The Inward Investment and International Taxation Review

Fourth Edition

Editor
Tim Sanders

Law Business Research

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THE LAW REVIEWS

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THE RESTRUCTURING REVIEW

THE PRIVATE COMPETITION ENFORCEMENT REVIEW

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EDITOR'S PREFACE

The taxation of cross-border corporate structures is highly topical. Companies such as Starbucks, Google and Amazon have become the centre of a great deal of unwanted attention. Governments faced with depressed economies and falling tax revenues have turned their attention to what they perceive as a growing trend for multinational companies to push their activities into low- or no-tax jurisdictions. This perception led to the G20 asking the OECD to create an action plan that culminated in July 2013 with the publication of the OECD Action Plan on Base Erosion and Profit Sharing (the Report). The Report acknowledges the increase in cross-border trade, facilitated by factors such as the removal of trade barriers and the use of technology, which make it ever easier for businesses to locate production far from the jurisdictions in which their customers are located. The Report identifies the fact that the trend is influenced by tax considerations, the more aggressive aspects of which are clearly going to come under increasing scrutiny. The Report identifies the need to tighten rules on transfer pricing, to end or neutralise tax arbitrage arrangements, and to prevent companies artificially avoiding establishing permanent establishments, and also identifies areas for action, such as increasing disclosure requirements. In all, the Report identifies 15 areas that are likely to dramatically change the tax landscape for companies and businesses operating in the global economy.

Despite this backdrop of uncertainty and the threat of increasingly complex rules with penalties for those companies that move jobs and economic activity elsewhere in a manner deemed unacceptable, companies will continue to trade in the global economy and across borders. This requires, more than ever before, not only detailed evaluation and comparison of the tax benefits and incentives available in competing jurisdictions, but also consideration of the tax consequences of moving capital and income flows across international borders. Consideration of such cross-border tax opportunities, issues and conflicts between tax systems requires business tax advisers to be increasingly aware of tax laws beyond the geographical boundaries of the country in which they practise.

The aim of this book is to provide a starting point for readers, and to assist businesses and advisers, each chapter providing topical and current insights from leading experts on the tax issues and opportunities in their respective jurisdictions (and, in one chapter, within the European Union). While specific tax advice is always essential, it is also necessary to have a broad understanding of the nature of the potential issues and advantages that lie ahead; this book provides a guide to these.

I should like to thank the contributors to this book for their time and efforts, and above all for their expertise. I would also like to thank the publisher and the team for their support and patience. I hope that you find the work useful, and any comments or suggestions for improvement that can be incorporated into any future editions will be gratefully received.

The views expressed in this book are those of the authors and not of their firms, the editor or the publishers. Every endeavour has been made to ensure that what you read is the latest intelligence.

Tim Sanders
Skadden, Arps, Slate, Meagher & Flom LLP
London
January 2014

Chapter 31

PORTUGAL

Paula Rosado Pereira and José Pedroso de Melo[1]

I INTRODUCTION

Following three consecutive years of tax increases to meet austerity targets agreed with international creditors within the framework of the Economic Adjustment Programme, designed to restore sound public finances, Portugal is currently in the process of looking beyond the financial crisis and implementing many structural reforms with a view to improving competitiveness and putting the economy back on the path to sustainable growth and job creation.

In this context, a corporate income tax (CIT) reform proposal has recently been presented to parliament, which includes a set of recommendations that will significantly increase Portugal's attractiveness to foreign investors, mainly by reducing the CIT tax rate, implementing a universal participation exemption and an IP Box regime, and by simplifying the overall taxation regime.

The Portuguese government has also been taking steps to reduce bureaucracy and to encourage foreign nationals to become resident in Portugal. Two examples are the new Golden Residence Permits Regime (allowing for free movement within the Schengen zone) and the Special Tax Regime for Non-habitual Residents, which is already in force and has already proved to be a huge success, especially among foreign pensioners.

1 Paula Rosado Pereira is a partner and José Pedroso de Melo is a managing associate at SRS Advogados.

II COMMON FORMS OF BUSINESS ORGANISATION AND THEIR TAX TREATMENT

i Corporate

Under Portuguese law, there is a choice of different legal forms for establishing a business, from sole trader to various types of companies, as defined in the Companies Code.

Five types of entity are listed in the Companies Code:

a partnerships;
b private limited companies;
c single-member private limited companies;
d public limited liability companies; and
e limited partnerships (simple or by shares).

