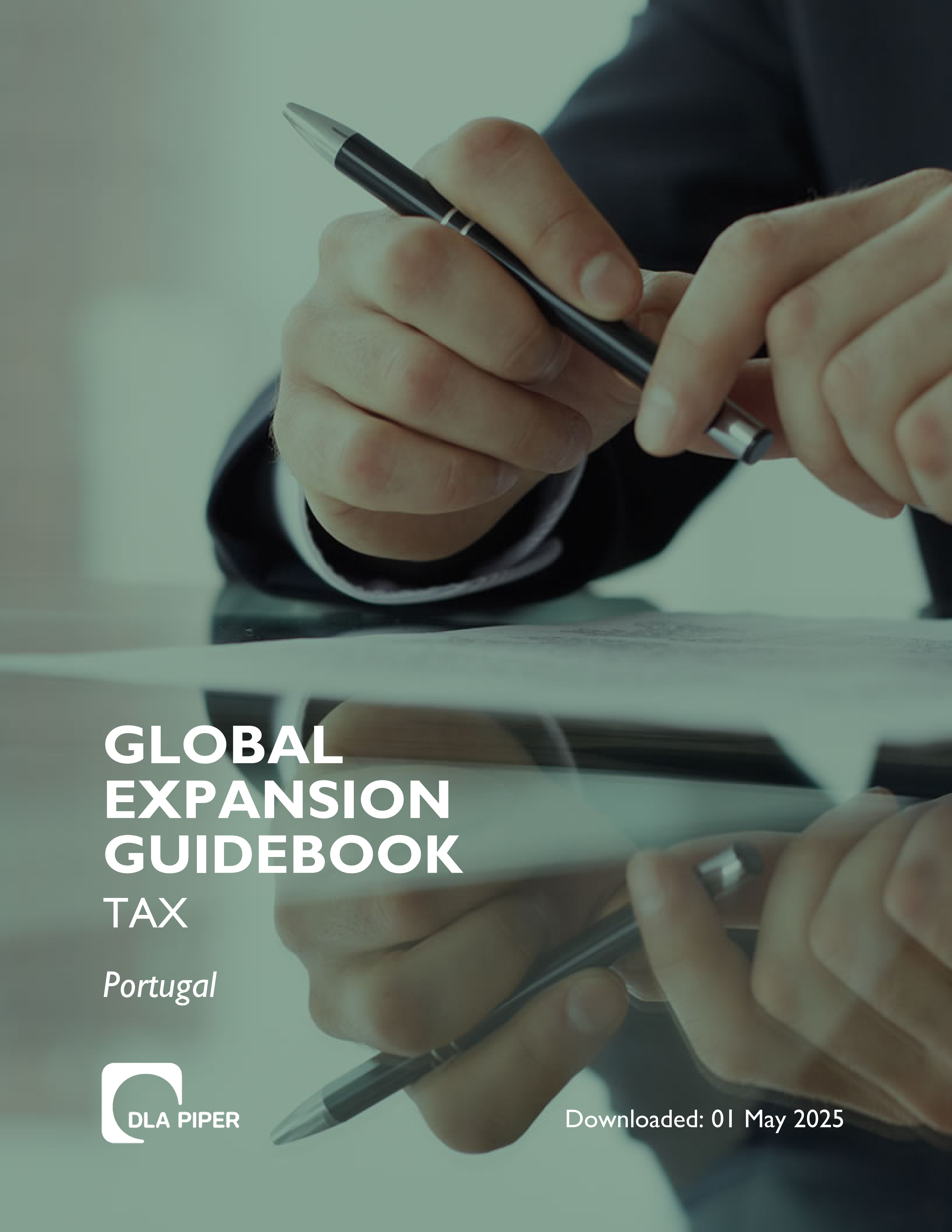

GLOBAL EXPANSION GUIDEBOOK

TAX

Portugal

DLA PIPER

INTRODUCTION

Welcome to the 2024 edition of DLA Piper's *Global Expansion Guidebook – Tax*.

GLOBAL EXPANSION GUIDEBOOK SERIES

Many companies today aim to scale their businesses globally and into multiple countries simultaneously. In order to help clients meet this challenge, we have created a handy set of global guides that cover the basics companies need to know.

The *Global Expansion Guidebook* series reviews business-relevant corporate, employment, intellectual property and technology, global equity and tax laws in key jurisdictions around the world.

TAX

Multinational companies continue to expand globally at an ever faster pace. Successful expansion depends, in part, on strategic and effective tax planning and compliance. This guide, brought to you by DLA Piper's Tax group summarizes the key features of tax laws in 41 popular jurisdictions.

