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PRACTICAL TAX GUIDE: **INVESTING IN PORTUGAL**

MAIN REVENUE TAXES

- **Corporate income tax**
  - Name: Imposto sobre o Rendimento das Pessoas Colectivas
  - Rate: 21% + 1,5% municipal surcharge + 3%, 5% or 9% state surcharge
  - Law:

    Decree-Law 442-B/88 of 30 November 1988, republished by Law 2/2014 of 16 January 2014 (CIT Code). Decree Law 215/89 of 1 July 1989 (Tax Benefits Statute)

- **Personal income tax**
  - Name: Imposto sobre o Rendimento das Pessoas Singulares
  - Rate: (i) general: 14,5% to 48% + 2,5% to 5%; (ii) passive income: 28% or 35%; (iii) Non-habitual residents: 0%, 20%, 28% or 35%
  - Law: Decree-Law 442-A/88 of 30 November 1988 (PIT Code)

- **Non residents income tax**
  - Name: Imposto sobre o Rendimento das Pessoas Colectivas or Imposto sobre o Rendimento das Pessoas Singulares
  - Rate: (i) general: for individuals: 28%; for corporations: 25%; (ii) dividends: 0%, 25% or 35%; (iii) interest: 0%, 25% or 35%; (iv) royalties: for individuals: 0% or 28%; for corporations: 0% or 25%

TAX AUTHORITIES: AUTORIDADE TRIBUTÁRIA E ADUANEIRA - TAX AND CUSTOMS AUTHORITY "ATA"

- Web page: http://www.portaldasfinancas.gov.pt/at/html/index.html

SEARCH TOOL FOR PORTUGUESE DOUBLE TAX TREATIES

- **ATA**
  - Webpage:

    http://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/convencoes_evitar_dupla_tributacao/convencoes_tabelas_doclib /

SEARCH TOOL FOR PORTUGUESE LAWS

- **Diário da República (Official Gazette)**
  - Webpage: https://dre.pt/
- **Procuradoria Geral da República (Public Prosecutor's Office)**
  - Webpage: http://www.ministeriopublico.pt/iframe/pesquisar

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1. SUMMARY OF MAIN TAXES

1.1 Direct taxes

1.1.1 Corporate Income Tax (Imposto sobre o Rendimento das Pessoas Colectivas - "CIT")

- Tax base: worldwide income of legal entities resident in Portugal for tax purposes.
- Rates:
  - General: 21%; a municipal surcharge of up to 1.5% of taxable profits could be added. The following state surcharges also apply: 3% of a taxable profit ranging between EUR 1.5 M and EUR 7.5 M; 5% of a taxable profit ranging between EUR 7.5 M and EUR 35 M; and 9% of a taxable profit exceeding EUR 35 M.
  - Securities Investment Funds and Real Estate Investment Funds (or companies): 21%. However, as a general rule, investment income, rental income and capital gains are exempt from CIT.
- Law:
  - Decree-Law 442-B/88 of 30 November 1988, republished by Law 2/2014 of 16 January 2014 (CIT Code).
  - Decree Law 215/89 of 1 July 1989 (Tax Benefits Statute).

1.1.2 Personal Income Tax (Imposto sobre o Rendimento das Pessoas Singulares - "PIT")

- Tax base: worldwide income of individuals resident in Portugal for tax purposes.
- Rates:
  - General: progressive PIT rates which range from 14.5% to 48%, plus (i) an additional surcharge of 2.5% of taxable income ranging between EUR 80,000 and EUR 250,000 and 5% of taxable income exceeding EUR 250,000Passive income (dividends, interest, capital gains, rental income): 28% (35% for sourced income from listed tax havens).
- Non-habitual residents: eligible income exempt or subject to PIT at 20%. Law:
  - Decree-Law 442-A/88 of 30 November 1988 (PIT Code).

1.1.3 CIT or PIT for non-resident investors:

- Tax base: income earned in Portugal.
- General rates:
  - PIT: 28%.
  - CIT: 25% (35% for payments made to entities resident in listed tax havens).
- Law:
  - PIT and CIT Code.

1.2 Indirect taxes

1.2.1 *Value Added Tax (Imposto sobre o Valor Acrescentado - “VAT”)*

- Tax base: sale of goods, imports and supplies of services carried out by VAT taxable persons. Generally recoverable by the taxable person.
- Rates:
  - General: 23%.
  - Intermediary: 13% (e.g. restaurants).
  - Reduced: 6% (e.g. essential goods).
- Law:
  - Decree-Law 394-B/84 of 26 December 1984 (VAT Code).

1.2.2 *Real Estate Transfer Tax (Imposto Municipal sobre as Transmissões Onerosas de Imóveis - “IMT”)*

- Tax base: transfer of real estate property located in Portugal.
- Rates:
  - Up to 6.5% for urban property.
  - 5% for rural property.
  - 10% if the acquirer is a company resident in a listed tax haven.
- Law:
  - Decree-Law 287/2003 of 12 November 2003(IMT Code).

1.2.3 *Stamp Tax (Imposto do Selo)*

- Tax base: all acts, contracts, documents, instruments and other taxable events set out in the Stamp Tax Code that take place in Portugal, i.e. credit transactions, guarantees, transfer of real estate.
- Rates:
  - From 0.04% to 0.6% on loans and guarantees, depending on the respective term.
  - 0.8% for the transfer of real estate.
- Law:
  - Decree-Law 287/2003 of 12 November 2003 (Stamp Tax Code).

1.2.4 Municipal Property Tax (Imposto Municipal sobre Imóveis - "IMI")

- Tax base: holding of real estate located in Portugal.
- Rates:
  - 0.8% for rural property.
  - From 0.3% to 0.45% on urban property (determined annually by the municipalities).
- Law:
  - Decree-Law 287/2003 of 12 November 2003 (IMI Code).

1.2.5 Additional Municipal Property Tax (Adicional ao Imposto Municipal sobre Imóveis – "AIMI")

- Tax base: holding of land for construction or residential real estate located in Portugal.
- Rates:
  - 0.4% on real estate owned by corporate entities.
  - 0.7% on real estate owned by individuals, 1% on the taxable value between €1M and € 2M, and 1.5% on the taxable value exceeding € 2M. The taxable value corresponds to the tax registered value of the real estate and individuals benefit from a € 600,000 deduction from the total tax registered value corresponding to all real estate owned by the individual.
- Law:
  - Decree-Law 287/2003 of 12 November 2003 (IMI Code).

1.2.6 Customs Duty

- Tax base: imports of goods into the EU through Portuguese borders.
- Rates: variable in accordance with the Common Customs Tariff, depending on the goods and its origin. The tariffs may be specific (by unit or quantity of goods), mixed or ad valorem.
- Law:
  - The Customs Duty Law in force in Portugal follows EU Regulations. The most important regulations are (i) Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code; (ii) Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code, as amended by article 55 of Commission Delegated Regulation (EU) 2016/341 of 17 December 2015; (iii) Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 with detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code.

1.3 Other relevant taxes

- Excise duties

2. GENERAL BACKGROUND

2.1 Interpretation of the tax law

Interpreting the tax law and qualifying the facts to which the rules are applied should be done according to the general interpretation rules and principles governing the interpretation of the law. If a certain concept from another field of law is used within the scope of tax law, it must be interpreted in accordance with its own field of law. Any doubts should be interpreted in light of the economic substance of the fact.

Tax rulings are also available. The main requirement for filing a ruling is that the request be filed with the proposal of the tax framework applicable to the situation under analysis. Two types of rulings may be requested: (i) A regular ruling request (without urgency), which has no associated costs but the tax authorities have an indicative timeframe of 150 days to decide. The failure to meet the timeframe does not trigger any consequence. (ii) An urgent ruling, the urgency of which must be accepted by the tax authorities. The costs may range between EUR 2,550 and EUR 25,500 depending on the complexity of the issue and it must be decided within 90 days. If no decision is issued after 90 days, the tax framework proposed by the taxpayer should be considered as tacitly accepted.

2.2 Anti-abuse rules

The Portuguese tax framework has a general anti-abuse rule according to which any act or transaction artificially or fraudulently carried out for the purposes of reducing, avoiding or delaying the tax that would otherwise be due or to obtain a tax saving that would not be achieved if the usual or correct action or transaction had been carried out, is to be deemed ineffective for tax purposes.

Further to the referred general anti-abuse rule, the CFC rules and the transfer pricing rules, there are also other anti-abuse provisions on tax driven mergers, transfers of assets or exchanges of shares, as well as rules on payments made to entities resident in low tax jurisdictions (denying the deductibility of certain expenses or the application of certain tax benefits).

2.3 Statute of limitations

In order to collect taxes, the tax authorities have to first issue a tax assessment before the end of the limitation period (*caducidade*).

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), except in the following cases:

- IMT and Stamp Tax 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 inquiry 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 (either upon the conclusion of the criminal inquiry or the issuance of a final court decision on the criminal proceedings).
- If the facts are related to a listed tax haven 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: twelve years.

The limitation period for the tax assessment is suspended if the tax authorities initiate an external tax audit (carried out at the head office or other premises of the taxpayer). This suspension does not apply if the tax audit is not concluded within six months (the external tax audit is considered to be concluded when the taxpayer is notified of the final tax audit report).

