Coffee with
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Guest
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Legal initiatives to attract tax residents: The Portuguese and Spanish models

Date: 30.03.2023
Time: 10.00h
Online (link Teams by registration)

Spain Registration of Non-Resident Corporations Documents Required

- **NIE for the foreign company's representative.**
  - It can be requested at the Spanish Consulate in their country.

- **Documents required to register the foreign company in the Tax Agency and Social Security Office:**
  - Power Of Attorney (POA) in favour of the Spanish Advisors,
  - Certificate issued by the Register of Companies where the company was created.
    - Notarial Act identifying shareholders that hold >25% shares

Provide with Original Documents

Estimated Process Duration: 4 – 6 weeks

Portugal Registration of Non-Resident Corporations

- **Register before the National Legal Entities Registry (Registo Nacional de Pessoas Coletivas or "RNPC")**
  - Portuguese identification number of a legal person ("NIPC") – same as tax identification number (NIF);
  - It can be a fully online process.

- **Register for Tax and/or Social Security purposes**
  - Declaration of commencement of activity;
  - Appoint a tax representative (if required).

- **Documents required:**
  - Power Of Attorney (POA) in favour of the legal advisors;
  - Certificate of incorporation issued by the Register of Companies of the respective country;
  - Beneficial ownership information.

Differences between the taxation and obligations of a non-resident (Spain)

(Art. 13.1.a IRNR Law) **Permanent Establishment (PE)**

Place (facilities) where a taxpayer or an authorized agent carries out an activity on a continuous or habitual basis. Is understood as a PE the headquarters of a company, offices, branch offices, factories, warehouses, shops, among others.

(DTT PT-ES Art. 5.5) **Permanent Establishment (PE)**

(...) where a person, other than an agent having an independent status acts on behalf of an enterprise and habitually exercises in a Contracting State powers enabling him to conclude contracts on behalf of the enterprise, that person shall be deemed to have a permanent establishment in that State in respect of all the activities which that person carries out on behalf of the enterprise. (...)

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WITH PE
Spanish Income Taxation - Limited Tax Liability on activities carried out by the PE.
Taxation by taxable period - CIT
Expense deduction + negative taxable basis to be offset
CIT Rules equivalent

WITHOUT PE
Spanish income taxation – NO Tax Liability regarding CIT
Income will be taxed in the country where the company is settled.

Obligations with PE

- Quarterly VAT submission
  - (F 303 – 390)
  - 21% VAT general tax rate
- Social Security Contributions (if employees)
- WHT for rental & workers (if required)
  - (F 115 – 180 & F 111 – 190)
- CIT + Annual Accounts
  - F (202 – 200)

Obligations without PE

- Quarterly VAT submission
  - (F 303 – 390)
  - 21% VAT general tax rate
- Social Security Contributions (if employees)
- WHT for rental & workers (if required)
  - (F 115 – 180 & F 111 – 190)
- NO CIT – NO Annual Accounts

Spain – CIT Regimes

	General Regime	Start-up and New Companies Regime	Rental Housing Regime
Description	Main regime applicable to Spanish Companies	Special regime applicable to new companies or start-ups	Especial Regime applicable to companies which main activity is real estate rental.
Taxable Period, Accrual & Timing for submission	12 months (fiscal year). Accrual = last day of the fiscal year. Submission: 25 days after the 6 months following the end of the fiscal year.		
Tax Rate	25%	15%	25% (40% Reduction)
Specifications	Tax Rate for 2023 will be 23% if Net Revenue 2022 < 1M€	Establishment year + the following 2 years	▪ Min. 8 houses rented ▪ Min. Rental period 3 years ▪ Separate accounting registers for each house ▪ Min. 55% income from renting or 55% of the assets are rented real estate.

Differences between the taxation and obligations of a non-resident (Portugal)

Permanent Establishment (PE) [for Corporate Income Tax (CIT) purposes]

- **Fixed place of business** in Portugal through which the business of an enterprise is wholly or partly carried on.
- A fixed place of business includes specifically a place of management, a branch, an office, a factory, a workshop, a mine, an oil or gas well, a quarry, or any other place of extraction of natural resources, and also a building site or a construction or installation project which exists for more than twelve months (it may depend on the tax treaty).
- It is also considered a permanent establishment in Portugal a **person acting in Portugal on behalf of an enterprise** – other than an agent of an independent status – if he has, and habitually exercises in Portugal an authority to conclude contracts in the name of the enterprise in the scope of its activity.

WITH PE
Corporate Income Tax (CIT) on the profits attributable to the PE
General rules applicable to standard CIT taxpayers

WITHOUT PE
Corporate Income Tax (CIT) exclusively on income from Portuguese source
Worldwide income will be taxed in the country where the company is established.

