certain requirements are fulfilled, in particular if there is a Portuguese dominant company which holds, directly or indirectly, at least 75% of the subsidiaries' share capital and such interest represents more than 50% of the voting rights.

In addition, a non-resident company may also be the dominant company of a "Horizontal tax grouping", provided that it has legal personality, is subject and not exempt to a tax similar to Portuguese CIT and is not resident in a country, territory or region subject to a more favourable tax regime. In such case, a representative company in Portugal must be appointed.

In a nutshell, this regime allows the companies of a tax group to be taxed according to the arithmetic sum of the individual taxable basis (therefore enabling tax losses assessed by a group company to be offset against taxable profits assessed in the same fiscal year by other group companies). See section 3.c. for further detail.

- Special Regime for venture capital funds ("VCFs")

Portugal has a special tax regime applicable to venture capital funds ("Fundo de Capital de Risco" or "FCR") as well as to their investors, that follows the principle of exit taxation. Under this regime, any income or gains obtained by VCFs that have been established and operate according to Portuguese law are exempt from CIT.

In certain cases, income paid or made available to Portuguese entities, either arising from distributions or redemption of units, is subject to withholding tax at a rate 10% (which is merely a payment on account of its final CIT liability). However, there is no WHT if these entities benefit from an exemption for capital income.

For non-resident entities without a PE in Portugal, income arising from distributions and capital gains from the redemption or sale of units may be exempt from taxation in Portugal. However, this exemption regime is not applicable and the income is taxed at 10% rate if (i) the non-resident investor is domiciled in a country, territory or region subject to a more favourable tax regime, or (ii) if it is directly or indirectly held, in more than 25% of its capital, by a Portuguese tax resident entity.

- Special Regime for Undertakings for Collective Investment ("UCIs")

UCIs are subject to CIT on taxable income under the general regime (see section 1.b. above). However, UCIs may benefit from a special tax regime provided that they take the following type: (i) securities investment funds ("SIFs"); (ii) real estate investment funds ("REIFs"); (iii) securities investment companies ("SICs"); and (iv) real estate investment companies ("REICs").

Under the terms of this regime, investment income, rental income and some capital gains obtained by eligible UCIs are exempt from CIT, with the exception of income distributed or due by an entity resident in country, territory or region subject to a more favourable tax regime, or resulting from the transfer of a participation held in such an entity. In addition, this special regime allows UCIs to be exempt from municipal and state surcharges.

Taxation at the level of the investor will differ depending on the investor being a Portuguese resident or a non-resident entity or individual. Special rules under the terms of this regime are only applicable to (i) income arising from UCIs distributions, (ii) gains arising from redemption of units against the capital of the UCIs and (iii) capital gains arising from the sale and purchase of units or shares in the capital of the UCIs.

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See below a summary of the regime applicable to investing entities:

- Investors residents in Portugal (including non-resident investors with units or shares attributable to a PE in Portugal) are subject to WHT at 25% (but this WHT has a nature of a payment on account of its final CIT liability).
- Income paid by SIFs and SICs or gains arising from the redemption of units or shares in the capital of such funds or companies to non-resident entities without PE in Portugal are exempt from taxation in Portugal. Otherwise, such income or gains are taxed at a 25% WHT.
- Capital gains arising from the sale and purchase of the units or shares of the SIFs and SICs are taxed at 25% WHT. However, it may be possible to apply domestic exemption for capital gains obtained by non-resident entities provided that certain conditions are met.
- Income paid by REIFs and REICs or gains arising from the redemption of the units or shares in the capital of such funds or companies, to non-resident entities are taxed in Portugal at a WHT of 10%. Otherwise, such income or gain is taxed at a WHT of 25%.
- Capital gains arising from the sale and purchase of the units or shares of REIFs and REICs, are qualified as gains from immovable property and taxed at the final rate of 10%.

Note that UCIs that applies this special regime are subject to SD, which is levied quarterly on the UCIs' net asset value, at a rate of 0.0125% or, for UCIs investing in money market instruments or deposits, at a rate of 0.0025% (see section 1.b. above).

- Research & Development regime

Portugal provides some tax incentives for Corporate Research & Development ("R&D"), so called SIFIDEII, which provides a current year tax deduction for R&D costs.