There are several other rules regarding the suspension of the limitation period for the tax assessment. For example, if there is pending litigation (irrespective of whether it is an administrative or a judicial claim) the limitation period for an assessment is suspended from the date on which the claim is filed until the final decision is issued.

After the tax assessment is issued by the tax authorities, there is also a limitation period within which the tax authorities may collect taxes (*prescrição*).

As a general rule, the limitation period to collect taxes is eight years (from the date on which the relevant taxable event takes place). However, if the facts are related to a listed tax haven 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, the limitation period to collect taxes is fifteen years.

2.4 Penalties

The Portuguese tax framework sets out a number of tax infractions for the late filing or fulfilment of tax obligations, the failure to perform payments and the non-fulfilment of ancillary tax obligations. As a general rule, each infraction has a minimum and maximum fine. Whenever the fine is for a legal entity, the fixed minimum and maximum amounts are doubled. The minimum fine is EUR 50 and the maximum is EUR 165,000 for infractions committed with wilful misconduct and EUR 45,000 for infractions committed with negligence. It is possible to reduce the applicable penalty to: (i) 12.5% of the minimum amount, if a request for the early payment of the fine is filed within 30 days from the commission of the offense or an audit procedure has begun; (ii) 25% of the minimum amount, if a request for early payment of the penalty is filed before the procedure for the assessment of the penalty or an audit procedure has begun; or (iii) 75% of the minimum amount if a request for the early payment of the penalty is filed before the end of the audit procedure and the offence is negligence.

2.5 Tax fraud

Tax fraud is any illegal conduct carried out for the purpose of avoiding the assessment, delivery or payment of tax, or obtaining a tax benefit, refund or other tax saving that reduces tax revenue through:

- The concealment or amendment of facts or amounts that should be recorded in the accounting books or the tax returns submitted by the taxpayer and used by the tax authorities to assess and determine the taxable base;
- The concealment or amendment of facts or amounts that should be revealed to the tax authorities; or
- A sham transaction, whether in terms of its value or its nature or by means of the interposition, omission or substitution of entities may qualify as tax fraud if the taxpayer obtains an unlawful profit of more than EUR 15,000. This amount is calculated on the basis of each tax return and, if it is not reached, the conduct will constitute a tax offence rather than a tax crime.

A corporate taxpayer convicted of fraud may face a monetary penalty of up to 360 days' duration (each day may range between EUR 5 and EUR 5,000). If certain conditions are met (such as the use of false invoices, or if an illegal conduct leads to an economic profit in excess of EUR 50,000), the applicable penalty may be up to five years' imprisonment or a penalty with a duration of 240 to 1,200 days (in the case of legal entities). If the illegal conduct causes an economic tax benefit in excess of EUR 200,000, the applicable penalty will be two to eight years' imprisonment, and a penalty of 480 to 1,920 days (in the case of legal entities).

3. MAIN INTERNATIONAL TAXATION RULES

3.1 Double Tax Treaties (“DTT”)

Portugal has a broad network of DTT; 77 DTTs in force (for example with Germany, Chile, China, Colombia, Spain, USA, France, the Netherlands, Peru and the United Kingdom) and another four that have been signed but have not yet entered into force.

The full list can be found at:

http://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/convencoes_evitar_dupla_tributacao/convencoes_tabelas_doclib/

3.2 Elimination of double taxation

3.2.1 Participation exemption on dividends

Dividends distributed to corporate entities resident in Portugal may be excluded from CIT, provided that the following requirements are met:

- The beneficiary (which cannot be a tax transparent entity) directly and indirectly holds at least 10% of the share capital or voting rights of the distributing entity.
- The relevant shares been held uninterruptedly for a one year prior to the distribution (or, if held for a shorter period, the shareholder must commit to keep them until the end of the one year period).
- The distributing entity is not a corporate entity resident in a listed tax haven and is subject to and not exempt from CIT or a tax referred to in the Parent-Subsidiary Directive or a similar income tax, with a rate not lower than 60% of the Portuguese CIT rate in force (i.e. 12.6% for 2019) (“subject to tax” condition).

The participation exemption regime is not applicable to dividends deductible for tax purposes at the level of the paying entity.

Dividends distributed by a Portuguese resident company to: (i) a parent company resident in another EU Member State; (ii) a company resident in an EEA State that is subject to exchange of information obligations similar to the obligations established by the EU; (iii) a parent company resident in a country with which Portugal has a DTT that foresees exchange of information procedures; or (iv) a PE located in another EU or EEA State that has its head office in another EU Member State, or an EEA State that is subject to exchange of information obligations similar to the obligations established by the EU, or located in a country with which Portugal has a DTT that foresees exchange of information procedures, are not subject to any taxation in Portugal (whether withholding or final taxation), provided that, among other conditions, the non-resident shareholder holds a participation of at least 10%, for an uninterrupted period of 1 year, and both companies are subject to one of the taxes on profits listed in Article 2 c) of the Parent-Subsidiary Directive or, in the case of companies resident in an EEA State or a country with a DTT, a similar income tax, with a rate not lower than 60% of the Portuguese CIT rate in force (i.e. 12.6% for 2019).

3.2.2 Participation exemption on capital gains

Capital gains earned or losses suffered by resident companies as a result of a shareholding that complies with the requirements mentioned above for the participation exemption on dividends may also be excluded from CIT.

The participation exemption regime will not apply to capital gains or losses arising from the transfer of a shareholding or other equity instruments such as supplementary capital contributions in a subsidiary whose assets are directly or indirectly composed of more than 50% of real estate located in Portugal, unless these assets are allocated to an industrial, commercial or agricultural activity which does not consist in the purchase and sale of real property. Only real property purchased on or after 1 January 2014 is considered for this purpose.

3.2.3 Domestic relief

A resident corporate entity obtaining foreign-source income is entitled to 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 credit is given), excluding all costs or losses directly or indirectly borne to obtain the income. The tax credit is assessed on a country by country basis, taking into account the income obtained in each country (excluding the income allocated to a PE of the Portuguese corporate entity, whose tax credit is calculated separately).

In the case of income deriving from a country with which Portugal has entered into a tax treaty, the tax credit is limited to the amount of tax payable in the source country under the applicable tax treaty.

Additionally, a resident corporate entity obtaining dividends and reserves abroad subject to CIT (not benefitting from the participation exemption regime) is entitled to an indirect foreign tax credit which allows a deduction equal to the lower of the following amounts: (i) a fraction of the foreign tax paid by the foreign entity distributing the dividends or by entities directly or indirectly held by the latter in proportion to the profits distributed or (ii) the CIT due on the distributed profits (as computed before the credit is given), excluding all costs or losses directly or indirectly borne to obtain the income and with the deduction of the direct tax credit mentioned above. The indirect foreign tax credit is only applicable if: (i) the beneficiary company directly or indirectly holds at least 10% of the share capital or voting rights of the distributing entity; and (ii) the relevant participation has been uninterruptedly held for one year prior to the distribution (or, if held for a shorter period, the shareholder commits to keep it until the one year period is completed).

In any case, this regime will not be applicable if the foreign tax was paid by an entity resident in a listed tax haven or by an entity which is held by the Portuguese corporate entity through an entity resident in a listed tax haven.

3.3 Transfer pricing

Under the Portuguese CIT Code, transactions carried out between related parties are valued at fair market value. A special relationship is deemed to exist if one entity is capable of directly or indirectly influencing, in a decisive manner, the management decisions of another entity (note that such capability is deemed to exist, in particular, between a resident company and its shareholders with a direct or indirect shareholding of at least 20%).

Under the Portuguese transfer pricing rules, interest on loans obtained from related parties must be valued at arm's length and properly documented. For this purpose, the CIT Code refers to the OECD transfer pricing methods of valuation. As a general rule, the arm's length value in a transaction between related parties should be established under the comparable uncontrolled method, the resale method, or the cost plus method.

Non-compliance with the arm's length principle may result in adjustments to the reported taxable profits and the assessment of the respective tax, compensatory interest and penalties.

Entities with a total income exceeding EUR 3 M must prepare a transfer pricing file evidencing the transactions carried out with related parties as well as the corporation's transfer pricing policies.

3.4 CFC rules

The Portuguese CFC rules may apply to the income earned by a non-resident entity which has a Portuguese resident entity as beneficiary or shareholder.

A CFC is defined as a foreign entity that is subject to a "more favourable tax regime", which is deemed to occur when: (i) it is resident in a country or territory listed as a tax haven; (ii) the income tax effectively paid is lower than 50% of the CIT which would be paid under the terms of the Portuguese CIT Code.

The CFC rules apply when a Portuguese resident corporate entity directly or indirectly holds (through a representative, fiduciary or intermediary), at least 25% of the shares, voting rights or rights over the income obtained on the assets held by the CFC.

The CFC regime does not apply to legal persons resident in either the EU or in the EEA if the incorporation and activities of the controlled entity are based on valid economic reasons and the entity carries out agricultural, commercial, industrial or service based activities.

