MACEDO VITORINO & ASSOCIADOS
Sociedade de Advogados, RL

#WHY**PORTUGAL** 2019

TAXATION IN PORTUGAL MADE EASY
WHY YOU SHOULDN'T BE SCARED OF PORTUGUESE TAX LAWS

With a regime focused on investment and attracting new business, as well as incentives for new tax residents, it may be time to consider taking your taxes to Portugal.

While no one likes doing their taxes, the questions of 'how', 'where 'and 'how much' you're going to be taxed is surely at the top of priority lists. Portugal's Government has also given priority to its tax regime to make it an attractive and cost-effective place for potential investors and incoming workers, as well as companies doing business in or via Portugal. There are, of course, a whole host of different scenarios, conditions and exemptions to be looked at on a case-by-case basis.

The Tax and Customs Authority is responsible for the management of taxes in Portugal in accordance with the rates set out in the tax legislation approved by the Parliament. General tax rules apply nationwide, but the Azores and Madeira enjoy fiscal autonomy, so some tax rates differ from mainland Portugal.

To note that any income obtained abroad by Portuguese residents, or in Portugal by non-residents, is subject to tax, but to avoid double taxation the country is party to agreements with over 85 countries including the US, Poland, Russia, China, Canada and Germany.

What is the regime for taxation of companies?

If your business is headquartered or managed in Portugal, your taxable income is subject to Corporate Income Tax (CIT). CIT also applies to the taxable profit of businesses with a permanent establishment here, even if HQ and management are abroad. You have a permanent establishment if your business activities in Portugal are carried out using an office or other place of business or via someone acting on behalf of the company who can conclude contracts in the company's name.

For mainland Portugal, the CIT rate is 21%, 20% in Madeira and 16.8% in Azores. For residents, this is applied to the taxable income and for non-residents with a permanent establishment to the taxable profit on any activities in Portugal. SMEs benefit from a reduced rate applied to their first €15,000 – 17% on the mainland, 13% in Madeira and 13.6% in the Azores.

A Municipal Surcharge is applied on top of CIT to any taxable amount not exempt from CIT. Rates vary with a max limit of 1.5%, although in some municipalities you can get a reduced rate if your past year's turnover is less than €150,000.

State Surtax also applies on taxable profits over €1.5m at the rate of 3% from €1.5m to €7.5m, 5% from €7.5m to €35m and 9% for anything over €35m.

To note, you could be liable for Autonomous Tax on certain expenses including undocumented expenses (50% or 70%), charges with vehicles (10% to 35%), representation expenses (10%), and employees' daily allowances not charged to customers (5%).

How are non-resident companies with activities in Portugal taxed?

Even as a non-resident company without a permanent establishment in Portugal, you could still be liable for CIT if the income is considered obtained here and taxable under the applicable double taxation agreements (eg, dividends, capital gains, interest and royalties).

In general, income (excluding capital gains) deemed to be obtained in Portugal will be subject to a withholding tax at a rate of 25%, although that rate might be reduced to 15% or 10% under double taxation agreements. There are, however, various reductions and exemptions available.

The payment of dividends to a company based in another EU Member State with a shareholding of at least 10% of the share capital of a company established in Portugal for an uninterrupted period of one year is exempt. The company must be deemed 'eligible' in accordance with the Parent Companies Directive.

Interest and royalties are exempt from withholding tax if you make a payment to an affiliated company resident in another EU Member State, provided the relevant holding requirements are fulfilled.

Are non-resident companies subject to capital gains?

In relation to capital gains, any gain from the sale of real estate in Portugal will make you liable to CIT, even as a non-resident company without a permanent establishment in Portugal. However, gains from the sale of shares and other securities issued by a company resident in Portugal will be CIT exempt unless:

- The seller's HQ is in a jurisdiction with a more favourable tax regime;
- 25% of the company is, directly or indirectly, owned by resident companies or individuals. This doesn't apply if the shareholder is resident in an EU Member State, EEA country or a country with a double taxation agreement with Portugal and the stake fulfils some of the participation exemption requirements (eg, a minimum stake of 10% and a minimum holding period of one year);
- Over 50% of the target company's assets are real estate in Portugal or, if the target is a holding company, over 50% of any controlled company's assets include real estate in Portugal.

When will VAT apply?

