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Recent Developments in International Taxation

Portugal

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Major Portuguese developments in the past 12 months

EU directives and international tax

NO PILLAR TWO YET

Directive (EU) 2022/2523, on 'guaranteeing a minimum level of taxation for multinational enterprise groups and large domestic groups within the Union', associated with the coordinated tax policy agreement promoted within the G20/Organisation for Economic Co-operation and Development (OECD), commonly referred to as Pillar Two (applicable only to groups of companies with an annual revenue of €750m or more), was not transposed by Portugal, as it should have been, until the end of 2023.

Portugal has already been notified by the European Commission for failing to meet the deadline and is expected to do so in 2024.

Double tax treaties

NO NEW DOUBLE TAX TREATIES

There haven't been any new tax treaties signed by Portugal in the last 12 months.

Domestic legislation

REINFORCED TAX BENEFITS

On 17 May 2023, new legislation was published that amends several tax benefits, of which we highlight the following:

- it was clarified that income from contracts for the assignment or temporary use of industrial property rights may benefit from our domestic 'Patent Box', even if not subject to registration (like computer programs);
- 'Patent Box' is no longer subject to the general maximum cap applicable to tax benefits under corporate income tax (CIT) (ten per cent of the CIT that would be due without the benefit); and
- it was clarified that the new Incentive Tax Regime for Corporate Capitalization ('ICE'), which allows a deduction from the CIT taxable profit of an amount corresponding to five per cent (small and medium-sized enterprises (SMEs)) or 4.5 per cent (non-SMEs) of relevant equity capital increases, has been applicable since 2023. It was also clarified that only retained earnings that would be otherwise distributable as dividends count towards the benefit.

Equity-based incentive plans

On 25 May 2023 a new tax regime for equity-based incentive plans offered by 'startup' companies, 'scaleup' companies (as defined in the legislation) that qualify as innovative companies (meaning a company with R&D or intellectual property development expenses equivalent to at least ten per cent of company's total expenses or turnover) or SMEs was enacted.

The regime aims to make Portugal more attractive to highly qualified employees wanting to work for innovative and SME companies by allowing certain types of stock option plans to qualify for deferred taxation (up to the moment of the sale of the shares or the moment the employee ceases to be a tax resident in Portugal), as well as for a reduced effective tax rate (14 per cent), provided certain conditions are fulfilled by both the employer and employee (most notably, holding the shares for at least one year before their sale).

More Housing programme

On 6 October 2023, a new legislative package of measures aimed at tackling Portugal's housing crisis known as the More Housing programme was published.

The More Housing programme has several important tax measures, most notably the following:

- personal income tax (PIT) and corporate income tax (CIT) exemptions, with some exceptions, on capital gains arising from the sale of residential properties to the state, autonomous regions or local municipalities;
- if some conditions are met, local accommodation (*alojamento local* or AL) properties transformed into residential leases until 31 December 2024 will benefit from an exemption from PIT and CIT on rent;
- PIT exemption on capital gains arising from the sale of a permanent residence/habitual abode (when the net sale price is reinvested in the purchase of a new one) now includes two more cumulative conditions: (1) the sold property has to have been used as the taxpayer's habitual abode or that of his/her family within the 24 months prior to the date of disposal; and (2) the taxable person has not benefitted from this exclusion regime in the year in which the capital gain was realised or in the three previous years;
- capital gains from the sale of land or secondary residential properties until 31 December 2024 are now excluded from PIT if: (1) the net sale price is reinvested on the amortisation of a mortgage loan on the taxpayer's own permanent residence (or his/her descendants); and (2) such amortisation is made within three months of the date of disposal;
- rental income from residential properties is now taxed at 25 per cent (instead of the previous 28 per cent), with possible further reductions down to five per cent for long-term lease agreements;
- properties acquired for resale must now be sold within one year (instead of the previous three years) in order to maintain the real estate transfer tax (RETT) exemption;
- all PIT and CIT benefits (on rent and/or capital gains) previously given to owners of properties that underwent urban rehabilitation are now revoked;
- the acquisition of land for construction intended for the construction of residential buildings to be subject to controlled rent is exempt from RETT if some requirements are met;
- a new extraordinary contribution was created that is due by local accommodation business owners and is levied at a rate of 15 per cent over a tax basis that is computed by applying the specific economic coefficients and the urban pressure coefficient to the private gross area of the properties in question; and
- the reduced VAT rate (of six per cent) is now applicable to new operations, namely: (1) rehabilitation of cost-controlled housing properties; (2) construction and rehabilitation contracts of housing properties for affordable rental; and (3) construction and rehabilitation of

equipment for collective use of a public nature, located in urban rehabilitation areas.