Companies resident outside of Portugal are also exempt from the CFC rules if the sum of the income arising from one or more of the following categories does not exceed 25% of the company's total income:

- Royalties or other income arising from intellectual property rights, image rights or similar rights.
- Dividends and income arising from the transfer of securities representing the share capital of a company.
- Income arising from financial leases.
- The leasing of assets, with the exception of real estate located in the country of residence of the non-resident corporation.
- Income arising from transactions commonly performed within banking activities (even if not performed by credit institutions), insurance activities or other financial activities, which are entered into with related parties under the applicable transfer pricing rules.
- Income arising from invoicing companies which obtain commercial and services income from goods and services bought and sold from and to related entities under the applicable transfer pricing rules.
- Interest or other investment income.

4. ONGOING TAXATION OF A COMPANY

4.1 CIT

4.1.1 General

Portuguese resident companies are subject to CIT on their worldwide income from all sources, including capital gains.

The taxable income of Portuguese companies is based on their profit and loss (P&L) account drawn up in accordance with the accounting rules (Portuguese GAAP, which are based on the International Accounting Standards - IAS), as adjusted in accordance with the CIT Code.

4.1.2 Tax year

Under the CIT Code, as a general rule, the tax year is the same as the calendar year. However, tax resident entities in Portugal, as well as permanent establishments ("**PE**") of non-resident entities may choose a different tax year.

Entities that have changed their tax year to a period that does not correspond with the calendar year may not change the new tax year for the next five tax periods. However, this restriction is not applicable when the relevant corporate entity forms part of a group of companies, which is required to consolidate its accounts, and the parent company chooses a different tax year.

If an entity chooses to have a different financial and tax year for corporate and accounting reasons, it will have to have two separate account closings, one for corporate and accounting purposes and another for tax purposes. It will also have to comply with its CIT obligation deadlines based on its tax year, specifically the filing of tax returns and annual tax declarations. As a matter of practice, the financial year therefore tends to be the same as the tax year.

4.1.3 Rates

The standard CIT rate applicable to resident companies is 21%; a municipal surcharge (*derrama municipal*) of up to 1.5% of taxable profits could be added (the municipal surcharge applicable is approved annually by each municipality). Furthermore, the following state surcharges (*derrama estadual*) also apply: 3% of a taxable profit ranging between EUR 1.5 M and EUR 7.5 M; 5% of a taxable profit ranging between EUR 7.5 M and EUR 35 M; and 9% of a taxable profit exceeding EUR 35 M. Both the municipal surcharge and the state surcharge are levied on taxable profits before the deduction of carry forward losses.

4.1.4 Expenses

The Portuguese CIT Code establishes that expenses incurred by a company are deductible for CIT purposes if they are duly documented and incurred or borne by the taxpayer in order to obtain or guarantee taxable income, namely: expenses relating to the production or? acquisition of assets or services, distribution, transport, publicity and sale of goods and products, financial expenses, administrative expenses (such as wages, subsistence allowances), depreciation, amortisation, impairment losses, capital losses and tax and parafiscal tax (except income taxes).

The CIT Code also foresees that certain expenses are not deductible for CIT purposes, such as: the CIT itself and any other taxes directly or indirectly levied on income, undocumented expenses, expenses documented by invoices that do not comply with the legal requirements, illegal expenses, taxes and expenses which the taxpayer is not legally liable for, penalties and other charges, expenses related to vehicles which exceed specific limits, the banking and energy sector contributions and amounts paid to entities resident in a listed tax haven (as approved by Ministerial Order 150/2004 of 13 February), unless the taxpayer provides evidence that the relevant amounts refer to an actual transaction and are not excessively high.

4.1.5 CIT autonomous taxation

The following expenses are subject to an autonomous CIT taxation, to be levied on the respective value and paid upon filing the annual CIT return:

- Undocumented expenses (at 50% which increases to 70% for entities exempt or partially exempt from CIT, and entities whose main activity is not a commercial, industrial or agricultural activity.
- Deductible representation expenses: 10%.
- Expenses relating to passenger vehicles, mixed passenger and goods carriage vehicles, and motorcycles (with the exclusion of electric vehicles) with an acquisition cost of less than EUR 25,000: 10%; with an acquisition cost of between EUR 25,000 and EUR 35,000: 27.5%; and vehicles with an acquisition cost of more than EUR 35,000 at 35%.
- Payments made to an entity resident in a listed tax haven, or in a country or territory in which it is not subject to an income tax similar to PIT or CIT or where the income tax paid is less than 60% of the tax that would be due in Portugal if the relevant entity were resident in Portugal, unless the paying company produces evidence that the payments relate to transactions effectively executed; and the amount in question is not excessively high: 35%.
- Deductible expenses, subsistence allowances and other compensation paid to employees relating to the use of private cars that are not charged to clients and not subject to taxation as employment income: 5%.
- Dividends distributed by a Portuguese resident company to an exempt or partially exempt entity that has held its shareholding in the resident company for less than one year: 23%.
- Indemnities and any other compensation paid in the event of the termination of the appointment of managers or members of the board of directors except: (i) the remuneration that the relevant manager or director would be entitled to receive up

to the end of the term of their appointment (in the event of a dismissal prior to the end of the appointment term); and (ii) any payments linked to productivity targets previously established: 35%.

- Premiums and other types of variable remuneration paid to a manager or director that represent more than 25% of their annual salary and exceed EUR 27,500: 35%; unless the relevant payments are: (i) deferred to at least 50% for a minimum of three years; and (ii) linked to the positive performance of the company during that period. If any of these conditions cease to be fulfilled, the amount of independent CIT taxation which should have been assessed is added to the CIT in the tax year in which the condition ceased.

The above tax rates are increased by 10% if the taxpayer has tax losses in the tax period in which the relevant expenses are incurred.

4.1.6 Financial expenses

Financial expenses incurred in order to generate or guarantee income subject to CIT are tax deductible.

This means that the interest paid on financing obtained in order to refund equity or proceed with dividend distributions tend to be considered as not being related to the activity of the company (i.e. not incurred to generate or guarantee income) and therefore as non-deductible for tax purposes.

The net financing expenses are only deductible for CIT purposes for up to the highest of the following amounts: (i) EUR 1 M; or (ii) 30% of the Earnings Before Interest, Tax, Depreciation and Amortisation ("**EBITDA**").

The tax concept of EBITDA used to calculate the abovementioned limits corresponds to the company's taxable income or tax losses subject and not exempt from CIT, added of net financing expenses, depreciation and amortization that are tax deductible.

The amount of net financing expenses which is not deductible as it exceeds the maximum limit for the relevant tax year can be carried forward and deducted in the following five years (subject to the limit applicable in each year).

If during a given year, the net financing expenses are lower than the limit of 30% of the EBITDA of that year, the excess amount within this limit (i.e. the difference between (i) 30% of the EBITDA; and (ii) the net financing expenses) could be offset against the net financing expenses of the following five years.

4.1.7 Tax losses

Tax losses may be carried forward against the taxable income of the following five years, but only up to 70% of the taxable profit in the year in which the tax losses are deducted (i.e. CIT will always be due on 30% of the taxable profit).

This five-year period is applicable only for the losses assessed in 2017 and subsequent years. The carryforward period is twelve years for 2014, 2015 and 2016.

Tax losses are, as a general rule, forfeited when more than 50% of a company's share capital or voting rights are transferred to third parties, unless the change refers to:

- The transformation of a direct shareholding into an indirect shareholding or vice versa, or the change of ownership occurs between companies more than 50% of which are directly or indirectly held by the same entity.
- A corporate reorganisation under the special tax neutrality regime.
- An inheritance.
- An acquirer which already held more than 20% of the share capital or voting rights since the beginning of the tax period in which the relevant tax losses were incurred.

- An acquirer which is an employee or a board member of the relevant company since the beginning of the tax period in which the relevant tax losses were incurred.

If the change does not fall within any of the referred situations, the taxpayer may request an authorisation from the Ministry of Finance to carry forward the accumulated losses against the taxable income of the following five years. Such authorisation will be granted only if the relevant transaction is deemed to have a significant economic purpose. The company must file a petition with the tax authorities, addressed to the Ministry of Finance within 30 days after the event that would prevent it from being able to offset its accumulated tax losses.

4.1.8 Tax consolidation regime

A group of companies resident in Portugal meeting the applicable legal requirements may choose to be taxed on their aggregate taxable basis. To qualify for the tax consolidation regime, the companies must fulfil the following conditions:

- The dominating company must directly or indirectly own 75% or more of the subsidiaries' share capital, provided such shareholding confers more than 50% of the voting rights.
- The office and effective management of all the companies must be in Portugal.
- The income of all the companies must be fully subject to the standard CIT regime at the higher tax rate (currently 21%).
- The dominating company must hold a shareholding in the subsidiaries for more than one year before the year in which the regime starts to apply. This is not necessary in the case of subsidiaries incorporated by the dominating company less than one year before the beginning of the regime. In addition, if the participation is acquired via a merger, division, etc., the period in which the merged or divided companies held the shareholding is taken into account to ascertain whether the holding period requirement is met.
- Seventy-five per cent or more of the dominating company may not be directly or indirectly held by another Portuguese company that holds more than 50% of its voting rights that is eligible for the tax consolidation regime.
- The dominating company cannot have waived the application of the tax consolidation regime in the previous three years.

Certain companies cannot be integrated into a group, such as: companies that are inactive for more than one year, dissolved, against which a bankruptcy or special recovery proceedings have been initiated, companies with tax losses in the three tax years preceding the tax year in which the regime will start to apply, unless the shareholding in such companies has been held for more than two years by the dominating company and companies subject to a CIT rate lower than the standard CIT rate that do not waive the reduced CIT rate.