This guide addresses common tax questions, by jurisdiction, including:

- Taxation of resident companies and non-resident companies
- Availability of tax holidays, rulings, and favorable tax regimes
- Ability to use losses to offset income
- Anti-deferral (ie CFC) rules
- Withholding taxes
- Employment tax issues

With more than 300 tax lawyers and economists in offices throughout the Americas, Europe and Asia Pacific, DLA Piper's global tax advisory services help multinational companies address the complex challenges of international commerce and business operations as well as manage and resolve tax audits. Our global tax group also assists clients in structuring a wide range of transactions, from private equity deals to corporate acquisitions and disposals. We provide these tax services across our global platform, while at the same time offering clients the benefits of the attorney-client and work-product privileges.

The information in this guide is an accessible, high-level summary of the tax laws in each jurisdiction. This is not a substitute for legal or tax advice. If you have specific questions or require detailed advice, we encourage you to contact one of the attorneys listed in the contributors section of this guide.

We hope that you find this guide valuable and we welcome your feedback.

This publication is provided to you as a courtesy, and it does not establish a client relationship between DLA Piper and you, or any other person or entity that receives it.

This is a general reference document and should not be relied upon as legal advice. The application and effect of any law or regulation upon a particular situation can vary depending upon the specific facts and circumstances, and so you should consult with a lawyer regarding the impact of any of these regimes in any particular instance.

DLA Piper and any contributing law firms accept no liability for errors or omissions appearing in this publication and, in addition, DLA Piper accepts no liability at all for the content provided by the other contributing law firms. Please note that tax law is dynamic, and the legal regime in the countries surveyed could change.

PORTUGAL

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RESIDENCE AND BASIS FOR TAXATION

An entity is treated as a domestic entity for corporate income tax purposes if its registered seat or the effective place of management is located in Portugal.

Domestic

A domestic entity is subject to Portuguese corporate tax on its worldwide income.

Foreign

A foreign entity is subject to Portuguese corporate tax on:

- Income from business carried on through a Portuguese permanent establishment, and
- Portuguese-source income

TAXABLE INCOME

Domestic

Taxable income of a domestic entity is equal to gross income less applicable deductions.

Foreign

Taxable income of a foreign entity is equal to the gross income of the business carried on through the Portuguese permanent establishment less any deductions applicable to that Portuguese business, or, when there is no permanent establishment, the amount of income sourced from Portugal.

TAX RATES

The general corporate income tax rate is 21 percent. A reduced tax rate of 17 percent applies to the first EUR50, 000 of taxable profits of small, medium-sized enterprises and small mid-caps. If these entities qualify as startups, as defined under the applicable Portuguese legal framework, the reduced tax rate should be of 12.5 percent.

A state surcharge is levied on taxable profits at the following rates: 3 percent for profits over EUR1.5 million up EUR7.5 million; 5 percent on profits over EUR7.5 million up to EUR35 million and 9 percent on profits exceeding EUR35 million.

A municipal surcharge may be levied on taxable profits at rates up to 1.5 percent, depending on the municipality.

TAX COMPLIANCE

The tax return must be filed within 5 months after the end of the tax year.

The supporting accounting and tax report must be filed by the 15th day of the 7th month after the end of the tax year.

CBC reports must be filed within 12 months after the end of the MNE's tax year.

ALTERNATIVE MINIMUM TAX

Not applicable for this jurisdiction.

TAX HOLIDAYS, RULINGS AND INCENTIVES

Tax holidays

Not applicable for this jurisdiction.

Tax rulings

No broad-based rulings are available. Taxpayers can request a private letter ruling that applies only to a specific issue.

Tax incentives

There are tax incentives for specific activities, including R&D expenses and deductions (eg Research and development (R&D) (*Sistema de Incentivos Fiscais em Investigação e Desenvolvimento Empresarial* or SIFIDE II), tax regime for investment support (*Regime Fiscal de Apoio ao Investimento* or RFAI), Pension funds, Investment Funds, including Real Estate Investment Funds (REIFs), and *Sociedades de Investimento e Gestão Imobiliária* or SIFI (with a regime akin to Real Estate Investment Trusts), Incentives to urban rehabilitation, Madeira International Business Centre (MIBC), Incentives on the capitalization of companies, Tax Incentive for Scientific Research and Innovation, etc.

CONSOLIDATION

Eligible corporations that are affiliated (generally based on at least 75 percent ownership of the statutory capital of the other affiliates and ownership of more than 50 percent of the voting rights) may elect to file corporate income tax returns on a consolidated basis.