Under SIFIDE II a tax credit corresponding to the amount of expenses incurred with R&D activities is available limited to the following:

(i) 32.5% of expenses borne during a tax year; and

(ii) 50% of the surplus of expenses borne in the tax year over the average of the two previous tax years, capped at EUR1.5 million.

Where the credit may not be fully offset in a taxable year, a carry forward is available for the following eight years with certain limitations.

At a first glance it seems that it should be the taxpayer itself incurring on the relevant expenses. However, there is an exception expressly mentioned in the law under which expenses for the acquisition of a participation in the share capital of certified R&D institutions and contributions to public or private investment funds to finance companies dedicated in particular to R&D are also eligible for benefiting from this regime. The Funds should finance entities that are recognised/certified by ANI ("R&D entities").

Note that SIFIDE II is not limited to particular industries and eligible activities may take place within or outside Portugal, provided that the cost is incurred by the Portuguese entity claiming the benefit.

- Tax Regime for Investment Support (“RFAI”)

Under this regime, investing companies may benefit from a tax credit against tax due (maximum 50% of tax assessed), corresponding to 25% of investments below EUR 15 million or 10% of investments above EUR15 million.

Exemptions of RETT, MPT (both depending on authorization of the corresponding municipality) and SD on the acquisition of real estate may also be available. In the case of start-ups, a full of the CIT may apply in the year of beginning of activity and the two following periods of taxation.

- Share Capital Remuneration (“RCCS”)

This regime foresees a deduction from the taxable profit corresponding to 7% of the contributions, up to EUR2 million, upon the incorporation of an entity or capital increases, applicable to cash contributions and conversion of credits, or the use of profits of the same taxable period.

The deduction to the taxable profit will be made in the tax period where the entries are made and in the following five tax periods.

The limitation to the net financing expenses of the taxpayers that use this benefit will be the higher value between EUR1 million and 25% of the result before depreciations, amortizations, net financing expenses and taxes (30% in case of taxpayers not yet benefiting from this regime).

12. OECD BEPS CONSIDERATIONS

Portugal has implemented the OECD BEPS recommendation into its domestic legislation. Some domestic rules have been updated in the domestic law considering the solutions recommended by the BEPS (OECD), such as the introduction of a broader definition of PE. Note that part of this development was also due to EU law (e.g. ATADs, etc.), which following the international trends, has issued some Directives that have been transposed into Portuguese law (e.g. hybrid mismatches rules).

In addition, Portugal signed the multilateral instrument (“MLI”) according to BEPS Action 15 on 7 June 2017, and the Parliament approved it and President ratified it on 14 November 2019. The MLI entered into force on 1 June 2020 and introduced some amendments in several tax treaties signed by Portugal.

Furthermore, tax treaties signed after 2017 have been drafted with the new wording and solutions of the OECD Model Convention 2017 (and UN Model Convention).

It should be noted that the Portuguese tax authorities and courts generally follow the OECD Model Commentary in the interpretation of tax treaties.

13. ACCOUNTING CONSIDERATIONS

In general the tax accounting is based on the financial statements. Where the tax law applies a different valuation or contains provisions regarding a limitation in tax deductibility, (e.g. time limitation or non-deductibility), the tax accounts and the taxable profit of a company might vary from the financial profit.

Commonly, an expense would need to be directly related to the business of the company to be recognised for tax purposes, as non-related expenses should be in general non-deductible. Furthermore, certain expenses are deemed to be non-deductible for tax purposes, even though incurred with regard to the business, as the tax law considers the deduction as inappropriate, (e.g. expenses due to penalties and fines).

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

In general terms, dividends can be distributed if the following aspects are respected:

- Legal reserves should be covered (there is a minimum legal reserve that cannot be distributed to the shareholders): a minimum of a 20th part of the net profits of each year of the company is destined for the legal reserve until it represents 20% of the share capital;
- The legal reserve may only be used: (i) to cover the portion of losses in the balance sheet that cannot be covered by the use of other reserves; (ii) to cover the portion of losses from the previous year that cannot be covered by net profits from the present year or by the use of other reserves; and (iii) to increase share capital.