The taxable income of a group must be declared and assessed by the dominating company and corresponds to the arithmetical sum of the taxable income and tax losses assessed by each company in the group in its individual CIT return amended, if necessary, by the application of the limit on the deductibility of financial expenses applicable to tax groups should the relevant group elect to apply such special regime. The municipal surcharge on the taxable income must be calculated individually by each company and the dominating company and the subsidiaries are jointly liable for the payment of the group's CIT, notwithstanding the subsidiaries' right of recourse against the dominating corporation.

With reference to financial expenses, whenever there is a group of corporations, the above-mentioned limits are applied to each company of the group individually considered, unless the dominating company of the group elects to apply the said limits to the net financing expenses of the group (and not of each company of the group), in which case the financing expenses of the group are deductible by up to EUR 1 M, regardless of the number of companies that form part of the group or, if higher, 30% of the total sum of the Tax EBITDAs obtained by each of the companies in the tax group.

Specific rules also apply to the deduction of tax losses incurred by the group.

4.1.9 CIT payments

CIT must be paid in three instalments (*pagamentos por conta*). Payments should be made in the seventh month, the ninth month, and by the fifteenth day of the twelfth month of the tax year in which the taxable income was generated. These payments on account are calculated based on the CIT paid in the previous tax year.

If the total amount of payments on account made during the corresponding year is lower than the final CIT liability, the difference must be paid, together with filing the annual CIT return (*Declaração Modelo 22*), by the last day of the fifth month of the following tax year. Any excess payments on account over the final CIT liability will be refunded by the end of the third month following that in which the annual CIT return was filed.

Except in the first two tax years of activity, a special payment on account (*pagamento especial por conta*) may have to be made during the third month (or in two instalments paid in the third and tenth months) of each tax year. The amount of this special payment on account is generally calculated as the difference between 1% of the company's turnover in the previous tax year (subject to the following limits: (i) a minimum limit of EUR 850; (ii) a maximum limit of EUR 850 plus 20% of the excess over that amount up to the value corresponding to 1%, with an overall maximum limit of EUR 70,000) and the amount of advance payments made in the previous year.

The special payment on account is credited against the final tax liability of the tax year in which it is paid and any excess can be carried forward for four years. Any excess after this period can only be refunded if the corporation is dissolved and liquidated and in other exceptional circumstances.

If in the previous year the entities were subject to the state surcharge, three additional payments on account are due on the same dates as the advance instalments. The additional payments on account correspond to 2.5% of taxable income ranging between EUR 1.5 M and EUR 7.5M; 4.5% of taxable income ranging from EUR 7.5 M to EUR 35 M; and 8.5% of taxable income exceeding EUR 35 M, assessed in the previous year.

4.1.10 Withholdings

Income paid to Portuguese resident entities is generally subject to withholding tax when considered to be earned in Portugal, namely: (i) royalties; (ii) capital investment income and rental income due from another resident corporate entity subject to CIT or an individual carrying out a business or professional activity that must keep accounting records; (iii) remuneration received as members of corporate bodies; (iv) income from sports and artistic activities due from another resident corporate entity subject to CIT or an individual carrying out a business or professional activity that must keep accounting records; and (vi) income from intermediation services and from other services rendered or used in Portugal, other than those concerning transport, communications and financial activities.

As a general rule, the withholding tax levied on income paid to Portuguese resident corporate entities is levied at a 25% rate and is considered a payment on account of their final tax due.

No withholding tax is due on the following types of income: (i) interest and other capital investment income paid to financial institutions except for dividends; (ii) interest or other similar income resulting from late payment or from the extension of the payment date of sales or services made/rendered by an entity subject to CIT; (iii) dividends paid to an entity that is entitled to the participation exemption; (iv) income (including dividends) paid to companies taxed under the tax grouping regime by another company in the same tax group, provided the income relates to a tax year in which the special tax regime was in force; (v) rental income paid to a company managing its own real property (provided it is not subject to the tax transparency regime) or a real estate investment fund; (vii) interest on shareholders' loans, commercial paper or bonds paid to a company by a subsidiary in which the former holds (directly or indirectly) at least 10% of the voting rights in the subsidiary for at least one year; and (viii) any income earned by an entity exempt from CIT.

4.2 Withholding taxes on payments made to employees and independent professionals

As a general rule, the income paid to dependant employees should be subject to withholding tax by the company at variable rates depending on the respective amount, ranging up to 44.5% and the income paid to independent professionals should be subject to 25% withholding tax. Both withholding taxes are considered as a payment on account of the final tax due.

4.3 Withholding taxes on payments to non-residents

4.3.1 Dividends

As a general rule, dividends paid by Portuguese resident companies to non-resident entities are subject to 25% withholding tax.

The withholding tax rate on dividends applicable to non-resident entities may be reduced under an applicable DTT (generally between 15% to 5%) if the beneficiary of the dividends provides the paying company with (i) a specific form (form 21 RFI), duly certified by the tax authorities of the beneficiary's country of residence or (ii) form 21 RFI (not certified) along with a certificate of residence issued by the tax authorities of the beneficiary's country of residence.

Furthermore, under the CIT Code, an exemption applies to dividends distributed by a Portuguese resident company to: (i) a parent company resident in another EU Member State; (ii) a company resident in an EEA State that is subject to exchange of information obligations similar to the obligations established by the EU; (iii) a parent company resident in a country with which Portugal has a DTT that foresees exchange of information procedures; or (iv) a PE located in another EU or EEA State that has its head office in another EU Member State, or an EEA State that is subject to exchange of information obligations similar to the obligations established by the EU, or located in a country with which Portugal has a DTT that foresees exchange of information procedures, are not subject to any taxation in Portugal (whether withholding or final taxation), provided that:

(A) Both companies are subject to one of the taxes on profits listed in Article 2 c) of the Parent-Subsidiary Directive or, in the case of companies resident in an EEA State or a country with a DTT, a similar income tax, with a rate not lower than 60% of the Portuguese CIT rate in force (i.e. 12.6% for 2019).

(B) The profit distribution does not result from the winding-up of the Portuguese corporation.

(C) The direct holding of the non-resident entity in the Portuguese company is at least 10%.

(D) An uninterrupted holding period of one year is completed before the distribution of the dividends.

(E) The non-resident entity provides evidence, prior to payment, that it qualifies for purposes of the Parent-Subsidiary Directive or meets similar requirements, by way of a declaration issued and confirmed by the relevant tax authorities, which is valid for one year.

Finally, where the income is paid or made available in an account opened in the name of one or more account holders, on behalf of unidentified third parties, and the beneficial owner is not disclosed, or when the beneficiary is domiciled in a listed tax haven, a 35% withholding tax rate applies.

4.3.2 Interest

As a general rule, interest paid by Portuguese resident companies or by Portuguese permanent establishments of non-resident entities is subject to 25% withholding tax (a withholding does not apply to interest paid to Portuguese resident credit institutions or Portuguese permanent establishments of non-resident credit institutions). The obligation to withhold tax arises when the interest becomes due and payable under the relevant contractual arrangements, irrespective of its effective payment and accrual.

The withholding tax rate on interest applicable to non-resident corporate entities may be reduced under a DTT if the beneficiary of the interest provides the paying company with (i) a specific form - form 21 RFI - duly certified by the tax authorities of the beneficiary's country of residence or (ii) form 21 RFI (not certified) along with a certificate of residence issued by the tax authorities of the beneficiary's country of residence. The reduced rate does not apply to interest that exceeds an arm's length amount, which should be subject to 25% withholding tax.

However, under Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States ("the Interest and Royalty Directive") interest payments arising in Portugal are exempt from taxation in Portugal, provided that:

(A) The beneficial owner of the interest: (i) is considered to be resident in another Member State of the EU and is not, within the meaning of a DTT considered to be resident for tax purposes outside the EU; (ii) is subject to income tax in an EU Member State, without being exempt from tax; and (iii) takes one of the forms specified by the Interest and Royalty Directive.

(B) The Portuguese resident paying company, or the company whose permanent establishment in Portugal is treated as the payer, of interest is an associated company of the company which is the beneficial owner, or whose permanent establishment is treated as the beneficial owner, of that interest, which is deemed to occur if, for an uninterrupted period of two years: (i) the first company has a direct minimum holding of 25% in the capital of the second company; or (ii) the second company has a direct minimum holding of 25% in the capital of the first company; or (iii) a third company has a direct minimum holding of 25% both in the capital of the first company and in the capital of the second company.

(C) The company receiving interest is the beneficial owner of that income.

If the relevant holding period has not been completed when the interest is paid, the refund of the withholding tax levied in excess may, within a two year period, be claimed when the holding period is completed. As such, any tax that is withheld may be refunded as soon as the above mentioned two year holding period has elapsed.

The exemption is not applicable to interest payments made to an "associated corporation" the majority of share capital or voting rights of which are ultimately directly or indirectly held by entities that are resident outside the EU for tax purposes, except where it is evidenced that the chain of shareholdings was not structured with the main purpose or with one of the main purposes of benefiting from the reduced withholding tax rate. Furthermore, where, by reason of a special relationship between the payer and the beneficial owner of interest, or between one of them and some other person, the interest exceeds the amount which would have been agreed by the payer and the beneficial owner in the absence of such a relationship, the reduced rate only applies to the latter amount, if any.