If your business involves the supply of goods and services, importing of goods and intra-community transactions carried out in Portugal, and your day-to-day activity or even one single taxable transaction falls within the scope of Personal Income Tax (PIT) or CIT, then Value Added Tax (VAT) will apply. VAT will apply to the value obtained or to be obtained from the purchaser. However, default interest, discounts, rebates and bonuses are discounted.

VAT is due at the moment the services are provided or when the goods are in the purchaser's possession.

VAT will always apply to certain services in Portugal: real estate services; access to cultural, sporting, educational and similar events; short-term transport rental; and transport services. Notable VAT exemptions include medical and educational services, transfer and rental of property, insurance and reinsurance operations, and certain financial transactions.

For transfers of goods within or starting out in Portugal, VAT will be applied, and any Intra-Community purchases will also be subject to VAT. Exceptions include: Intra-Community transfers; exports; operations associated with exports and international transport; and, the transfer of goods to be placed in customs / tax warehouses under a suspensive regime.

The supply of services is also subject to VAT when the purchaser is also based in Portugal, but if the provider is in Portugal and the purchaser is abroad, there's no VAT, as a rule.

To note there are exceptions to these location rules for example for telecommunications services, broadcasting and electronic services where the acquirer is a private individual resident in Portugal.

What are the VAT rates?

The standard rate is 23% in mainland Portugal, 18% in the Azores and 22% in Madeira, and there are intermediate and reduced rates on certain goods/services. On the mainland there is an intermediate rate of 13% and a reduced rate of 6%. In the Azores the intermediate is 9% and reduced is 4%, while in Madeira the intermediate is 12% and reduced is 5%.

When do excise and customs duties apply?

If your goods or services have an environmental or public health element, such as alcohol, alcoholic beverages, added-sugar beverages, petrol and energy, and tobacco, you could be hit with Excise Duties. These will be levied by the authorised warehouse keeper or registered consignee. As a rule, these taxes are payable at the time of release for consumption.

Note that any products subject to excise duty are exempt when their use is for embassies or consulates, international organisations recognised by the Portuguese State or for a State party to the North Atlantic Treaty Organisation.

If you are importing into Portugal from outside the EU, then Customs Duties will also apply. Tariffs are calculated on the basis of a percentage of the price of the imported good as well as the related costs included in the Common European Customs Tariff.

Which taxes are due in relation to a real estate purchase?

Municipal Real Estate Transfer Tax (MRETT) applies on any real estate purchase, with a few exceptions.

As a general rule, MRETT applies to the contractual price or its taxable patrimonial value, if higher. MRETT also applies to the acquisition of more than 75% of the share capital of a limited liability company, or a closed-end real estate investment fund, which owns real estate in Portugal.

You need to pay MRETT prior to the transfer of the real estate as to execute the purchase deed a notary will require proof of payment. Payment must be made through the Tax Authority website.

Rates differ depending on the nature and use of the property: 5% for land, 0-6% for urban buildings exclusively for private and permanent housing, 1-6% for urban buildings exclusively for housing and 6.5 % for the acquisition of other urban buildings and onerous acquisitions. The rate will be 10% for buildings (urban or land) or other acquisitions where the purchaser is resident in a country, territory or region subject to a more favourable tax regime.

To note, the acquisition of buildings for resale by real estate companies are exempt from MRETT. You can also get an exemption on the acquisition of your permanent home, as long as the taxable amount doesn't exceed €92,407.

When does stamp duty apply?

You may also be liable for Stamp Duty on various legal acts, documents, contracts and operations (all of which are VAT-exempt) and as outlined in the General Stamp Tax Table. Flat rates apply as follows: 0.8% on onerous acquisitions of real estate; 10% on the acquisition of real estate for free; 10% on leases and subleases; 5% on transfer of businesses as going concerns (*trespasses*) and 5% on health insurance contracts.

Do look out for exemptions that may apply on life insurance premiums and commissions, as well as on interest on loans for the acquisition, construction, reconstruction or improvement of your home.

Which tax applies to property owners?

Real estate owners pay an annual Municipal Property Tax (MPT) each April on the asset value of a building with rates dependent on the type of real estate: 0.3% to 0.45% on urban buildings, 0.8% on land and 7.5% on buildings held by entities resident in tax havens. MPT can be paid in one go or in instalments: a single instalment payable in May where the taxable amount is equal to or less than €100; two instalments (to be paid in May and November) for over €100 and equal to or less than €500; and, three instalments (to be paid in May, August and November) for anything over €500.

