

Pérez-Llorca

# Tax Guide for Corporate Vehicles in Portugal

*Corporate Income Tax*



## Introduction

In today's economy, establishing and operating a successful business demands strategic positioning within the right legal and tax framework. Our comprehensive corporate tax services are designed to guide you through the complexities of modern business establishment, ensuring businesses are structured for optimal growth, tax efficiency, and compliance.

The current Portuguese corporate tax framework offers a set of tax benefits designed for sector-specific business, namely: R&D projects, patent (and software) box and tax incentives to capitalisation.

Moreover, Portugal has developed and consolidated its legal and tax framework regarding the corporate structuring of private equity and venture capital, real estate investments, as well as an innovative credit funds regime.

Portugal has emerged as one of Europe's most attractive investment destinations, offering a compelling combination of strategic location, political stability, and a business environment that has been significantly enhanced by economic reforms, EU membership benefits, and a commitment to innovation and sustainability.

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## 1.

## Corporate Tax Regime

Portuguese tax resident companies are subject to CIT on their worldwide income, which is generally taxed under the standard CIT rate. For some specific types of income (e.g. dividends, capital gains and royalties) a withholding tax rate may be defined by the Portuguese tax law or the applicable tax treaties.

The taxable income (taxable profit or loss) will correspond to the net accounting income calculated in accordance with the Portuguese general accounting principles (similar to IFRS), as adjusted by the CIT Code.

Therefore, any income generated by Portuguese companies, including capital gains, should be considered as taxable profit and the relevant expenses – e.g. annual operating cost, depreciation of assets and financing costs within the limits established in CIT Code, among others – provided they are properly documented and deemed as incurred to generate the income subject to taxation, should be deemed as deductible to taxable profits.

### Accounting profit ➤ Tax Adjustments ➤ Taxable Income

Tax losses can be carried forward to subsequent tax periods without limitation. However, the deduction of tax losses in any FY may not exceed 65% of the taxable profit, meaning that at least 35% of the taxable profit will always be liable to CIT. Carry-back of losses is not allowed.

Taxable income is subject to a standard CIT rate of **20%**, which may be increased through:

- Municipal Surcharge (“*derrama municipal*”) of up to 1.5%;
- State Surcharge (“*derrama estadual*”):
  - 3% on taxable profit exceeding €1,5M and €7,5M;
  - 5% on taxable profit exceeding €7,5M and up to €35M;
  - 9% on taxable profit exceeding €35M.

Small Mid Cap companies may benefit from a reduced CIT rate of 16% applicable to the first €50k of taxable income.



## Participation exemption regimes

The Portuguese participation exemption domestic regime allows resident companies to exclude dividends and capital gains derived from qualifying participations. Similarly, the EU Parent-Subsidiary Directive (PSD) establishes a framework to eliminate double taxation of profit distributions between associated companies of different EU Member States.

These regimes establish an exemption from withholding tax on dividends, whilst also providing for the exemption of dividends received by Portuguese parent companies from their EU subsidiaries, subject to the fulfillment of certain requirements, namely:

- » Tax residence (EU / EEA Member States)
- » Holding period (at least 1 year)
- » Corporate form and / or subject-to-tax
- » Documental / administrative compliance

These regimes facilitate cross-border corporate structures and promote the internal market by removing tax obstacles to profit distributions within corporate groups operating across EU borders.

Under anti-abuse provisions, the participation exemption regime will not be applicable to capital gains arising from the transfer of equity in a subsidiary with more than 50% of its assets related to real estate located in Portugal, or to arrangements put into place for the main purpose or one of the main purposes of obtaining a tax advantage that are not genuine having regard to all relevant facts and circumstances.

## Withholding taxes on dividends

	To Resident Companies	To Non-Resident Companies	To Resident Individuals	To Non-Resident Individuals
<b>Withholding Tax Rate</b>	25%	25%	28%	28%
<b>Elimination / reduction</b>	0% (if domestic participation exemption applies)	EU PSD (0%) or tax treaty available (10-15%)	Not available	Tax treaty available (10-15%)

## 2.

## Tax benefits highlight

Portugal offers several attractive tax benefits designed to stimulate business investment and innovation, and this document outlines three of the most relevant and widely used tax incentives and tax benefits.