Finally, a withholding tax exemption is applicable to debt instruments integrated in a centralised system recognised under the Securities Code and complementary legislation (*Interbolsa*), provided that the beneficial owner of debt instruments is a non-resident that is not resident in a tax haven.

4.3.3 Royalties

The CIT treatment of royalties paid to non-resident entities is the same as that referred in the previous section.

4.3.4 Services

As a general rule, service fees paid by Portuguese resident companies for services rendered by non-resident companies are subject to 25% Portuguese withholding tax. However, whenever the beneficiary of the income is resident in a country with a DTT with Portugal, no Portuguese withholding tax will be due, provided that certain formalities are complied with prior to the date on which the relevant fees are paid.

4.4 Taxes on the sale and transfer of a company's assets

4.4.1 CIT

Income obtained from the sale of assets from a Portuguese resident company is qualified as a capital gain. Taxable capital gains are calculated as the excess of the transfer value (net of transfer expenses) over the net book value of the assets transferred (the net book value is equal to the acquisition value of the assets as reduced by impairment losses and accumulated depreciation accepted as deductible for tax purposes). The net book value may be adjusted by coefficients set annually by the government for assets owned for at least the last two years preceding the sale, but no adjustment is allowed for the acquisition price of financial instruments other than shares.

The capital gains are then subject to the general CIT rates referred to in section 4.1.3above.

There is a reinvestment regime for capital gains earned by resident companies that can be summarised as follows:

(A) Only 50% of the positive difference between capital gains and capital losses obtained in the relevant tax year from the transfer for consideration of tangible fixed assets, intangible fixed assets, and bearer biological assets held for a minimum of one year (or from indemnities received due to the involuntary destruction of the same assets) is subject to taxation if the transfer proceeds are reinvested in similar assets in the tax year before the tax year of the transfer, in the tax year of the transfer or in the two following tax years.

(B) The acquired assets must be held for at least one year, which begins to run from the end of the tax year of the reinvestment.

(C) The acquisition of used assets from entities deemed related entities under the applicable transfer pricing rules does not qualify for this purpose.

(D) The regime does not apply to intangible assets acquired or transferred to related entities, or to assets transferred in the context of corporate reorganisations.

(E) A statement concerning the intention to reinvest must be included in the annual tax return of the tax year of the transfer and, once the reinvestment is made, this fact should also be evidenced in that tax return or in the tax return filed for the tax year in which the reinvestment is made.

(F) If only part of the proceeds is reinvested, the benefits described above are proportionally reduced. Furthermore, if the reinvestment is not made until the end of the second tax year following the tax year of disposal, the defaulted CIT amount will be added to the taxable profit of that tax year, plus 15% (the same rule applies if the shares acquired by way of reinvestment are not retained for the minimum period of one year, unless such shares are transferred within the scope of a corporate reorganisation carried out under the special tax neutrality regime set out in the CIT Code.

For the participation exemption regime on capital gains arising from the transfer of shareholdings or other equity items please see the "Elimination of double taxation" section.

4.4.2 VAT

As a general rule, the sale of goods is subject to VAT at the standard rate of 23%. Reduced rates of 13% and 6% apply to specific goods or services.

Real estate transactions such as the transfer or lease of real estate property are generally exempt from VAT, but, provided certain conditions are met, the exemption may be waived. In this case the standard 23% VAT rate is applicable and the acquirer should be, under certain conditions, entitled to deduct the input VAT paid on the purchase of the property.

The transfer of assets from a company which are considered as a business unit (transfer of a going concern) is not subject to VAT provided that the acquirer is a VAT taxable entity. If not, the transfer of a going concern is subject to 23% VAT.

The periodic VAT returns must be submitted via the Internet and the tax paid as follows:

(A) In the case of taxable persons covered by the ordinary monthly regime (only taxable persons with a yearly turnover of EUR 650,000 or more or taxable persons expressly opting for this regime): no later than the tenth day of the second month following the transaction.

(B) In the case of taxable persons covered by the quarterly regime (taxable persons with a yearly turnover of less than EUR 650,000): no later than the fifteenth day of the second month following the end of the calendar quarter in which the transactions were carried out.

4.4.3 Real Estate Transfer Tax (IMT)

As a general rule, the acquisition of Portuguese real estate is subject to IMT at a rate of up to 6.5%. The tax base is the acquisition value or, if higher, the tax registered value of the real estate (evaluated by the tax authorities according to formulas set out in the law) and the tax is paid before the acquisition of the relevant property. Exemptions may apply to real estate acquired for resale or be subject to urban rehabilitation works.

4.4.4 Stamp Tax (Imposto do Selo)

As a general rule, the acquisition of Portuguese real estate is subject to Stamp Tax at a rate of 0.8%. The tax base is the acquisition value or, if higher, the tax registered value of the real estate and the tax is paid before the acquisition of the relevant property. Since transactions subject to VAT are not subject to Stamp Tax, the latter will only be due if the VAT exemption on real estate transactions is not waived.

4.4.5 Municipal Property Tax (IMI)

IMI is levied annually on the tax registered value of the real estate (evaluated by the tax authorities according to formulas set out in the law) at rates that range from 0.3% to 0.45% in the case of urban property and land for construction.

As a general rule, IMI is paid in the year following that to which it relates:

(A) in one instalment during the month of May when the amount due does not exceed EUR 100;

(B) in two instalments during the months of May and November when the amount due ranges between EUR 100 and EUR 500; or

(C) in three instalments during the months of May, August and November when the amount due exceeds EUR 500.

4.4.6 Additional Municipal Property Tax (AIMI)

AIMI is levied annually on the tax registered value of the real estate (evaluated by the tax authorities according to formulas set out in the law) at a rate of 0.4% for corporate entities, and in case of individuals, at a rate of 0.7% on the tax registered value up to EUR 1M, at a rate of 1% on the tax registered value between EUR 1M and EUR 2M, and at a rate of 1.5% on the tax registered value exceeding EUR 2M. Individuals benefit from a € 600,000 deduction from the total tax registered value corresponding to all real estate owned by the individual.

The AIMI is paid in September of the year to which the assessment refers to.

5. FOREIGN INVESTMENT

5.1 Commercial and legal opening for foreign investment

There is no general restriction for foreign investment in Portugal, regardless of whether such investment comes from other EU Member States, where principles of the free movement of persons and capital apply, or from non EU Member States.

There are restrictions on shareholdings held by foreigners in specific regulated sectors. This is the case of aviation companies, which, pursuant to EU regulations, must be controlled by EU nationals, and companies engaged in the gaming sector, which, as a general rule, must be EU companies.

No special tax regime applies to foreign investors.

5.2 Foreign investors domiciled in tax havens

There are no additional requirements imposed on foreign investors domiciled in tax havens. However payments made to investors from tax havens or low tax jurisdictions will be subject to the aforementioned anti abuse rules (e.g. increased rates, non-deductibility of certain expenses and non-application of certain tax benefits).

6. ELECTING THE INVESTMENT VEHICLE

6.1 Investment vehicles commonly used and main differences; general rule and recommendation

The most common vehicles used are companies incorporated under the form of public limited companies which have shares (*Sociedades Anónimas*) as opposed to limited liability companies which have “quotas” (*Sociedades por Quotas*). As common law systems do not draw a distinction between shares and “quotas”, we have not reflected this difference in this guide and have therefore only referred to shares and shareholders.

6.1.1 Sociedades Anónimas

Sociedades Anónimas (“**SA**”) are one of the most common types of public limited company in Portugal. This is the legal form adopted by the largest companies as well as by all public corporations. The share capital of an SA is represented by shares, which may be bearer or nominative shares represented by certificates or of the book entry type. There may be different categories of shares, granting different rights to the respective shareholders.

An SA must be incorporated through a private document executed by the incorporating shareholders (provided the relevant signatures are duly certified) or through a public deed and must be registered with the commercial registry. An SA may also be incorporated under the fast-track procedures of *Empresa na Hora* or *Empresa on-line.*

As a general rule, an SA must be incorporated by at least five shareholders (individuals or legal entities). An SA may also be incorporated by a sole shareholder provided that shareholder is also a corporation. This minimum number of shareholders must be maintained during the life of the company. If the number of shareholders falls below the minimum, the company becomes subject to administrative dissolution. More importantly, if an SA becomes a sole shareholder company, the sole shareholder may in certain circumstance be held liable without limitation for the company’s obligations.

The minimum share capital of an SA is EUR 50,000, divided into shares, which are negotiable securities. The share capital must be fully subscribed, but Portuguese law allows the payment of up to 70% of the contributions in cash to be postponed for a maximum term of five years.

The most commonly adopted management body is a board of directors and a sole auditor or a supervisory board (the latter being mandatory for publicly listed companies and for companies meeting two of the three following quantitative thresholds in two consecutive years: a balance sheet exceeding EUR 20 M, a total net turnover exceeding EUR 40 M and/or an average number of employees during the year of more than 250). If the company's share capital does not exceed EUR 200,000, the shareholders may appoint a sole director.