In addition, there are some limitations to the distribution of dividends to the shareholders:

- If the equity capital, including the year net income, as shown in the approved accounts, is less than the sum of the share capital and the reserves or becomes less than this sum as a result of the distribution;
- If they are necessary to cover accumulated losses or to form or reconstitute reserves required by law or by the articles of association; or
- If the incorporation costs or research and development costs are not completely paid, unless the amount of free reserves and retained earnings is at least equal to those costs not paid.

b. Application of Regional Rules

As a member of the European Union, Portugal is subject and has implemented into its internal law all EU Directives in tax matters (e.g. EU Parent-Subsidiary Directive, EU Merger Directive, ATAD, ATAD 2, the EU Directives on administrative cooperation in tax matters, so-called "DAC" 1 to 6, etc.).

c. Tax Rulings and Clearances

Portuguese taxpayers can request a binding ruling to gain certainty on the tax treatment of a particular transaction. Portuguese tax provides for two types of binding rulings:

- A non-urgent ruling, which has no associated costs but the tax authorities have an indicative timeframe of 150 days to decide and the non-decision within the deadline does not trigger any consequences.
- An urgent ruling, in which the urgency must be justified and accepted by the Portuguese tax authorities. The costs may range between EUR2,550 and EUR25,500 depending on the complexity of the issue and it must be decided within 75 days. However, if no decision is issued within the deadline established, the tax framework proposed by the taxpayer should be tacitly accepted.

15. MAJOR NON-TAX CONSIDERATIONS

This section is left intentionally blank.

16. APPENDIX I - TAX TREATY RATES

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Algeria	10 / 15	15	10	[1], [2]
Andorra	5 / 15	10	5	[3]
Angola	8 / 15	10	8	[A], [2], [4], [5]
Austria	15	10	5 / 10	[6]
Barbados	5 / 15	10	5	[7], [2]
Belgium	15	15	10	-----
Brazil	10 / 15	15	15	[1]
Bulgaria	10 / 15	10	10	[1], [2]
Canada	10 / 15	10	10	[1], [2]
Cape Verde	10	10	10	[2]
Chile	10 / 15	5 / 10 / 15	5 / 10	[7], [9], [10]
China	10	10	10	[2],
Colombia	10	10	10	-----
Croatia	5 / 10	10	10	[11]
Cuba	5 / 10	10	5	[2], [7], [12]
Cyprus	10	10	10	-----
Czech Republic	10 / 15	10	10	[1], [2]
Denmark	10	10	10	[2]
East Timor	5 / 10	10	10	[7]
Estonia	10	10	10	[2]
Ethiopia	5 / 10	10	5	[2], [7]
Finland	-	-	-	[B]
France	15	10 / 12	5	[13]
Georgia	5 / 10	10	5	[2], [7]
Germany	15	10 / 15	10	[14]
Greece	15	15	10	-----

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Guinea-Bissau	10	10	10	-----
Hong Kong	5 / 10	10	5	[2], [11]
Hungary	10 / 15	10	10	[1], [2]
Iceland	10 / 15	10	10	[2], [16]
India	10 / 15	10	10	[1], [2]
Indonesia	10	10	10	[2]
Ireland	15	15	10	[2]
Israel	5 / 10 / 15	10	10	[2], [17]
Italy	15	15	12	[2]
Ivory Coast	10	10	5	[2]
Japan	5 / 10	5 / 10	5	[3], [18]
Kenya	7,5 / 10	10	10	[A], [2], [19]
Kingdom of Bahrain	10 / 15	10	5	[7]
Korea, Republic of	10 / 15	15	10	[1], [2]
Kuwait	5 / 10	10	10	[11]
Latvia	10	10	10	[2]
Lithuania	10	10	10	[2]
Luxembourg	15	10 / 15	10	[20]
Macau	10	10	10	[2]
Malta	10 / 15	10	10	[1], [2]
Mexico	10	10	10	[2]
Moldova	5 / 10	10	8	[7]
Montenegro	5 / 10	10	5 / 10	[21], [2], [15]
Morocco	10 / 15	12	10	[1]
Mozambique	10	10	10	[2]
Netherlands	10	10	10	[2]
Norway	5 / 15	10	10	[22]
Panama	10 / 15	10	10	[1], [2]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Pakistan	10 / 15	10	10	[1], [2]
Peru	10 / 15	10 / 15	10 / 15	[11], [23], [24]
Poland	10 / 15	10	10	[1], [2]
Qatar	5 / 10	10	10	[2], [11], [25]
Romania	10 / 15	10	10	[1], [2]
Russia	10 / 15	10	10	[1], [2]
San Marino	10 / 15	10	10	[7]
Sao Tome and Principe	10 / 15	10	10 / 15	[2], [7], [26]
Saudi Arabia	5 / 10	10	8	[2], [25],
Senegal	5 / 10	10	8 / 10	[7], [2], [27]
Singapore	10	10	10	[2], [12]
Slovakia	15 / 10	10	10	[1]
Slovenia	5 / 15	10	5	[2], [7]
South Africa	10 / 15	10	10	[1], [2]
Spain	10 / 15	15	5	[7]
Sultanate of Oman	5 / 10 / 15	10	8	[2], [28]
Sweden	-	-	-	[C]
Switzerland	5 / 15	10	5	[2], [7], [29]
Tunisia	15	15	10	-----
Turkey	5 / 15	10 / 15	10	[2], [16], [34]
Ukraine	10 / 15	10	10	[1], [2]
United Arab Emirates	5 / 15	10	5	[2], [11]
United Kingdom	10 / 15	10	5	[7]
United States	5 / 15	10	10	[1], [2], [30]
Uruguay	5 / 10	10	10	[7]
Venezuela	10	10	10 / 12	[2], [31]
Vietnam	5 / 10 / 15	10	10 / 7,5	[2], [32], [33]