Of the various entities on offer under Portuguese law, the two most common are the private limited company and the public limited liability company. The choice of business entity is dependent on several factors: the desired degree of simplicity (both in terms of structure and operation), the minimum amount of paid-in capital required and confidentiality issues relating to the ownership of capital.

In a public limited liability company, the liability of each shareholder is limited to the value of his or her shareholding. The minimum number of shareholders for the incorporation of this type of company is five and the capital divided into shares.

Private limited companies are the most common type of company in Portugal. This is the preferred model for small and medium-sized companies given its great flexibility.

ii Non-corporate

For CIT purposes, partnerships are subject to the same treatment as companies, although a fiscal transparency regime applies to certain resident entities: civil law companies not incorporated in commercial form, incorporated firms of professionals, and holding companies, the equity of which is controlled, directly or indirectly, for more than 183 days by a family group or a limited number of members.

A fiscal transparency regime also applies to ACEs (complementary business groupings) and to AEIEs (European economic interest groupings) treated as resident in Portugal.

III DIRECT TAXATION OF BUSINESSES

i Tax on profits

Determination of taxable profit

Taxable profit is calculated on the basis of accounting income, adjusted according to specific rules contained in Portuguese tax legislation.

Business expenses are generally tax deductible provided that they are incurred in generating taxable profits or maintaining the structure of the company. Nonetheless, some expenses are not deductible for the purpose of computing taxable profits, even where accounted for as costs or losses in the relevant accounting period. That is the case, for example, in relation to the following items: (1) corporate income tax paid,

(2) compensation paid in respect of insurable events, (3) per diem expense allowances and payments relating to an employee's travel using hisor her own car, under certain circumstances, (4) excessive depreciation and accounting provisions, (5) interest and other forms of remuneration from shareholder loans exceeding certain limits and (6) losses on the disposal of shares to related parties.

Goodwill acquired from third parties and intangible assets with an indefinite useful life are not tax depreciable, although the CIT Reform foresees radical changes to this principle (see Section X, *infra*).

Capital and income

The CIT Code adopts a wide definition of taxable income and capital gains are treated as ordinary business profits and taxed accordingly.

Capital gains and capital losses on the sale of company's assets are calculated as the difference between the proceeds of disposal, net of related expenditure, and the acquisition cost, reduced by any depreciation claimed.

Only 50 per cent of the difference between capital gains and losses is taken into account where, in the year prior to disposal or before the end of the second following year, the disposal proceeds are reinvested in the acquisition, manufacture or construction of tangible fixed assets, non-consumable biological assets or investment properties, but with the exception of second- hand assets acquired from related parties.

Losses

Tax losses may be carried forward for five years, although any deduction is limited to 75 per cent of taxable profit assessed in the relevant fiscal year.

Losses carried forward may be lost if, between the tax year in which the losses took place and the year in which they are used, there is a change in the objects or the activity effectively performed by the company or 50 per cent (or more) of its share capital is transferred to different shareholders.

Rates

The regular CIT rate in Portugal is 25 per cent. A municipal surcharge is levied in addition to CIT in most municipalities at a rate of up to 1.5 per cent of taxable income.

Corporate taxpayers with taxable income of more than €1.5 million are also subject to a state surcharge of 3 per cent. The surcharge increases to 5 per cent for taxable income exceeding €7.5 million.

Administration

Filing tax returns

CIT assessment returns must be filed by Portuguese resident entities and permanent establishments of non-resident companies and submitted by 31 May following the end of the calendar year, or five months after the authorised year-end if the company's tax year does not coincide with the calendar year. An annual return containing simplified corporate information (IES) also needs to be filed by 15 July or by the 15th day of the seventh month following the end of the tax year.

Taxable persons liable for CIT and their representatives must also file statements in respect of registrations, changes or cancellations on the register of taxable persons, and are required to keep a tax documentation file in respect of each accounting period, for a 10-year period, containing accounting and tax information.

Tax authorities

Taxes in Portugal are administered by the Portuguese Tax and Customs Authority; this Authority is organised as a vertical structure integrated into the Ministry of Finance and Public Administration and divided into two main services: the Directorate General for Taxation and the Directorate General for Customs and Excise Taxes.

The Portuguese Tax Authority has competence to carry out tax audit procedures, make additional and late-interest tax assessments, and to impose penalties and fines on non-compliant taxpayers.