Reduced rates apply in certain situations. You can get a three-year reduction on your permanent home, as long as the value doesn't exceed €125,000 and your PIT taxable income in the year prior to the acquisition doesn't exceed €153,300. There may also be a reduction in MPT in relation to the number of dependents you are responsible for and living with you, which can range from between €20 to €70.

An additional tax on top of the MPT will apply in certain circumstances over the sum of the aggregate taxable value of the owned property as follows:

- Individuals and undivided inheritances will be subject to the rate of 0.7% on the taxable value up to €1m, 1% on the taxable value up to €2m, and 1.5% on the taxable value above €2m; these rates apply after a deduction of €600,000 (or, in case of married couples or non-marital partnerships who opt for joint taxation, €1.2m);
- Companies will also be subject to a rate of 0.4% of the aggregate value of the property, unless the property is used by shareholders or members of corporate bodies, in which case the rates set out for individuals will apply;
- Residents in a country, territory or region subject to a more favourable tax regime will pay a rate of 7.5%.

To note, urban buildings related to commerce, industry or services are not covered by this additional tax.

How is personal income taxed?

When it comes to your personal taxes, PIT is applied to employment income, business and professional income and pensions at progressive rates from 14.5% to 48%. PIT depends on the type of income, the regime to which you subscribe, as well as the benefits and exemptions you are entitled to.

Any taxable income you make over €80,000 is also subject to an additional solidarity charge at a rate of 2.5% for income between €80,000 and €250,000 and at 5% for anything over €250.000.

Your employment income is subject to different withholding taxes according to the income itself and your family situation. You may also be entitled to exemptions for certain benefits such as meal allowances and subsidies, up to a predetermined limit.

If you are self-employed, you can choose to apply a simplified accounting regime if your income doesn't exceed €200,000.

In general, passive income (e.g. capital gains from the sale of shares and other securities, dividends, interest, rental income) are taxed at a 28% flat rate, but you can opt for the inclusion of this type of income in your annual tax returns.

There are some notable exemptions, for example, any gains from the sale of your permanent home won't be taxed if you reinvest the proceeds into the purchase of a new home either two years before or up to three years after the sale.

To note, unlike residents who are taxed on their overall income obtained in Portugal and abroad, non-residents are only taxed on their income obtained in Portugal and in accordance with any applicable double taxation treaties.

What are the obligations in relation to Social Security?

Social Security also comes into play if you're working in Portugal, whether as an employee, self-employed or a member of corporate body, although certain exemptions apply. Portugal is also party to several social security conventions that establish exemptions for workers who are temporarily working in Portugal, for example with the US and Canada.

If you're an employee the rates are 11% payable by you and 23.75% paid by the company. If you're self-employed you pay 21.4% and the companies you work for pay 10%, if work is performed to such companies exceeds 80%, and 7% in other cases. If you're a member of a corporate body you pay 11% as a director or manager and 9.3% in all other positions, and then 20.3% or 23.75% respectively is paid by the company.

To note, certain benefits are excluded from contributions: allowances up to the limits established for PIT purposes; compensation for termination of the employment contract in case of collective dismissal; and possible subsidies for medical care and medicine for workers and their families.

Are there any tax benefits for expatriates?

There are considerable benefits for expatriates that become a tax resident under the Non-Habitual Residents Regime (NPR).

The main benefits include a flat rate of 20% on all your employment / self-employment income in Portugal, and pensions from outside Portugal are PIT exempt. Also, any foreign-sourced income you have will be exempt, provided it can be taxed outside of Portugal under applicable tax conventions or the OECD model (if not a tax haven) or, in the case of employment income, it is effectively taxed in the source country.

To qualify you must have been non-tax resident for the previous five years, request the NPR when you do register as tax resident or up to end of March of the following year, and if you have employment income it must come from a 'high added-value' activity, which includes architects, engineers, artists, auditors, doctors, dentists and teachers.

Once you have the NPR, the above-mentioned benefits will last for a full 10 years from when you become a tax resident as long as you continue fulfilling the above criteria. If you do not fulfil the criteria in any given year then you will lose your NPR status for that year, but your right can be renewed in any following year (within the 10-year period) if you ensure to fulfil all the criteria again.

This is of course only a snippet of the intricate tax regime in Portugal, so for more in-depth information do read our Guide 'Why Portugal?' or get in touch so we can offer you a more personalised approach.