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SETTING UP BUSINESS IN PORTUGAL

Antea

Alliance of independent firms

General Aspect

Portugal is the westernmost country of mainland Europe, and also includes the Madeira and Azores archipelagos in the Atlantic Ocean. With about 89.000 square kilometres, has 832 kilometres of Atlantic coast. The total population is around 10 million people. The official language is Portuguese, but many people speak good English. As economy of the Euro Zone, its monetary unit of currency is the Euro (EUR). Traces of this worldwide historic presence may be felt even today. Portugal is a developed country, with a high human development index, and one of the most peacefull and globalized country in the world. Over the past few years, it has proved to be a prime location to invest, to do business and to live.

Legal Forms of Business Entities

Legal form	Feature	Remarks
Branch Office *(Sucursal)*	An extension of a non-PT company and as such has no legal personality in Portugal, but is part of the legal entity of the foreign company. It is basically a place of business, which is considered as a local extension to the head office. All responsibilities for any liabilities in Portugal belong with the foreign company.	Suitable for foreign companies looking for a presence in Portugal to initiate business or maintain contacts with business partners, especially in cases of uncertain success. Likely to be classed as a permanent establishment for tax purposes (Non-resident taxation).
According to the Portuguese Commercial Companies Code, the ownership of a company may be a single person or in partnership.		
There are several body corporate types under Portuguese law, but the following two types of company are the most common:		
Private Limited Liability Company *(Sociedade por Quotas, limitada – LDA. or Sociedade Unipessoal por Quotas, limitada – LDA.)*	Requires at least two partners (or in certain conditions, just one) either an individual or a company. Generally, decisions are taken and written in General Meetings of Quotaholders. It should have one or more managers (gerentes). The corporate entity is responsible for any company's liability, i.e., not the individual. The capital is freely established by the partners in the statutory contract, which is represented by "quotas", each one with a minimum value of EUR 1.	The most popular legal form for body corporates, with high flexibility and relatively few obligations.

Public Limited Company *(Sociedade Anónima, S.A.)*	As a rule, it is required at least five shareholders (individuals or legal entities, domestic or foreign). It is also allowed the incorporation by a foreign company which will be the sole owner of shares representing the entire share capital. The shareholders' liability is limited up to the value of its shares. Generally, decisions are taken and written in General Meetings of shareholders. Board of Directors (Conselho de Administração) are designated in General Meeting or in the company's articles. Directors are not subject to any residence or nationality restrictions, except being registed as individuals for tax purposes. It must have a statutory auditor. Alternative structures: 1. Board of Directors (or Sole Director if capital < EUR 200.000) + Audit Board (or Sole Auditor); 2. Board of Directors (including an Audit Commission) + Auditor; 3. Executive Board of Directors (or Sole Director if capital < EUR 200.000) + General and Supervisory Board + Auditor. Companies incorporated according to alternative i. must have an Audit Board and appoint an auditor if 2 of the following limits are exceeded for 2 consecutive years (from 1 January 2016): total balance sheet EUR 20.000.000; net turnover EUR 40.000.000; average number of employees 250. The minimum registered share capital is EUR 50.000. 70% of contributions in cash may be postponed for 5 years' period.	Shares can be transferred easily. The Public Limited Company can be listed publicly on the stock exchange and enjoys an high market reputation. The costs of the founding process and the organizational, accounting obligations and the publication requirements are often more extensive than in a Private Limited Liability Company. Previous limits aplied to the alternative struture i.: total balance sheet EUR 100.000.000; net turnover EUR 150.000.000; average number of employees 150.
Conversion from one Company type to another	A Private Limited Liability Company can be converted into a Public Limited Company and vice versa.	On re-registration, the company keeps its original company number and retains the same corporate identification.