Advance rulings

In order to reduce ambiguities, taxpayers may request advance rulings regarding their tax affairs, including their eligibility for tax benefits. When advance rulings are issued, the tax authorities may not derogate from such rulings in relation to the taxpayers that requested it except pursuant to court decisions.

By request of the applicant, and subject to the payment of a fee, an advance ruling may be provided urgently (within 90 days), provided that such request is accompanied by a tax framework proposal. The proposed tax framework and the facts to which the urgent request for an advance ruling relate are considered tacitly sanctioned by the tax authorities if the request is not answered within 90 days. Non-urgent rulings are delivered within 150 days.

Apart from the advance ruling regime, a taxpayer and the Portuguese Tax Authority may negotiate advance pricing agreements (APAs) on transfer pricing issues.

Means of appeal

Following a tax audit, the taxpayer is allowed to challenge an additional tax assessment made by the tax authorities, either by means of an administrative claim submitted to the tax authorities or via a judicial or arbitration appeal to the tax courts or to the tax arbitration court.

Decisions of the tax courts may be appealed to the Central Administrative Court of Appeal or to the Administrative Supreme Court.

Tax groupings

Portuguese-resident companies that are members of an economic group may opt to be taxed under the special group taxation regime. The parent must hold, directly or indirectly, for a minimum one-year period, at least 90 per cent of the subsidiaries' share capital and 50 per cent of their voting rights. All companies in the group must be tax resident in Portugal and be subject to Portuguese CIT on their worldwide income at the standard CIT rate to benefit from this regime.

Entities with tax losses in the preceding three years are not eligible for this regime, except where their share capital has been held by the parent for more than two years.

ii Other relevant taxes

Value added tax

Portuguese VAT legislation basically follows the EU common system of VAT. It applies to the supply of goods, services, intra-Community acquisitions and imports into Portuguese territory.

Any person or corporate entity that, independently, carries out an economic activity or that carries out a single taxable transaction either in connection with the performance of the activities aforementioned or that is subject to personal or corporate income tax, is liable to charge VAT on every supply it makes in the scope of its activities and afterwards deliver the due amount to the tax authorities.

There are three VAT rates: 23 per cent (standard), 13 per cent (intermediate) and 6 per cent (reduced).

In the autonomous regions of Azores and Madeira, VAT rates are currently reduced to 16 per cent and 22 per cent (standard), 9 per cent and 12 per cent (intermediate); and 4 per cent and 5 per cent (reduced), respectively.

Property transfer tax

Property transfer tax (IMT) is levied on the onerous transfer of immoveable property.

The tax is payable by the purchaser, whether an individual or a company, resident or non-resident. The taxable amount corresponds to the higher of the contractual price or the patrimonial tax value.

The tax due is assessed as described above at the following tax rates:

a rural property: 5 per cent

b urban property and other acquisitions: 6.5 per cent

c urban property for residential purposes: progressive tax rates (ranging from 0 per cent up to 6 per cent); and

d rural or urban property where the purchaser is domiciled in a blacklisted jurisdiction: 10 per cent.

Local property tax

Local property tax (IMI) is levied annually on immoveable property located within each municipality. The tax is payable on the taxable value by the owner of the property as of 31 December of each year, to be paid in two instalments in the following year.

The taxable value of urban property corresponds to the patrimonial tax value recorded on the tax registry.

The IMI rates are:

a rural property: 0.8 per cent;

b urban property (already subject to the general revaluation process): 0.3 per cent to 0.5 per cent; and

c rural or urban property where the owner is domiciled in a blacklisted jurisdiction: 7.5 per cent.

Stamp tax

Stamp tax is generally charged on certain formal acts and documents, such as transfers of title and contracts, which are signed or take place on Portuguese territory and are not subject to VAT, as outlined in the General Table of Stamp Tax.

Loans granted to resident entities, regardless of the nature or place of domicile of the lender, are generally subject to stamp duty ranging from 0.04 per cent up to 0.6 per cent, depending on the term of the credit or loan given. The following are exempt from stamp tax:

a long-term loans qualifying as 'suprimentos' for Portuguese commercial law purposes, made by a shareholder to a company;

b short-term (less than one year) cash management loans made by Portuguese holding companies (SGPSs) to their subsidiaries;

c short-term cash management loans made by subsidiaries to SGPSs, provided that the companies find themselves in a dominant or group position; and

d short-term cash management loans made by parent companies to their subsidiaries, provided that the participation meets the minimum one-year holding period and minimum shareholding threshold of 10 per cent.