Footnotes	
A	Follows the wording (or some aspects) of OECD Model Convention 2017.
B	No DTT in force between Finland and Portugal as of 1 January 2019.
C	No DTT in force between Sweden and Portugal as of 1 January 2022.
1	Dividends - The lower rate applies if the BO is a company, which holds directly at least 25% of the capital of the company paying the dividends for an uninterrupted period of at least 2 years prior to the decision to distribute the dividends.
2	Interest - An exemption applies in relation to interest paid by or received by the Public Administration mention in the rule (usually, Governments, political or administrative subdivision or local Authorities, undertakings controlled by the mention Public Administration, the national Central Banks, etc.). Note: Each DTT contains its specific way to structure the interest exemption connected to the Public Administration.
3	Dividends - The lower rate applies if the BO is a company, which holds directly at least 10% of the capital of the company paying the dividends for an uninterrupted period of at least 12 months prior to the decision to distribute the dividends.
4	Dividends - The lower rate applies if the BO is a company which holds directly at least 25% of the capital of the company paying the dividends throughout a 365 day period that includes the day of the payment of the dividend (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganisation, such as a merger or demerger reorganisation, of the company that holds the shares or that pays the dividend).
5	The dividend definition includes income distributed by “real estate investment funds” or “real estate investment companies”.
6	Royalties - The lower rate applies to recipients with a direct shareholding of at least 50% in the Portuguese company.
7	Dividends - The lower rate applies to companies (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends.
9	Interest - The lower rate will apply to interest derived from bonds or securities that are regularly and substantially traded on a recognised securities market. The intermediate rate will apply to interest derived from (i) loans granted by banks and insurance companies; and (ii) a sale on credit paid by the purchaser of machinery and equipment to a BO that is the seller of the machinery and equipment.
10	Royalties - The lower% rate applies to royalties for the use of, or the right to use, any industrial, commercial or scientific equipment.
11	Dividends - The lower rate applies to corporate recipients, which are the Beneficial Owners of the dividends, with a direct shareholding of minimum 10% in the Portuguese company.
12	Dividends - An exemption applies in relation to dividends paid to the Public Administration.
13	Interest - The 10% rate is applicable to interest on bonds issued in France after 1 January 1965.
14	Interest - Reduced rate will apply if the interest is paid on a loan of whatever kind granted by a bank. In the case of interest arising in Portugal, the provision of this subparagraph shall only apply if the operation for which loan is given, is considered to be of an economic or social interest for the country of the Portuguese government, which condition is always considered to be fulfilled if it is comprised in development plans approved by this government. An exemption applies in relation to interest paid to the national Central Banks.