6.1.2 Sociedades por Quotas

Sociedades por Quotas ("**Lda**") are the most common legal form of company in Portugal because they are the most suitable for small and medium-sized undertakings, due to their lower initial share capital requirements, simplicity, and the higher degree of control granted to the shareholders.

The share capital of an Lda is divided into shares registered with the commercial registry, where the identity of the shareholders is publicly available. The shares may not be represented by certificates.

An Lda is incorporated by means of a written document (*contrato de sociedade or título constitutivo*) executed by the future shareholders (either a private document with their signatures duly certified or a public deed). The incorporation must be registered with the commercial registry. An Lda may also be incorporated following the fast-track procedures of Empresa na Hora or Empresa on-line.

The minimum nominal value of a share is EUR 1. This means, for instance, that the minimum share capital of a sole shareholder Lda is EUR 1 and EUR 2 for a Lda with two shareholders. The share capital must be fully subscribed, but Portuguese law allows shareholders to postpone paying their contributions in cash to the share capital for a maximum term of five years, provided the minimum nominal value of the shares is paid up by the execution of the incorporation deed or by the end of the company's first tax year.

An Lda may be managed by one or several directors. The directors are appointed either by means of the incorporation deed or by a resolution of the general shareholders meeting approved by a simple majority of the votes cast. Their appointment must be registered with the commercial registry.

6.2 Other forms of entities

There are other forms of entities such as partnership like entities, but they are not commonly used in Portuguese practice.

From purely a tax perspective, the CIT treatment between SA's and Lda's is the same but, since the transfer of shares of Lda's holding real estate may trigger IMT and the transfer of shares of SA's does not, SA's are generally more efficient.

6.3 Tax transparent entities

The Portuguese CIT establishes a transparency regime applicable to the following companies, irrespectively of whether they are incorporated as limited partnerships (*sociedades de pessoas*) or as stock? corporations (*sociedades de capitais*): (i) civil companies that have not adopted the form of commercial companies; (ii) companies engaged in listed professional activities (*Sociedades de Profissionais*); (iii) companies that are either controlled by a family firm or fully owned by no more than five people qualifying as a mere asset management companies (*Sociedades de simples administração de bens* - "**SSAB**"); and (iv) European Economic Interest Groups and Complementary Enterprise Groups.

Companies engaged in listed professional activities are companies in which all the partners are individuals acting as professionals under one of the activities listed in article 151 of the Personal Income Tax Code (e.g. lawyers, architects); and companies where more than 75% of their income is earned from carrying out a professional activity listed in article 151 of the Personal Income Tax

Law if, during more than 183 days in a given tax period, the following conditions are cumulatively met: (i) there are a maximum of five partners; (ii) none of the partners is a "legal person of public law"; and (iii) at least 75% of the share capital is held by professionals who perform the referred activities through the company.

SSABs are companies which activity is restricted to the mere management of their own assets (passive activity), which are held on a permanent basis (no minimum holding period is required); and companies that carry out other activities besides the passive activity referred to before, provided that the average income obtained from its passive activity in the last three years exceeds 50% of the average total income obtained by it in the same period (in this case the regime only applies after the third year).

If a company resident in Portugal for tax purposes qualifies as a tax transparent entity, the company is required to determine its taxable income in accordance with exactly the same rules that apply to non-transparent entities fully subject and not exempt from CIT. However, the said taxable income (minus any carryforward losses) is subject to shareholder-level taxation.

6.4 Other vehicles with tax benefits

6.4.1 Securities investment funds

A special tax regime applies to Portuguese-resident securities investment funds which are, as a general rule, subject to CIT on their annual taxable profits at the standard rate of 21%. However, investment and real estate income, as well as any capital gains obtained by investment funds are not subject to CIT, unless the income is distributed or due by companies resident in a listed tax haven or results from the transfer of a shareholding in such a company.

Portuguese-resident securities investment funds are also subject to Stamp Tax, which is levied quarterly on the funds' net asset value, at a rate of 0.0125% or, for securities investment funds investing in money market instruments or deposits, at a rate of 0.0025%.

Income earned by a Portuguese resident company from units held in Portuguese securities investment funds is subject to 25% withholding tax on account of the final tax due and an exemption applies to income paid by a securities investment fund to, and capital gains obtained by, non-resident individuals, as well as to non-resident companies. The exemption should not apply to investors resident in a listed tax haven or, in the case of companies, if more than 25% of the share capital is directly or indirectly held by Portuguese resident companies or resident individuals, unless the non-resident company is resident in another EU Member State, an EEA State, or in a country with which Portugal has a DTT that foresees exchange of information procedures. These rules (regarding both taxation of the income and gains earned by securities investment funds and taxation of the investors regarding the income and gains earned with respect to their units) also apply to securities investment companies created under Portuguese law.

6.4.2 Real estate investment funds

Real estate investment funds or real estate investment companies are subject to the same regime referred to above for securities investment funds and companies, except in case of income paid to, or capital gains obtained by, non-resident investors, in which case a final tax of 10% applies.

6.4.3 Madeira Free Trade Zone

Companies authorised to operate in the Madeira Free Trade Zone ("**FTZ**") benefit from a special tax regime, the main features of which vary depending on when the relevant company obtained its authorisation. Provided certain conditions are met, entities authorised to operate within the FTZ may benefit from a reduced CIT rate of 5% (on income deriving from transactions entered into with other entities resident in the FTZ or non-resident entities), plus other tax benefits, such as a withholding tax on interest or loans granted by non-resident entities, provided the loan is to be invested within the scope of the FTZ. Also, royalties or service fees paid by a company

established in an FTZ to a non-resident entity are not subject to withholding tax, provided the respective service or right (for example, a patent or copyright) is related to the activity carried out by the paying company within the scope of the FTZ.

In order to benefit from the aforementioned CIT benefits, the company must meet one of the following requirements:

(A) Create one to five jobs in the first six months of activity and make a minimum investment of EUR 75,000 in the acquisition of tangible or intangible fixed assets during the first two years of activity.

(B) Create six or more jobs in the first six months of activity.

The application of the reduced CIT rate is subject to the following taxable income cap (depending on the number of jobs created or maintained in each tax year:

- One to two jobs: EUR 2.73 M
- Three to five jobs: EUR 3.55 M
- Six to 30 jobs: EUR 21.87 M
- 31 to 50 jobs: EUR 35.54 M
- 51 to 100 jobs: EUR 54.68 M
- over 100 jobs: EUR 205.5 M

Taxable income exceeding the above ceilings is subject to the general CIT rate of 21%.

The tax benefits granted to companies authorised to operate in the FTZ are also capped at one of the following limits:

- 20.1% of the gross added value obtained in the relevant tax year
- 30.1% of the labour costs incurred in the relevant tax year
- 15.1% of the turnover obtained in the relevant tax year

The activities of companies authorised to operate within the FTZ benefitting from the special tax regime are restricted to the following:

- activities related to agriculture and farming, except services connected with forest exploitation
- fishing, aquaculture and related services
- manufacturing activities
- production and distribution of electricity, gas and water
- commercial activities in general
- transportation, storage and communications
- real estate activities and services rendered to companies
- teaching and other educational activities
- other services rendered to companies in general

Financial intermediation and insurance activities, as well as “intra-group services,” i.e. coordination, treasury and distribution centre activities are expressly excluded.

The benefits of the taxes other than CIT include: (i) a Stamp Tax exemption of 80% for any documents, agreements, transactions or acts regarding the company authorised to operate in the FTZ, unless the relevant documents, agreements, transactions or acts have a Portuguese resident entity or a Portuguese PE of a non-resident entity — onshore — as an intermediary or recipient; and (ii) an IMI and IMT exemption of 80% with respect to real property acquired by the company authorised to operate in the FTZ, provided the relevant property is directly used in the activities of the company in the FTZ.

7. INVESTMENT PROCEDURES AND FORMALITIES

In order to invest in Portugal the main formality for a non-resident entity is to obtain a Portuguese tax identification number (*Número de Identificação Fiscal* - "**NIF**"), which is requested at the National Register of Legal Entities (*Registo Nacional de Pessoas Coletivas*) by filing the relevant application forms and an excerpt of the information recorded at the commercial registry regarding the entity, which must be officially translated and apostilled or certified by the competent consular entities.

Moreover, there are generally no further specific formalities to invest in Portugal, unless the envisaged investment activity falls within a regulated activity (i.e. financial services) in which case authorisations and licenses should be requested from the competent authorities. The bureaucratic part of the investment is the incorporation of the vehicles before the commercial registry, registration before the tax and social security authorities, as well as the opening of bank accounts. As a general rule, for registration and KYC procedures the authorities accept apostilled documents under the Hague Convention, or documents certified by the Portuguese consulate in the country in which the documents were drafted.

8. FINANCING THE INVESTMENT VEHICLE

8.1 Equity

There are no legal limitations to equity financing.

For the withholding treatment of income obtained with equity instruments please see section 4 on "Dividends".

No taxes are applicable to equity financing, only company law related formalities.