IV TAX RESIDENCE AND FISCAL DOMICILE

i Corporate residence

Companies are deemed resident in Portugal for tax purposes if their head offices or places of effective management (regardless of the head office jurisdiction) are located in Portuguese territory. These two criteria are often met simultaneously, providing consistency under tax law. Where this is not the case, however, the place of effective management is the decisive factor.

According to Portuguese case law, the place of effective management is defined as the place in which the management decision-making takes place, and where adequate substance (in the form of both people and real estate) exists.

Resident companies are taxed on their worldwide income. Non-resident companies are taxed on their Portuguese-sourced income.

ii Branch or permanent establishment

In general terms, domestic branch profits are taxed on the same basis as corporate income. Nevertheless, there are some differences in tax treatment (general administrative expenses incurred by the head office may be allocated to the branch and there may be certain restrictions concerning the deductibility of certain expenses charged by the head office to the branch).

All income is included in the tax base, regardless of its geographical source, provided that such income is attributable to the permanent establishment located in Portuguese territory. All allowable items of expenditure, deductions and credits are also taken into account, regardless of the source of the income to which such items relate, with the same requirement mentioned above.

V TAX INCENTIVES, SPECIAL REGIMES AND RELIEFS THAT MAY ENCOURAGE INWARD INVESTMENT

i Holding company regimes

Holding companies are not subject to CIT on dividends, provided that at least 10 per cent of the subsidiary's share capital has been held for more than one year and that the subsidiary is subject to effective taxation.

Capital gains and losses arising from the transfer of shares in a company held for at least one year are not subject to CIT in Portuguese SGPSs, except if:

a the shares have been acquired from related parties, or from entities resident in tax havens, and they have been held for less than three years; or

b the holding company results from the restructuring, in one of the preceding three years, of a company that was not entitled to this exemption.

This regime also applies to companies resident in Portugal for tax purposes but incorporated under the law of another EU Member State, provided that they comply with the requirements laid down in the Portuguese law for SGPSs.

Financial charges incurred on the acquisition of shares are disallowed for tax purposes if the corresponding capital gain is not subject to CIT.

ii IP regimes

Portuguese tax law does not provide for any special IP taxation regime.

iii State aid

National and foreign companies that intend to invest in Portugal in certain sectors of activity may apply for financial incentives granted by EU structural funds under the National Strategic Reference Framework.

Apart from such financial incentives, eligible productive investment projects set up by 31 December 2020 may also benefit from certain contractual tax incentives under the Tax Investment Code, such as corporate income tax credits, real estate and stamp tax reductions or exemptions. This regime complies with EU state aid rules.

iv General

Apart from the exemptions from withholding tax on outbound payments granted under the CIT Code (see below), there are some other notable tax incentives provided in the Portuguese Tax Benefits Statute and ancillary legislation.

Net rental income from real estate investment funds is taxed at 25 per cent; net capital gains are taxed at 12.5 per cent. Income derived by non-resident unit holders is fully exempt from withholding tax.

Venture capital funds are CIT exempt. Income from participating units owned by non-resident entities is subject to withholding tax at 10 per cent.

Capital gains realised by non-resident entities from the transfer of shares, warrants and other securities issued by Portuguese resident entities, and those realised by non-resident entities are income tax exempt. This exemption does not apply to:

a non-resident entities, at least 25 per cent of whose equity is directly or indirectly owned by resident entities;
b entities domiciled in blacklisted territories; and
c capital gains realised by non-resident entities on the sale of shares in the capital of a company resident in Portugal, at least 50 per cent of whose assets are made up of real estate situated in Portuguese territory.

VI WITHHOLDING AND TAXATION OF FOREIGN SOURCE INCOME STREAMS

i Withholding on outbound payments (domestic law)

Except in certain circumstances, most of the income obtained by non-resident entities on Portuguese territory is subject to withholding tax. Income is deemed obtained in Portugal where the debtor is resident, or has its head office or place of effective management, in Portugal, or where its payment is attributable to a permanent establishment in Portugal.