Footnotes	
15	The 5 % rate applies to any copyright of literary, artistic or scientific work, including cinematographic films and recordings on tape or other media used for radio or television broadcasting or other means of reproduction or transmission or computer Software. The 10% rate applies to any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.
16	Dividends - The lower rate applies if the BO is a company, which holds directly at least 25% of the capital of the company paying the dividends for an uninterrupted period of at least 2 years prior to the decision to distribute the dividends. In alternative, the lower rate also applies if the BO holds directly at least 25% of the capital of the company that has existed for less than two years, during the lifetime of the company.
17	Dividends - The lower rate applies to corporate recipients, which are the Beneficial Owners of the dividends, with a direct shareholding of minimum 25% in the Portuguese company. The intermediate rate applies if the BO is a company which holds directly at least 25% of the capital of the company paying the dividends where that latter company is a resident of Israel and the dividends are paid out of profits which are subject to tax in Israel at a rate which is lower than the normal rate of Israeli company tax.
18	Interest – The lower rate will apply if the interest is beneficially owned by a bank established and regulated as such under the laws of the other Contracting State. Protocol amended this provision stated that if Portugal concludes a DTT with another state on the exemption at source for interest beneficially owned by a bank which is a resident of that other state, the reduced rate above should be replaced and the interest should only be taxed in the Contracting State where the bank is resident.
19	Dividends - The lower rate applies if the BO is a company which holds directly at least 10% of the capital of the company paying the dividends throughout a 365 day period that includes the day of the payment of the dividend (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganisation, such as a merger or demerger reorganisation, of the company that holds the shares or that pays the dividend).
20	Interest - Reduced rate will apply if the interest is paid by a company to a resident financial establishment of the other Contracting State.
21	Dividends - The lower rate applies if the BO is a company holds directly or indirectly at least 5% of the capital of the company paying the dividends.
22	Dividends - The lower rate applies if the BO is a company, which holds directly at least 10% of the capital (i) of the company paying the dividends for an uninterrupted period of at least 12 months prior to the decision to distribute the dividends, or (ii) or if the company paying the dividends has existed for less than 12 months, during the lifetime of the company. The lower rate is also applicable to the Beneficial Owners are the Public Administration.
23	Interest – The lower rate will apply to the interest on any loan granted by a bank.
24	Royalties - The lower rate will apply to any payment of royalties received as consideration for the furnishing of technical assistance in connection with the use of, or the right to use, any copyright, goods or information.

Footnotes	
25	Dividends - The lower rate applies if the BO is a company, which holds directly at least 10% of the capital of the company paying the dividends. The intermediate rate applies to corporate recipients, which are the Beneficial Owners of the dividends, with a direct shareholding of minimum 10% in the Portuguese company.
26	Royalties - The 10% rate applies to royalties and the 15% applies to the technical fees (payments in consideration for any services of a managerial, technical or consultancy nature).
27	Royalties - The 10% rate applies to royalties and the 8% applies to the technical fees (payments in consideration for any services of a managerial, technical or consultancy nature).
28	Dividends - The lower rate applies if the BO is the Public Administration; The intermediate rate applies to corporate recipients, which are the Beneficial Owners of the dividends, with a direct shareholding of minimum 10% in the Portuguese company.
29	Dividends - An exemption applies in relation to dividends paid to the national Central Banks. The lower rate applies if: i) the company holds directly at least 25% of the capital of the company paying the dividends for a period of at least 2 years; ii) both companies are subject to and not exempt from of taxes covered by the DTT; iii) none of the company is a resident of that third state; and, iv) both the companies adopt the form of a limited liability company.
30	Royalties - If the royalties are received as consideration for the use of, or the right to use, containers in international traffic, the royalties shall be taxable only in the contracting state of which the recipient is a resident.
31	Royalties - The 12% rate applies to royalties and the 10% applies to the fees for technical assistance (payments received as a consideration for technical assistance in connection with the use or the right to use any copyright, goods or information).
32	Dividends - The lower rate applies to corporate recipients, which are the Beneficial Owners of the dividends, with a direct shareholding of minimum 70% in the Portuguese company. The intermediate rate applies to corporate recipients, which are the Beneficial Owners of the dividends, with a direct shareholding of minimum 25% in the Portuguese company.
33	Royalties - The 10% rate applies to royalties and the 7.5% applies to the technical fees (payments in consideration for any services of a managerial, technical or consultancy nature).
34	Interest – The lower rate will apply to the interest on a loan made for a period of more than two years.

