

# **Tax reforms in Spain and in Portugal: How they will impact your company?**

## **Portuguese Tax Changes 2012**

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## Areas of Main Impact

- Introduction of surtaxes in addition to the standard **Corporate Income Tax rate**
- General increase in the **domestic withholding tax rates** on dividends, interest and royalties
- Limitations on **tax losses carry-forward**
- Other relevant **Corporate Income Tax** changes
- Relevant **VAT changes**
- Update on relevant **tax incentives and benefits**

## Corporate Income Tax – **New rates and surtaxes**

- **Increase of the additional State Surtax**
  - Before State Surtax was assessed on the taxable profit exceeding €2.000.000,00 at an additional rate of 2,5%
  - **Now State Surtax is assessed on the taxable profit exceeding €1.500.000,00, at an additional rate of 3%, and of 5%, for taxable profit exceeding €10.000.000,00**
- **Currently Portuguese Corporate Income Rate stands as follows:**
  - **25%** standard rate, **added by**
    - **Municipal Surtax** rate of 1,5% assessed on taxable profit, and
    - **State Surtax** rate of 3% or 5%

## Domestic Withholding Taxes – **General Increase**

- **Increase of domestic withholding tax rates** for Interest, dividends and other types of investment income obtained by non-resident entities
  - Before – Domestic WHT was at 21,5%
  - **Now – Domestic WHT stands at 25%, and 30% for black listed entities**
- **Reduction and Exemptions regimes available:**
  - Portuguese Tax Treaty network – Reduced Rates available
  - Parent Subsidiary Directive – Participation Exemption regime
  - Interest and Royalty Directive – Reduced 5% WHT available. 0% after 2013

## Limitations to **Tax Losses Carry forward**

- Deduction of tax losses in a given year is limited to **75%** of the taxable profit of that given year. Before there was no limit
- This limit was also introduced to the **Tax Consolidation regime** available in Portugal
- Carry-Forward period was increased from 4 years to **5** years

## Other relevant changes for **Corporate Income Tax**

- Payments made indirectly to Black Listed entities, are not tax deductible, when the tax payer knew or was suppose to know the destiny of such payments (knowledge presumed in case of related party transactions)
- **CFC rules** extended to situations involving trust management/fiduciary arrangements
- **CFC rules** excluded from EU and EEE environment

## Other relevant changes for **Corporate Income Tax** (cont.)

- Increase of the expenses liable to an autonomous rate of 70%
- Liability to the Municipal Surtax in case of Tax Consolidation regime, is to be assessed on individual basis, rather than on consolidated basis

## Relevant changes – VAT

- Increase of the VAT rates (already since 2011) as follows:
  - Standard rate – **23%** (before 21%)
  - Medium rate – **13%** (before 12%)
  - Reduced rate – **6%** (before 5%)
- Reallocation of products between the three rates
- Introduction of anti-abuse rules for related party transactions

## Update on **Tax Incentives** and **Tax Benefits**

- **Capital Gains** – Re-introduction of the capital gains exemption regime to non-resident entities, as long not black listed (before, only tax treaty entities would benefit from the domestic exemption)
- **Portuguese Holdings (SGPSs)** – Clarification on the maintenance of the regime, which provides for general capital gains exemption regime
- **Portuguese Share Funds** – Special Corporate Income Tax rate for capital gains realized upon disposal of shares increased from 10% to **21,5%**
- **Foreign EU Pension Funds** – Following EU Commission actions, Portugal extend the tax benefits to Portuguese Pension Funds, to equivalent EU Pension Funds, even if not Portuguese incorporated

## Update on **Tax Incentives** and **Tax Benefits** (cont.)

### – **Madeira regime changes**

- Elimination of the WHT exemptions granted to non-resident entities, regarding dividends, interest and other payments
- Madeira WHT regime changed from a full exemption regime to a 25% WHT tax rate regime, increasing to 30% in case of Black Listed entities

## Recommendations / To Do's

- **Tax Losses** – Calculate impact of 75% limit to the tax losses carry-forward, on an individual basis, as well as on a consolidated basis
- **MADEIRA changes** – Identify Madeira structures that might need re-structuring
- **Tax Opportunities**
  - Tax Groups - Challenge Municipal Surtax charged on a individual basis, regarding the last years
  - Portuguese Funds Tax Benefits – EU based may funds access whether they were discriminated regarding Portuguese Funds, and file appropriate claims