Organizational Questions

Topic	Feature	Remarks
Commercial Register *(Registo Comercial)*	Companies must be entered in the commercial register. The commercial register is administered in electronic form http://www.mj.gov.pt/publicações	If a company is legally required to be registered, but takes up business operations before being entered in the commercial register, the partners are personally liable for any losses up to the point of registration.
National Register of Companies	Any proposed name can be checked against a national computer database. If it has not already been taken, that name can be validated to be registered by the National Registry of Legal Entities *(Registo Nacional de Pessoas Colectiva, RNPC)*. Apply for an Admissibility Certificate *(Certificado de Admissibilidade)* and for a Company Card *(Cartão da Empresa)*. The Corporation Identification Number of the company shall correspond also to its Tax Payer Number *(Número de Identificação de Pessoa Colectiva, NIPC)*. Apply also for the Social Security Registration Number *(Número de Identificação da Segurança Social, NISS)*.	Depending on the activity, a licence or an approval for the business registration may be necessary
Register at the Tax and Customs Authority	Apply for a Declaration of the commencement of activity for tax purposes *(Declaração de Início de Actividade)* at the Tax and Customs Authority *(Autoridade Tributária e Aduaneira)*.	
Online services	Several services are available on line. The procedure of the On the Spot Firm (Empresa na Hora) allows to create a new company through a website in a single day. An permanent access to the online commercial registry certificate of the company is provided by the Commercial Registry Office.	Full Knowledge of the local rules is advisable.. Applicable in quite simple forms only.
Bank Account *(Conta Bancária)*	A business bank account is required with clear indications as to who can proceed to the movements. To open a bank account, individuals need a valid passport. Companies need an excerpt from the commercial register and the articles of association of the company. A tax number from the Portuguese Tax and Customs Authority is needed.	For account deposits of more than EUR 10.000 cash, banks are required to check the identity of the depositor in order to prevent money laundering.
Transfer of Goods and Machinery	Within the EU goods and machinery can circulate freely. Imports from non-EU states to Portugal cause customs, import turnover tax, and in some cases special excise taxes.	There are several customs exemptions to be considered.
Transfer of Capital	Capital can be moved in and out of Portugal without any specific restrictions.	

Accounting Principles/ Financial Statements	Portuguese GAAP are in line with the IFRSs conceptual framework. Portuguese companies listed in an EU/EEA securities market follow IFRSs since 2005.	
Simplified Business Information *(Informação Empresarial Simplificada – IES)*	General Meeting must approve the annual financial statements within 3 months from the close of the fiscal year to which it relates. SSubmitting the IES files online, annually (until July), allows the company to fulfill, at once and in total desmaterialized way, account, fiscal and statistical obligations to the competent authorities	

Employment

Topic	Feature	Remarks
Visa and Residence permit	All EU citizens can set up business and take up self-employed work in Portugal without the requirement of any permit. Non-EU nationals may need a visa to enter.	
Work permit	Citizens of the European Union, the European Economic Area (EEA), can work in Portugal without any restrictions. Nationals from all other countries need a work permit to work legally in Portugal more than 90 days, except members of the management board of body corporate.	
Labour law	There are detailed employment regulations. Common working hours are 40 hours per week, with some flexibility allowed by labour code. Statutory limits on working time are part of health and safety regulations. 22 days of paid holidays a year is guaranteed. The notice period for termination of employment depends on seniority of the employee. National minimum wage EUR 557 (since 1 January 2017).	
Social System *(Segurança Social)*	Register of the company and each employee at the local Social Security regional centre is required.	
	In the normal scheme, the security contributions are shared 11% / 23,75% by employee and employer, respectively. The accident insurance has to be paid by the employer in total. No other amounts are obliged. The payment entitles the payer to a range of social security benefits.	There are exemption, or rate reduction, for the employer in several situations.

Taxation

Companies in Portugal are usually taxed on two levels: on the first level, corporations are subject to corporate income tax *(Imposto sobre o rendimento das pessoas colectivas - IRC)*, whereas partnerships are subject to personal income tax *(Imposto sobre o rendimento das pessoas singulars - IRS)*. Both taxes are levied by the government. On the second level, taxable earnings are subject to the additional tax *(Derrama)*.