The CIT withholding tax rate is generally 25 per cent.

ii Domestic law exclusions or exemptions from withholding on outbound payments

Under the EU Parent Subsidiary Directive, dividends paid to EU corporate shareholders are withholding tax exempt provided that:
a both the Portuguese subsidiary and the EU parent company are incorporated using a legal form listed in the Annex to the Directive;
b both are subject to tax on income, without exemption; and
c the EU parent owns at least 10 per cent of the share capital of the Portuguese subsidiary, for at least one year.

Furthermore, corporate EU investors may also be withholding tax exempt on interest and royalties paid by resident companies under the EU Interest and Royalties Directive, to the extent that:
a both the debtor and the beneficiary are incorporated using a legal form listed in the Annex to the Directive;
b both companies are subject to tax on income, without exemption; and
c one company holds a minimum 25 per cent participation in the other, or at least 25 per cent of each company is owned by a third company, which meets the above conditions.

In all situations, there is a minimum two-year holding period.

iii Double tax treaties

In addition to Portuguese domestic arrangements that provide relief from international double taxation, Portugal has entered into double taxation treaties with more than 60 countries to prevent double taxation. Most of these are already in force.

Under those treaties, withholding tax rates on outbound dividend, interest and royalty payments are reduced wherever the beneficial owner of the income derived from Portugal is a tax resident of the other contracting state. For a detailed list of the tax treaties in force and rates applicable to interest, royalties and dividends, please see Appendix 1, *infra*.

iv Taxation of foreign-sourced income

Residents who receive foreign-sourced income are entitled to a tax credit equal to the lower of the foreign tax paid or the Portuguese tax payable on such income. The credit applies to income derived from treaty and non-treaty countries; however, for treaty countries, the credit is limited to the amount of tax payable in the source country under such treaty.

Under the domestic participation exemption regime, dividends paid to a Portuguese tax-resident parent company by a Portuguese subsidiary that is not exempt from CIT, or by an EU-resident subsidiary fulfilling the cumulative criteria in Article 2 of the EU Parent-Subsidiary Directive, are exempt from CIT where the parent company holds at least 10 per cent of the share capital of the subsidiary for at least one consecutive year, and does not benefit from the fiscal transparency regime.

VII TAXATION OF FUNDING STRUCTURES

i Thin capitalisation

The former thin capitalisation rules were abolished on 1 January 2013, and replaced by specific limitations on the tax deductibility of interest expenses.

Under the new rules, net financial costs are only deductible up to:

a €3 million; or,

b 70 per cent (for 2013) of earnings before interest, taxes, depreciation and amortisation (EBITDA).

The 70 per cent threshold will be reduced by 10 percentage points annually until it reaches 30 per cent in 2017. The non-deductible excess, as well as the unused fraction of the 30 per cent threshold, may be carried forward for the next five years.

Furthermore, in respect of shareholder loans, deductible interest cannot exceed the 12-month Euribor rate in force on the day the loan was granted, plus a 1.5 per cent spread. This limitation does not apply where transfer pricing rules are applicable.

ii Deduction of finance costs

Presently, only financial expenses (e.g., bank finance and exchange rate costs) incurred by SGPS-type holding companies on the acquisition of relevant shares are disallowed as tax-deductible expenses.

iii Restrictions on payments

Under the Portuguese Commercial Companies Code, the payment of dividends or reserves to shareholders is disallowed in the following situations:

a any profit is needed to cover accrued losses or to rebuild legal or statutory reserves;

b incorporation and R&D expenses are not fully depreciated, unless the amount of the free reserves and retained earnings is at least equal to non-depreciated expenses; or

c the company's net equity is less than the sum of its share capital and reserves.

iv Return of capital

Companies may return cash to shareholders by means of a dividend distribution, capital reduction, redemption of shares or liquidation.

A payment to shareholders in connection with a reduction of capital along with a redemption of shares is regarded, for tax purposes, as a capital gain on any value exceeding the purchase price of the shares.

Liquidation proceeds are deemed capital income (dividends), calculated as the difference between the amount attributed to the shareholder and that shown in the accounts of the liquidated company as contributions effectively made by the shareholder to the share capital, with any excess being regarded as a capital gain. If negative, the difference is treated as a capital loss, being deductible only if the shares were in the ownership of the taxpayer during the three years immediately preceding the date of dissolution.

VIII ACQUISITION STRUCTURES, RESTRUCTURING AND EXIT CHARGES

i Acquisitions

Business acquisitions are usually structured as either asset or share deals.