State Budget for 2024

On 29 December 2023 the State Budget for 2024 was published, containing very important tax measures.

- End of Portugal's expat regime (non-habitual residency): Portugal's non-habitual residency regime (NHR), a special tax status that offered special tax treatment for ten years to newly established expats, was officially terminated. Taxpayers that already hold NHR status will keep the status and its benefits until the end of the programme, but newly established residents will not have access to it, unless they have had a relevant connection with Portugal since 2023 or before.
- Tax Incentive for Scientific Research and Innovation (TISRI): In place of the NHR, the TISRI is a new expat regime targeting highly qualified workers that move to Portugal to live and work (locally). In simplistic terms, the TISRI allows these highly qualified workers to be taxed in Portugal at a special PIT rate of 20 per cent (plus social security) on employment or self-employment income earned for a period of ten consecutive years (non-extendable).
- Return to Portugal tax relief extended: The return to Portugal tax relief programme, 50 per cent tax break on employment or self-employment income for five years, has been extended to 2026, but now with the added limitation that eligible income cannot surpass €250,000 per year.
- Young Workers Tax Relief 4.0: The Young Workers Tax Relief Programme, which provides for a partial tax exemption for the first years of income after graduation, is further enhanced, now allowing a full tax exemption in the first year after graduation and very deep tax cuts in the following four years.
- Balance sheet bonus: Balance sheet bonuses (meaning profit distribution in favour of employees) are now exempt from PIT up to a monthly salary, as long as it does not surpass 5x guaranteed minimum monthly pay (*retribuição mínima mensal garantida* or RMMG) (5x €820). However, in order for the employee to be eligible for this tax break, the employer needs to conduct a nominal increase in fixed remuneration for all employees in 2024 equal to or greater than five per cent.
- Travel agencies will benefit from the reimbursement of the VAT regime in place for event organisers: Last year, a new regime was enacted allowing for the reimbursement of additional VAT by event organisers with Classificação Portuguesa de Actividades Económicas (CAE) 82300. Under this regime, event organisers can recover an additional 50 per cent of the VAT incurred in hospitality expenses (the other 50 per cent is recovered via the general rules of the Portuguese VAT Code and general VAT returns). This regime is now extended to travel agencies registered under CAE 79110.

Future developments

NEW GOVERNMENT: NEW TAX MEASURES

On 2 April 2024, Portugal's new (XXIV) Constitutional Government took office. According to its Government programme, we can expect the following tax measures:

- general reduction of PIT progressive tax rates, up to the eighth income bracket;

- further PIT reductions under Young Workers' Tax Relief;
- doubling of the *imposto sobre o rendimento das pessoas singulares* (IRS) consignment in favour of social institutions from 0.5 per cent to one per cent;
- exemption from 'contributions and taxes' on performance bonuses up to a limit equivalent to a monthly salary (15th month);
- mandatory updating of tax brackets and withholding tables in line with inflation and productivity growth;
- encouraging savings by 'creating tax-free savings accounts';
- increased tax advantages for companies that hire disabled people above the legal quota;
- tax advantages for large families;
- reduction of the CIT tax rate by two percentage points per year and from 21 per cent to 15 per cent over three years;
- reduction of autonomous taxation on company vehicles in terms of corporate income tax by 20 per cent;
- promotion of the gradual elimination of the progressive state surcharge and municipal surcharge in terms of CIT, ensuring, in the case of the latter, that the loss of revenue for municipalities is compensated by funds from the state budget;
- simplification of CIT with a view to 'boosting the attraction of investment and gains in scale';
- expansion of the cash VAT regime (currently limited to €500,000 in turnover) with the European Commission;
- creation of an exceptional and temporary scheme to eliminate or reduce tax costs on construction or rehabilitation works on properties intended for permanent habitation, regardless of their location in an Área de Reabilitação Urbana (ARU), materialised, among other things, in the application of a reduced VAT rate for construction and rehabilitation works and services, as well as extending the deductibility of the tax;
- consideration of the tax regime applicable to digital platforms and encouraging discussion at the European level, with revenue being allocated to encouraging demand for media content; and
- repeal of the Extraordinary Contribution on Local Accommodation, among other measures aimed at removing limits recently imposed on this activity.