8.2 Debt

- For the withholding treatment of income earned from debt instruments please see section 4 on "Interest". As referred to therein, a withholding tax exemption on debt instruments integrated in a centralised system may be useful for resident entities to obtain third party financing from non-resident entities?.
- Please see section 4 on "Financial Expenses" for the financial expenses deductibility limitations.
- Stamp Tax applies to financing operations. According to the Portuguese Stamp Tax Code, and as a general rule, the granting of loans and guarantees/security is subject to Stamp Tax if (i) the corresponding contract takes place in the Portuguese territory; (ii) the loans or guarantees/security are granted by non-resident entities to a Portuguese resident entity or to a Portuguese PE of a non-resident entity; or (iii) the corresponding documents or contracts are submitted or filed in Portugal for any legal purpose. According to the Portuguese tax authorities, a loan agreement is deemed to take place in the Portuguese territory when the entity granting the loan is resident in Portugal.

However, no Stamp Tax is due on guarantees/security whenever they are ancillary to a contract specifically taxed under the General Stamp Tax Table, and granted simultaneously to the secured obligation.

Stamp Tax on loans is levied on the value of the loan (i.e. on the amount of the funds used under the loan agreement) at a rate of: 0.04% per month or a fraction thereof on loans with a term of less than one year; 0.5% on loans with a term ranging from one to four years; 0.6% on loans with a five year term or longer; and 0.04% per month on the use of or credit under a current account or any other form where the term is not or may not be determined, levied on the monthly average of the total daily debtor balances during each month divided by thirty. Please note that whenever the term of a loan is extended, Stamp Tax is as a general rule due as if a new loan was being granted.

The following transactions are exempt from Stamp Tax:

(A) Short-term loans (with a term of less than one year), including the corresponding interest, provided such transactions are exclusively intended to cover a lack of cash liquidity and are granted by a company to another company in which the former has a shareholding of at least 10% or with an acquisition cost of at least EUR 5 M according to the latest balance sheet, or are granted to a controlled company or are granted within a group relationship company.

(B) Short-term loans (with a term of less than one year), including the respective interest, provided such transactions are exclusively intended to cover a lack of cash liquidity granted to an entity by its shareholders with a participation of at least 10%, provided that the shareholding has been held for an uninterrupted period of one year or, if the period since the incorporation of the controlled entity is less than one year, for the period necessary to complete one year.

(C) Shareholder loans (*suprimentos*), provided that the shareholder holds at least 10% for an uninterrupted period of one year or since the subsidiary was incorporated (in which case the shareholding should be kept until the holding period of one year is completed).

With reference to the shareholders loans referred to in point (C) above, the Stamp Tax Code does not define a shareholder loan and therefore the rules applicable are those established in the Companies Law. According to the Companies Law, loans granted by shareholders are deemed shareholder loans whenever they have a term of more than one year, and the term may be established upon the granting of the loan or afterwards, or are not refunded within the first year (irrespective of whether or not the loan had no term or had a term of less than one year).

No Stamp Tax is due on the granting of additional capital contributions (*prestações suplementares*) and financing granted through the issue of debt instruments (bonds, etc.) is also not subject to Stamp Tax.

As regards guarantees/security, Stamp Tax is levied on the maximum secured amount at a rate of: 0.04% per month or fraction thereof on guarantees/security with a term of less than one year; 0.5% on guarantees/security with a term ranging from one to four years; and 0.6% on guarantees/security with no term or with a five-year term or longer.

In general, interest and fees charged by financial institutions for financial services to Portuguese resident entities are subject to Stamp Tax at a rate of 4% (3% for fees charged for the granting of guarantees).

In the case of loans granted to Portuguese resident entities by non-resident entities and interest and fees charged by non-resident financial institutions to Portuguese resident entities (in both cases, where Portuguese resident financial entities do not act as intermediaries in the transactions), Stamp Tax should be assessed and borne by the borrower.

As to guarantees/security granted by Portuguese resident entities to non-resident entities, Stamp Tax should be assessed by the entity granting the guarantee/security and borne by the entity that is obliged to present the guarantee/security. In the case of guarantees/security granted by non-resident entities to Portuguese resident entities, Stamp Tax should be assessed by the Portuguese resident beneficiary of the guarantee/security and borne by the entity that is obliged to present the guarantee/security.

8.3 Recommendation on the form and proportion of financing

The best way to finance an investment to be made in Portugal will depend on the type of investment and therefore it should be assessed on a case-by-case basis. This notwithstanding, the common structure consists of a mix of equity and debt (either from shareholders or third parties).

9. DIVESTMENT

9.1 Share capital reductions and reimbursement to shareholders

Share capital reductions with the reimbursement to shareholders for their nominal value have no CIT implications. If the share capital is reduced and the reimbursement is made to the shareholder for an amount higher than its initial investment, the positive difference will be considered a capital gain subject to CIT at the general rates referred to in section 1, and in the case of non-resident entities, subject to CIT at a 25% rate (unless an applicable DTT prevents the Portuguese taxation rights on the income arising from the sale of the assets).

9.2 Capital gains

As a general rule, capital gains obtained in Portugal by a resident entity should be subject to the general CIT rates referred to in section 1, while the capital gains obtained in Portugal by non-resident entities are subject to 25% CIT (unless an applicable DTT prevents the Portuguese taxation rights on the income arising from the sale of the assets).

Moreover, capital gains earned by a non-resident entity, without a PE in Portugal to which the gains are attributable, from the sale of shareholdings, securities, autonomous warrants traded on a regulated market and derivative instruments traded on a regulated market, are exempt from taxation unless one of the following apply:

- More than 25% of the share capital of the non-resident entity is directly or indirectly held by Portuguese resident entities unless the legal entity is resident in another EU Member State, in an EEA State (which is bound by administrative cooperation in tax matters similar to the regime established within the EU), or in another country that has a DTT with Portugal in force which foresees exchange of information procedures.
- The non-resident entity is located in a country or territory listed as a tax haven.
- The capital gains are obtained from the sale of shareholdings in Portuguese corporations more than 50% of the assets of which consist of real property located in Portugal or from the sale of shareholdings in Portuguese holding corporations that control Portuguese corporations 50% of the assets of which consist of real property located in Portugal.

9.3 Indirect capital gains

The Portuguese CIT Code includes a rule which states that gains obtained by a non-resident entity, with the sale of another non-resident entity of which the value of the shares derive directly or indirectly, in the 365 days preceding the sale, in more than 50%, from real estate located in Portugal, is considered to be income obtained in Portugal. Said indirect gains are subject to CIT in Portugal at a 25% rate. This rule does not apply if the relevant real estate is allocated to an agricultural, industrial or commercial activity (which does not consist of the simple acquisition and sale of real estate) or an applicable DTT prevents the Portuguese taxation rights on the income arising from the sale of the assets.

As referred to above, upon a divestment by an entity resident in Portugal, gains will be subject to CIT at the general rates, while gains obtained by a non-resident entity through the divestment will be subject to 25% CIT. Most of the DTTs entered into with Portugal allocate the taxation rights on the income earned from the sale of securities to the country of residence of the non-resident

investor, unless the securities relate to a Portuguese resident entity of which more than 50% of the assets consist in real estate located in Portugal. For example,, the DTTs entered into by Portugal with Luxembourg and the Netherlands do not have the referred safeguarding rule regarding Portuguese entities holding real estate in Portugal.

10. CORPORATE REORGANISATION

10.1 Main tax rules affecting mergers, divisions, exchanges and transfer of assets

The positive difference between the net asset value and the market value of the assets at the date of any of the referred corporate reorganisations is considered a gain taxable for CIT purposes under the general rules referred to in section 4.

10.2 Tax neutrality regime for corporate reorganisations

Pursuant to the Merger Directive (Council Directive 2009/133/EC), Portugal has a tax neutrality regime in force for mergers, divisions, transfer of assets and exchanges of shares executed between companies resident in the EU. Provided certain conditions are met, namely, provided the receiving company agrees to the assets and liabilities being transferred for tax purposes at the same tax values that they had in the transferring company prior to the relevant merger, division or transfer of assets, there should be no direct taxation consequences for the transferring company in the referred transactions.

The tax neutrality regime does not apply if the sole or main purpose of the corporate restructuring is to avoid taxation, which is deemed to occur when all the entities involved are not subject to the same CIT regime or if there are no valid economic reasons underlying the transaction, such as the reorganisation and rationalisation of the entities' activities.

11. NON-HABITUAL RESIDENTS REGIME

A special tax regime named the non-habitual residents regime may be applicable for ten years (renewable) to individuals who

- become resident in Portugal for PIT purposes; and
- have not been deemed resident in Portugal for tax purposes in the five previous years.

An individual is deemed to be tax resident in Portugal for PIT purposes if the individual meets one of the following requirements during the year to which the income applies:

- The individual has remained in the Portuguese territory for more than 183 calendar days (which need not be continuous) during any 12-month period beginning or ending in the relevant year (in which case the individual is considered a tax resident since day one of his or her permanence period in Portugal).
- The individual has a dwelling in Portugal that may be used as a main place of residence in any given day of the period mentioned above (in which case the individual is considered tax resident since day one of the permanence period in Portugal).
- The individual is employed as ship or airplane crew by a Portuguese resident company or a non-resident entity's PE in Portugal as at 31 December.
- The individual holds an official post or is employed by the Portuguese Government outside of the Portuguese territory.