17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

As a general rule, the limitation period for tax authorities to issue assessments is four years from the relevant taxable event (in some cases the limitation period begins to run from the end of the relevant tax period, such as in CIT, PIT), except in the following cases:

- RETT and SD on gratuitous transfers or transfers for consideration of real estate, eight years.
- If an error is detected in a taxpayer's return or if the taxable income is determined using indirect methods, three years.
- If the taxpayer reports any deduction or tax credit, the limitation period is the term during which the relevant right can be exercised.
- If a criminal procedure is initiated and the assessment depends on the facts under investigation, the limitation period for assessments is extended until one year after the end of the criminal proceedings.
- If the facts are related to a blacklisted jurisdiction and were not declared to the tax authorities, or if the facts are related to deposit or securities accounts held in financial institutions outside the EU or in subsidiaries of resident financial institutions located outside the EU, the existence and identification of which was not indicated by the taxpayer in the PIT return of the respective year, 12 years.

Nº.	Category	Sub-Category	Description of Request
1	Tax Due Diligence	Financial Statements	Balance sheet and income statement for the years under review by the tax authorities
2	Tax Due Diligence	Financial Statements	Trial balance with the greatest amount of detail available for the years under review
3	Tax Due Diligence	Financial Statements	Annual accounts for the years under review by the tax authorities
4	Tax Due Diligence	General	Valid and most updated official statements of inexistence of debts towards the Tax Authorities and the Social Security.
5	Tax Due Diligence	General	Most updated commercial registry certificate.
6	Tax Due Diligence	General	Identification of all shareholding changes that occurred in years under review, and copy of any request of maintenance of tax losses and respective answer of the Portuguese Tax Authority ("PTA").
7	Tax Due Diligence	General	Minutes regarding the approval of any profits distribution for the years under review.
8	Tax Due Diligence	General	Print extracted from the PTA's website (showing date of issuance) in section "Consultar/ Informação Financeira/ Movimentos financeiros" search options (i) fines (ii) VAT (iii) CIT (iv) MPT (v) RETT (vi) SD (vii) "IStg" (viii) WHT PIT(ix) WHT CIT.
9	Tax Due Diligence	General	Notifications received regarding tax audits performed by tax authorities, as well as any communications exchanged with the tax authorities (namely binding opinions, revaluations of the VPT, amongst others) or any litigation.
10	Tax Due Diligence	General	Evidence of any other communication from/to the PTA not mentioned above.
11	Tax Due Diligence	General	Other tax debts and contingencies that the companies may be aware of.

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Nº.	Category	Sub-Category	Description of Request
12	Tax Due Diligence	Corporate Tax	Annual declaration of the CIT - “Modelo 22 do IRC” of the Companies for the years under review.
13	Tax Due Diligence	Corporate Tax	Declaration of Simplified Corporate Information (IES) of the Companies for the years under review.
14	Tax Due Diligence	Corporate Tax	Communication of the option to apply the RETGS (tax consolidation regime) and of all subsequent amendments to the perimeter of the Companies’ group.
15	Tax Due Diligence	Corporate Tax	Detailed computation of the CIT estimate of the Companies and supporting documentation.
16	Tax Due Diligence	Corporate Tax	Detailed information of the computation of the CIT payable / receivable of each “Modelo 22 do IRC”.
17	Tax Due Diligence	Corporate Tax	Computation and proof of payment (showing date of payment) of all CIT payments made in the years under review (e.g. payments on account, etc.) as well as evidence of any final CIT payments or refunds by the PTA.
18	Tax Due Diligence	Corporate Tax	Control-map of available tax losses including the tax losses generated in each year under review and the respective utilisation/per year and the balance to carry forward.
19	Tax Due Diligence	Corporate Tax	Computation of the autonomous taxation of the FYs under review (segregated by nature of expenses, rates applied and evidence of the underlying documentation).
20	Tax Due Diligence	Corporate Tax	Official tax forms “Modelo 30”, explanation of procedures adopted for deductible provisions, adjustments to inventories and credits, impairments and provisions in the FYs under review.
21	Tax Due Diligence	Corporate Tax	Official tax forms “Modelo 32” for the depreciation and amortization of tangible and intangible assets in the FYs under review and underlying documentation.
22	Tax Due Diligence	Corporate Tax	Official tax forms “Modelo 31” for assessment of taxable capital gains and losses and summary spreadsheet for control of rollover relief mechanism of the FYs under review.
23	Tax Due Diligence	Transfer Pricing	Transfer pricing documentation for the FYs under review.
24	Tax Due Diligence	Transfer Pricing	Evidence or written declaration on whether the Tax file and Transfer pricing documentation (whenever applicable) are duly organized and transactions duly justified for the FYs under review.
25	Tax Due Diligence	Transfer Pricing	Evidence that the CbCr (Country by Country report) declarative obligation - “Modelo 55” (or that the reporting entity was identified to the PTA - “Modelo 54”) was fulfilled (whenever applicable).
26	Tax Due Diligence	Corporate Tax	Evidence of the annual communication of the inventory for the FYs under review.
27	Tax Due Diligence	Corporate Tax	Supporting documentation and justification of any tax benefits, including subsidies received during the years open to inspection and their tax treatment.
28	Tax Due Diligence	Corporate Tax	Information regarding the participation in Joint ventures or other participations (e.g. ACE’s) applying the tax transparency regime.