The main difference between asset and share deals is the type of tax treatment. There are various taxes that can be either levied on the acquisition of assets (property transfer tax, VAT or stamp tax), depending on the nature of such assets. On the other hand, the obtaining of taxable capital gains is less likely than on a sale of shares.

The acquisition of shares of a public limited liability company is not subject to VAT or property transfer tax. The acquisition of shares of a private limited company, of a general partnership or of a partnership association is subject to IMT where these entities hold property, and where, following the share acquisition, one of the shareholders will hold at least 75 per cent of the share capital, or the number of shareholders will reduce to two, these two individuals being spouses married under the regime for general community property.

Capital gains realised by non-resident entities on the transfer of shares of Portuguese companies are not income tax exempt if more than 50 per cent of the assets of the sold company consist of real estate situated on Portuguese territory (see above).

Due to some of the aforementioned tax constraints, SGPSs are widely used, even though these entities are not allowed to deduct financial expenses incurred on the acquisition of shares in their portfolios.

ii Reorganisations

Restructuring operations, such as mergers, demergers, transfers of assets and share exchanges may be performed without income tax constraints for the companies and shareholders involved under the Portuguese fiscal neutrality regime.

The fiscal-neutrality regime covers only corporate and personal income tax. Exemptions from property transfer tax, stamp tax and notarial and registration fees may however, be granted by the Ministry of Finance upon request provided that certain conditions are met by the restructuring operation.

iii Exit charges

When a company transfers its tax residence abroad, the company is deemed liquidated and is subject to corporate income tax on the positive difference between the market value and the book value of its assets, provided that these are not allocated to a permanent establishment of the company in Portugal. The same regime applies on the cessation of activity of a permanent establishment of a non-resident entity located in Portugal and to the transfer outside Portuguese territory, by any act or legal instrument, of assets allocated to that establishment.

In the event of the transfer of tax residency of a company abroad, the shareholders are subject to taxation on the difference between the net asset value at that date and the purchase price of their shares.

IX ANTI-AVOIDANCE AND OTHER RELEVANT LEGISLATION

i General anti-avoidance

Portuguese general taxation law provides for a general principle of substance over form under which the tax authorities may disregard the legal form agreed upon by the parties where a transaction is deemed exclusively or principally tax-driven, and they may re-characterise the facts for tax purposes in accordance with the underlying economic reality.

ii Controlled foreign companies

Under CFC rules, profits or other income derived by non-residents on Portuguese territory and subject to a more favourable tax regime can be attributed to Portuguese-resident shareholders who hold, directly or indirectly, at least 25 per cent of the share capital (or 10 per cent if more than 50 per cent of the share capital of the non-resident company is held, directly or indirectly, by Portuguese-resident shareholders), in proportion to their shareholding.

iii Transfer pricing

Portugal has implemented detailed transfer pricing legislation, which broadly follows the methodologies and principles in the OECD guidelines.

Under Portuguese transfer pricing rules, domestic and cross-border inter-company transactions must be at arm's length and the Portuguese tax authorities have wide-ranging powers to adjust declared income if they consider that market conditions have not been respected.

Special relations are deemed to exist between two entities where one of them has the power to exercise, directly or indirectly, significant influence over management decisions of the other entity.

All companies undertaking transactions with related entities, even if they are not obliged to prepare a transfer pricing file, have to fill out additional declarations as part of their annual tax reporting obligations.

Additionally, taxpayers with annual net sales and other income equal to or greater than €3 million in the fiscal year prior to the year under consideration are required to prepare a transfer pricing file that should contain analyses of all aspects of all transactions with related parties.

iv Tax clearances and rulings

Upon request, tax and social security authorities may deliver a written confirmation that a company's tax affairs are in order. These certificates are valid for three months.

Binding advance rulings may be awarded in specific situations (see above).

X YEAR IN REVIEW

2013 was marked by the implementation of new austerity measures in order to comply with the goals set out in the Memorandum of Understanding on Economic Policy agreed with the Troika.[2] Nonetheless, the Portuguese government also seems to be committed to the implementation of tax measures with the goal of lightening the tax burden on companies and enhancing the competitiveness of the Portuguese economy.

To that end, it has approved a new special VAT regime allowing small enterprises to declare VAT on a cash basis, which came into force in late October 2013, and which will hopefully improve the liquidity of a broad range of taxpayers.