If one of the above requirements is met, income earned in Portugal by non-habitual residents may be taxed in one of the following ways:

- If the income is earned from high value-added activities of a scientific, artistic or technical nature, as set out in Order 12/2010: at a flat rate of 20% plus a surcharge ranging between 1% and 3.5% of the taxable income exceeding the annual national minimum wage (currently EUR 8,400). Professions falling under this category include: (a) architects, engineers and geologists; (b) artists, theatre actors, ballet dancers, cinema actors, radio and television artists, singers, sculptors, musicians and painters; (c) auditors and tax consultants; (d) some medical professionals and dentists; (e) university professors; (f) psychologists; (g) archaeologists, biologists, certain professionals carrying out activities related to computer and scientific research services; (h) designers; (i) investors, directors and managers of companies promoting investment (provided the activities of those companies are carried out in the context of projects eligible for tax concessions under contracts covered by the tax code of investment) and senior company executives.
- In all other situations: according to the general progressive PIT rates (which range from 14.5% to 48%), plus charges (as described above).

Income earned outside of Portugal by non-habitual residents is taxed as follows:

- Foreign-source passive income, including dividends, interest, as well as income earned from real estate, capital gains and income from independent personal services (high technical value professions) are exempt from PIT provided that the income taxable in the source country under an applicable DTT, or, in the absence of a DTT, would be taxable in the source country according to the OECD Model Tax Convention.
- Foreign-source employment income is exempt from PIT provided that the income is effectively taxed in the source country under an applicable DTT or, if no DTT is applicable, if the income is taxed in the source country and is not considered to arise from a Portuguese source under the PIT Code.
- Pension income may also be exempt from taxation if it is effectively taxed in the source country under an applicable DTT or if it is considered to arise from a foreign source under the PIT Code.

Other income earned outside of Portugal by non-habitual residents that does not qualify for either the applicable exemptions or fall within the application of Order 12/2010 will be subject to the general progressive PIT rates of up to 48%, plus applicable charges. This regime does not apply to income sourced in listed tax havens.

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MAP OF DIRECT TAXES JURISDICTIONS: PPU-UM

DIRECT TAXES						
CLASSIFICATION / TAXABLE EVENT		CHILE	COLOMBIA	SPAIN	PERU	PORTUGAL
INCOME TAXES	CORPORATIONS	First-Category Tax	Income Tax	Corporate Income Tax	Income Tax	Corporate Income Tax
		25% or 27% * Deductible from Global Complementary Tax or Additional Tax	General corporate income tax rate: 2019: 33% 2020: 32% 2021: 31% 2022 and ongoing: 30% Financial bodies 2019: 37% 2020: 36% 2021: 34% 2022: 33% 2023 and ongoing: 30% Users of Industrial properties and Operators in Free Trade Zones: 20% (15% in Free Trade Zones created in the municipality of Cúcuta until 2019) Taxpayers eligible for the large investments special tax regime: 27% Hosting, tourism and publishing activities: 9%. There are also reduced rates for activities developed in the areas most affected by the armed conflict	25%	29.5%	21% + 1.5% municipal surcharge + 3% - 5% - 9% state surcharge
			Dividends: 7.5% to 38.8%, depending on (i) whether they come from Colombian or foreign companies; (ii) whether they			

DIRECT TAXES							
CLASSIFICATION / TAXABLE EVENT		CHILE	COLOMBIA	SPAIN	PERU	PORTUGAL
			come from earnings that were taxed at corporate level; (iii), the year of their distribution to shareholders; (iv) and whether the shareholder is a legal entity which is a tax resident in Colombia. The following legal entities are not subject to dividend taxes; (i) Colombian holding companies, and (ii) companies eligible for the large investments special tax regime.			
INCOME TAXES	**INDIVIDUALS**	Global Complementary Tax (*Impuesto Global Complementario*)	Income Tax	Personal Income Tax (*Impuesto sobre la Renta de las Personas Físicas*)	Income Tax	Personal Income Tax
		0% to 35%	General individual income tax rate for tax residents Labour, capital, non-labour and pension income, 0% to 39% (progressive rate) Dividends: 0% to 38.8%, depending on (i) their value; (ii) whether they come from Colombian or foreign companies; (iii) whether they are paid against profits that were taxed at a	General: 19% to 45% Savings: 19% to 23%	5% to 30%	General: 14.5% to 48% + 2.5% - 5% Passive income: 28% - 35% Non-domiciled residents: 0% - 20% - 28% - 35% (general rate)

DIRECT TAXES								
CLASSIFICATION / TAXABLE EVENT			CHILE	COLOMBIA	SPAIN	PERU	PORTUGAL
				corporate level; (iv) the year of their distribution to shareholders			
	NON-RESIDENTS		Additional Tax (Impuesto Adicional)	Income Tax	Non-Resident Income Tax (*Impuesto sobre la Renta de No Residentes*)	Income Tax	CIT or PIT for non-resident investors
	NON-RESIDENTS	General rate	35% or 4%	Corporations 2019: 33% 2020: 32% 2021: 31% 2022 and ongoing: 30% Individuals 35% Foreign teachers which are not Colombian tax residents and are hired for a period not exceeding 182 days: 7%.	24%	30%	CIT: 25% PIT: 28%
	NON-RESIDENTS	Interest	35% or 4%	General tax rate - 20% - 15% - 5%	0% - 19%	4.99% - 30% related parties	0% - 25% - 35%

DIRECT TAXES								
CLASSIFICATION / TAXABLE EVENT			CHILE	COLOMBIA	SPAIN	PERU	PORTUGAL
INCOME TAXES	NON-RESIDENTS	Dividends	35% minus First-Category Tax	For profits taxed at corporate level: 10% For profits that were not taxed at corporate level: 2019: 38.03% 2020: 38.8% 2021: 37.9% 2022 and ongoing: 37%	0% - 19%	5%	0% - 25% - 35%
		Royalties	30% - 20% - 15% - 0%	20%	0% - 24%	30%	CIT: 0% - 25% PIT: 0% - 28%
		Capital gains	35%	10% *Also for extraordinary gains	19%	30% - 5%	CIT: 0% - 25% PIT: 0% - 28%
	EXTRAORDINARY GAINS			Tax on extraordinary gains			
				10%			

DIRECT TAXES							
CLASSIFICATION / TAXABLE EVENT		CHILE	COLOMBIA	SPAIN	PERU	PORTUGAL
INCOME TAXES	MINING	Mining tax (Impuesto Específico a la Renta Operacional de la Actividad Minera)		Tax on Business Activities (*Impuesto sobre Actividades Económicas*)	Mining Tax (Impuesto Especial a la Minería)	
		Medium-sized mining operators 0.5% to 4.5% Large mining operators 5% to 14%		Tax on mining companies depending on the raw material. Between €1.6 and €5 for each kW of power capacity	Depending on operating profits 2% a 8,4%	
GROSS INCOME			Industry and Commerce Tax	Tax on Business Activities (*Impuesto sobre Actividades Económicas*)		
			From 0.2% to 1% of gross income depending on the activity and municipality * Currently, it can be deducted up to 50% from Income Tax and up to 100% from 2022			

DIRECT TAXES							
CLASSIFICATION / TAXABLE EVENT		CHILE	COLOMBIA	SPAIN	PERU	PORTUGAL
WEALTH TAXES	ENTITIES	(Local Patent)	Wealth Tax, only applicable to foreign entities that do not file tax returns and that own assets located in Colombia, shares, receivables or portfolio investments (properties, aircrafts, mining rights, etc.)		Temporary Net Asset Tax *(Impuesto Temporal a los Activos Netos)*	
		0.25% to 0.5%, depending on the municipality	1% above COP 5 billion * In force until 2021		0.4% on the tax value of the company's net assets for the excess of S/1MM * Deductible from Income Tax or refundable	
	INDIVIDUALS		Wealth tax	Wealth Tax		
			1% above COP 5 billion * In force until 2021	0% to 3.75%, depending on the region		

DIRECT TAXES							
CLASSIFICATION / TAXABLE EVENT		CHILE	COLOMBIA	SPAIN	PERU	PORTUGAL
WEALTH TAXES	PROPERTIES (INDIVIDUALS AND CORPORATIONS)	Real Estate Tax *(Impuesto Territorial)*	Property Tax *(Impuesto Predial)*	Real Estate Tax *(Impuesto sobre Bienes Inmuebles)*	Property Tax *(Impuesto Predial)*	Municipal Property Tax
		Agricultural: 1% Non-Agricultural: 0.98% - 1.2% * On the assessed value	Depending on the municipality, with a maximum of 1.6% * On the cadastral value. Deductible from Income Tax	0.3% to 1.1%, depending on the municipality * On the cadastral value	0.2% to 1.0%, depending on the municipality * On the assessed value	Rural: 0.8% Urban: 0.3% to 0.45%, depending on the municipality *Taxable base: tax registered value
						Additional Municipal Property Tax
						Land for construction and residential real estate Entities: 0.4% Individuals: 0.7% - 1% - 1.5% *Tax base: tax registered value
TRANSFER OF REAL ESTATE				Tax on the Increase in Value of Urban Lands *(Impuesto sobre el Incremento de Valor de los Terrenos Naturaleza Urbana)*	Conveyance of Property Tax *(Impuesto de Alcabala)*	
				0% to 30% on the increased value of the land, depending on the region	3% on the transfer value or assessed value, whichever is higher	