Nº.	Category	Sub-Category	Description of Request
29	Tax Due Diligence	Corporate Tax	Evidence of the procedures adopted regarding representation expenses and travel and accommodation expenses as well as daily allowances and compensation given for the use of worker's own vehicle and underlying supporting documentation (namely, the necessary control maps and if when the daily allowances are paid any other meal allowances are correspondingly annulled/ deducted).
30	Tax Due Diligence	Corporate Tax	Evidence of the organisation structure for purposes of application of the EU Directives regarding payment of dividends, financial interests and/ or royalties payable to non-resident entities.
31	Tax Due Diligence	Corporate Tax	Evidence of any procedure entailed by the Companies to prove that the price actually paid on the sale or purchase of real estate was lower than the VPT for purposes of MPT.
32	Tax Due Diligence	Corporate Tax	Summary of social useful contributions given to employees, and confirmation that they are attributed to the overall employees under an objective and identical criteria, as well as information of expenses related to retirement benefits and other post-employment benefits or long-term employee benefits.
33	Tax Due Diligence	VAT	VAT initial activity return and subsequent amendments to business activity returns, and current print extracted from the PTA's.
34	Tax Due Diligence	VAT	Print extracted from the PTA's website in sections "Consultar/ Informação Financeira/ IVA/ Conta Corrente" and "Consultar/ Informação Financeira/ IVA/ Reembolsos/ Todos os periodos" for all FYs under analysis.
35	Tax Due Diligence	VAT	Evidence of the most relevant VAT reimbursement procedure entailed for the FYs under review.
36	Tax Due Diligence	VAT	Periodic VAT returns of the Companies submitted and respective payments of the FYs under review.
37	Tax Due Diligence	VAT	VAT recapitulative statements submitted in the FYs under review.
39	Tax Due Diligence	VAT	Brief description of the main active and passive transactions and of the adopted procedures in the assessment, reverse charge, and deduction of VAT (specifying the applied pro-rata and/or other allocation method).
40	Tax Due Diligence	VAT	Evidence of underlying documentation to the VAT adjustments ("regularizações") performed submitted in the FYs under review.
41	Tax Due Diligence	VAT	Evidence of situations and procedures adopted regarding the recharge of expenses to other entities and sample invoicing.
42	Tax Due Diligence	VAT	Description and supporting documentation regarding the applied discount policies for the FYs under review.
43	Tax Due Diligence	VAT	Evidence of compliance with the formalities required for export, namely, evidence of the appropriate customs documents or declaration issued by the purchaser of the goods or the user of the services.