The Incentive to Capitalisation of Companies allows companies to deduct a percentage of capital increases from their taxable income, encouraging businesses to strengthen their financial position through equity instruments. Portugal also supports for innovation through its R&D benefits: enhanced deductions for qualifying expenditure and the ability to carry forward unused deductions. Finally, Portugal has patent (and software) box regime, offering a reduced corporate income tax rate on income derived from qualifying assets.

### ICE

The tax Incentive to Capitalisation of Companies (“ICE”) foresees a Tax Benefit under the form of a deduction from the taxable profit. The deduction is calculated by applying to the net eligible capital increases a variable rate corresponding to the average 12-month Euribor during the tax year + 2% spread.

- » Eligible equity increases include (during the year concerned as well as six previous FY):
  - i. cash contributions made in connection with the incorporation of companies or increase in the share capital;
  - ii. contributions in kind made within the scope of the share capital increase resulting from conversion of credits (conversions of quasi-equity – e.g., supplementary / ancillary capital contributions – into share capital are not deemed as eligible capital increases);
  - iii. share premium for issuing shares;
  - iv. utilization of retained earnings to increase capital reserves or share capital.
- » This incentive only applies to eligible capital increases executed after 1 January 2023.
- » The deduction shall not exceed, in each year, the higher of: a) € 4M; or b) 30% of the tax EBITDA. The amounts that were not deducted for having exceeded the mentioned limits, can be carried forward over 5 FY, as long as, together with the deduction such FY, they do not exceed the referred limits.
- » There are additional deductions of 50%, 50% and 20% respectively in the 2024, 2025 and 2026, subject to the abovementioned limits.





## SIFIDE



**CIT deduction**, of up to 82,5% of R&D expenses, as follows:

- Base rate: 32,5% of expenses incurred in that period; and
- Incremental rate: 50% of the increase in the expenses considering an average of the two previous FY's, up to a limit of €1.5M



**R&D expenses** – e.g. participation in investment funds investing in R&D



12-year period (ANI)



120% deduction for eco-design projects

## Patent Box

- » **CIT exclusion up to 85%** of income arising from **intellectual property** (agreements for the disposal or temporary use of patents, designs, models or software copyrights).
- » In order to apply the Patent Box regime, it is necessary that:
  - the rights are registered;
  - the entity acquiring/using the right use it to pursuit a commercial activity;
  - the purchaser or user of the rights is not domiciled in a blacklisted jurisdiction;
  - the results of the use of the rights by the purchaser/user do not involve any supply of services resulting in tax-deductible costs in the beneficiary of the regime or any related company; and
  - the beneficiary of the regime has separate accounting records for the activities carried out in connection with the rights.



# 3.

## Alternative structures

### Real estate structures: SIC / SIGI

SICs are collective investment undertakings with a corporate form (*sociedade de investimento coletivo*), designed to promote a legal framework for investments, widely used in real estate investment in Portugal.

SIGIs are usually referred as the “portuguese REITs”. These structures shall adopt the form of a public limited company (*sociedade anónima*) and their shares are securities admitted to trading.



#### Taxation at the level of the SIC / SIGI

Under the SIC / SIGI taxation regime, certain types of income (and related expenses) are excluded from its taxable income, namely (i) investment income; (ii) real estate income; and (iii) capital gains from the sale of real estate assets, (for SIGI's the property must be allocated to leasing or atypical contracts involving real estate and services for at least 3 years). SIC / SIGI also exempt from Municipal and State surcharges.

Regarding Stamp Tax, these structures are subject to a quarterly payment, at a rate of 0.0125% on the net asset value.



#### Taxation at the level of the investors

Distributions to non-resident investors are subject to a 10% tax rate. General CIT or PIT rules apply for resident investors.

## Private equity and venture capital structures

Venture Capital Funds (FCR) are venture capital collective investment undertakings with a contractual form whose management shall be carried out by a third-party, a management entity, usually a Venture Capital Firm (*sociedades de capital de risco*, or SCR).

Both the FCRs and SCRs are regulated entities whose incorporation is subject to prior notice to the Portuguese securities market regulator (CMVM).

### — EXEMPTION FOR FCR

From a tax perspective, FCRs should be tax neutral investment vehicles and attract alternative private capital to the Portuguese market, shifting taxation to investors. As such, FCRs that are incorporated and operate according to Portuguese law are exempt from CIT.