In 2013, the Portuguese government also appointed a special Reform Commission to study and draft reforms to the CIT Code. Its ambitious conclusions were included in a draft law delivered to Parliament in late October 2013, to be implemented from 2014 onwards.

The key reforms are as follows:

a gradual reduction of CIT rates, and elimination of the existing municipal and national surtaxes;

b extension of the tax loss carry-forward period from five to 12 years;

c introduction of a generic participation exemption regime covering inbound and outbound dividends and capital gains;

d simplification of ancillary tax obligations;

e simplification of transfer pricing rules, and an increase of the related party threshold from 10 per cent to 20 per cent;

f introduction of a special Patent Box taxation regime; and

g introduction of tax depreciation, over a 20-year period, for industrial property (such as trademarks and licences) and goodwill.

2 The EU, the IMF and the European Central Bank.

2013 was also marked by the consolidation of the tax arbitration regime, which has proven to be a credible and efficient means of resolving tax disputes.

XI OUTLOOK AND CONCLUSIONS

When the reform of the CIT Code is approved in the Parliament and enters into force (expected at the beginning of 2014), Portugal will offer a very attractive tax regime to foreign investors, in relation to both operational and holding activities, in Portugal and abroad. Efforts have been made in relation to the more efficient resolution of tax disputes and to advantageous individual income tax regimes, put in place for individuals wishing to establish themselves in Portugal to carry out value added activities; alongside these, this tax reform has the potential to considerably increase the prospects of the country as good place in which to do business and as a tax-efficient platform for investments in other jurisdictions.

Appendix I: Treaty rates for dividends, interest and royalties

	Dividends	*Interest*	*Royalties*
Treaty rates	%	%	%
Algeria	10% /15%	15%	10%
Austria	15%	10%	5% /10%
Belgium	15%	15%	10%
Brazil	10% /15%	15%	15%
Bulgaria	10% /15%	10%	10%
Canada	10% /15%	10%	10%
Cape Verde	10%	10%	10%
Chile	10% /15%	5% /10% /15%	5% /10%
China	10%	10%	10%
Cuba	5% /10%	10%	5%
Cyprus	10%	10%	10%
Czech Republic	10% /15%	10%	10%
Denmark	10%	10%	10%
Estonia	10%	10%	10%
Finland	10% /15%	15%	10%
France	15%	10% /12%	5%
Germany	15%	10% /15%	10%
Greece	15%	15%	10%
Guinea Bissau	10%	10%	10%
Netherlands	10%	10%	10%
Hong Kong	5% /10%	10%	5%
Hungary	10% /15%	10%	10%
India	10% /15%	10%	10%
Indonesia	10%	10%	10%
Ireland	15%	15%	10%
Iceland	10% /15%	10%	10%
Israel	5% /10% /15%	10%	10%
Italy	15%	15%	12%
Japan	5% /10%	5%	5%
Korea	10% /15%	15%	10%
Latvia	10%	10%	10%
Lithuania	10%	10%	10%
Luxembourg	15%	10% /12%	10%
Macau	10%	10%	10%
Malta	10% /15%	10%	10%
Morocco	10% /15%	12%	10%
Mexico	10%	10%	10%
Mozambique	15%	10%	10%

	Dividends	*Interest*	*Royalties*
Treaty rates	*%*	*%*	*%*
Moldova	5% /10%	10%	8%
Norway	5% /15%	10%	10%
Panama	10% /15%	10%	10%
Pakistan	10% /15%	10%	10%
Poland	10% /15%	10%	10%
Romania	10% /15%	10%	10%
Russia	10% /15%	10%	10%
Singapore	10%	10%	10%
Slovakia	10% /15%	10%	10%
Slovenia	5% /15%	10%	5%
South Africa	10% /15%	10%	10%
Spain	10% /15%	10%	5%
Sweden	10%	10%	10%
Switzerland	5% /15%	10%	5%
Tunisia	15%	15%	10%
Turkey	5% /15%	10% /15%	10%
United Arab Emirates	5% /15%	10%	5%
United Kingdom	10% /15%	10%	5%
United States of America	5% /10% /15%	10%	10%
Ukraine	10% /15%	10%	10%
Uruguay	5% /10%	10%	10%
Venezuela	10% /15%	10%	10% /12%

Appendix 1

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