Tax	Feature	Remarks
Tax treaties	Portugal has 68 tax treaties in force.	
Corporate Income Tax *(Imposto sobre o rendimento das pessoas colectivas – IRC)*	The standard rate is 21%. A reduced rate of 17% applies to the first EUR 15.000 of taxable profits of small and medium-sized enterprises. Once profits are distributed to the shareholders, personal income tax on the dividends is applicable.	
Additional Tax *(Derrama)*	Between 0% to 1,5% on taxable earnings of the body corporate, levied by a municipality (municipal surtax). An additonal tax rate - state surtax - is applicable at following conditions: 3% on the taxable earnings between EUR 1.5 million and EUR 7.5 million; 5% to earnings between EUR 7.5 million and EUR 35 million; or 7% to earnings over EUR 35 million.	
Participation exemption	Dividends received and capital gains realized by a resident company from a domestic or foreign shareholding are exempt, provided that some conditions are met, such as: • the shares are held for a minimum continuous period of 12 months; • the shareholder has held, directly or indirectly, at least 10% of the capital or voting rights of the entity that is disposed of.	
Autonomous surcharge *(Tributação auntónoma)*	For anti-abuse purposes, certain expenses can be taxable with tax rates between 5% to 20%; for non-documented expenses, the tax rate is between 50%, in general cases.	
Carry forward tax losses	The period to carry forward tax losses is 12 years since 1 January 2014, 5 years for 2012, 4 years for 2011 and 2010, and 6 years for tax losses arisen before 2009. This period will be reduced to 5 years for tax losses arisen in periods commencing on or after 1 January 2017, although the 12 year-period will be mantained for small and medium-sized companies. Since 1 January 2014, losses used in each period cannot exceed 70% of the taxable earnings. The carryback of losses is not permitted. Since 1 January 2017, the FIFO criteria for using tax losses was repealed.	
Thin capitalization	Net financial costs are deductible only up to the greater of these thresholds: EUR 1 million or 30% of EBITDA as adjusted for tax purposes. A transition period applies, under which the threshold is 40% (2016) or 30% (2017) of the adjusted EBITDA. The exceeding amount may be carried forward for 5 years, up to the 30% threshold.	Specific limitations apply to the tax deductibility of interest expense, instead of previous thin capitalization rules.

Personal Income Tax *(Imposto sobre o rendimento das pessoas singulares – IRS)*	There are several categories of income like employment income, business and professional income, investment income, real estate income, increases in net worth and pensions. The rate starts at 14,5% for an annual income exceeding the tax-free allowance of EUR 7.000. It rises progressively to a maximum personal income tax rate of 48%, which is applicable to earnings of EUR 80.000 or more. A tax of solidarity the 2,5% and 5% is applicable for annual income between EUR 80.000 and EUR 250.000 and over than EUR 250.000, respectively.	Tax advantages are available for married couples and children.
Non-habitual residents *(Residentes não-habituais)*	The non fiscal residents in Portugal during any of the previous 5 years may be taxed under a special regime, applicable for a period of 10 consecutive years. Must be registered in Tax and Customs Authority. These individuals are eligible for a flat 20% rate on income related to work or services rendered in Portugal in activities defined in a Ministerial order.	
Personal Income Tax in case of partnerships	As partnerships are not separate legal entities but associations of partners, the partners themselves generally are subject to the personal income tax, with the individual tax rate applicable to each shareholder. There are rules in place to achieve a tax burden neutrality between partnerships and corporations.	
Value Added Tax (VAT) *(Imposto sobre o valor acrescentado – IVA)*	For mainland, the standard VAT rate is 23% and there are also a rate of 13% and 6%. Lower rates are applicable in Madeira and Azores. Some services, including banking, healthcare, and non-profit work, are VAT-exempt. For certain services rendered by a foreign entrepreneur, the reverse-charge-system has to be applied.	Each entrepreneur can apply for a VAT-Identification-number, which is particularly necessary for intra-EU supplies and services. Import turnover tax has to be paid for goods imported from non-EU states.
Real Estate Transfer Tax *(Imposto municipal sobre as transmissões onerosas de imóveis – IMT)*	When domestic real estate changes owner, a one-time tax over the purchase price has to be paid, usually by the buyer. The rate varies from 5% on the transfer of rural properties, a maximum rate of 6% on the transfer of residential properties, 6,5% on the transfer on urban properties and to 10% if the purchaser is located in a listed tax haven.	
Real Estate Tax *(Imposto municipal sobre imóveis – IMI)*	Every property owner in Portugal is annually liable to real estate tax. The tax rate depends on the category of the real estate, the assessed value of the property and the municipal collection rate.	
Stamp duty *(Imposto do Selo)*	Applicable on several types of agreements, documents and deeds, as well as certain transactions not subject to VAT. Subject to exemptions.	

Non-resident taxation	A non-resident company which is trading through a permanent establishment is liable to corporation tax on income connected to the permanent establishment in Portugal, and on capital gains arising from assets connected with the activities of that permanent establishment. Non-resident individuals and companies in Portugal receiving income generated in Portugal, are subject to Portuguese limited taxation with their Portuguese-sourced income. Double taxation of this income is avoided by double taxation agreements between Portugal and other countries. In case of a non-resident company, the tax treatment depends on each kind of income.	
Tax benefits *(Benefícios Fiscais)*	Portuguese tax law allows tax benefits in several issues, namely in the following: Special tax credit for qualified investments; Tax reductions for net jobs creation; Exemption for capital gains reinvestment.	Part of these benefits are determined or renewed by the government in an annual basis.

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