PARTICIPATION EXEMPTION

Dividends and capital gains arising from the disposal of participations in other companies are exempt from corporate tax provided the following requirements are cumulatively met:

- The Portuguese company, directly or indirectly, holds a minimum 10 percent of the capital or voting rights of its subsidiary.
- Such participation is held or maintained for a minimum period of 1 year.
- The Portuguese company is not taxed under the tax transparency rules.
- The participated company is subject and not exempted from CIT or, if EU resident, from a tax mentioned under article 2 of Directive 2011/96/UE or, if resident outside the EU, from a tax similar to the CIT and the rate applicable under such CIT is not below 60 percent of the Portuguese CIT, but note this condition may be waived under certain circumstances (article 66(6) CIT Code).
- The participated company is not resident in a blacklisted jurisdiction.

The capital gains exemption does not apply if the participated company has real estate in Portugal which value represents more than 50 percent of its assets, unless such real estate is used in connection with an agricultural, industrial or commercial activity.

CAPITAL GAIN

Capital gain is taxed at the same rate as ordinary income. Capital gain arising from the disposal of shares may be exempt from tax under the participation exemption regime (see Participation exemption).

Fifty percent of the gains derived from the disposal of tangible fixed assets and intangible assets held for at least 1 year may be excluded from taxation if the total disposal proceeds are reinvested within the prescribed period.

DISTRIBUTIONS

Distributions paid by a corporation to its shareholders are treated as dividends.

LOSS UTILIZATION

Net operating losses can be carried forward without any time limitation but can be used to offset only 65 percent of the taxable income.

Due to the COVID-19 pandemic, net operating losses generated in 2020 and 2021 may be used to offset 75 percent of the taxable income (instead of 65 percent).

TAX-FREE REORGANIZATIONS

Group reorganizations are ordinarily tax neutral.

ANTI-DEFERRAL RULES

Profits or income derived by an entity resident in a blacklisted jurisdiction or in a jurisdiction where it is subject to an effective tax rate lower than 50 percent of the tax that would be paid according to the Portuguese CIT rules are imputed to the Portuguese taxpayer, provided it holds, directly, indirectly or constructively, at least 25 percent of the share capital, voting rights or rights to income or assets of that entity.

CFC rules also apply if the controlled entity is held by a Portuguese entity through a legal representative, fiduciary or intermediary.

CFC rules do not apply if the CFC is resident in another EU country or in an EEA member state (bound to administrative cooperation on tax matters), provided that there are valid economic reasons underlying the incorporation and running of such company and it carries out agricultural, commercial, industrial or services activities supported by staff, equipment, assets and premises.

FOREIGN TAX CREDITS

Foreign taxes paid on income subject to Portuguese taxation can be credited under the Portuguese tax credit system.

SPECIAL RULES APPLICABLE TO REAL PROPERTY

Not applicable for this jurisdiction.

TRANSFER PRICING

Arm's-length principles are applied to transactions between related entities. The Portuguese rules generally follow OECD principles.

WITHHOLDING TAX

Dividends, royalties, interest, rents, etc

Dividends paid to a foreign entity are subject to withholding tax at a rate of 25 percent (35 percent if paid to a resident of a black-listed country or if paid or made available in accounts in the name of 1 or more holders acting on behalf of undisclosed 3rd parties). The withholding tax rate may be reduced under a tax treaty. Dividends are not subject to withholding tax in the case of qualified participations (generally, 10 percent or more equity interest held for at least 1 year), subject to additional requirements.

Interest paid to a foreign entity is subject to withholding tax at a tax rate of 25 percent (35 percent if paid to a resident of a black-listed country or if paid or made available in accounts in the name of 1 or more holders acting on behalf of undisclosed 3rd parties). The withholding tax rate may be reduced under a tax treaty. Interest is not subject to withholding tax if the requirements under the EU Interest & Royalty Directive are met.

Royalties paid to a foreign entity is subject to withholding tax at a tax rate of 25 percent (35 percent if paid to a resident of a black-listed country or if paid or made available in accounts in the name of 1 or more holders acting on behalf of undisclosed 3rd parties). The withholding tax rate may be reduced under a tax treaty. Royalties are not subject to withholding tax if the requirements under the EU Interest & Royalty Directive are met.

Other payments made to foreign entities may be subject to withholding tax. The general tax rate is 25 percent.

Service fees

Withholding tax may be applied to service fees if the services are performed or used in Portugal (subject to treaty limitations).

CAPITAL DUTY, STAMP DUTY AND TRANSFER TAX

Stamp duty and transfer tax are applicable in Portugal.

EMPLOYMENT TAXES

Employers must withhold income tax and social security contributions.

OTHER TAX CONSIDERATIONS

Not applicable.

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