Obligations with PE

- **VAT**
  - Monthly/Quarterly returns
  - Invoicing
  - Communication of invoices to PTA (SAFT-PT)
- **Payroll**
  - WHT
  - Social Security contributions
- Other WHT obligations (rent, self-employment, etc.)
- CIT returns + Annual Accounts + Annual Return of Tax and Accounting Information (IES)

Obligations without PE

- **VAT** (if applicable)
  - Monthly/Quarterly returns
  - Invoicing
  - Communication of invoices to PTA (SAFT-PT)
- **Payroll** (if applicable)
  - WHT
  - Social Security contributions
- **NO** CIT returns, **NO** Annual Accounts

Portugal – CIT Regimes

<table>
<tr><th></th><th>General Regime</th><th>Small or medium-sized companies</th><th>Simplified regime (up to €200,000 of annual turnover)</th></tr>
<tr><td>Taxable profit</td><td colspan="2">Determined based on the accounting records (accounts prepared in accordance with the accounting principles in force in Portugal, IFRS based), and subject to some adjustments as foreseen in the tax law</td><td>Based on the application of coefficients on the turnover (vary according to the nature of the activity)</td></tr>
<tr><td>General CIT rate (mainland*)</td><td>21%</td><td colspan="2">17% (up to €50,000 of taxable profit)

21% (taxable profit in excess of €50,000)</td></tr>
<tr><td>Local surtax
(“Derrama Municipal”)</td><td colspan="3">Maximum rate of 1.5% on taxable profit, depending on the municipality</td></tr>
<tr><td>Additional State surtax (“Derrama Estadual”) – Mainland*</td><td colspan="2">3% - taxable income between €1,500,000 and €7,500,000

5% - taxable income between €7,500,000 and €35,000,000

9% - taxable income above €35,000,000</td><td>N/A</td></tr>
<tr><td>Others</td><td colspan="3">Some expenses may also be subject to an autonomous taxation, such as expenses with light passengers’ vehicles and entertainment expenses (eg. 10%) or non-documented expenses (50%)</td></tr>
</table>

* Lower rates may apply to entities in Madeira, Azores and peripheral regions

Double taxation treaty (PT-ES)

Dividends

DTA. Dividends can be taxed at destiny, where they are perceived. Even so, dividends can be taxed at the origin if the Law of that Country establishes it; however, the tax rate will be limited to:

10% if the beneficiary is a company that owns ≥ 25% of the shares of the paying company

15% for the rest of the cases.

According to Spanish domestic law, dividends are **exempt** to be taxed (Art. 14.1.h/k/l IRNR Law) if certain requirements are met.

Otherwise, the tax rate is fixed at:

- **19%** without PE
- **25%** with PE

Double taxation treaty (PT-ES)

Interests

DTA. Interests can be subject to taxation where they are perceived; nonetheless, they can also be taxed at source if the legislation of the Country requires it. In that case, the tax rate will be limited to **15%.**

Spanish domestic law (IRNR Art. 14.1.c/d/f) states that interests, Government bond yields, and NR bank account yields are **exempt**. If the criteria for the exemption are not met, the tax rate is:

- **19% without PE**
- **25% with PE**

Double taxation treaty (PT-ES)

Royalties

DTA. The amounts received under Royalties can be taxed at the residency of the perceiver; nonetheless, if the regulation of the paying Country states so, they can also be taxed at the origin. In the latter, the tax rate will be limited to **5%** if certain requirements are met.

According to the domestic Spanish law (IRNR Art.14.1.m), royalties are **exempt** under specific requirements. Otherwise, the tax rate is at:

- **19% without PE**
- **25% with PE**

Exemptions - Criteria

Dividends (benefit sharing)	Interests (capital gains from shares)	Royalties
Both companies subject to CIT		
Dividends not resulting from the extinction of the company	Main % assets ≠ real estate	Company form → DIRECTIVE 2003/49/CE
Company relation: subsidiary-parent (5% shares)	Requirements to be met art. 21 CIT Spanish Law (min 5% shares hold at least during last tax year)	Associated companies (25%) +1 year
Parent Company resident in the EU or within the EEA provided that are not obtained through a tax haven (non-cooperative jurisdiction)	Obtained by residents in another Member State of the EU or within the EEA provided that are not obtained through a tax haven (non-cooperative jurisdiction)	
	Income derived from Public Debt Income from NR accounts	Payment to final beneficiary

If there is a DTA:

The DTA applies first; however, if the domestic rule establish an exemption the latter prevails over what dictates the DTA.

Double taxation treaty (PT-ES)

Dividends/Interest/Royalties

General (internal) rule: 25% WHT

DTA: Portugal has signed double tax treaties with circa 80 jurisdictions

	Dividends	Interest	Royalties
Spain	15%/10%	15%	5%

Exemptions - Criteria

Dividends	Interest	Royalties
Participation exemption regime Ownership of at least 10%, direct, or directly and indirectly, of the sharecapital or of the voting rights, for 1 year (among other requirements)	**Interest & Royalties EU Directive** Ownership of at least 25% of the share capital, for 2 years (among other requirements)	

WTH exemption is also subject to some formalities (including obtaining tax residency certificates of the beneficiaries)