Nº.	Category	Sub-Category	Description of Request
44	Tax Due Diligence	VAT	Evidence of compliance with the formalities necessary for import, namely, electronic import declaration (“declaração eletrónica de importação”) – STADA.
46	Tax Due Diligence	VAT	Detailed information on all transactions performed under the waiver of VAT exemption and underlying documentation regarding the compliance of the regime’s conditions (PTA certificates, agreements, public deeds, VAT activity, evidence of ownership, etc).
47	Tax Due Diligence	VAT	Chart/table identifying the amount of VAT incurred and deducted regarding construction works and acquisitions within the VAT regularization period of 20 years if applicable.
48	Tax Due Diligence	VAT	Description and supporting documentation regarding any call-off stock arrangements (“vendas à consignação”) implemented.
49	Tax Due Diligence	VAT	Evidence that the invoicing communication have been successfully and timely submitted on a monthly basis for the FYs under review.
50	Tax Due Diligence	VAT	Written confirmation that the communication of transport documents have been successfully made to the PTA in the period under analysis and if they were correctly issued and evidence of 2 samples per year of the FYs under review.
51	Tax Due Diligence	VAT	Evidence that if the SAF-T (PT) file was timely and successfully submitted in the FYs under review.
52	Tax Due Diligence	Payroll Taxes	Chart or table identifying the taxation procedure of the income paid to employees and board members under PIT (namely applied rates, exemptions, etc.) by nature of income, including segregation of bonuses, share of profits, remuneration in kind (e.g. car use, any “realizações de utilidade social” as health life insurances) and other fringe benefits, etc. always segregating board members from employees and specifying conditions of attribution.
53	Tax Due Diligence	Payroll Taxes	Evidence of payroll procedures regarding allowances, bonuses, share of profits, daily allowances, compensation given for the use of worker’s own vehicle or similar granted to employees and board members, and underlying supporting documentation (namely internal policy, board meeting minutes, communication to employees, etc., segregating employees from board members) - months of January and August of each of the FYs under review.
54	Tax Due Diligence	Payroll Taxes	Confirmation that all monthly payroll declarations (DMR) were timely submitted to the PTA and evidence of DMRs respecting to January and August of each of the FYs under review.
55	Tax Due Diligence	Payroll Taxes	Payroll process for the month of January and July of each of year under review, as well as supporting documentation regarding daily-allowances and/or compensation for the use of worker’s own vehicles paid.
56	Tax Due Diligence	Payroll Taxes	Minutes identifying remuneration of board members and proof of registration before Social Security authorities even if not remunerated (or provide evidence of any exemption from Social Security contribution applied/requested).

Nº.	Category	Sub-Category	Description of Request
57	Tax Due Diligence	Property Taxes	Chart summarizing all real estate transactions and related (namely promissory contracts, surface rights, usage rights, assignment of real estate related contractual position) performed, identifying: (i) nature of the transactions; (ii) date of purchase; (iii) value of purchase; (iv) VPT; (v) RETT paid; (vi) RETT applied exemption; (vii) specification if transactions performed with related party.
58	Tax Due Diligence	Property Taxes	Public deeds and other documentation concerning all the real estate transactions mentioned in the item above.
59	Tax Due Diligence	Property Taxes	Evidence of RETT assessments (even when an exemption was applied or delay in payment occurred) regarding all real estate transactions for the FYs under review and respective proof of payment (showing date of payment).
60	Tax Due Diligence	Property Taxes	Information and support documentation on any real estate acquisition performed in order to benefit from the RETT resale exemption (namely, information on the first acquisition performed to benefit from the exemption) in the FYs under review.
61	Tax Due Diligence	Property Taxes	Updated property land registry certificates (“certidão predial permanente”).
62	Tax Due Diligence	Property Taxes	Updated tax registry certificates (“caderneta predial”).
63	Tax Due Diligence	Property Taxes	Evidence of MPT assessments and proof of its payment for the FYs under review.
64	Tax Due Diligence	Property Taxes	Chart or table identifying any changes to the properties’ areas or uses (services, housing, parking, etc.) as well as any constructions performed in the period under analysis.
65	Tax Due Diligence	Property Taxes	Forms “Modelo 1” submitted in the FYs under review.
66	Tax Due Diligence	Stamp Duty	List of operations / transactions performed by the Companies that were deemed subject to SD and evidence of the procedures adopted (namely if any exemptions were applied) as well as proof of any SD assessments and payments.
67	Tax Due Diligence	Stamp Duty	Monthly SD returns (“Declaração Mensal de Imposto do Selo”) as well as any substitutive returns submitted and evidence of payment of the corresponding tax.
68	Tax Due Diligence	Stamp Duty	Sample of rental agreements, transfer of going concern, sub-concessions, loans and other agreements subject to SD and proof correspondent payment and / or identification of the applied exemption.
69	Tax Due Diligence	Stamp Duty	Information on shareholder’s loans or other shareholder debts/credits and underlying agreements and underlying ledger of accounts for the FYs under review, and if any loans were provided on the grounds of treasury needs, please provide evidence for the treasury needs.
70	Tax Due Diligence	Stamp Duty	Copy of granted guarantees, containing: (i) name of the bank or financial institution; (ii) amounts guaranteed; (iii) granting and maturity dates; (iv) description of the type of guarantee; (v) beneficiary
71	Tax Due Diligence	Stamp Duty	Evidence of the submission of forms “Modelo 2” to communicate lease agreements in FYs under review.

PORTUGAL

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