Considering that such entities are liable to tax (benefiting from a corporate income tax exemption), there is an obligation to fulfil some ancillary obligations, including filing the annual corporate income tax return.

Unlike ordinary investment funds, which are subject on a periodic basis to Stamp Tax, FCR will not be subject to any such taxation.



## TAXATION AT THE LEVEL OF INVESTORS

Regarding the taxation of investors, it should be noted the distinction between the person who is entitle to such income (an individual or corporate entity), the place of its residence and the nature of income, as follows:

		Distribution of dividends	To Resident Individuals
RESIDENT	Individuals	<ul style="list-style-type: none"> <li>» 10% withholding tax (final withholding tax if obtained outside the scope of a business activity) or</li> <li>» Option to aggregate with the remaining individual's income (only 50% will be considered taxable income), at the general PIT progressive tax rates</li> </ul>	<ul style="list-style-type: none"> <li>» 10% if obtained outside the scope of a business activity or</li> <li>» Option to aggregate with the remaining individual's income at the general PT progressive tax rates.</li> </ul>
	Entities	<ul style="list-style-type: none"> <li>» Subject to CIT at the general rates. 10% withholding tax (payment on account), unless for entities exempt from CIT on capital income.</li> </ul>	<ul style="list-style-type: none"> <li>» Subject to CIT at the general rates, as part of the CIT taxable profit.</li> </ul>
NON-RESIDENT	Individuals	<ul style="list-style-type: none"> <li>» Exempt* or</li> <li>» taxed at a 10% rate if resident in a Portuguese blacklist jurisdiction.</li> </ul>	<ul style="list-style-type: none"> <li>» Exempt* or</li> <li>» taxed at a 10% rate if resident in a Portuguese blacklist jurisdiction*.</li> </ul>
	Entities	<ul style="list-style-type: none"> <li>» Exempt, except if (i) resident in a Portuguese blacklist jurisdiction or (ii) more than 25% of the non-resident entity is held, directly or indirectly, by entities resident in Portugal.</li> </ul>	<ul style="list-style-type: none"> <li>» Exempt or taxed at a 10% rate if resident in a blacklisted jurisdiction or held directly or indirectly in more than 25% by a Portuguese residents.</li> </ul>

*\*Risk of the PTA impose a 10% tax rate or even, in a worst-case scenario, the general tax regime, in any case.*

Please note that the tax regime described above (for FCR and its investors) also applies to credit funds.

## 4.

## About Pérez-Llorca

### A leading firm, unparalleled quality, service and commitment

Pérez-Llorca is an Ibero-American law firm that operates in Spain, Portugal, Mexico and Colombia and provides high-end advice on major market transactions and disputes.

The firm carries out multi-jurisdictional work in Europe, the Americas and Asia and offers comprehensive advice on Spanish, Portuguese, Mexican, Colombian and European law with offices in Barcelona, Bogotá, Brussels, Lisbon, London, Madrid, Medellín, Mexico City, Monterrey, New York and Singapore, where more than 1,000 professionals work together, including nearly 600 lawyers.

For over 40 years, the firm's highly motivated lawyers and staff have been working towards a common goal: to contribute to the business success of our clients by providing the results they need in the most efficient way. To this end, we offer first-rate legal services whilst always adhering to ethical and professional codes of practice.

#### COMPREHENSIVE ADVICE IN PORTUGAL

Our Lisbon office is involved in many of the most complex corporate transactions and disputes in Portugal. Working across all sectors and industries, our lawyers advise clients on securities offerings, complex financing transactions and mergers and acquisitions. Clients rely on our sophisticated, practical advice and innovative solutions for their most challenging business and legal needs. Some of our partners are qualified in Portugal, Brazil and Spain and offer extensive experience and in-depth knowledge of Portuguese-speaking markets.

The firm serves large companies, financial institutions, investment banks, private equity funds, sovereign wealth funds, public entities, individuals and family offices in Portugal and other Portuguese-speaking markets. Our partners are involved and participate at all times in the matters from the different practice areas the firm advises on: **Corporate/M&A, Banking and Finance, Insurance, Energy and Infrastructure, Real Estate, Employment, Private Equity, Tax, Regulatory and Competition.**

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